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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

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A BILL

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

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Comprehensive Immigration Reform Act of 2010" or the "CIR Act of 2010".

(b) TABLE OF CONTENTS.—The table of contents for 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

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SEC. 3. DEFINITIONS.

In this Act:

(1) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(2) NORTHERN BORDER.—The term ''Northern border'' means the international land border between the United States and Canada.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(4) SOUTHERN BORDER.—The term ''Southern border'' means the international land border between the United States and Mexico.

TITLE I—BORDER ENFORCEMENT

Subtitle A—Additional Assets and Resources

SEC. 101. EFFECTIVE DATE TRIGGERS.

(a) IN GENERAL.—Notwithstanding any effective date provision or any other law, an alien in lawful prospective immigrant status may not adjust status to the status of an alien lawfully admitted for permanent residence under section 502 until—

(1) the Secretary submits a written certification to the President and Congress that the measures described in subsection (b) are established, funded, and operational; and

(2) the Attorney General submits a written certification to the President and Congress that each of the measures described in subsection (c) are established, funded, and operational.

(b) MEASURES BY DEPARTMENT OF HOMELAND SECURITY.—The measures described in this subsection are established, funded, and operational if—

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

(A) a total force of 6,410 agents to investigate violations of criminal law, including docu-

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

(B) a total force of 185 worksite enforcement auditors to support a worksite enforcement strategy that prioritizes developing cases against employers committing serious violations;

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

(D) a nationwide plan with benchmarks to dramatically increase the nationwide enrollment of an alternatives to detention program that utilizes community-based nonprofit organizations; and

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

(2) United States Customs and Border Protection (CBP) has—

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

spections for drugs, contraband, and immigrants who are unlawfully present at ports of entry in the United States;

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

(C) 7 unmanned aircraft systems deployed and operational;

(D) remote video surveillance systems deployed and operational at 300 sites;

(E) 200 scope trucks; and

(F) 56 mobile surveillance systems.

(3) the employment verification system established under title III is fully operational and mandatory for all employers; and

(4) the Secretary has received, and is processing and adjudicating in a timely manner, applications under title 5, including conducting all necessary background and security checks required under such title.

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

(1) 300 Assistant United States Attorneys in place who prosecute criminal violations at the border; and

(2) 275 Immigration Judges in place with appropriate support staff.

SEC. 102. CUSTOMS AND BORDER PROTECTION PERSONNEL.

(a) STAFF ENHANCEMENTS.—

(1) REVISIONS TO FISCAL YEAR ALLOCATIONS AND FUNDING.—Title II of the Department of Homeland Security Appropriations Act, 2010 (Public Law 111–83), is amended by inserting ''*Provided further,* That of the total amount provided, $40,000,000 shall be used to pay the salaries and related compensation for 250 additional Customs and Border Protection officers and 25 associated support staff personnel, who shall be devoted to new inspection lanes at new land ports of entry on the Southwest border'' before the period at the end of the first paragraph.

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

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

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

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

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

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

(c) REPORT TO CONGRESS.—

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

tection officers on outbound inspections at all Southern border land ports of entry to—

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

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

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

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

(2) AGRICULTURAL SPECIALISTS.—Not later than 90 days after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, shall submit a report to the committees set forth in paragraph (1) that contains plans for ensuring the placement of sufficient agriculture specialists at all Southern border land ports of entry.

(d) RETENTION INCENTIVES AND SALARIES.—

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

cers. Not more than $55,000,000 in retention payments may be paid under this paragraph.

(2) SPECIAL RULES FOR INCENTIVE PAYMENTS.—

(A) RETENTION INCENTIVES.—Each payment made under paragraph (1)—

(i) shall be paid to each qualified employee, in a lump sum, at the end of the fiscal year in which the employee is selected by the Secretary, or a delegate of the Secretary, to receive such payment;

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

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

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

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

(iii) shall be contingent upon the selected employee signing an agreement, under penalty of perjury, to continue serving as a United States Customs and Bor-

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

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

(B) LIMITATIONS.—

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

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

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

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

tion and satellite-enabled device, supported by system interoperability, which allows such officers to communicate—

(1) between ports of entry and inspection stations; and

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

(b) BORDER AREA SECURITY INITIATIVE GRANT PROGRAM.—

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

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

SEC. 104. INFRASTRUCTURE IMPROVEMENTS AND EXPANSION OF LAND PORTS OF ENTRY.

(a) AMENDMENTS TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.—Title VI of the American Recovery and Reinvestment Act of 2009 (Public Law 111–

5), under the heading entitled ''Construction'' is amended—

(1) by striking ''U.S. Customs and Border Protection owned''; and

(2) by inserting ''*Provided further,* That $300,000,000 shall be used for infrastructure improvements, expansion, and new construction (or reimbursement for new construction costs incurred during fiscal years 2007 through 2012) of high-volume ports of entry along the Northern border and the Southern border, regardless of port ownership'' before the period at the end.

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

SEC. 105. ADDITIONAL AUTHORITIES FOR PORT OF ENTRY CONSTRUCTION.

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

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

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

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

(b) CONSULTATION.—

(1) LOCATIONS FOR NEW PORTS OF ENTRY.—The Secretary shall consult with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of State, the International Boundary and Water Commission, the International Joint Commission, and appropriate representatives of States, local governments, Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)), and property owners to—

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

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

(2) SAVINGS PROVISION.—Nothing in this subsection may be construed—

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

(B) to affect the legality and validity of any determination under this Act by the Secretary; or

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

SEC. 106. ADDITIONAL INCREASES IN IMMIGRATION ENFORCEMENT PERSONNEL.

(a) IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.—Section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3734) is amended by striking ''800'' and inserting ''1000''.

(b) ADDITIONAL PERSONNEL.—In addition to the positions authorized under section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended by paragraph (1), during each of the fiscal years 2011 through 2015, the Secretary shall, subject to the availability of appropriations, increase by not less than 50 the number of positions for personnel within the Department assigned to investigate alien smuggling.

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

SEC. 107. ADDITIONAL IMMIGRATION COURT PERSONNEL.

(a) DEPARTMENT OF JUSTICE.—

(1) LITIGATION ATTORNEYS.—In each of fiscal years 2011 through 2015, the Attorney General shall, subject to the availability of appropriations for such purpose, increase by not less than 50 the number of positions for attorneys in the Office of Immigration Litigation of the Department of Justice.

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

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

(B) increase by not less than 80 the number of positions for personnel to support the immigration judges described in subparagraph (A) compared to the number of such positions for

which funds were made available during the preceding fiscal year.

(3) STAFF ATTORNEYS.—In each of fiscal years 2011 through 2015, the Attorney General shall, subject to the availability of appropriations for such purpose—

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

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

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General for each of the fiscal years 2011 through 2015 such sums as may be necessary to carry out this subsection, including the hiring of necessary support staff.

SEC. 108. IMPROVED TRAINING FOR BORDER SECURITY AND IMMIGRATION ENFORCEMENT OFFICERS.

The Secretary shall ensure that Customs and Border Protection agents, U.S. Border Patrol agents, Immigration and Customs Enforcement agents, and Agricultural Inspectors stationed within 100 miles of any land or marine border of the United States or at any United States port of entry receive appropriate training, prepared in collaboration with the Office for Civil Rights and Civil Liberties, in—

(1) identifying and detecting fraudulent travel documents;

(2) civil, constitutional, and privacy rights of individuals;

(3) limitations on the use of force, including lethal force, against individuals apprehended or encountered while on duty; and

(4) screening, identifying, and addressing vulnerable populations, including children, victims of crime and human trafficking, and individuals fleeing persecution or torture.

SEC. 109. STANDARDS OF PROFESSIONAL CONDUCT.

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

sional conduct for interaction with the public, for all United States Customs and Border Protection agents, United States Border Patrol agents, United States Immigration and Customs Enforcement agents, and Agricultural Inspectors stationed within 100 miles of any land or marine border of the United States or at a United States port of entry.

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

(1) may not violate any law or any agency policy, rule, or procedure;

(2) shall obey all lawful orders;

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

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

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

(6) shall refrain from an officious or overbearing attitude or language that belittles, ridicules, or intimidates individuals;

(7) may not unnecessarily delay the performance of their duty;

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

(9) may not use their authority as Federal agents to resolve personal grievances, including those involving the officer, family members, relatives, or friends; and

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

(c) OVERSIGHT AND EVALUATION.—The Secretary shall develop and implement an officer evaluation and supervisor evaluation plan that applies the standards described in subsection (b), ensures agent responsibility, and protects civil rights by—

(1) making adherence to the standards of professional 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.

(f) COMPLAINTS.—Not more than 180 days after the date of the enactment of this Act, the Secretary, in consultation with the Office for Civil Rights and Civil Liberties, shall establish a uniform and standardized procedure for the public regarding complaints against U.S. Customs and Border Protection agents, U.S. Border Patrol agents, and Agricultural Inspectors for violations of standards of professional conduct that—

(1) requires such agents and inspectors to quickly review, effectively investigate, and meaningfully resolve complaints;

(2) identifies patterns of abuse or malfeasance;

(3) is accessible, transparent, consistent, effective, and fair;

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

(5) specifies to whom, how, and where complaints are to be filed;

(6) is posted in a publicly visible place at all ports of entry and interior checkpoints and is accessible in multiple languages;

(7) allocates a sufficient percentage of the funding appropriated to the Department for enforcement initiatives to provide staff and resources commensurate with the quantity of complaints submitted;

(8) includes a publicly accessible national, standardized database capable of tracking and analyzing complaints and their resolution; and

(9) makes copies of complaints and their resolutions publicly accessible and permanently preserved and available for inspection, while maintaining the confidentiality of complainants' identities.

(g) COMPLAINANTS.—

(1) ELIGIBLE COMPLAINANTS.—Any interested party or legal representative may file a complaint against the Department for violation of standards of professional conduct through the complaint procedure established under subsection (f).

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

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

(A) use any information received from a complaint filed under this section to initiate removal proceedings or removals against any person filing the complaint or identified in the complaint; or

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

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

(5) DEPARTMENT ASSISTANCE.—The Department shall provide assistance to complainants seeking to file complaints under this subsection, including language assistance, accommodations for disabilities, and accurate and complete responses to their questions.

(h) ANNUAL REPORT.—

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

(A) the number and type of complaints received in each sector;

(B) demographic information about the complainants;

(C) the results of the investigations conducted to determine whether the alleged violations of professional standards occurred, including—

(i) which standards were violations of standards;

(ii) any disciplinary actions taken; and

(iii) any complaint patterns that could be prevented or reduced by policy or practice changes.

(2) CONGRESSIONAL COMMITTEES.—The congressional committees set forth in this paragraph are—

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

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

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

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

(E) the Committee on Oversight and Government Reform of the House of Representatives.

SEC. 110. INVENTORY OF ASSETS AND PERSONNEL.

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

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

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

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

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

SEC. 111. CUSTOMS BORDER PATROL AND BORDER PROTECTION ASSETS.

(a) PERSONAL EQUIPMENT.—

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

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

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

(C) is strongly encouraged, but not required, to wear such body armor whenever practicable; and

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

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

(A) border patrol agents are equipped with weapons that are reliable and effective to protect themselves, their fellow agents, and innocent third parties from the threats posed by armed criminals; and

(B) ensure that the policies of the Department authorize all agents to carry weapons that are suited to the potential threats that they face.

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

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

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

(b) HELICOPTERS AND POWER BOATS.—

(1) HELICOPTERS.—The Secretary shall—

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

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

(C) ensure that appropriate types of helicopters are procured for the various missions being performed.

(2) POWER BOATS.—The Secretary shall—

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

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

(C) ensure that the types of power boats that are procured are appropriate for the waterways in which they are used and the mission requirements.

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

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

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

cluding safe operating procedures and rescue operations.

(c) MOTOR VEHICLES.—

(1) QUANTITY.—The Secretary shall—

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

(B) if the Secretary determines that the number of motor vehicles is insufficient, establish a fleet of motor vehicles appropriate for use by the Border Patrol; and

(C) ensure that there are sufficient numbers and types of other motor vehicles to support the mission of the Border Patrol.

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

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

(B) have a panic button and a global positioning system device that is activated solely in emergency situations to track the location of agents in distress.

(d) ELECTRONIC EQUIPMENT.—

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

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

(B) is otherwise suited to the unique operational requirements of the Border Patrol.

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

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

(B) each portable communications device is equipped with a panic button and a global positioning system device that is activated solely in emergency situations to track the location of agents in distress.

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

handheld global positioning system device for navigational purposes.

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

(e) APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of fiscal years 2011 through 2015 to carry out this section.

SEC. 112. TECHNOLOGICAL ASSETS.

(a) ACQUISITION.—Subject to the availability of appropriations for such purpose, the Secretary shall procure additional unmanned aerial systems, aircrafts, cameras, poles, ground sensors, and other technologies necessary to achieve effective control of the land and maritime borders of the United States.

(b) UNMANNED AIRCRAFT AND ASSOCIATED INFRASTRUCTURE.—The Secretary shall acquire and maintain unmanned aerial systems for use on the border, including related equipment such as—

(1) additional sensors;

(2) critical spares;

(3) satellite command and control; and

(4) other necessary equipment for operational support.

(c) PRIVACY AND CIVIL LIBERTIES ASSESSMENTS.—The Secretary, in consultation with the Attorney General, shall conduct a privacy impact assessment and a civil liberties impact assessment before the deployment of new technologies under this section.

(d) AUTHORIZATION OF APPROPRIATIONS.—

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

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

SEC. 113. SURVEILLANCE TECHNOLOGIES PROGRAMS.

(a) AERIAL SURVEILLANCE PROGRAM.—

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

aerial systems, that the Secretary determines to be necessary to enhance the security of the border between the United States and Canada and the border between the United States and Mexico.

(2) ASSESSMENT AND CONSULTATION REQUIREMENTS.—The Secretary shall—

(A) consider current and proposed aerial surveillance technologies;

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

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

(D) consult with the Administrator of the Federal Aviation Administration regarding safety, airspace coordination and regulation, and any other issues necessary for implementation of the program;

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

national law implications relating to the implementation or conduct of the program; and

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

(3) EVALUATION OF TECHNOLOGIES.—The aerial surveillance program authorized under this subsection shall include the use of a variety of aerial surveillance technologies in a variety of topographies and areas, including populated and unpopulated areas located on or near the international border of the United States, to evaluate, for a range of circumstances—

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

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

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

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

of 2002 (6 U.S.C. 142 and 345), the Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties shall conduct additional reviews, as necessary.

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

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

(b) INTEGRATED AND AUTOMATED SURVEILLANCE PROGRAM.—

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

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

(B) to establish a security perimeter known as a ''virtual fence'' along such inter-

national borders to provide a barrier to unauthorized immigration.

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

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

(B) use a standard process to collect, catalog, and report intrusion and response data collected under the program;

(C) ensure that future surveillance technology investments and upgrades for the program can be integrated with existing systems;

(D) develop and apply performance measures to evaluate whether the program is providing desired results by increasing response effectiveness in monitoring and detecting unauthorized intrusions along the Northern border and the Southern border;

(E) develop plans, in accordance with relevant environmental laws, to streamline site selection, site validation, and environmental assessment processes to minimize delays of installing surveillance technology infrastructure;

(F) develop standards to expand the shared use of existing private and governmental structures to install remote surveillance technology infrastructure to the extent possible; and

(G) develop standards to identify and deploy the use of nonpermanent or mobile surveillance platforms that will increase the Secretary's mobility and ability to identify unauthorized border intrusions.

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

Subtitle B—Enhanced Coordination and Planning for Border Security

SEC. 121. ANNUAL REPORT ON IMPROVING NORTH AMERICAN SECURITY INFORMATION EXCHANGE.

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

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

(b) CONTENTS.—

(1) SECURITY CLEARANCES AND DOCUMENT INTEGRITY.—Each report submitted under subsection (a) shall describe the development of common enrollment, security, technical, and biometric standards for the issuance, authentication, validation, and repudiation of secure documents, including—

(A) technical and biometric standards based on best practices and consistent with international standards for the issuance, authentication, validation, and repudiation of travel documents, including—

(i) passports;

(ii) visas; and

(iii) permanent resident cards;

(B) the joint efforts of the United States, Canada, and Mexico to encourage foreign governments to enact laws that—

(i) combat alien smuggling and trafficking; and

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

(C) efforts made to ensure that other countries meet proper travel document standards and are committed to travel document verification before the nationals of such countries travel internationally, including travel to the United States.

(2) IMMIGRATION AND VISA MANAGEMENT.—Each report submitted under subsection (a) shall describe the progress made in sharing information regarding high-risk individuals who attempt to enter Canada, Mexico, or the United States, including—

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

(B) identifying and analyzing trends related to immigration fraud, including asylum and document fraud.

(3) VISA POLICY COORDINATION AND IMMIGRATION SECURITY.—Each report submitted under subsection (a) shall describe the progress made by Canada, Mexico, and the United States to enhance North American security by cooperating on visa policy and identifying best practices regarding immigration security, including—

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

(B) comparing the procedures and policies of Canada and the United States related to visitor visa processing, including—

(i) application process;

(ii) interview policy;

(iii) general screening procedures;

(iv) visa validity;

(v) quality control measures; and

(vi) access to appeal or review;

(C) exploring methods for Canada, Mexico, and the United States to waive visa requirements for nationals and citizens of the same foreign countries;

(D) developing and implementing an immigration security strategy for North America that utilizes a common security perimeter by enhancing technical assistance for programs and systems to support advance automated reporting and risk targeting of international passengers;

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

(F) collecting 10 fingerprints from each individual who applies for a visa.

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

(A) respect the privacy laws of both countries; and

(B) share information regarding third country nationals who have overstayed their period of authorized admission in Canada or the United States.

(5) TERRORIST WATCH LISTS.—Each report submitted under subsection (a) shall describe the capacity of the United States to combat terrorism through the coordination of counterterrorism efforts, including—

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

States and between Mexico and the United States—

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

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

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

(C) establishing a multilateral watch list mechanism that would facilitate direct coordination between the country that identifies individuals on a watch list and the country that owns such list, including procedures that satisfy security concerns, comply with privacy laws, and are consistent with the other laws of each participating country; and

(D) establishing transparent standards and processes that enable innocent individuals to remove their names from a watch list.

(6) MONEY LAUNDERING, CURRENCY SMUGGLING, AND ALIEN SMUGGLING.—Each report submitted under subsection (a) shall describe improvements made in information sharing and law enforce-

ment cooperation in combating organized crime, including—

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

(B) determining the feasibility of formulating a firearms trafficking action plan between Mexico and the United States;

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

(D) determining the feasibility of formulating a joint threat assessment on organized crime between Mexico and the United States;

(E) developing mechanisms to exchange information on findings, seizures, and capture of individuals transporting undeclared currency; and

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

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

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

(B) the feasibility of establishing law enforcement teams that include personnel from the United States and Mexico; and

(C) the appropriate procedures for such multinational teams.

SEC. 122. COOPERATION WITH THE GOVERNMENT OF MEXICO.

(a) COOPERATION REGARDING BORDER SECURITY.—The Secretary of State, in cooperation with the Secretary and representatives of Federal, State, and local law enforcement agencies that are involved in border security and immigration enforcement efforts, shall work with appropriate officials of the Government of Mexico to improve coordination between the United States and Mexico to—

(1) improve border security along the international border between the United States and Mexico;

(2) reduce human trafficking and smuggling between the United States and Mexico;

(3) reduce drug trafficking and smuggling between the United States and Mexico;

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

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

(6) reduce other violence and criminal activity.

(b) COOPERATION REGARDING EDUCATION ON IMMIGRATION LAWS.—The Secretary of State, in cooperation with other appropriate Federal officials, shall work with appropriate officials of the Government of Mexico to educate citizens and nationals of Mexico regarding their eligibility for nonimmigrant status in the United States to ensure that such citizens and nationals are not exploited while working in the United States.

(c) COOPERATION REGARDING CIRCULAR MIGRATION.—The Secretary of State, in cooperation with the Secretary of Labor and other appropriate Federal officials, shall work with appropriate officials of the Government of Mexico to encourage circular migration of citizens and nationals of Mexico, including assisting in the development of economic opportunities and the provision of job training for such citizens and nationals.

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

in the United States, shall cooperate with their counterparts in Mexico to enhance border security structures along the international border between the United States and Mexico, as authorized by this title, by—

(1) soliciting the views of affected communities;

(2) lessening tensions; and

(3) fostering greater understanding and stronger cooperation on border security structures and other important security issues of mutual concern.

(e) ANNUAL REPORT.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State shall submit a report to Congress that describes the actions taken by the United States and Mexico under this section.

SEC. 123. ENHANCED INTERNATIONAL COOPERATION.

The Attorney General, in cooperation with the Secretary of State, shall—

(1) assign agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives to the United States mission in Mexico to work with Mexican law enforcement agencies in conducting investigations relating to firearms trafficking and other criminal enterprises;

(2) provide the equipment and technological resources necessary to support such investigations and to trace firearms recovered in Mexico; and

(3) support the training of Mexican law enforcement officers in serial number restoration techniques, canine explosive detection, and anti-trafficking tactics.

SEC. 124. EXPANSION OF COMMERCE SECURITY PROGRAMS.

(a) CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Commissioner, in consultation with the Secretary, shall develop a plan to expand the programs of the Customs-Trade Partnership Against Terrorism established pursuant to section 211 of the SAFE Port Act (6 U.S.C. 961), including adding additional personnel for such programs along the Northern border and the Southern border.

(2) C–TPAT PROGRAMS.—The programs referred to in paragraph (1) include—

(A) the Business Anti-Smuggling Coalition;

(B) the Carrier Initiative Program;

(C) the Americas Counter Smuggling Initiative;

(D) the Container Security Initiative established pursuant to section 205 of the SAFE Port Act (6 U.S.C. 945);

(E) the Free and Secure Trade Initiative; and

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

(b) DEMONSTRATION PROGRAMS.—Not later than 180 days after the date of enactment of this Act, the Commissioner shall—

(1) implement, on a demonstration basis, a Customs-Trade Partnership Against Terrorism program, which has been successfully implemented along the Northern border and along the Southern border; and

(2) establish a demonstration program to develop a cooperative trade security system to improve supply chain security.

SEC. 125. NORTHERN AND SOUTHERN BORDER DRUG PROSECUTION INITIATIVE.

(a) REIMBURSEMENT TO STATE AND LOCAL PROSECUTORS FOR PROSECUTING FEDERALLY INITIATED DRUG CASES.—Subject to the availability of appropria-

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

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

SEC. 126. PROJECT GUNRUNNER INITIATIVE.

(a) IN GENERAL.—The Attorney General shall dedicate and expand the resources provided for the Project Gunrunner Initiative of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (referred to in this section as ''ATF'') to identify, investigate, and prosecute individuals involved in the trafficking of firearms across the Southern border.

(b) ACTIVITIES.—In carrying out this section, the Attorney General shall—

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

(2) establish not fewer than 1 Project Gunrunner team in each State along the Southern border; and

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

(c) ADDITIONAL STAFF.—The Attorney General may—

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

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

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

SEC. 127. OPERATION STREAMLINE PROSECUTION INITIATIVE.

(a) REPORTING REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary, in coordination with the Attorney General, shall submit a report to the congressional committees set forth in subsection (b) that describes—

(1) the operational goals and oversight mechanisms of Operation Streamline and similar programs;

(2) the estimated costs of seeking Federal court prosecution and jail time for all unauthorized entrants—

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

(B) who are initially referred to immigration courts upon apprehension;

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

(A) sufficient judicial resources;

(B) Federal Public Defenders;

(C) United States Marshals;

(D) detention facilities;

(E) United States Attorneys; and

(F) other costs incurred in active areas;

(4) the impact of Operation Streamline on Federal prosecutorial initiatives focused on curbing border violence, including enhanced use of investigations and prosecutions for money laundering or other financial offenses to disrupt—

(A) the illicit firearms trade;

(B) human smuggling; and

(C) cross-border drug and currency trafficking;

(5) the impact of Operation Streamline on discretionary prosecutorial decisions;

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

(A) the costs incurred for detentions, prosecutions, and incarcerations for immigrant offenses under Operation Streamline;

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

(C) the length of imprisonment, names, convictions, and locations of prisons used to incarcerate individuals arrested under Operation Streamline;

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

(8) the rates of Federal prosecutions and convictions in districts along the Southern border compared to such rates in other districts; and

(9) interviews with criminal defense attorneys who have represented defendants charged under Operation Streamline, including—

(A) a review of the opportunity for arrestees to consult with immigration attorneys before they are convicted for immigration offenses; and

(B) the ratio of defendants to defense attorneys.

(b) CONGRESSIONAL COMMITTEES.—The congressional committees set forth in the subsection are—

(1) the Committee on Appropriations of the Senate;

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

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

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

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

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

(c) EVALUATION.—Not later than 180 days after the submission of the report under subsection (a), the Secretary, in coordination with the Attorney General, shall—

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

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

SEC. 128. BORDER RELIEF GRANT PROGRAM.

(a) GRANTS AUTHORIZED.—

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

(A) eligible law enforcement agencies or a coalition of such agencies, including sheriff's offices, police departments, and tribal police departments; and

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

(2) PRIORITY.—In awarding grants for the uses described in paragraphs (1) through (3) of subsection (b), the Attorney General shall give priority to law enforcement agencies—

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

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

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

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

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

(b) USE OF FUNDS.—Grants awarded under this section may only be used to provide—

(1) additional resources for eligible law enforcement agencies to address drug-related criminal activity;

(2) training and technical assistance related to—

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

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

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

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

(A) obtaining, upgrading, or maintaining equipment;

(B) hiring additional personnel;

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

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

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

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

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

(C) strengthening partnerships between Federal, State, tribal, and local law enforcement agencies; and

(5) resources to enhance jails, community corrections, and detention operations by—

(A) improving the administration and operations of correction functions related to reducing and preventing criminal narcotics activity;

(B) improving access to intelligence and collaboration between law enforcement and correctional system personnel;

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

(D) hiring detention, probation, parole, and other corrections personnel for implementation of the efforts described in this paragraph.

(c) APPLICATION.—

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

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

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

(B) disclose whether the applicant has been investigated for, or convicted of, a violation of Federal or State racial profiling laws; and

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

to ensure compliance with the requirements under this section.

(d) MONITORING AND OVERSIGHT.—

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

(A) protecting border community safety;

(B) preventing smuggling activities; and

(C) apprehending persons involved in violence and organized crime.

(2) USE OF INFORMATION.—The Attorney General shall analyze the information contained in the reports submitted under paragraph (1) to determine whether the grantee—

(A) used grant funds appropriately; and

(B) should be considered for a renewal grant.

(e) DEFINITIONS.—In this section:

(1) ELIGIBLE LAW ENFORCEMENT AGENCY.—The term ''eligible law enforcement agency'' means a State, tribal, or local law enforcement agency, including a community corrections agency and any agency that employs prosecutors, probation officers,

or parole officers, which is located or performs duties in—

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

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

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

(2) HIGH INTENSITY DRUG TRAFFICKING AREA.—The term ''High Intensity Drug Trafficking Area'' means any jurisdiction designated as a ''High Intensity Drug Trafficking Area'' by the National Drug Control Program under section 707 of the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1706).

(f) ASSESSMENT AND REPORT.—The Attorney General shall submit a biannual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that assesses—

(1) the success of the Border Relief Grant Program in combating and reducing drug-trafficking and drug-related criminal activity;

(2) the cost-effectiveness of the Program; and

(3) the future value and viability of the Program.

(g) AUTHORIZATION OF APPROPRIATIONS.—

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

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

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

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

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

SEC. 129. REPORT ON DEATHS AND STRATEGY STUDY.

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

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

(A) the causes of the deaths; and

(B) the total number of deaths;

(2) publish the statistics collected under paragraph (1) on a quarterly basis; and

(3) not later than 1 year after the date of the enactment of this Act, and annually thereafter, submit a report to the Secretary that—

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

(B) recommends actions to reduce and prevent the deaths described in paragraph (1)(B).

(b) SOUTHWEST BORDER STRATEGY STUDY AND ANALYSIS.—

(1) IN GENERAL.—The Secretary shall conduct a study of Southwest Border Enforcement operations since 1994 and its relationship to death rates on the border between the United States and Mexico, including—

(A) an analysis of the relationship of border enforcement and deaths on the border;

(B) an analysis of whether physical barriers, technology, and enforcement programs have contributed to the rate of migrant deaths;

(C) an analysis of the effectiveness of geographical terrain as a natural barrier for entry into the United States in achieving Department goals and its role in contributing to rates of migrant deaths;

(D) consultation with nongovernmental organizations and other community stakeholders involved in recovering and identifying migrant deaths; and

(E) an assessment of existing protocol related to reporting, tracking, and inter-agency communications between United States Customs and Border Protection and local first responders and consular services.

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

(A) the United States-Mexico Border Enforcement Commission established under section 129;

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

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

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

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

(F) the Committee on Oversight and Government Reform of the House of Representatives.

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

SEC. 130. IMMIGRATION AND UNITED STATES-MEXICO BORDER ENFORCEMENT COMMISSION.

(a) ESTABLISHMENT OF COMMISSION.—

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

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

(A) to study the overall enforcement strategies, programs, and policies of Federal agen-

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

(B) to strengthen relations and collaboration between communities in the border regions and the Department, the Department of Justice, and other Federal agencies that carry out such strategies, programs, and policies;

(C) to ensure that the strategies, programs, and policies of Federal agencies along the Southern border and the agents and employees charged to implement such strategies, programs, and policies protect the due process, civil, and human rights of all individuals and communities at and near the Southern border; and

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

(3) MEMBERSHIP.—

(A) IN GENERAL.—The Commission shall be composed of 16 voting members and 2 nonvoting members.

(B) APPOINTMENT OF VOTING MEMBERS.—The Governors of the States of Cali-

fornia, New Mexico, Arizona, and Texas shall each appoint 4 voting members to the Commission, of whom—

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

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

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

(C) APPOINTMENT OF NONVOTING MEMBERS.—The Secretary and the Attorney General shall each appoint 1 nonvoting member to the Commission.

(4) QUALIFICATIONS.—

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

(i) individuals with expertise in migration, border enforcement and protection, civil and human rights, community relations, cross-border trade and commerce, or other pertinent qualifications or experience; and

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

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

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

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

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

(7) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in

the same manner in which the original appointment was made.

(8) MEETINGS.—

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

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

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

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

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

(11) STRUCTURE.—The Commission shall have a Federal, regional, and local review structure, divided into 2 subcommittees, of which—

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

(B) 1 shall focus on border and immigration enforcement policies and programs.

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

(1) the compliance of the Department and other immigration and border-related agencies with existing laws and regulations;

(2) the extent to which agency policies and practices protect the civil rights of migrants and border community residents, including policies and practices in the contexts of engagement, detention, apprehension, use of force, definition and use of reasonable suspicion and probable cause, and racial profiling;

(3) the frequency, adequacy, and effectiveness of human and civil rights training of border enforcement personnel and others from Federal agencies who have contact with the public near the Southern border;

(4) the extent to which—

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

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

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

(5) the effectiveness and capacity of agency oversight, accountability, and management, including prevention and disciplinary policies involving use of force, abuse, malfeasance, corruption, and illegal activity;

(6) the effect of operations, technology, and enforcement infrastructure along the Southern border on the—

(A) environment;

(B) cross border traffic and commerce;

(C) privacy rights and other civil liberties; and

(D) the quality of life of border communities;

(7) the extent to which State and local law enforcement engage in the enforcement of Federal immigration law;

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

grants and other individuals at and near the Southern border;

(9) whether border policies and agencies are accomplishing their stated goals; and

(10) any other matters regarding immigration and border enforcement policies, strategies, and programs that the Commission determines to be appropriate.

(c) POWERS OF COMMISSION.—

(1) IN GENERAL.—

(A) HEARINGS AND EVIDENCE.—The Commission and any subcommittee or member of the Commission authorized by the Commission may, for the purpose of carrying out this title—

(i) hold hearings, sit and act, take testimony, receive evidence, and administer oaths; and

(ii) subject to subparagraph (B), require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such au-

thorized subcommittee or member determines to be advisable.

(B) SUBPOENAS.—

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

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

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

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

(I) issued under the signature of the Chairman or any member designated by a majority of the Commission; and

(II) served by any person designated by the Chairman or by a member designated by a majority of the Commission.

(iii) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena issued under this subparagraph, the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where

the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(2) RECOMMENDATIONS.—

(A) IN GENERAL.—The Commission may make recommendations to the Secretary on the disposition of cases and the discipline of personnel under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(B) RESPONSE.—Not later than 180 days after receipt a report from the Commission, the Secretary shall issue a response that describes how the Department, the Department of Justice, and the Department of Defense have addressed the recommendations included in such report.

(3) CONTRACTING.—The Commission may enter into contracts to enable the Commission to discharge its duties under this title.

(4) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—Upon request made by the Chairman, the chairman of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, the Commission may secure information, suggestions, estimates, and statistics for the purposes of this title directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Federal Government, which shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission.

(B) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information may only be received, handled, stored, and disseminated by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive orders.

(5) ASSISTANCE FROM FEDERAL AGENCIES.—

(A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide, on a reimbursable basis, administrative support to the Commission and other

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

(B) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance described in paragraph (1), Federal departments and agencies may provide the Commission with such services, funds, facilities, staff, and other support services as may be authorized by law.

(6) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(d) COMPENSATION.—

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

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

(e) TRAINING.—The Commission shall establish a process and criteria by which Commission members receive orientation and training on human, constitutional, and civil rights.

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

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

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

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

(4) a recommendation as to whether the Commission should continue to operate after the date of termination described in subsection (h); and

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

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

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

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

SEC. 131. PREEMPTION.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), this Act preempts any State or local law, licensing requirement, or other standard, requirement, action or instrument that—

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

(2) imposes any sanction or liability—

(A) on any person based on his or her immigration status;

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

(C) based on a violation or alleged violation of immigration law.

(b) EFFECT OF CONVICTION.—Notwithstanding subsection (a)(2)(C), a State or political subdivision of a State may take account of a Federal conviction for an immigration-related crime in the same manner as any other Federal criminal conviction.

(c) LIMITATION.—Nothing in this Act may be construed to preempt—

(1) State or local discrimination based on immigration status if such discrimination is explicitly authorized by Federal law; or

(2) State or local citizenship requirements for voting, jury service, elective office, or other important governmental positions, to the extent such requirements comply with the Constitution of the United States.

(d) DEFINED TERM.—In this section, the term ''immigration status'' refers to a person's present or previous visa classification, refugee status, temporary protected status, status as an immigrant lawfully admitted for permanent residence, lawful presence, work authorization, or other classification or category authorized under this Act.

SEC. 132. INHERENT AUTHORITY.

Section 287(g)(10) (8 U.S.C. 1357(g)(10)) is amended to read as follows:

''(10) Except as provided in sections 103(a)(10), 103(a)(11), 242(c), and 274(c), or an agreement under this subsection, the authority to investigate, identify, apprehend, arrest, or detain persons for any violation of this Act or any regulation issued pursuant to this Act—

''(A) is restricted to immigration officers and employees of the Department; and

"(B) is subject to the specific limitations set forth in this Act.".

SEC. 133. BORDER PROTECTION STRATEGY.

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

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

(1) a comparative analysis of the levels of operational control, based on auditable and verifiable data, achievable through alternative tactical infrastructure and other security measures, including an assessment of—

(A) pedestrian fencing;

(B) vehicle barriers, especially in the vicinity of existing or planned roads;

(C) additional Border Patrol agents;

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

(E) fielding of advanced remote sensing and information integration technology, including the use of—

(i) unmanned aerial vehicles;

(ii) other advanced technologies and systems developed and employed, or under development, for tactical surveillance, multisource information integration, and response analysis in difficult terrain and under adverse environmental conditions;

(F) regional, urban, and rural variation in border security methodologies, including the incorporation of natural barriers;

(G) enhanced cooperation with, and assistance to, intelligence, security, and law enforcement agencies in Mexico and Canada in detecting, reporting, analyzing, and successfully responding to unauthorized or unlawful border crossings from or into Mexico or Canada; and

(H) removal of obstructive nonnative vegetation;

(2) a comprehensive analysis of cost and other impacts of security measures assessed in paragraph (1), including an assessment of—

(A) land acquisition costs, including related litigation and other costs;

(B) construction costs, including labor and material costs;

(C) maintenance costs for the next 25 years;

(D) contractor costs;

(E) management and overhead costs;

(F) the impacts on wildlife, wildlife habitat, natural communities, and functioning cross-border wildlife migration corridors and hydrology (including water quantity, quality, and natural hydrologic flows) on Federal, State, tribal, local government, and private lands along the Northern border and the Southern border; and

(G) the costs of fully mitigating the adverse impacts to Federal, State, tribal, local, and private lands, waters (including water quality, quantity, and hydrological flows), wildlife, and wildlife habitats, including, if such action is possible, the full costs of the replacement or restoration of severed wildlife migration corridors with protected corridors of equivalent biological functionality, as determined by each Secretary concerned, in consultation with ap-

propriate authorities of State, tribal, and local governments and appropriate authorities of the Government of Mexico and the Government of Canada;

(3) a comprehensive compilation of the fiscal investments in acquiring or managing Federal, State, tribal, local, and private lands and waters in the vicinity of, or ecologically related to, the land borders of the United States that have been acquired or managed in whole or in part for conservation purposes (including the creation or management of protected wildlife migration corridors) in—

(A) units of the National Park System;

(B) National Forest System land;

(C) land under the jurisdiction of the Bureau of Land Management;

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

(E) other relevant land under the jurisdiction of the Department of the Interior or the Department of Agriculture;

(F) land under the jurisdiction of the Department of Defense or any military department;

(G) land under the jurisdiction of the Department of Commerce;

(H) tribal lands;

(I) State and private lands; and

(J) lands within Mexico or Canada; and

(4) recommendations for strategic border security management based on—

(A) comparative security described in paragraph (1);

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

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

(c) TRAINING.—

(1) REQUIRED TRAINING.—The Secretary, in cooperation with the Secretary concerned, shall provide—

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

(B) cultural resource training for Customs and Border Protection agents and other Federal personnel assigned to plan or oversee the construction or operation of border security tactical infrastructure or to patrol tribal lands.

(2) ADDITIONAL CONSIDERATIONS.—In developing and providing training under subparagraph (A) of paragraph (1), the Secretary shall coordinate with the Secretary concerned and the relevant tribal government to ensure that such training is appropriate to the mission of the relevant agency and is focused on achieving border security objectives while avoiding or minimizing the adverse impact on natural and cultural resources resulting from border security tactical infrastructure, operations, or other activities.

(d) DEFINED TERM.—In this section, the term ''Secretary concerned'' means—

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

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

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

(4) the Secretary of Commerce, with respect to land under the jurisdiction of the Secretary of Commerce.

SEC. 134. BORDER COMMUNITIES LIAISON OFFICE.

(a) ESTABLISHMENT.—The Secretary shall establish, in consultation with the Office of Civil Rights and Civil Liberties, a Border Communities Liaison Office in every Border Patrol sector on the Southern border or the Northern border.

(b) PURPOSE.—The purpose of the Border Communities Liaison Office shall be—

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

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

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

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

(5) to receive assessments on agency performance from border communities; and

(6) to receive complaints regarding agency performance and agent conduct.

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

SEC. 135. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—In addition to any funds otherwise available, there are authorized to be appropriated such sums as may be necessary for the fiscal years 2011 through 2015 to carry out this subtitle.

(b) INTERNATIONAL AGREEMENTS.—Amounts appropriated pursuant to subsection (a) may be used to implement projects that are authorized under this subtitle and are described in—

(1) the Declaration on Embracing Technology and Cooperation to Promote the Secure and Efficient Flow of People and Commerce across our Shared Border between the United States and Mexico, agreed to March 22, 2002, Monterrey, Mexico; or

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

TITLE II—INTERIOR ENFORCEMENT

Subtitle A—Prevention of Unauthorized Entries and Removal

CHAPTER 1—STRENGTHENING THE VISA WAIVER PROGRAM TO SECURE AMERICA AND ENFORCING ENTRY AND EXIT REQUIREMENTS

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

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

SEC. 202. ENFORCEMENT OF REQUIREMENT FOR PERIODIC EVALUATIONS OF PROGRAM COUNTRIES.

(a) REEVALUATIONS.—The Secretary, in consultation with the Secretary of State, shall reevaluate all coun-

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

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

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

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

SEC. 203. ARRIVAL AND DEPARTURE VERIFICATION.

(a) IN GENERAL.—The Secretary shall compare foreign national arrival data to available immigration and law enforcement records and databases and exit data to determine whether these foreign nationals are still in the United States.

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

(c) AUDIT.—The Secretary shall conduct an audit of the data collected by the electronic travel system, including—

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

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

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

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

(2) an explanation of the implementation problems identified pursuant to subsection (c)(2).

SEC. 204. VISA OVERSTAY RATES.

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

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

(2) by striking clause (i) and inserting the following:

"(i) ESTABLISHMENT.—The maximum visa overstay rate for countries par-

ticipating in the program shall be 2 percent.

"(ii) EFFECT OF FAILURE TO COMPLY.—If the visa overstay rate of a country is more than 2 percent, the Secretary shall temporarily suspend such country's participation in the Visa Waiver Program until the country can demonstrate that the overstay rate for that country is below 2 percent.".

(b) DATA SHARING.—If, 3 months after the date of the enactment of this Act, a country designated as a Visa Waiver Program under section 217(c) of the Immigration and Nationality Act (8 U.S.C. 1187(c)) has not entered into a data sharing agreement in accordance with paragraph (2)(F) of such section, the Secretary shall temporarily suspend such country's participation in the Visa Waiver Program until the country is in compliance with such paragraph.

SEC. 205. US–VISIT SYSTEM.

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

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

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

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

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

(1) at designated ports of entry; and

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

CHAPTER 2—PREVENTING UNAUTHORIZED ENTRIES AND ENSURING REMOVAL

SEC. 211. ILLEGAL ENTRY AND REENTRY.

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

"(b) IMPROPER TIME OR PLACE; CIVIL PENALTIES.—Any alien older than 18 years of age who is apprehended while entering or attempting to enter, or knowingly crossing or attempting to cross the border to, the United States at a time or place that has not been designated as a lawful entry by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

"(1) not less than $250 or more than $500 for each such entry or attempted entry; or

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

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

"SEC. 276. REENTRY OF REMOVED ALIENS.

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

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

"(b) REENTRY OF CRIMINAL OFFENDERS.—In addition to the penalty provided in subsection (a), any alien described in that subsection—

"(1) whose removal was subsequent to a conviction for 3 or more misdemeanors involving drugs or crimes against the person, or a felony for which the alien was sentenced to a term of imprisonment of more than 12 months before such removal or departure, shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

"(2) whose removal was subsequent to a conviction for a felony involving drugs or crimes against the person before such removal or departure for which the alien was sentenced to a term of imprisonment of not less than 30 months, shall be fined under such title 18, imprisoned not more than 10 years, or both;

"(3) who has been excluded from the United States pursuant to section 235(c) because the alien was excludable under section 212(a)(3)(B) or has been removed from the United States pursuant to title V of the CIR Act of 2010, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18, United States Code, and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence;

"(4) who was removed from the United States pursuant to section 241(a)(4)(B) and who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both;

"(5) whose removal was subsequent to a conviction for an aggravated felony before such removal or departure for which the alien was sentenced to a term of imprisonment of not less than 60 months, shall be fined under such title 18, imprisoned not more than 20 years, or both; or

"(6) was convicted for 3 felonies before such removal or departure, shall be fined under such title 18, imprisoned not more than 25 years, or both.

"(c) PROOF OF PRIOR CONVICTIONS.—The prior convictions described in subsection (b) are elements of the crimes described in that subsection, and the penalties set forth in subsection (b) shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

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

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

"(d) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to a violation of this section if—

"(1) the alien sought and received the express consent of the Secretary of Homeland Security to reapply for admission into the United States before the alleged violation occurred;

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

"(A) was not required to obtain such advance consent under this Act or any prior Act; and

"(B) had complied with all other laws and regulations governing the alien's admission into the United States; or

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

"(e) LIMITATION ON COLLATERAL ATTACK ON UNDERLYING REMOVAL ORDER.—In a criminal proceeding under this section, an alien may not challenge the validity of the order described in subsection (a)(1) or (b) unless the alien demonstrates that—

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

"(2) the removal proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

"(3) the entry of the order was fundamentally unfair.

"(f) REENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States—

"(1) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has expressly consented to the alien's reentry or the alien is prima facie eligible for protection from removal; and

"(2) shall be subject to such other penalties relating to the reentry of removed aliens as may be available under this section or any other provision of law.

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

"(1) providing, or attempting to provide, an alien with humanitarian assistance, including emergency medical care or food; or

"(2) transporting the alien to a location where such humanitarian assistance can be rendered without compensation or the expectation of compensation.".

SEC. 212. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY.

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

(1) in clause (i), by striking ''seeks admission within 5 years of the date of such removal (or within 20 years'' and inserting ''seeks admission not later than 5 years after the date of the alien's removal (or not later than 20 years after the alien's removal''; and

(2) in clause (ii), by striking ''seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of'' and inserting ''seeks admission not later than 10 years after the date of the alien's departure or removal (or not later than 20 years after''.

SEC. 213. BIOMETRIC SCREENING.

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

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

''(C) WITHHOLDING INFORMATION.—Except as provided in subsection (d)(2), any alien who, through his or her own fault, fails or has failed to comply with a lawful request for biometric information is inadmissible.''; and

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

"(2) The Secretary may waive the application of subsection (a)(7)(C) for an individual alien or a class of aliens. A decision by the Secretary to grant or deny a waiver under this paragraph shall not be subject to review.".

SEC. 214. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.

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

(1) in subsection (a)—

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

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

"(A) the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection instead of being subject to proceedings under section 240; or

"(B) the Attorney General may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection

after the initiation of removal proceedings under section 240 and before the conclusion of such proceedings before an immigration judge.'';

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

''(A) IN GENERAL.—

''(i) INSTEAD OF REMOVAL.—Subject to subparagraph (B), the Secretary of Homeland Security—

''(I) may not grant an alien permission to voluntarily depart under paragraph (1)(A) for a period longer than 180 days; and

''(II) may require such alien to post a voluntary departure bond, which will be surrendered upon proof that the alien has departed the United States within the time specified in such bond.

''(ii) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—

''(I) LIMITATION.—The Attorney General—

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

"(bb) may only grant such permission after determining that the alien has the means to depart the United States and intends to do so.

"(II) VOLUNTARY DEPARTURE BOND.—An immigration judge may—

"(aa) require an alien permitted to voluntarily depart under paragraph (1)(B) to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, which will be surrendered upon proof that the alien has departed the United States within the time specified in such bond; and

"(bb) may waive the requirement to post a voluntary departure bond in individual cases

after determining that the alien has presented compelling evidence that the posting of a bond will pose a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.'';

(C) by striking paragraph (3); and

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

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

''(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

''(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure under this section may only be granted as part of an affirmative agreement by the alien.

''(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien's agreement to depart voluntarily under paragraph (1)(A), the Secretary of Homeland Security may reduce the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).

"(3) ADVISALS.—Agreements relating to voluntary departure granted during removal proceedings under section 240, or at the conclusion of such proceedings, shall be presented on the record before the immigration judge, who shall advise the alien of the consequences of a voluntary departure agreement, including the consequences of failing to comply with the agreement, before accepting such agreement.

"(4) FAILURE TO COMPLY WITH AGREEMENT.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), unless such noncompliance is through no fault of the alien, the alien is—

"(A) ineligible for the benefits of the agreement;

"(B) subject to the penalties described in subsection (d); and

"(C) subject to an alternate order of removal if voluntary departure was granted under subsection (a)(1)(B) or (b).

"(5) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary of Homeland Security in writing before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary.";

(3) by amending subsection (d) to read as follows:

"(d) PENALTIES FOR FAILURE TO DEPART.—

"(1) CIVIL PENALTY.—An alien who is permitted to voluntarily depart under this section and fails to leave the United States during the period specified in the voluntary departure agreement or otherwise violates the terms of such agreement shall be liable for a civil penalty of $1,000. The voluntary departure order shall specify the amount of the penalty, which shall be acknowledged by the alien on the record.

"(2) COLLECTION OF PENALTY.—If the Secretary of Homeland Security establishes, by clear and convincing evidence, that the alien failed to

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

"(A) no further procedure will be necessary to establish the amount of the penalty;

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

"(C) the alien shall be ineligible for any benefits under this chapter until this civil penalty is paid."; and

(4) by amending subsection (e) to read as follows:

"(e) ELIGIBILITY.—

"(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien may not be permitted to voluntarily depart under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily under this section on or after the date of enactment of the CIR Act of 2010.

"(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1)(A) for any class of aliens.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the date of the enactment of this Act.

SEC. 215. CANCELLATION OF VISAS.

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

(1) in paragraph (1), by striking ''Attorney General, such visa'' and inserting ''Secretary of Homeland Security, such visa and any other nonimmigrant visa issued by the United States that is in the possession of the alien''; and

(2) in paragraph (2)(A), by striking ''(other than the visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality'' and inserting ''(other than a visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality or foreign residence''.

SEC. 216. MANDATORY ADDRESS REPORTING REQUIREMENTS.

(a) CLARIFYING ADDRESS REPORTING REQUIREMENTS.—Section 265 (8 U.S.C. 1305) is amended—

(1) in subsection (a)—

(A) by striking ''notify the Attorney General in writing'' and inserting ''submit written or electronic notification to the Secretary of Homeland Security, in a manner approved by the Secretary,'';

(B) by striking ''the Attorney General may require'' and inserting ''the Secretary may require''; and

(C) by adding at the end the following: ''If the alien is involved in proceedings before an immigration judge or in an administrative appeal of such proceedings, the alien shall provide the Attorney General with the alien's current address and a telephone number, if any, at which the alien may be contacted.'';

(2) in subsection (b)—

(A) by striking ''Attorney General'' the first place such term appears and inserting ''Secretary of Homeland Security''; and

(B) by striking ''Attorney General'' each additional place such term appears and inserting ''Secretary'';

(3) in subsection (c), by striking ''given to such parent'' and inserting ''provided by such parent''; and

(4) by adding at the end the following:

"(d) ADDRESS TO BE PROVIDED.—

"(1) IN GENERAL.—Except as otherwise provided by the Secretary under paragraph (2), an address provided by an alien under this section—

"(A) shall be the mailing address of the alien's residence at the time such address is provided; and

"(B) may not be—

"(i) a post office box;

"(ii) another nonresidential mailing address; or

"(iii) the address of an attorney, representative, labor organization, or employer.

"(2) SPECIFIC REQUIREMENTS.—The Secretary of Homeland Security may provide specific requirements with respect to—

"(A) designated classes of aliens and special circumstances, including aliens who are employed at a remote location; and

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

"(3) DETENTION.—An alien who is being detained by the Secretary under this Act—

"(A) is not required to report the alien's current address under this section during the time the alien remains in detention; and

"(B) shall notify the Secretary of the alien's address under this section at the time of the alien's release from such detention.

"(e) USE OF MOST RECENT ADDRESS PROVIDED BY THE ALIEN.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Homeland Security may provide for the appropriate coordination and cross referencing of address information provided by an alien under this section with other information relating to the alien's address under other Federal programs, including—

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

"(B) any information available to the Attorney General with respect to an alien in a 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-

ceeding before an immigration judge or an administrative appeal of such proceeding).

"(f) REQUIREMENT FOR DATABASE.—The Secretary of Homeland Security shall establish an electronic database to timely record and preserve addresses provided under this section.".

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

(1) in section 262(c), by striking "Attorney General" and inserting "Secretary of Homeland Security";

(2) in section 263(a), by striking "Attorney General" and inserting "Secretary of Homeland Security"; and

(3) in section 264—

(A) in subsections (a), (b), (c), and (d), by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security"; and

(B) in subsection (f)—

(i) by striking "Attorney General is authorized" and inserting "Secretary of Homeland Security and the Attorney General are authorized"; and

(ii) by striking ''Attorney General or the Service'' and inserting ''Secretary or the Attorney General''.

(c) EFFECT ON ELIGIBILITY FOR IMMIGRATION BENEFITS.—If an alien fails to comply with any provision under section 262, 263, or 265 of the Immigration and Nationality Act (8 U.S.C. 1302, 1303, and 1305) or section 264.1 of title 8, Code of Federal Regulations, or removal orders or voluntary departure agreements based on any such section for acts committed before the date of the enactment of this Act, such noncompliance shall not affect the eligibility of the alien to apply for a benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

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

(1) by striking ''Attorney General'' the first place such term appears and inserting ''Secretary of Homeland Security''; and

(2) by striking ''Attorney General'' each additional place such term appears and inserting ''Secretary''.

SEC. 217. PENALTIES RELATING TO VESSELS AND AIRCRAFT.

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

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

(2) by striking ''Commissioner'' each place such term appears and inserting ''Secretary''; and

(3) in paragraph (1)—

(A) in subparagraph (A), by striking ''$2,000'' and inserting ''$5,000'';

(B) in subparagraph (B), by striking ''$5,000'' and inserting ''$10,000''; and

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

''(C) COMPROMISE.—The Secretary of Homeland Security, in the Secretary's unreviewable discretion and upon the receipt of a written request, may mitigate the monetary penalties required under this subsection for each alien stowaway to an amount equal to not less than $500, upon such terms that the Secretary determines to be appropriate.''.

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

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

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

(2) by inserting ''or subsets of such visas'' after ''both,''; and

(3) by inserting ''of State'' after ''Secretary'' the last place such term appears.

SEC. 219. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.

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

(b) REIMBURSEMENT OF STATES FOR INDIRECT COSTS RELATING TO THE INCARCERATION OF UNAUTHORIZED ALIENS.—Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1365) is amended—

(1) by amending subsection (a) to read as follows:

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

"(1) the costs incurred by the State for the imprisonment of all unauthorized aliens convicted of a felony by such State; and

"(2) the indirect costs related to the imprisonments described in paragraph (1)."; and

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

"(c) ALLOCATION OF REIMBURSEMENTS.—Reimbursements under this section shall be allocated in a manner that gives special consideration for any State that shares a border with Mexico or with Canada.

"(d) DEFINITIONS.—In this section:

"(1) INDIRECT COSTS.—The term 'indirect costs' includes—

"(A) court costs, county attorney costs, detention costs, and criminal proceedings expenditures that do not involve going to trial;

"(B) indigent defense costs; and

"(C) unsupervised probation costs.

"(2) STATE.—The term 'State' has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

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

of the fiscal years 2008 through 2012 to carry out subsection (a)(2).''.

SEC. 220. PROCEDURES REGARDING ALIENS APPREHENDED BY STATE AND LOCAL LAW ENFORCEMENT OFFICERS.

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

(b)(1) An authorized officer or employee of the Department of Homeland Security shall promptly determine whether or not to issue a detainer to detain an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances if the law enforcement official—

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

(B) expeditiously informs such officer or employee of the arrest and of facts concerning the status of the alien; and

(C) requests the Department of Homeland Security to determine whether or not to issue such detainer.

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

or local officials, the Secretary shall effectively and expeditiously take custody of the alien.

(3) The Secretary of Homeland Security shall collect data regarding detainers issued under this subsection, including—

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

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

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

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

(8) the date on which a Federal or State criminal court or other government entity ordered the release of the individual;

(9) the date on which the Department of Homeland Security took custody of the individual;

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

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

(12) the ultimate disposition of immigration case, including whether the individual was determined to be a United States citizen;

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

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

(c) RULEMAKING.—The Secretary shall issue regulations that require officers and employees of the Department of Homeland Security to confirm, before issuing a detainer—

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

(A) the name of the individual;

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

(C) the fingerprints of the individual and

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

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

(a) TRAFFICKING IN PASSPORTS.—Section 1541 of title 18, United States Code, is amended to read as follows:

"§ 1541. Trafficking in passports

''(a) MULTIPLE PASSPORTS.—Any person who, during any period of 3 years or less, knowingly—

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

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

"(3) secures, possesses, uses, receives, buys, sells, or distributes 10 or more passports, knowing the passports to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority; or

"(4) completes, mails, prepares, presents, signs, or submits 10 or more applications for a United States passport, knowing the applications to contain any false statement or representation,

shall be fined under this title, imprisoned not more than 20 years, or both.

"(b) PASSPORT MATERIALS.—Any person who knowingly and without lawful authority produces, buys, sells, possesses, or uses any official material (or counterfeit of any official material) used to make a passport, including any distinctive paper, seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.".

(b) FALSE STATEMENT IN AN APPLICATION FOR A PASSPORT.—Section 1542 of title 18, United States Code, is amended to read as follows:

"§ 1542. False statement in an application for a passport

"(a) IN GENERAL.—Any person who knowingly—

"(1) makes any false statement or representation in an application for a United States passport; or

"(2) mails, prepares, presents, or signs an application for a United States passport knowing the application to contain any false statement or representation,

shall be fined under this title, imprisoned not more than 15 years, or both.

"(b) VENUE.—

"(1) IN GENERAL.—An offense under subsection (a) may be prosecuted in any district—

"(A) in which the false statement or representation was made or the application for a United States passport was prepared or signed; or

"(B) in which or to which the application was mailed or presented.

"(2) ACTS OCCURRING OUTSIDE THE UNITED STATES.—An offense under subsection (a) involving an application for a United States passport prepared and adjudicated outside the United States may be

prosecuted in the district in which the resultant passport was or would have been produced.

"(c) SAVINGS CLAUSE.—Nothing in this section may be construed to limit the venue otherwise available under sections 3237 and 3238 of this title.".

(c) FORGERY AND UNLAWFUL PRODUCTION OF A PASSPORT.—Section 1543 of title 18, United States Code, is amended to read as follows:

"§ 1543. Forgery and unlawful production of a passport

"(a) FORGERY.—Any person who knowingly—

"(1) forges, counterfeits, alters, or falsely makes any passport; or

"(2) transfers any passport knowing it to be forged, counterfeited, altered, falsely made, stolen, or to have been produced or issued without lawful authority,

shall be fined under this title, imprisoned not more than 15 years, or both.

"(b) UNLAWFUL PRODUCTION.—Any person who knowingly and without lawful authority—

"(1) produces, issues, authorizes, or verifies a passport in violation of the laws, regulations, or rules governing the issuance of the passport;

"(2) produces, issues, authorizes, or verifies a United States passport for or to any person knowing or in reckless disregard of the fact that such person is not entitled to receive a passport; or

"(3) transfers or furnishes a passport to any person for use by any person other than the person for whom the passport was issued or designed,

shall be fined under this title, imprisoned not more than 15 years, or both.".

(d) MISUSE OF A PASSPORT.—Section 1544 of title 18, United States Code, is amended to read as follows:

"§ 1544. Misuse of a passport

"Any person who knowingly—

"(1) uses any passport issued or designed for the use of another person;

"(2) uses any passport in violation of the conditions or restrictions contained in the passport, or in violation of the laws, regulations, or rules governing the issuance and use of the passport;

"(3) secures, possesses, uses, receives, buys, sells, or distributes any passport knowing it to be forged, counterfeited, altered, falsely made, procured by fraud, or produced or issued without lawful authority; or

"(4) violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States,

shall be fined under this title, imprisoned not more than 15 years, or both.".

(e) SCHEMES TO DEFRAUD ALIENS.—Section 1545 of title 18, United States Code, is amended to read as follows:

"SEC. 1545. SCHEMES TO DEFRAUD ALIENS.

"(a) IN GENERAL.—Any person who knowingly executes a scheme or artifice, in connection with any matter that is authorized by or arises under any Federal immigration law or any matter the offender claims or represents is authorized by or arises under any Federal immigration law, to—

"(1) defraud any person; or

"(2) obtain or receive money or anything else of value from any person by means of false or fraudulent pretenses, representations, or promises,

shall be fined under this title, imprisoned not more than 15 years, or both.

"(b) MISREPRESENTATION.—Any person who knowingly and falsely represents that such person is an attorney or an accredited representative (as that term is defined in section 1292.1 of title 8, Code of Federal Regula-

tions (or any successor regulation)) in any matter arising under any Federal immigration law shall be fined under this title, imprisoned not more than 15 years, or both.''.

(f) IMMIGRATION AND VISA FRAUD.—Section 1546 of title 18, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 1546. Immigration and visa fraud";

(2) by striking subsections (b) and (c) and inserting the following:

''(b) TRAFFICKING.—Any person who, during any period of 3 years or less, knowingly—

''(1) and without lawful authority produces, issues, or transfers 10 or more immigration documents;

''(2) forges, counterfeits, alters, or falsely makes 10 or more immigration documents;

''(3) secures, possesses, uses, buys, sells, or distributes 10 or more immigration documents, knowing the immigration documents to be forged, counterfeited, altered, stolen, falsely made, procured by fraud, or produced or issued without lawful authority; or

''(4) completes, mails, prepares, presents, signs, or submits 10 or more immigration documents

knowing the documents to contain any materially false statement or representation,

shall be fined under this title, imprisoned not more than 20 years, or both.

"(c) IMMIGRATION DOCUMENT MATERIALS.—Any person who knowingly and without lawful authority produces, buys, sells, possesses, or uses any official material (or counterfeit of any official material) used to make immigration documents, including any distinctive paper, seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.

"(d) EMPLOYMENT DOCUMENTS.—Any person who uses—

"(1) an identification document, knowing or having reason to know that the document is false or was not issued lawfully for the use of the possessor; or

"(2) a false attestation, for the purpose of satisfying a requirement under section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)), shall be fined under this title, imprisoned not more than 1 year, or both.".

(g) ALTERNATIVE IMPRISONMENT MAXIMUM FOR CERTAIN OFFENSES.—Section 1547 of title 18, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ''(other than an offense under section 1545)'';

(2) in paragraph (1), by striking ''15'' and inserting ''20''; and

(3) in paragraph (2), by striking ''20'' and inserting ''25''.

(h) ATTEMPTS, CONSPIRACIES, JURISDICTION, AND DEFINITIONS.—Chapter 75 of title 18, United States Code, is amended by adding after section 1547 the following:

''§ 1548. Attempts and conspiracies

''Any person who attempts or conspires to violate any section of this chapter shall be punished in the same manner as a person who completed a violation of such section.

''§ 1549. Additional jurisdiction

''(a) IN GENERAL.—Any person who commits an offense under this chapter within the special maritime and territorial jurisdiction of the United States shall be punished as provided under this chapter.

''(b) EXTRATERRITORIAL JURISDICTION.—Any person who commits an offense under this chapter outside

the United States shall be punished as provided under this chapter if—

"(1) the offense involves a United States passport or immigration document (or any document purporting to be such a document) or any matter, right, or benefit arising under or authorized by any Federal immigration law;

"(2) the offense is in or affects foreign commerce;

"(3) the offense affects, jeopardizes, or poses a significant risk to the lawful administration of Federal immigration laws, or the national security of the United States;

"(4) the offense is committed to facilitate an act of international terrorism (as defined in section 2331) or a drug trafficking crime (as defined in section 929(a)(2)) that affects or would affect the national security of the United States;

"(5) the offender is a national of the United States or an alien lawfully admitted for permanent residence (as those terms are defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a))); or

"(6) the offender is a stateless person whose habitual residence is in the United States.

"§ 1550. Authorized law enforcement activities

''Nothing in this chapter may be construed to prohibit—

''(1) any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States; or

''(2) any activity authorized under title V of the Organized Crime Control Act of 1970 (Public Law 91–452; 84 Stat. 933).''.

(i) CLERICAL AMENDMENT.—The table of sections for chapter 75 of title 18, United States Code, is amended 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.''.

(j) UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, NATURALIZATION, AND PEONAGE OFFENSES.—

(1) IN GENERAL.—Section 3291 of title 18, United States Code, is amended to read as follows:

"§ 3291. Immigration, naturalization, and peonage offenses

''A person may not be prosecuted, tried, or punished for any violation under chapter 69 (relating to nationality and citizenship offenses), 75 (relating to passport, visa, and immigration offenses), or 77 (relating to peonage, slavery, and trafficking in persons), for an attempt or conspiracy to commit such a violation, for a violation of any criminal provision under section 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and 1328), or for an attempt or conspiracy to commit any such violation, unless the indictment is returned or the information filed not later than 10 years after the commission of the offense.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by striking the item relating to section 3291 and inserting the following:

''3291. Immigration, naturalization, and peonage offenses.''.

SEC. 222. DIRECTIVES RELATED TO PASSPORT AND DOCUMENT FRAUD.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—

(1) IN GENERAL.—Pursuant to the authority under section 994 of title 28, United States Code,

the United States Sentencing Commission shall promulgate or amend the sentencing guidelines, policy statements, and official commentaries related to passport fraud offenses, including the offenses described in chapter 75 of title 18, United States Code, as amended by section 209, to reflect the serious nature of such offenses.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the United States Sentencing Commission shall submit a report on the implementation of this subsection to—

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

(B) the Committee on the Judiciary of the House of Representatives.

(b) PROTECTION FOR LEGITIMATE REFUGEES AND ASYLUM SEEKERS.—

(1) IN GENERAL.—

(A) REQUIREMENT FOR GUIDELINES.—The Attorney General, in consultation with the Secretary, shall develop binding prosecution guidelines for Federal prosecutors to ensure that each prosecution of an alien seeking entry into the United States by fraud is consistent with the United States treaty obligations under

Article 31(1) of the Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).

(B) NO PRIVATE RIGHT OF ACTION.—The guidelines developed pursuant to subparagraph (A), and any internal office procedures related to such guidelines—

(i) are intended solely for the guidance of attorneys of the United States; and

(ii) are not intended to, do not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

(2) PROTECTION OF VULNERABLE PERSONS.—A person described in paragraph (3) may not be prosecuted under chapter 75 of title 18, United States Code, or under section 275 or 276 of the Immigration and Nationality Act (8 U.S.C. 1325 and 1326), in connection with the person's entry or attempted entry into the United States until after the date on which the person's application for such protection, classification, or status has been adjudicated

and denied in accordance with the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) PERSONS SEEKING PROTECTION, CLASSIFICATION, OR STATUS.—A person described in this paragraph is a person who—

(A) is seeking protection, classification, or status; and

(B)(i) has filed an application for asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), withholding of removal under section 241(b)(3) of such Act (8 U.S.C. 1231), or relief under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York, December 10, 1994, pursuant to title 8, Code of Federal Regulations;

(ii) indicates immediately after apprehension, that he or she intends to apply for such asylum, withholding of removal, or relief and promptly files the appropriate application;

(iii) has been referred for a credible fear interview, a reasonable fear interview, or an asylum-only hearing under section 235 of the Immigration and Nationality Act (8 U.S.C.

1225) or title 8, Code of Federal Regulations; or

(iv) has filed an application for classification or status under—

(I) paragraph (15)(T), (15) (U), (27)(J), or (51) of section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)); or

(II) section 216(c)(4)(C), 240A(b)(2), or 244(a)(3) of such Act (8 U.S.C. 1186a(c)(4)(C), 1229b(b)(2), and 1254a(a)(3)).

SEC. 223. EXPANDING THE DEFINITION OF CONVEYANCES SUBJECT TO FORFEITURE.

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

(1) by amending the section heading to read as follows:

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

(2) in subsection (a), by amending the subsection heading to read as follows:

"(a) VESSELS, VEHICLES, OTHER CONVEYANCES, AND INSTRUMENTS OF INTERNATIONAL TRAFFIC SUBJECT TO SEIZURE AND FORFEITURE.—";

(3) in subsection (b), by amending the subsection heading to read as follows:

"(b) VESSELS, VEHICLES, OTHER CONVEYANCES, AND INSTRUMENTS OF INTERNATIONAL TRAFFIC DEFINED.—";

(4) in subsections (a) and (b), by inserting ", vehicle, other conveyance, or instrument of international traffic" after "vessel" each place such term appears; and

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

"(c) ACTS CONSTITUTING PRIMA FACIE EVIDENCE OF SMUGGLING.—For purposes of this section, prima facie evidence that a conveyance is being, has been, or is attempting to be employed in smuggling or to defraud the revenue of the United States shall be—

"(1) in the case of a vessel, the vessel—

"(A) has become subject to pursuit, as described in section 1581;

"(B) is a hovering vessel; or

"(C) fails, at any place within the customs waters of the United States or within a cus-

toms-enforcement area, to display lights as required by law;

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

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

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

SEC. 224. PROHIBITION OF THE SALE OF FIREARMS TO, OR THE POSSESSION OF FIREARMS BY, CERTAIN ALIENS.

Section 922 of title 18, United States Code, is amended—

(1) in subsection (d)(5), by amending subparagraph (B) to read as follows:

"(B) except as provided in subsection (y), is in the United States and has not been lawfully admitted for permanent residence;";

(2) in subsection (g)(5), by amending subparagraph (B) to read as follows:

"(B) except as provided in subsection (y), is in the United States and has not been lawfully admitted for permanent residence;"; and

(3) in subsection (y)—

(A) in the subsection heading, by striking "ADMITTED UNDER NONIMMIGRANT VISAS" and inserting "NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE";

(B) by amending paragraph (1)(B) to read as follows:

"(B) the term 'lawfully admitted for permanent residence' has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).";

(C) in paragraph (2), by striking "under a nonimmigrant visa" and inserting "and has not been lawfully admitted for permanent residence"; and

(D) in paragraph (3)(A), by striking "admitted to the United States under a nonimmigrant visa" and inserting "lawfully admitted to the United States and has not been lawfully admitted for permanent residence".

SEC. 225. CRIMINAL FORFEITURE.

Section 982 of title 18, United States Code, is amended—

(1) in subsection (a)(2)(B) by inserting ''1028A'' between ''1028'' and ''1029;''

(2) in subsection (a)(6)(A)—

(A) by striking '' or 274A(a)(2)'' and inserting ''274A(a)(2) or 274A(i)''; and

(B) by inserting ''and 1028A'' after ''1028'' and

(3) in subsection (a)(8) by inserting ''and 1028A'' after ''1028''.

SEC. 226. ADVANCE DELIVERY OF INFORMATION INCLUDING PASSENGER MANIFESTS.

(a) IN GENERAL.—Section 231 (8 U.S.C. 1221) is amended as follows:

(1) by striking ''commercial vessel or aircraft'' each place it appears and inserting ''commercial vessel, commercial vehicle, or aircraft'';

(2) in subsection (a), by striking ''such vessel or aircraft'' and inserting ''such vessel, vehicle, or aircraft'';

(3) in subsection (g), by striking ''$1,000'' and inserting ''$5,000'';

(4) in subsection (j), by striking ''The Attorney 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).

SEC. 227. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUSTOMS CONTROLS AND DISOBEYANCE OF LAWFUL ORDERS.

Section 758 of title 18, United States Code, is amended to read as follows:

"§ 758. Unlawful flight from Federal checkpoints and disobeyance of lawful orders

"(a) EVADING A CHECKPOINT.—Any person who, while operating a motor vehicle or vessel—

"(1) knowingly flees or evades a checkpoint operated by the Department of Homeland Security or any other Federal law enforcement agency; and

"(2) knowingly or recklessly disregards or disobeys the lawful command of a Federal law enforcement officer engaged in the enforcement of Federal law, or the lawful command of any law enforcement officer assisting such Federal officer,

shall be fined under this title, imprisoned not more than 5 years, or both.

"(b) FAILURE TO STOP.—Any person who, while operating a motor vehicle, aircraft, or vessel, knowingly or recklessly disregards or disobeys the lawful command of a Federal law enforcement officer engaged in the enforcement of Federal law, or the lawful command of any law enforcement officer assisting such Federal officer, shall be

fined under this title, imprisoned not more than 2 years, or both.''.

SEC. 228. REDUCING ILLEGAL IMMIGRATION AND ALIEN SMUGGLING ON TRIBAL LANDS.

(a) GRANTS AUTHORIZED.—The Secretary may award grants to any Indian tribe that—

(1) owns land that is adjacent to an international border of the United States; and

(2) has been adversely affected by illegal immigration.

(b) USE OF FUNDS.—Grants awarded under subsection (a) may be used for—

(1) law enforcement activities;

(2) health care services;

(3) environmental restoration; and

(4) the preservation of cultural resources.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that—

(1) describes the level of access that Border Patrol agents have on tribal lands;

(2) describes the extent to which the enforcement of Federal immigration laws and rescue oper-

ations by Border Patrol officers may be improved by enhanced access to tribal lands;

(3) contains a strategy for improving access to tribal lands through increased cooperation with tribal authorities; and

(4) identifies grants provided by the Department to Indian tribes, either directly or through grants provided to State or local governments, for border security expenses.

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

SEC. 229. DIPLOMATIC SECURITY SERVICE.

(a) Section 37(a)(1) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709(a)(1)) is amended to read as follows:

"(1) conduct investigations concerning—

"(A) illegal passport or visa issuance or use;

"(B) identity theft or document fraud affecting or relating to the programs, functions, or authorities of the Department of State;

"(C) violations of chapter 77 of title 18, United States Code; and

"(D) Federal offenses committed within the special maritime and territorial jurisdiction defined in section 7(9) of title 18, United States Code, except as that jurisdiction relates to the premises of United States military missions and related residences;".

(b) RULE OF CONSTRUCTION.—Nothing in this section may be construed to limit the investigative authority of any Federal department or agency.

SEC. 230. INCREASED PENALTIES BARRING THE ADMISSION OF CONVICTED SEX OFFENDERS FAILING TO REGISTER AND REQUIRING DEPORTATION OF SEX OFFENDERS FAILING TO REGISTER.

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

(1) in subclause (I), by striking "or" at the end;

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

(3) by inserting after subclause (II) the following:

"(III) a conviction under section 2250 of title 18, United States Code

(relating to failure to register as a sex offender),''.

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

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

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

(3) by inserting after subclause (II) the following:

''(III) a conviction under section 2250 of title 18, United States Code (relating to failure to register as a sex offender),''.

SEC. 231. AGGRAVATED FELONY.

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

(1) in the matter preceding subparagraph (A), by striking ''The term 'aggravated felony' means—'' and inserting ''Notwithstanding any other provision of law, the term 'aggravated felony' applies to any offense which is a felony described in this paragraph, whether in violation of Federal or State law, for which the individual served at least 1 year of imprisonment and to such a felony offense in violation

of the law of a foreign country, for which the term of imprisonment was completed during the previous 15 years, regardless of whether the conviction was entered before, on, or after September 30, 1996, and means—";

(2) in subparagraph (N), by striking "paragraph (1)(A) or (2) of" and inserting "paragraph (1)(A), (2), or (4) of"; and

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

(b) EFFECTIVE DATE AND APPLICATION.—

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

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

(B) apply to any act that occurred on or after such date.

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

gardless of when the conviction for such actions occurred.

SEC. 232. INCREASED CRIMINAL PENALTIES RELATED TO GANG VIOLENCE.

(a) CRIMINAL STREET GANGS.—

(1) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following:

"(J) MEMBERS OF CRIMINAL STREET GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who has been convicted of a crime under section 521 of title 18, United States Code, is inadmissible.".

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

"(F) MEMBERS OF CRIMINAL STREET GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who has been convicted of a crime under section 521 of title 18, United States Code, is deportable.".

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

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

(B) in subsection (c)(2)(B)—

(i) in clause (i), by striking '', or'' at the end and inserting a semicolon;

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

(iii) by adding at the end the following:

''(iii) the alien has been convicted of a crime under section 521 of title 18, United States Code.''.

(C) in subsection (d)—

(i) by striking paragraph (3);

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

(iii) in paragraph (3), as redesignated, by adding at the end the following: ''The Secretary of Homeland Security shall detain an alien provided temporary protected status under this section if the alien has been found by an immigration judge to be subject to detention under section 236(c)(1).''.

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

(1) in subsection (a)(1), in the matter following subparagraph (D)—

(A) by striking ''or imprisoned not more than four years'' and inserting ''and imprisoned for not more than 5 years''; and

(B) by striking '', or both''; and

(2) in subsection (b), by striking ''not more than $1,000 or imprisoned for not more than one year, or both'' and inserting ''under title 18, United States Code, and imprisoned for not more than 3 years (or for not more than 10 years if the alien is removable under paragraph (1)(E), (2), or (4) of section 237(a)).''.

Subtitle B—Detention Reform

SEC. 241. DEFINITIONS.

In this subtitle:

(1) APPREHENSION.—The term ''apprehension'' means the detention, arrest, or custody, or any significant deprivation of an individual's freedom of action by government officials or entities acting under agreement with the Department for suspicion of violations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(2) CHILD.—The term ''child'' has the meaning given to the term in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)).

(3) CHILD WELFARE AGENCY.—The term ''child welfare agency'' means the State or local agency responsible for child welfare services under subtitles B and E of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(4) COOPERATING ENTITY.—The term ''cooperating entity'' means a State or local entity acting under agreement with, or at the request of, the Department.

(5) DETAINEE.—The term ''detainee'' means an individual who is subject to detention under the Immigration and Nationality Act.

(6) DETENTION.—The term ''detention'' means government custody or any other deprivation of an individual's freedom of movement by government agents.

(7) DETENTION FACILITY.—The term ''detention facility'' means a Federal, State, or local government facility, or a privately owned and operated facility, that is used to hold individuals suspected or found to be in violation of the Immigration and Na-

tionality Act (8 U.S.C. 1101 et seq.) for more than 72 hours.

(8) FAMILIES WITH CHILDREN.—The term ''family with children'' means any parent or legal guardian who is apprehended with 1 or more of their children.

(9) GROUP LEGAL ORIENTATION PRESENTATIONS.—The term ''group legal orientation presentations'' means live group presentations, supplemented by individual orientations, pro se workshops, and pro bono referrals, that—

(A) are carried out by private nongovernmental organizations;

(B) are presented to detainees;

(C) inform detainees about Federal immigration law and procedures; and

(D) enable detainees to determine their eligibility for relief.

(10) IMMIGRATION ENFORCEMENT ACTION.—The term ''immigration enforcement action'' means the apprehension of, detention of, or request for or issuance of a detainer for, 1 or more individuals for suspected or confirmed violations of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) by the Department or cooperating entities.

(11) LOCAL EDUCATION AGENCY.—The term ''local education agency'' has the meaning given to the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(12) NGO.—The term ''NGO'' means a nongovernmental organization that provides social services or humanitarian assistance to the immigrant community.

(13) SECURE ALTERNATIVES.—The term ''secure alternatives'' means custodial or noncustodial programs under which aliens are screened and provided with appearance assistance services or placed in supervision programs as needed to ensure they appear at all immigration interviews, appointments and hearings.

(14) SHORT-TERM DETENTION FACILITY.—The term ''detention facility'' means a Federal, State, or local government facility, or a privately owned and operated facility, that is used to hold individuals suspected or found to be in violation of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) for 72 hours or less.

(15) UNACCOMPANIED ALIEN CHILDREN.—The term ''unaccompanied alien children'' has the mean-

ing given the term in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)).

SEC. 242. PROTECTIONS FOR VULNERABLE POPULATIONS.

(a) PROTECTION OF VULNERABLE POPULATIONS.—

(1) IN GENERAL.—Not later than 72 hours after the commencement of an immigration-related enforcement activity, the Department shall screen each detainee to determine if the individual is a member of a vulnerable population.

(2) ELIGIBILITY FOR RELEASE.—An individual is a member of a vulnerable population and eligible for release under paragraph (3) if the Department determines that he or she—

(A) has a nonfrivolous claim to United States citizenship;

(B) has been deemed by a medically trained professional to have medical or mental health needs, or a disability;

(C) is pregnant or nursing;

(D) is being detained with 1 or more of his or her children, or is 1 of such children;

(E) provides financial, physical, and other direct support to his or her minor children, parents, or other dependents;

(F) is older than 65 years of age;

(G) is a child (as defined in section 101(b) of the Immigration and Nationality Act (8 U.S.C. 1101(b));

(H) is a victim of abuse, violence, crime, or human trafficking;

(I) has been referred for a credible fear interview, a reasonable fear interview, or an asylum hearing, or is a stateless individual;

(J) has applied or intends to apply for asylum, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984;

(K) is prima facie eligible for relief under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) including returning lawful permanent residents; or

(L) is a member of any other group that has been designated as a vulnerable population in regulations or guidance promulgated by the Secretary.

(b) OPTIONS REGARDING DETENTION DECISIONS FOR VULNERABLE POPULATIONS.—Section 236 (8 U.S.C. 1226), as amended by this Act, is further amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1) by striking ''(c)'' and inserting ''(g)''; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking ''or'' at the end;

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

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

''(C) the alien's own recognizance;''; and.

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

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

''(3) may enroll the alien in a secure alternatives program; and'';

(2) by inserting after subsection (a) the following:

''(b) CUSTODY DECISIONS.—

''(1) CRITERIA TO BE CONSIDERED.—For any alien who is not charged with inadmissibility or removability under a ground specified in subsection (g) or section 236A, the criteria that the Secretary of

Homeland Security or the Attorney General shall use to demonstrate that detention is necessary are—

"(A) whether the alien poses a risk to public safety, including a risk to national security; and

"(B) whether alien poses a flight risk and there are no conditions of release that will reasonably ensure that the alien will appear for immigration proceedings, including bond or other conditions that reduce the risk of flight.

"(2) EXCEPTION.—A decision to detain an alien shall not be subject to the criteria under paragraph (1) if the Secretary demonstrates, by a preponderance of the evidence, that the alien falls is described in subsection (g)(1).

"(3) REVIEW.—Decisions by the Secretary or the Attorney General under this section shall be subject to review.

"(c) CUSTODY DECISIONS FOR VULNERABLE POPULATIONS.—

"(1) IN GENERAL.—Not later than 72 hours after an individual is detained under this section (unless the 72-hour requirement is waived in writing by the individual), an individual who is a member of a vulnerable population (as defined by subsection

(a)) shall be released from the custody of the Department of Homeland Security and shall not be subject to electronic monitoring unless the Department demonstrates by a preponderance of evidence that the individual—

"(A) is subject to mandatory detention under subsection (g) or section 236A;

"(B) poses a risk to public safety, including a risk to national security; or

"(C) is a flight risk and the risk cannot be mitigated through other conditions of release, such as bond or secure alternatives, which will reasonably ensure the alien will appear for immigration proceedings.

"(2) RELEASE.—An individual shall be released from custody under this subsection—

"(A) on the individual's own recognizance;

"(B) by posting a minimum bond under subsection (a)(2)(a);

"(C) on parole, in accordance with section 212(d)(5)(A); or

"(D) into a noncustodial secure alternatives program.

"(d) DECISION TO REMOVE OR RELEASE AN 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

with the Secretary's decision under paragraph (1), request a redetermination of that decision by an immigration judge.

"(B) OTHER DECISIONS.—The Attorney General may review and conduct custody redeterminations for any custody decision by the Secretary.

"(C) SAVINGS PROVISION.—Nothing in this subparagraph may be construed to prevent an individual from requesting a bond redetermination.

"(e) TIMELY NOTICE UPON APPREHENSION AND SERVICE OF CHARGING DOCUMENTS.—

"(1) NOTICE.—The Secretary, for each individual detained by the Department under this section, shall file the notice to appear or other relevant charging document with the closest immigration court to where the individual was apprehended and serve such notice on the individual not later than 48 hours after the commencement of the individual's detention.

"(2) CUSTODY DETERMINATION.—Any individual who is detained under this section for more than 48 hours shall be brought before an immigration judge for a custody determination not later than

72 hours after the commencement of such detention unless the individual waives such right in accordance with paragraph (3).

"(3) WAIVER.—The requirements under this subsection may be waived for 7 days if the individual—

"(A) enters into a written agreement with the Department of Homeland Security to waive such requirement; and

"(B) is eligible for immigration benefits or demonstrates eligibility for a defense against removal.

"(4) APPLICABILITY OF OTHER LAW.—Nothing in this section may be construed to repeal section 236A.";

(3) in subsection (e)(2), as redesignated, by inserting "or for humanitarian reasons," after "such an investigation,"; and

(4) by redesignating subsections (b), (c), and (d), as subsections (f), (g), and (h), respectively.

SEC. 243. APPREHENSION PROCEDURES FOR IMMIGRATION ENFORCEMENT-RELATED ACTIVITIES RELATING TO CHILDREN.

(a) NOTIFICATION.—

(1) ADVANCE NOTIFICATION.—Subject to paragraph (2), when conducting any immigration enforcement action, the Department and cooperating entities shall notify the Governor of the State, the local child welfare agency, and relevant State and local law enforcement before commencing the action, or, if advance notification is not possible, immediately after commencing such action, of—

(A) the approximate number of individuals to be targeted in the immigration enforcement action; and

(B) the primary language or languages believed to be spoken by individuals at the targeted site.

(2) HOURS OF NOTIFICATION.—To the extent possible, advance notification should occur during business hours and allow the notified entities sufficient time to identify resources to conduct the interviews described in subsection (b)(1).

(3) OTHER NOTIFICATION.—When conducting any immigration action, the Department and cooperating entities shall notify the relevant local education agency and local NGOs of the information described in paragraph (1) immediately after commencing the 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-

vidual would endanger public safety or national security; and

(B) contact information for—

(i) child welfare agencies in all 50 States, the District of Columbia, all United States territories, counties, and local jurisdictions; and

(ii) attorneys and legal service providers capable of providing free legal advice or free legal representation regarding child welfare, child custody determinations, and immigration matters;

(3) ensure that personnel of the Department and cooperating entities do not—

(A) interview individuals in the immediate presence of children; or

(B) compel or request children to translate for interviews of other individuals who are encountered as part of an immigration enforcement action; and

(4) ensure that any parent, legal guardian, or primary caregiver of a child in the United States—

(A) receives due consideration of the best interests of his or her children or wards in any decision or action relating to his or her deten-

tion, release, or transfer between detention facilities; and

(B) is not transferred from his or her initial detention facility or to the custody of the Department until the individual—

(i) has made arrangements for the care of his or her children or wards; or

(ii) if such arrangements are impossible, is informed of the care arrangements made for the children and of a means to maintain communication with the children.

(c) NONDISCLOSURE AND RETENTION OF INFORMATION ABOUT APPREHENDED INDIVIDUALS AND THEIR CHILDREN.—

(1) IN GENERAL.—Information collected by child welfare agencies and NGOs in the course of the screenings and interviews described in subsection (b)(1) about an individual apprehended in an immigration enforcement action may not be disclosed to Federal, State, or local government entities or to any person, except pursuant to written authorization from the individual or his or her legal counsel.

(2) CHILD WELFARE AGENCY OR NGO RECOMMENDATION.—Notwithstanding paragraph (1), a child welfare agency or NGO may—

(A) submit a recommendation to the Department of Homeland Security or cooperating entities regarding whether an apprehended individual is a parent, legal guardian, or primary caregiver who is eligible for the protections provided under this Act; and

(B) disclose information that is necessary to protect the safety of the child, to allow for the application of subsection (b)(4)(A), or to prevent reasonably certain death or substantial bodily harm.

SEC. 244. DETENTION OF FAMILIES.

(a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any family with children sought to be removed by the Department shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(b) CUSTODY OF FAMILIES WITH CHILDREN.—

(1) SEPARATION.—Families with children shall not be separated or taken into custody except when justified by exceptional circumstances, or when required by law.

(2) EXCEPTIONAL CIRCUMSTANCES.—In exceptional circumstances, if release or a secure alter-

natives program is not an option for families with children, the Secretary shall ensure that—

(A) special nonpenal, residential, home-like facilities that enable families to live as a family unit are designed to house families with children, taking into account the particular needs and vulnerabilities of the children;

(B) procedures and conditions of custody are appropriate for families with children;

(C) entities with demonstrated experience and expertise in child welfare staff and are responsible for the management of facilities housing families with children;

(D) unless such restrictions are necessary to prevent flight or to ensure the safety of residents, families with children are are not subject restrictions—

(i) on freedom of movement;

(ii) involving access to visitations, telephones, internet, a library, and a law library;

(iii) regarding possession of personal property, including personal clothing;

(iv) on the availability of age appropriate education; or

(v) religious practices;

(E) individualized reviews by an immigration judge of each family's well being, custody status and the need for continued detention are conducted every 30 days for any family held in such a facility for more than 3 weeks;

(F) all families are notified in writing of the decisions resulting from such reviews and of the individualized reasons for the decision; and

(G) parents retain fundamental parental rights and responsibilities, including the discipline of children, in accordance with applicable State laws.

(c) DISCRETIONARY WAIVER AUTHORITY FOR FAMILIES WITH CHILDREN.—Section 235(b)(1)(B)(iii) (8 U.S.C. 1225(b)(1)(B)(iii)) is amended—

(1) in subclause (IV), by striking ''Any alien'' and inserting ''Except as provided in subclause (V), any alien''; and

(2) by adding at the end the following:

''(V) DISCRETIONARY WAIVER AUTHORITY FOR FAMILIES WITH CHILDREN.—The Secretary of Homeland Security may decide for humanitarian reasons or significant public

benefit not to detain families with children who are otherwise subject to mandatory detention under subclause (IV).''.

SEC. 245. ACCESS TO CHILDREN, LOCAL AND STATE COURTS, CHILD WELFARE AGENCIES, AND CONSULAR OFFICIALS.

(a) IN GENERAL.—The Secretary shall ensure that all detention facilities operated by or under agreement with the Department implement procedures to ensure that the best interest of the child, including the best outcome for the family of the child, is considered in any decision or action relating to the custody of children whose parent, legal guardian, or primary caregiver is detained as the result of an immigration enforcement action.

(b) ACCESS TO CHILDREN, STATE AND LOCAL COURTS, CHILD WELFARE AGENCIES, AND CONSULAR OFFICIALS.—At all detention facilities operated by, or under agreement with, the Department, the Secretary shall—

(1) ensure that individuals who are detained by reason of their immigration status may receive the screenings and interviews described in section 243(b)(1) not later than 6 hours after their arrival at the detention facility;

(2) ensure that individuals who are detained by reason of their immigration status and are believed to be parents, legal guardians, or primary caregivers of children in the United States are—

(A) permitted daily phone calls and regular contact visits with their children or wards;

(B) able to participate fully, and to the extent possible in-person, in all family court proceedings and any other proceeding impacting upon custody of their children or wards;

(C) able to fully comply with all family court or child welfare agency orders impacting upon custody of their children or wards;

(D) provided with contact information for family courts in all 50 States, the District of Columbia, all United States territories, counties, and local jurisdictions;

(E) granted free and confidential telephone calls to child welfare agencies and family courts;

(F) granted free and confidential telephone calls and confidential in-person visits with attorneys, legal representatives, and consular officials;

(G) provided United States passport applications for the purpose of obtaining travel documents for their children or wards;

(H) granted adequate time before removal to obtain passports and other necessary travel documents on behalf of their children or wards if such children or wards will accompany them on their return to their country of origin or join them in their country of origin; and

(I) provided with the access necessary to obtain birth records or other documents required to obtain passports for their children or wards; and

(3) facilitate the ability of detained parents, legal guardians, and primary caregivers to share information regarding travel arrangements with their children or wards, child welfare agencies, or other caregivers well in advance of the detained individual's departure from the United States.

SEC. 246. MEMORANDA OF UNDERSTANDING.

The Secretary shall develop and implement memoranda of understanding or protocols with child welfare agencies and NGOs regarding the best ways to cooperate and facilitate ongoing communication between all relevant entities in cases involving a child whose parent, legal

guardian, or primary caregiver has been apprehended or detained in an immigration enforcement action to protect the best interests of the child and the best outcome for the family of the child.

SEC. 247. MANDATORY TRAINING.

The Secretary, in consultation with the Secretary of Health and Human Services and independent child welfare experts, shall require and provide in-person training on the protections required to all personnel of the Department and of States and local entities acting under agreement with the Department who regularly come into contact with children or parents in the course of conducting immigration enforcement actions.

SEC. 248. ALTERNATIVES TO DETENTION.

(a) SECURE ALTERNATIVES.—The Secretary shall establish secure alternatives programs to ensure public safety and appearances at immigration proceedings. The Secretary shall contract with nongovernmental organizations to conduct screening of detainees, provide appearance assistance services, and operate community-based supervision programs. If an individual is not eligible for release from custody, the Secretary shall consider the alien for placement in secure alternatives that maintain custody over the alien, including but not limited to the use of electronic 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.

(A) Each detainee shall receive a comprehensive medical, dental, and mental health intake screening by a licensed health care professional upon arrival at the detention facility and each detainee shall receive a comprehensive medical and mental health examination by a licensed health care professional not later than 14 days after arrival.

(B) All prescribed medications and medically necessary treatment shall be provided to detainees on schedule and without interruption. Medically necessary treatment shall include prenatal care, prenatal vitamins, and hormonal therapies including birth control. Female detainees shall be provided with adequate access to sanitary products. Each detainee taking prescribed medications prior to detention shall be allowed to continue taking such medications, on schedule and without interruption, until and unless a licensed health care professional examines the immigration detainee and decides upon an alternative course of treatment. Detainees who arrive at a detention facility with prescription medications shall be permitted to continue taking their medications, on schedule and with-

out interruption, until such time as a qualified health care professional examines the detainee and decides upon an alternative course of treatment. Detainees who arrive at a detention facility without prescription medications but who report being on such medications shall be evaluated by a qualified health care professional as soon as possible, but not later than 24 hours after arrival. All decisions to discontinue or modify a detainee's reported prescription medication regimen shall be conveyed to the detainee in a language that the detainee understands and shall be recorded in writing in the detainee's medical records.

(C) Involuntary psychotropic medication may be used only if allowed by applicable law and then only in emergency situations when a physician has determined, after personally examining the patient, that a detainee is imminently dangerous to self or others due to a mental illness and that involuntary psychotropic medication is medically appropriate to treat the mental illness and necessary to prevent harm. Medication shall not be forcibly administered to

a detainee to facilitate transport, removal or otherwise to control the detainee's behavior.

(D) On-Site Medical Providers. Detention facilities, in conjunction with the Department, shall provide for an administrative process for handling appeals of denials of medical or mental health treatment or care. Any decision regarding requested medical care for a detainee shall be made in writing by an on-site licensed health care professional within 72 hours. The decision of the on-site provider shall be communicated without delay to the detainee.

(E) Administrative Appeals Process. Detention facilities, in conjunction with the Department, shall ensure that detainees, medical providers, and legally-appointed advocates have the opportunity to appeal a denial of requested health care services by an on-site provider to an independent appeals board. The appeals board shall include health care professionals in the fields relevant to the request for medical or mental health care. Any such appeal shall be resolved in writing within 7 days by the appeals board or earlier if medically necessary.

(F) Review of on-site medical provider requests. The Secretary shall respond within 72 hours to any request by an on-site medical provider for authorization to provide medical or mental health care to an immigration detainee. In each case in which the Secretary denies or fails to grant such a request by the onsite medical provider, a written explanation of the reasons for the decision shall be conveyed without delay to the on-site medical provider and the immigration detainee. The on-site medical provider and immigration detainee (or legally appointed advocate) shall be permitted to appeal the denial of or failure to grant the requested health care service. Such appeal shall be resolved in writing within 7 days by an impartial appeals board or earlier if medically necessary and communicated without delay to the on-site medical provider and the immigration detainee.

(G) Any detainee deemed by a licensed health care professional to have a medical or mental health care condition shall be considered for release on parole, on bond, or into a secure alternatives program, with periodic reevaluations for such detainees not initially released.

(H) Upon removal or release, all detainees with medical or mental health conditions and women who are pregnant, post-natal, and nursing mothers shall receive discharge planning to ensure continuity of care for a reasonable period of time.

(I) The Department shall maintain complete, confidential medical records for every detainee, which shall be made available within 72 hours upon request to a detainee or individuals authorized by the detainee. Immediately upon an immigration detainee's transfer from one detention facility to another, the immigration detainee's complete medical records, including any transfer summary, shall be provided to the receiving facility.

(2) TRANSFERS OF DETAINEES.—

(A) NOTICE.—Absent exigent circumstances, such as a natural disaster or comparable emergency, the Secretary shall provide not less than 72 hours written notice to any detainee before such detainee is transferred to another detention facility. Not later than 24 hours after transfer, the Secretary shall notify by telephone and in writing the detainee's legal rep-

1 resentative 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,

free of charge, legal representatives, designated non-governmental organizations, consular officials, Federal and State courts where the detainee is or may become involved in a legal proceeding, and all government immigration agencies and adjudicatory bodies including the DHS Office of the Inspector General and the DHS Office for Civil Rights and Civil Liberties through confidential toll-free numbers. Confidential calls at no charge shall be provided to detainees who are subject to expedited removal or who are experiencing personal or family emergencies, including the need to arrange care for dependents. Each detainee has the right to privacy of telephone conversations made for the purpose of obtaining legal representation or related to legal matters. The Secretary shall ensure that rates charged in detention facilities for telephone calls are reasonable and do not significantly impair the detainee's right to access telephones.

(4) PHYSICAL AND SEXUAL ABUSE.—No detainee, whether in a detention facility or short term detention facility, shall be subject to degrading or inhumane treatment such as physical abuse, sexual abuse or harassment, or arbitrary punishment. Detention facilities shall take all necessary measures to

prevent sexual abuse and sexual assaults of detainees, to provide medical and mental health treatment to victims of sexual abuse and sexual assaults and shall comply fully with the standards under the Prison Rape Elimination Act of 2003 (42 U.S.C. 15601 et seq.)

(5) LIMITATIONS ON SOLITARY CONFINEMENT AND STRIP SEARCHES.—The use of solitary confinement, shackling, and strip searches of detainees shall be limited to situations where the use of such techniques is necessitated by extraordinary circumstances when the safety of other persons is at imminent risk. These techniques shall in no event be used for the purpose of humiliating detainees either within or outside the detention facility. Detention facilities shall adopt written policies pertaining to the use of force and the use of restraints and shall train all staff on the proper use of such devices. Solitary confinement, shackling and strip searches shall not be used on pregnant women, nursing mothers, women in labor or delivery or children who are younger than 18 years of age. Strip searches shall not be conducted in front of children who are younger than 21 years of age.

(6) LOCATION OF DETENTION FACILITIES.—All new detention facilities used by the Department shall be located within 50 miles of a city or municipality in which there is a demonstrated capacity to provide free or low-cost legal representation by nonprofit legal aid organizations or pro bono attorneys with expertise in asylum or immigration law. By January 1, 2012, all detention facilities used by the Department shall meet this requirement, and if the Secretary is unable to comply, the Secretary shall submit a report to Congress on that date and annually each year thereafter, explaining the reasons for the failure and the specific plans to meet the requirement.

(7) TRANSLATION CAPABILITIES.—Detention facilities and short term detention facilities shall employ facility staff who are professionally qualified in any language spoken by more than 10 percent of its immigration detainee population. All short term detention facilities and detention facilities shall provide alternative translation services in the exceptional circumstances when trained bilingual staff members are unavailable to translate. All such facilities shall provide notices and written materials to detainees

translated in any language spoken by more than 5 percent of its immigration detainee population.

(8) LEGAL ACCESS.—Detainees in detention facilities have the right to access legal information, including an on-site law library with up-to-date legal materials and law databases. Each detainee has the right to access free of charge the necessary equipment and materials for legal research and correspondence, such as computers, printers, copiers, and typewriters. The Secretary shall ensure each detainee is provided with information regarding the availability of legal information and services to assist those with limited English proficiency or disabilities. Detention facilities shall also provide access for each detainee to meet confidentially with legal counsel and shall provide services to send confidential legal documents to legal counsel, government offices and legal organizations.

(9) VISITATIONS.—Detainees in detention facilities have the right to meet privately with his or her current or prospective legal representative, interpreters, and other legal support staff a minimum of 8 hours per day on regular business days and 4 hours per day on weekends and holidays, subject to appropriate security procedures. Legal visits shall

not be restricted absent narrowly defined exceptional circumstances, such as a natural disaster or comparable emergency. Detention facilities shall prominently post official lists, updated semi-annually by the Secretary of Homeland Security, of pro bono legal organizations and their contact information in detainee housing units and other appropriate areas. Each detainee has the right to reasonable access to religious or other qualified individuals to address religious, cultural, or spiritual considerations. Detainees have the right to regular, private contact visits with children who are younger 18 years of age.

(10) RECREATIONAL PROGRAMS AND ACTIVITIES.—Detainees in detention facilities shall be afforded access to at least one hour each day of indoor and outdoor recreational programs and activities for detainees.

(11) TRAINING OF PERSONNEL.—All personnel in detention facilities and short term detention facilities shall be given a comprehensive specialized training and regular, periodic updates that shall include at a minimum an overview of immigration detention and all detention standards; the characteristics of the non-citizen detainee population including special 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 Secretaryshall 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;

(vi) receives educational materials; and

(vii) has access to at least three hours per day of indoor and outdoor recreational programs and activities.

(B) CONFIDENTIALITY.—The Secretary of Health and Human Services shall maintain the privacy and confidentiality of all information gathered in the course of providing care, custody, placement and follow-up services to unaccompanied alien children, consistent with the best interest of the unaccompanied alien child, by not disclosing such information to other government agencies or nonparental third parties. The Secretary may share information when authorized to do so by the child and when consistent with the child's best interest. The Secretary may provide information to a duly recognized law enforcement entity, if such disclosure would prevent imminent and serious harm to another individual. All disclosures shall be duly recorded in writing and placed in the child's files.

(13) VULNERABLE POPULATIONS.—Detention 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,

shall be investigated and determined by the Secretary within 30 days and, if a violation is found, such violations shall be remedied within an additional 30 days. A decision by the Secretary not to pursue such an enforcement action shall constitute final agency action.

(B) Each detainee has the right to file grievances with the staff of short term detention facilities, detention facilities, and the Department and shall be protected from retaliation.

(C) Each short term detention facility and detention facility shall designate an officer to ensure compliance with the provisions of this section. Such officer shall investigate all evidence pertaining to a violation of this section and, if a violation is identified, shall remedy the violation within 30 days. A detainee may not seek review in district court until after the passage of the afore-described 30-day period.

(D) Nothing in the Act may be construed to preclude review of noncompliance with this section under section 1983 of title 42, United States Code.

(E) No individual shall seek remedy in district court without first having complied with the procedures promulgated under paragraph 1 or paragraph 2 of this subsection. No individual may seek punitive damages for violations under this section.

(c) DETENTION COMMISSION.—

(1) APPOINTMENT.—The Secretary shall appoint and convene a detention commission comprised of experts from U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, the Office of Refugee Resettlement, and Division of Immigration Health Services in the Department of Health and Human Services, and an equal number of independent experts from nongovernmental organizations and intergovernmental organizations with expertise in working on behalf of aliens detained under immigration laws and vulnerable populations.

(2) DUTIES.—The commission shall conduct independent investigations, evaluate, and report on the compliance of short term detention facilities, detention facilities and the Department with the requirements set forth in this Act.

(3) REPORT.—Not later than 60 days after the first September 30 after the date of the enactment

of this Act, and biennially thereafter, the commission shall submit a report on the duties set forth in paragraph (2) to—

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

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

(C) the Committee on the Judiciary of the House of Representatives; and

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

(d) DEATH IN CUSTODY REPORTING REQUIREMENT.—

(1) IN GENERAL.—If an individual dies while in the custody of the Department or en route to or from custody, the supervising official at a short term detention facility or detention facility shall immediately report such death to the Secretary. Not later than 48 hours after receiving the report of such death, the Secretary shall report the death to the Office of the Inspector General of the Department and the Department of Justice.

(2) INVESTIGATIONS.—The Department shall complete an investigation of each detainee death that shall be conducted consistent with established

medical practice for morbidity and mortality reviews and examine both individual and systemic contributors to the death. The investigation shall be conducted by a panel of physicians with experience in morbidity and mortality reviews and shall include the medical staff of the facility or facilities that cared for the deceased detainee, physicians from within the Department, and independent physicians not affiliated with the Department or facility. The panel shall complete a report and corrective action plan in each case.

(3) REPORTS.—

(A) IN GENERAL.—Not later than 60 days after the end of each fiscal year, the Secretary shall submit to the Committee on the Judiciary and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on the Judiciary and the Committee on Homeland Security of the House of Representatives a report containing detailed information regarding all such deaths during the preceding fiscal year, including each mortality and morbidity report, corrective action plan, and corrective actions taken.

(B) CONTENTS.—The reports to the Office of the Inspector General and to Congress referenced in paragraph (1) shall, at a minimum, include the name, gender, race, ethnicity, and age of the deceased; the date, time, and location of death; the law enforcement agency that detained, arrested, or was in the process of arresting the deceased; a description of the circumstances surrounding the death; the status and results of any investigation that has been conducted into the circumstances surrounding the death; and all medical records of the deceased.

SEC. 250. ACCESS TO COUNSEL.

Section 240(b)(4) (8 U.S.C. 1229a(b)(4)) is amended—

(1) in the matter preceding subparagraph (A), by striking ''In proceedings under this section, under regulations of the Attorney General'' and inserting ''The Attorney General shall promulgate regulations for proceedings under this section, under which—''

(2) in subparagraph (B), by striking '', and'' at the end and inserting a semicolon;

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

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

"(C) the Attorney General, or the designee of the Attorney General, may appoint counsel to represent an alien if the fair resolution or effective adjudication of the proceedings would be served by appointment of counsel; and".

SEC. 251. GROUP LEGAL ORIENTATION PRESENTATIONS.

(a) ESTABLISHMENT OF A NATIONAL LEGAL ORIENTATION SUPPORT AND TRAINING CENTER.—The Attorney General, in consultation with the Secretary, shall establish a National Legal Orientation Support and Training Center (referred to in this section as the "Center") to ensure quality and consistent implementation of group legal orientation programs nationwide.

(b) DUTIES.—The Center shall—

(1) offer training to nonprofit agencies that will offer group legal orientation programs;

(2) consult with nonprofit agencies offering group legal orientation programs regarding program development and substantive legal issues;

(3) develop standards for group legal orientation programs; and

(4) ensure that all detained aliens in immigration and asylum proceedings under sections 235,

238, 240, and 241(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1225, 1228, 1229a, and 1231(b)(5)) receive group legal orientation programs.

(c) PROCEDURES.—The Secretary shall establish procedures for regularly scheduled, group legal orientation presentations.

(d) GRANTS AUTHORIZED.—The Attorney General shall establish a program to award grants to nongovernmental agencies to develop, implement, or expand legal orientation programs for all detainees at a detention facility that offers such programs.

SEC. 252. PROTECTIONS FOR REFUGEES.

(a) PROTECTION OF REFUGEES PRIOR TO ADJUSTMENT.—Section 209 (8 U.S.C. 1159) is amended—

(1) in subsection (a)(1), by striking ''return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 235, 240, and 241'' and inserting ''be eligible for adjustment of status as an immigrant to the United States'';

(2) in subsection (a)(2), by striking ''upon inspection and examination''; and

(3) in subsection (c), by adding at the end the following: "An application for adjustment under this section may be filed up to 3 months before the date the applicant would first otherwise be eligible for adjustment under this section.".

(b) PROCEDURES FOR ENSURING ACCURACY AND VERIFIABILITY OF SWORN STATEMENTS TAKEN PURSUANT TO EXPEDITED REMOVAL AUTHORITY.—

(1) IN GENERAL.—The Secretary shall establish quality assurance procedures to ensure the accuracy and verifiability of signed or sworn statements taken by employees of the Department exercising expedited removal authority under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)).

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

(3) RECORDINGS.—

(A) IN GENERAL.—The recording of the interview shall include the written statement, in its entirety, being read back to the alien in a

language that the alien claims to understand, and the alien affirming the accuracy of the statement or making any corrections thereto.

(B) FORMAT.—The recording shall be made in video, audio, or other equally reliable format.

(4) EXEMPTION AUTHORITY.—

(A) Subsections (b) and (c) shall not apply to interviews that occur at facilities exempted by the Secretary pursuant to this subsection.

(B) The Secretary or the Secretary's designee may exempt any facility based on a determination by the Secretary or the Secretary's designee that compliance with subsections (b) and (c) at that facility would impair operations or impose undue burdens or costs.

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

(D) The exercise of the exemption authority shall not give rise to a private cause of action.

(c) INTERPRETERS.—The Secretary shall ensure that a professional fluent interpreter is used when the inter-

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

(d) RECORDINGS IN IMMIGRATION PROCEEDINGS.—Recordings of interviews of aliens described in section (b) shall be included in the record of a proceeding and may be considered as evidence in any further proceedings involving the alien.

(e) STUDY ON THE EFFECT OF EXPEDITED REMOVAL PROVISIONS, PRACTICES AND PROCEDURES ON ASYLUM CLAIMS.—

(1) IN GENERAL.—The United States Commission on International Religious Freedom (referred to in this section as the ''Commission'') is authorized to conduct a study to determine whether immigration officers described in paragraph (2) are engaging in conduct described in paragraph (3).

(2) IMMIGRATION OFFICERS DESCRIBED.—An immigration officer described in this paragraph is an immigration officer performing duties under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) with respect to aliens who are apprehended after entering the United States and who

may be eligible to apply for asylum under such section or section 208 of such Act (8 U.S.C. 1158).

(3) CONDUCT DESCRIBED.—Conduct described in this paragraph is the following:

(A) Improperly encouraging an alien referred to in paragraph (2) to withdraw or retract claims for asylum.

(B) Incorrectly failing to refer such an alien for an interview by an asylum officer for a determination of whether the alien has a credible fear of persecution (within the meaning of section 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(v))).

(C) Incorrectly removing such an alien to a country where the alien may be persecuted.

(D) Detaining such an alien improperly or in inappropriate conditions.

(f) REPORT.—Not later than 24 months after the date on which the Commission initiates the study conducted under subsection (a), the Commission shall submit a report containing the results of the study to—

(1) the Committee on Homeland Security and Governmental Affairs of the Senate;

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

(3) the Committee on Foreign Relations of the Senate;

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

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

(6) the Committee on Foreign Affairs of the House of Representatives.

(g) STAFF.—

(1) FROM OTHER AGENCIES.—At the request of the Commission, the Secretary, the Attorney General, and the Comptroller General of the United States shall authorize staff designated by the Commission who are recognized for their expertise and knowledge of refugee and asylum issues to assist the Commission in conducting the study under subsection (a).

(2) HIRING OF STAFF.—The Commission may hire additional staff and consultants to conduct the study under subsection (a).

(3) ACCESS TO PROCEEDINGS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary and the Attorney General shall permit staff designated under paragraph (1) or hired under paragraph (2) to

have unrestricted access to all stages of all proceedings conducted under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)).

(B) EXCEPTIONS.—The Secretary and the Attorney General shall not permit unrestricted access pursuant to subparagraph (A) in any case in which—

(i) an alien that is subject to a proceeding conducted under section 235(b) of the Immigration and Nationality Act objects to such access; or

(ii) the Secretary or Attorney General determines that the security of a particular proceeding would be threatened by such access.

SEC. 253. IMMIGRATION AND CUSTOMS ENFORCEMENT OMBUDSMAN.

(a) ESTABLISHMENT.—Subtitle D of title III of the Homeland Security Act of 2002 (6 U.S.C. 251 et seq.) is amended by adding at the end the following:

"SEC. 447. IMMIGRATION AND CUSTOMS ENFORCEMENT OMBUDSMAN.

''(a) IN GENERAL.—There established in the Department 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-

missioner of United States Customs and Border Protection in the course of custody and detention operations;

"(5) initiate investigations into allegations of systemic problems at detention facilities;

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

"(7) refer matters, as appropriate, to the Office of Inspector General of the Department of Justice, the Office of Civil Rights and Civil Liberties of the Department, or any other relevant office or agency;

"(8) propose changes in the policies or practices of United States Immigration and Customs Enforcement to improve the treatment of United States citizens and residents, immigrants, detainees, and others subject to immigration-related enforcement operations;

"(9) establish a public advisory group consisting of nongovernmental organization representatives and Federal, State, and local government officials with expertise in detention and vulnerable populations to provide the Ombudsman with input on—

"(A) the priorities of the Ombudsman; and

"(B) current practices of United States Immigration and Customs Enforcement; and

"(10) recommend to the Assistant Secretary personnel action based on any finding of noncompliance.

"(d) ANNUAL REPORT.—

"(1) OBJECTIVES.—Not later than June 30 of each year, the Ombudsman shall prepare and submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the objectives of the Office of the Ombudsman for the next fiscal year.

"(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

"(A) full and substantive analysis of the objectives of the Office of the Ombudsman;

"(B) statistical information regarding such objectives;

"(C) a description of each detention facility found to be in noncompliance with the detention standards of the Department of Homeland Security or other applicable regulations;

"(D) a description of the actions taken by the Department of Homeland Security to rem-

edy any findings of noncompliance or other identified problems;

"(E) information regarding whether the actions described in subparagraph (D) resulted in compliance with detention standards;

"(F) a summary of the most pervasive and serious problems encountered by individuals subject to the enforcement operations of the Department of Homeland Security, including a description of the nature of such problems; and

"(G) such other information as the Ombudsman may consider advisable.".

(b) AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting after the item relating to section 446 the following:

"Sec. 447. Immigration and Customs Enforcement Ombudsman."

SEC. 254. LAWFUL PERMANENT RESIDENT STATUS OF REFUGEES AND ASYLUM SEEKERS GRANTED ASYLUM.

(a) ADMISSION OF EMERGENCY SITUATION REFUGEES.—Section 207(c) (8 U.S.C. 1157(c)) is amended—

(1) in paragraph (1)—

(A) by striking "Attorney General the first time it appears and inserting 'Secretary of Homeland Security";

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

(C) by striking ''(except as otherwise provided under paragraph (3)) as an immigrant under this Act.'' and inserting ''(except as provided under subsection (b) and (c) of section 209) as an immigrant under this Act. Notwithstanding any numerical limitations specified in this Act, any alien admitted under this paragraph shall be regarded as lawfully admitted to the United States for permanent residence as of the date of such alien's admission to the United States.'';

(2) in paragraph (2)(A)—

(A) by striking ''(except as otherwise provided under paragraph (3))'' and inserting ''(except as provided under subsection (b) and (c) of section 209)''; and

(B) by striking the last sentence and inserting the following: ''An alien admitted to the United States as a refugee may petition for his or her spouse or child to follow to join him or her in the United States at any time after such alien's admission, notwithstanding his or her

treatment as a lawful permanent resident as of the date of his or her admission to the United States.'';

(3) by striking paragraph (3);

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

(5) in paragraph (3), as redesignated—

(A) by striking ''Attorney General'' the first time it appears and inserting ''Secretary of Homeland Security''; and

(B) by striking ''Attorney General'' each additional place it appears and inserting ''Secretary''.

(b) TREATMENT OF SPOUSE AND CHILDREN.—Section 208(b)(3) (8 U.S.C. 1158(b)(3)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (E); and

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

''(B) PETITION.—An alien granted asylum under this subsection may petition for the same status to be conferred on his or her spouse or child at any time after such alien is granted asylum whether or not such alien has applied

for, or been granted, adjustment to permanent resident status under section 209.

"(C) PERMANENT RESIDENT STATUS.—Notwithstanding any numerical limitations specified in this Act, a spouse or child admitted to the United States as an asylee following to join a spouse or parent previously granted asylum shall be regarded as lawfully admitted to the United States for permanent residence as of the date of such spouse's or child's admission to the United States.

"(D) APPLICATION FOR ADJUSTMENT OF STATUS.—A spouse or child who was not admitted to the United States pursuant to a grant of asylum, but who was granted asylum under this subparagraph after his or her arrival as the spouse or child of an alien granted asylum under section 208, may apply for adjustment of status to that of lawful permanent resident under section 209 at any time after being granted asylum.".

(c) REFUGEES.—

(1) IN GENERAL.—Section 209 (8 U.S.C. 1159) is amended to read as follows:

"SEC. 209. TREATMENT OF ALIENS ADMITTED AS REFUGEES AND OF ALIENS GRANTED ASYLUM.

"(a) IN GENERAL.—

"(1) TREATMENT OF REFUGEES.—Notwithstanding any numerical limitations specified in this Act, any alien who has been admitted to the United States under section 207 shall be regarded as lawfully admitted to the United States for permanent residence as of the date of such admission.

"(2) TREATMENT OF SPOUSE AND CHILDREN.—Notwithstanding any numerical limitations specified in this Act, any alien admitted to the United States under section 208(b)(3) as the spouse or child of an alien granted asylum under section 208(b)(1) shall be regarded as lawfully admitted to the United States for permanent residence as of the date of such admission.

"(3) ADJUSTMENT OF STATUS.—The Secretary of Homeland Security or the Attorney General, in the discretion of the Secretary or the Attorney General, and under such regulations as the Secretary or the Attorney General may prescribe, may adjust, to the status of an alien lawfully admitted to the United States for permanent residence, the status of any alien who, while in the United States—

"(A) is granted—

"(i) asylum under section 208(b) (as a principal alien or as the spouse or child of an alien granted asylum); or

"(ii) refugee status under section 207 as the spouse or child of a refugee;

"(B) applies for such adjustment of status at any time after being granted asylum or refugee status;

"(C) is not firmly resettled in any foreign country; and

"(D) is admissible (except as otherwise provided under subsections (b) and (c)) as an immigrant under this Act at the time of examination for adjustment of such alien.

"(4) RECORD.—Upon approval of an application under this subsection, the Secretary of Homeland Security or the Attorney General shall establish a record of the alien's admission for lawful permanent residence as of the date such alien was granted asylum or refugee status.

"(5) DOCUMENT ISSUANCE.—An alien who has been admitted to the United States under section 207 or 208 or who adjusts to the status of a lawful permanent resident as a refugee or asylee under this section shall be issued documentation indicating that

such alien is a lawful permanent resident pursuant to a grant of refugee or asylum status.

"(b) INAPPLICABILITY OF CERTAIN INADMISSIBILITY GROUNDS TO REFUGEES, ALIENS GRANTED ASYLUM, AND SUCH ALIENS SEEKING ADJUSTMENT OF STATUS TO LAWFUL PERMANENT RESIDENT.—Paragraphs (4), (5), and (7)(A) of section 212(a) shall not apply to—

"(1) any refugee under section 207;

"(2) any alien granted asylum under section 208; or

"(3) any alien seeking admission as a lawful permanent resident pursuant to a grant of refugee or asylum status.

"(c) WAIVER OF INADMISSIBILITY OR DEPORTABILITY FOR REFUGEES, ALIENS GRANTED ASYLUM, AND SUCH ALIENS SEEKING ADJUSTMENT OF STATUS TO LAWFUL PERMANENT RESIDENT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Homeland Security or the Attorney General may waive any ground of inadmissibility under section 212 or any ground of deportability under section 237 for a refugee admitted under section 207, an alien granted asylum under section 208, or an alien seeking admission as a lawful permanent resident pursuant to a grant of ref-

ugee or asylum status if the Secretary or the Attorney General determines that such waiver is justified by humanitarian purposes, to ensure family unity, or is otherwise in the public interest.

"(2) INELIGIBILITY.—A refugee under section 207, an alien granted asylum under section 208, or an alien seeking admission as a lawful permanent resident pursuant to a grant of refugee or asylum status shall be ineligible for a waiver under paragraph (1) if it has been established that the alien is—

"(A) inadmissible under section 212(a)(2)(C) or subparagraph (A), (B), (C), or (E) of section 212(a)(3);

"(B) deportable under section 237(a)(2)(A)(iii) for an offense described in section 101(a)(43)(B); or

"(C) deportable under subparagraph (A), (B), (C), or (D) of section 237(a)(4).".

(d) TECHNICAL AMENDMENTS.—

(1) ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—Section 201(b)(1)(B) (8 U.S.C. 1151(b)(1)(B)) is amended to read as follows:

"(B) Aliens who are admitted to the United States as permanent residents under

section 207 or 208 or whose status is adjusted under section 209.''.

(2) TRAINING.—Section 207(f)(1) (8 U.S.C. 1157(f)(1)) is amended by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''.

(3) TABLE OF CONTENTS.—The table of contents is amended by striking the item relating to section 209 and inserting the following:

''Sec. 209. Treatment of aliens admitted as refugees and of aliens granted asylum.''.

(e) SAVINGS PROVISIONS.—

(1) IN GENERAL.—Nothing in the amendments made by this section may be construed to limit access to the benefits described at chapter 2 of title IV of the Immigration and Nationality Act (8 U.S.C. 1521 et seq.).

(2) CLARIFICATION.—Aliens admitted for lawful permanent residence under section 207 or 208 of the Immigration and Nationality Act (8 U.S.C. 1157 and 1158) or who adjust status to lawful permanent resident under section 209 of such Act (8 U.S.C. 1159) shall be considered to be refugees and aliens granted asylum in accordance with sections 402, 403, 412, and 431 of the Personal Responsibility

and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612, 1613, 1622, and 1641).

(f) EFFECTIVE DATE.—This section, and the amendments made by this section, shall become effective on the earlier of—

(1) the date that is 180 days after the date of the enactment of this Act; or

(2) the date on which a final rule is promulgated to implement this section.

SEC. 255. ELIMINATION OF TIME LIMITS ON ASYLUM APPLICATIONS.

Section 208(a)(2) (8 U.S.C. 1158(a)(2)) is amended—

(1) in subparagraph (A), by striking ''Attorney General'' each place it appears and inserting ''Attorney General or the Secretary of Homeland Security'';

(2) by striking subparagraph (B);

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively;

(4) in subparagraph (B), as redesignated, by striking ''subparagraph (D)'' and inserting ''subparagraphs (C) and (D)''; and

(5) by striking subparagraph (C), as redesignated, and inserting the following:

"(C) CHANGED CIRCUMSTANCES.—Notwithstanding subparagraph (B), an application for asylum of an alien may be considered if the alien demonstrates, to the satisfaction of the Attorney General or the Secretary of Homeland Security, the existence of changed circumstances that materially affect the applicant's eligibility for asylum.

"(D) MOTION TO REOPEN DENIED ASYLUM CLAIM.—Notwithstanding subparagraph (B) or section 240(c)(7), an alien may file a motion to reopen an asylum claim during the 2-year period beginning on the date of enactment of this subparagraph if the alien—

"(i) was denied asylum based solely upon a failure to meet the 1-year application filing deadline in effect on the date on which the application was filed;

"(ii) was granted withholding of removal to the alien's country of nationality (or, if stateless, to the country of last habitual residence under section 241(b)(3));

"(iii) has not obtained lawful permanent residence in the United States pursuant to any other provision of law;

"(iv) is not subject to the safe third country exception in section 208(a)(2)(A) or a bar to asylum under section 208(b)(2) and should not be denied asylum as a matter of discretion; and

"(v) is physically present in the United States when the motion is filed."; and

(6) in subparagraph (E), by striking "subparagraphs (A) and (B)" and inserting "subparagraph (A)."

SEC. 256. EFFICIENT ASYLUM DETERMINATION PROCESS AND DETENTION OF ASYLUM SEEKERS.

Section 235(b)(1)(B) (8 U.S.C. 1225(b)(1)(B)) is amended—

(1) in clause (ii), by striking "shall be detained for further consideration of the application for asylum" and inserting "may, in the Secretary's discretion, be detained for further consideration of the application for asylum by an asylum officer designated by the Director of United States Citizenship and Immigration Services. The asylum officer, after conducting a nonadversarial asylum interview, may grant asylum to the alien under section 208 or refer the case to a designee of the Attorney General, for

a de novo asylum determination, for relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984, or for withholding of removal under section 241(b)(3).''; and

(2) in clause (iii)(IV)—

(A) by amending the subclause heading to read as follows:

''(IV) DETENTION.—''; and

(B) by striking ''shall'' and inserting ''may, in the Secretary's discretion,''.

SEC. 257. PROTECTION OF STATELESS PERSONS IN THE UNITED STATES.

(a) IN GENERAL.—Chapter 1 of title II (8 U.S.C. 1151 et seq.) is amended by adding at the end the following:

''SEC. 210A. PROTECTION OF STATELESS PERSONS IN THE UNITED STATES.

''(a) DEFINED TERM.—

''(1) IN GENERAL.—In this section, the term 'de jure stateless person' means an individual who is not considered a national under the laws of any country. Individuals who have lost their nationality as a result of their voluntary action or knowing inac-

tion after arrival in the United States shall not be considered de jure stateless persons.

"(2) DESIGNATION OF SPECIFIC DE JURE GROUPS.—The Secretary of Homeland Security, in consultation with the Secretary of State, may, in the discretion of the Secretary, designate specific groups of individuals who are considered de jure stateless persons, for purposes of this section.

"(b) MECHANISMS FOR REGULARIZING THE STATUS OF STATELESS PERSONS.—

"(1) RELIEF FOR INDIVIDUALS DETERMINED TO BE DE JURE STATELESS PERSONS.—The Secretary of Homeland Security or the Attorney General may, in his or her discretion, provide conditional lawful status to an alien who is otherwise inadmissible or deportable from the United States if the alien—

"(A) is a de jure stateless person;

"(B) applies for such relief;

"(C) is not inadmissible under paragraph (2) or (3) of section 212(a); and

"(D) is not described in section 241(b)(3)(B)(i).

"(2) WAIVERS.—The provisions of paragraphs (4), (5), (6)(A), (7)(A), and (9) of section 212(a)

shall not be applicable to any alien seeking relief under paragraph (1), and the Secretary of Homeland Security or the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(3) SUBMISSION OF PASSPORT OR TRAVEL DOCUMENT.—Any alien who seeks benefits under this section must submit to the Secretary or the Attorney General—

"(A) any passport or travel document issued at any time to the alien (whether or not the passport or document has expired or been cancelled, rescinded, or revoked); or

"(B) an affidavit sworn under penalty of perjury stating that the alien has never been issued a passport or travel document, or identifying with particularity any such passport or travel document and explaining why the alien cannot submit it.

"(4) WORK AUTHORIZATION.—The Secretary may—

"(A) authorize an alien who has applied for relief under paragraph (1) to engage in employment in the United States while such application is being considered; and

"(B) provide such applicant with an employment authorized endorsement or other appropriate document signifying authorization of employment.

"(5) TREATMENT OF SPOUSES AND CHILDREN.—The spouse or child of an alien who has been granted conditional lawful status under paragraph (1) shall, if not otherwise eligible for admission under paragraph (1), be granted conditional lawful status under this section if accompanying, or following to join, such alien, provided that the spouse or child is admissible (except as otherwise provided in paragraph (2)), and provided further that the qualifying relationship to the principal beneficiary existed on the date on which such alien was granted conditional lawful status.

"(c) ADJUSTMENT OF STATUS.—

"(1) INSPECTION AND EXAMINATION.—At the end of the 5-year period beginning on the date on which an alien has been granted conditional lawful

status under subsection (b), the alien may apply for lawful permanent residence in the United States if—

"(A) the alien has been physically present in the United States for at least 5 years;

"(B) the alien's conditional lawful status has not been terminated by the Secretary of Homeland Security or the Attorney General, pursuant to such regulations as the Secretary or the Attorney General may prescribe; and

"(C) the alien has not otherwise acquired permanent resident status.

"(2) REQUIREMENTS FOR ADJUSTMENT.—The Secretary or the Attorney General, under such regulations as the Secretary or the Attorney General may prescribe, may adjust the status of an alien granted conditional lawful status under subsection (b) to that of an alien lawfully admitted for permanent residence if such alien—

"(A) is a de jure stateless person;

"(B) properly applies for such adjustment of status;

"(C) has been physically present in the United States for at least 5 years after being granted conditional lawful status under subsection (b);

"(D) is not firmly resettled in any foreign country; and

"(E) is admissible (except as otherwise provided under subsection (b)(2)) as an immigrant under this chapter at the time of examination of such alien for adjustment of status.

"(3) RECORD.—Upon approval of an application under this subsection, the Secretary or the Attorney General shall establish a record of the alien's admission for lawful permanent residence as of the date that is 5 years before the date of such approval.

"(d) PROVING THE CLAIM.—In determining an alien's eligibility for lawful conditional status or adjustment of status under this subsection, the Secretary or the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Secretary or the Attorney General.

"(e) REVIEW.—

"(1) ADMINISTRATIVE REVIEW.—No appeal shall lie from the denial of an application by the Secretary, but such denial will be without prejudice to the alien's right to renew the application in proceedings under section 240 of this title.

"(2) MOTIONS TO REOPEN.—Notwithstanding any limitation imposed by law on motions to reopen removal, deportation, or exclusion proceedings, any individual who is eligible for relief under this section may file 1 motion to reopen removal or deportation proceedings in order to apply for relief under this section, except that any such motion must be filed within one year of the date of enactment of this section, or within 90 days of the date of entry of a final administrative order of removal, deportation, or exclusion, whichever is later.

"(f) LIMITATION.—The provisions of this section shall apply only to aliens present in the United States. Nothing in this section shall be construed to authorize or require (i) the admission of any alien to the United States, (ii) the parole of any alien into the United States, or (iii) the grant of any motion to reopen or reconsider filed by an alien after departure or removal from the United States.".

(b) JUDICIAL REVIEW.—Section 242(a)(2)(B)(ii) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(B)(ii)) is amended by inserting "or 210A" after "208(a)".

(c) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act is amended by

inserting after the item relating to section 210 the following:

"210A. Protection of stateless persons in the United States.".

SEC. 258. AUTHORITY TO DESIGNATE CERTAIN GROUPS OF REFUGEES FOR CONSIDERATION.

(a) IN GENERAL.—Section 207(c)(1) (8 U.S.C. 1157(c)(1)) is amended—

(1) by inserting "(A)" before "Subject to the numerical limitations"; and

(2) by adding at the end the following:

"(B)(i) The President, upon a recommendation of the Secretary of State made in consultation with the Secretary of Homeland Security, and after appropriate consultation (as defined in paragraph (e)), may designate specifically defined groups of aliens whose resettlement in the United States is justified by humanitarian concerns or is otherwise in the national interest and who share common characteristics that identify them as targets of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion or of other serious harm, or who, having been identified as targets of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion or of other serious harm,

share a common need for resettlement due to a specific vulnerability.

"(ii) An alien who establishes membership in a group designated under clause (i) to the satisfaction of the Secretary of Homeland Security shall be considered a refugee for purposes of admission as a refugee under this section, unless the Secretary determines that such alien ordered, incited, assisted or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(iii) A designation under clause (i)—

"(I) may be revoked by the President at any time after notification to Congress; '(II) if not revoked, shall expire at the end of each fiscal year; and

"(II) may be renewed by the President after appropriate consultation (as defined in paragraph (e)).

"(iv) Categories of aliens established under section 599D of title V of Public Law 101-167 (8 U.S.C. 1157 note) shall be designated under clause (i) until the end of the first fiscal year commencing after the date of enactment of this subparagraph,

and thereafter shall be eligible for designation at the discretion of the President.

"(v) An alien's admission under this subparagraph shall count against the refugee admissions goal under subsection (a).

"(vi) A designation under clause (i) shall not influence decisions to grant, to any alien, asylum under section 208, protection under section 241(b)(3), or protection under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.".

(b) WRITTEN REASONS FOR DENIALS OF REFUGEE STATUS.—Each decision to deny an application for refugee status of an alien who is within a category established under this section shall be in writing and shall state, to the maximum extent feasible, the reason for the denial.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the first fiscal year that begins after the date of the enactment of this Act.

SEC. 259. ADMISSION OF REFUGEES IN THE ABSENCE OF THE ANNUAL PRESIDENTIAL DETERMINATION.

Section 207(a) (8 U.S.C. 1157(a)) is amended—

(1) by striking paragraph (1);

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

(3) in paragraph (1), as redesignated—

(A) by striking ''after fiscal year 1982''; and

(B) by adding at the end the following: ''If the President does not issue a determination under this paragraph before the beginning of a fiscal year, the number of refugees that may be admitted under this section in each quarter before the issuance of such determination shall be 25 percent of the number of refugees admissible under this section during the previous fiscal year.''; and

(4) in paragraph (3), as redesignated, by striking ''(beginning with fiscal year 1992)''.

TITLE III—WORKSITE ENFORCEMENT

SEC. 301. UNLAWFUL EMPLOYMENT OF ALIENS.

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

"SEC. 274A. UNLAWFUL EMPLOYMENT OF UNAUTHORIZED ALIENS.

"(a) IN GENERAL.—

"(1) IN GENERAL.—It is unlawful for an employer—

"(A) to hire an alien for employment in the United States knowing or with reckless disregard that the alien is an unauthorized alien (as defined in subsection (b)(1)) with respect to such employment; or

"(B) to hire for employment in the United States an individual without complying with the requirements of subsections (c) and (d).

"(2) CONTINUING EMPLOYMENT.—It is unlawful for an employer, after hiring an alien for employment, to continue to employ the alien in the United States knowing or with reckless disregard that the alien is (or has become) an unauthorized alien with respect to such employment. Nothing in this section shall prohibit or require employment of an authorized employee who was previously unauthorized.

"(3) USE OF LABOR THROUGH CONTRACT.—For purposes of this section, any person or entity who uses a contract, subcontract, or exchange to obtain the labor of an alien in the United States knowing or with reckless disregard that the alien is an

unauthorized alien (as defined in subsection (b)(1)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of subparagraph (a)(1)(A).

"(A) For purposes of ensuring compliance with the immigration laws, the Secretary may require by regulation that a person or entity include in a written contract or subcontract an effective and enforceable requirement that the contractor or subcontractor adhere to the immigration laws, including the use of an employment verification system (referred to in this section as the 'System').

"(B) The Secretary may establish procedures by which a person or entity may obtain confirmation from the Secretary that the contractor or subcontractor has registered with the System and is utilizing the System to verify its employees.

"(C) The Secretary may establish such other requirements for persons or entities using contractors or subcontractors, including procedures adapted to different employment sectors,

as the Secretary deems necessary to prevent knowing violations of this paragraph.

"(4) DEFENSE.—An employer that establishes that it has complied in good faith with the requirements of subsections (c)(1) through (c)(4), pertaining to document verification requirements, and subsection (d), pertaining to the use of the System, has established an affirmative defense that the employer has not violated subsection (a)(1)(A) with respect to such hiring; provided that—

"(A) until such time as the Secretary has required an employer to participate in the System, or that employer is participating on a voluntary basis pursuant to subsection (d), a defense is established without a showing of compliance with subsection (d); and

"(B) to establish a defense, the employer must also be in compliance with any additional requirements that the Secretary may promulgate by regulation pursuant to subsections (c) and (d).

"(5) PRESUMPTION.—An employer is presumed to have acted with knowledge or reckless disregard if the employer fails to comply with written stand-

ards, procedures, or instructions issued by the Secretary.

"(b) DEFINITIONS.—In this section:

"(1) EMPLOYER.—The term 'employer'—

"(A) means any person or entity hiring an individual for employment in the United States, including—

"(i) any person or entity who is an agent acting on behalf of an employer; and

"(ii) entities in any branch of the Federal Government; and

"(B) does not include a person or entity with fewer than 5 full- or part-time employees, for purposes of any requirement to participate in the System under subsection (d), except as it relates to subsection (d)(2)(H).

"(2) UNAUTHORIZED ALIEN.—The term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not—

"(A) an alien lawfully admitted for permanent residence; or

"(B) authorized to be so employed by this Act or by the Secretary.

"(c) DOCUMENT VERIFICATION REQUIREMENTS.—Any employer hiring an individual for employment in the United States shall take the following steps, and those provided in subsection (d), to verify that the individual is authorized to work in the United States:

"(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

"(A) IN GENERAL.—The employer must attest, under penalty of perjury and on a form prescribed by the Secretary, that it has verified the identity and employment authorization status of the individual by examining—

"(i) a document described in subparagraph (B); or

"(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

The form prescribed by the Secretary may be electronic or on paper, and may be integrated electronically with the requirements under subsection (d), if the Secretary determines that combining the requirements in (c) and (d) would improve efficiency of the verification requirements. Such attestation may be manifested by either a handwritten or digital signature. An

employer has complied with the requirements of this paragraph with respect to examination of documentation if the employer has followed applicable regulations and any written procedures or instructions provided by the Secretary, and if a reasonable person would conclude that the documentation is genuine and relates to the individual presenting it, taking into account any information provided to the employer by the Secretary, including photographs and other biometric information.

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

"(i) United States passport or passport card issued pursuant to the Secretary of State's authority under section 211a of title 22, United States Code;

"(ii) permanent resident card or other document issued to aliens authorized to work in the United States, as designated by the Secretary, if the document—

"(I) contains a photograph of the individual, other biometric data such

as fingerprints, or such other personal identifying information relating to the individual as the Secretary finds, by regulation, sufficient for the purposes of this subsection;

''(II) is evidence of authorization for employment in the United States; and

''(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use;

''(iii) enhanced driver's license, enhanced identification card, or enhanced tribal card issued to a citizen of the United States, provided that the Secretary has certified by notice published in the Federal Register that such enhanced document is suitable for use under this subparagraph based upon the accuracy and security of the issuance process, security features on the document, and such other factors as the Secretary may determine; or

''(iv) a passport issued by the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI)

with evidence of nonimmigrant admission to the United States under the Compact of Free Association between the United States and the FSM or the RMI.

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

"(i) an individual's driver's license or identity card issued by a State or an outlying possession of the United States, a Federally recognized Indian tribe, or an agency (including military) of the Federal government if the driver's license or identity card includes, at a minimum,—

"(I) the individual's photograph, name, date of birth, gender, and driver's license or identification card number, and

"(II) security features to make it resistant to tampering, counterfeiting, and fraudulent use, or

"(ii) for individuals under 18 years of age who are unable to present a document listed in clause (i), documentation of personal identity of such other type as the

Secretary finds provides a reliable means of identification, which may include an attestation as to the individual's identity by a person 21 years of age or older under penalty of perjury.

"(D) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—All documents must be unexpired. The following documents may be accepted as evidence of employment authorization—

"(i) a Social Security account number card issued by the Commissioner of Social Security (referred to in this section as the 'Commissioner') other than a card which specifies on its face that the card is not valid for employment in the United States or has other similar words of limitation. The Secretary, in consultation with the Commissioner, may require by publication of a notice in the Federal Register that only a social security account number card described in section 304 of the CIR Act of 2010 be accepted for this purpose; or

"(ii) any other documentation evidencing authorization of employment in the

United States which the Secretary determines, by notice published in the Federal Register, to be acceptable for purposes of this section, provided that the document, including any electronic security measures linked to the document, contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

"(E) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Secretary finds that any document or class of documents described in subparagraph (B), (C), or (D) does not reliably establish employment authorization or identity or is being used fraudulently to an unacceptable degree, the Secretary may prohibit or restrict the use of that document or class of documents for purposes of this subsection.

"(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury in the form prescribed by the Secretary, that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary to be hired for such employment. Such attestation may be

manifested by either a hand-written or digital signature. The individual must also provide any Social Security Account Number issued to the individual on such form.

"(3) RETENTION OF VERIFICATION RECORD.—After completion of such form in accordance with paragraphs (1) and (2), the employer must retain a paper, microfiche, microfilm, or electronic version of the form, according to such standards as the Secretary may provide, and make it available for inspection by officers or employees of the Department of Homeland Security (or persons designated by the Secretary), the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring of the individual and ending 7 years after such date of hiring, or 2 years after the date the individual's employment is terminated, whichever is later.

"(4) COPYING OF DOCUMENTATION AND RECORDKEEPING REQUIRED.—

"(A) Notwithstanding any other provision of law, the employer shall copy all documents presented by an individual pursuant to this subsection and shall retain a paper, microfiche,

microfilm, or electronic copy, but only (except as otherwise permitted under law) for the purposes of complying with the requirements of this section and section 274B. Such copies may be required to reflect the signatures of the employer and the employee, as well as the date of receipt. The Secretary may authorize or require an alternative method of storing and authenticating the employee's documentation information if the Secretary determines that such alternative method is more secure or efficient.

"(B) The employer shall maintain records of all actions and copies of any correspondence or action taken by the employer to clarify or resolve any issue as to the validity of the individual's identity or employment authorization.

"(C) The employer shall maintain the records described in this paragraph for any employee for the period of time required by paragraph (3) for retention of that employee's verification form. The Secretary may prescribe the manner of recordkeeping and may require that additional records be kept or that additional documents be copied and maintained. The Secretary in furtherance of an investigation

based on reasonable suspicion of a violation of this act, may require that these documents be transmitted electronically for purposes of authorized inspections or other enforcement actions, and may develop automated capabilities to request such documents.

"(D) An employer shall safeguard any information retained under this paragraph and paragraph (3) and protect any means of access to such information to ensure that such information is not used for any purpose other than as authorized in this paragraph or paragraph (3) or to determine the identity and employment eligibility of the individual, and to protect the confidentiality of such information, including ensuring that such information is not provided to any person other than a person who carries out the employer's responsibilities under this subsection, except as provided in paragraph (3).

"(5) PENALTIES.—An employer that fails to comply with any requirement of this subsection shall be penalized under subsection (e)(4)(B).

"(6) PROTECTION OF CIVIL RIGHTS.—

"(A) Nothing in this section shall be construed to prohibit any reasonable accommodation necessary to protect the religious freedom of any individual, or to ensure access to employment opportunities of any disabled individual.

"(B) The employer shall use the procedures for document verification set forth in this paragraph for all employees without regard to race, sex, national origin, or, unless specifically permitted in this section, to citizenship status.

"(7) RECEIPTS.—The Secretary must provide for the use of receipts for replacement documents, and temporary evidence of employment authorization by an individual to meet a documentation requirement of this subsection on a temporary basis not to exceed 1 year, pending satisfaction by the individual of such requirement.

"(d) THE EMPLOYMENT VERIFICATION SYSTEM.—

"(1) IN GENERAL.—

"(A) The Secretary, in consultation with the Commissioner, shall implement and specify the procedures for the System. The participating employers shall timely register with the System and shall use the System as described in subsection (d)(5).

"(B) The Secretary shall create the necessary processes to monitor the functioning of the System, including the volume of the workflow, the speed of processing of queries, the speed and accuracy of responses, misuse of the System, fraud or identity theft, whether use of the System results in wrongful adverse actions or discrimination based upon a prohibited factor against U.S. citizens or employment authorized aliens, and the security, integrity and privacy of the program.

"(2) IMPLEMENTATION SCHEDULE.—

"(A) FEDERAL GOVERNMENT.—All employers within the Executive, Legislative, or Judicial Branches of the Federal Government shall participate in the System on or after the date of enactment of this subsection as follows—

"(i) as of the date of enactment, to the extent required by section 402(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 as already implemented by each Branch; or

"(ii) on or after the date that is 60 days after the date of enactment of this subsection;

whichever is earlier, with respect to all newly hired employees and employees with expiring employment authorization.

"(B) FEDERAL CONTRACTORS.—Federal contractors shall participate in the System as provided in the final rule published at 73 Federal Register 67,651 (Nov. 14, 2008), or any subsequent amendments to such rule, for which purpose references to E-Verify in the final rule shall be construed to apply to the System.

"(C) CRITICAL INFRASTRUCTURE.—As of the date that is 1 year after the date of enactment of this subsection, the Secretary, in the Secretary's discretion, with notice to the public provided in the Federal Register, may require any employer or industry which the Secretary determines to be part of the critical infrastructure or directly related to the national security or homeland security of the United States to participate in the System with respect to all newly hired employees and employees with expiring employment authorization. The Secretary

shall notify employers subject to this subparagraph no less than 60 days prior to such required participation.

"(D) EMPLOYERS WITH MORE THAN 1,000 EMPLOYEES.—Not later than 2 years after the date of enactment of this subsection, all employers with more than 1,000 employees shall participate in the System with respect to all newly hired employees and employees with expiring employment authorization.

"(E) EMPLOYERS WITH MORE THAN 500 EMPLOYEES.—Not later than 3 years after the date of enactment of this subsection, all employers with more than 500 employees shall participate in the System with respect to all newly hired employees and employees with expiring employment authorization.

"(F) EMPLOYERS WITH MORE THAN 100 EMPLOYEES.—Not later than 4 years after the date of enactment of this subsection, all employers with more than 100 employees shall participate in the System with respect to all newly hired employees and employees with expiring employment authorization.

"(G) ALL EMPLOYERS.—Not later than 5 years after the date of enactment of this subsection, all employers shall participate in the System with respect to all newly hired employees and employees with expiring employment authorization.

"(H) IMMIGRATION LAW VIOLATORS.—An order finding any employer to have violated section 274A, 274B, or 274C shall require the employer to participate in the System with respect to newly hired employees and employees with expiring employment authorization, if such employer is not otherwise required to participate in the System by this section. The Secretary shall monitor such employer's compliance with System procedures.

"(3) PARTICIPATION IN THE SYSTEM.—The Secretary may—

"(A) permit any employer that is not required under this section to participate in the System to do so on a voluntary basis; and

"(B) require any employer that is required to participate in the System with respect to its newly hired employees also to do so with respect to its current workforce if the employer is de-

termined by the Secretary or other appropriate authority to have engaged in any violation of the immigration laws.

"(4) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If an employer is required under this subsection to participate in the System and fails to comply with the requirements of such program with respect to an individual—

"(A) such failure shall be treated as a violation of subsection (a)(1)(B) of this section with respect to that individual, and

"(B) a rebuttable presumption is created that the employer has violated subsection (a)(1)(A) or (a)(2) of this section, except in the case of any criminal prosecution.

"(5) PROCEDURES FOR PARTICIPANTS IN THE SYSTEM.—

"(A) IN GENERAL.—An employer participating in the System must register such participation with the Secretary and conform to the following procedures in the event of hiring any individual for employment in the United States—

"(i) REGISTRATION OF EMPLOYERS.—The Secretary, through notice in the Fed-

eral Register, shall prescribe procedures that employers must follow to register with the System. In prescribing these procedures, the Secretary shall have authority to require employers to provide—

"(I) employer's name;

"(II) employer's Employment Identification Number (EIN) and such other employer identification information as the Secretary may designate;

"(III) company address;

"(IV) name, date of birth, and position of the employer's employees accessing the System;

"(V) the information described in subclauses (I) through (IV) of this clause with respect to any agent, contractor, or other service provider accessing the System on the employer's behalf; and

"(VI) such other information as the Secretary deems necessary to ensure proper use and security of the System.

"(ii) UPDATING INFORMATION.—The employer is responsible for providing notice of any change to the information required under subclauses (I) through (V) of clause (i) before conducting any further inquiries within the System, or on such other schedule as the Secretary may provide.

"(iii) TRAINING.—The Secretary shall require employers to undergo such training to ensure proper use, protection of civil rights and civil liberties, privacy, integrity and security of the System. To the extent practicable, such training shall be made available electronically.

"(iv) NOTIFICATION TO EMPLOYEES.—The employer shall post notice or otherwise inform individuals hired for employment of the use of the System, that the System may be used for immigration enforcement purposes, and that the System cannot be used to discriminate or to take adverse action against U.S. citizens or employment authorized aliens.

"(v) PROVISION OF ADDITIONAL INFORMATION.—The employer shall obtain

from the individual (and the individual shall provide) and shall record in such manner as the Secretary may specify—

"(I) the individual's social security account number, or any other information relevant to determining citizenship as the Secretary of Homeland Security may specify,

"(II) if the individual does not attest to United States nationality under subsection (c)(2) of this section, such identification or authorization number established by the Department of Homeland Security as the Secretary of Homeland Security shall specify, and

"(III) such other information as the Secretary may require to determine the identity and employment authorization of an employee.

"(vi) PRESENTATION OF DOCUMENTATION.—The employer, and the individual whose identity and employment eligibility are being confirmed, shall fulfill the re-

quirements of subsection (c) of this section.

"(B) SEEKING CONFIRMATION.—

"(i) The employer shall use the System to provide to the Secretary all required information in order to initiate confirmation of the identity and employment eligibility of any individual no earlier than the date upon which the individual has accepted an offer of employment, and no later than 3 business days, or such other reasonable period as the Secretary may provide, after the date when employment begins. An employer may not, however, make the starting date of an individual's employment or training or any other term and condition of employment dependent on the receipt of a confirmation of identity and employment eligibility.

"(ii) For reverification of an individual with a limited period of employment authorization, all required System procedures must be initiated no later than 3 business days after the date the individual's employment authorization expires.

"(iii) For those employers required by the Secretary to verify their entire workforce, the System can be used for initial verification of an individual hired before the employer is subject to the System, and the employer must initiate all required procedures on or before such date as the Secretary shall specify.

"(iv) The Secretary shall provide, and the employer shall utilize, as part of the System, a method of notifying employers of a confirmation or nonconfirmation of an individual's identity and employment eligibility, or a notice that further action is required to verify such identity or employment eligibility ('further action notice'). The Secretary and the Commissioner shall establish procedures to directly notify the individual, as well as the employer, of a confirmation, nonconfirmation, or further action notice, and provide information about filing an administrative appeal pursuant to paragraph (7). The Secretary and the Commissioner may provide for a phased-in implementation of the notifica-

tion requirements of this clause as appropriate, but the notification system shall cover all inquiries not later than 5 years after the date of the enactment of the CIR Act of 2010.

"(C) CONFIRMATION OR NONCONFIRMATION.—

"(i) INITIAL RESPONSE.—The System shall provide a confirmation of an individual's identity and employment eligibility or a further action notice at the time of the inquiry, unless for technological reasons or due to unforeseen circumstances, the System is unable to provide such confirmation or further action notice. In such situations, the System shall provide a confirmation or further action notice within 3 business days of the initial inquiry. If providing a confirmation or further action notice, the System shall provide an appropriate code indicating such confirmation or such further action notice.

"(ii) CONFIRMATION UPON INITIAL INQUIRY.—When the employer receives an appropriate confirmation of an individual's

identity and employment eligibility under the System, the employer shall record the confirmation in such manner as the Secretary may specify.

"(iii) FURTHER ACTION NOTICE AND LATER CONFIRMATION OR NONCONFIRMATION.—

"(I) NOTIFICATION AND ACKNOWLEDGMENT THAT FURTHER ACTION IS REQUIRED.—Within 3 business days of an employer's receipt of a further action notice of an individual's identity or employment eligibility under the System, the employer shall notify the individual for whom the confirmation is sought of the further action notice and any procedures specified by the Secretary for addressing such notice. The further action notice must be given to the individual in writing. The individual must affirmatively acknowledge in writing, or in such other manner as the Secretary may specify, the receipt of the further action notice from the employer. If

the individual refuses to acknowledge the receipt of the further action notice, or acknowledges in writing that he or she will not contest the further action notice under subclause (II), the employer shall notify the Secretary in such manner as the Secretary may specify.

"(II) CONTEST.—Within 10 business days of receiving notification of a further action notice under subclause (I), the individual must contact the appropriate Federal agency and, if the Secretary so requires, appear in person for purposes of verifying the individual's identity and employment eligibility. The employer shall provide the individual with time as needed during daytime hours to contest the further action notice. The Secretary, in consultation with the Commissioner and other appropriate Federal agencies, shall specify an available secondary verification procedure to confirm the validity of information provided and

to provide a confirmation or nonconfirmation.

"(III) NO CONTEST.—If the individual refuses to acknowledge receipt of the further action notice, acknowledges that he or she will not contest the further action notice as provided in subclause (I), or does not contact the appropriate Federal agency within the period specified in subclause (II), a nonconfirmation shall issue. The employer shall record the nonconfirmation in such manner as the Secretary may specify and terminate the individual's employment. An individual's failure to contest a further action notice shall not be considered an admission of guilt with respect to any violation of this section or any provision of law.

"(IV) CONFIRMATION OR NONCONFIRMATION.—Unless the period is extended in accordance with this subclause, the System shall provide a confirmation or nonconfirmation with-

in 15 business days from the date that the individual contests the further action notice under subclause (II). If the Secretary determines that good cause exists, including to permit the individual to obtain and provide needed evidence of identity or employment eligibility, the Secretary shall extend the period for providing confirmation or nonconfirmation for stated periods beyond 15 business days. When confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation.

"(V) RE-EXAMINATION.—Nothing in this section shall prevent the Secretary from establishing procedures to reexamine a case where a confirmation or nonconfirmation has been provided if subsequently received information indicates that the confirmation or nonconfirmation may not have been correct.

"(VI) EMPLOYEE PROTECTIONS.—In no case shall an employer terminate employment or take any other adverse action against an individual solely because of a failure of the individual to have identity and employment eligibility confirmed under this subsection until a nonconfirmation has been issued, and if the further action notice was contested, the period to timely file an administrative appeal has expired without an appeal, or in the case where an administrative appeal has been filed, the appeal has been denied or a stay of the nonconfirmation has been terminated.

"(iv) NOTICE OF NONCONFIRMATION.—Within 3 business days of an employer's receipt of a nonconfirmation, the employer shall notify the individual who is the subject of the nonconfirmation, and provide information about filing an administrative appeal pursuant to paragraph (7). The nonconfirmation notice must be given

to the individual in writing. The individual must affirmatively acknowledge in writing, or in such other manner as the Secretary may specify, the receipt of the nonconfirmation notice from the employer. If the individual refuses or fails to acknowledge the receipt of the nonconfirmation notice, the employer shall notify the Secretary in such manner as the Secretary may specify.

"(D) CONSEQUENCES OF NONCONFIRMATION.—

"(i) TERMINATION OF CONTINUED EMPLOYMENT.—Except as provided in clause (iii), if the employer has received a nonconfirmation regarding an individual and has notified the individual as required by subparagraph (C)(iv), the employer shall terminate employment of the individual upon the expiration of the time period as specified in paragraph(7)(A) for filing an administrative appeal, or immediately if the further action notice was not contested.

"(ii) CONTINUED EMPLOYMENT AFTER NONCONFIRMATION.—If the em-

ployer, in violation of subclause (i), continues to employ an individual after receiving nonconfirmation, a rebuttable presumption is created that the employer has violated subsections (a)(1)(A) and (a)(2) of this section. The previous sentence shall not apply in any prosecution under subsection (l)(1) of this section.

"(iii) EFFECT OF ADMINISTRATIVE APPEAL.—If an individual files an administrative appeal of the nonconfirmation within the time period specified in paragraph (7)(A), and provides a copy of such appeal to the employer, the employer shall not terminate the individual's employment under this subparagraph prior to the resolution of the administrative appeal unless the Secretary or Commissioner terminates the stay under paragraph (7)(B).

"(E) OBLIGATION TO RESPOND TO QUERIES AND ADDITIONAL INFORMATION.—

"(i) Employers are required to comply with requests for information from the Secretary, including queries concerning current and former employees (within the

time frame during which records are required to be maintained under this section regarding such former employees) that relate to the functioning of the System, the accuracy of the responses provided by the System, and any suspected misuse, discrimination, fraud, or identity theft in the use of the System. Failure to comply with such a request is a violation of section (a)(1)(B).

''(ii) Individuals being verified through the System may be required to take further action to address irregularities identified by the Secretary or the Commissioner in the documents relied upon for purposes of subsection (c). The employer shall communicate to the individual within 3 business days any such requirement for further actions and shall record the date and manner of such communication. The individual must acknowledge in writing, or in such other manner as the Secretary may specify, the receipt of this communication 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

Opportunity Commission, Office of Special Counsel for Unfair Immigration Related Employment Practices, and the Administrator of the Small Business Administration, shall commence a campaign to disseminate information respecting the procedures, rights, and remedies prescribed under this section. Such campaign shall be aimed at increasing the knowledge of employers, employees, and the general public concerning employer and employee rights, responsibilities, and remedies under this section. The Secretary shall assess the success of the campaign in achieving its goals.

"(i) In order to carry out and assess the campaign under this paragraph, the Secretary of Homeland Security may, to the extent deemed appropriate and subject to the availability of appropriations, contract with public and private organizations for outreach and assessment activities under the campaign.

"(ii) There are authorized to be appropriated to carry out this paragraph $40,000,000 for each fiscal year 2011 through 2013.

"(H) Based on a regular review of the System and the document verification procedures to identify misuse or fraudulent use and to assess the security of the documents and processes being used to establish identity or employment authorization, the Secretary, in consultation with the Commissioner, may modify the documents or information that must be presented to the employer, the information that must be provided to the System by the employer, and the procedures that must be followed by employers with respect to any aspect of the System if the Secretary, in the Secretary's discretion, concludes that the modification is necessary to ensure that the System accurately and reliably determines the identity and employment authorization of employees while providing protection against misuse, discrimination, fraud, and identity theft.

"(I) Subject to appropriate safeguards to prevent misuse of the system, the Secretary, in consultation with the Commissioner, shall establish a secure self-verification procedure to permit an individual who seeks to verify the individual's own employment eligibility prior to

obtaining or changing employment to contact the appropriate agency and, in a timely manner, correct or update the information used by the System.

"(J) The Secretary may, upon notice provided in the Federal Register, adjust the time periods described in this paragraph.

"(6) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION PROVIDED BY THE SYSTEM.—No employer participating in the System who complies with all System procedures as required in this Act shall be liable under this Act for any employment-related action taken with respect to the employee in good faith reliance on information provided through the confirmation system.

"(7) ADMINISTRATIVE REVIEW.—

"(A) IN GENERAL.—An individual who is notified pursuant to paragraph (5)(C)(iv) of a nonconfirmation by the employer may, not later than 15 business days after the date that such notice is received, file an administrative appeal of such nonconfirmation. An individual subject to a nonconfirmation may file an appeal thereof after the 15-day period if the appeal is accom-

panied by evidence that the individual did not receive timely notice of a nonconfirmation, or that there was good cause for the failure to file an appeal within the 15-day period. All administrative appeals shall be filed as follows:

"(i) CITIZENS OR NATIONALS OF THE UNITED STATES.—An individual claiming to be a citizen or national of the United States shall file the administrative appeal with the Commissioner.

"(ii) ALIENS.—An individual claiming to be an alien authorized to work in the United States shall file the administrative appeal with the Secretary.

"(B) ADMINISTRATIVE STAY OF NONCONFIRMATION.—The nonconfirmation shall be automatically stayed upon the timely filing of an administrative appeal, and the stay shall remain in effect until the resolution of the appeal, unless the Secretary or the Commissioner terminates the stay based on a determination that the administrative appeal is frivolous or filed for purposes of delay.

"(C) REVIEW FOR ERROR.—The Secretary and the Commissioner shall develop procedures

for resolving administrative appeals regarding nonconfirmations based upon the information that the individual has provided, including any additional evidence or argument that was not previously considered. Any such additional evidence or argument shall be filed within 15 days of the date the appeal was originally filed. Appeals shall be resolved within 30 days after the individual has submitted all evidence and arguments he or she wishes to submit, or has stated in writing that there is no additional evidence that he or she wishes to submit. The Secretary and the Commissioner may, on a case by case basis for good cause, extend the filing and submission period in order to ensure accurate resolution of an appeal before him or her. Administrative review under this paragraph shall be limited to whether the nonconfirmation notice is supported by the weight of the evidence.

"(D) COMPENSATION FOR ERROR.—If the individual was denied a stay under subparagraph (B) and the Secretary makes a determination that the nonconfirmation issued for an individual was not caused by an act or omission of the individual or the employer, the Secretary

shall compensate the individual for lost wages in an amount not exceeding $75,000 and reasonable costs and attorneys' fees incurred during administrative and judicial review which shall not exceed $50,000. Amounts under this clause may be adjusted to account for inflation pursuant to the US Consumer Price Index - All Urban Consumers (CPI-U) compiled by the Bureau of Labor Statistics.

"(i) CALCULATION OF LOST WAGES.—Lost wages shall be calculated based on the wage rate and work schedule that prevailed prior to termination. The individual shall be compensated for wages lost beginning on the first scheduled work day after employment was terminated and ending 180 days after completion of the administrative review process described in this paragraph, or judicial review if any, or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first. If the individual obtains employment elsewhere at a lower wage rate, the individual shall be compensated for the difference in wages for the period ending 180

days after completion of the administrative review process or judicial review, if any.

"(ii) LIMITATION ON COMPENSATION.—For purposes of determining an individual's compensation for the loss of employment, such compensation shall not include any period in which the individual was ineligible for employment in the United States.

"(iii) SOURCE OF FUNDS.—Compensation or reimbursement provided under this paragraph shall not be provided from funds appropriated in annual appropriations Acts to the Secretary for the Department of Homeland Security.

"(8) JUDICIAL REVIEW.—

"(A) IN GENERAL.—After the Secretary or the Commissioner makes a final determination on an appeal filed by an individual under paragraph (7), the individual may obtain judicial review of such determination in a civil action commenced not later than 90 days after notice of such decision.

"(B) JURISDICTION.—A civil action for such judicial review shall be brought in the dis-

trict court of the United States for the judicial district in which the plaintiff resides or, if the plaintiff does not reside within any such judicial district, in the District Court of the United States for the District of Columbia.

"(C) SERVICE.—The defendant is either the Secretary or the Commissioner, but not both, depending upon who issued the administrative order under paragraph (7). In addition to serving the defendant, the plaintiff must also serve the Attorney General.

"(D) ANSWER.—As part of the Secretary's or the Commissioner's answer to a complaint for such judicial review, the Secretary or the Commissioner shall file a certified copy of the administrative record compiled during the administrative review under paragraph (7), including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and the administrative record, a judgment affirming or reversing the result of that administrative review, with or without remanding the cause for a rehearing.

"(E) STANDARD OF REVIEW.—

"(i) The burden shall be on the plaintiff to show that the administrative order was erroneous. Administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary. The court, upon good cause shown, may in its discretion remand to the Secretary or the Commissioner for additional fact-finding or other proceedings.

"(ii) If the plaintiff meets his or her burden to show that the administrative order was erroneous, the court shall, upon request of the plaintiff, determine whether the plaintiff can establish by the preponderance of the evidence that the error was caused by the decision rules, processes, or procedures utilized by the System or erroneous system information that was not the result of acts or omissions of the individual.

"(F) COMPENSATION FOR ERROR.—

"(i) IN GENERAL.—In cases in which the judicial review reverses the final determination of the Secretary or the Commis-

sioner made under paragraph (7), and the court finds that the final determination was erroneous by reason of the decision rules, processes, or procedures utilized by the System or erroneous system information that was not the result of acts or omissions of the individual, the court may award to the individual lost wages not exceeding $75,000, reasonable costs and attorneys' fees incurred during administrative and judicial review which shall not exceed $50,000, and compensatory damages in an amount deemed necessary by the court. Amounts under this clause may be adjusted to account for inflation pursuant to the US Consumer Price Index - All Urban Consumers (CPI-U) compiled by the Bureau of Labor Statistics.

"(ii) CALCULATION OF LOST WAGES.—Lost wages shall be calculated based on the wage rate and work schedule that prevailed prior to termination. The individual shall be compensated for wages lost beginning on the first scheduled work day after employment was terminated and

ending 180 days after completion of the judicial review described in this paragraph or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first. If the individual obtains employment elsewhere at a lower wage rate, the individual shall be compensated for the difference in wages for the period ending 180 days after completion of the judicial review process. No lost wages shall be awarded for any period of time during which the individual was not authorized to be employed in the United States.

''(iii) PAYMENT OF COMPENSATION.—Notwithstanding any other law, payment of compensation for lost wages, costs and attorneys' fees under this paragraph, or compromise settlements of the same, shall be made as provided by section 1304 of title 31, United States Code. Appropriations made available to the Secretary or the Commissioner, accounts provided for under section 286 of the Immigration and Nationality Act (8 U.S.C. 1356), and funds from the Federal Old-Age and Survivors

Insurance Trust Fund or the Federal Disability Insurance Trust Fund shall not be available to pay such compensation.

"(iv) EXCLUSIVE REMEDY.—Awards of compensation for lost wages, costs, and attorneys' fees under this paragraph shall be the exclusive remedy for a finding under clause (i) that a final determination of the Secretary or the Commissioner made under paragraph (7) was erroneous by reason of the negligence or recklessness of the Secretary or the Commissioner.

"(9) PRIVATE RIGHT OF ACTION.—If the nonconfirmation issued for an individual was caused by negligence or other misconduct on the part of the employer, the individual may seek recovery of damages, reinstatement, back pay, and other appropriate remedies in a civil action against the employer. Such action must be commenced not later than 90 days after notice of the Secretary's or the Commissioner's decision on an administrative appeal as described in paragraph (7), or 90 days after termination of the individual as a result of the final nonconfirmation if no such administrative appeal is taken. The action shall be brought in the district court of the United

States for the judicial district in which the plaintiff resides or, if the plaintiff does not reside within any such judicial district, in the District Court of the United States for the District of Columbia. In such action, no prior administrative or judicial finding relating to the employer in any proceeding to which the employer was not a party may be given any res judicata or collateral estoppel effect against the employer.

"(10) LIMIT ON INJUNCTIVE RELIEF.—Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions in this section, other than with respect to the application of such provisions to an individual plaintiff.

"(11) ANNUAL STUDY AND REPORT.—

"(A) REQUIREMENT FOR STUDY.—The Comptroller General of the United States shall conduct an annual study of the System as described in this paragraph.

"(B) PURPOSE OF THE STUDY.—The Comptroller General shall, for each year, under-

take a study to determine whether the System meets the following requirements:

"(i) DEMONSTRATED ACCURACY OF THE DATABASES.—New information and information changes submitted by an individual to the System is updated in all of the relevant databases not later than 3 working days after submission in at least 99 percent of all cases.

"(ii) LOW ERROR RATES AND DELAYS IN VERIFICATION.—

"(I) RATES OF INCORRECT NONCONFIRMATION NOTICES.—

"(aa) That, during a year, the number of incorrect nonconfirmations provided through the System for individuals who are native-born U.S. citizens is not more than 1 percent.

"(bb) That, during a year, the number of incorrect nonconfirmations provided through the System for individuals who are foreign-born, work-authorized in-

1 dividuals 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

in each phase of expansion of the System.

"(iv) PROTECTION OF WORKERS' PRIVATE INFORMATION.—At least 97 percent of employers who participate in the System are in full compliance with the privacy requirements described in this subsection.

"(v) ADEQUATE AGENCY STAFFING AND FUNDING.—The Secretary and Commissioner of Social Security have sufficient funding to meet all of the deadlines and requirements of this subsection.

"(C) CONSULTATION.—In conducting a study under this paragraph, the Comptroller General shall consult with representatives of business, labor, immigrant communities, State governments, privacy advocates, and appropriate departments of the United States.

"(D) REQUIREMENT FOR REPORTS.—Not later than 21 months after the date of the enactment of the Act, and annually thereafter, the Comptroller General shall submit to the Secretary and to Congress a report containing the findings of the study carried out under this paragraph and shall include the following:

"(i) An assessment of the accuracy of the databases utilized by the System and of the timeliness and accuracy of the responses provided through the System to employers.

"(ii) An assessment of the privacy and confidentiality of the System and of the overall security of the System with respect to cybertheft and theft or misuse of private data.

"(iii) An assessment of whether the System is being implemented in a nondiscriminatory and nonretaliatory manner.

"(iv) An assessment of the most common causes for the erroneous issuance of nonconfirmations by the System and recommendations to correct such causes.

"(v) The recommendations of the Comptroller General regarding whether or not the System should be modified prior to further expansion.

"(E) CERTIFICATION.—If the Comptroller General determines that the System meets the requirements set out in clauses (i) through (v) of subparagraph (B) for a year, the Comptroller

shall certify such determination and submit such certification to Congress with the report required by subparagraph (D).

"(12) ANNUAL AUDIT AND REPORT.—

"(A) PURPOSE OF THE AUDIT AND REPORT.—The Office for Civil Rights and Civil Liberties shall conduct annual audits of E–Verify described in section 403(a) of the Illegal Immigration Reform and Responsibility Act of 1996, Public Law No. 104–208, Div. C, 110 Stat. 3009–546, to assess employer compliance with System requirements, including civil rights and civil liberties protections, and compliance with the System rules and procedures set forth in the Memorandum of Understanding between employers and the Social Security Administration and the Department of Homeland Security.

"(B) REQUIREMENTS OF AUDIT.—Annual audits shall include, but are not limited to, the following activities:

"(i) Use of testers to check if employers' are using E-Verify as outlined in the Memorandum of Understanding between employers and the Department of Homeland Security and the Social Security Ad-

ministration, including if employers are misusing of the system to prescreen job applicants, if employers are giving proper notification to employees' regarding non-confirmations, and if employers are taking adverse actions against workers based upon nonconfirmations.

''(ii) Random audits of employers to confirm that employers are using the system as outlined in the Memorandum of Understanding and in a manner consistent with civil rights and civil liberties protections; and

''(iii) Periodic audits of employers for which the Special Counsel has received information or complaints and/or actual charges of citizenship/national origin discrimination or document abuse.

''(C) AUTHORITY OF OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—The Office shall have the authority to obtain from users of E-Verify relevant documents and testimony and answers to written interrogatories. The Office shall also have the authority to conduct site visits, and interview employees.

"(D) FAILURE OF EMPLOYERS TO COOPERATE.—Employers that fail to cooperate with the Office for Civil Rights and Civil Liberties shall be noted in the annual report set forth below in this subsection.

"(E) REQUIREMENT FOR REPORTS.—Not later than 18 months after the date of enactment of the Act, and annually thereafter, the Office for Civil Rights and Civil Liberties shall submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of Congress a report containing the findings of the audit carried out under this paragraph.

"(13) MANAGEMENT OF THE SYSTEM.—

"(A) IN GENERAL.—The Secretary is authorized to establish, manage, and modify the System, which shall—

"(i) respond to inquiries made by participating employers at any time through the internet, or such other means as the Secretary may designate, concerning an individual's identity and whether the individual is authorized to be employed;

"(ii) maintain records of the inquiries that were made, of confirmations provided (or not provided), and of the codes provided to employers as evidence of their compliance with their obligations under the System; and

"(iii) provide information to, and require action by, employers and individuals using the System.

"(B) DESIGN AND OPERATION OF SYSTEM.—The System shall be designed and operated—

"(i) to maximize its reliability and ease of use by employers consistent with protecting the privacy and security of the underlying information, and ensuring full notice of such use to employees;

"(ii) to maximize its ease of use by employees, including notification of its use, of results, and ability to challenge results;

"(iii) to respond accurately to all inquiries made by employers on whether individuals are authorized to be employed and to register any times when the system is unable to receive inquiries;

"(iv) to maintain appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information, misuse by employers and employees, and discrimination;

"(v) to allow for auditing of the use of the System to detect misuse, discrimination, fraud, and identity theft, and to preserve the integrity and security of the information in all of the System, including but not limited to the following—

"(I) to develop and use tools and processes to detect or prevent fraud and identity theft, such as multiple uses of the same identifying information or documents to fraudulently gain employment;

"(II) to develop and use tools and processes to detect and prevent misuse of the system by employers and employees;

"(III) to develop tools and processes to detect anomalies in the use of the system that may indicate potential fraud or misuse of the system;

"(IV) to audit documents and information submitted by employees to employers, including authority to conduct interviews with employers and employees, and obtain information concerning employment from the employer;

"(vi) to confirm identity and employment authorization through verification and comparison of records maintained by the Secretary, other Federal departments, states, or outlying possessions of the United States, or other available information, as determined necessary by the Secretary, including—

"(I) records maintained by the Social Security Administration;

"(II) birth and death records maintained by vital statistics agencies of any state or other United States jurisdiction;

"(III) passport and visa records (including photographs) maintained by the Department of State; and

"(IV) state driver's license or identity card information (including photographs) maintained by State departments of motor vehicles;

"(vii) to confirm electronically the issuance of the employment authorization or identity document and to display the digital photograph that the issuer placed on the document so that the employer can compare the photograph displayed to the photograph on the document presented by the employee. If a photograph is not available from the issuer, the Secretary shall specify alternative procedures for confirming the authenticity of the document; and

"(viii) to include, notwithstanding section 6103 of title 26, U.S. Code, procedures for verification by the Secretary of the Treasury of the validity of any employer identification number and related information provided by an employer to the Secretary for the purpose of participating in the System.

"(C) ACCESS TO INFORMATION.—

"(i) Notwithstanding any other provision of law, the Secretary of Homeland Security shall have access to relevant records described in subparagraphs (B)(vi) and (viii), for the purposes of preventing identity theft, fraud and misuse in the use of the System and administering and enforcing the provisions of this section governing employment verification. Any governmental agency or entity possessing such relevant records shall provide such assistance and cooperation in resolving further action notices and nonconfirmations relating to such records, or otherwise to improve the accuracy of the System, as the Secretary may request. A state or other non-Federal jurisdiction that does not provide such access, assistance, and cooperation shall not be eligible for any grant or other program of financial assistance administered by the Secretary or by the Commissioner.

"(ii) The Secretary, in consultation with the Commissioner and other appropriate Federal and State agencies, shall 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-

prove the privacy protections of the program.

"(D) RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.—

"(i) As part of the System, the Secretary shall maintain a reliable, secure method, which, operating through the System and within the time periods specified, compares the name, alien identification or authorization number, or other information as determined relevant by the Secretary, provided in an inquiry against such information maintained or accessed by the Secretary in order to confirm (or not confirm) the validity of the information provided, the correspondence of the name and number, whether the alien is authorized to be employed in the United States (or, to the extent that the Secretary determines to be feasible and appropriate, whether the records available to the Secretary verify the identity or status of a national of the United States), and such other information as the Secretary may prescribe.

"(ii) As part of the System, the Secretary shall establish a reliable, secure method, which, operating through the System, displays the digital photograph described in subparagraph (B)(vii).

"(iii) The Secretary shall have authority to prescribe when a confirmation, nonconfirmation, or further action notice shall be issued.

"(iv) The Secretary shall perform regular audits under the System, as described in subparagraph (B)(v) and shall utilize the information obtained from such audits, as well as any information obtained from the Commissioner pursuant to section 304 of the CIR ACT OF 2010, for the purposes of this section, to administer and enforce the immigration laws, and to ensure employee rights are protected under the System.

"(v) The Secretary may make appropriate arrangements to allow employers or employees who are otherwise unable to access the System to use Federal Government facilities or public facilities or other

available locations in order to utilize the program.

"(vi) The Secretary shall, in consultation with the Commissioner, establish a program which shall provide a reliable, secure method by which victims of identity fraud and other individuals may suspend or limit the use of their Social Security account number or other identifying information for System purposes. The Secretary may implement the program on a limited pilot program basis before making it fully available to all individuals.

"(vii) The Secretary, in consultation with the Commissioner of Social Security, shall establish procedures for an Enhanced Verification System under paragraph (X).

"(viii) The Secretary and the Commissioner shall establish a program in which Social Security account numbers that have been identified to be subject to unusual multiple use in the System, or that are otherwise suspected or determined to have been compromised by identity fraud or other misuse, shall be blocked from use for

System purposes unless the individual using such number is able to establish, through secure and fair additional security procedures, that he or she is the legitimate holder of the number.

"(ix) The Secretary shall establish a monitoring and compliance unit to detect and reduce identity fraud and other misuse of the program.

"(x) The Secretary, acting through the Officer for Civil Rights and Civil Liberties of the Department of Homeland Security, shall conduct regular civil rights and civil liberties assessments of the System, including participation by employers, other private entities, other Federal agencies, and state and local government. The Officer shall review the results of the assessment and recommend to the Secretary any changes necessary to improve the civil rights and civil liberties protections of the program.

"(E) RESPONSIBILITIES OF THE SECRETARY OF STATE.—As part of the System, the Secretary of State shall provide to the Sec-

retary access to passport and visa information as needed to confirm that a passport or passport card presented under subsection (c)(1)(B) confirms the identity of the subject of the System check, or that a passport, passport card or visa photograph matches the Secretary of State's records, and shall provide such assistance as the Secretary may request in order to resolve further action notices or nonconfirmations relating to such information.

"(F) UPDATING INFORMATION.—The Commissioner and the Secretaries of Homeland Security and State shall update their information in a manner that promotes maximum accuracy and shall provide a process for the prompt correction of erroneous information.

"(14) LIMITATION ON USE OF THE SYSTEM.—Notwithstanding any other provision of law, nothing in this subsection shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, database, or other records assembled under this subsection for any purpose other than for verification as provided by this subsection the enforcement and administration of the immigration

laws, or the enforcement of Federal laws for violations relating to use of the System.

"(15) CONFORMING AMENDMENT.—Sections 401 to 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208, as amended; 8 U.S.C. 1234a note) are repealed, provided that nothing in this subsection shall be construed to limit the authority of the Secretary to allow or continue to allow the participation in the System of employers who have participated in the E–Verify program established by such sections.

"(16) NONDISCRIMINATION.—The employer shall use the procedures for the System specified in this section for all employees without regard to race, sex, national origin, or, unless specifically permitted in this section, to citizenship status.

"(e) COMPLIANCE.—

"(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary of Homeland Security shall establish procedures—

"(A) for individuals and entities to file complaints respecting potential violations of subsections (a) or (f)(1);

"(B) for the investigation of those complaints which the Secretary deems appropriate to investigate; and

"(C) for such other investigations of violations of subsections (a) or (f)(1) as the Secretary determines to be appropriate.

"(2) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

"(A) immigration officers shall have reasonable access to examine evidence of any employer being investigated;

"(B) immigration officers designated by the Secretary, and administrative law judges and other persons authorized to conduct hearings under this section, may compel by subpoena the attendance of witnesses and the production of evidence at any designated place in an investigation or case under this subsection. In case of refusal to fully comply with a subpoena lawfully issued under this paragraph, the Secretary may request that the Attorney General apply in an appropriate district court of the United States for an order requiring compliance with the subpoena, and any failure to

obey such order may be punished by the court as contempt. Failure to cooperate with the subpoena shall be subject to further penalties, including but not limited to further fines and the voiding of any mitigation of penalties or termination of proceedings under paragraph (4)(D); and

"(C) the Secretary, in cooperation with the Commissioner and Attorney General, and in consultation with other relevant agencies, shall establish a Joint Employment Fraud Task Force consisting of, at a minimum, the System's compliance personnel, immigration law enforcement officers, Special Counsel for Unfair Immigration-Related Employment Practices personnel, Department of Homeland Security Office for Civil Rights and Civil Liberties personnel, and Social Security Administration fraud division personnel.

"(3) COMPLIANCE PROCEDURES.—

"(A) PRE-PENALTY NOTICE.—If the Secretary has reasonable cause to believe that there has been a civil violation of this section, the Secretary shall issue to the employer concerned a written notice of the Department's in-

tention to issue a claim for a monetary or other penalty. Such pre-penalty notice shall:

"(i) describe the violation;

"(ii) specify the laws and regulations allegedly violated;

"(iii) disclose the material facts which establish the alleged violation;

"(iv) describe the penalty sought to be imposed; and

"(v) inform such employer that he or she shall have a reasonable opportunity to make representations as to why a monetary or other penalty should not be imposed.

"(B) EMPLOYER'S RESPONSE.—Whenever any employer receives written pre-penalty notice of a fine or other penalty in accordance with subparagraph (A), the employer may, within 30 days from receipt of such notice, file with the Secretary its written response to the notice. The response may include any relevant evidence or proffer of evidence that the employer wishes to present with respect to whether the employer violated this section and whether, if so, the penalty 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:

"(i) pay a civil penalty of not less than $2,000 and not more than $5,000 for each unauthorized alien with respect to which each violation of either subsection (a)(1)(A) or (a)(2) occurred;

"(ii) if the employer has previously been fined under this paragraph, pay a civil penalty of not less than $4,000 and not more than $10,000 for each unauthorized alien with respect to which a violation of either subsection (a)(1)(A) or (a)(2) occurred; and

"(iii) if the employer has previously been fined more than once under this paragraph, pay a civil penalty of not less than $8,000 and not more than $25,000 for each unauthorized alien with respect to which a violation of either subsection (a)(1)(A) or (a)(2) occurred.

"(B) ENHANCED PENALTY.—If an employer is determined to have committed within the 5 years immediately preceding the date of any violation of subsection (a)(1)(A) or (a)(2) a civil or criminal violation of a Federal or State law relating to wage and hour or other employ-

ment standards, workplace safety, collective bargaining, civil rights, or immigration, by a court or an administrative agency with jurisdiction over such violation, for which a monetary penalty of at least $500, a judicial injunction, or other equitable relief, or any term of imprisonment has been imposed, any civil money penalty or criminal fine otherwise applicable under this section shall be trebled. In any proceeding under this section, the Secretary of Homeland Security, administrative law judge, or court, as appropriate, shall determine whether a court or administrative agency has imposed such penalty for such previous violation of other law, but the validity and appropriateness of such prior action shall not be subject to review.

"(C) RECORDKEEPING OR VERIFICATION PRACTICES.—Any employer that violates or fails to comply with any requirement of subsection (a)(1)(B), shall pay a civil penalty as follows:

"(i) not less than $500 and not more than $2,000 for each violation;

"(ii) if an employer has previously been fined under this paragraph, not less

than $1,000 and not more than $4,000 for each violation; and

"(iii) if an employer has previously been fined more than once under this paragraph, not less than $2,000 and not more than $8,000 for each violation.

"(D) OTHER PENALTIES.—The Secretary may impose additional penalties for violations, including cease and desist orders, specially designed compliance plans to prevent further violations, suspended fines to take effect in the event of a further violation, and in appropriate cases, the remedy provided by paragraph (f)(2).

"(E) MITIGATION.—The Secretary is authorized, upon such terms and conditions as the Secretary deems reasonable and just and in accordance with such procedures as the Secretary may establish, to reduce or mitigate penalties imposed upon employers, based upon factors including, but not limited to, the employer's hiring volume, compliance history, good-faith implementation of a compliance program, and voluntary disclosure of violations of this subsection to the Secretary. The Secretary shall not mitigate a penalty below the minimum penalty pro-

vided by this section, except that the Secretary may, in the case of an employer subject to penalty for record-keeping or verification violations only who has not previously been penalized under this section, in the Secretary's discretion, mitigate the penalty below the statutory minimum or remit it entirely.

"(5) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—If the Secretary has reasonable cause to believe that an employer has failed to comply with this section, the Secretary is authorized, at any time, to require that the employer certify that it is in compliance with this section, or has instituted a program to come into compliance. Within 60 days of receiving a notice from the Secretary requiring such a certification, the employer's chief executive officer or similar official with responsibility for, and authority to bind the company on, all hiring and immigration compliance notices shall certify under penalty of perjury that the employer is in conformance with the requirements of subsections (c)(1) through (c)(4), pertaining to document verification requirements, and with subsection (d), pertaining to the System (once that system is implemented with respect to that employer according to

the requirements of subsection (d)(1)), and with any additional requirements that the Secretary may promulgate by regulation pursuant to subsections (c) or (d) or that the employer has instituted a program to come into compliance with these requirements. At the request of the employer, the Secretary may extend the 60-day deadline for good cause. The Secretary is authorized to publish in the Federal Register standards or methods for such certification, require specific recordkeeping practices with respect to such certifications, and audit the records thereof at any time. This authority shall not be construed to diminish or qualify any other penalty provided by this section.

"(6) JUDICIAL REVIEW.—

"(A) IN GENERAL.—Notwithstanding any other provision of law (statutory or nonstatutory) including sections 1361 and 1651 of title 28, no court shall have jurisdiction to consider a final determination or penalty claim issued under paragraph (3)(C), except as specifically provided by this paragraph. Judicial review of a final determination under paragraph (4) is governed only by chapter 158 of title 28, except as specifically provided below. The Secretary is

authorized to require that the petitioner provide, prior to filing for review, security for payment of fines and penalties through bond or other guarantee of payment acceptable to the Secretary.

"(B) REQUIREMENTS FOR REVIEW OF A FINAL DETERMINATION.—With respect to judicial review of a final determination or penalty claim issued under paragraph (3)(C), the following requirements apply:

"(i) DEADLINE.—The petition for review must be filed no later than 30 days after the date of the final determination or penalty claim issued under paragraph (3)(C).

"(ii) VENUE AND FORMS.—The petition for review shall be filed with the court of appeals for the judicial circuit where the employer's principal place of business was located when the final determination or penalty claim was issued. The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten or electronically filed record and briefs.

"(iii) SERVICE.—The respondent is the Secretary of Homeland Security. In addition to serving the respondent, the petitioner must also serve the Attorney General.

"(iv) PETITIONER'S BRIEF.—The petitioner shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the respondent, and the court may not extend these deadlines, except for good cause shown. If a petitioner fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.

"(v) SCOPE AND STANDARD FOR REVIEW.—The court of appeals shall decide the petition only on the administrative record on which the final determination is based. The burden shall be on the petitioner to show that the final determination was arbitrary, capricious, an abuse of dis-

cretion, not supported by substantial evidence, or otherwise not in accordance with law.

"(C) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—A court may review a final determination under paragraph (3)(C) only if—

"(i) the petitioner has exhausted all administrative remedies available to the petitioner as of right; and

"(ii) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

"(D) LIMIT ON INJUNCTIVE RELIEF.—Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions in this section, other than with respect to

the application of such provisions to an individual petitioner.

"(7) ENFORCEMENT OF ORDERS.—If the final determination issued against the employer under this subsection is not subject to review as provided in paragraph (6), the Attorney General, upon request by the Secretary, may bring a civil action to enforce compliance with the final determination in any appropriate district court of the United States. The court, on a proper showing, shall issue a temporary restraining order or a preliminary or permanent injunction requiring that the employer comply with the final determination issued against that employer under this subsection. In any such civil action, the validity and appropriateness of the final determination shall not be subject to review.

"(8) LIENS.—

"(A) CREATION OF LIEN.—If any employer liable for a fee or penalty under this section neglects or refuses to pay such liability and fails to file a petition for review (if applicable) as provided in paragraph (6), such liability is a lien in favor of the United States on all property and rights to property of such person as if the liability of such person were a liability for

a tax assessed under the Internal Revenue Code of 1986. If a petition for review is filed as provided in paragraph (6), the lien (if any) shall arise upon the entry of a final judgment by the court. The lien continues for 20 years or until the liability is satisfied, remitted, set aside, or terminated.

"(B) EFFECT OF FILING NOTICE OF LIEN.—Upon filing of a notice of lien in the manner in which a notice of tax lien would be filed under section 6323(f)(1) and (2) of the Internal Revenue Code of 1986, the lien shall be valid against any purchaser, holder of a security interest, mechanic's lien or judgment lien creditor, except with respect to properties or transactions specified in subsection (b), (c), or (d) of section 6323 of the Internal Revenue Code of 1986 for which a notice of tax lien properly filed on the same date would not be valid. The notice of lien shall be considered a notice of lien for taxes payable to the United States for the purpose of any State or local law providing for the filing of a notice of a tax lien. A notice of lien that is registered, recorded, docketed, or indexed in accordance with the rules and require-

ments relating to judgments of the courts of the State where the notice of lien is registered, recorded, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section. The provisions of section 3201(e) of chapter 176 of title 28 shall apply to liens filed as prescribed by this section.

"(C) ENFORCEMENT OF A LIEN.—A lien obtained through this process shall be considered a debt as defined by 28 U.S.C. section 3002 and enforceable pursuant to the Federal Debt Collection Procedures Act.

"(9) TRANSITION PROVISION.—The Attorney General shall have jurisdiction to adjudicate administrative proceedings under this subsection, pursuant to procedures for hearings before administrative law judges as in effect under section 274A(e) of this Act and its implementing regulations on the day immediately before the date of the enactment of the CIR Act of 2010, until the date that regulations promulgated by the Secretary, in consultation with the Attorney General, for the adjudication of cases under this subsection are in effect. Such regulations may provide for the continuing jurisdiction of the Attorney General over cases pending before the Attorney

General on such date that the regulations are promulgated. Sections 1512 and 1517 of the Homeland Security Act (6 U.S.C. 552 and 557) shall apply to any transfer of jurisdiction to adjudicate cases under this subsection from the Attorney General to the Secretary as if such transfer is a transfer under the Homeland Security Act; provided that, nothing in this sentence shall be construed to require any transfer of personnel from the Department of Justice to the Department of Homeland Security.

''(f) PROHIBITION OF INDEMNITY BONDS.—

''(1) PROHIBITION.—It is unlawful for an employer, in the hiring of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring of the individual.

''(2) CIVIL PENALTY.—Any employer who is determined, after notice and opportunity for mitigation of the monetary penalty under subsection (e), to have violated paragraph (1) of this subsection shall be subject to a civil penalty of $10,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such

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

from the receipt of new Federal contracts, grants, or cooperative agreements for a period of up to 5 years, waive operation of this subsection, limit the duration or scope of the proposed debarment, or may refer to an appropriate lead agency the decision of whether to seek debarment of the employer, for what duration, and under what scope in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. However, any administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding.

"(2) EFFECT OF INDICTMENTS OR OTHER ACTIONS.—Indictments for violations of this section or adequate evidence of actions that could form the basis for debarment under this subsection shall be considered a cause for suspension under the procedures and standards for suspension prescribed by the Federal Acquisition Regulation.

"(3) INADVERTENT VIOLATIONS.—Inadvertent violations of recordkeeping or verification requirements, in the absence of any other violations of this section, shall not be a basis for determining that an employer is a repeat violator for purposes of this subsection.

"(4) OTHER REMEDIES AVAILABLE.—Nothing in this subsection shall be construed to modify or limit any remedy available to any agency or official of the Federal Government for violation of any contractual requirement to participate in the System, as provided in the final rule published at 73 Federal Register 67,651 (Nov. 14, 2008), or any subsequent amendments thereto.

"(h) PREEMPTION.—The provisions of this section preempt any State or local law, contract license, or other standard, requirement, action or instrument from—

"(1) imposing sanctions or liabilities for employing, or recruiting or referring for employment, unauthorized aliens, or for working without employment authorization;

"(2) requiring those hiring, recruiting, or referring individuals for employment to ascertain or verify the individuals' employment authorization or to participate in an employment authorization verification system, or requiring individuals to demonstrate employment authorization; and

"(3) requiring, authorizing or permitting the use of an employment verification system, unless otherwise mandated by Federal law, for any other 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-

tion is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

"(A) whether this section, or any regulation issued to implement this section, violates the Constitution of the United States; or

"(B) whether such a regulation issued by or under the authority of the Secretary to implement this section, is contrary to applicable provisions of this section or was issued in violation of title 5, chapter 5, United States Code.

"(2) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this subsection must be filed no later than 180 days after the date the challenged section or regulation described in subparagraph (A) or (B) of paragraph (1) is first implemented.

"(3) RULE OF CONSTRUCTION.—In determining whether the Secretary's interpretation regarding any provision of this section is contrary to law, a court shall accord to such interpretation the maximum deference permissible under the Constitution.

"(l) PRIVATE RIGHT OF ACTION.—Any person or entity who is injured in his business or property by reason of the employment of an unauthorized alien by any other

person or entity may sue such other person or entity in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of suit, including reasonable attorney's fees. The award of interest, and the amount of damages payable to foreign states and instrumentalities of foreign states, shall be determined in the manner provided by section 15 of title 15, United States Code. The provision shall become effective 3 years after the date of the enactment of the CIR Act of 2010 and shall apply only to injury occurring after the effective date.

"(m) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN OR PRACTICE VIOLATIONS.—

"(1) PATTERN AND PRACTICE.—Any employer who engages in a pattern or practice of knowing violations of subsection (a)(1)(A) or (a)(2) shall be fined under title 18, United States Code, imprisoned for not more than 3 years for the entire pattern or practice, or both.

"(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—Whenever the Secretary or the Attorney General has reasonable cause to believe that an employer is engaged in a pattern or practice of em-

ployment in violation of subsection (a)(1)(A) or (a)(2), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the employer, as the Secretary or Attorney General deems necessary.

"(n) CRIMINAL PENALTIES FOR UNLAWFUL EMPLOYMENT.—

"(1) UNAUTHORIZED ALIENS.—Any person who, during any 12-month period, knowingly employs or hires for employment 10 or more individuals within the United States knowing that the individuals are unauthorized aliens (as defined in subsection (b)(1) of this section) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

"(2) ABUSIVE EMPLOYMENT.—Any person who, during any 12-month period, knowingly employs or hires for employment 10 or more individuals within the United States—

"(A) knowing that the individuals are unauthorized aliens; and

"(B) under conditions that violate section 206 or 207 of Title 29 (relating to minimum wages and maximum hours of employment),

shall be fined under title 18, United States Code, or imprisoned for not more than 10 years, or both.

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

(b) CONFORMING AMENDMENT.—Section 274(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(3)) is repealed.

SEC. 302. DISCLOSURE OF CERTAIN TAXPAYER INFORMATION TO ASSIST IN IMMIGRATION ENFORCEMENT.

Section 6103(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(21) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO DEPARTMENT OF HOMELAND SECURITY.—

"(A) IN GENERAL.—From taxpayer identity information or other information which has been disclosed or otherwise made available to

the Social Security Administration and upon written request by the Secretary of Homeland Security, the Commissioner of Social Security shall disclose directly to the Department of Homeland Security—

"(i) the taxpayer identity information of persons within the specifications of the written request who have filed an information return required by reason of section 6051 or section 6041(a) after calendar year 2010 that contains—

"(I) 10 (or any greater number the Secretary of Homeland Security shall request) names and addresses of employees (within the meaning of section 6041(a)) with the same taxpayer identifying number, and

"(II) the taxpayer identity and date of birth of each such employee, and

"(ii) the taxpayer identity of each person who has filed an information return required by reason of section 6051 or 6041(a) after calendar year 2010 that contains the taxpayer identifying number (as-

signed under section 6109) of an employee (within the meaning of section 6051) or a recipient (within the meaning of section 6041(a))—

"(I) who is under the age of 14 (or any lesser age the Secretary of Homeland Security shall request), according to the records maintained by the Commissioner of Social Security, or

"(II) whose date of death, according to the records so maintained, occurred in a calendar year preceding the calendar year for which the information return was filed, and

"(iii) the taxpayer identity and date of birth of each such employee.

"(B) RESTRICTION ON DISCLOSURE.—The taxpayer identities disclosed under subparagraph (A) may be used by officers, employees, and contractors of the Department of Homeland Security only for purposes of, and to the extent necessary to—

"(i) prevent identity fraud, and

"(ii) prevent unauthorized aliens from obtaining or continuing employment in the United States.

"(C) REIMBURSEMENT.—The Secretary of Homeland Security shall transfer to the Commissioner of Social Security the funds necessary to cover the additional cost directly incurred by the Commissioner in carrying out the searches requested by the Secretary of Homeland Security.

"(D) INFORMATION RETURNS UNDER SECTION 6041.—For purposes of this paragraph, any reference to information returns required by reason of section 6041(a) shall only be a reference to such information returns relating to payments for labor.".

SEC. 303. COMPLIANCE BY DEPARTMENT OF HOMELAND SECURITY CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.

(a) IN GENERAL.—Section 6103(p) of the Internal Revenue Code is amended by adding at the end the following new paragraph:

"(9) DISCLOSURE TO DEPARTMENT OF HOMELAND SECURITY.—Notwithstanding any other provision of this section, no return or return information

shall be disclosed to any contractor of the Department of Homeland Security unless such Department, to the satisfaction of the Secretary of the Treasury—

"(A) has requirements in effect that require each such contractor that would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information;

"(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 3 years in duration) of each contractor to determine compliance with such requirements;

"(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E);and

"(D) certifies to the Secretary for the most recent annual period that such contractor is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor, a description of the contract or agreement with such

contractor, and the duration of such contract or agreement.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 6103(p)(8)(B) of such Code is amended by inserting ''or paragraph (9)'' after ''subparagraph (A)''.

(2) Section 7213(a)(2) of such Code is amended by striking ''or (20)'' and inserting ''(20), or (21)''.

(c) REPEAL OF REPORTING REQUIREMENTS.—

(1) REPORT ON EARNINGS OF ALIENS NOT AUTHORIZED TO WORK.—Subsection (c) of section 290 of the Immigration and Nationality Act (8 U.S.C. 1360) is repealed.

(2) REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT NUMBERS.—Subsection (b) of section 414 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1360 note) is repealed.

SEC. 304. INCREASING SECURITY AND INTEGRITY OF SOCIAL SECURITY CARDS.

(a) FRAUD RESISTANT, TAMPER-RESISTANT, AND WEAR-RESISTANT SOCIAL SECURITY CARDS.—

(1) ISSUANCE.—

(A) PRELIMINARY WORK.—Not later than 180 days after the date of the enactment of this Act, the Commissioner of Social Security shall begin work to administer and issue fraud-resistant, tamper-resistant, and wear-resistant Social Security cards.

(B) COMPLETION.—Not later than 2 years after the date of the enactment of this Act, the Commissioner of Social Security shall issue only fraud-resistant, tamper-resistant and wear-resistant Social Security cards.

(2) AMENDMENT.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is amended to read—

"(i) The Commissioner of Social Security shall issue a social security card to each individual at the time of the issuance of a social security account number to such individual. The social security card shall be fraud-resistant, tamper-resistant and wear-resistant.".

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection and the amendments made by this subsection.

(b) MULTIPLE CARDS.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is further amended by adding at the end the following:

"(ii) The Commissioner of Social Security shall not issue a replacement Social Security card to any individual unless the Commissioner determines that the purpose for requiring the issuance of the replacement document is legitimate.".

(c) CRIMINAL PENALTIES.—Section 208(a) of the Social Security Act (42 U.S.C. 408(a)) is amended—

(1) by amending existing paragraph (7) to read as follows:

"(7) for any purpose—

"(A) knowingly uses a social security account number or social security card knowing that the number or card was obtained from the Commissioner of Social Security by means of fraud or false statement with the intent to defraud the actual holder of the number or card;

"(B) knowingly and falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account

number assigned by the Commissioner of Social Security to him or to such other person with the intent to defraud the actual holder of the number or card;

''(C) knowingly sells, or possesses with intent sell a social security account number or a social security card that is or purports to be a number or card issued by the Commissioner of Social Security; or

''(D) knowingly alters, counterfeits, forges, or falsely makes a social security account number or a social security card;

''(E) knowingly distributes a social security account number or a social security card knowing the number or card to be altered, counterfeited, forged, falsely made, or stolen; or;'';

(2) in paragraph (8)—

(A) by inserting the word ''knowingly'' immediately before the word ''discloses'';

(B) by inserting the word ''account'' immediately after the word ''security''; and

(C) by adding ''or'' at the end of the paragraph;

(3) by inserting immediately after paragraph (8) the following:

"(9) without lawful authority, knowingly produces or acquires for any person a social security account number, a social security card, or a number or card that purports to be a social security account number or social security card;";

(4) in the undesignated penalty language at the end of subsection (a), by striking the word "five" and inserting the word "ten".

(d) CONSPIRACY AND DISCLOSURE.—Section 208 of the Social Security Act (42 U.S.C. 408) is amended by adding at the end the following:

"(f) Whoever attempts or conspires to violate any criminal provision within this section shall be punished in the same manner as a person who completes a violation of that provision.

"(g)(1) Notwithstanding any other provision of law and subject to paragraph (2), the Commissioner of Social Security shall disclose the following records of the Social Security Administration to any federal law enforcement agency that requests such records for the purpose of investigating a violation of this section or section 274A, section 274B, or section 274C of the Immigration and Nationality Act, provided that such request is in writing and from an officer in a supervisory position or higher official:

"(A) records concerning the identity, address, location, or financial institution accounts of the holder of a social security account number or social security card;

"(B) records concerning the application for and issuance of a social security account number or social security card; and

"(C) records concerning the existence or nonexistence of a social security account number or social security card.

"(2) The Commissioner of Social Security shall not disclose any tax return or tax return information pursuant to this subsection.".

SEC. 305. INCREASING SECURITY AND INTEGRITY OF IMMIGRATION DOCUMENTS.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall—

(1) issue only machine-readable, tamper-resistant employment authorization documents that use biometric identifiers; and

(2) submit a report to Congress that describes the feasibility, advantages, and disadvantages of issuing a document described in paragraph (1) to any nonimmigrant alien authorized for employment with a specific employer.

SEC. 306. RESPONSIBILITIES OF THE SOCIAL SECURITY ADMINISTRATION.

Section 205(c)(12) of the Social Security Act, 42 U.S.C. 405(c)(2), is amended by adding at the end the following new subparagraph:

"(A) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—

"(i) As part of the verification system, the Commissioner of Social Security shall, subject to the provisions of section 274A(d) of the Immigration and Nationality Act, establish a reliable, secure method that, operating through the System and within the time periods specified in section 274A(d) of the Immigration and Nationality Act:

"(I) Compares the name, date of birth, social security account number and available citizenship information provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided regarding an individual whose identity and employment eligibility must be confirmed.

"(II) Determines the correspondence of the name, number, and any other identifying information.

"(III) Determines whether the name and number belong to an individual who is deceased.

"(IV) Determines whether an individual is a national of the United States (when available).

"(V) Determines whether the individual has presented a social security account number that is not valid for employment.

The System shall not disclose or release social security information to employers through the confirmation system (other than such confirmation or nonconfirmation, information provided by the employer to the System, or the reason for the issuance of a further action notice).

"(ii) SOCIAL SECURITY ADMINISTRATION DATABASE IMPROVEMENTS.—For purposes of preventing identity theft, protecting employees, and reducing burden on employers, and notwithstanding section

6103 of title 26, United States Code, the Commissioner of Social Security, in consultation with the Secretary of Homeland Security, shall review the Social Security Administration databases and information technology to identify any deficiencies and discrepancies related to name, birth date, citizenship status, or death records of the social security accounts and social security account holders likely to contribute to fraudulent use of documents, or identity theft, or to affect the proper functioning of the System, and shall correct any identified errors. The Commissioner shall ensure that a system for identifying and correcting such deficiencies and discrepancies is adopted to ensure the accuracy of the Social Security Administration's databases.

"(iii) NOTIFICATION TO SUSPEND USE OF SOCIAL SECURITY NUMBER.—The Commissioner of Social Security, in consultation with the Secretary of Homeland Security, may establish a secure process whereby an individual can request that the Commissioner preclude any confirmation under

the System based on that individual's Social Security number until it is reactivated by that individual.''.

SEC. 307. ANTIDISCRIMINATION PROTECTIONS.

(a) AMENDMENTS.—Section 274B (8 U.S.C. 1324b) is amended—

(1) by amending subsection (a) to read as follows—

''(a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

''(1) IN GENERAL.—It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual, because of such individual's national origin or citizenship status, with respect to the hiring of the individual for employment, the verification of the individual's eligibility for employment through the System described in section 274A(d), the compensation, terms, conditions, or privileges of the employment of the individual, or the discharging of the individual from employment.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) a person or other entity that employs 3 or fewer employees, except for an employment agency, as defined in paragraph (9);

"(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2);

"(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

"(3) ADDITIONAL EXCEPTION PROVIDING RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen 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

that additional verification will be required, beyond what is required for most newly hired individuals;

"(E) to fail to provide any required notice to a current employee within the relevant time period;

"(F) to use the System to deny workers' employment benefits or otherwise interfere with their labor rights;

"(G) to use the System for any discriminatory or retaliatory purpose; and

"(H) to use an immigration status verification system or service other than those described in section 274A for purposes of verifying employment eligibility under that section.

"(5) PROHIBITION OF INTIMIDATION OR RETALIATION.—It is also an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under this section or because the individual intends to file or has filed a 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

position in question and consistent with business necessity.

"(ii) The complaining party demonstrates that an alternative employment practice is available and the respondent refuses to adopt such an alternative employment practice. An alternative employment practice is defined as a policy that would satisfy the employer's legitimate interests without having a disparate impact on a protected class.

"(B) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decision-making process are not capable of separation for analysis, the decision-making process may be analyzed as one employment practice.

"(C) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be

required to demonstrate that such practice is required by business necessity.

"(D) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this statute.

"(8) MOTIVATING FACTOR.—Except as otherwise provided in this Act, an unlawful immigration-related unfair employment practice is established when the charging party demonstrates that citizenship status or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

"(9) EMPLOYMENT AGENCY DEFINED.—As used in this section, the term 'employment agency' means any person or entity regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such person or entity.";

(2) in subsection (d)—

(A) by amending paragraphs (1) and (2) to read as follows—

"(1) The Special Counsel shall investigate each charge received and determine whether or not there

is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his or her own initiative, conduct investigations respecting unfair immigration-related employment practices or unfair employment practices and, based on such an investigation, file a complaint before such judge.

''(2) If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice or an unfair employment practice which alleges discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within 120 days, the Special Counsel shall notify the person making the charge of the determination not to file such a complaint during such period and the person making the charge may file a complaint directly before such judge within 90 days after the date of receipt of the notice.'';

(3) in subsection (g)(2)—

(A) in subparagraph (A), by inserting before the period ''and which requires such affirmative action as may be appropriate, or any

other individual equitable relief as the administrative law judge determines appropriate.'';

(B) in subparagraph (B)—

(i) in clause (iii), by inserting before the semicolon '', and to provide such other relief as the administrative law judge determines appropriate to make the individual whole''; and

(ii) by amending clause (iv) to read as follows—

''(iv) to pay any applicable civil penalties proscribed below, the amounts of which may be adjusted periodically to account for inflation as provided by law—

''(I) except as provided in subclauses (II) through (IV), to pay a civil penalty of not less than $2,000 and not more than $5,000 for each individual subjected to an unfair immigration related employment practice;

''(II) except as provided in subclauses (III) and (IV), in the case of a person or entity previously subject to a single order under this paragraph, to pay a civil penalty of not

less than $4,000 and not more than $10,000 for each individual subjected to an unfair immigration related employment practice;

''(III) except as provided in subclause (IV), in the case of a person or entity previously subject to more than one order under this paragraph, to pay a civil penalty of not less than $8,000 and not more than $25,000 for each individual subjected to an unfair immigration related employment practice; and

''(IV) in the case of an unfair immigration-related employment practice described in subsection (a)(6) of this section, to pay a civil penalty of not less than $500 and not more than $5,000 for each individual subjected to an unfair immigration related employment practice.'';

(C) in clause (vii) by striking ''and'';

(D) in clause (viii) by striking the period and inserting ''; and''; and (E) by adding a new clause (ix) to read as follows—

"(i)(I) An order of the administrative law judge may not require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged more likely that not, for any reason other than discrimination on account of citizenship status or national origin or in violation of this section.

"(II) On a claim in which an individual proves a violation under paragraph (a)(9) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the administrative law judge may grant declaratory relief, injunctive relief (except as provided in clause (b)(2)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under paragraph (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-

ployment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this section and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Special Counsel in carrying out this section. In furtherance of such cooperative efforts, the Special Counsel may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Special Counsel shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Special Counsel shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Special Counsel shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this section.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment

of this Act and shall apply to violations occurring on or after such date.

SEC. 308. IMMIGRATION ENFORCEMENT SUPPORT BY THE INTERNAL REVENUE SERVICE AND THE SOCIAL SECURITY ADMINISTRATION.

(a) INCREASE IN PENALTY ON EMPLOYER FAILING TO FILE CORRECT INFORMATION RETURNS.—Section 6721 of the Internal Revenue Code of 1986(relating to failure to file correct information returns), as amended by section 2101 of the Small Business Jobs Act of 2010, is amended as follows—

(1) in subsection (a)(1)—

(A) by striking ''$100'' and inserting ''$200''; and

(B) by striking ''$1,500,000'' and inserting ''$2,000,000'';

(2) in subsection (b)(1)(A), by striking ''$15 in lieu of $50'' and inserting ''$60 in lieu of $200'';

(3) in subsection (b)(1)(B), by striking ''$250,000'' and inserting ''$300,000'';

(4) in subsection (b)(2)(A), by striking ''$30 in lieu of $50'' and inserting ''$120 in lieu of $200'';

(5) in subsection (b)(2)(B), by striking ''$500,000'' and inserting ''$600,000'';

(6) in subsection (d)—

(A) in paragraph (1)(B) by striking "'$75,000' for '$250,000'" and inserting "'$100,000' for '$300,000'";

(B) in paragraph (1)(C) by striking "'$200,000' for '$500,000'" and inserting "'$200,000' for '$600,000'";

(C) in paragraph (2)(A), by striking "$5,000,000" and inserting "$2,000,000"; and

(D) in the heading, by striking "$5,000,000" and inserting "$2,000,000";

(7) in subsection (e)—

(A) in paragraph (2) in the matter preceding subparagraph (A) by striking "$250" and inserting "$400";

(B) in paragraph (2)(C)(i) by striking "$25,000" and inserting "$100,000";

(C) in paragraph (2)(C)(ii) by striking "$100,000" and inserting "$400,000"; and

(D) in paragraph (3)(A), by striking "$1,500,000" and inserting "$2,000,000".

(b) EFFECTIVE DATE.—The amendments made by subsection (c) shall apply to failures occurring after the date of enactment of this section.

SEC. 309. ENHANCED VERIFICATION SYSTEM.

(a) RIGHT TO REVIEW AND CORRECT SYSTEM INFORMATION.—The Secretary, in consultation with the Commissioner of Social Security, shall establish—

(1) procedures to permit an individual—

(A) to verify the individual's eligibility for employment in the United States before obtaining or changing employment;

(B) to view the individual's own records in the Enhanced Verification System in order to ensure the accuracy of such records; and

(C) to correct or update the information used by the System regarding the individual by electronic means, to the greatest extent practicable; and

(2) procedures for establishing an Enhanced Verification System under subsection (b) through which an individual who has viewed the individual's own record may electronically—

(A) block the use of the individual's Social Security number under the System; and

(B) remove such block in order to—

(i) prevent the fraudulent or other misuse of a Social Security account number;

(ii) prevent employer misuse of the system;

(iii) protect privacy; and

(iv) limit erroneous nonconfirmations during employment verification.

(b) ENHANCED VERIFICATION SYSTEM.—

(1) IN GENERAL.—The Secretary, in consultation with the Commissioner of Social Security, shall establish a voluntary self-verification system to allow an individual to submit biometric information, verify the individual's own record, and to block and unblock the use of the individual's Social Security number in order to prevent the fraudulent or other misuse of the individual's Social Security Number during employment verification, to prevent employer misuse of the system, to protect privacy, and to limit erroneous non-confirmations during employment verification.

(2) VOLUNTARY ENROLLMENT.—An individual may enroll in the Enhanced Verification System on a voluntary basis.

(3) ELECTRONIC ACCESS.—The Secretary shall establish procedures allowing individuals to use a Personal Identification Number (PIN) or other biographic information to authenticate the individual's

identity and to block and unblock the individual's Social Security number electronically.

(4) USE OF ENHANCED VERIFICATION SYSTEM RECEIPT FOR PURPOSE OF EMPLOYMENT VERIFICATION.—The Secretary shall establish procedures to allow an individual who has authenticated the individual's identity and unblocked the individual's Social Security number to receive a single –use code as a receipt indicating that the individual is work authorized and has self-verified, and procedures to allow the individual to use the single-use code in place of the identity and eligibility documents described in this section.

(5) EXPEDITED REVIEW PROCESS.—The Secretary shall establish an expedited review process to allow an individual who has authenticated the individual's identity and unblocked the individual's Social Security number immediately to correct user or system errors which result in an erroneous non-confirmation of work eligibility.

(6) REPORTS.—

(A) SYSTEM ASSESSMENT.—Not later than 3 months after the end of the third and fourth years in which the programs are in effect, the Secretary shall submit reports to the Committee

on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the Enhanced Verification System that—

(i) assesses the degree of fraudulent attesting of United States citizenship;

(ii) assesses the benefits of the Enhanced Verification System to employers and the degree to which it assists in the enforcement of section 274A of the Immigration and Nationality Act;

(iii) assesses the benefits of the Enhanced Verification System to individuals and the degree to which they prevent misuse of the System and erroneous non-confirmations during employment verification;

(iv) determines whether the Enhanced Verification System reduces discrimination during the employment verification process;

(v) assesses the degree to which the Enhanced Verification System protects employee civil liberties and privacy; and

(vi) includes recommendations on whether the Enhanced Verification System should be continued or modified.

(B) REPORT ON EXPANSION.—Not later than September 30, 2015, the Secretary shall submit a report shall to the committees referred to in subparagraph (A) that—

(i) evaluates whether the problems identified by the reports submitted under subparagraph (A) have been substantially resolved; and

(ii) describes the actions to be taken by the Secretary before requiring any individual to participate in the Enhanced Verification System.

(7) LIMITATION ON USE OF THE CONFIRMATION SYSTEM AND ANY RELATED SYSTEMS.—Notwithstanding any other provision of law, nothing in this section may be construed to permit any department, bureau, or other agency of the United States Government to utilize any information, database, or other records assembled under this section for any other purpose other than as provided for under the Enhanced Verification System.

SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF HOMELAND SECURITY.—There are authorized to be appropriated to the Department such sums as may be necessary to carry out this title, and the amendments made by this title, including the following:

(1) In each of the 5 years beginning on the date of the enactment of this Act, the appropriations necessary to increase to a level not less than 4500, by the end of such five-year period, the total number of personnel of the Department of Homeland Security assigned exclusively or principally to an office or offices in U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement (and consistent with the missions of such agencies), dedicated to administering the System, and monitoring and enforcing compliance with sections 274A, 274B, and 274C of the Immigration and Nationality Act (8 U.S.C. 1324a, 1324b, and 1324c), including compliance with the requirements of the System. These personnel shall perform compliance and monitoring functions, including the following:

(A) Verify Employment Identification Numbers of employers participating in the System.

(B) Verify compliance of employers participating 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.

(H) Analyze and audit the use of the System and the data obtained through the System to develop compliance tools as necessary to respond to changing patterns of fraud.

(I) Provide employers with additional training and other information on the proper use of the System, including but not limited to privacy training and employee rights.

(J) Perform threshold evaluation of cases for referral to the Special Counsel for Unfair Immigration-Related Employment Practices or the Equal Employment Opportunity Commission, and other officials or agencies with responsibility for enforcing anti-discrimination, civil rights, privacy or worker protection laws, as may be appropriate.

(K) Any other compliance and monitoring activities that, in the Secretary's judgment, are necessary to ensure the functioning of the System.

(L) Investigate identity theft and fraud detected through the System and undertake the necessary enforcement or referral actions.

(M) Investigate use of or access to fraudulent documents and undertake the necessary enforcement actions.

(N) Perform any other investigations that, in the Secretary's judgment, are necessary to ensure the lawful functioning of the System, and undertake any enforcement actions necessary as a result of these investigations.

(2) The appropriations necessary to acquire, install and maintain technological equipment necessary to support the functioning of the System and the connectivity between U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement, Department of Justice, and other agencies or officials with respect to the sharing of information to support the System and related immigration enforcement actions.

(3) The appropriations necessary to establish a robust redress process for employees who wish to appeal contested nonconfirmations to ensure the accuracy and fairness of the System.

(4) The appropriations necessary to provide a means by which individuals may access their own employment authorization data to ensure its accuracy independent of their employer.

(5) The appropriations necessary to establish a Joint Employment Fraud Task Force to promote employer compliance with the system and ensure a coordinated response to noncompliance.

(6) The appropriations necessary for the Office for Civil Rights and Civil Liberties and the Office of Privacy to perform their responsibilities as they relate to the System.

(7) The appropriations necessary to make grants to states to support them in assisting the federal government in carrying out the provisions of this title.

(b) SOCIAL SECURITY ADMINISTRATION.—There are authorized to be appropriated to the Social Security Administration such sums as may be necessary to carry out its responsibilities under this title, including section 308.

(c) DEPARTMENT OF JUSTICE.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary to carry out its responsibilities under this title, including enforcing compliance with section 274B of the Act, as amended by section 307 of this Act.

(d) DEPARTMENT OF STATE.—There are authorized to be appropriated to the Department of State such sums

as may be necessary to carry out its responsibilities under this title.

TITLE IV—REFORMING AMERICA'S LEGAL IMMIGRATION SYSTEM

Subtitle A—New Worker Program and the Creation of a Standing Commission

SEC. 401. STANDING COMMISSION ON IMMIGRATION, LABOR MARKETS, AND THE NATIONAL INTEREST.

(a) ESTABLISHMENT OF COMMISSION.—

(1) IN GENERAL.—There is established an independent Federal agency within the Executive Branch to be known as the Standing Commission on Immigration, Labor Markets, and the National Interest (referred to in this section as the ''Commission'').

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

(A) establish employment-based immigration policies that promote America's economic growth and competitiveness while minimizing job displacement, wage depression and unauthorized employment in the United States;

(B) create and implement a policy-focused research agenda on the economic impacts of immigration at the national, regional, State, industry and occupation levels;

(C) collect and analyze information about employment-based immigration and the labor market and share the data and analysis with lawmakers, researchers and the American public;

(D) recommend to the Congress and the President on a regular basis an evidence-based methodology for determining the level of employment-based immigration;

(E) recommend to Congress and the President the numeric levels and characteristics of workers to be admitted in various employment-based visa categories; and

(F) to collect and analyze information about the economic, labor, security, and foreign policy impacts of our Nation's immigration policies.

(3) MEMBERSHIP.—The Commission shall be composed of—

(A) 7 voting members—

(i) who shall be appointed by the President, with the advice and consent of the Senate, not later than 6 months after the establishment of this Act;

(ii) who shall serve for 5-year staggered terms;

(iii) one of whom the President shall appoint as Chair of the Commission to serve a 6-year term, which can be extended for 1 additional 3-year term;

(iv) who shall have expertise in economics, demography, sociology, labor, business, civil rights, immigration, or other pertinent qualifications or experience;

(v) who may not be an employee of the Federal Government or of any State or local government; and

(vi) not more than 4 of whom may be members of the same political party.

(B) 7 ex-officio members, including—

(i) the Secretary;

(ii) the Secretary of State;

(iii) the Attorney General;

(iv) the Secretary of Labor;

(v) the Secretary of Commerce;

(vi) the Secretary of Health and Human Services;

(vii) the Secretary of Agriculture; and

(viii) the Commissioner of Social Security.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) MEETINGS.—

(A) INITIAL MEETING.—The Commission shall meet and begin carrying out the duties described in subsection (b) as soon as practicable.

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

(C) QUORUM.—Four voting members of the Commission shall constitute a quorum.

(b) DUTIES OF THE COMMISSION.—The Commission shall collect, analyze, and publish data regarding—

(1) the historic migration patterns to and from the United States and demographic trends, including the birth rate, education levels, and age profiles of the immigrant and native population of the United States;

(2) the national, regional, State, and local impacts of employment-based immigration—

(A) within industries and business sectors;

(B) on wages, labor standards, occupations, and employment levels;

(C) on small business;

(D) on employment and unemployment levels;

(E) on economic growth, productivity, and competitiveness;

(F) on national and border security; and

(G) on local communities;

(3) the development and implementation of the new worker program to admit H–2C nonimmigrants (referred to in this section as the ''Program''), including—

(A) the criteria for the admission of workers under the Program; and

(B) the formula and methodologies for determining the annual numerical limitations of the Program;

(4) the current and anticipated needs of employers for skilled and unskilled labor;

(5) the national interest;

(6) the current and anticipated supply of skilled and unskilled labor;

(7) the impact of employment-based immigration on the economic growth, competitiveness, labor standards, labor conditions, and wages;

(8) the extent and impact of unauthorized employment in the United States;

(9) the factors that determine the economic success of immigrants to the United States;

(10) specific aspects of the Nation's immigration policies and programs that Congress has requested the Commission to examine or analyze; and

(11) any other matters regarding the impact of employment-based immigration that the Commission considers appropriate.

(c) ANNUAL REPORTS.—

(1) PROGRAM EVALUATION.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Commission shall submit a report to the President and Congress that—

(A) assesses the economic, labor, security, and foreign policy impacts of the nation's immigration policies;

(B) evaluates the Program and defines a formula and methodologies for measuring the

need for H–2C nonimmigrants in States, industries, and occupations and determines the numeric limitations of the H–2C Program;

(C) recommends adjustments, based on the established methodologies, to the Program's numeric allocations for the subsequent fiscal year; and

(D) reviews the issuance and allocations of employment-based immigrant and nonimmigrant visa categories.

(2) EFFECT ON EMPLOYMENT LEVELS.—Not later than February 1 of each year, the Commission shall submit a report to Congress that contains—

(A) the Commission's recommendations on the increase or decrease in the number of employment-based immigrant visas to be made available for temporary or permanent employment under the Immigration and Nationality Act and a statement of the reasons for such recommendations; and

(B) the Commission's recommendations on how many immigrant visas from the discretionary national interest pool described in section 411(e) should be added to the subsequent fiscal year's annual immigrant visa allocations

to comport with the increases recommended in subparagraph (A) and to which employment preference categories such visas should be added.

(3) EFFECT OF CONGRESSIONAL INACTION.—If Congress does not enact a law to approve or disapprove the Commission's recommendations under paragraph (2) not later than 90 days after receiving a report under such paragraph, the number of employment-based immigrant visas shall remain at the level authorized for the previous fiscal year.

(d) NATIONAL INTEREST DEFINED.—For purposes of determining whether immigrant visas should be allocated from the discretionary national interest pool in a given fiscal year, the term ''national interest'' shall be broadly defined and shall take into consideration—

(1) national and regional unemployment rates;

(2) unemployment rates by industry and sector;

(3) national and regional demographic and industry projections;

(4) wage and labor impact;

(5) immigrant visa backlogs and length of familial separation;

(6) national security and border security;

(7) community impact assessments; and

(8) competitiveness and economic growth.

(e) POWERS OF THE COMMISSION.—The Commission, by vote of a majority of the members present and voting, shall have the power to—

(1) establish general policies and promulgate such rules and regulations for the Commission as are necessary to carry out the purposes of this section;

(2) appoint and fix the salary and duties of the Staff Director of the Commission, who shall serve at the discretion of the Commission and who shall be compensated at a rate not to exceed the highest rate now or hereafter prescribed for Level 6 of the Senior Executive Service Schedule (5 U.S.C. 5382), and such other personnel as may be necessary to enable the Commission to carry out its functions;

(3) deny, revise, or ratify any request for regular, supplemental, or deficiency appropriations prior to any submission of such request to the Office of Management and Budget by the Chair;

(4) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement for such utilization;

(5) without regard to section 3324 of title 31, United States Code, enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

(6) accept and employ, in carrying out the provisions of this title, voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code, however, individuals providing such services shall not be considered Federal employees except for purposes of chapter 81 of title 5, United States Code, with respect to job-incurred disability and title 28, United States Code, with respect to tort claims;

(7) request such information, data, and reports from any Federal agency as the Commission may from time to time require and as may be produced consistent with other law;

(8) arrange with the head of any other Federal agency for the performance by such agency of any function of the Commission, with or without reimbursement;

(9) establish a research and development program within the Commission for the purpose of understanding and documenting the effects of immigration and the admission of foreign workers on the labor market and national competitiveness;

(10) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the need for and effects of immigration;

(11) interview and confer with state and local officials, representatives of labor and industry, and experts in academia to obtain information about the need for or benefit of additional immigrant or nonimmigrant workers;

(12) make recommendations to Congress concerning the numeric limitations of the H–2C program and all immigrant and nonimmigrant employment-based visa categories and recommend modifications or the enactment of statutes relating to matters that the Commission finds to be necessary and advisable to carry out an effective immigration policy;

(13) hold hearings and call witnesses to assist the Commission in the exercise of its powers or duties;

(14) retain and, in its discretion pay reasonable attorneys' fees out if its appropriated funds to, private attorneys who—

(A) shall provide legal advice to the Commission in the conduct of its work, or to appear for or represent the Commission in any case in which the Commission is authorized by law to represent itself, or in which the Commission is representing itself with the consent of the Department of Justice; and

(B) when serving as officers or employees of the United States, shall be considered special government employees as defined in section 202(a) of title 18;

(15) grant incentive awards to its employees pursuant to chapter 45 of title 5, United States Code; and

(16) perform such other functions as may be necessary to carry out the purposes of this section, which may be delegated to any member or designated person, as appropriate.

(f) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

(1) INFORMATION.—The head of any Federal department or agency that receives a request from

the Commission for information, including suggestions, estimates, and statistics, as the Commission considers necessary to carry out the provisions of this section, shall furnish such information to the Commission, to the extent allowed by law.

(2) ASSISTANCE.—

(A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall, on a reimbursable basis, provide the Commission with administrative support and other services for the performance of the Commission's functions.

(B) OTHER FEDERAL AGENCIES.—The departments and agencies of the United States may provide the Commission with such services, funds, facilities, staff, and other support services as the heads of such departments and agencies determine advisable and authorized by law.

(g) PERSONNEL MATTERS.—

(1) STAFF.—

(A) APPOINTMENT AND COMPENSATION.—The Chair, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such

other personnel as may be necessary to enable the Commission to carry out its functions.

(B) FEDERAL EMPLOYEES.—

(i) IN GENERAL.—Except as provided under clause (ii), the executive director and any personnel of the Commission who are employees shall be considered to be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of such title.

(ii) COMMISSION MEMBERS.—Clause (i) shall not apply to members of the Commission.

(2) DETAILEES.—Any employee of the Federal Government may be detailed to the Commission without reimbursement from the Commission. Such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) CONSULTANT SERVICES.—The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the daily rate paid a person occupying a position at level IV of the

Executive Schedule under section 5315 of such title 5.

(h) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—Each voting member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under section 5703(b) of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(i) DETERMINATION OF NEW LEVELS OF PROGRAM VISAS.—The numeric levels for visas under the Program shall be set by the Commission unless Congress enacts superseding legislation.

(j) FUNDING.—Fees and fines deposited into the New Worker Program and Conditional Nonimmigrants Fee Account established under section 286(w) of the Immigration

and Nationality Act, as added by subsection (k), may be used by the Commission to carry out its duties under this section.

(k) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—Section 286 (8 U.S.C. 1356) is amended by adding at the end the following:

"(w) NEW WORKER PROGRAM AND CONDITIONAL NONIMMIGRANTS FEE ACCOUNT.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'New Worker Program and Conditional Nonimmigrants Fee Account'.

"(2) DEPOSITS.—Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees and fines collected under this title.

"(3) USE OF FEES.—Fees collected under this section may only be used by the Secretary of Homeland Security to administer and operate the New Worker Program and Conditional Nonimmigrants Fee Account Program.".

SEC. 402. H–2C NONIMMIGRANT WORKER PROGRAM.

(a) DEFINITION.—Section 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is amended—

(1) in clause (i)—

(A) by redesignating subclause (c) as subclause (d); and

(B) by inserting after subclause (b) the following:

"(c) who is coming temporarily to the United States to initially perform temporary labor or services other than the labor or services described in clause (i)(b), (i)(b1), (i)(d), (ii)(a), or (iii), subparagraph (D), (E), (I), (L), (O), (P), or (R), or section 214(e) (if United States workers who are able, willing, and qualified to perform such labor or services cannot be found in the United States); and"; and

(2) by adding at the end the following:

"(iv) who—

"(I) is the spouse or minor child of an alien described in this subparagraph; and

"(II) is accompanying or following to join such alien.".

(b) ADMISSION OF H–2C NONIMMIGRANT WORKERS.—Chapter 2 of title II (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:

"SEC. 218A. ADMISSION OF H–2C NONIMMIGRANTS.

"(a) AUTHORIZATION.—The Secretary of State may grant a visa to an H–2C nonimmigrant who demonstrates an intent to perform labor or services in the United States (other than the labor or services described in clause (i)(b), (i)(b)(1), (i)(c), (ii)(a), or (iii) of section 101(a)(15)(H), subparagraph (D), (E), (I), (L), (O), (P), or (R) of section 101(a)(15), or section 214(e) (if United States workers who are able, willing, and qualified to perform such labor or services cannot be found in the United States).

"(b) REQUIREMENTS FOR ADMISSION.—An alien shall be eligible for H–2C nonimmigrant status if the alien meets the following requirements:

"(1) ELIGIBILITY TO WORK.—The alien shall establish that the alien is capable of performing the labor or services required for an occupation described in section 101(a)(15)(H)(ii)(c).

"(2) EVIDENCE OF EMPLOYMENT OFFER.—Evidence of an alien's employment offer shall be provided in accordance with the requirements issued by the Secretary of State, in consultation with the Secretary of Labor. In carrying out this paragraph, the Secretary may consider evidence from employers, employer associations, and labor representatives.

"(3) FEE.—The alien shall pay a $100 visa issuance fee in addition to the cost of processing and

adjudicating such application. Nothing in this paragraph shall be construed to affect consular procedures for charging reciprocal fees.

"(4) MEDICAL EXAMINATION.—The alien shall undergo a medical examination (including a determination of immunization status), at the alien's expense, that conforms to generally accepted standards of medical practice.

"(5) APPLICATION CONTENT AND WAIVER.—

"(A) APPLICATION FORM.—The alien shall submit to the Secretary of State a completed application, which contains evidence that the requirements under paragraphs (1) and (2) have been met.

"(B) CONTENT.—In addition to any other information that the Secretary requires to determine an alien's eligibility for H–2C nonimmigrant status, the Secretary of State shall require an alien to provide information concerning the alien's—

"(i) physical and mental health;

"(ii) criminal history and gang membership;

"(iii) immigration history; and

"(iv) involvement with groups or individuals that have engaged in terrorism, genocide, persecution, or who seek the overthrow of the United States government.

"(C) KNOWLEDGE.—The alien shall include with the application submitted under this paragraph a signed certification in which the alien certifies that—

"(i) the alien has read and understands all of the questions and statements on the application form;

"(ii) the alien certifies under penalty of perjury under the laws of the United States that the application, and any evidence submitted with it, are all true and correct; and

"(iii) the applicant authorizes the release of any information contained in the application and any attached evidence for law enforcement purposes.

"(c) GROUNDS OF INADMISSIBILITY.—

"(1) IN GENERAL.—In determining an alien's admissibility as an H–2C nonimmigrant—

"(A) paragraphs (5), (6) (except subparagraphs (E) and (G)), (7), (9), and (10)(B) of section 212(a) may not apply with respect to conduct that occurred before the effective date of this Act;

"(B) the Secretary of Homeland Security may not waive the application of—

"(i) subparagraph (A), (B), (C), (D), (E), (G), (H), or (I) of section 212(a)(2);

"(ii) section 212(a)(3); or

"(iii) subparagraph (A), (C) or (D) of section 212(a)(10);

"(C) the Secretary of State may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an individual alien—

"(i) for humanitarian purposes;

"(ii) to ensure family unity; or

"(iii) if such a waiver is otherwise in the public interest; and

"(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this paragraph to waive the provisions of section 212(a).

"(2) RENEWAL OF AUTHORIZED ADMISSION AND SUBSEQUENT ADMISSIONS.—An alien seeking renewal of authorized admission or subsequent admission as an H–2C nonimmigrant shall establish that the alien is not inadmissible under section 212(a).

"(3) BACKGROUND CHECKS.—The Secretary of Homeland Security shall not admit, and the Secretary of State shall not issue a visa to, an alien seeking H–2C nonimmigrant status unless all appropriate background checks have been completed.

"(d) PERIOD OF AUTHORIZED ADMISSION.—

"(1) AUTHORIZED PERIOD.—The initial period of authorized admission as an H–2C nonimmigrant shall be 3 years.

"(2) RENEWAL.—Before the expiration of the initial period under paragraph (1), an H–2C nonimmigrant may submit an application to the Secretary of Homeland Security to extend H–2C nonimmigrant status for 1 additional 3-year period. The Secretary may not require an applicant under this paragraph to depart the United States as a condition for granting such extension.

"(3) LOSS OF EMPLOYMENT.—

"(A) IN GENERAL.—

"(i) PERIOD OF UNEMPLOYMENT.—Subject to clause (ii) and subsection (c), the period of authorized admission of an H–2C nonimmigrant shall terminate if the alien is unemployed for 60 or more consecutive days.

"(ii) EXCEPTION.—The period of authorized admission of an H–2C nonimmigrant shall not terminate if the alien is unemployed for 60 or more consecutive days if the alien submits documentation to the Secretary of Homeland Security that establishes that such unemployment was caused by—

"(I) a period of physical or mental disability of the alien or the spouse, son, daughter, or parent (as defined in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611)) of the alien;

"(II) a period of vacation, medical leave, maternity leave, or similar leave from employment authorized by employer policy, State law, or Federal law; or

"(III) any other period of temporary unemployment that is the direct result of a major disaster or emergency.

"(iii) EXTENSION.—The Secretary of Labor and the Secretary of Homeland Security shall promulgate regulations to establish procedures for granting an extension of the 60-day period described in clause (i) in accordance with the conditions described in section 218B(g).

"(B) RETURN TO FOREIGN RESIDENCE.—Any alien whose period of authorized admission terminates under subparagraph (A) shall be required to leave the United States.

"(C) PERIOD OF VISA VALIDITY.—Any alien, whose period of authorized admission terminates under subparagraph (A), who leaves the United States under subparagraph (B), may reenter the United States as an H–2C nonimmigrant to work for an employer, if the alien has complied with the requirements of subsection (b).

"(4) VISITS OUTSIDE THE UNITED STATES.—

"(A) IN GENERAL.—Under regulations established by the Secretary of Homeland Security, an H–2C nonimmigrant—

"(i) may travel outside of the United States; and

"(ii) may be readmitted without having to obtain a new visa if the period of authorized admission has not expired.

"(B) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under subparagraph (A) shall not extend the period of authorized admission in the United States.

"(5) BARS TO EXTENSION OR ADMISSION.—An alien may not be granted H–2C nonimmigrant status, or an extension of such status, if—

"(A) the alien has violated any material term or condition of such status granted previously, including failure to comply with the change of address reporting requirements under section 265;

"(B) the alien is inadmissible as a nonimmigrant except that grounds of inadmissibility that are waived under section 218(a) of

the Immigration and Nationality Act as amended by this Act shall not apply; or

"(C) the granting of such status or extension of such status would allow the alien to exceed 6 years as an H–2C nonimmigrant, unless the alien has resided and been physically present outside the United States for at least 1 year after the expiration of such H–2C nonimmigrant status.

"(e) EVIDENCE OF NONIMMIGRANT STATUS.—Each H–2C nonimmigrant shall be issued documentary evidence of nonimmigrant status, which—

"(1) shall be machine-readable, tamper-resistant, and allow for biometric authentication;

"(2) shall, during the alien's authorized period of admission under subsection (f), serve as a valid entry document for the purpose of applying for admission to the United States—

"(A) instead of a passport and visa if the alien—

"(i) is a national of a foreign territory contiguous to the United States; and

"(ii) is applying for admission at a land border port of entry; and

"(B) in conjunction with a valid passport, if the alien is applying for admission at an air or sea port of entry;

"(3) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B); and

"(4) shall be issued to the H–2C nonimmigrant by the Secretary of Homeland Security promptly after final adjudication of such status or, at the discretion of the Secretary of Homeland Security, may be issued by the Secretary of State at a consulate instead of a visa.

"(f) PENALTIES FOR FAILURE TO DEPART.—If an H–2C nonimmigrant fails to depart the United States by the date that the alien's authorized admission as an H–2C nonimmigrant concludes, the visa of the alien shall be void under section 222(g)(1) and the alien shall be ineligible to be readmitted to the United States under section 222(g)(2). The alien may be removed if found to be within 1 or more of the classes of deportable aliens described in section 237.

"(g) PORTABILITY.—A nonimmigrant alien described in this section, who was previously issued a visa or other-

wise provided H–2C nonimmigrant status, may accept a new offer of employment with a subsequent employer, if—

"(1) the employer complies with section 218B; and

"(2) the alien, after lawful admission to the United States, did not work without authorization.

"(h) CHANGE OF ADDRESS.—An H–2C nonimmigrant shall comply with the change of address reporting requirements under section 265 through electronic or paper notification.

"(i) COLLECTION OF FEES.—All fees (other than the application filing fee) collected under this section shall be deposited in the Treasury in accordance with section 286(w).".

(c) CLERICAL AMENDMENT.—The table of contents (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218 the following:

"Sec. 218A. Admission of H–2C nonimmigrants.".

(d) EMPLOYER OBLIGATIONS.—

(1) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.) is amended by inserting after section 218A, as added by subsection (b), the following:

"SEC. 218B. EMPLOYER OBLIGATIONS.

"(a) GENERAL REQUIREMENTS.—Each employer that seeks to employ an H–2C nonimmigrant shall—

"(1) file a petition with the Secretary of Labor in accordance with subsections (b) and (c); and

"(2) be required to pay—

"(A) an application filing fee for each alien, based on the cost of carrying out the processing duties under this subsection;

"(B) for an initial application, a secondary fee, to be deposited in the Treasury in accordance with section 286(w), of—

"(i) $500, in the case of an employer employing 25 employees or less;

"(ii) $750, in the case of an employer employing between 26 and 150 employees;

"(iii) $1,250, in the case of an employer employing between 151 and 500 employees; or

"(iv) $1,500, in the case of an employer employing more than 500 employees; and

"(C) a secondary fee shall only be required once for each alien applying for the H–2C program and shall not be required for subsequent applications to new employers.

"(b) REQUIRED PROCEDURE.—Unless the Secretary of Labor determines that there is a shortage of United

States workers in the occupation and area of intended employment to which the H–2C nonimmigrant is sought, each employer that employs an H–2C nonimmigrant shall comply with the following requirements:

"(1) EFFORTS TO RECRUIT UNITED STATES WORKERS.—During the period beginning not later than 90 days before the date on which a petition is filed under subsection (a)(1), and ending on the date that is 14 days before such filing date, the employer involved shall recruit United States workers for the position for which the H–2C nonimmigrant is sought under the petition, by—

"(A) submitting a copy of the job opportunity, including a description of the wages and other terms and conditions of employment and the minimum education, training, experience, and other requirements of the job, to the State Employment Service Agency that serves the area of employment in the State in which the employer is located;

"(B) authorizing the employment service agency of the State to post the job opportunity on the Internet website established under Section 405 of this Act with local job banks, and 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.

"(2) EFFORTS TO EMPLOY UNITED STATES WORKERS.—An employer that seeks to employ an H–2C nonimmigrant shall first offer the job to any eligible United States worker who applies, is qualified for the job and is available at the time of need, notwithstanding any other valid employment criteria.

"(c) PETITION.—A petition to hire an H–2C nonimmigrant under this section shall include an attestation by the employer that the employer has complied with the following requirements:

"(1) PROTECTION OF UNITED STATES WORKERS.—The employment of an H–2C nonimmigrant—

"(A) will not adversely affect the wages and working conditions of workers in the United States similarly employed; and

"(B) did not and will not cause the separation from employment of a United States worker employed by the employer within the 180-day period beginning 90 days before the date on which the petition is filed.

"(2) WAGES.—

"(A) IN GENERAL.—The employer has offered to United States workers during the period of recruitment described in subsection

(b)(1), and is offering and will pay H–2C nonimmigrants during the period of authorized employment not less than the greater of—

"(i) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

"(ii) the prevailing wage level for the occupational classification in the area of employment, as determined in accordance with subparagraph (C), taking into account experience and skill levels of employees.

"(B) CALCULATION.—The wage levels under subparagraph (A) shall be calculated based on the best information available at the time of the filing of the application.

"(C) PREVAILING WAGE LEVEL.—For purposes of subparagraph (A)(ii), the prevailing wage level shall be determined as follows:

"(i) If the job opportunity is covered by a collective bargaining agreement between a union and the employer, the prevailing 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 date 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

on another wage survey approved by the Secretary of Labor.

"(II) The Secretary shall promulgate regulations applicable to approval of such other wage surveys that require, among other things, that the Bureau of Labor Statistics determine such surveys are statistically viable.

"(3) WORKING CONDITIONS.—All workers in the occupation at the place of employment at which the H–2C nonimmigrant will be employed will be provided the working conditions and benefits that are normal to workers similarly employed in the area of intended employment.

"(4) LABOR DISPUTE.—There is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the H–2C nonimmigrant will be employed. If such strike, lockout, or work stoppage occurs following submission of the petition, the employer will provide notification in accordance with regulations promulgated by the Secretary of Labor.

"(5) PROVISION OF INSURANCE.—If the position for which the H–2C nonimmigrant is sought is not covered by the State workers' compensation law,

the employer will provide, at no cost to the H–2C nonimmigrant, insurance covering injury and disease arising out of, and in the course of, the worker's employment, which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

"(6) NOTICE TO EMPLOYEES.—

"(A) IN GENERAL.—The employer has provided notice of the filing of the petition to the bargaining representative of the employer's employees in the occupational classification and area of employment for which the H–2C nonimmigrant is sought.

"(B) NO BARGAINING REPRESENTATIVE.—If there is no such bargaining representative, the employer has—

"(i) posted a notice of the filing of the petition in a conspicuous location at the place or places of employment for which the H–2C nonimmigrant is sought; or

"(ii) electronically disseminated such a notice to the employer's employees in the occupational classification for which the H–2C nonimmigrant is sought.

"(7) RECRUITMENT.—The following conditions must be met:

"(A) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition.

"(B) Good faith efforts have been taken to recruit United States workers, in accordance with regulations promulgated by the Secretary of Labor, which efforts included—

"(i) the completion of recruitment during the period beginning on the date that is 90 days before the date on which the petition was filed with the Department of Homeland Security and ending on the date that is 14 days before such filing date; and

"(ii) the actual wage paid by the employer for the occupation in the areas of intended employment was used in conducting recruitment.

"(8) INELIGIBILITY.—The employer is not currently ineligible from using the H–2C nonimmigrant program described in this section.

"(9) CONSTRUCTION AND METAL WORKER OCCUPATIONS.—No petition by an employer may be granted for an H–2C nonimmigrant worker if the employer seeks to employ an H–2C nonimmigrant in an any construction or metal worker occupation.

"(10) BONA FIDE OFFER OF EMPLOYMENT.—The job for which the H–2C nonimmigrant is sought is a bona fide job—

"(A) for which the employer needs labor or services;

"(B) which has been and is clearly open to any United States worker; and

"(C) for which the employer will be able to place the H–2C nonimmigrant on the payroll.

"(11) PUBLIC AVAILABILITY AND RECORDS RETENTION.—A copy of each petition filed under this section and documentation supporting each attestation, in accordance with regulations promulgated by the Secretary of Labor, will—

"(A) be provided to every H–2C nonimmigrant employed under the petition;

"(B) be made available for public examination at the employer's place of business or work site;

"(C) be made available to the Secretary of Labor during any audit; and

"(D) remain available for examination for 5 years after the date on which the petition is filed.

"(12) NOTIFICATION UPON SEPARATION FROM OR TRANSFER OF EMPLOYMENT.—The employer will notify the Secretary of Labor and the Secretary of Homeland Security of an H–2C nonimmigrant's separation from employment or transfer to another employer not more than 3 business days after the date of such separation or transfer, in accordance with regulations promulgated by the Secretary of Homeland Security.

"(13) ACTUAL NEED FOR LABOR OR SERVICES.—The petition was filed not more than 60 days before the date on which the employer needed labor or services for which the H–2C nonimmigrant is sought.

"(14) WAIVER OF RIGHTS PROHIBITED.—An H–2C nonimmigrant may not be required to waive any rights or protections under this Actor the amendments made by such Act. Nothing in this paragraph may be construed to affect the interpretation of other laws.

"(15) NO THREATENING OF EMPLOYEES.—It shall be a violation of this subsection for an employer that has filed a petition under this section to threaten the H–2C nonimmigrant beneficiary with withdrawal of the petition for exercising a right protected by this Actor any amendment made by such Act.

"(d) AUDIT OF ATTESTATIONS.—

"(1) REFERRALS BY SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall refer all approved petitions for H–2C nonimmigrants to the Secretary of Labor for potential audit.

"(2) AUDITS AUTHORIZED.—The Secretary of Labor may audit any approved petition referred pursuant to paragraph (1), in accordance with regulations promulgated by the Secretary of Labor.

"(e) INELIGIBLE EMPLOYERS.—

"(1) IN GENERAL.—The Secretary of Labor shall not approve an employer's petitions, applications, certifications, or attestations under any immigrant or nonimmigrant program if the Secretary of Labor determines, after notice and an opportunity for a hearing, that the employer submitting such documents—

"(A) has, with respect to the attestations required under subsection (b)—

"(i) misrepresented a material fact;

"(ii) made a fraudulent statement; or

"(iii) failed to comply with the terms of such attestations; or

"(B) failed to cooperate in the audit process in accordance with regulations promulgated by the Secretary of Labor.

"(2) LENGTH OF INELIGIBILITY.—An employer described in paragraph (1) shall be ineligible to participate in the labor certification programs of the Secretary of Labor for not less than the time period determined by the Secretary, not to exceed 3 years.

"(3) EMPLOYERS IN HIGH UNEMPLOYMENT AREAS.—The Secretary of Labor may not approve any employer's petition under subsection (b) if the work to be performed by the H–2C nonimmigrant is not agriculture based and is located in a metropolitan or micropolitan statistical area (as defined by the Office of Management and Budget) in which the unemployment rate for workers who have not completed any education beyond a high school diploma during the most recently completed 6-month period 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 rem-
8 edy 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;

"(H) the existence of any arrangement with any owner, employer, foreign contractor, or its agent where such person receives a commission from the provision of items or services to workers;

"(I) the extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including—

"(i) work-related injuries and death during the period of employment;

"(ii) the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance;

"(iii) the name and the telephone number of each person who must be notified of an injury or death; and

"(iv) the time period within which such notice must be given;

"(J) any education or training to be provided or required, including—

"(i) the nature and cost of such training;

"(ii) the entity that will pay such costs; and

"(iii) whether the training is a condition of employment, continued employment, or future employment; and

"(K) a statement, in a form specified by the Secretary of Labor, describing the protections of this Act for workers recruited abroad.

"(2) FALSE OR MISLEADING INFORMATION.—No foreign labor contractor or employer who engages in foreign labor contracting activity shall knowingly provide materially false or misleading information to any worker concerning any matter required to be disclosed in paragraph (1).

"(3) LANGUAGES.—The information required to be disclosed under paragraph (1) shall be provided in writing in English or, as necessary and reasonable, in the language of the worker being recruited. The Secretary of Labor shall make forms available in English, Spanish, and other languages, as necessary, which may be used in providing workers with information required under this section.

"(4) FEES.—A person conducting a foreign labor contracting activity shall not assess any fee to a worker for such foreign labor contracting activity.

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

contractors who are registered under this subparagraph.

"(ii) ISSUANCE.—The Secretary shall promulgate regulations to establish an efficient electronic process for the investigation and approval of an application for a certificate of registration of foreign labor contractors not later than 14 days after such application is filed, including—

"(I) requirements under paragraphs (1), (4), and (5) of section 102 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1812);

"(II) an expeditious means to update registrations and renew certificates; and

"(III) any other requirements that the Secretary may prescribe.

"(iii) TERM.—Unless suspended or revoked, a certificate under this subparagraph shall be valid for 2 years.

"(iv) REFUSAL TO ISSUE; REVOCATION; SUSPENSION.—In accordance with regulations promulgated by the Secretary

of Labor, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration under this subparagraph if—

"(I) the application or holder of the certification has knowingly made a material misrepresentation in the application for such certificate;

"(II) the applicant for, or holder of, the certification is not the real party in interest in the application or certificate of registration and the real party in interest—

"(aa) is a person who has been refused issuance or renewal of a certificate;

"(bb) has had a certificate suspended or revoked; or

"(cc) does not qualify for a certificate under this paragraph; or

"(III) the applicant for, or holder of, the certification has failed to comply with this Act.

"(C) REMEDY FOR VIOLATIONS.—An employer engaging in foreign labor contracting activity and a foreign labor contractor that violates the provisions of this subsection shall be subject to remedies for foreign labor contractor violations under subsections (k) and (l). If a foreign labor contractor acting as an agent of an employer violates any provision of this subsection, the employer shall be subject to remedies under subsections (k) and (l). An employer that violates a provision of this subsection relating to employer obligations shall be subject to remedies under subsections (k) and (l).

"(D) EMPLOYER NOTIFICATION.—An employer shall notify the Secretary of Labor if the employer becomes aware of a violation of this subsection by a foreign labor recruiter.

"(E) WRITTEN AGREEMENTS.—A foreign labor contractor may not violate the terms of any written agreements made with an employer relating to any contracting activity or worker protection under this subsection.

"(F) BONDING REQUIREMENT.—The Secretary of Labor may require a foreign labor

contractor to post a bond in an amount sufficient to ensure the protection of individuals recruited by the foreign labor contractor. The Secretary may consider the extent to which the foreign labor contractor has sufficient ties to the United States to adequately enforce this subsection.

"(i) WAIVER OF RIGHTS PROHIBITED.—An H–2C nonimmigrant may not be required to waive any rights or protections under this Act. Nothing under this subsection shall be construed to affect the interpretation of other laws.

"(j) NO THREATENING OF EMPLOYEES.—It shall be a violation of this section for an employer who has filed a petition under this section to threaten the alien beneficiary of such a petition with the withdrawal of such a petition in retaliation for the beneficiary's exercise of a right protected by this Act.

"(k) ENFORCEMENT.—

"(1) IN GENERAL.—The Secretary of Labor shall promulgate regulations for the receipt, investigation, and disposition of complaints by an aggrieved person respecting a violation of this section.

"(2) FILING DEADLINE.—No investigation or hearing shall be conducted on a complaint con-

cerning a violation under this section unless the complaint was filed not later than 12 months after the date of such violation.

"(3) REASONABLE CAUSE.—The Secretary of Labor shall conduct an investigation under this subsection if there is reasonable cause to believe that a violation of this section has occurred. The process established under this subsection shall provide that, not later than 30 days after a complaint is filed, the Secretary shall determine if there is reasonable cause to find such a violation.

"(4) NOTICE AND HEARING.—

"(A) IN GENERAL.—Not later than 60 days after the Secretary of Labor makes a determination of reasonable cause under paragraph (4), the Secretary shall issue a notice to the interested parties and offer an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

"(B) COMPLAINT.—If the Secretary of Labor, after receiving a complaint under this subsection, does not offer the aggrieved person or organization an opportunity for a hearing under subparagraph (A), the Secretary shall notify the aggrieved person or organization of

such determination and the aggrieved party or organization may seek a hearing on the complaint in accordance with such section 556.

"(C) HEARING DEADLINE.—Not later than 60 days after the date of a hearing under this paragraph, the Secretary of Labor shall make a finding on the matter in accordance with paragraph (5).

"(5) ATTORNEY'S FEES.—A complainant who prevails with respect to a claim under this subsection shall be entitled to an award of reasonable attorney's fees and costs.

"(6) POWER OF THE SECRETARY.—The Secretary may bring an action in any court of competent jurisdiction—

"(A) to seek remedial action, including injunctive relief;

"(B) to recover the damages described in subsection (i); or

"(C) to ensure compliance with terms and conditions described in subsection (g).

"(7) SOLICITOR OF LABOR.—Except as provided in section 518(a) of title 28, United States Code, the Solicitor of Labor may appear for and represent the Secretary of Labor in any civil litigation

brought under this subsection. All such litigation shall be subject to the direction and control of the Attorney General.

"(8) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.—The rights and remedies provided to workers under this section are in addition to any other contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

"(l) PENALTIES.—

"(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary of Labor finds a violation of subsection (b), (e), (f), or (g), the Secretary may impose administrative remedies and penalties, including—

"(A) back wages;

"(B) benefits; and

"(C) civil monetary penalties.

"(2) CIVIL PENALTIES.—The Secretary of Labor may impose, as a civil penalty—

"(A) for a violation of subsection (e) or (f)—

"(i) a fine in an amount not to exceed $2,000 per violation per affected worker;

"(ii) if the violation was willful, a fine in an amount not to exceed $5,000 per violation per affected worker;

"(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not to exceed $25,000 per violation per affected worker; and

"(B) for a violation of subsection (g)—

"(i) a fine in an amount not less than $500 and not more than $4,000 per violation per affected worker;

"(ii) if the violation was willful, a fine in an amount not less than $2,000 and not more than $5,000 per violation per affected worker; and

"(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not less than $6,000 and not more than $35,000 per violation per affected worker.

"(3) USE OF CIVIL PENALTIES.—All penalties collected under this subsection shall be deposited in the Treasury in accordance with section 286(w).

"(4) CRIMINAL PENALTIES.—If a willful and knowing violation of subsection (g) causes extreme physical or financial harm to an individual, the person in violation of such subsection may be imprisoned for not more than 6 months, fined in an amount not more than $35,000, or both.

"(m) DEFINITIONS.—In this section and in sections 218A, 218C, and 218D:

"(1) AGGRIEVED PERSON.—The term 'aggrieved person' means a person adversely affected by an alleged violation of this section, including—

"(A) a worker whose job, wages, or working conditions are adversely affected by the violation; and

"(B) a representative for workers whose jobs, wages, or working conditions are adversely affected by the violation who brings a complaint on behalf of such worker.

"(2) AREA OF EMPLOYMENT.—The terms 'area of employment' and 'area of intended employment' mean the area within normal commuting distance of the worksite or physical location at which the work of the worker is or will be performed. If such worksite or location is within a metropolitan statistical

area, any place within such area is deemed to be within the area of employment.

"(3) ELIGIBLE INDIVIDUAL.—The term "'eligible individual'" means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A) with respect to that employment.

"(4) EMPLOY; EMPLOYEE; EMPLOYER.—The terms 'employ', 'employee', and 'employer' have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

"(5) FOREIGN LABOR CONTRACTOR.—The term 'foreign labor contractor' means any person who for any compensation or other valuable consideration paid or promised to be paid, performs any foreign labor contracting activity.

"(6) FOREIGN LABOR CONTRACTING ACTIVITY.—The term 'foreign labor contracting activity' means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a nonimmigrant alien described in section 101(a)(15)(H)(ii)(c).

"(7) H–2C NONIMMIGRANT.—The term 'H–2C nonimmigrant' means a nonimmigrant described in section 101(a)(15)(H)(ii)(c).

"(8) SEPARATION FROM EMPLOYMENT.—The term 'separation from employment' means the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract. The term does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether the employee accepts the offer. Nothing in this paragraph shall limit an employee's rights under a collective bargaining agreement or other employment contract.

"(9) UNITED STATES WORKER.—The term 'United States worker' means an employee who is—

"(A) a citizen or national of the United States; or

"(B) an alien who is—

"(i) lawfully admitted for permanent residence;

"(ii) admitted as a refugee under section 207;

"(iii) granted asylum under section 208; or

"(iv) otherwise authorized, under this Act or by the Secretary of Homeland Security, to be employed in the United States.".

(2) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 218A, as added by subsection (b)(2), the following:

"Sec. 218B. Employer obligations.".

(e) NUMERICAL LIMITATIONS.—Section 214(g)(1) (8 U.S.C. 1184(g)) is amended—

(1) by striking "(beginning with fiscal year 1992)";

(2) in subparagraph (B), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(C) under section 101(a)(15)(H)(ii)(c), may not exceed—

"(i) the number of visas recommended by the Commission on Immigration and the National Interest created by this Act

in its annual report to Congress submitted on the first of March every year; or

"(ii) if the Commission fails to make a recommendation, the number designated by the Commission in the prior fiscal year.".

(f) ADMISSION OF NONIMMIGRANTS.—

(1) PRESUMPTION OF NONIMMIGRANT STATUS.—Section 214(b) (8 U.S.C. 1184(b)) is amended by striking "and other than" and inserting "a nonimmigrant described in section 101(a)(15)(H)(ii)(c)), and".

(2) EVIDENCE TO ABANDON FOREIGN RESIDENCE.—Section 214(h) (8 U.S.C. 1184(h)) is amended by striking "H(i)(b) or (c)," and inserting "(H)(i)(b), H(i)(c), (H)(ii)(c),".

(g) RULEMAKING; EFFECTIVE DATE.—

(1) RULEMAKING.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Labor shall promulgate regulations, in accordance with the notice and comment provisions of section 553 of title 5, United States Code, to carry out the provisions of sections 218A and 218B of the Immigration and Nationality Act, as added by this section.

(2) EFFECTIVE DATE.—The amendments made by subsections (b), (c), and section 403 shall take effect on the date that is 1 year after the date of the enactment of this Act with regard to aliens, who, on such effective date, are in the foreign country where they maintain residence.

SEC. 403. RECRUITMENT OF UNITED STATES WORKERS.

(a) ELECTRONIC JOB REGISTRY.—The Secretary of Labor shall establish a publicly accessible web page on the Internet website of the Department of Labor that provides a single Internet link to each State workforce agency's statewide electronic registry of jobs available throughout the United States to United States workers.

(b) RECRUITMENT OF UNITED STATES WORKERS.—

(1) POSTING.—An employer shall attest that the employer has posted an employment opportunity at a prevailing wage level (as described in section 218B(c)(2)(C) of the Immigration and Nationality Act).

(2) RECORDS.—An employer shall maintain records for not less than 1 year after the date on which an H–2C nonimmigrant is hired that describe the reasons for not hiring any of the United States workers who may have applied for such position.

(c) OVERSIGHT AND MAINTENANCE OF RECORDS.—The Secretary of Labor shall promulgate regulations regarding the maintenance of electronic job registry records for the purpose of audit or investigation.

(d) ACCESS TO ELECTRONIC JOB REGISTRY.—The Secretary of Labor shall ensure that job opportunities advertised on an electronic job registry established under this section are accessible—

(1) by the State workforce agencies, which may further disseminate job opportunity information to other interested parties; and

(2) through the Internet, for access by workers, employers, labor organizations, and other interested parties.

SEC. 404. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS.

Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

''(n)(1) For purposes of adjustment of status under subsection (a), employment-based immigrant visas shall be made available to an alien having nonimmigrant status described in section 101(a)(15)(H)(ii)(c) upon the filing of a petition for such a visa—

''(A) by the alien's employer; or

"(B) by the alien, if the alien has been employed as an H–2C nonimmigrant in the United States for a cumulative total of 4 years.

"(2) An alien applying for adjustment of status shall—

"(A) pay an application fee of $100, in addition to the fee established by the Secretary of Homeland Security to process an application for adjustment of status;

"(B) be physically present in the United States;

"(C) establish evidence of continuous lawful employment; and

"(D)(i) meet the requirements under section 312 of the Immigration and Nationality Act; or

"(ii) be satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of the history and Government of the United States.

"(3) An alien shall demonstrate evidence of employment.

"(A) An alien may conclusively establish employment status in compliance with paragraph (2) by submitting records to the Secretary that demonstrate such employment, and have been maintained 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.

"(C) ADDITIONAL DOCUMENTS AND RESTRICTIONS.—The Secretary may—

"(i) designate additional documents to evidence employment in the United States; and

"(ii) set such terms and conditions on the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent fraudulent submissions.

"(4) An alien who demonstrates that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

"(5) Filing a petition under paragraph (1) on behalf of an alien or otherwise seeking permanent residence in the United States for such alien shall not constitute evidence of the alien's ineligibility for nonimmigrant status under section 101(a)(15)(H)(ii)(c).

"(6) The limitation regarding the period of authorized stay under section 218A(d) shall not apply to an H–2C nonimmigrant if—

"(A) a labor certification application filed under section 203(b) on behalf of such alien is pending;

"(B) an immigrant visa petition filed under section 204(b) on behalf of such alien is pending; or

"(C) an application for adjustment of status is pending.

"(7) The Secretary of Homeland Security shall extend the stay of an alien who qualifies for an exemption under paragraph (6) in 1-year increments until a final decision is made on the alien's lawful permanent residence.

"(8) Nothing in this subsection shall be construed to prevent an alien having nonimmigrant status described in section 101(a)(15)(H)(ii)(c) from filing an application for adjustment of status under this section in accordance with any other provision of law.".

SEC. 405. EMPLOYER COMPLIANCE.

(a) COMPLIANCE INVESTIGATORS.—The Secretary of Labor, subject to the availability of appropriations for such purpose, shall annually increase, by not less than 2,000, the number of positions for compliance investigators dedicated to enforcing compliance with this title, and the amendments made by this title.

(b) INCREASED PENALTIES FOR VIOLATING EMPLOYERS.—Any employer of a nonimmigrant alien described in section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)), as amended by section 402, that is subject to a fine under section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) or section 17 of the Occupational Safety and Health Act

of 1970 (29 U.S.C. 666) for a violation with respect to such alien or other affected workers, shall be required to pay a fine equal to twice the fine that would otherwise be assessed under such sections.

(c) ENSURING EMPLOYER COMPLIANCE WITH FEDERAL LABOR AND EMPLOYMENT LAWS.—

(1) COMPLIANCE.—Section 274A(d), as amended by section 301, is further amended—

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

"(D) MISREPRESENTATION.—United States Immigration and Customs Enforcement officials may not misrepresent to employees or employers that they are a member of any agency or organization that provides domestic violence services, enforces health and safety law or other labor laws, provides health care services, or any other services intended to protect life and safety."; and

(B) by adding at the end the following:

"(8) COORDINATION.—An investigation under paragraph (1) shall be coordinated with the appropriate regional office of the National Labor Relations Board, the Department of Labor, and all relevant State and local agencies that are charged with

enforcing workplace standards. Such coordination shall include gathering evidence from such agencies about past and pending charges filed against the entity under investigation not later than 3 years after the commencement of the investigation. Evidence gathered from such agencies shall be considered in determining whether the entity under investigation has violated subsection (a).''.

(2) REMEDIES.—Section 274A(i), as amended by section 301, is further amended by adding at the end the following:

''(3) REMEDIES.—A court may not deny back pay or any other monetary damages to a current or former employee based on the—

''(A) failure of the employer or employee to comply with the requirements of this section;

''(B) violation by the employer or employee of a provision of Federal law related to the Electronic Employment Verification System described in subsection (c) in establishing or maintaining the employment relationship; or

''(C) status of the employee before or after the termination of employment.''.

(3) PROTECTION AGAINST DISCRIMINATION.—Section 274B (8 U.S.C. 1324b) is amended—

(A) in subsection (a)—

(i) by amending paragraph (1) to read as follows:

"(1) IN GENERAL.—It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien defined in section 274A(h)(3)) with respect to—

"(A) the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

"(i) because of such individual's national origin; or

"(ii) in the case of a protected individual, because of such individual's citizenship status; or

"(B) the compensation, terms, conditions, or privileges of the employment of the individual."; and

(ii) in paragraph (6), by striking "if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1)" and inserting "in violation of paragraph (1),";

(B) in subsection (d)—

(i) in paragraph (1), by striking ''and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge'' and inserting ''Any such investigation shall begin not later than 180 days after the alleged discriminatory act. Any such complaint filed with an administrative law judge shall be filed not later than 1 year after the commencement of the independent investigation.''; and

(ii) by striking paragraph (3); and

(C) in subsection (g)(2)(B), by amending clause (iii) to read as follows:

''(iii)(I) to hire individuals directly and adversely affected, with back pay; and

''(II) to provide such other relief as the administrative law judge determines appropriate to make the individual whole;''.

(d) ENFORCING WORKPLACE SAFETY FOR IMMIGRANT WORKERS.—Section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)) is amended by adding at the end the following:

''(9)(A) In this paragraph, the term required personal protective equipment has the meaning given

the term personal protective equipment under section 1910.132(a) of title 29, Code of Federal Regulations.

''(B)(i) Not later than 30 days after the date of the enactment of this Act, the Secretary shall amend section 1910.132(a) of title 29, Code of Federal Regulations, to require employers to provide employees with required personal protective equipment at no cost to the employee.

''(ii) In promulgating any future standard under this section, the Secretary shall specify that the required personal protective equipment shall be provided at no cost to the employee.''.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title, and the amendments made by this title.

Subtitle B—Family and Employment Visa Reforms

CHAPTER 1—FAMILY AND EMPLOYMENT BASED IMMIGRANT VISAS

SEC. 411. RECAPTURE OF IMMIGRANT VISAS LOST TO BUREAUCRATIC DELAY.

(a) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) (8 U.S.C. 1151(c)) is amended to read as follows:

"(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—

"(1) IN GENERAL.—Subject to subparagraph (B), the worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to the sum of—

"(A) 480,000; and

"(B) the sum of—

"(i) the number computed under paragraph (2); and

"(ii) the number computed under paragraph (3).

"(2) UNUSED VISA NUMBERS FROM PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between—

"(A) the worldwide level of family-sponsored immigrant visas established for the previous fiscal year; and

"(B) the number of visas issued under section 203(a), subject to this subsection, during the previous fiscal year.

"(3) UNUSED VISA NUMBERS FROM FISCAL YEARS 1992 THROUGH 2007.—The number computed under this paragraph is the difference, if any, between—

"(A) the difference, if any, between—

"(i) the sum of the worldwide levels of family-sponsored immigrant visas established for fiscal years 1992 through 2007; and

"(ii) the number of visas issued under section 203(a), subject to this subsection, during such fiscal years; and

"(B) the number of unused visas from fiscal years 1992 through 2007 that were issued after fiscal year 2007 under section 203(a), subject to this subsection.".

(b) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—Section 201(d) (8 U.S.C. 1151(d)) is amended 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—

"(i) the sum of the worldwide levels of employment-based immigrant visas established for each of fiscal years 1992 through 2007; and

"(ii) the number of visas issued under section 203(b), subject to this subsection, during such fiscal years; and

"(B) the number of unused visas from fiscal years 1992 through 2007 that were issued after fiscal year 2007 under section 203(b), subject to this subsection.".

(c) ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

"(F) A derivative beneficiary as described in section 203(d) of an employment-based immigrant under section 203(b).

"(G) Aliens with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, if:

"(i) the achievements of such alien have been recognized in the field through extensive documentation;

"(ii) such alien seeks to enter the United States to continue work in the area of extraordinary ability; and

"(iii) the entry of such alien into the United States will substantially benefit prospectively the United States.

"(H) Aliens who have earned an advanced degree in the sciences (not including the social sciences), technology, engineering, or mathematics from a United States institution of higher education (as defined in section 1001(a) of title 20) and have been working in a field related to their degree subject in the United States under a nonimmigrant visa during the 2-year period preceding their application for an immigrant visa under section 203(b).

"(I) Alien physicians who have completed service requirements of a waiver or exemption requested by an interested State agency or by an interested Federal agency under section 214(l), including those alien physicians who completed such service before the date of the enactment of this subparagraph.

"(J) Aliens who are eligible for adjustment of status under section 245(n)(1) as an alien who described in section 101(a)(15)(H)(ii)(c)."

(d) REQUIREMENT TO SATISFY ELIGIBILITY REQUIREMENTS.—Section 203 (8 U.S.C. 1153) is amended by adding at the end the following new subsection:

"(i) REQUIREMENT TO SATISFY ELIGIBILITY REQUIREMENTS.—Notwithstanding the inapplicability of the worldwide levels specified in sections 201(c) and (d) to aliens described in section 201(b)(1), aliens described in section 201(b)(1) (H) and (I) must satisfy the requirements for eligibility for an immigrant visa under one of the preference categories under subsection (b).".

(e) DISCRETIONARY NATIONAL INTEREST POOL.—The discretionary national interest pool is the number that is the average of the difference between—

(1) the number of legal immigrant visas issued annually from fiscal year 1995 through fiscal year 2010; and

(2) the number of legal immigrant visas issued annually plus unauthorized entries estimated annually by the Secretary of Homeland Security from fiscal year 1995 through fiscal year 2010.

(f) APPLICABILITY.—The amendments made by subsection (c) shall apply to any immigrant petition or immigrant visa application—

(1) pending on the date of the enactment of this Act; or

(2) filed on or after such date of enactment.

(g) ELIMINATION OF THE EB–1A PREFERENCE CATEGORY.—Section 203(b)(1) (8 U.S.C. 1153(b)(1)) is amended—

(1) by striking subparagraph (A); and

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first fiscal year that commences no earlier than 9 months after the date of the enactment of the Comprehensive Immigration Reform Act of 2010.

SEC. 412. RECLASSIFICATION OF SPOUSES AND MINOR CHILDREN OF LEGAL PERMANENT RESIDENTS AS IMMEDIATE RELATIVES.

(a) IN GENERAL.—Section 201(b)(2) (8 U.S.C. 1151(b)(2)) is amended to read as follows:

"(2) IMMEDIATE RELATIVE.—

"(A) IN GENERAL.—

"(i) IMMEDIATE RELATIVE DEFINED.—In this subparagraph, the term 'immediate relative' means a child, spouse, or parent of a citizen of the United States or a child or spouse of a lawful permanent resident (and for each family member of a citizen or lawful permanent resident under this subparagraph, such individual's spouse or child who is accompanying or following to join the individual), except that, in the case of parents, such citizens shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States and was not legally separated from the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 204(a)(1)(A)(ii) within 2 years after such date and only until the date the spouse remarries. For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section

204(a)(1)(A) of this Act remains an immediate relative in the event that the United States citizen or lawful permanent resident spouse or parent loses United States citizenship on account of the abuse.''.

(b) ALLOCATION OF IMMIGRANT VISAS.—Section 203(a) (8 U.S.C. 1153(a)) is amended—

(1) in paragraph (1), by striking ''23,400'' and inserting ''127,200'';

(2) by striking paragraph (2) and inserting the following:

''(2) UNMARRIED SONS AND UNMARRIED DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence shall be allocated visas in a number not to exceed 80,640, plus any visas not required for the class specified in paragraph (1).'';

(3) in paragraph (3), by striking ''23,400'' and inserting ''80,640''; and

(4) in paragraph (4), by striking ''65,000'' and inserting ''191,520''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) RULES FOR DETERMINING WHETHER CERTAIN ALIENS ARE IMMEDIATE RELATIVES.—Section 201(f) (8 U.S.C. 1151(f)) is amended—

(A) in paragraph (1), by striking ''paragraphs (2) and (3),'' and inserting ''paragraph (2),'';

(B) by striking paragraph (2);

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(D) in paragraph (3), as redesignated by subparagraph (C), by striking ''through (3)'' and inserting ''and (2)''.

(2) NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE.—Section 202 (8 U.S.C. 1152) is amended—

(A) in subsection (a)(4)—

(i) by striking subparagraphs (A) and (B);

(ii) by redesignating subparagraphs (C) and (D) as subparagraphs (A) and (B), respectively; and

(iii) in subparagraph (A), as redesignated by clause (ii), by striking ''section 203(a)(2)(B)'' and inserting ''section 203(a)(2)''; and

(B) in subsection (e), in the flush matter following paragraph (3), by striking ", or as limiting the number of visas that may be issued under section 203(a)(2)(A) pursuant to subsection (a)(4)(A)".

(3) ALLOCATION OF IMMIGRATION VISAS.—Section 203(h) (8 U.S.C. 1153(h)) is amended—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking "subsections (a)(2)(A) and (d)" and inserting "subsection (d)";

(ii) in subparagraph (A), by striking "becomes available for such alien (or, in the case of subsection (d), the date on which an immigrant visa number became available for the alien's parent)," and inserting "became available for the alien's parent,"; and

(iii) in subparagraph (B), by striking "applicable";

(B) by amending paragraph (2) to read as follows:

"(2) PETITIONS DESCRIBED.—The petition described in this paragraph is a petition filed under

section 204 for classification of the alien's parent under subsection (a), (b), or (c).''; and

(C) in paragraph (3), by striking ''subsections (a)(2)(A) and (d)'' and inserting ''subsection (d)''.

(4) PROCEDURE FOR GRANTING IMMIGRANT STATUS.—Section 204 (8 U.S.C. 1154) is amended—

(A) in subsection (a)(1)—

(i) in subparagraph (A)—

(I) in clause (i), by inserting ''or lawful permanent resident'' after ''citizen'';

(II) in clause (ii), by striking ''described in the second sentence of section 201(b)(2)(A)(i) also'' and inserting '', alien child, or alien parent described in section 201(b)(2)(A)'';

(III) in clause (iii)—

(aa) in subclause (I)(aa), by inserting ''or legal permanent resident'' after ''citizen''; and

(bb) in subclause (II)(aa)—

(AA) in subitems (AA) and (BB), by inserting ''or

legal permanent resident;'' after ''citizen'' each place that term appears;

(BB) in subitem (CC), by inserting ''or legal permanent resident'' after ''citizen'' each place that term appears; and

(CC) in subitem (CC)(bbb), by inserting ''or legal permanent resident'' after ''citizenship'';

(IV) in clause (iv), by inserting ''or legal permanent resident'' after ''citizen'' each place that term appears;

(V) in clause (v)(I), by inserting ''or legal permanent resident'' after ''citizen''; and

(VI) in clause (vi)—

(aa) by inserting ''or legal permanent resident status'' after ''renunciation of citizenship''; and

(bb) by inserting "or legal permanent resident" after "abuser's citizenship";

(ii) by striking subparagraph (B);

(iii) in subparagraph (C), by striking "subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii)" and inserting "clause (iii) or (iv) of subparagraph (A)"; and

(iv) in subparagraph (J), by striking "or clause (ii) or (iii) of subparagraph (B)";

(B) in subsection (a), by striking paragraph (2);

(C) in subsection (c)(1), by striking "or preference status"; and

(D) in subsection (h), by striking "or a petition filed under subsection (a)(1)(B)(ii)".

(d) COUNTRY LIMIT.—Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is amended to read as follows:

"(2) PER COUNTRY LEVELS FOR FAMILY-SPONSORED AND EMPLOYMENT-BASED IMMIGRANTS.—Subject to paragraphs (3), (4), and (5) the total number of immigrant visas made available to natives of any single foreign state under subsection (a) of section 203 in any fiscal year may not exceed 15

percent of the total number of such visas made available under such subsection in that fiscal year.''.

SEC. 413. PROMOTING FAMILY UNITY.

(a) UNLAWFULLY PRESENT ALIENS.—Section 212(a)(9) (8 U.S.C. 1182(a)(9)) is amended—

(1) by striking subparagraph (B) and inserting the following:

''(B) ALIENS UNLAWFULLY PRESENT.—

''(i) IN GENERAL.—Subject to the provisions of clause (iii), any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more is inadmissible until such time as the alien departs or is removed and remains outside of the United States for a period of 3 consecutive years.

''(ii) CONSTRUCTION OF UNLAWFUL PRESENCE.—For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Secretary or is present in the United 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).

"(IV) BATTERED WOMEN AND CHILDREN.—Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if 'violation of the terms of the alien's nonimmigrant visa' were substituted for 'unlawful entry into the United States' in subclause (III) of that paragraph.

"(V) TRAFFICKING VICTIMS.—Clause (i) shall not apply to an alien who demonstrates that the severe form of trafficking (as that term is defined in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102)) was at least one central reason for the alien's unlawful presence in the United States.

"(VI) IMMIGRANT VISAS.—Clause (i) shall not apply to an alien for whom an immigrant visa is available or was available on or before the date of the enactment of the Comprehensive Immigration Reform Act of 2011, and is otherwise admissible to the

United States for permanent residence.

"(VII) UNLAWFUL PRESENCE PRIOR TO THE CIR ACT OF 2010.—Any unlawful presence accrued by an alien as of the date of enactment of this Comprehensive Immigration Reform Act of 2011 shall not be considered unlawful presence for the purpose of this subparagraph if such alien was as of the date of enactment of this Comprehensive Immigration Reform Act of 2011—

"(aa) the beneficiary of a pending or approved petition for classification as an immediate relative (as described in section 201(b)(2));

"(bb) the beneficiary of a pending or approved petition under section 203(a) or (b); or

"(cc) a derivative beneficiary of a pending or approved petition for classification as an immediate

relative or under section 203(a) or (b).

"(iv) TOLLING FOR GOOD CAUSE.—In the case of an alien who—

"(I) has been lawfully admitted or paroled into the United States;

"(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Secretary; and

"(III) has not been employed without authorization in the United States before or during the pendency of such application, the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

"(v) WAIVER.—The Secretary has sole discretion to waive clause (i) in the case of an immigrant who is the spouse, son, daughter or parent of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to

the satisfaction of the Secretary that the refusal of admission to such immigrant alien would result in hardship to the alien or to the citizen or lawfully resident spouse, son, daughter, or parent of such alien or if the Secretary determines in her unreviewable discretion that a waiver is necessary for humanitarian purposes or the public interest or to ensure family unity in the case of an alien who is eligible for an immigrant visa under section 201 or 203. Clause (i) may also be waived by the Secretary, in her sole and unreviewable discretion, if she permits the alien to depart the United States voluntarily pursuant to section 240B(a)(1). No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.''; and

(2) by striking subparagraph (C).

(b) FALSE CLAIMS AND MISREPRESENTATIONS.—Title II (8 U.S.C. 1151 et seq.) is amended—

(1) in section 212 (8 U.S.C. 1182)—

(A) in subsection (a)(6)(C)—

(i) in clause (ii), by inserting ''and willfully'' after ''falsely'' each place such term appears; and

(ii) in clause (iii), by striking ''of clause (i)''; and

(B) in subsection (i), by amending paragraph (1) to read as follows:

''(1) The Attorney General or the Secretary of Homeland Security may, in the discretion of the Attorney General or the Secretary, waive the application of subsection (a)(6)(C) if it is established to the satisfaction of the Attorney General or the Secretary that the refusal of admission to the United States would—

''(A) result in extreme hardship to the alien or, in the case of an immigrant who is the parent, spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, to the citizen or lawfully resident parent, spouse, son, or daughter; or

''(B) in the case of a VARA self-petitioner, result in significant hardship to the alien or the alien's United States citizen, lawful permanent

resident, or qualified alien parent or child.''; and

(2) in section 237(a)(3)(D) (8 U.S.C. 1227(a)(3)(D)), by inserting ''and willfully'' after ''falsely'' each place such term appears.

SEC. 414. DISCRETIONARY AUTHORITY WITH RESPECT TO REMOVAL OR DEPORTATION OF CITIZEN AND RESIDENT IMMEDIATE FAMILY MEMBERS.

Section 240(c)(4) (8 U.S.C. 1229a(c)(4)) is amended by adding at the end the following:

''(D) JUDICIAL DISCRETION.—In the case of an alien subject to removal, deportation, or exclusion, the immigration judge may exercise discretion to decline to order the alien removed, deported or excluded from the United States if the judge determines that such removal, deportation, or exclusion is against the public interest or would result in hardship to the alien's United States citizen or permanent resident parent, spouse or child except that this subparagraph shall not apply to an alien whom the judge determines—

''(i) is described in subparagraphs (B), (C), (D)(ii), (E), (H), (I), or (J) of section 212(a)(2);

"(ii) is described in section 212(a)(3);

"(iii) subparagraphs (A), (C), or (D) of section 212(a)(10);

"(iv) is described in section 237(a)(4); or

"(v) has engaged in conduct described in paragraph (8) or (9) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).".

SEC. 415. MILITARY FAMILIES.

(a) IN GENERAL.—The Secretary or the Attorney General shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence if the alien—

(1) applies for such adjustment;

(2) is admissible to the United States as an immigrant, except as provided in subsection (d);

(3) pays a fee in an amount determined by the Secretary for the processing of such application (unless such fee is waived by the Secretary); and

(4) is physically present in the United States.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided under subsection (a) shall only apply to an alien who is—

(1) a parent, spouse, child, son, or daughter (and their spouse, child, son, or daughter, if any) of—

(A) a living Armed Forces member described in subsection (c); or

(B) a deceased Armed Forces member described in subsection (c) if—

(i) the Armed Forces member died as a result of injury or disease incurred in or aggravated by the Armed Forces member's service; and

(ii) the alien applies for such adjustment—

(I) if the death of the Armed Forces member occurred prior to the date of the enactment of this Act, not later than 2 years after the date of such enactment; or

(II) if the death of the Armed Forces member occurred after the date of the enactment of this Act, not later than 2 years after the death of the Armed Forces member; or

(2) a son or daughter described in paragraph (1) or (3) of section 203(a) of the Immigration and

Nationality Act (8 U.S.C. 1153(a)) who has a Filipino parent who was naturalized pursuant to section 405 of the Immigration Act of 1990 (8 U.S.C. 1440 note).

(c) ARMED FORCES MEMBER DEFINED.—In this section, the term ''Armed Forces member'' means any person who—

(1) is, or was at the time of the person's death described in subsection (b)(1)(B)(i), a United States citizen or lawfully admitted for permanent residence;

(2) is serving, or has served honorably on or after October 7, 2001, as a member of the National Guard or the Selected Reserve of the Ready Reserve, or in an active-duty status in the military, air, or naval forces of the United States; and

(3) if separated from the service described in paragraph (2), was separated under honorable conditions.

(d) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—

(1) IN GENERAL.—The provisions of paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply to adjustment of status under this Act.

(2) ADDITIONAL WAIVERS.—The Secretary of Homeland Security or the Attorney General may waive any other provision of section 212(a) of such Act (other than paragraph (2)(C) and subparagraphs (A), (B), (C), (E), and (F) of paragraph (3)) with respect to an adjustment of status under this Act—

(A) for humanitarian purposes;

(B) to assure family unity; or

(C) if such waiver is otherwise in the public interest.

(e) RECORD OF ADJUSTMENT.—Upon the approval of an application for adjustment of status under this Act, the Secretary of Homeland Security shall create a record of the alien's admission as an alien lawfully admitted for permanent residence.

(f) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—

(1) IN GENERAL.—If an alien is lawfully admitted for permanent residence under this Act, the Secretary of State shall not reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(2) EXEMPTION FROM DIRECT NUMERICAL LIMITATIONS.—Section 201(b)(1) of the Immigration

and Nationality Act (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

"(F) Aliens who are described in paragraph (1) or (3) of section 203(a) and have a Filipino parent who was naturalized pursuant to section 405 of the Immigration Act of 1990 (8 U.S.C. 1440 note).".

SEC. 416. EQUAL TREATMENT FOR ALL STEPCHILDREN.

Section 101(b)(1)(B) (8 U.S.C. 1101(b)(1)(B)) is amended by striking ", provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred".

SEC. 417. WIDOWS, WIDOWERS, AND ORPHANS.

(a) PROTECTION FOR CERTAIN SURVIVING RELATIVES.—Section 204(l)(1) (8 U.S.C. 1154(l)(1) is amended by adding at the end the following: "An alien is not required to reside in the United States to qualify to have his or her petition or application adjudicated under this paragraph if the alien is described in subparagraph (A), (B), or (C) of paragraph (2) and his or her priority date was current at the time of the qualifying relative's death or is described in subparagraph (D), (E), or (F) of paragraph (2)."

"(1) IN GENERAL.—An alien described in paragraph (2) who resided in the United States at the

time of the death of the qualifying relative and who continues to reside in the United States''.

(b) CONTINUED WAIVER ELIGIBILITY FOR WIDOWS, WIDOWERS, AND ORPHANS.—Section 212(a)(1)(B) (8 U.S.C. 1182(a)(1)(B)) is amended to read as follows:

''(B) WAIVER FOR WIDOWS, WIDOWERS, AND ORPHANS.—An alien who would have been statutorily eligible for a waiver of inadmissibility under this Act, if his or her qualifying relative had not died, may be considered for any waiver under this Act notwithstanding such death, which shall constitute the functional equivalent of extreme hardship to the qualifying relative.''.

(c) NATURALIZATION OF SURVIVING RELATIVES.—Section 319(a) (8 U.S.C. 1430(a)) is amended by inserting ''(or, if the spouse is deceased, the spouse was a citizen of the United States)'' after ''citizen of the United States''.

SEC. 418. FIANCÉ CHILD STATUS PROTECTION.

(a) DEFINITION.—Section 101(a)(15)(K)(iii) (8 U.S.C. 1101(a)(15)(K)(iii)) is amended by inserting '', provided that a determination of the age of such minor child is made using the age of the alien on the date on which the petition is filed with the Secretary of Homeland

Security to classify the alien's parent as the fiancé or fiancé of a United States citizen (in the case of an alien parent described in clause (i)) or as the spouse of a United States citizen under section 201(b)(2)(A)(i) (in the case of an alien parent described in clause (ii));'' before the semicolon at the end.

(b) ADJUSTMENT OF STATUS AUTHORIZED.—Section 214(d) (8 U.S.C. 1184(d)(1)) is amended—

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

(2) in paragraph (1), by striking ''In the event'' and inserting the following:

''(2)(A) If an alien does not marry the petitioner under paragraph (1) within 3 months after the alien and the alien's minor children are admitted into the United States, such alien and children shall be required to depart from the United States. If such aliens fail to depart from the United States, they shall be removed in accordance with sections 240 and 241.

''(B) Subject to subparagraphs (C) and (D), if an alien marries the petitioner described in section 101(a)(15)(K)(i) within 3 months after the alien is admitted into the United States, the Secretary of Homeland Security or the Attorney General, subject

to the provisions of section 245(d), may adjust the status of the alien, and any minor children accompanying or following to join the alien, to that of an alien lawfully admitted for permanent residence on a conditional basis under section 216 if the alien and any such minor children apply for such adjustment and are not determined to be inadmissible to the United States.

''(C) Paragraphs (5) and (7)(A) of section 212(a)) shall not apply to an alien who is eligible to apply for adjustment of his or her status to an alien lawfully admitted for permanent residence under this section.

''(D) An alien eligible for a waiver of inadmissibility as otherwise authorized under this Act shall be permitted to apply for adjustment of his or her status to that of an alien lawfully admitted for permanent residence under this section.''.

(c) AGE DETERMINATION.—Section 245(d) (8 U.S.C. 1155(d)) is amended—

(1) by inserting ''(1)'' before ''The Attorney General''; and

(2) by adding at the end the following:

''(2) A determination of the age of an alien admitted to the United States under section

101(a)(15)(K)(iii) shall be made, for purposes of adjustment to the status of an alien lawfully admitted for permanent residence on a conditional basis under section 216, using the age of the alien on the date on which the petition is filed with the Secretary of Homeland Security to classify the alien's parent as the fiancé or fiancé of a United States citizen (in the case of an alien parent admitted to the United States under section 101(a)(15)(K)(i)) or as the spouse of a United States citizen under section 201(b)(2)(A)(i) (in the case of an alien parent admitted to the United States under section 101(a)(15)(K)(ii)).''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this subsection shall be effective as if included in the Immigration Marriage Fraud Amendments of 1986 (Public Law 99–639).

(2) APPLICABILITY.—The amendments made by this subsection shall apply to all petitions or applications described in such amendments that—

(A) are pending as of the date of the enactment of this Act; or

(B) have been denied, but would have been approved if such amendments had been in effect

at the time of adjudication of the petition or application.

(3) MOTION TO REOPEN OR RECONSIDER.—A motion to reopen or reconsider a petition or application described in subparagraph (B)(ii) shall be granted if such motion is filed with the Secretary or the Attorney General not later than 2 years after the date of the enactment of this Act.

SEC. 419. SPECIAL HUMANITARIAN VISAS.

Section 103 (8 U.S.C. 1103) is amended by adding at the end the following:

''(i) AUTHORITY TO WAIVE ELIGIBILITY REQUIREMENTS FOR SPECIAL HUMANITARIAN CONSIDERATIONS.—Notwithstanding any other provision of law, the Secretary of Homeland Security may waive any requirements under this Act on behalf of not more than 1,000 aliens whose circumstances involve special humanitarian considerations.''.

SEC. 420. EXEMPTION FROM IMMIGRANT VISA LIMIT FOR CERTAIN VETERANS FROM THE PHILIPPINES.

Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

''(F) Aliens who are eligible for an immigrant visa under paragraph (1) or (3) of section 203(a) and who have a parent who was naturalized pursu-

ant to section 405 of the Immigration Act of 1990 (8 U.S.C. 1440 note).''.

SEC. 420A. DETERMINATIONS UNDER THE HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998.

(a) IN GENERAL.—Section 902(d) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note) is amended by adding at the end the following:

''(3) DETERMINATIONS WITH RESPECT TO CHILDREN.—

''(A) USE OF APPLICATION FILING DATE.—Determinations made under this subsection as to whether an individual is a child of a parent shall be made using the age and marital status of the individual on October 21, 1998.

''(B) APPLICATION SUBMISSION BY PARENT.—Notwithstanding paragraph (1)(C), an application under this subsection filed based on status as a child may be filed for the benefit of such child by a parent or guardian of the child, if the child is physically present in the United States on such filing date.''.

(b) NEW APPLICATIONS AND MOTIONS TO REOPEN.—

(1) NEW APPLICATIONS.—Notwithstanding section 902(a)(1)(A) of the Haitian Refugee Immigration Fairness Act of 1998, an alien who is eligible for adjustment of status under such Act may submit an application for adjustment of status under such Act not later than the later of—

(A) 2 years after the date of the enactment of the Comprehensive Immigration Reform Act of 2011; or

(B) 1 year after the date on which final regulations are promulgated to implement this section and the amendment made by subsection (a).

(2) MOTIONS TO REOPEN.—The Secretary shall establish procedures for the reopening and reconsideration of applications for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998 that are affected by the amendment made by subsection (a).

(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—Section 902(a)(3) of the Haitian Refugee Immigration Fairness Act of 1998 shall apply to an alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily, and who files an applica-

tion under paragraph (1) or a motion under paragraph (2), in the same manner as such section 902(a)(3) applied to aliens filing applications for adjustment of status under such Act prior to April 1, 2000.

(c) INADMISSIBILITY DETERMINATION.—Section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note) is amended—

(1) in subsection (a)(1)(B), by inserting ''(6)(C)(i),'' after ''(6)(A),''; and

(2) in subsection (d)(1)(D), by inserting ''(6)(C)(i),'' after ''(6)(A),''.

SEC. 420B. AFFIDAVIT OF SUPPORT.

Section 213A (8 U.S.C. 1183a) is amended—

(1) in subsection (a)(1)(A) by striking ''125'' and inserting ''100'';

(2) in subsection (f)(1)(E), by striking ''125'' and inserting ''100'';

(3) in subsection (f)(4)(B)(i), by striking ''125'' and inserting ''100''; and

(4) in subsection (f)(5)(A), by striking ''125'' and inserting ''100''.

SEC. 420C. RETAINING WORKERS SUBJECT TO GREEN CARD BACKLOG.

(a) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—Section 245 (8 U.S.C. 1255), as amended by section 404, is further amended by adding at the end the following:

"(o) ADJUSTMENT OF STATUS FOR EMPLOYMENT-BASED IMMIGRANTS.—

"(1) ELIGIBILITY.—The Secretary of Homeland Security shall promulgate regulations to provide for the filing of an application for adjustment of status by an alien (and any eligible dependents of such alien), regardless of whether an immigrant visa is immediately available at the time the application is filed, if the alien—

"(A) has an approved petition under subparagraph (E) or (F) of section 204(a)(1); or

"(B) at the discretion of the Secretary, has a pending petition under subparagraph (E) or (F) of section 204(a)(1).

"(2) VISA AVAILABILITY.—An application filed pursuant to paragraph (1) may not be approved until an immigrant visa becomes available.

"(3) FEES.—If an application is filed pursuant to paragraph (1), the beneficiary of such application shall pay a supplemental fee of $500. Such fee may not be charged to any dependent accompanying or following to join such beneficiary.

"(4) EXTENSION OF EMPLOYMENT AUTHORIZATION AND ADVANCED PAROLE DOCUMENT.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall provide employment authorization and advanced parole documents, in 3-year increments, to beneficiaries of an application for adjustment of status based on a petition that is filed or, at the discretion of the Secretary, pending, under subparagraph (E) or (F) of section 204(a)(1).

"(B) FEE ADJUSTMENTS.—Application fees under this subsection may be adjusted in accordance with the 3-year period of validity assigned to the employment authorization or advanced parole documents under subparagraph (A).".

(b) USE OF FEES.—Section 286 (8 U.S.C. 1356) is amended—

(1) in subsection (m)—

(A) by striking "Notwithstanding any other provisions of law," and inserting the following:

"(c) IMMIGRATION EXAMINATIONS FEE ACCOUNT.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, all fees collected under section 245(o)(3) and";

(B) by striking ": Provided, however, That all" and inserting the following:

"(2) VIRGIN ISLANDS; GUAM.—All"; and

(C) by striking ": Provided further, That fees" and inserting the following:

"(3) COST RECOVERY.—Fees".

(2) in subsection (n)—

(A) by striking "(n) All deposits" and inserting the following:

"(4) USE OF FUNDS.—

"(A) IN GENERAL.—Except as provided under subparagraph (B), all deposits"; and

(B) adding at the end the following:

"(C) SUPPLEMENTAL FEE FOR ADJUSTMENT OF STATUS OF EMPLOYMENT-BASED IMMIGRANTS.—Any amounts deposited into the Immigration Examinations Fee Account that were collected under section 245(o)(3) shall remain available until expended by the Secretary of Homeland Security for backlog reduction and clearing security background check delays.";

(3) in subsection (o), by striking ''(o) The Attorney General'' and inserting the following:

''(5) ANNUAL FINANCIAL REPORT TO CONGRESS.—The Attorney General''; and

(4) in subsection (p), by striking ''(p) The provisions set forth in subsections (m), (n), and (o) of this section'' and inserting the following:

''(6) APPLICABILITY.—The provisions set forth in this subsection shall''.

SEC. 420D. RETURN OF TALENT PROGRAM.

(a) SHORT TITLE.—This section may be cited as the ''Return of Talent Act''.

(b) ESTABLISHMENT.—

(1) IN GENERAL.—Title III (8 U.S.C. 1401 et seq.) is amended by inserting after section 317 the following:

''SEC. 317A. TEMPORARY ABSENCE OF PERSONS PARTICIPATING IN THE RETURN OF TALENT PROGRAM.

''(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall establish the Return of Talent Program to permit eligible aliens to temporarily return to the alien's country of citizenship in order to make a material contribution to that 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) for purposes of section 316(a), physically present and residing in the United States for purposes of naturalization within the meaning of that section; and

"(2) for purposes of section 316(b), to meet the continuous residency requirements in that section.

"(f) OVERSIGHT AND ENFORCEMENT.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall oversee and enforce the requirements of this section.".

(2) TABLE OF CONTENTS.—The table of contents (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 317 the following:

"Sec. 317A. Temporary absence of persons participating in the Return of Talent Program.".

(c) ELIGIBLE IMMIGRANTS.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)), as amended by section 517, is further amended by adding at the end the following:

"(O) an immigrant who—

"(i) has been lawfully admitted to the United States for permanent residence;

"(ii) demonstrates an ability and willingness to make a material contribution to 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

U.S. Mission, or the appropriate Assistant Secretary of State, that is beyond the ability of such country's response capacity and warrants a response by the United States Government.''.

(d) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of State, shall submit a report to Congress that describes—

(1) the countries of citizenship of the participants in the Return of Talent Program established under section 317A of the Immigration and Nationality Act, as added by subsection (b);

(2) the post-conflict or natural disaster reconstruction efforts that benefitted, or were made possible, through participation in the program; and

(3) any other information that the Secretary determines to be appropriate.

(e) REGULATIONS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall promulgate regulations to carry out this section and the amendments made by this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to United States Citi-

zenship and Immigration Services such sums as may be necessary to carry out this section and the amendments made by this section.

CHAPTER 2—UNITING AMERICAN FAMILIES ACT

SEC. 421. SHORT TITLE.

This chapter may be cited as the ''Uniting American Families Act of 2010''.

SEC. 422. DEFINITIONS.

(a) PERMANENT PARTNER AND PERMANENT PARTNERSHIP.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following:

''(52) The term 'permanent partner' means an individual 18 years of age or older who—

''(A) is in a committed, intimate relationship with another individual 18 years of age or older in which both parties intend a lifelong commitment;

''(B) is financially interdependent with that other individual;

''(C) is not married to or in a permanent partnership with anyone other than that other individual;

"(D) is unable to contract with that other individual a marriage cognizable under this Act; and

"(E) is not a first, second, or third degree blood relation of that other individual.

"(53) The term 'permanent partnership' means the relationship that exists between 2 permanent partners.

"(54) The term 'alien permanent partner' means the individual in a permanent partnership who is being sponsored for a visa.".

(b) DERIVATIVE STATUS FOR PERMANENT PARTNERS OF NONIMMIGRANT VISA HOLDERS.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended—

(1) in subparagraph (E), by inserting "or permanent partner" after "spouse";

(2) in subparagraph (F)(ii), by inserting "or permanent partner" after "spouse";

(3) in subparagraph (G)(i), by inserting ", which shall include his or her permanent partner" after "members of his or their immediate family";

(4) in subparagraph (G)(ii), by inserting ", which shall include permanent partners," after "the members of their immediate families";

(5) in subparagraph (G)(iii), by inserting ", which shall include his permanent partner," after "the members of his immediate family";

(6) in subparagraph (G)(iv), by inserting ", which shall include permanent partners" after "the members of their immediate families";

(7) in subparagraph (G)(v), by inserting ", which shall include permanent partners" after "the members of the immediate families";

(8) in subparagraph (H)(iii), by inserting "or permanent partner" after "spouse";

(9) in subparagraph (I), by inserting "or permanent partner" after "spouse";

(10) in subparagraph (J), by inserting "or permanent partner" after "spouse";

(11) in subparagraph (K)(ii), by inserting "or permanent partnership" after "marriage";

(12) in subparagraph (L), by inserting "or permanent partner" after "spouse";

(13) in subparagraph (M)(ii), by inserting "or permanent partner" after "spouse";

(14) in subparagraph (O)(iii), by inserting "or permanent partner" after "spouse";

(15) in subparagraph (P)(iv), by inserting "or permanent partner" after "spouse";

(16) in subparagraph (Q)(ii)(II), by inserting ''or permanent partner'' after ''spouse'';

(17) in subparagraph (R), by inserting ''or permanent partner'' after ''spouse'';

(18) in subparagraph (S), by inserting ''or permanent partner'' after ''spouse'';

(19) in subparagraph (T)(ii)(I), by inserting ''or permanent partner'' after ''spouse'';

(20) in subparagraph (T)(ii)(II), by inserting ''or permanent partner'' after ''spouse'';

(21) in subparagraph (U)(ii)(I), by inserting ''or permanent partner'' after ''spouse'';

(22) in subparagraph (U)(ii)(II), by inserting ''or permanent partner'' after ''spouse''; and

(23) in subparagraph (V), by inserting ''permanent partner or'' after ''beneficiary (including a''.

(c) CHILD.—Section 101(b)(1) (8 U.S.C. 1101(b)(1)) is amended by adding at the end the following:

''(H)(i) a biological child of an alien permanent partner if the child was under the age of 18 at the time the permanent partnership was formed; or

''(ii) a child adopted by an alien permanent partner while under the age of 16 years if the child has been in the legal custody of, and has

resided with, such adoptive parent for at least 2 years and if the child was under the age of 18 at the time the permanent partnership was formed.''.

SEC. 423. AVAILABILITY OF IMMIGRANT VISAS FOR PERMANENT PARTNERS.

(a) WORLDWIDE LEVEL OF IMMIGRATION.—Section 201(b)(2)(A)(i) (8 U.S.C. 1151(b)(2)(A)(i)) is amended—

(1) by inserting ''permanent partners,'' after ''spouses,'';

(2) by inserting ''or permanent partner'' after ''spouse'' each place it appears;

(3) by inserting ''(or, in the case of a permanent partnership, whose permanent partnership was not terminated)'' after ''was not legally separated from the citizen''; and

(4) by striking ''remarries.'' and inserting ''remarries or enters a permanent partnership with another person.''.

(b) NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.—

(1) PER COUNTRY LEVELS.—Section 202(a)(4) (8 U.S.C. 1152(a)(4)) is amended—

(A) in the heading, by inserting '', PERMANENT PARTNERS,'' after ''SPOUSES'';

(B) in the heading of subparagraph (A), by inserting ", PERMANENT PARTNERS," after "SPOUSES"; and

(C) in the heading of subparagraph (C), by striking "AND DAUGHTERS" inserting "WITHOUT PERMANENT PARTNERS AND UNMARRIED DAUGHTERS WITHOUT PERMANENT PARTNERS".

(2) RULES FOR CHARGEABILITY.—Section 202(b)(2) (8 U.S.C. 1152(b)(2)) is amended—

(A) by inserting "or permanent partner" after "spouse" each place it appears; and

(B) by inserting "or permanent partners" after "husband and wife".

(c) ALLOCATION OF IMMIGRANT VISAS.—

(1) PREFERENCE ALLOCATION FOR FAMILY MEMBERS OF PERMANENT RESIDENT ALIENS.—Section 203(a)(2) (8 U.S.C. 1153(a)(2)) is amended—

(A) in the heading—

(i) by striking "AND" after "SPOUSES" and inserting , "PERMANENT PARTNERS,"; and

(ii) by inserting "WITHOUT PERMANENT PARTNERS" after "SONS" and after "DAUGHTERS";

(B) in subparagraph (A), by inserting ", permanent partners," after "spouses"; and

(C) in subparagraph (B), by inserting "without permanent partners" after "sons" and after "daughters".

(2) PREFERENCE ALLOCATION FOR SONS AND DAUGHTERS OF CITIZENS.—Section 203(a)(3) (8 U.S.C. 1153(a)(3)) is amended—

(A) in the heading, by inserting "AND DAUGHTERS AND SONS WITH PERMANENT PARTNERS" after "DAUGHTERS"; and

(B) by inserting ", or daughters or sons with permanent partners," after "daughters".

(3) EMPLOYMENT CREATION.—Section 203(b)(5)(A)(ii) (8 U.S.C. 1153(b)(5)(A)(ii)) is amended by inserting "permanent partner," after "spouse,".

(4) TREATMENT OF FAMILY MEMBERS.—Section 203(d) (8 U.S.C. 1153(d)) is amended by inserting ", permanent partner," after "spouse" each place it appears.

SEC. 423A. PROCEDURE FOR GRANTING IMMIGRANT STATUS.

(a) CLASSIFICATION PETITIONS.—Section 204(a)(1) (8 U.S.C. 1154(a)(1)) is amended—

(1) in subparagraph (A)(ii), by inserting ''or permanent partner'' after ''spouse'';

(2) in subparagraph (A)(iii)—

(A) by inserting ''or permanent partner'' after ''spouse'' each place it appears; and

(B) in subclause (I), by inserting ''or permanent partnership'' after ''marriage'' each place it appears;

(3) in subparagraph (A)(v)(I), by inserting ''permanent partner,'' after ''is the spouse,'';

(4) in subparagraph (A)(vi)—

(A) by inserting ''or termination of the permanent partnership'' after ''divorce''; and

(B) by inserting '', permanent partner,'' after ''spouse''; and

(5) in subparagraph (B)—

(A) by inserting ''or permanent partner'' after ''spouse'' each place it appears;

(B) by inserting ''or permanent partnership'' after ''marriage'' in clause (ii)(I)(aa) and the first place it appears in clause (ii)(I)(bb); and

(C) in clause (ii)(II)(aa)(CC)(bbb), by inserting ''(or the termination of the permanent

partnership)'' after ''termination of the marriage''.

(b) IMMIGRATION FRAUD PREVENTION.—Section 204(c) (8 U.S.C. 1154(c)) is amended—

(1) by inserting ''or permanent partner'' after ''spouse'' each place it appears; and

(2) by inserting ''or permanent partnership'' after ''marriage'' each place it appears.

SEC. 424. ADMISSION OF REFUGEES AND ASYLEES.

(a) ANNUAL ADMISSION OF REFUGEES AND ADMISSION OF EMERGENCY SITUATION REFUGEES.—Section 207(c) (8 U.S.C. 1157(c)) is amended—

(1) in paragraph (2)—

(A) by inserting ''or permanent partner'' after ''spouse'' each place it appears; and

(B) by inserting ''or permanent partner's'' after ''spouse's''; and

(2) in paragraph (4), by inserting ''or permanent partner'' after ''spouse''.

(b) ASYLUM.—Section 208(b)(3) (8 U.S.C. 1158(b)(3)) is amended—

(1) in the heading, by inserting ''OR PERMANENT PARTNER'' after ''SPOUSE''; and

(2) in the text, by inserting ''or permanent partner'' after ''spouse''.

(c) ADJUSTMENT OF STATUS OF REFUGEES.—Section 209(b)(3) (8 U.S.C. 1159(b)(3)) is amended by inserting ''or permanent partner'' after ''spouse''.

SEC. 425. INADMISSIBLE AND DEPORTABLE ALIENS.

(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Section 212(a) (8 U.S.C. 1182(a)) is amended—

(1) in paragraph (3)(D)(iv), by inserting ''permanent partner,'' after ''spouse,'';

(2) in paragraph (4)(C)(i)(I), by inserting '', permanent partner,'' after ''spouse,'';

(3) in paragraph (6)(E)(ii), by inserting ''permanent partner,'' after ''spouse,''; and

(4) in paragraph (9)(B)(v), by inserting '', permanent partner,'' after ''spouse,''.

(b) WAIVERS.—Section 212(d) (8 U.S.C. 1182(d)) is amended—

(1) in paragraph (11), by inserting ''permanent partner,'' after ''spouse,''; and

(2) in paragraph (12), by inserting '', permanent partner,'' after ''spouse''.

(c) WAIVERS OF INADMISSIBILITY ON HEALTH-RELATED GROUNDS.—Section 212(g)(1)(A) (8 U.S.C. 1182(g)(1)(A)) is amended by inserting ''or permanent partner'' after ''spouse''.

(d) WAIVERS OF INADMISSIBILITY ON CRIMINAL AND RELATED GROUNDS.—Section 212(h)(1)(B) (8 U.S.C. 1182(h)(1)(B)) is amended by inserting ''permanent partner,'' after ''spouse,''.

(e) WAIVER OF INADMISSIBILITY FOR MISREPRESENTATION.—Section 212(i)(1) (8 U.S.C. 1182(i)(1)) is amended by inserting ''permanent partner,'' after ''spouse,''.

(f) DEPORTABLE ALIENS.—Section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)) is amended—

(1) in paragraph (1)(D)(i), by inserting ''or permanent partners'' after ''spouses'' each place it appears;

(2) in paragraphs (1)(E)(ii), (1)(E)(iii), and (1)(H)(i)(I), by inserting ''or permanent partner'' after ''spouse'';

(3) by adding at the end of paragraph (1) the following new subparagraph:

''(I) PERMANENT PARTNERSHIP FRAUD.—An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(6)(C)(i)) and to be in the United States

in violation of this Act (within the meaning of subparagraph (B)) if—

"(i) the alien obtains any admission to the United States with an immigrant visa or other documentation procured on the basis of a permanent partnership entered into less than 2 years prior to such admission and which, within 2 years subsequent to such admission, is terminated because the criteria for permanent partnership are no longer fulfilled, unless the alien establishes to the satisfaction of the Secretary of Homeland Security that such permanent partnership was not contracted for the purpose of evading any provisions of the immigration laws; or

"(ii) it appears to the satisfaction of the Secretary of Homeland Security that the alien has failed or refused to fulfill the alien's permanent partnership which in the opinion of the Secretary of Homeland Security was made for the purpose of procuring the alien's admission as an immigrant." and

(4) in paragraphs (2)(E)(i) and (3)(C)(ii), by inserting ''or permanent partner'' after ''spouse'' each place it appears.

SEC. 426. NONIMMIGRANT AND CONDITIONAL PERMANENT RESIDENT STATUS.

(a) NONIMMIGRANT STATUS FOR PERMANENT PARTNERS AWAITING THE AVAILABILITY OF AN IMMIGRANT VISA.—Section 214(r) (8 U.S.C. 1184(r)) is amended—

(1) in paragraph (1), by inserting ''or permanent partner'' after ''spouse''; and

(2) by inserting ''or permanent partnership'' after ''marriage'' each place it appears.

(b) CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES, PERMANENT PARTNERS, AND SONS AND DAUGHTERS.—

(1) SECTION HEADING.—

(A) IN GENERAL.—The heading for section 216 (8 U.S.C. 1186a) is amended by inserting ''**AND PERMANENT PARTNERS**'' after ''**SPOUSES**''.

(B) CLERICAL AMENDMENT.—The table of contents is amended by amending the item relating to section 216 to read as follows:

''Sec. 216. Conditional permanent resident status for certain alien spouses and permanent partners and sons and daughters.''.

(2) IN GENERAL.—Section 216(a) (8 U.S.C. 1186a(a)) is amended—

(A) in paragraph (1), by inserting ''or permanent partner'' after ''spouse'';

(B) in paragraph (2)(A), by inserting ''or permanent partner'' after ''spouse'';

(C) in paragraph (2)(B), by inserting ''permanent partner,'' after ''spouse,''; and

(D) in paragraph (2)(C), by inserting ''permanent partner,'' after ''spouse,''.

(3) TERMINATION OF STATUS IF FINDING THAT QUALIFYING MARRIAGE IMPROPER.—Section 216(b) of such Act (8 U.S.C. 1186a(b)) is amended—

(A) in the heading, by inserting ''OR PERMANENT PARTNERSHIP'' after ''MARRIAGE'';

(B) in paragraph (1)(A), by inserting ''or permanent partnership'' after ''marriage''; and

(C) in paragraph (1)(A)(ii)—

(i) by inserting ''or has ceased to satisfy the criteria for being considered a permanent partnership under this Act,'' after ''terminated,''; and

(ii) by inserting ''or permanent partner'' after ''spouse''.

(4) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—Section 216(c) (8 U.S.C. 1186a(c)) is amended—

(A) in paragraphs (1), (2)(A)(ii), (3)(A)(ii), (3)(C), (4)(B), and (4)(C), by inserting ''or permanent partner'' after ''spouse'' each place it appears; and

(B) in paragraph (3)(A), in the matter following clause (ii), and in paragraph (3)(D), (4)(B), and (4)(C), by inserting ''or permanent partnership'' after ''marriage'' each place it appears.

(5) CONTENTS OF PETITION.—Section 216(d)(1) of such Act (8 U.S.C. 1186a(d)(1)) is amended—

(A) in the heading of subparagraph (A), by inserting ''OR PERMANENT PARTNERSHIP'' after ''MARRIAGE'';

(B) in subparagraph (A)(i), by inserting ''or permanent partnership'' after ''marriage'';

(C) in subparagraph (A)(i)(I), by inserting before the comma at the end '', or is a permanent partnership recognized under this Act'';

(D) in subparagraph (A)(i)(II)—

(i) by inserting ''or has not ceased to satisfy the criteria for being considered a permanent partnership under this Act,'' after ''terminated,''; and

(ii) by inserting ''or permanent partner'' after ''spouse'';

(E) in subparagraph (A)(ii), by inserting ''or permanent partner'' after ''spouse''; and

(F) in subparagraph (B)(i)—

(i) by inserting ''or permanent partnership'' after ''marriage''; and

(ii) by inserting ''or permanent partner'' after ''spouse''.

(6) DEFINITIONS.—Section 216(g) (8 U.S.C. 1186a(g)) is amended—

(A) in paragraph (1)—

(i) by inserting ''or permanent partner'' after ''spouse'' each place it appears; and

(ii) by inserting ''or permanent partnership'' after ''marriage'' each place it appears;

(B) in paragraph (2), by inserting ''or permanent partnership'' after ''marriage'';

(C) in paragraph (3), by inserting ''or permanent partnership'' after ''marriage''; and

(D) in paragraph (4)—

(i) by inserting ''or permanent partner'' after ''spouse'' each place it appears; and

(ii) by inserting ''or permanent partnership'' after ''marriage''.

(c) CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, PERMANENT PARTNERS, AND CHILDREN.—

(1) SECTION HEADING.—

(A) IN GENERAL.—The heading for section 216A (8 U.S.C. 1186b) is amended by inserting ''**OR PERMANENT PARTNERS**'' after ''**SPOUSES**''.

(B) CLERICAL AMENDMENT.—The table of contents is amended by amending the item relating to section 216A to read as follows:

''Sec. 216A. Conditional permanent resident status for certain alien entrepreneurs, spouses or permanent partners, and children.''.

(2) IN GENERAL.—Section 216A(a) (8 U.S.C. 1186b(a)) is amended, in paragraphs (1), (2)(A), (2)(B), and (2)(C), by inserting ''or permanent partner'' after ''spouse'' each place it appears.

(3) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER.—Section 216A(b)(1) (8 U.S.C. 1186b(b)(1)) is amended by inserting ''or permanent partner'' after ''spouse'' in the matter following subparagraph (C).

(4) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—Section 216A(c) (8 U.S.C. 1186b(c)) is amended, in paragraphs (1), (2)(A)(ii), and (3)(C), by inserting ''or permanent partner'' after ''spouse''.

(5) DEFINITIONS.—Section 216A(f)(2) (8 U.S.C. 1186b(f)(2)) is amended by inserting ''or permanent partner'' after ''spouse'' each place it appears.

SEC. 427. REMOVAL, CANCELLATION OF REMOVAL, AND ADJUSTMENT OF STATUS.

(a) REMOVAL PROCEEDINGS.—Section 240 (8 U.S.C. 1229a) is amended—

(1) in the heading of subsection (c)(7)(C)(iv), by inserting ''PERMANENT PARTNERS,'' after ''SPOUSES,''; and

(2) in subsection (e)(1), by inserting ''or permanent partner'' after ''spouse''.

(b) CANCELLATION OF REMOVAL; ADJUSTMENT OF STATUS.—Section 240A(b) (8 U.S.C. 1229b(b)) is amended—

(1) in paragraph (1)(D), by inserting ''or permanent partner'' after ''spouse'';

(2) in the heading for paragraph (2), by inserting '', PERMANENT PARTNER,'' after ''SPOUSE''; and

(3) in paragraph (2)(A), by inserting '', permanent partner,'' after ''spouse'' each place it appears.

(c) ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE.—

(1) PROHIBITION ON ADJUSTMENT OF STATUS.—Section 245(d) (8 U.S.C. 1255(d)) is amended by inserting ''or permanent partnership'' after ''marriage''.

(2) AVOIDING IMMIGRATION FRAUD.—Section 245(e) (8 U.S.C. 1255(e)) is amended—

(A) in paragraph (1), by inserting ''or permanent partnership'' after ''marriage''; and

(B) by adding at the end the following new paragraph:

''(4) Paragraph (1) and section 204(g) shall not apply with respect to a permanent partnership if the alien establishes by clear and convincing evidence to

the satisfaction of the Secretary of Homeland Security that the permanent partnership was entered into in good faith and in accordance with section 101(a)(52) and the permanent partnership was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien permanent partner. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.''.

(3) ADJUSTMENT OF STATUS FOR CERTAIN ALIENS PAYING FEE.—Section 245(i)(1) (8 U.S.C. 1255(i)(1)) is amended by inserting ''or permanent partner'' after ''spouse'' each place it appears.

SEC. 428. APPLICATION OF CRIMINAL PENALTIES FOR MISREPRESENTATION AND CONCEALMENT OF FACTS REGARDING PERMANENT PARTNERSHIPS.

Section 275(c) (8 U.S.C. 1325(c)) is amended to read as follows:

"(c) Any individual who knowingly enters into a marriage or permanent partnership for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.".

SEC. 429. NATURALIZATION REQUIREMENTS.

(a) REQUIREMENTS AS TO RESIDENCE, GOOD MORAL CHARACTER, ATTACHMENT TO THE PRINCIPLES OF THE CONSTITUTION.—Section 316(b) (8 U.S.C. 1427(b)) is amended by inserting "or permanent partner" after "spouse".

(b) NATURALIZATION FOR PERMANENT PARTNERS OF CITIZENS.—Section 319 (8 U.S.C. 1430) is amended—

(1) in subsection (a), by inserting "or permanent partner" after "spouse" each place it appears;

(2) in subsection (a), by inserting "or permanent partnership" after "marital union";

(3) in subsection (b)(1), by inserting "or permanent partner" after "spouse";

(4) in subsection (b)(3), by inserting "or permanent partner" after "spouse";

(5) in subsection (d)—

(A) by inserting "or permanent partner" after "spouse" each place it appears; and

(B) by inserting ''or permanent partnership'' after ''marital union'';

(6) in subsection (e)(1)—

(A) by inserting ''or permanent partner'' after ''spouse''; and

(B) by inserting ''or permanent partnership'' after ''marital union''; and

(7) in subsection (e)(2), by inserting ''or permanent partner'' after ''spouse''.

SEC. 430. APPLICATION OF FAMILY UNITY PROVISIONS TO OTHER LAWS.

(a) APPLICATION OF FAMILY UNITY PROVISIONS TO PERMANENT PARTNERS OF CERTAIN LIFE ACT BENEFICIARIES.—Section 1504 of the LIFE Act (division B of the Miscellaneous Appropriations Act, 2001, as enacted into law by section 1(a)(4) of Public Law 106–554) is amended—

(1) in the heading, by inserting '', permanent partners,'' after ''spouses'';

(2) in subsection (a), by inserting '', permanent partner,'' after ''spouse''; and

(3) in each of subsections (b) and (c)—

(A) in the subsection headings, by inserting '', PERMANENT PARTNERS,'' after ''SPOUSES''; and

(B) by inserting ", permanent partner," after "spouse" each place it appears.

(b) APPLICATION TO CUBAN ADJUSTMENT ACT.—

(1) IN GENERAL.—The first section of Public Law 89–732 (November 2, 1966; 8 U.S.C. 1255 note) is amended—

(A) in the next to last sentence, by inserting ", permanent partner," after "spouse" the first 2 places it appears; and

(B) in the last sentence, by inserting ", permanent partners," after "spouses".

(2) CONFORMING AMENDMENTS.—

(A) IMMIGRATION AND NATIONALITY ACT.—Section 101(a)(51)(D) (8 U.S.C. 1101(a)(51)(D)) is amended by striking "or spouse" and inserting ", spouse, or permanent partner".

(B) VIOLENCE AGAINST WOMEN ACT.—Section 1506(c)(2)(A)(i)(IV) of the Violence Against Women Act of 2000 (8 U.S.C. 1229a note; division B of Public Law 106–386) is amended by striking "or spouse" and inserting ", spouse, or permanent partner".

CHAPTER 3—REFORMS TO SPECIFIC EMPLOYMENT-BASED VISA CATEGORIES

Subchapter A—Reforms to the EB–5 Program

SEC. 431. EB–5 REGIONAL CENTER PROGRAM FEES.

(a) IN GENERAL.—Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended—

(1) by striking ''pilot'' each place it appears;

(2) in subsection (b), by striking ''for 15 years''; and

(3) by adding at the end the following:

''(e) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fee of $2,500 to apply for designation as a regional center under this section. Fees collected under this subsection shall be deposited in the Treasury in accordance with section 286(x) of the Immigration and Nationality Act.''.

(b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—Section 286 (8 U.S.C. 1356) is amended by adding at the end the following:

''(x) IMMIGRANT ENTREPRENEUR REGIONAL CENTER ACCOUNT.—

''(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account,

which shall be known as the 'Immigrant Entrepreneur Regional Center Account'. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) and any fees collected in connection with forms I–526 or I–829.

"(2) USE OF FEES.—Fees collected under this section may only be used by the Secretary of Homeland Security to administer and operate the employment creation program described in section 203(b)(5).".

(c) PREMIUM PROCESSING FEE FOR EB–5 IMMIGRANT INVESTORS.—Section 286(u) (8 U.S.C. 1356(u)) is amended by adding at the end the following: "In the case of a petition filed under section 204(a)(1)(H) for classification under section 203(b)(5), if the petitioner desires a guarantee of a decision on the petition in 60 days or less, the premium fee under this subsection shall be set at $2,500 and shall be deposited as offsetting receipts in the Immigrant Entrepreneur Regional Center Account established under subsection (x).".

(d) RULEMAKING.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall prescribe regulations to implement the amendments made by this section.

(e) EFFECTIVE DATE.—The amendments made by subsections (a)(3) and (b) shall take effect on the effective date of the regulations prescribed pursuant to subsection (c). The remaining amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 432. ADJUSTMENT OF STATUS.

(a) ELIGIBILITY FOR ADJUSTMENT OF STATUS.—Section 245(k) (8 U.S.C. 1255(k)) is amended, in the matter preceding paragraph (1), by striking ''(1), (2), or (3)'' and inserting ''(1), (2), (3), or (5)''.

(b) CONCURRENT FILING OF EB–5 PETITIONS AND APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section 245 (8 U.S.C. 1255) is amended by adding at the end the following:

''(n) If, at the time a petition is filed for classification through a regional center under section 203(b)(5), approval of the petition would make a visa immediately available to the alien beneficiary, the alien beneficiary's adjustment application under this section shall be considered to be properly filed whether the application is submitted concurrently with, or subsequent to, the visa petition.''.

SEC. 433. SET-ASIDE PROGRAMS.

(a) IMPROVED SET-ASIDE FOR TARGETED EMPLOYMENT AREAS.—Section 203(b)(5)(B) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(B)) is amended as follows:

(1) TARGETED EMPLOYMENT AREA DEFINED.—Clause (ii) is amended to read as follows:

"(ii) TARGETED EMPLOYMENT AREA DEFINED.—In this paragraph, the term 'targeted employment area' means, at the time a petition for classification under this paragraph is filed, any of the following:

"(iii) A rural area.

"(iv) An area that has experienced high unemployment (of at least 150 percent of the national average rate).

"(v) A county that has had a 20 percent or more decrease in population since 1970.

"(vi) An area that is within the boundaries established for purposes of a State or Federal economic development incentive program, including areas defined as Enterprise Zones, Renewal Communities and Empowerment Zones.

"(vii) An area designated by a State agency to which the Governor has delegated the authority to designate targeted employment areas within the State.".

(2) RURAL AREA DEFINED.—Clause (iii) is amended by striking "other than an area within a metropolitan statistical area or".

(3) EFFECT OF PRIOR DETERMINATION.—Such section is amended by adding at the end the following:

"(iv) EFFECT OF PRIOR DETERMINATION.—In a case in which a geographic area is determined under clause (ii) to be a targeted employment area, such determination shall remain in effect during the 2-year period beginning on the date of the determination for purposes of any alien seeking a visa reserved under this subparagraph.".

(b) SET-ASIDE OF VISAS FOR REGIONAL CENTER PROGRAM.—Section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended by striking "3,000" and inserting "10,000".

SEC. 434. EXPANSION OF EB–5 PROGRAM.

(a) EB–5 EXTENSION.—Subparagraph (A) of section 216A(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(2)(A)) is amended by adding at the end the following: ''A date specified by the applicant (but not later than the fourth anniversary) shall be substituted for the second anniversary in applying the preceding sentence if the applicant demonstrates that the applicant has attempted to follow his business model in good faith, provides an explanation for the delay in filing the petition that is based on circumstances outside of the applicant's control, and demonstrates that such circumstances will be able to be resolved within the specified period.''.

(b) EB–5 PROGRAM STUDY.—

(1) IN GENERAL.—The Secretary, in appropriate consultation with the Secretary of Commerce and other interested parties, shall conduct a study concerning—

(A) current job creation counting methodology and initial projections under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)); and

(B) how best to promote the employment creation program described in such section overseas to potential immigrant investors.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the Congress containing the results of the study conducted under paragraph (1).

(c) EB–5 FULL-TIME EQUIVALENTS.—

(1) IN GENERAL.—Section 203(b)(5)(A)(ii) (8 U.S.C. 1153(b)(5)(A)(ii)) is amended by inserting ''(or full-time equivalent)'' after ''full-time''.

(2) DEFINITION.—Section 203(b)(5)(D) (8 U.S.C. 1153(b)(5)(D)) is amended to read as follows:

''(D) EMPLOYMENT-RELATED DEFINITIONS.—

''(i) FULL-TIME EMPLOYMENT DEFINED.—In this paragraph, the term 'full-time employment' means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

''(ii) FULL-TIME EQUIVALENT EMPLOYMENT DEFINED.—In this paragraph, the term 'full-time equivalent employment' means employment representing the number of full-time employees that could have been employed if the reported number of

hours worked by part-time employees had been worked by full-time employees. This shall be calculated by dividing the part-time hours paid by the standard number of hours for full-time employees.''.

Subchapter B—Adjustments to Other Select Visa Programs

SEC. 435. ELIMINATION OF SUNSET PROVISIONS.

(a) SPECIAL IMMIGRANT NONMINISTER RELIGIOUS WORKER PROGRAM.—Section 101(a)(27)(C)(ii) (8 U.S.C. 1101 (a)(27)(C)(ii)) is amended by striking ''September 30, 2012'' each place such term appears.

(b) CONRAD STATE 30 PROGRAM.—Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. 1182 note) is amended by striking ''and before September 30, 2012.''.

SEC. 436. PERMANENT AUTHORIZATION OF THE NON-IMMIGRANT NURSES IN HEALTH PROFESSIONAL SHORTAGE AREAS PROGRAM.

(a) IN GENERAL.—Section 2(e)(2) of the Nursing Relief for Disadvantaged Areas Act of 1999 (8 U.S.C. 1182 note) is amended to read as follows:

''(e) APPLICATION OF NONIMMIGRANT CHANGES.—The amendments made by this section shall apply to classification petitions filed for nonimmigrant status only—

"(1) during the period—

"(A) beginning on the date that interim or final regulations are first promulgated under subsection (d); and

"(B) ending on the date that is 3 years after the date of the enactment of the Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005; and

"(2) beginning on the date of enactment of the CIR Act of 2010.".

(b) INAPPLICABILITY OF CERTAIN REGULATORY REQUIREMENTS.—The requirements of chapter 5 of title 5, United States Code (commonly referred to as the "Administrative Procedure Act") or any other law relating to rulemaking, information collection or publication in the Federal Register, shall not apply to any action to implement the amendments made by section 2 to the extent the Secretary Homeland of Security, the Secretary of Labor, or the Secretary of Health and Human Services determines that compliance with any such requirement would impede the expeditious implementation of such amendments.

SEC. 437. INCENTIVES FOR PHYSICIANS TO PRACTICE IN MEDICALLY UNDERSERVED COMMUNITIES.

Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended—

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

"(12) An alien physician described in section 212(j)(2)(B) who entered the United States as a nonimmigrant described in section 101(a)(15)(H)(i)(b) to pursue graduate medical education or training shall not be subject to the limitations described in paragraphs (1) and (4), provided that the period of authorized admission of such alien as an H–1B nonimmigrant may not extend beyond the 6-year period beginning on the date on which the alien receives the exemption described in subparagraph (A), if—

"(A) an interested State agency submits a request for an exemption under section 214(l)(1)(B), but not 1 of the 10 waivers or exemptions described in subsection (l)(1)(D)(ii); and

"(B) the Secretary of State recommends that the alien be exempted from such limitations."; and

(2) in subsection (l)—

(A) in paragraph (1)—

(i) by striking "the Attorney General shall not grant such waiver unless" and in-

serting ''or for an exemption from the limitations described in paragraphs (1) and (4) of subsection (g) on behalf of an alien described in subsection (g)(12), the Secretary shall not grant such waiver or exemption unless'';

(ii) in subsection (A), by inserting ''or exemption'' before the semicolon at the end;

(iii) in subsection (B), by striking ''would not cause the number of waivers allotted for that State for that fiscal year to exceed 30'' and inserting ''or exemption would not cause the total number of waivers plus the total number of exemptions allotted for that State for that fiscal year to exceed 30, unless such allotment is increased pursuant to paragraph (4)'';

(iv) in subsection (C)(ii), by inserting ''or exemption'' after ''waiver''; and

(v) in subsection (D)—

(I) in clause (ii), by striking ''would not cause the number of the waivers'' and inserting ''or exemption

would not cause the total number of waivers and exemptions''; and

(II) in clause (iii), by inserting ''or exemption'' after ''waiver'';

(B) in paragraph (2)(A), by striking ''status of an alien and inserting status of an alien described in 212(e)(iii)''; and

(C) by adding at the end the following:

''(4) If at least 90 percent of the total number of waivers and exemptions allotted under paragraph (1)(B) to States that were granted not fewer than 5 such waivers or exemptions, in the aggregate, during any 1 of the 3 previous fiscal years are granted, on a nationwide basis, in the current fiscal year, the allotment of such waivers and exemptions in the current fiscal year shall be increased from 30 to 35 for each State. Such allotments shall be further increased in increments of 5 each time such 90 percent threshold of the adjusted allotment level is reached, on a nationwide basis. The allotment for each State shall reset to 30 at the beginning of each fiscal year.''.

SEC. 438. STUDENT VISA REFORM.

(a) IN GENERAL.—

(1) NONIMMIGRANT CLASSIFICATION.—Section 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)) is amended to read as follows:

"(F) an alien—

"(i) who—

"(I) is a bona fide student qualified to pursue a full course of study in mathematics, engineering, technology, or the sciences leading to a bachelors or graduate degree and who seeks to enter the United States for the purpose of pursuing such a course of study consistent with section 214(m) at an institution of higher education (as defined by section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Secretary the termination of attendance of each nonimmigrant student, and if

any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn; or

''(II) is engaged in temporary employment for optional practical training related to such alien's area of study following completion of the course of study described in subclause (I) for a period or periods of not more than 24 months;

''(ii) who—

''(I) has a residence in a foreign country which the alien has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study, and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(m) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training pro-

gram in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Secretary the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn; or

''(II) is engaged in temporary employment for optional practical training related to such alien's area of study following completion of the course of study described in subclause (I) for a period or periods of not more than 24 months;

''(iii) who is the spouse or minor child of an alien described in clause (i) or (ii) if accompanying or following to join such an alien;

''(iv) who—

"(I) is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) or (ii) except that the alien's qualifications for and actual course of study may be full- or part-time, and who commutes to the United States institution or place of study from Canada or Mexico; or

"(II) is engaged in temporary employment for optional practical training related to such student's area of study following completion of the course of study described in subclause (I) for a period or periods of not more than 24 months; or

"(v) who—

"(I) maintains actual residence and place of abode in the alien's country of nationality; and

"(II) is described in clause (i), except that the alien's actual course of study may involve a distance learning program, for which the alien is tempo-

rarily visiting the United States for a period of up to 30 days.''.

(2) ADMISSION.—Section 214(b) (8 U.S.C. 1184(b)) is amended by inserting ''(F)(i),'' before ''(L) or (V)''.

(3) CONFORMING AMENDMENT.—Section 214(m)(1) (8 U.S.C. 1184(m)(1)) is amended, in the matter preceding subparagraph (A), by striking ''(i) or (iii)'' and inserting ''(i), (ii), (iv), or (v)''.

(b) OFF-CAMPUS WORK AUTHORIZATION FOR FOREIGN STUDENTS.—

(1) IN GENERAL.—Aliens admitted as nonimmigrant students described in section 101(a)(15)(F), as amended by subsection (a), (8 U.S.C. 1101(a)(15)(F)) may be employed in an off-campus position unrelated to the alien's field of study if—

(A) the alien has enrolled full-time at the educational institution and is maintaining good academic standing;

(B) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer—

(i) has spent at least 21 days recruiting United States citizens to fill the position; and

(ii) will pay the alien and other similarly situated workers at a rate not less than the greater of—

(I) the actual wage level for the occupation at the place of employment; or

(II) the prevailing wage level for the occupation in the area of employment; and

(C) the alien will not be employed more than—

(i) 20 hours per week during the academic term; or

(ii) 40 hours per week during vacation periods and between academic terms.

(2) DISQUALIFICATION.—If the Secretary of Labor determines that an employer has provided an attestation under paragraph (1)(B) that is materially false or has failed to pay wages in accordance with the attestation, the employer, after notice and opportunity for a hearing, shall be disqualified from employing an alien student under paragraph (1).

SEC. 439. TEMPORARY VISAS FOR INDIVIDUALS FROM IRELAND.

(a) DEFINITION.—Section 101(a)(15)(E)(iii) (8 U.S.C. 1101(a)(15)(E)) is amended by inserting ''or solely to perform services as an employee who meets the requirements of section 203(d)(2) if the alien is a national of the republic of Ireland'' after ''Australia''.

(b) TEMPORARY ADMISSION OF INADMISSIBLE ALIENS.—Clause (i) of section 212(a)(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)) is amended by inserting before the semicolon the following: ''provided that such recommendation and approval shall not be required for the issuance of a visa pursuant to section 101(a)(15)(E) for ineligibility under paragraphs (6), (7) or (9) of section 212(a) that is based on conduct occurring prior to the date of enactment of this Act''.

(c) NUMERICAL LIMITATIONS.—Section 214(g)(11)(B)(8 U.S.C. 1184(g)(11)(B)) is amended by inserting ''for each of the nationalities included in section 101(a)(15)(E)(iii)'' before the period.

SEC. 440. S VISAS.

(a) EXPANSION OF S VISA CLASSIFICATION.—Section 101(a)(15)(S) (8 U.S.C. 1101(a)(15)(S)) is amended—

(1) in clause (i)—

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

(B) in subclause (I), by inserting before the semicolon, '', including a criminal enterprise undertaken by a foreign government, its agents, representatives, or officials'';

(C) in subclause (III), by inserting ''if the information concerns a criminal enterprise undertaken by an individual or organization that is not a foreign government, its agents, representatives, or officials,'' before ''whose''; and

(D) by striking ''or'' at the end; and

(2) in clause (ii)—

(A) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''; and

(B) by striking ''1956,'' and all that follows through ''the alien;'' and inserting the following: ''1956; or

''(iii) who the Secretary of Homeland Security and the Secretary of State, in consultation with the Director of Central Intelligence, jointly determine—

''(I) is in possession of critical reliable information concerning the ac-

tivities of governments or organizations, or their agents, representatives, or officials, with respect to weapons of mass destruction and related delivery systems, if such governments or organizations are at risk of developing, selling, or transferring such weapons or related delivery systems; and

"(II) is willing to supply or has supplied, fully and in good faith, information described in subclause (I) to appropriate persons within the United States Government; and

if the Secretary of Homeland Security (or with respect to clauses (ii) and (iii), the Secretary of State and the Secretary of Homeland Security jointly) considers it to be appropriate, the spouse, children, married and unmarried sons and daughters, and parents of an alien described in clause (i), (ii), or (iii) if accompanying, or following to join, the alien;".

(b) NUMERICAL LIMITATION.—Section 214(k)(1) (8 U.S.C. 1184(k)(1)) is amended to read as follows:

"(1) The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S) in any fiscal year may not exceed 1,000.".

(c) REPORTS.—

(1) CONTENT.—Section 214(k)(4) (8 U.S.C. 1184(k)(4)) is amended—

(A) in the matter preceding subparagraph (A)—

(i) by striking "Attorney General" and inserting "Secretary of Homeland Security"; and

(ii) by striking "concerning" and inserting "that includes";

(B) in subparagraph (D), by striking "and" at the end;

(C) in subparagraph (E), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following:

"(F) if the total number of such nonimmigrants admitted is fewer than 25 percent of the total number provided for under paragraph (1)—

"(i) the reasons for the reduced number of such nonimmigrants;

"(ii) the efforts made by the Secretary of Homeland Security to admit such nonimmigrants; and

"(iii) any extenuating circumstances that contributed to the reduced number of such nonimmigrants.".

(2) FORM OF REPORT.—Section 214(k) (8 U.S.C. 1184(k)) is amended by adding at the end the following:

"(5) To the extent required by law and if it is in the interests of national security or the security of such nonimmigrants that are admitted, as determined by the Secretary of Homeland Security—

"(A) the information contained in a report described in paragraph (4) may be classified; and

"(B) the Secretary of Homeland Security shall, to the extent feasible, submit a non-classified version of the report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.".

CHAPTER 4—PROTECTION OF H–2B NONIMMIGRANTS AND WORKERS RECRUITED ABROAD

SEC. 441. DEFINITIONS.

(a) IN GENERAL.—Except as otherwise provided by this title, the terms used in this title shall have the same meanings, respectively, as are given those terms in section 3 of the Fair Labor Standards Act of 1938.

(b) OTHER DEFINITIONS.—As used in this chapter:

(1) AREA OF EMPLOYMENT.—The term ''area of employment'' means the area within normal commuting distance of the worksite or physical location where the work of the H–2B nonimmigrant is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area shall be deemed to be within the area of employment.

(2) BUILDING AND GROUNDS CLEANING AND MAINTENANCE OCCUPATION.—The term ''Building and Grounds Cleaning and Maintenance occupation'' means any occupation listed as a Building and Grounds Cleaning and Maintenance occupation in the Department of Labor's Standard Occupational Classification (as published by such Department).

(3) CONSTRUCTION OCCUPATION.—The term ''construction occupation'' means any occupation listed as a construction or extraction occupation in the Department of Labor's Standard Occupational Classification (as published by such Department), except that it does not include any occupation listed in such classification as an extraction worker occupation.

(4) DISPLACE.—In the case of an application with respect to one or more H–2B non immigrants by an employer, the employer is considered to ''displace'' a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or non immigrants is or are sought. A job shall not be considered to be essentially equivalent of an other job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

(5) FOREIGN LABOR CONTRACTING ACTIVITY.—The term ''foreign labor contracting activity'' means recruiting, soliciting for hire, or furnishing an individual who resides outside of the United States to be

employed in the United States. The term shall not include such activity performed by labor organizations, including labor organizations representing agricultural laborers.

(6) FOREIGN LABOR CONTRACTOR.—The term ''foreign labor contractor'' means any person who performs any foreign labor contracting activity. The term shall not include labor organizations, including labor organizations representing agricultural laborers.

(7) FOREIGN WORKER PROGRAM.—The term ''foreign worker program'' means any program authorized by the Immigration and Nationality Act to employ nonimmigrants described in subparagraphs (B), (E), (H), (J), (L), (O), (P), or (R) of section 101(a)(15) of such Act (8 U.S.C. 1101(a)(15)).

(8) H–2B NONIMMIGRANT.—The term ''H–2B nonimmigrant'' means an alien admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(ii)(B).

(9) LAYS OFF.—

(A) IN GENERAL.—The term ''lays off'', with respect to a worker—

(i) means to cause the worker's loss of employment, other than through a dis-

charge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in paragraph (1)(E)); and

(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regard less of whether or not the employee accepts the offer.

(B) CONSTRUCTION.—Nothing in this subparagraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

(10) METAL WORKERS OCCUPATION.—The term ''Metal Workers occupation'' means any occupation listed as a metal worker or plastic worker occupation in the Department of Labor's Standard Oc-

cupational Classification (as published by such Department).

(11) REGISTERED H–2B EMPLOYER.—The term ''registered H–2B employer'' means an employer that has been registered by the Secretary of Labor under paragraph (2) to employ an H–2B nonimmigrant.

(12) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

(13) STATE.—The term ''State'' means any State of the United States and includes the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

(14) SUBSTANTIAL FAILURE.—The term ''substantial failure'' means the willful failure to comply with the requirements of this section that constitutes a significant deviation from the terms and conditions of an application.

(15) UNITED STATES WORKER.—The term ''United States worker'' means an employee who—

(A) is a citizen or national of the United States; or

(B) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee

under section 207, is granted asylum under section 208, or is an immigrant otherwise authorized, by this Act or by the Secretary of Homeland Security, to be employed.

(16) WORKER.—The term ''worker'' means an individual who is the subject of foreign labor contracting activity.

SEC. 442. PROTECTIONS FOR WORKERS RECRUITED ABROAD.

(a) DISCLOSURE OF WORKING CONDITIONS.—Any person who engages in foreign labor contracting activity shall ascertain and disclose, to each worker who is recruited for employment at the time of the worker's recruitment—

(1) the place of employment;

(2) the compensation for the employment;

(3) a description of employment activities;

(4) the period of employment;

(5) any travel or transportation expenses to be assessed;

(6) any other employee benefit to be provided and any costs to be charged for each benefit;

(7) the existence of any strike or lockout in the course of a labor dispute at the place of employment;

(8) the existence of any arrangement with any person involving the receipt of a commission or any other benefit for the provision of items or services to workers;

(9) the extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including—

(A) work related injuries and death during the period of employment;

(B) the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance;

(C) the name and telephone number of each person who must be notified of an injury or death; and

(D) the time period within which such notice must be given;

(10) any education or training to be provided or required, including—

(A) the nature and cost of such training;

(B) the person that will pay such costs; and

(C) whether the training is a condition of employment, continued employment, or future employment; and

(11) a statement, in a form specified by the Secretary of Labor, describing the protections of this section and of the Trafficking Victims Protection Act of 2000 (division A of Public Law 106–486), including relevant complaint line information, for workers recruited abroad.

(b) FALSE OR MISLEADING INFORMATION.—No person who engages in foreign labor contracting activity shall knowingly provide materially false or misleading information to any worker concerning any matter required to be disclosed in paragraph (1).

(c) FORM OF DISCLOSURE.—The information required to be disclosed under paragraph (1) shall be provided in writing in English or, as necessary and reasonable, in the language of the worker being recruited. The Secretary of Labor shall make forms available in English, Spanish, and other languages, as necessary and reasonable, which may be used in providing workers with information required under this section.

(d) RECRUITMENT FEES.—No person conducting foreign labor contracting activity shall assess any fee to a worker for such foreign labor contracting activity.

(e) TRANSPORTATION COSTS.—The employer shall bear the transportation costs, including subsistence costs during the period of travel, for the worker from the worker's home residence at the time of recruitment to the place of employment either through direct payment or reimbursement in the first workweek and from the place of employment to such worker's place of permanent residence.

(f) UNLAWFUL DISCRIMINATION.—

(1) DISCRIMINATION PROHIBITED.—It shall be unlawful for an employer or a foreign labor contractor to discharge any individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because such individual's race, color, creed, sex, national origin, religion, age, or disability.

(2) DETERMINATION.—For the purposes of determining the existence of unlawful discrimination under paragraph (1)—

(A) in the case of a claim of discrimination based on race, color, creed, sex, national origin, or religion, the same legal standards shall apply as are applicable under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(B) in the case of a claim of discrimination based on unlawful discrimination based on age, the same legal standards shall apply as are applicable under the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.); and

(C) in the case of a claim of discrimination based on disability, the same legal standards shall apply as are applicable under title I of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.).

(g) DISCRIMINATION PROHIBITED AGAINST WORKERS SEEKING RELIEF UNDER THIS CHAPTER.—No person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any worker because such worker has, with just cause, filed any complaint or instituted, or caused to be instituted, any proceeding under or related to this chapter, or has testified or is about to testify in any such proceedings, or because of the exercise, with just cause, by such worker on behalf of himself or others of any right or protection afforded by this chapter.

(h) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.—The rights and remedies provided to workers under this chapter are in addition to any other

contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

(i) AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Labor shall prescribe such regulations as may be necessary to carry out this chapter.

SEC. 443. ENFORCEMENT PROVISIONS.

(a) COMPLAINTS AND INVESTIGATIONS.—

(1) IN GENERAL.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting the application of a predominant wage level proposed by an employer seeking certification under this subsection, an employer's failure to meet a condition specified in an application submitted under paragraph (2) or (3) or an applicant's misrepresentation of material facts in such an application but not the methodology used to calculate the predominant wage level itself. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary shall conduct

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-

scribed in subparagraph (B). If the Secretary determines that such a reasonable basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, not later than 60 days after the date of the determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary may consolidate the hearings under this subparagraph on such complaints.

(4) PENALTIES.—If the Secretary of Labor finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of the application described under paragraph (2) or (3), a willful misrepresentation of a material fact in such application, or a violation of subparagraph (F)—

(A) the Secretary of Labor shall notify the Secretary of Homeland Security of such finding and may, in addition to any other remedy authorized by law, impose such administrative remedies (including civil monetary penalties in

an amount not to exceed $10,000 per violation) as the Secretary of Labor determines to be appropriate;

(B) the Secretary of Labor may not approve applications filed with respect to that employer under paragraph (2) or (3) during a period of at least 1 year but not more than 5 years for aliens to be employed by the employer; and

(C) the Secretary of Homeland Security may not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 1 year for aliens to be employed by the employer.

(5) CRIMINAL SANCTIONS.—Whoever knowingly violates this chapter shall be fined up to $3,000 per violation or imprisoned not more than one year, or both. Upon conviction, after a first conviction under this section, for a second or subsequent violation of this chapter, the defendant shall be fined up to $10,000 or imprisoned not more than three years, or both.

(6) HIGHEST PENALTIES.—In determining the level of penalties to be assessed under subparagraph (D), the highest penalties shall be reserved for will-

ful failures to meet any of the conditions of the application that involve harm to United States workers.

(7) DISCRIMINATION OR RETALIATION PROHIBITED.—It is a violation of this subparagraph for an employer who has filed an application under this subsection to intimidate, threaten, restrain, coerce, discharge, or in any other manner discriminate or retaliate against an employee (including a former employee or an applicant for employment) because the employee—

(A) has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection; or

(B) cooperates, or seeks to cooperate, in an investigation or other proceeding concerning the employer's compliance with the requirements of this subsection, or any rule or regulation pertaining to this subsection.

(b) AUTHORITY TO ENSURE COMPLIANCE.—The Secretary of Labor may bring an action in any court of competent jurisdiction as may be necessary to assure employer compliance with terms and conditions of employ-

ment under this subsection, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations. The rights and remedies provided to H–2B workers by this subsection are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of such workers, and are not intended to alter or affect such rights and remedies.

SEC. 444. TRANSFER OF FOREST, CONSERVATION, NURSERY, AND LOGGING WORKERS TO THE H–2A AGRICULTURAL WORKER PROGRAM.

(a) CLASSIFICATION AS AGRICULTURAL LABOR.—Any farming, fishing, or forestry occupation (as included in this major group the Standard Occupational Classification published by the Department of Labor's Bureau of Labor Statistics) shall be considered agricultural labor for the purposes of employing nonimmigrants described in section101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(b) SIMULTANEOUS CLASSIFICATION.—Any workers currently considered seasonal agricultural workers under the Migrant Seasonal Worker Protection Act (29 U.S.C. 1801 et seq.) shall retain their simultaneous classification under such Act.

SEC. 445. H–2B NONIMMIGRANT LABOR CERTIFICATION APPLICATION FEES.

(a) ESTABLISHMENT OF FEES.—Section 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)) is amended by adding the following:

"(v) ESTABLISHMENT OF H–2B EMPLOYMENT CERTIFICATION APPLICATION FEE.—

"(I) IN GENERAL.—The Secretary of Labor shall impose a fee on an employer that submits an application for an employment certification for aliens granted nonimmigrant status under section 101(a)(15)(H)(ii)(b) to the Secretary of Labor under this subparagraph.

"(II) FEE DURING INITIAL YEAR.—During the 12-month period beginning on the date of the enactment of this clause, the fee imposed under subclause (I) shall be $800 for each application.

"(III) ADDITIONAL FEE PER WORKER.—In addition to the application fee required under clause (i), the Secretary shall require each employer

to pay a fee of $300, to be deposited in the Treasury in accordance with section 286(x), for each H–2B worker position requested in an application described in subparagraph (A).

"(IV) FEE AFTER INITIAL YEAR.—After the expiration of the period described in subclause (II), the fee imposed under subclause (I) shall be set at a level the Secretary of Labor determines will—

"(aa) ensure recovery of the full costs of carrying out labor certification activities under this subparagraph; and

"(bb) recover any additional costs associated with the administration of the fees collected.

"(V) PROHIBITION ON EMPLOYER ACCEPTING REIMBURSEMENT OF FEE.—

"(aa) IN GENERAL.—An employer subject to a fee under this clause may not require or accept reimbursement, directly or indi-

rectly, of or other compensation for all or part of the cost of such fee.

"(bb) CIVIL PENALTY.—If the Secretary of Labor determines, after notice and opportunity for a hearing, that an employer has violated item (aa), the Secretary of Labor may impose a civil penalty in an amount not to exceed $5,000 per violation.

"(VI) DEPOSIT OF FEES AND PENALTIES.—Fees and civil penalties collected under this clause shall be deposited in the 'H–2B Employment Certification Application Fee Account' established under section 286(x).".

(b) ESTABLISHMENT OF ACCOUNT AND USE OF FUND.—Section 286 (8 U.S.C. 1356) is amended by adding at the end the following:

"(x) H–2B EMPLOYMENT CERTIFICATION APPLICATION FEE ACCOUNT.—

"(1) ESTABLISHMENT OF ACCOUNT.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'H–

2B Employment Certification Application Fee Account'. Notwithstanding any other provision of this title, there shall be deposited as offsetting receipts into the account all amounts from the fees and civil penalties collected under section 212(a)(5)(A)(v).

"(2) USE OF FEES.—Of the amounts deposited into the H–2B Employment Certification Application Fee Account under this subsection in each fiscal year, the Secretary of Labor shall use such amounts as the Secretary of Labor determines are necessary for the costs of Federal administration, including personnel, in carrying out labor certification activities under section 212(a)(5)(A), and to assist the States, as appropriate, in the determination of prevailing wages for purposes of carrying out such section.

"(3) AVAILABILITY OF FUNDS.—The fees deposited into the H–2B Employment Certification Application Fee Account under this subsection shall remain available until expended for the activities described in paragraph (2).".

(c) PROGRAM INTEGRITY.—Section 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)), as amended by subsection (a), is further amended by adding at the end the following:

"(vi) PROGRAM INTEGRITY REGULATIONS.—The Secretary of Labor may prescribe such regulations as may be necessary to ensure the integrity of the labor certification process carried out under this subparagraph, including standards and procedures under which employers and their representatives are excluded from participation in the labor certification process under this subparagraph.".

SEC. 446. LABOR AGREEMENT PROVISIONS.

(a) RECRUITMENT OF UNITED STATES WORKERS.—Section 212 (8 U.S.C. 1182) is amended—

(1) in subsection (p)(3), by striking "(a)(5)(A), (n)(1)(A)(i)(II)," and inserting "(n)(1)(A)(i)(II)";

(2) by redesignating subsection (t) (as added by section 1(b)(2)(B) of Public Law 108–449) as subsection (u); and

(3) by adding at the end the following:

"(v)(1) Except as provided under paragraph (5), an employer that seeks to employ an alien described in section 101(a)(15)(H)(ii)(b) (referred to in this subsection as an 'H–2B nonimmigrant') shall take the following steps to recruit United States workers for the position for which

the alien is sought not later than 14 days before filing an application under paragraph (3):

"(A) The employer shall submit a copy of the job offer, including a description of wages and other terms and conditions of employment, to the State workforce agency that serves the area of employment in the State in which the employer is located (referred to in this subsection as the 'SWA'). The SWA shall provide the employer with an acknowledgment of receipt of such documentation in accordance with this paragraph.

"(B) The employer shall authorize the SWA to post the job opportunity on the Internet, with local job banks, with other State workforce agencies, and with unemployment agencies and other labor referral and recruitment sources pertinent to such job opportunity.

"(C) The employer shall authorize the SWA to provide notification of the job opportunity to—

"(i) the central office of the State Federation of Labor in the State in which the job is located; and

"(ii) the office of the local union which represents the employees in the same or sub-

stantially equivalent job classification, if applicable.

"(D) The employer shall—

"(i) provide notice of the job opportunity to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which the employer is seeking a worker, or

"(ii) if there is no such bargaining representative, post the availability of the job opportunity for which the employer is seeking a worker in conspicuous locations at the place or places of employment or in some other manner that provides reason able notification to all employees in the occupational classification and in the same area of intended employment for which H–2B nonimmigrants are sought.

"(E) The employer shall advertise the availability of the job opportunity for which the employer is seeking a worker in one or more publications in the labor market that is likely to be patronized by potential applicants (as determined by the SWA). Such advertisement, at a minimum, shall—

"(i) describe the job opportunity and term of employment;

"(ii) state the wage rate to be offered;

"(iii) summarize the employer's minimum job requirements; "(iv) offer training if the job opportunity is the type for which employers normally provide training; and"(v) be posted for 3 consecutive issues during the first half of the 21-day recruitment period.

"(F) If the job involved in the application requires a particular skill or an advanced degree, and a professional or trade journal normally would be used to advertise the job opportunity, the local job service may require the employer to place an advertisement in the journal most likely to bring responses from able, willing, qualified, and available United States workers.

"(G) In no event shall the employer advertise such job opportunity to United States workers using wages or other terms and conditions of employment which are less favorable for United States workers than those to be offered to an H–2B nonimmigrant of similar qualifications.

"(2) EXCEPTION FOR NON-REGISTERED H–2B EMPLOYERS.—

"(A) IN GENERAL.—An employer that is not registered under paragraph (2) but that seeks to

employ an H–2B nonimmigrant in an occupational classification may file an application under paragraph (3) to employ one or more H–2B nonimmigrants if the employer demonstrates to the Secretary of Labor that:

"(i) the failure to hire such workers to address a temporary need for labor or services would directly result in the loss of jobs for United States workers and would deprive the impacted community of a substantial economic benefit (as certified by a State or regional economic development authority, including consultation with any relevant union);

"(ii) labor, geographical, or other conditions substantially prevent the employer from meeting such need for labor or services with workers in the United States;

"(iii) the employer has not been found to have violated, within the last 5 years, applicable Federal, State and local employment-related laws and regulations, including employment-related health and safety laws; and

"(iv) the employer has not been found to have violated, within the last 5 years, a mate-

rial term or condition of any foreign worker program.

"(B) LIMITATION.—The number of H–2B nonimmigrants admitted under this paragraph may not exceed 1,000.

"(3) LIMITATIONS ON EMPLOYMENT.—

"(A) DURATION OF EMPLOYMENT.—Certification of an H–2B nonimmigrant for employment with an employer in the United States shall be limited to a maximum of 10 months per employer. An H–2B nonimmigrant shall not be certified for more than 5 years without returning to his country of origin. The Secretary of State and Secretary of Homeland Security may allow admission of the H–2B nonimmigrant into the United States for additional periods, of no more than 60 days in the aggregate, to allow for travel to and from the worksite and transfer between H–2B employers.

"(B) TRANSFER OF H–2B NONIMMIGRANTS BETWEEN EMPLOYERS.—

"(i) IN GENERAL.—An H–2B nonimmigrant may not accept employment from any employer in the United States other than an employer with an approved H–2B application filed on behalf of such nonimmigrant under

paragraph (3). An employer may not trade, transfer, or otherwise provide an H–2B nonimmigrant to any other employer for employment in the United States.

"(ii) CONSTRUCTION.—Nothing in this paragraph prohibits an H–2B nonimmigrant in the United States from accepting new employment with a new employer upon approval of a petition filed by such employer on the H–2B nonimmigrant's behalf.

"(C) AVAILABILITY OF UNITED STATES WORKER.—The employer shall be required to provide employment to any able and qualified United States worker who applies to the employer prior to 30 days before the commencement of the H–2B nonimmigrant's employment.

"(4) COMPLIANCE AND STATISTICS.—

"(A) PUBLIC EXAMINATION.—The Secretary of Labor shall make available for public examination, including by posting over the Internet, the following:

"(i) within 60 days of the close of the registration period under paragraph (2), a list of all employers registered under such paragraph;

"(ii) upon the filing of an application by an employer under paragraph (3), a copy of

such application, except that the Secretary shall redact any proprietary in formation from such application; and

"(iii) a list (by employer, location and occupational classification), compiled on a current basis, of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, period of intended employment, and dates of need.

"(B) MAINTENANCE OF DOCUMENTATION.—The employer shall maintain for at least 3 years after the filing of the application or the employment relationship is terminated, whichever is later, documentation evidencing compliance with the conditions in paragraph (3) and recruitment efforts in paragraph (4).

"(C) AUDIT AUTHORITY.—On a yearly basis, the Secretary of Labor shall audit at least 5 percent of employers employing H–2B nonimmigrants to determine compliance with the terms and conditions of this subsection.

"(5) COMPLAINTS AND INVESTIGATIONS.—

"(A) IN GENERAL.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting the ap-

plication of a predominant wage level proposed by an employer seeking certification under this subsection, but not the methodology used to calculate the predominant wage level itself, an employer's failure to meet a condition specified in an application submitted under paragraph (2) or (3) or an applicant's misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than one year after the date of the failure or misrepresentation, respectively. The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.''.

(b) PETITIONS BY EMPLOYERS THAT HAVE SIGNED LABOR AGREEMENTS WITH UNIONS THAT OPERATE HIRING HALLS.—Section 212(v), as added by subsection (a), is amended by adding at the end the following:

''(6) An employer that seeks to hire an H–2B nonimmigrant may file an application with the Secretary of Labor in accordance with this paragraph,

instead of complying with paragraphs (1) through (4), if—

"(A) the employer has signed a labor agreement with a labor organization (as defined in section 2(5) of the Labor-Management Relations Act (29 U.S.C. 152(5)) under which the labor organization is responsible for referring applicants for employment to the employer under a procedure commonly known as a 'hiring hall' or 'referral hall'; and

"(B) the application is accompanied by a written statement prepared by the labor organization attesting that—

"(i) the labor organization operates a hiring hall that, pursuant to contractual agreement and actual practice, is a source of employees in the same or substantially equivalent occupational classification in which the employer seeks to employ an H–2B nonimmigrant;

"(ii) the labor organization does not have a sufficient number of qualified applicants available for referral in the same or substantially equivalent occupational classi-

fication in which the employer seeks to employ an H–2B nonimmigrant;

"(iii) the labor organization has advertised, for at least 5 consecutive days, the availability of the job opportunity for which the employer is seeking to employ an H–2B nonimmigrant in the publication with the highest circulation in the labor market that is likely to be patronized by potential applicants;

"(iv) the employer is contractually obligated to pay all employees, in the same or substantially equivalent occupational classification in which the employer seeks to employ an H–2B nonimmigrant, wages and benefits set forth in a labor agreement with the labor organization, which equals or exceeds the prevailing wage rate the employer would be obligated to pay; and

"(v) the H–2B nonimmigrants who the employer seeks to employ will be paid not less than the same wages and benefits and be subject to the same terms and conditions of employment set forth in the em-

ployer's labor agreement with the labor organization.''.

(c) PREVAILING WAGES FOR UNITED STATES WORKERS AND H–2B WORKERS.—Section 212 (8 U.S.C. 1182), as amended by this section, is further amended by adding at the end the following:

''(w)(1) No alien may be admitted or provided status as a nonimmigrant under section 101(a)(15)(H)(ii)(b) in an occupational classification unless the Secretary of Labor certifies that the employer—

''(A) is offering and will offer during the period of authorized employment to aliens admitted or provided such status the wage rate set forth in the collective bargaining agreement, if the job opportunity is covered by a collective bargaining agreement;

''(B) if the job opportunity is not covered by a collective bargaining agreement, the wage the employer is offering and will offer, to any alien or United States worker employed by or offered employment by the employer, during the period of authorized employment for aliens admitted or provided such status, wages that are not less than the higher of—

''(i) the wage determination, if any, issued pursuant to subchapter IV of chapter 31 of title

40, United States Code (commonly known as the 'Davis-Bacon Act');

"(ii) the wage determination, if any, issued pursuant to the Service Contract Act of 1965 (41 U.S.C. 351 et seq.);

"(iii) the median rate of the highest 66 percent of the wage data applicable to such occupational classification under the most recently published Occupational Employment Statistics Survey, compiled by the Bureau of Labor Statistics; or

"(iv) a wage that is not less than 150 percent of the Federal minimum wage in effect under the Fair Labor Standards Act (29 U.S.C. 201 et seq.); and

"(C) will provide working conditions for such alien that will not adversely affect the working conditions of workers similarly employed.

"(2) An employer may not appeal a decision of the Secretary of Labor concerning the wages required to be paid under paragraph (1)(A) unless United States workers and their labor representatives are given the opportunity to submit contrary evidence or appeal that such required wages are too low.

"(3) An employer may not hire a nonimmigrant described in section 101(a)(15)(H)(ii)(b) unless—

"(A) real prevailing wages in the occupational classification in which such nonimmigrant is to be hired are at least 3 percent higher than such wages during the preceding year under the Occupational Employment Statistics Survey compiled by the Bureau of Labor Statistics; or

"(B) the employer offers to pay the H–2B worker or a United States worker a wage in the occupational classification in which such worker is to be hired that is at least 3 percent higher during the preceding year, after adjusting for inflation under the Occupational Employment Survey.".

SEC. 447. ENFORCEMENT OF FEDERAL LABOR LAWS.

(a) H–2B NONAGRICULTURAL GUEST WORKERS.—Section 214(c)(14) (8 U.S.C. 1184(c)(14)) is amended—

(1) in subparagraph (A), by striking "of Homeland Security" each place it appears and inserting "of Labor";

(2) by striking subparagraph (B);

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(4) by adding at the end the following:

"(D) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with the terms and conditions required under this Act for employing nonimmigrant workers described in section 101(a)(15)(H)(ii)(b) or (c). The authority of the Secretary of Labor under this subparagraph shall not preempt any other rights which affected persons may have under Federal or State law.

"(E) Any aggrieved person whose wages or working conditions have been directly and adversely affected by an employer in violation of applicable laws and regulations governing the employment of nonimmigrant workers described in section 101(a)(15)(H)(ii)(b) or (c), or by a violation of the terms and conditions of employment, may bring a civil action against such employer in the appropriate district court of the United States. Such cause of action shall not be subject to exhaustion of administrative remedies and shall be in addition to any other causes of action and remedies that may exist.

"(F) Notwithstanding any other provision of law, the Legal Services Corporation may provide legal services on behalf of nonimmigrant workers described in section 101(a)(15)(H)(ii)(b) or (c) regarding the terms and condi-

tions of employment, transportation, and housing and other provisions of law applicable to the employment of such nonimmigrants.''.

(b) CERTIFICATION REQUIREMENT; PROTECTION FOR WORKERS.—Section 214(c)(14), as amended by subsection (a), is further amended by adding at the end the following:

''(G) A petition by an employer seeking to hire an alien described in section 101(a)(15)(H)(ii)(b) shall not be approved until the employer has provided written certification, under penalty of perjury, to the Secretary of Labor that—

''(i) the employer has not been required under law to provide a notice of a mass layoff pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.) during the 12-month period immediately preceding the date on which the alien is to be hired; and

''(ii) the employer does not intend to provide a notice of a mass layoff pursuant to such Act.

''(H) If an employer is required under law to provide a notice of a mass layoff pursuant to such Act after hiring nonimmigrants granted status under section 101(a)(15)(H)(ii)(b), the status of such nonimmigrants

shall expire on the date that is 60 days after the date on which such notice is provided.

"(I) An employer shall be exempt from the requirements under subparagraphs (G) and (H) if the employer provides written certification, under penalty of perjury, that the total number of the employer's employees in the United States will not be reduced as a result of a mass layoff.

"(J) Employers who hire nonimmigrants described in section 101(a)(15)(H)(ii)(b) shall pay up front or reimburse in the first workweek the nonimmigrants reasonable cost of transportation incurred by such nonimmigrants and United States workers to initially reach the job site and, once the period of employment for the job opportunity is completed, to return to their countries of origin or to the next place of employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker's transportation to such subsequent employer's place of employment. The amount of reimbursement for reasonable cost of transportation expenses shall not exceed the lesser of—

"(i) the actual cost to the worker or alien of the 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

"(II) excludes the worker's Sabbath and Federal holidays.

"(iv) A work guarantee does not meet the requirements under this subparagraph unless the number of hours of work offered by the employer is equal to not less than the product of—

"(I) 75 percent of the workdays; multiplied by

"(II) the average number of hours per day stated in the job order.

"(v) A worker may be offered more than the specified hours of work on a single workday.

"(vi) The employer may not require, for purposes of meeting the work guarantee, that the worker work longer than the number of hours specified in the job order on a workday, the worker's Sabbath, or a Federal holiday.

"(M) If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State's workers compensation law for comparable employment.

"(N) Agreements by employees purporting to waive or to modify their rights under this Act shall be void as contrary to public policy.

"(O) Consistent with section 292 and notwithstanding any other provision of law, the Legal Services Corporation may provide legal services on behalf of an H–2B nonimmigrant.".

(c) REPORT.—Section 214(g)(10) (8 U.S.C. 1184(g)(10)) is amended—

(1) by inserting "(A)" after "(10)"; and

(2) by adding at the end the following:

"(B) Each employer that hires a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) shall—

"(i) notify the Secretary of Labor not later than 30 days after the conclusion of each such nonimmigrant's term of employment; and

"(ii) submit to the Secretary of Labor employment payroll records and similar documentation showing that the employer complied with the recruitment provisions herein and paid the required prevailing wage and transportation, and other expenses required under this section and section 212.".

(d) H–2B PORTABILITY.—Section 214(n) (8 U.S.C. 1184(n)) is amended—

(1) in paragraph (1)—

(A) by striking ''section 101(a)(15)(H)(i)(b)'' and inserting ''clause (i)(b) or (ii)(b) of section 101(a)(15)(H)''; and

(B) by inserting ''A nonimmigrant described in 101(a)(15)(H)(ii)(b) is authorized to accept new employment immediately, if a petition for unnamed workers is already in place, upon the filing by the prospective employer of a new petition, or upon the filing of a temporary labor certification covering the petition with the Department of Labor, which may be filed not earlier than 45 days before the need for new employees'' after ''provided under subsection (a)''; and

(2) in paragraph (2)(B), by inserting ''(or labor certification if the alien is described in 101(a)(15)(H)(ii)(b))'' after ''nonfrivolous petition''.

CHAPTER 5—H–2B AND L–1 VISA REFORMS

Subchapter A—H–1B Employer Application Requirements

SEC. 451. APPLICATION REQUIREMENTS.

(a) MODIFICATION OF APPLICATION REQUIREMENTS.—

(1) INTERNET POSTING REQUIREMENT.—Section 212(n)(1)(C) (8 U.S.C. 1182(n)(1)(C)) is amended—

(A) by redesignating clause (ii) as subclause (II);

(B) by striking ''(i) has provided'' and inserting the following: ''(ii)(I) has provided''; and

(C) by inserting before clause (ii), as redesignated by paragraph (2) of this subsection, the following:

''(i) has posted on the Internet website described in paragraph (3), for at least 30 calendar days, a detailed description of each position for which a nonimmigrant is sought that includes a description of—

''(I) the wages and other terms and conditions of employment;

''(II) the minimum education, training, experience, and other requirements for the position; and

''(III) the process for applying for the position; and''.

(2) OUTPLACEMENT RESTRICTION.—Section 212(n)(1)(F) (8 U.S.C. 1182(n)(1)(F)) is amended—

(A) by inserting ''(ii)'' before ''In the case of an application'';

(B) by renumbering clauses (i) and (ii) as subclauses (I) and (II); and

(C) by inserting the following at the beginning as clause (i):

''(i) The employer will not place, outsource, lease, or otherwise contract to provide the services of the H–1B nonimmigrant at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent unless:

''(I) the H–1B nonimmigrant will be controlled and supervised principally by the petitioning employer; and

''(II) the placement of the H–1B nonimmigrant at the worksite of the unaffiliated employer is not essentially an arrangement to provide labor for hire for the unaffiliated employer.''.

(b) NEW APPLICATION REQUIREMENTS.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by adding at the end the following:

"(H)(i) The employer has not advertised any available position specified in the application in an advertisement that states or indicates that—

"(I) such position is only available to an individual who is or will be an H–1B nonimmigrant; or

"(II) an individual who is or will be an H–1B nonimmigrant shall receive priority or a preference in the hiring process for such position.

"(ii) The employer has not solely recruited individuals who are or who will be H–1B nonimmigrants to fill such position.

"(I) If the employer employs 50 or more employees in the United States, the sum of the number of such employees who are H–1B nonimmigrants who are not intending immigrants as defined in section 463 of the CIR Act of 2010 plus the number of such employees who are nonimmigrants described in section 101(a)(15)(L) who are not intending immigrants as defined in section 463 of the CIR Act

of 2010 may not exceed 50 percent of the total number of employees.

''(J) If the employer, in such previous period as the Secretary shall specify, employed 1 or more H–1B nonimmigrants, the employer shall submit to the Secretary the Internal Revenue Service Form W–2 Wage and Tax Statement filed by the employer with respect to the H–1B nonimmigrants for such period.''.

(c) APPLICATION REVIEW REQUIREMENTS.—

(1) TECHNICAL AMENDMENT.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)), as amended by this Act, is further amended in the undesignated paragraph at the end, by striking ''The employer'' and inserting the following: ''(K) The employer.''.

(2) APPLICATION REVIEW REQUIREMENTS.—Section 212(n)(1)(K), as designated by paragraph (1), is amended—

(A) by inserting ''and through the Department of Labor's website, without charge.'' after ''D.C.'';

(B) by striking ''only for completeness'' and inserting ''for completeness and clear indicators of fraud or misrepresentation of material fact,'';

(C) by striking ''or obviously inaccurate'' and inserting '', presents clear indicators of fraud or misrepresentation of material fact, or is obviously inaccurate'';

(D) by striking ''within 7 days of'' and inserting ''not later than 14 days after''; and

(E) by adding at the end the following: ''If the Secretary's review of an application identifies clear indicators of fraud or misrepresentation of material fact, the Secretary may conduct an investigation and hearing in accordance with paragraph (2).''.

Subchapter B—Investigation and Disposition of Complaints Against H–1B Employers

SEC. 452. INVESTIGATION PROCEDURES.

(a) GENERAL MODIFICATION OF PROCEDURES FOR INVESTIGATION AND DISPOSITION.—Section 212(n)(2)(A) (8 U.S.C. 1182(n)(2)) is amended—

(1) by striking ''(A) Subject'' and inserting ''(A)(i) Subject'';

(2) by striking ''12 months'' and inserting ''24 months'';

(3) by striking the last sentence; and

(4) by adding at the end the following:

"(i)(I) Upon the receipt of such a complaint, the Secretary may initiate an investigation to determine if such a failure or misrepresentation has occurred.

"(II) The Secretary may conduct surveys of the degree to which employers comply with the requirements of this subsection and may conduct annual compliance audits of employers that employ H–1B, H–2B, or H–2C nonimmigrants.

"(III) The Secretary shall—

"(aa) conduct annual compliance audits of not less than 1 percent of the employers that employ H–1B nonimmigrants during the applicable calendar year;

"(bb) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are H–1B nonimmigrants; and

"(cc) make available to the public an executive summary or report describing the general findings of the

audits carried out pursuant to this subclause.''.

(b) INVESTIGATION, WORKING CONDITIONS, AND PENALTIES.—Section 212(n)(2)(C) (8 U.S.C. 1182(n)(2)) is amended—

(1) in clause (i)—

(A) in the matter preceding subclause (I)—

(i) by striking ''a condition of paragraph (1)(B), (1)(E), or (1)(F)'' and inserting ''a condition under subparagraph (A), (B), (C)(i), (E), (F), (G)(i)(I), (H), (I), or (J) of paragraph (1)''; and

(ii) by striking ''(1)(C)'' and inserting ''(1)(C)(ii)''; and

(B) in subclause (I)—

(i) by striking ''$1,000'' and inserting ''$2,000''; and

(ii) by striking ''and'' at the end;

(C) in subclause (II), by striking the period at the end and inserting a semicolon and ''and'';

(D) by adding at the end the following:

''(III) an employer that violates such subparagraph (A) shall be liable

to the employees harmed by such violations for lost wages and benefits.''; and

(2) in clause (ii)—

(A) in subclause (I)—

(i) by striking ''may'' and inserting ''shall''; and

(ii) by striking ''$5,000'' and inserting ''$10,000''; and

(B) in subclause (II), by striking the period at the end and inserting a semicolon and ''and'';

(C) by adding at the end the following:

''(III) an employer that violates such subparagraph (A) shall be liable to the employees harmed by such violations for lost wages and benefits.''; and

(3) in clause (iii)—

(A) in the matter preceding subclause (I), by striking ''90 days'' both places it appears and inserting ''180 days'';

(B) in subclause (I)—

(i) by striking ''may'' and inserting ''shall''; and

(ii) by striking ''and'' at the end;

(C) in subclause (II), by striking the period at the end and inserting a semicolon and ''and''; and

(D) by adding at the end the following:

''(III) an employer that violates subparagraph (A) of such paragraph shall be liable to the employees harmed by such violations for lost wages and benefits.'';

(4) in clause (iv)—

(A) by inserting ''to take, fail to take, or threaten to take or fail to take, a personnel action,'' or before ''to intimidate'';

(B) by inserting ''(I)'' after ''(iv)''; and

(C) by adding at the end the following:

''(II) An employer that violates this clause shall be liable to the employees harmed by such violation for lost wages and benefits.''; and

(5) in clause (vi)—

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

"(I) It is a violation of this clause for an employer who has filed an application under this subsection—

"(aa) to require an H–1B nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer (the Secretary shall determine whether a required payment is a penalty, and not liquidated damages, pursuant to relevant State law); and

"(bb) to fail to offer to an H–1B nonimmigrant, during the nonimmigrant's period of authorized employment, on the same basis, and in accordance with the same criteria, as the employer offers to United States workers, benefits and eligibility for benefits, including—

"(AA) the opportunity to participate in health, life,

disability, and other insurance plans;

"(BB) the opportunity to participate in retirement and savings plans; and

"(CC) cash bonuses and noncash compensation, such as stock options (whether or not based on performance)."; and

(B) in subclause (III), by striking "$1,000" and inserting "$2,000".

(c) INITIATION OF INVESTIGATIONS.—Section 212(n)(2)(G) (8 U.S.C. 1182(n)(2)) is amended—

(1) in clause (i), by striking "if the Secretary and all that follows"and inserting "with regard to the employer's compliance with the requirements of this subsection.";

(2) in clause (ii), by striking "and whose identity" and all that follows through "failure or failures." and inserting "the Secretary of Labor may conduct an investigation into the employer's compliance with the requirements of this subsection.";

(3) in clause (iii), by striking the last sentence;

(4) by striking clauses (iv) and (v);

(5) by redesignating clauses (vi), (vii), and (viii) as clauses (iv), (v), and (vi), respectively;

(6) in clause (iv), as so redesignated, by striking ''meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months'' and inserting ''comply with the requirements under this subsection, unless the Secretary of Labor receives the information not later than 24 months'';

(7) by amending clause (v), as so redesignated, to read as follows:

''(v) The Secretary of Labor shall provide notice to an employer of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that such compliance would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. A determination by the Secretary under this

clause shall not be subject to judicial review.'';

(8) in clause (vi), as so redesignated, by striking ''An investigation'' and all that follows through ''the determination.'' and inserting ''If the Secretary of Labor, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination.''; and

(9) by adding at the end the following:

''(vii) If the Secretary of Labor, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary shall impose a penalty under subparagraph (C).''.

(d) CONFORMING AMENDMENT.—Section 212(n)(2)(F) (8 U.S.C. 1182(n)(2)(F)) is amended by striking ''The preceding sentence shall apply to an em-

ployer regardless of whether or not the employer is an H–1B-dependent employer.''.

(e) INFORMATION SHARING.—Section 212(n)(2)(H) (8 U.S.C. 1182(n)(2)(H)) is amended to read as follows:

''(H) The Director of United States Citizenship and Immigration Services shall provide the Secretary of Labor with any information contained in the materials submitted by employers of H–1B nonimmigrants as part of the adjudication process that indicates that the employer is not complying with visa program requirements for H–1B nonimmigrants. The Secretary may initiate and conduct an investigation and hearing under this paragraph after receiving information of noncompliance under this subparagraph.''.

Subchapter C—Other Protections

SEC. 453. H–1B GOVERNMENT AUTHORITY AND REQUIREMENTS.

(a) IMMIGRATION DOCUMENTS.—Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding at the end the following:

''(m) EMPLOYER TO PROVIDE IMMIGRATION PAPERWORK EXCHANGED WITH FEDERAL AGENCIES.—Not later than 21 business days after receiving a written request from a former, current, or future employee or bene-

ficiary, an employer shall provide such employee or beneficiary with the original (or a certified copy of the original) of all petitions, notices, and other written communication exchanged between the employer and the Department of Labor, the Department of Homeland Security, or any other Federal agency or department that is related to an immigrant or nonimmigrant petition filed by the employer for such employee or beneficiary.''.

(b) REPORT ON JOB CLASSIFICATION AND WAGE DETERMINATIONS.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall prepare a report analyzing the accuracy and effectiveness of the Secretary of Labor's current job classification and wage determination system. The report shall—

(1) specifically address whether the systems in place accurately reflect the complexity of current job types as well as geographic wage differences; and

(2) make recommendations concerning necessary updates and modifications.

(c) MINOR VIOLATIONS.—Section 212(n)(2)(C)(i)(II) (8 U.S.C. 1182(n)(2)(C)(i)(II)) is amended by striking ''shall'' and inserting ''may''.

(d) POSTING AVAILABLE POSITIONS THROUGH DEPARTMENT OF LABOR.—

(1) DEPARTMENT OF LABOR WEBSITE.—Section 212(n)(3) (8 U.S.C. 1182(n)) is amended to read as follows:

''(3)(A) Not later than 90 days after the date of the enactment of the Comprehensive Immigration Reform Act of 2010, the Secretary of Labor shall establish a searchable Internet website for posting positions as required by paragraph (1)(C), which shall be available to the public without charge.

''(B) The Secretary may work with private companies or nonprofit organizations to develop and operate the Internet website described in subparagraph (A).

''(C) The Secretary may promulgate rules, after notice and a period for comment, to carry out the requirements of this paragraph.''.

(2) REQUIREMENT FOR PUBLICATION.—The Secretary of Labor shall submit to Congress and publish in the Federal Register and other appropriate media a notice of the date that the Internet website required under section 212(n)(3) of the Immigration and Nationality Act will be operational.

(3) APPLICATION.—The amendments made by paragraph (1) shall apply to an application filed on

or after the date that is 30 days after the date described in paragraph (2).

SEC. 454. H–1B AND L–1 VISA REQUIREMENTS.

(a) ADDITIONAL H–1B VISA REFORMS.—

(1) IN GENERAL.—Section 214(g)(5) (8 U.S.C. 1184(g)(5)) is amended—

(A) in subparagraph (B)—

(i) by striking ''nonprofit research'' and inserting ''nonprofit'';

(ii) by inserting ''Federal, State, or local'' before ''governmental''; and

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

(B) in subparagraph (C) by adding at the end ''or has been awarded a medical specialty certification based on post-doctoral training and experience in the United States.''; and

(2) APPLICABILITY.—The amendments made by subsection (a) shall apply to any petition or visa application pending on the date of enactment of this Act and any petition or visa application filed on or after such date.

(b) REQUIREMENTS FOR INFORMATION FOR H–1B AND L–1 NONIMMIGRANTS.—Section 214 (8 U.S.C. 1184) is amended by adding at the end the following:

"(s) REQUIREMENTS FOR INFORMATION FOR H–1B AND L–1 NONIMMIGRANTS.—

"(1) IN GENERAL.—Upon issuing a visa to an applicant for nonimmigrant status pursuant to subparagraph (H)(i)(b) or (L) of section 101(a)(15) who is outside the United States, the issuing office shall provide the applicant with—

"(A) a brochure outlining the obligations of the applicant's employer and the rights of the applicant with regard to employment under Federal law, including labor and wage protections;

"(B) the contact information for appropriate Federal agencies or departments that offer additional information or assistance in clarifying such obligations and rights; and

"(C) a copy of the application submitted for the nonimmigrant under section 212(n) or the petition submitted for the nonimmigrant under subsection (c)(2)(A), as appropriate.

"(2) Upon the issuance of a visa to an applicant referred to in paragraph (1) who is inside the United States, the issuing officer of the Department of Homeland Security shall provide the applicant

with the material described in clauses (i), (ii), and (iii) of subparagraph (A).''.

SEC. 455. ADDITIONAL DEPARTMENT OF LABOR EMPLOYEES.

(a) IN GENERAL.—The Secretary of Labor is authorized to hire 200 additional employees to administer, oversee, investigate, and enforce programs involving nonimmigrant employees described in section 101(a)(15)(H)(i)(B).

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

Subchapter D—L–1 Visa Fraud and Abuse Protections

SEC. 456. L–1 EMPLOYER PETITION REQUIREMENTS.

(a) EMPLOYMENT AT NEW OFFICES.—Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

''(G)(i) If the beneficiary of a petition under this paragraph is coming to the United States to open, or be employed in, a new office, the petition may be approved for up to 12 months only if—

''(I) the alien has not been the beneficiary of 2 or more petitions under this subparagraph during 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;

"(VI) evidence that the importing employer, for the entire period beginning on the date on which the petition was approved under clause (i), has been doing business at the new office through regular, systematic, and continuous provision of goods and services;

"(VII) a statement of the duties the beneficiary has performed at the new office during the approval period under clause (i) and the duties the beneficiary will perform at the new office during the extension period granted under this clause;

"(VIII) a statement describing the staffing at the new office, including the number of employees and the types of positions held by such employees;

"(IX) evidence of wages paid to employees;

"(X) evidence of the financial status of the new office; and

"(XI) any other evidence or data prescribed by the Secretary.

"(iii) A new office employing the beneficiary of an L-1 petition approved under this paragraph shall do business only through regular, systematic, and continuous provision of goods and services for the entire period for which the petition is sought.

"(iv) Notwithstanding clause (ii), and subject to the maximum period of authorized admission set forth in subparagraph (D), the Secretary of Homeland Security, in the Secretary's discretion, may approve a subsequently filed petition on behalf of the beneficiary to continue employment at the office described in this subparagraph for a period beyond the initially granted 12-month period if the importing employer has been doing business at the new office through regular, systematic, and continuous provision of goods and services for the 6 months immediately preceding the date of extension petition filing and demonstrates that the failure to satisfy any of the requirements described in those subclauses was directly caused by extraordinary circumstances, as determined by the Secretary in the Secretary's discretion.".

(b) COOPERATION WITH SECRETARY OF STATE.—Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended by subsection (a), is further amended by adding at the end the following:

"(H) For purposes of approving petitions under this paragraph, the Secretary of Homeland Security shall work cooperatively with the Secretary of State to verify the existence or continued existence of a company or office in the United States or in a foreign country.".

(c) INVESTIGATION AND DISPOSITION OF COMPLAINTS AGAINST L-1 EMPLOYERS.—Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended by this section, is further amended by adding at the end the following:

''(I)(i) The Secretary of Homeland Security may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(L) with regard to the employer's compliance with the requirements of this subsection.

''(ii) If the Secretary receives specific credible information from a source who is likely to have knowledge of an employer's practices, employment conditions, or compliance with the requirements under this subsection, the Secretary may conduct an investigation into the employer's compliance with the requirements of this subsection. The Secretary may withhold the identity of the source from the employer, and the source's identity shall not be subject to disclosure under section 552 of title 5, United States Code.

''(iii) The Secretary shall establish a procedure for any person desiring to provide to the Secretary information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the informa-

tion in writing on a form developed and provided by the Secretary and completed by or on behalf of the person.

"(iv) No investigation described in clause (ii) (or hearing described in clause (vi) based on such investigation) may be conducted with respect to information about a failure to comply with the requirements under this subsection, unless the Secretary receives the information not later than 24 months after the date of the alleged failure.

"(v) Before commencing an investigation of an employer under clause (i) or (ii), the Secretary shall provide notice to the employer of the intent to conduct such investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that to do so would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary under this clause.

"(vi) If the Secretary, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide 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

"(cc) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.".

(d) WAGE RATE AND WORKING CONDITIONS FOR L–1 NONIMMIGRANT.—

(1) IN GENERAL.—Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended by this section, is further amended by adding at the end the following:

"(J)(i) If an employer, in such previous period specified by the Secretary of Homeland Security, employed 1 or more such nonimmigrants, the employer shall provide to the Secretary of Homeland Security the Internal Revenue Service Form W-2 Wage and Tax Statement filed by the employer with respect to such nonimmigrants for such period.

"(ii) It is a failure to meet a condition under this subparagraph for an employer who has filed a petition to import 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

"(I) to require such a nonimmigrant to pay a penalty for ceasing employment with the employer before a date mutually agreed to by the nonimmigrant and the employer; or

"(II) to fail to offer to such a nonimmigrant, during the nonimmigrant's period of authorized em-

ployment, on the same basis, and in accordance with the same criteria, as the employer offers to United States workers, benefits and eligibility for benefits, including—

"(aa) the opportunity to participate in health, life, disability, and other insurance plans;

"(bb) the opportunity to participate in retirement and savings plans; and

"(cc) cash bonuses and noncash compensation, such as stock options (whether or not based on performance).

"(iii) The Secretary of Homeland Security shall determine whether a required payment under clause (iii)(I) is a penalty (and not liquidated damages) pursuant to relevant State law.".

(2) RULEMAKING.—The Secretary of Homeland Security shall promulgate rules, after notice and a period of comment, to implement the requirements of section 214(c)(2)(J) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as added by paragraph (1). In promulgating rules under this paragraph, the Secretary shall take into consideration any special circumstances relating to 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

to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

"(I) the Secretary shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary determines to be appropriate;

"(II) the Secretary may not, during a period of at least 2 years, approve a petition filed for that employer to employ 1 or more aliens as such nonimmigrants; and

"(III) in the case of a violation of subparagraph (J) or (L), the employer shall be liable to the employees harmed by such violation for lost wages and benefits.".

(f) PROHIBITION ON RETALIATION AGAINST L–1 NONIMMIGRANTS.—Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended by this section, is further amended by adding at the end the following:

"(L)(i) It is a violation of this subparagraph for an employer who has filed a petition to import 1 or more aliens as nonimmigrants described in section 101(a)(15)(L) to take, fail to take, or threaten to take or fail to take, a personnel action, or to intimidate, threaten, restrain, coerce, blacklist, discharge, or discriminate

in any other manner against an employee because the employee—

"(I) has disclosed information that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection; or

"(II) cooperates or seeks to cooperate with the requirements of this subsection, or any rule or regulation pertaining to this subsection.

"(ii) In this subparagraph, the term 'employee' includes—

"(I) a current employee;

"(II) a former employee; and

"(III) an applicant for employment.".

(g) TECHNICAL AMENDMENTS.—Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended by this section, is further amended by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security".

(h) REPORTS ON L–1 NONIMMIGRANTS.—Section 214(c)(8) (8 U.S.C. 1184(c)(8)) is amended by inserting "(L)," after "(H),".

SEC. 457. APPLICATION.

Except as specifically otherwise provided, the amendments made by this section and subchapter C shall apply

to applications filed on or after the date of the enactment of this Act.

SEC. 458. REPORT ON L–1 BLANKET PETITION PROCESS.

(a) REQUIREMENT FOR REPORT.—Not later than 6 months after the date of the enactment of this Act, the Inspector General of the Department of Homeland Security shall submit a report to the appropriate committees of Congress regarding the use of blanket petitions under section 214(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(A)).

(b) CONTENTS.—The report submitted under subsection (a) shall assess the efficiency and reliability of the process for reviewing the blanket petitions described in subsection (a), including whether the process includes adequate safeguards against fraud and abuse.

(c) APPROPRIATE COMMITTEES OF CONGRESS.—In this section the term ''appropriate committees of Congress'' means—

(1) the Committee on Homeland Security and Governmental Affairs of the Senate;

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

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

(4) the Committee on the Judiciary of the House of Representatives.

CHAPTER 6—MISCELLANEOUS EMPLOYMENT VISA REFORMS

SEC. 461. PROVIDING PREMIUM PROCESSING OF EMPLOYMENT-BASED VISA PETITIONS.

Pursuant to section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)), the Secretary shall establish and collect—

(a) a fee for premium processing of employment-based immigrant petitions; and

(b) a fee for premium processing of an administrative appeal of any decision on a permanent employment-based immigrant petition.

SEC. 462. VISA REVALIDATION.

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

(1) in subsection (h), in the matter preceding subparagraph (1), by inserting ''and except as provided under subsection (i),'' after ''Act''; and

(2) by adding at the end the following:

''(i) The Secretary of State shall permit an alien granted a nonimmigrant visa under subparagraph (E), (H), (I), (L), (O), or (P) of section 101(a)(15) to apply for a renewal of such visa within the United States if—

"(1) such visa is valid or did not expire more than 12 months before the date of such application;

"(2) the alien is seeking a nonimmigrant visa under the same subparagraph under which the alien had previously received a visa; and

"(3) the alien has complied with the immigration laws and regulations of the United States.".

SEC. 463. APPLICATION FEES FOR INTENDING IMMIGRANTS.

Section 402 of Public Law 111–230 is amended—

(1) in subsection (a), by inserting "and are not intending immigrants" before the period at the end;

(2) in subsection (b), by inserting "and are not intending immigrants" before the period at the end; and

(3) by adding at the end the following:

"(d) Subsections (a) and (b) shall not apply to seasonal or intermittent nonimmigrants, and family members of nonimmigrants described in section 101(a)(15)(L).

"(e) For purposes of subsections (a) and (b), the term 'intending immigrant' means any alien who intends to work and reside permanently in the United States, as evidenced by—

"(1) a pending or approved application for alien employment certification under section 212(a)(5)(A); or

"(2) a pending or approved petition under paragraph (1), (2) or (3) of section 203(b).".

SEC. 464. E–1, E–2, AND L–1 VISAS.

(a) E–1 AND E–2 VISAS.—Section 101(a)(15)(E) (8 U.S.C. 1101(a)(15)(E)) is amended—

(1) by striking "of commerce and navigation";

(2) by redesignating clause (iii) as clause (iv); and

(3) by inserting "(iii) to be employed by an entity described in clause (i) or (ii) as a manager, supervisor, or employee with essential skills to the enterprise, which is at least 50 percent owned by nationals of the treaty country and, if the entity is described in clause (ii), 1 or more nationals of the treaty country have invested, or are actively in process of investing, a substantial amount of capital to the enterprise;".

(b) L–1 VISAS FOR SMALL COMPANIES.—Section (a)(44)(C) of 8 U.S.C. 1101 is amended by inserting at the end of the paragraph the following: "Neither the small 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

which they were eligible at the time of such death until the later of—

"(i) 1 year after such death; or

"(ii) the date on which an adjudication of benefits under section 204(l) is completed.".

CHAPTER 7—POWER ACT

SEC. 471. SHORT TITLE.

This chapter may be cited as the" Protect Our Workers from Exploitation and Retaliation Act" or the "POWER Act".

SEC. 472. VICTIMS OF SERIOUS LABOR AND EMPLOYMENT VIOLATIONS OR CRIME.

(a) PROTECTION FOR VICTIMS OF LABOR AND EMPLOYMENT VIOLATIONS.—Section 101(a)(15)(U) (8 U.S.C. 1101(a)(15)(U)) is amended—

(1) in clause (i)—

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

"(I) the alien—

"(aa) has suffered substantial abuse or harm as a result of having been a victim of criminal activity described in clause (iii);

"(bb) has suffered substantial abuse or harm related to a violation described in clause (iv);

"(cc) is a victim of criminal activity described in clause (iii) and would suffer extreme hardship upon removal; or

"(dd) has suffered a violation described in clause (iv) and would suffer extreme hardship upon removal;";

(B) in subclause (II), by inserting ", or a labor or employment violation resulting in a workplace claim described in clause (iv)" before the semicolon at the end;

(C) in subclause (III)—

(i) by striking "or State judge, to the Service" and inserting ", State, or local judge, to the Department of Homeland Security, to the Equal Employment Opportunity Commission, to the Department of Labor, to the National Labor Relations Board"; and

(ii) by inserting ", or investigating, prosecuting, or seeking civil remedies for a

labor or employment violation related to a workplace claim described in clause (iv)'' before the semicolon at the end; and

(D) in subclause (IV)—

(i) by inserting ''(aa)'' after ''(IV)''; and

(ii) by adding at the end the following: ''or

''(bb) a workplace claim described in clause (iv) resulted from a labor or employment violation;'';

(2) in clause (ii)(II), by striking ''and'' at the end;

(3) in clause (iii), by striking ''or'' at the end and inserting ''and''; and

(4) by adding at the end the following:

''(iv) in the labor or employment violation related to a workplace claim, the alien—

''(I) has filed, is a material witness in, or is likely to be helpful in the investigation of, a workplace claim (as defined in section 274A(e)(10)(C)(iii)(II)); and

"(II) reasonably fears, has been threatened with, or has been the victim of, an action involving force, physical restraint, retaliation, or abuse of the immigration or other legal process against the alien or another person by the employer in relation to acts underlying the workplace claim or related to the filing of the workplace claim; or";

(b) TEMPORARY PROTECTION FOR VICTIMS OF CRIME, LABOR, AND EMPLOYMENT VIOLATIONS.—Notwithstanding any other provision of law, the Secretary may permit an alien to temporarily remain in the United States and grant the alien employment authorization if the Secretary determines that the alien—

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

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

(B) has been helpful, is being helpful, or is likely to be helpful to—

(i) a Federal, State, or local law enforcement official;

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

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

(iv) the Department of Homeland Security;

(v) the Equal Employment Opportunity Commission;

(vi) the Department of Labor;

(vii) the National Labor Relations Board; or

(viii) other Federal, State, or local authorities investigating, prosecuting, or seeking civil remedies related to the workplace claim.

(c) CONFORMING AMENDMENTS.—Section 214(p) (8 U.S.C. 1184(p)) is amended—

(1) in paragraph (1), by inserting ''or investigating, prosecuting, or seeking civil remedies for workplace claims described in section 101(a)(15)(U)(iv)'' after ''section 101(a)(15)(U)(iii)'' each place such term appears;

(2) in paragraph (2)(A), by striking ''10,000'' and inserting ''20,000''; and

(3) in paragraph (6)—

(A) by inserting ''or workplace claims described in section 101(a)(15)(U)(iv)'' after ''described in section 101(a)(15)(U)(iii)''; and

(B) by inserting ''or workplace claim'' after ''prosecution of such criminal activity''.

(d) ADJUSTMENT OF STATUS FOR VICTIMS OF CRIMES.—Section 245(m)(1) (8 U.S.C. 1255(m)(1)) is amended by inserting ''or an investigation or prosecution regarding a workplace claim'' after ''prosecution''.

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

(1) in subparagraph (E), by striking ''physical or mental abuse and the criminal activity'' and inserting ''abuse and the criminal activity or workplace claim'';

(2) in subparagraph (F), by adding ''or'' at the end; and

(3) by inserting after subparagraph (F) the following:

''(G) the alien's employer,''.

SEC. 473. LABOR ENFORCEMENT ACTIONS.

(a) REMOVAL PROCEEDINGS.—Section 239(e) (8 U.S.C. 1229(e)) is amended—

(1) in paragraph (1)—

(A) by striking ''In cases where'' and inserting ''If''; and

(B) by inserting ''or as a result of information provided to the Department of Homeland Security in retaliation against individuals for exercising or attempting to exercise their employment rights or other legal rights'' after ''paragraph (2)''; and

(2) in paragraph (2), by adding at the end the following:

''(C) At a facility about which a workplace claim has been filed or is contemporaneously filed.''.

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

''(10) CONDUCT IN ENFORCEMENT ACTIONS.—

''(A) ENFORCEMENT ACTION.—If the Department of Homeland Security undertakes an enforcement action at a facility about which a workplace claim has been filed or is contemporaneously filed, or as a result of information provided to the Department in retaliation against employees for exercising their rights re-

lated to a workplace claim, the Department shall ensure that—

"(i) any aliens arrested or detained who are necessary for the investigation or prosecution of workplace claim violations or criminal activity (as described in subparagraph (T) or (U) of section 101(a)(15)) are not removed from the United States until after the Department—

"(I) notifies the appropriate law enforcement agency with jurisdiction over such violations or criminal activity; and

"(II) provides such agency with the opportunity to interview such aliens; and

"(ii) no aliens entitled to a stay of removal or abeyance of removal proceedings under this section are removed.

"(B) PROTECTIONS FOR VICTIMS OF CRIME, LABOR, AND EMPLOYMENT VIOLATIONS.—

"(i) STAY OF REMOVAL OR ABEYANCE OF REMOVAL PROCEEDINGS.—An alien

against whom removal proceedings have been initiated under chapter 4 of title II, who has filed a workplace claim, who is a material witness in any pending or anticipated proceeding involving a workplace claim, or who has filed for relief under section 101(a)(15)(U), shall be entitled to a stay of removal or an abeyance of removal proceedings and to employment authorization until the resolution of the workplace claim or the denial of relief under section 101(a)(15)(U) after exhaustion of administrative appeals, whichever is later, unless the Department establishes, by a preponderance of the evidence in proceedings before the immigration judge presiding over that alien's removal hearing, that—

"(I) the Department initiated the alien's removal proceeding for wholly independent reasons and not based on, or as a result of, any information provided to, or obtained by, the Department—

"(aa) from the alien's employer;

"(bb) from any outside source, including any anonymous source or any individual described in subparagraphs (A) through (G) of section 1384(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367(a)(1)); or

"(cc) during the prosecution or investigation of the workplace claim; and

"(II) the workplace claim was filed in a bad faith with the intent to delay or avoid the alien's removal.

"(ii) DURATION.—Any stay of removal or abeyance of removal proceedings and employment authorization issued pursuant to clause (i) shall remain valid until the resolution of the workplace claim or the denial of relief under section 101(a)(15)(U) after the exhaustion of administrative appeals, and shall be extended by the Secretary of Homeland Security for

a period of not longer than 3 additional years upon determining that—

"(I) such relief would enable the alien asserting a workplace claim to pursue the claim to resolution;

"(II) the deterrent goals of any statute underlying a workplace claim would be served; or

"(III) such extension would otherwise further the interests of justice.

"(iii) DEFINITIONS.—In this section:

"(I) MATERIAL WITNESS.—Notwithstanding any other provision of law, the term 'material witness' means an individual who presents a declaration from an attorney investigating, prosecuting, or defending the workplace claim or from the presiding officer overseeing the workplace claim attesting that, to the best of the declarant's knowledge and belief, reasonable cause exists to believe that the testimony of the individual will be relevant to the outcome of the workplace claim.

"(II) WORKPLACE CLAIM.—The term 'workplace claim' means any written or oral claim, charge, complaint, or grievance filed with, communicated to, or submitted to the employer, a Federal, State, or local agency or court, or an employee representative related to the violation of applicable Federal, State, and local labor laws, including laws concerning wages and hours, labor relations, family and medical leave, occupational health and safety, or nondiscrimination.".

SEC. 474. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this chapter and the amendments made by this chapter.

CHAPTER 8—AGRICULTURAL JOB OPPORTUNITIES, BENEFITS, AND SECURITY

SEC. 475. SHORT TITLE.

This chapter may be cited as the "Agricultural Job Opportunities, Benefits, and Security Act of 2010" or the "AgJOBS Act of 2010".

Subchapter A—Blue Card Status

SEC. 476. REQUIREMENTS FOR BLUE CARD STATUS.

(a) REQUIREMENT TO GRANT BLUE CARD STATUS.—Notwithstanding any other provision of law, the Secretary shall, pursuant to the requirements of this section, grant blue card status to an alien who qualifies under this section if the Secretary determines that the alien—

(1) has performed agricultural employment in the United States for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2008;

(2) applied for such status during the 18-month application period beginning on the first day of the seventh month that begins after the date of the enactment of this Act;

(3) is otherwise admissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as otherwise provided under section 478(a)(2); and

(4) has not been convicted of any felony or a misdemeanor, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500.

(b) AUTHORIZED TRAVEL.—An alien who is granted blue card status is authorized to travel outside the United

States (including commuting to the United States from a residence in a foreign country) in the same manner as an alien lawfully admitted for permanent residence.

(c) AUTHORIZED EMPLOYMENT.—The Secretary shall provide an alien who is granted blue card status an employment authorized endorsement or other appropriate work permit, in the same manner as an alien lawfully admitted for permanent residence.

(d) TERMINATION OF BLUE CARD STATUS.—

(1) DEPORTABLE ALIENS.—The Secretary shall terminate blue card status granted to an alien if the Secretary determines that the alien is deportable.

(2) OTHER GROUNDS FOR TERMINATION.—The Secretary shall terminate blue card status granted to an alien if—

(A) the Secretary finds, by a preponderance of the evidence, that the adjustment to blue card status was the result of fraud or willful misrepresentation, as described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(B) the alien—

(i) commits an act that makes the alien inadmissible to the United States under section 212 of the Immigration and

Nationality Act (8 U.S.C. 1182), except as provided under section 478(a)(2);

(ii) is convicted of a felony or 3 or more misdemeanors committed in the United States;

(iii) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500; or

(iv) fails to perform the agricultural employment required under paragraph (1)(A) of section 478(a) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in paragraph (3) of such section.

(e) RECORD OF EMPLOYMENT.—

(1) IN GENERAL.—Each employer of an alien granted blue card status shall annually—

(A) provide a written record of employment to the alien; and

(B) provide a copy of such record to the Secretary.

(2) CIVIL PENALTIES.—

(A) IN GENERAL.—If the Secretary determines, after notice and opportunity for a hearing, that an employer of an alien granted blue card status has failed to provide the record of employment required under paragraph (1) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil penalty in an amount not to exceed $1,000 per violation.

(B) LIMITATION.—The penalty applicable under subparagraph (A) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this section.

(3) SUNSET.—The obligation under paragraph (1) shall terminate on the date that is 6 years after the date of the enactment of this Act.

(f) REQUIRED FEATURES OF IDENTITY CARD.—The Secretary shall provide each alien granted blue card status, and the spouse and any child of each such alien residing in the United States, with a card that contains—

(1) an encrypted, machine-readable, electronic identification strip that is unique to the alien to whom the card is issued;

(2) biometric identifiers, including fingerprints and a digital photograph; and

(3) physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes.

(g) FINE.—An alien granted blue card status shall pay a $100 fine to the Secretary.

(h) MAXIMUM NUMBER.—The Secretary may not issue more than 1,350,000 blue cards during the 5-year period beginning on the date of the enactment of this Act.

(i) TREATMENT OF ALIENS GRANTED BLUE CARD STATUS.—

(1) IN GENERAL.—Except as otherwise provided under this section, an alien granted blue card status (including a spouse or child of the alien granted derivative status) shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(2) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—Except as otherwise provided in law, an alien granted blue card status (including a spouse or child of the alien granted derivative status) shall not be eligible, by reason of such

status, for any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after the date on which the alien is granted an adjustment of status under section 478.

SEC. 477. APPLICATION FOR BLUE CARD STATUS.

(a) SUBMISSION.—The Secretary shall provide that—

(1) applications for blue card status may be submitted—

(A) to the Secretary if the applicant is represented by an attorney or a nonprofit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations; or

(B) to a qualified designated entity if the applicant consents to the forwarding of the application to the Secretary; and

(2) applications for adjustment of status under section 478 shall be filed directly with the Secretary.

(b) QUALIFIED DESIGNATED ENTITY DEFINED.—In this section, the term ''qualified designated entity'' means—

(1) a qualified farm labor organization or an association of employers designated by the Secretary; or

(2) any such other person designated by the Secretary if that Secretary determines such person is qualified and has substantial experience, demonstrated competence, and has a history of long-term involvement in the preparation and submission of applications for adjustment of status under section 209, 210, or 245 of the Immigration and Nationality Act (8 U.S.C. 1159, 1160, and 1255), the Act entitled ''An Act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes'', approved November 2, 1966 (Public Law 89–732; 8 U.S.C. 1255 note), Public Law 95–145 (8 U.S.C. 1255 note), or the Immigration Reform and Control Act of 1986 (Public Law 99–603; 100 Stat. 3359) or any amendment made by that Act.

(c) PROOF OF ELIGIBILITY.—

(1) IN GENERAL.—An alien may establish that the alien meets the requirement of section 476(a)(1) or 478(a)(1) through government employment records or records supplied by employers or collective 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

sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

(d) APPLICATIONS SUBMITTED TO QUALIFIED DESIGNATED ENTITIES.—

(1) REQUIREMENTS.—Each qualified designated entity shall agree—

(A) to forward to the Secretary an application submitted to that entity pursuant to subsection (a)(1)(B) if the applicant has consented to such forwarding;

(B) not to forward to the Secretary any such application if the applicant has not consented to such forwarding; and

(C) to assist an alien in obtaining documentation of the alien's work history, if the alien requests such assistance.

(2) NO AUTHORITY TO MAKE DETERMINATIONS.—No qualified designated entity may make a determination required by this subtitle to be made by the Secretary.

(e) LIMITATION ON ACCESS TO INFORMATION.—Files and records collected or compiled by a qualified designated entity for the purposes of this section are confidential and the Secretary shall not have access to such a file or record

relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to subsection (f).

(f) CONFIDENTIALITY OF INFORMATION.—

(1) IN GENERAL.—Except as otherwise provided in this section, the Secretary or any other official or employee of the Department or a bureau or agency of the Department is prohibited from—

(A) using information furnished by the applicant pursuant to an application filed under this title, the information provided by an applicant to a qualified designated entity, or any information provided by an employer or former employer for any purpose other than to make a determination on the application or for imposing the penalties described in subsection (g);

(B) making any publication in which the information furnished by any particular individual can be identified; or

(C) permitting a person other than a sworn officer or employee of the Department or a bureau or agency of the Department or, with respect to applications filed with a qualified designated entity, that qualified designated entity, to examine individual applications.

(2) REQUIRED DISCLOSURES.—The Secretary shall provide the information furnished under this title or any other information derived from such furnished information to—

(A) a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, if such information is requested in writing by such entity; or

(B) an official coroner, for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

(3) CONSTRUCTION.—

(A) IN GENERAL.—Nothing in this subsection may be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes, of information contained in files or records of the Department pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(B) CRIMINAL CONVICTIONS.—Notwithstanding any other provision of this subsection,

information concerning whether the alien applying for blue card status or an adjustment of status under section 478 has been convicted of a crime at any time may be used or released for immigration enforcement or law enforcement purposes.

(4) CRIME.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be subject to a fine in an amount not to exceed $10,000.

(g) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(1) CRIMINAL PENALTY.—Any person who—

(A) files an application for blue card status or an adjustment of status under section 478 and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

(B) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(h) ELIGIBILITY FOR LEGAL SERVICES.—Section 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for blue card status or an adjustment of status under section 478.

(i) APPLICATION FEES.—

(1) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees that—

(A) shall be charged for the filing of an application for blue card status or for an adjustment of status under section 478; and

(B) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(2) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under paragraph (1)(B) for services provided to applicants.

(3) DISPOSITION OF FEES.—

(A) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the ''Agricultural Worker Immigration Status Adjustment Account''. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under paragraph (1)(A).

(B) USE OF FEES FOR APPLICATION PROCESSING.—Amounts deposited in the ''Agricultural Worker Immigration Status Adjustment Account'' shall remain available to the Secretary until expended for processing applications for blue card status or an adjustment of status under section 478.

SEC. 478. ADJUSTMENT TO PERMANENT RESIDENCE.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary shall adjust the status of an alien granted blue card status to that of an alien lawfully admitted

for permanent residence if the Secretary determines that the following requirements are satisfied:

(1) QUALIFYING EMPLOYMENT.—

(A) IN GENERAL.—Subject to subparagraph (B), the alien has performed at least—

(i) 5 years of agricultural employment in the United States for at least 100 work days per year, during the 5-year period beginning on the date of the enactment of this Act; or

(ii) 3 years of agricultural employment in the United States for at least 150 work days per year, during the 3-year period beginning on the date of the enactment of this Act.

(B) 4-YEAR PERIOD OF EMPLOYMENT.—An alien shall be considered to meet the requirements of subparagraph (A) if the alien has performed 4 years of agricultural employment in the United States for at least 150 work days during 3 years of those 4 years and at least 100 work days during the remaining year, during the 4-year period beginning on the date of the enactment of this Act.

(2) PROOF.—An alien may demonstrate compliance with the requirement under paragraph (1) by submitting—

(A) the record of employment described in section 476(e); or

(B) documentation that may be submitted under section 477(c).

(3) EXTRAORDINARY CIRCUMSTANCES.—

(A) IN GENERAL.—In determining whether an alien has met the requirement of paragraph (1)(A), the Secretary may credit the alien with not more than 12 additional months of agricultural employment in the United States to meet such requirement if the alien was unable to work in agricultural employment due to—

(i) pregnancy, injury, or disease, if the alien can establish such pregnancy, disabling injury, or disease through medical records;

(ii) illness, disease, or other special needs of a minor child, if the alien can establish such illness, disease, or special needs through medical records;

(iii) severe weather conditions that prevented the alien from engaging in agri-

cultural employment for a significant period of time; or

(iv) termination from agricultural employment, if the Secretary finds that the termination was without just cause and that the alien was unable to find alternative agricultural employment after a reasonable job search.

(B) EFFECT OF FINDING.—A finding made under subparagraph (A)(iv), with respect to an alien, shall not—

(i) be conclusive, binding, or admissible in a separate or subsequent judicial or administrative action or proceeding between the alien and a current or prior employer of the alien or any other party; or

(ii) subject the alien's employer to the payment of attorney fees incurred by the alien in seeking to obtain a finding under subparagraph (A)(iv).

(4) APPLICATION PERIOD.—The alien applies for adjustment of status not later than 7 years after the date of the enactment of this Act.

(5) FINE.—The alien pays a fine of $400 to the Secretary.

(b) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary shall deny an alien granted blue card status an adjustment of status under this section if—

(1) the Secretary finds, by a preponderance of the evidence, that the adjustment to blue card status was the result of fraud or willful misrepresentation, as described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(2) the alien—

(A) commits an act that makes the alien inadmissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as provided under section 105(b);

(B) is convicted of a felony or 3 or more misdemeanors committed in the United States;

(C) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500; or

(D) failed to perform the agricultural employment required under paragraph (1)(A) of subsection (a) unless the alien was unable to work in agricultural employment due to the ex-

traordinary circumstances described in paragraph (3) of such subsection.

(c) GROUNDS FOR REMOVAL.—Any alien granted blue card status who does not apply for adjustment of status under this section before the expiration of the application period described in subsection (a)(4) or who fails to meet the other requirements of subsection (a) by the end of the application period, is deportable and may be removed under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(d) PAYMENT OF TAXES.—

(1) IN GENERAL.—Not later than the date on which an alien's status is adjusted under this section, the alien shall establish that the alien does not owe any applicable Federal tax liability by establishing that—

(A) no such tax liability exists;

(B) all such outstanding tax liabilities have been paid; or

(C) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(2) APPLICABLE FEDERAL TAX LIABILITY.—In paragraph (1) the term ''applicable Federal tax liability'' 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.—

(A) GRANTING OF STATUS AND REMOVAL.—The Secretary shall grant derivative status to the alien spouse and any minor child residing in the United States of an alien granted blue card status and shall not remove such derivative spouse or child during the period that the alien granted blue card status maintains such status, except as provided in paragraph (3). A grant of derivative status to such a spouse or child under this subparagraph shall not decrease the number of aliens who may receive blue card status under subsection (h) of section 101.

(B) TRAVEL.—The derivative spouse and any minor child of an alien granted blue card status may travel outside the United States in the same manner as an alien lawfully admitted for permanent residence.

(C) EMPLOYMENT.—The derivative spouse of an alien granted blue card status may apply to the Secretary for a work permit to authorize such spouse to engage in any lawful employment in the United States while such alien maintains blue card status.

(3) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS AND REMOVAL.—The Secretary shall deny an alien spouse or child adjustment of status under paragraph (1) and may remove such spouse or child under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) if the spouse or child—

(A) commits an act that makes the alien spouse or child inadmissible to the United States under section 212 of such Act (8 U.S.C. 1182), except as provided under section 479(a)(2);

(B) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(C) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500.

SEC. 479. OTHER PROVISIONS.

(a) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151 and 1152) shall not apply to the adjustment

of aliens to lawful permanent resident status under section 478.

(2) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien''s eligibility for status under section 101(a) or an alien''s eligibility for adjustment of status under section 478(b)(2)(A) the following rules shall apply:

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7), and (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may waive any other provision of such section 212(a) in the case of individual aliens for humanitarian purposes, to ensure family unity, or if otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—Subparagraphs (A), (B), (C), (D), (G), (H), and (I) of paragraph (2) and paragraphs (3) and (4) of such section 212(a) may not be waived by the Secretary under subparagraph (A).

(iii) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for blue card status or an adjustment of status under section 478 by reason of a ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(3) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(A) BEFORE APPLICATION PERIOD.—Effective on the date of enactment of this Act, the Secretary shall provide that, in the case of an alien who is apprehended before the beginning of the application period described in section 476(a)(2) and who can establish a nonfrivolous case of eligibility for blue card status (but for the fact that the alien may not apply for such

status until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for blue card status, the alien—

(i) may not be removed; and

(ii) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

(B) DURING APPLICATION PERIOD.—The Secretary shall provide that, in the case of an alien who presents a nonfrivolous application for blue card status during the application period described in section 476(a)(2), including an alien who files such an application within 30 days of the alien's apprehension, and until a final determination on the application has been made in accordance with this section, the alien—

(i) may not be removed; and

(ii) shall be granted authorization to engage in employment in the United States and be provided an employment authorized

endorsement or other appropriate work permit for such purpose.

(b) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) IN GENERAL.—There shall be no administrative or judicial review of a determination respecting an application for blue card status or adjustment of status under section 478 except in accordance with this section.

(2) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF REMOVAL.—There shall be judicial review of such a determination only in the judicial review of an

order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(c) USE OF INFORMATION.—Beginning not later than the first day of the application period described in section 476(a)(2), the Secretary, in cooperation with qualified designated entities (as that term is defined in section 477(b)), shall broadly disseminate information respecting the benefits that aliens may receive under this subtitle and the requirements that an alien is required to meet to receive such benefits.

(d) REGULATIONS, EFFECTIVE DATE, AUTHORIZATION OF APPROPRIATIONS.—

(1) REGULATIONS.—The Secretary shall issue regulations to implement this chapter not later than

the first day of the seventh month that begins after the date of enactment of this Act.

(2) EFFECTIVE DATE.—This chapter shall take effect on the date that regulations required under subsection (a) are issued, regardless of whether such regulations are issued on an interim basis or on any other basis.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to implement this subtitle, including any sums needed for costs associated with the initiation of such implementation, for fiscal years 2011 and 2012.

SEC. 480. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—Section 208(e)(1) of the Social Security Act (42 U.S.C. 408(e)(1)) is amended—

(1) in subparagraph (B)(ii), by striking ''or'' at the end;

(2) in subparagraph (C), by inserting ''or'' at the end;

(3) by inserting after subparagraph (C) the following:

''(D) who is granted blue card status under the AgJOBS Act of 2010.''; and

(4) by striking ''1990.'' and inserting ''1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted blue card status.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of the enactment of this Act.

Subchapter B—Reform of H–2A Worker Program

SEC. 481. AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.) is amended by striking section 218 and inserting the following:

''SEC. 218. H–2A EMPLOYER APPLICATIONS.

''(a) APPLICATIONS TO THE SECRETARY OF LABOR.—

''(1) IN GENERAL.—No alien may be admitted to the United States as an H–2A worker, or otherwise provided status as an H–2A worker, unless the employer has filed with the Secretary of Labor an application containing—

"(A) the assurances described in subsection (b);

"(B) a description of the nature and location of the work to be performed;

"(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and

"(D) the number of job opportunities in which the employer seeks to employ the workers.

"(2) ACCOMPANIED BY JOB OFFER.—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question.

"(b) ASSURANCES FOR INCLUSION IN APPLICATIONS.—The assurances referred to in subsection (a)(1) are the following:

"(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is covered under a collective bargaining agreement:

"(A) UNION CONTRACT DESCRIBED.—The job opportunity is covered by a union contract which was negotiated at arm's length between a bona fide union and the employer.

"(B) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

"(C) NOTIFICATION OF BARGAINING REPRESENTATIVES.—The employer, at the time of filing the application, has provided notice of the filing under this paragraph to the bargaining representative of the employer's employees in the occupational classification at the place or places of employment for which aliens are sought.

"(D) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

"(E) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or

the nonimmigrants are, sought and who will be available at the time and place of need.

"(F) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

"(2) JOB OPPORTUNITIES NOT COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is not covered under a collective bargaining agreement:

"(A) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer has applied for an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

"(B) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

"(C) BENEFIT, WAGE, AND WORKING CONDITIONS.—The employer will provide, at a min-

imum, the benefits, wages, and working conditions required by section 218A to all workers employed in the job opportunities for which the employer has applied for an H–2A worker under subsection (a) and to all other workers in the same occupation at the place of employment.

"(D) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment and for a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer has applied for an H–2A worker.

"(E) REQUIREMENTS FOR PLACEMENT OF THE NONIMMIGRANT WITH OTHER EMPLOYERS.—The employer will not place the nonimmigrant with another employer unless—

"(i) the nonimmigrant performs duties in whole or in part at 1 or more worksites owned, operated, or controlled by such other employer;

"(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer; and

"(iii) the employer has inquired of the other employer as to whether, and has no actual knowledge or notice that, during the period of employment and for a period of 30 days preceding the period of employment, the other employer has displaced or intends to displace a United States worker employed by the other employer in the occupation at the place of employment for which the employer seeks approval to employ H–2A workers.

"(F) STATEMENT OF LIABILITY.—The application form shall include a clear statement explaining the liability under subparagraph (E) of an employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph.

"(G) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in

the course of the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

"(H) EMPLOYMENT OF UNITED STATES WORKERS.—

"(i) RECRUITMENT.—The employer has taken or will take the following steps to recruit United States workers for the job opportunities for which the H–2A nonimmigrant is, or H–2A nonimmigrants are, sought:

"(I) CONTACTING FORMER WORKERS.—The employer shall make reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact any United States worker the employer employed during the previous season in the occupation at the place of intended employment for which the employer is applying for workers and has made the availability of the employer's job opportunities in the occupation at the place of intended em-

ployment known to such previous workers, unless the worker was terminated from employment by the employer for a lawful job-related reason or abandoned the job before the worker completed the period of employment of the job opportunity for which the worker was hired.

"(II) FILING A JOB OFFER WITH THE LOCAL OFFICE OF THE STATE EMPLOYMENT SECURITY AGENCY.—Not later than 28 days before the date on which the employer desires to employ an H–2A worker in a temporary or seasonal agricultural job opportunity, the employer shall submit a copy of the job offer described in subsection (a)(2) to the local office of the State employment security agency which serves the area of intended employment and authorize the posting of the job opportunity on `America's Job Bank' or other electronic job registry, except that nothing in this subclause shall require the employer to file an

interstate job order under section 653 of title 20, Code of Federal Regulations.

"(III) ADVERTISING OF JOB OPPORTUNITIES.—Not later than 14 days before the date on which the employer desires to employ an H–2A worker in a temporary or seasonal agricultural job opportunity, the employer shall advertise the availability of the job opportunities for which the employer is seeking workers in a publication in the local labor market that is likely to be patronized by potential farm workers.

"(IV) EMERGENCY PROCEDURES.—The Secretary of Labor shall, by regulation, provide a procedure for acceptance and approval of applications in which the employer has not complied with the provisions of this subparagraph because the employer's need for H–2A workers could not reasonably have been foreseen.

"(ii) JOB OFFERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or nonimmigrants are, sought and who will be available at the time and place of need.

"(iii) PERIOD OF EMPLOYMENT.—The employer will provide employment to any qualified United States worker who applies to the employer during the period beginning on the date on which the H–2A worker departs for the employer's place of employment and ending on the date on which 50 percent of the period of employment for which the H–2A worker who is in the job was hired has elapsed, subject to the following requirements:

"(I) PROHIBITION.—No person or entity shall willfully and knowingly withhold United States workers before the arrival of H–2A workers in order to force the hiring of United States workers under this clause.

"(II) COMPLAINTS.—Upon receipt of a complaint by an employer that a violation of subclause (I) has occurred, the Secretary of Labor shall immediately investigate. The Secretary of Labor shall, within 36 hours of the receipt of the complaint, issue findings concerning the alleged violation. If the Secretary of Labor finds that a violation has occurred, the Secretary of Labor shall immediately suspend the application of this clause with respect to that certification for that date of need.

"(III) PLACEMENT OF UNITED STATES WORKERS.—Before referring a United States worker to an employer during the period described in the matter preceding subclause (I), the Secretary of Labor shall make all reasonable efforts to place the United States worker in an open job acceptable to the worker, if there are other job offers pending with the job service

that offer similar job opportunities in the area of intended employment.

"(iv) STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall be construed to prohibit an employer from using such legitimate selection criteria relevant to the type of job that are normal or customary to the type of job involved so long as such criteria are not applied in a discriminatory manner.

"(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS.—

"(1) IN GENERAL.—An agricultural association may file an application under subsection (a) on behalf of 1 or more of its employer members that the association certifies in its application has or have agreed in writing to comply with the requirements of this section and sections 218A, 218B, and 218C.

"(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association filing an application under paragraph (1) is a joint or sole employer of the temporary or seasonal agricultural workers requested on the application, the certifications granted under subsection (e)(2)(B) to the association may be used for the certified job opportunities of any of its

producer members named on the application, and such workers may be transferred among such producer members to perform the agricultural services of a temporary or seasonal nature for which the certifications were granted.

"(d) WITHDRAWAL OF APPLICATIONS.—

"(1) IN GENERAL.—An employer may withdraw an application filed pursuant to subsection (a), except that if the employer is an agricultural association, the association may withdraw an application filed pursuant to subsection (a) with respect to 1 or more of its members. To withdraw an application, the employer or association shall notify the Secretary of Labor in writing, and the Secretary of Labor shall acknowledge in writing the receipt of such withdrawal notice. An employer who withdraws an application under subsection (a), or on whose behalf an application is withdrawn, is relieved of the obligations undertaken in the application.

"(2) LIMITATION.—An application may not be withdrawn while any alien provided status under section 101(a)(15)(H)(ii)(a) pursuant to such application is employed by the employer.

"(3) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred by an employer under any

other law or regulation as a result of the recruitment of United States workers or H–2A workers under an offer of terms and conditions of employment required as a result of making an application under subsection (a) is unaffected by withdrawal of such application.

"(e) REVIEW AND APPROVAL OF APPLICATIONS.—

"(1) RESPONSIBILITY OF EMPLOYERS.—The employer shall make available for public examination, within 1 working day after the date on which an application under subsection (a) is filed, at the employer's principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary).

"(2) RESPONSIBILITY OF THE SECRETARY OF LABOR.—

"(A) COMPILATION OF LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under subsection (a). Such list shall include the wage rate, number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for examination in the District of Columbia.

"(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall certify that the intending employer has filed with the Secretary of Labor an application as described in subsection (a). Such certification shall be provided within 7 days of the filing of the application.

"SEC. 218A. H–2A EMPLOYMENT REQUIREMENTS.

"(a) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States workers shall offer the United States workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H–2A workers.

"(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—Except in cases where higher benefits, wages, or working conditions are required by the provisions of subsection (a), in order to protect similarly em-

ployed United States workers from adverse effects with respect to benefits, wages, and working conditions, every job offer which shall accompany an application under section 218(b)(2) shall include each of the following benefit, wage, and working condition provisions:

"(1) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.—

"(A) IN GENERAL.—An employer applying under section 218(a) for H–2A workers shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

"(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer's election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation

housing or other substantially similar class of habitation. In the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

"(C) FAMILY HOUSING.—If it is the prevailing practice in the occupation and area of intended employment to provide family housing, family housing shall be provided to workers with families who request it.

"(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

"(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

"(F) CHARGES FOR HOUSING.—

"(i) CHARGES FOR PUBLIC HOUSING.—If public housing provided for migrant agricultural workers under the aus-

1 pices of a local, county, or State govern-
2 ment is secured by an employer, and use of
3 the public housing unit normally requires
4 charges from migrant workers, such
5 charges shall be paid by the employer di-
6 rectly to the appropriate individual or enti-
7 ty affiliated with the housing's manage-
8 ment.

9 "(ii) DEPOSIT CHARGES.—Charges in
10 the form of deposits for bedding or other
11 similar incidentals related to housing shall
12 not be levied upon workers by employers
13 who provide housing for their workers. An
14 employer may require a worker found to
15 have been responsible for damage to such
16 housing which is not the result of normal
17 wear and tear related to habitation to re-
18 imburse the employer for the reasonable
19 cost of repair of such damage.

20 "(G) HOUSING ALLOWANCE AS ALTER-
21 NATIVE.—

22 "(i) IN GENERAL.—If the requirement
23 set out in clause (ii) is satisfied, the em-
24 ployer may provide a reasonable housing
25 allowance instead of offering housing

under subparagraph (A). Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance. No housing allowance may be used for housing which is owned or controlled by the employer.

"(ii) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers and H–2A workers who are seeking temporary housing while employed in agricultural work.

Such certification shall expire after 3 years unless renewed by the Governor of the State.

"(iii) AMOUNT OF ALLOWANCE.—

"(I) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

"(II) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this paragraph is in a metro-

politan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

"(2) REIMBURSEMENT OF TRANSPORTATION.—

"(A) TO PLACE OF EMPLOYMENT.—A worker who completes 50 percent of the period of employment of the job opportunity for which the worker was hired shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place from which the worker came to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment.

"(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of employment

for the job opportunity involved shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker's transportation and subsistence to such subsequent employer's place of employment.

"(C) LIMITATION.—

"(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed the lesser of—

"(I) the actual cost to the worker or alien of the transportation and subsistence involved; or

"(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

"(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

"(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (4)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

"(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORKSITE.—The employer shall provide transportation between the worker's living quarters and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

"(3) REQUIRED WAGES.—

"(A) IN GENERAL.—An employer applying for workers under section 218(a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less (and is not required to pay more) than the greater of the prevailing wage in the occupation in the area of intended employment or the adverse effect wage rate. No worker shall be paid less than the greater of the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State minimum wage.

"(B) LIMITATION.—Effective on the date of the enactment of the Agricultural Job Opportunities, Benefits, and Security Act of 2009 and continuing for 3 years thereafter, no adverse effect wage rate for a State may be more than the adverse effect wage rate for that State in effect on January 1, 2009, as established by section 655.107 of title 20, Code of Federal Regulations.

"(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

"(i) FIRST ADJUSTMENT.—If Congress does not set a new wage standard applicable to this section before the first March 1 that is not less than 3 years after the date of enactment of this section, the adverse effect wage rate for each State beginning on such March 1 shall be the wage rate that would have resulted if the adverse effect wage rate in effect on January 1, 2009, had been annually adjusted, beginning on March 1, 2012, by the lesser of—

"(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

"(II) 4 percent.

"(ii) SUBSEQUENT ANNUAL ADJUSTMENTS.—Beginning on the first March 1 that is not less than 4 years after the date of enactment of this section, and each March 1 thereafter, the adverse effect

wage rate then in effect for each State shall be adjusted by the lesser of—

"(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

"(II) 4 percent.

"(D) DEDUCTIONS.—The employer shall make only those deductions from the worker's wages that are authorized by law or are reasonable and customary in the occupation and area of employment. The job offer shall specify all deductions not required by law which the employer will make from the worker's wages.

"(E) FREQUENCY OF PAY.—The employer shall pay the worker not less frequently than twice monthly, or in accordance with the prevailing practice in the area of employment, whichever is more frequent.

"(F) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to the worker, on or before each payday, in 1 or more written statements—

"(i) the worker's total earnings for the pay period;

"(ii) the worker's hourly rate of pay, piece rate of pay, or both;

"(iii) the hours of employment which have been offered to the worker (broken out by hours offered in accordance with and over and above the 3/4 guarantee described in paragraph (4);

"(iv) the hours actually worked by the worker;

"(v) an itemization of the deductions made from the worker's wages; and

"(vi) if piece rates of pay are used, the units produced daily.

"(G) REPORT ON WAGE PROTECTIONS.—Not later than December 31, 2011, the Comptroller General of the United States shall prepare and transmit to the Secretary of Labor, the Committee on the Judiciary of the Senate, and Committee on the Judiciary of the House of Representatives, a report that addresses—

"(i) whether the employment of H–2A or unauthorized aliens in the United States agricultural workforce has depressed

United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

''(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

''(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage level that would have prevailed in the absence of H–2A employment;

''(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage; and

''(v) recommendations for future wage protection under this section.

"(H) COMMISSION ON WAGE STANDARDS.—

"(i) ESTABLISHMENT.—There is established the Commission on Agricultural Wage Standards under the H–2A program (in this subparagraph referred to as the 'Commission').

"(ii) COMPOSITION.—The Commission shall consist of 10 members as follows:

"(I) Four representatives of agricultural employers and 1 representative of the Department of Agriculture, each appointed by the Secretary of Agriculture.

"(II) Four representatives of agricultural workers and 1 representative of the Department of Labor, each appointed by the Secretary of Labor.

"(iii) FUNCTIONS.—The Commission shall conduct a study that shall address—

"(I) whether the employment of H–2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker wages below the levels that

would otherwise have prevailed if alien farm workers had not been employed in the United States;

''(II) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

''(III) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage level that would have prevailed in the absence of H–2A employment;

''(IV) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

"(V) recommendations for future wage protection under this section.

"(iv) FINAL REPORT.—Not later than December 31, 2011, the Commission shall submit a report to the Congress setting forth the findings of the study conducted under clause (iii).

"(v) TERMINATION DATE.—The Commission shall terminate upon submitting its final report.

"(4) GUARANTEE OF EMPLOYMENT.—

"(A) OFFER TO WORKER.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least 3/4 of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker's Sabbath and Federal holidays. If the employer affords the United States or H–2A worker less employment than that required under this paragraph,

the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

"(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

"(C) ABANDONMENT OF EMPLOYMENT, TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the 3/4 guarantee described in subparagraph (A).

"(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the

worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster, including a flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought, before the guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will make efforts to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall provide the return transportation required in paragraph (2)(D).

''(5) MOTOR VEHICLE SAFETY.—

''(A) MODE OF TRANSPORTATION SUBJECT TO COVERAGE.—

''(i) IN GENERAL.—- Except as provided in clauses (iii) and (iv), this subsection applies to any H–2A employer that

uses or causes to be used any vehicle to transport an H–2A worker within the United States.

"(ii) DEFINED TERM.—In this paragraph, the term 'uses or causes to be used'—

"(I) applies only to transportation provided by an H–2A employer to an H–2A worker, or by a farm labor contractor to an H–2A worker at the request or direction of an H–2A employer; and

"(II) does not apply to—

"(aa) transportation provided, or transportation arrangements made, by an H–2A worker, unless the employer specifically requested or arranged such transportation; or

"(bb) car pooling arrangements made by H–2A workers themselves, using 1 of the workers' own vehicles, unless specifically requested by the employer

directly or through a farm labor contractor.

"(iii) CLARIFICATION.—Providing a job offer to an H–2A worker that causes the worker to travel to or from the place of employment, or the payment or reimbursement of the transportation costs of an H–2A worker by an H–2A employer, shall not constitute an arrangement of, or participation in, such transportation.

"(iv) AGRICULTURAL MACHINERY AND EQUIPMENT EXCLUDED.—This subsection does not apply to the transportation of an H–2A worker on a tractor, combine, harvester, picker, or other similar machinery or equipment while such worker is actually engaged in the planting, cultivating, or harvesting of agricultural commodities or the care of livestock or poultry or engaged in transportation incidental thereto.

"(v) COMMON CARRIERS EXCLUDED.—This subsection does not apply to common carrier motor vehicle transportation in which the provider holds itself out to the general public as engaging in the

transportation of passengers for hire and holds a valid certification of authorization for such purposes from an appropriate Federal, State, or local agency.

"(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE REQUIREMENTS.—

"(i) IN GENERAL.—When using, or causing to be used, any vehicle for the purpose of providing transportation to which this subparagraph applies, each employer shall—

"(I) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)) and other applicable Federal and State safety standards;

"(II) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle; and

"(III) have an insurance policy or a liability bond that is in effect

which insures the employer against liability for damage to persons or property arising from the ownership, operation, or causing to be operated, of any vehicle used to transport any H–2A worker.

"(ii) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of Labor pursuant to regulations to be issued under this subsection.

"(iii) EFFECT OF WORKERS' COMPENSATION COVERAGE.—If the employer of any H–2A worker provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by State law, the following adjustments in the requirements of subparagraph (B)(i)(III) relating to having an insurance policy or liability bond apply:

"(I) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for

which there is coverage under such State law.

"(II) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

"(c) COMPLIANCE WITH LABOR LAWS.—An employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, except that a violation of this assurance shall not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

"(d) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer's application and job offer described in section 218(a), or, if the employer will require the worker to enter into a separate employment contract covering the employment in question, such separate employment contract.

"(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing in this section, section 218, or section 218B shall preclude the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

"SEC. 218B. PROCEDURE FOR ADMISSION AND EXTENSION OF STAY OF H–2A WORKERS.

"(a) PETITIONING FOR ADMISSION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H–2A worker may file a petition with the Secretary. The petition shall be accompanied by an accepted and currently valid certification provided by the Secretary of Labor under section 218(e)(2)(B) covering the petitioner.

"(b) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means assuring expedited delivery, transmit a copy of notice of action on the petition to the petitioner and, in the case of approved petitions, to the appropriate immigration officer at the port of entry or United States consulate (as the case may be) where the petitioner has indicated that

the alien beneficiary (or beneficiaries) will apply for a visa or admission to the United States.

"(c) CRITERIA FOR ADMISSIBILITY.—

"(1) IN GENERAL.—An H–2A worker shall be considered admissible to the United States if the alien is otherwise admissible under this section, section 218, and section 218A, and the alien is not ineligible under paragraph (2).

"(2) DISQUALIFICATION.—An alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years—

"(A) violated a material provision of this section, including the requirement to promptly depart the United States when the alien's authorized period of admission under this section has expired; or

"(B) otherwise violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

"(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—

"(A) IN GENERAL.—An alien who has not previously been admitted into the United States pursuant to this section, and who is otherwise eligible for admission in accordance with paragraphs (1) and (2), shall not be deemed inadmissible by virtue of section 212(a)(9)(B). If an alien described in the preceding sentence is present in the United States, the alien may apply from abroad for H–2A status, but may not be granted that status in the United States.

"(B) MAINTENANCE OF WAIVER.—An alien provided an initial waiver of ineligibility pursuant to subparagraph (A) shall remain eligible for such waiver unless the alien violates the terms of this section or again becomes ineligible under section 212(a)(9)(B) by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

"(d) PERIOD OF ADMISSION.—

"(1) IN GENERAL.—The alien shall be admitted for the period of employment in the application certified by the Secretary of Labor pursuant to section 218(e)(2)(B), not to exceed 10 months, supplemented by a period of not more than 1 week before

the beginning of the period of employment for the purpose of travel to the worksite and a period of 14 days following the period of employment for the purpose of departure or extension based on a subsequent offer of employment, except that—

"(A) the alien is not authorized to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

"(B) the total period of employment, including such 14-day period, may not exceed 10 months.

"(2) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Secretary to extend the stay of the alien under any other provision of this Act.

"(e) ABANDONMENT OF EMPLOYMENT.—

"(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who abandons the employment which was the basis for such admission or status shall be considered to have failed to maintain nonimmigrant status as an H–2A worker and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

"(2) REPORT BY EMPLOYER.—The employer, or association acting as agent for the employer, shall notify the Secretary not later than 7 days after an H–2A worker prematurely abandons employment.

"(3) REMOVAL BY THE SECRETARY.—The Secretary shall promptly remove from the United States any H–2A worker who violates any term or condition of the worker's nonimmigrant status.

"(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

"(f) REPLACEMENT OF ALIEN.—

"(1) IN GENERAL.—Upon presentation of the notice to the Secretary required by subsection (e)(2), the Secretary of State shall promptly issue a visa to, and the Secretary shall admit into the United States, an eligible alien designated by the employer to replace an H–2A worker—

"(A) who abandons or prematurely terminates employment; or

"(B) whose employment is terminated after a United States worker is employed pursuant to section 218(b)(2)(H)(iii), if the United

States worker voluntarily departs before the end of the period of intended employment or if the employment termination is for a lawful job-related reason.

"(2) CONSTRUCTION.—Nothing in this subsection is intended to limit any preference required to be accorded United States workers under any other provision of this Act.

"(g) IDENTIFICATION DOCUMENT.—

"(1) IN GENERAL.—Each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) shall be provided an identification and employment eligibility document to verify eligibility for employment in the United States and verify the alien's identity.

"(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

"(A) The document shall be capable of reliably determining whether—

"(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

"(ii) the individual whose eligibility is being verified is claiming the identity of another person; and

"(iii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H–2A worker.

"(B) The document shall be in a form that is resistant to counterfeiting and to tampering.

"(C) The document shall—

"(i) be compatible with other databases of the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

"(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

"(h) EXTENSION OF STAY OF H–2A ALIENS IN THE UNITED STATES.—

"(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H–2A alien who is lawfully present in the United States, the petition filed by the employer or an association pursuant to 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.

"(C) HANDLING OF PETITION.—The employer shall provide a copy of the employer's petition to the alien, who shall keep the petition with the alien's identification and employment eligibility document as evidence that the petition has been filed and that the alien is authorized to work in the United States.

"(D) APPROVAL OF PETITION.—Upon approval of a petition for an extension of stay or change in the alien's authorized employment, the Secretary shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

"(4) LIMITATION ON EMPLOYMENT AUTHORIZATION OF ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An expired identification and employment eligibility document, together with a copy of a petition for extension of stay or change in the alien's authorized employment that complies with the requirements of paragraph (1), shall constitute a valid work authorization document for a period of not more than 60 days beginning on the date on which such petition

is filed, after which time only a currently valid identification and employment eligibility document shall be acceptable.

"(5) LIMITATION ON AN INDIVIDUAL'S STAY IN STATUS.—

"(A) MAXIMUM PERIOD.—The maximum continuous period of authorized status as an H–2A worker (including any extensions) is 3 years.

"(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—

"(i) IN GENERAL.—Subject to clause (ii), in the case of an alien outside the United States whose period of authorized status as an H–2A worker (including any extensions) has expired, the alien may not again apply for admission to the United States as an H–2A worker unless the alien has remained outside the United States for a continuous period equal to at least 1/5 the duration of the alien's previous period of authorized status as an H–2A worker (including any extensions).

"(ii) EXCEPTION.—Clause (i) shall not apply in the case of an alien if the

alien's period of authorized status as an H–2A worker (including any extensions) was for a period of not more than 10 months and such alien has been outside the United States for at least 2 months during the 12 months preceding the date the alien again is applying for admission to the United States as an H–2A worker.

"(i) SPECIAL RULES FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORKERS.—Notwithstanding any provision of the Agricultural Job Opportunities, Benefits, and Security Act of 2009, an alien admitted under section 101(a)(15)(H)(ii)(a) for employment as a sheepherder, goat herder, or dairy worker—

"(1) may be admitted for an initial period of 12 months;

"(2) subject to subsection (j)(5), may have such initial period of admission extended for a period of up to 3 years; and

"(3) shall not be subject to the requirements of subsection (h)(5) (relating to periods of absence from the United States).

"(j) ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

"(1) ELIGIBLE ALIEN.—For purposes of this subsection, the term 'eligible alien' means an alien—

"(A) having nonimmigrant status under section 101(a)(15)(H)(ii)(a) based on employment as a sheepherder, goat herder, or dairy worker;

"(B) who has maintained such nonimmigrant status in the United States for a cumulative total of 36 months (excluding any period of absence from the United States); and

"(C) who is seeking to receive an immigrant visa under section 203(b)(3)(A)(iii).

"(2) CLASSIFICATION PETITION.—In the case of an eligible alien, the petition under section 204 for classification under section 203(b)(3)(A)(iii) may be filed by—

"(A) the alien's employer on behalf of the eligible alien; or

"(B) the eligible alien.

"(3) NO LABOR CERTIFICATION REQUIRED.—Notwithstanding section 203(b)(3)(C), no determination under section 212(a)(5)(A) is required with respect to an immigrant visa described in paragraph (1)(C) for an eligible alien.

"(4) EFFECT OF PETITION.—The filing of a petition described in paragraph (2) or an application for adjustment of status based on the approval of such a petition shall not constitute evidence of an alien's ineligibility for nonimmigrant status under section 101(a)(15)(H)(ii)(a).

"(5) EXTENSION OF STAY.—The Secretary shall extend the stay of an eligible alien having a pending or approved classification petition described in paragraph (2) in 1-year increments until a final determination is made on the alien's eligibility for adjustment of status to that of an alien lawfully admitted for permanent residence.

"(6) CONSTRUCTION.—Nothing in this subsection shall be construed to prevent an eligible alien from seeking adjustment of status in accordance with any other provision of law.

"SEC. 218C. WORKER PROTECTIONS AND LABOR STANDARDS ENFORCEMENT.

"(a) ENFORCEMENT AUTHORITY.—

"(1) INVESTIGATION OF COMPLAINTS.—

"(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINTS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a

petitioner's failure to meet a condition specified in section 218(b), or an employer's misrepresentation of material facts in an application under section 218(a). Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure, or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

"(B) DETERMINATION ON COMPLAINT.—Under such process, the Secretary of Labor shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C), (D), (E), or (G). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties

and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

"(C) FAILURES TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(A), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218(b), a substantial failure to meet a condition of paragraph (1)(C), (1)(E), (2)(C), (2)(D), (2)(E), or (2)(H) of section 218(b), or a material misrepresentation of fact in an application under section 218(a)—

"(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money pen-

alties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

"(ii) the Secretary may disqualify the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(a) for a period of 1 year.

"(D) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b), a willful misrepresentation of a material fact in an application under section 218(a), or a violation of subsection (d)(1)—

"(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000 per violation) as the Secretary of Labor determines to be appropriate;

"(ii) the Secretary of Labor may seek appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and

"(iii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 2 years.

"(E) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b) or a willful misrepresentation of a material fact in an application under section 218(a), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer's application under section 218(a) or during the period of 30 days preceding such period of employment—

"(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $15,000 per violation) as the Secretary of Labor determines to be appropriate; and

"(ii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 3 years.

"(F) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose total civil money penalties with respect to an application under section 218(a) in excess of $90,000.

"(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment, required under section 218A(b), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H–2A worker employed by the employer in the specific employment in question. The back wages or other required benefits under section 218A(b) shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

"(2) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority of the Secretary of Labor to conduct any compliance investigation under any other labor law,

including any law affecting migrant and seasonal agricultural workers, or, in the absence of a complaint under this section, under section 218 or 218A.

"(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF ACTION.—H–2A workers may enforce the following rights through the private right of action provided in subsection (c), and no other right of action shall exist under Federal or State law to enforce such rights:

"(1) The providing of housing or a housing allowance as required under section 218A(b)(1).

"(2) The reimbursement of transportation as required under section 218A(b)(2).

"(3) The payment of wages required under section 218A(b)(3) when due.

"(4) The benefits and material terms and conditions of employment expressly provided in the job offer described in section 218(a)(2), not including the assurance to comply with other Federal, State, and local labor laws described in section 218A(c), compliance with which shall be governed by the provisions of such laws.

"(5) The guarantee of employment required under section 218A(b)(4).

"(6) The motor vehicle safety requirements under section 218A(b)(5).

"(7) The prohibition of discrimination under subsection (d)(2).

"(c) PRIVATE RIGHT OF ACTION.—

"(1) MEDIATION.—Upon the filing of a complaint by an H–2A worker aggrieved by a violation of rights enforceable under subsection (b), and within 60 days of the filing of proof of service of the complaint, a party to the action may file a request with the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute. Upon a filing of such request and giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (B).

"(A) MEDIATION SERVICES.—The Federal Mediation and Conciliation Service shall be available to assist in resolving disputes arising under subsection (b) between H–2A workers and agricultural employers without charge to the parties.

"(B) 90-DAY LIMIT.—The Federal Mediation and Conciliation Service may conduct mediation or other nonbinding dispute resolution activities for a period not to exceed 90 days be-

ginning on the date on which the Federal Mediation and Conciliation Service receives the request for assistance unless the parties agree to an extension of this period of time.

"(C) AUTHORIZATION.—

"(i) IN GENERAL.—Subject to clause (ii), there are authorized to be appropriated to the Federal Mediation and Conciliation Service $500,000 for each fiscal year to carry out this section.

"(ii) MEDIATION.—Notwithstanding any other provision of law, the Director of the Federal Mediation and Conciliation Service is authorized to conduct the mediation or other dispute resolution activities from any other appropriated funds available to the Director and to reimburse such appropriated funds when the funds are appropriated pursuant to this authorization, such reimbursement to be credited to appropriations currently available at the time of receipt.

"(2) MAINTENANCE OF CIVIL ACTION IN DISTRICT COURT BY AGGRIEVED PERSON.—An H–2A worker aggrieved by a violation of rights enforceable

under subsection (b) by an agricultural employer or other person may file suit in any district court of the United States having jurisdiction over the parties, without regard to the amount in controversy, without regard to the citizenship of the parties, and without regard to the exhaustion of any alternative administrative remedies under this Act, not later than 3 years after the date the violation occurs.

"(3) ELECTION.—An H–2A worker who has filed an administrative complaint with the Secretary of Labor may not maintain a civil action under paragraph (2) unless a complaint based on the same violation filed with the Secretary of Labor under subsection (a)(1) is withdrawn before the filing of such action, in which case the rights and remedies available under this subsection shall be exclusive.

"(4) PREEMPTION OF STATE CONTRACT RIGHTS.—Nothing in this Act shall be construed to diminish the rights and remedies of an H–2A worker under any other Federal or State law or regulation or under any collective bargaining agreement, except that no court or administrative action shall be available under any State contract law to enforce the rights created by this Act.

"(5) WAIVER OF RIGHTS PROHIBITED.—Agreements by employees purporting to waive or modify their rights under this Act shall be void as contrary to public policy, except that a waiver or modification of the rights or obligations in favor of the Secretary of Labor shall be valid for purposes of the enforcement of this Act. The preceding sentence may not be construed to prohibit agreements to settle private disputes or litigation.

"(6) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF.—

"(A) If the court finds that the respondent has intentionally violated any of the rights enforceable under subsection (b), it shall award actual damages, if any, or equitable relief.

"(B) Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

"(7) WORKERS' COMPENSATION BENEFITS; EXCLUSIVE REMEDY.—

"(A) Notwithstanding any other provision of this section, where a State's workers' compensation law is applicable and coverage is provided for an H–2A worker, the workers' compensation benefits shall be the exclusive remedy

for the loss of such worker under this section in the case of bodily injury or death in accordance with such State's workers' compensation law.

"(B) The exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for loss from an injury or death but does not preclude other equitable relief, except that such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect—

"(i) a recovery under a State workers' compensation law; or

"(ii) rights conferred under a State workers' compensation law.

"(8) TOLLING OF STATUTE OF LIMITATIONS.—If it is determined under a State workers' compensation law that the workers' compensation law is not applicable to a claim for bodily injury or death of an H–2A worker, the statute of limitations for bringing an action for actual damages for such injury or death under subsection (c) shall be tolled for the period during which the claim for such injury or death under such State workers' compensation law was

pending. The statute of limitations for an action for actual damages or other equitable relief arising out of the same transaction or occurrence as the injury or death of the H–2A worker shall be tolled for the period during which the claim for such injury or death was pending under the State workers' compensation law.

"(9) PRECLUSIVE EFFECT.—Any settlement by an H–2A worker and an H–2A employer or any person reached through the mediation process required under subsection (c)(1) shall preclude any right of action arising out of the same facts between the parties in any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

"(10) SETTLEMENTS.—Any settlement by the Secretary of Labor with an H–2A employer on behalf of an H–2A worker of a complaint filed with the Secretary of Labor under this section or any finding by the Secretary of Labor under subsection (a)(1)(B) shall preclude any right of action arising out of the same facts between the parties under any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

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

of Labor regarding a denial of the rights enumerated and enforceable under subsection (b) or instituted, or caused to be instituted, a private right of action under subsection (c) regarding the denial of the rights enumerated under subsection (b), or has testified or is about to testify in any court proceeding brought under subsection (c).

''(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE EMPLOYMENT.—The Secretary of Labor and the Secretary shall establish a process under which an H–2A worker who files a complaint regarding a violation of subsection (d) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

''(f) ROLE OF ASSOCIATIONS.—

''(1) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An employer on whose behalf an application is filed by an association acting as its agent is fully responsible for such application, and for complying with the terms and conditions of sections 218 and 218A, as though the employer had filed the application itself. If such an employer is determined, under this section, to have committed a violation, the pen-

alty for such violation shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge, or reason to know, of the violation, in which case the penalty shall be invoked against the association or other association member as well.

"(2) VIOLATIONS BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing an application as a sole or joint employer is determined to have committed a violation under this section, the penalty for such violation shall apply only to the association unless the Secretary of Labor determines that an association member or members participated in or had knowledge, or reason to know of the violation, in which case the penalty shall be invoked against the association member or members as well.

"SEC. 218D. DEFINITIONS.

"For purposes of this section and sections 218, 218A, 218B, and 218C:

"(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under sec-

tion 3121(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(a).

"(2) BONA FIDE UNION.—The term 'bona fide union' means any organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of work for agricultural employees. Such term does not include an organization formed, created, administered, supported, dominated, financed, or controlled by an employer or employer association or its agents or representatives.

"(3) DISPLACE.—The term 'displace', in the case of an application with respect to 1 or more H–2A workers by an employer, means laying off a United States worker from a job for which the H–2A worker or workers is or are sought.

"(4) ELIGIBLE.—The term 'eligible', when used with respect to an individual, means an individual who is not an unauthorized alien (as defined in section 274A).

"(5) EMPLOYER.—The term 'employer' means any person or entity, including any farm labor con-

tractor and any agricultural association, that employs workers in agricultural employment.

"(6) H–2A EMPLOYER.—The term 'H–2A employer' means an employer who seeks to hire 1 or more nonimmigrant aliens described in section 101(a)(15)(H)(ii)(a).

"(7) H–2A WORKER.—The term 'H–2A worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

"(8) JOB OPPORTUNITY.—The term 'job opportunity' means a job opening for temporary or seasonal full-time employment at a place in the United States to which United States workers can be referred.

"(9) LAYING OFF.—

"(A) IN GENERAL.—The term 'laying off', with respect to a worker—

"(i) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, contract impossibility (as described in section 218A(b)(4)(D)), or temporary suspension

of employment due to weather, markets, or other temporary conditions; and

"(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under section 218(b)(2)(E), with either employer described in such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

"(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

"(10) REGULATORY DROUGHT.—The term 'regulatory drought' means a decision subsequent to the filing of the application under section 218 by an entity not under the control of the employer making such filing which restricts the employer's access to water for irrigation purposes and reduces or limits

the employer's ability to produce an agricultural commodity, thereby reducing the need for labor.

"(11) SEASONAL.—Labor is performed on a 'seasonal' basis if—

"(A) ordinarily, it pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

"(B) from its nature, it may not be continuous or carried on throughout the year.

"(12) SECRETARY.—Except as otherwise provided, the term 'Secretary' means the Secretary of Homeland Security.

"(13) TEMPORARY.—A worker is employed on a 'temporary' basis where the employment is intended not to exceed 10 months.

"(14) UNITED STATES WORKER.—The term 'United States worker' means any worker, whether a national of the United States, an alien lawfully admitted for permanent residence, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a).".

(b) TABLE OF CONTENTS.—The table of contents of the Immigration and Nationality Act (8 U.S.C. 1101 et

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.—

(A) IN GENERAL.—In establishing and adjusting such a schedule, the Secretary shall comply with Federal cost accounting and fee setting standards.

(B) PUBLICATION AND COMMENT.—The Secretary shall publish in the Federal Register an initial fee schedule and associated collection process and the cost data or estimates upon which such fee schedule is based, and any subsequent amendments thereto, pursuant to which public comment shall be sought and a final rule issued.

(c) USE OF PROCEEDS.—Notwithstanding any other provision of law, all proceeds resulting from the payment of the fees pursuant to the amendment made by section 480 shall be available without further appropriation and shall remain available without fiscal year limitation to reimburse the Secretary, the Secretary of State, and the Secretary of Labor for the costs of carrying out—

(1) sections 218 and 218B of the Immigration and Nationality Act; and

(2) the provisions of this Act.

SEC. 483. RULEMAKING.

(a) REQUIREMENT FOR THE SECRETARY TO CONSULT.—The Secretary shall consult with the Secretary of

Labor and the Secretary of Agriculture during the promulgation of all regulations to implement the duties of the Secretary under this Act and the amendments made by this Act.

(b) REQUIREMENT FOR THE SECRETARY OF STATE TO CONSULT.—The Secretary of State shall consult with the Secretary, the Secretary of Labor, and the Secretary of Agriculture on all regulations to implement the duties of the Secretary of State under this Act and the amendments made by this Act.

(c) REQUIREMENT FOR THE SECRETARY OF LABOR TO CONSULT.—The Secretary of Labor shall consult with the Secretary of Agriculture and the Secretary on all regulations to implement the duties of the Secretary of Labor under this Act and the amendments made by this Act.

(d) DEADLINE FOR ISSUANCE OF REGULATIONS.—All regulations to implement the duties of the Secretary, the Secretary of State, and the Secretary of Labor created under sections 218, 218A, 218B, 218C, and 218D of the Immigration and Nationality Act, as amended or added by section 480 of this Act, shall take effect on the effective date of section 480 and shall be issued not later than 1 year after the date of enactment of this Act.

SEC. 484. REPORTS TO CONGRESS.

(a) ANNUAL REPORT.—Not later than September 30 of each year, the Secretary shall submit a report to Congress that identifies, for the previous year—

(1) the number of job opportunities approved for employment of aliens admitted under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the number of workers actually admitted, disaggregated by State and by occupation;

(2) the number of such aliens reported to have abandoned employment pursuant to section 218B(e)(2) of such Act;

(3) the number of such aliens who departed the United States within the period specified in section 218B(d) of such Act;

(4) the number of aliens who applied for blue card status pursuant to section 476(a);

(5) the number of aliens who were granted such status pursuant section 476(a);

(6) the number of aliens who applied for an adjustment of status pursuant to section 478(a); and

(7) the number of aliens who received an adjustment of status pursuant section 478(a).

(b) IMPLEMENTATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the Sec-

retary shall prepare and submit a report to Congress that describes the measures being taken and the progress made in implementing this Act.

SEC. 485. EFFECTIVE DATE.

Section 481 and the amendments made by section 480 shall take effect 1 year after the date of the enactment of this Act.

TITLE V—REGISTRATION OF UNDOCUMENTED INDIVIDUALS

Subtitle A—Lawful Prospective Immigrant Status

SEC. 501. LAWFUL PROSPECTIVE IMMIGRANT STATUS.

(a) IN GENERAL.—

(1) AUTHORITY TO GRANT LAWFUL PROSPECTIVE IMMIGRANT STATUS.—Notwithstanding any other provision of law, the Secretary may grant an alien status as a Lawful Prospective Immigrant if the alien—

(A) submits an application for such status; and

(B) meets the requirements of this section.

(2) TREATMENT OF APPLICANTS.—For purposes of this section, an applicant for Lawful Prospective Immigrant status shall be treated as an applicant for admission to the United States.

(b) ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—To be eligible for status as a Lawful Prospective Immigrant an alien shall the requirements of this section including the following:

(A) INELIGIBILITY.—The alien shall not ineligible for such status under paragraph (2).

(B) INADMISSIBILITY.—Except as provided in paragraph (3), the alien shall not be inadmissible under section 212(a) of the Immigration and Nationality Act (hereinafter in this subtitle referred to as ''the Act'') (8 U.S.C. 1182(a)).

(C) PHYSICAL PRESENCE.—The alien shall—

(i) be physically present in the United States on the date of application for status as a Lawful Prospective Immigrant;

(ii) have been present in the United States before September 30, 2010; and

(iii) have maintained continuous physical presence in the United States from September 30, 2010 to the date on which the alien is granted status as a Lawful Prospective Immigrant under this title;

(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;

(III) an alien who, according to the records of the Secretary, is in a period of authorized stay in any nonimmigrant status (other than an alien considered to be in a nonimmigrant status solely by reason of section 244(f)(4) of the Act), notwithstanding any unauthorized employment or other violation of nonimmigrant status;

(IV) an alien paroled into the United States under section 212(d)(5) of the Act for purposes of prosecution or of serving as a witness in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; or

(V) an alien paroled into the Commonwealth of the Northern Mariana Islands.

(B) CONSTRUCTION.—For purposes of determining ineligibility under this paragraph, section 101(a)(48) of the Act shall apply to determinations of conviction or sentencing for an offense.

(3) GROUNDS OF INADMISSIBILITY.—

(A) IN GENERAL.—In determining an alien's admissibility under paragraph (1)(B)—

(i) Section 212(a)(5) of the Act shall not apply, and paragraphs (6)(A), (6)(B), (6)(C), (6)(D), (6)(F), (6)(G), (7), (9), and (10)(B) of section 212(a) of the Act shall not apply with regard to conduct or unlawful presence occurring before the date of application;

(ii) the Secretary may not waive—

(I) subparagraphs (B), (C), (D)(ii), (E), (H), (I), or (J) (as amended by this Act) of section 212(a)(2) of the Act (relating to criminals);

(II) section 212(a)(3) of the Act (relating to security and related grounds);

(III) subparagraphs (A), (C), or (D) of section 212(a)(10) of the Act (relating to polygamists and child abductors); or

(IV) paragraph (6)(A)(i) of section 212(a) of the Act (with respect to

any entries occurring on or after September 30, 2010); and

(iii) the Secretary may in her discretion waive the application of any provision of section 212(a) of the Act not listed in clause (ii) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest.

(B) CONSTRUCTION.—Nothing in this paragraph shall be construed as requiring the Secretary to commence removal proceedings against an alien. Nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this paragraph to waive the provisions of section 212(a) of such Act.

(4) CONTINUOUS PHYSICAL PRESENCE.—For purposes of this subsection, any absence from the United States without authorization pursuant to subsection (d)(1)(A)(ii) of this section shall constitute a break in continuous physical presence.

(5) APPLICABILITY OF OTHER PROVISIONS.—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

(ii) the Secretary of State shall prescribe by regulation published in the Federal Register—

(I) the procedures for an alien overseas who is the beneficiary of an approved petition for status as a Lawful Prospective Immigrant to apply at a consulate for a visa or other appropriate documentation authorizing travel to a United States port of entry; and

(II) the evidence required to demonstrate eligibility for such documentation.

(B) RECEIPT OF APPLICATIONS.—The Secretary shall accept applications from aliens in the United States for Lawful Prospective Immigrant status for a period of 1 year starting the first day of the tenth month that begins after the date of enactment of this Act. If, during the 1 year initial period for the receipt of applications for Lawful Prospective Immigrant status, the Secretary determines that additional time is required to process applications for such status or for other good cause, the Secretary may in

her discretion extend the period for accepting applications by up to 6 months.

(C) APPLICATION BY ALIENS APPREHENDED BEFORE START OF APPLICATION PERIOD.—If an alien is apprehended between the date of enactment of this Act and the date on which the period for application under subparagraph (B) of this paragraph closes, and the alien can establish prima facie eligibility for status as a Lawful Prospective Immigrant under this section, the Secretary shall provide the alien with a reasonable opportunity to file an application under this section after regulations implementing this section are promulgated.

(D) APPLICATION BY ALIENS IN REMOVAL PROCEEDINGS.—Notwithstanding any provision of the Act—

(i) if the Secretary determines that an alien, between the date of enactment of this Act and the date on which the period for application under subparagraph (B) of this paragraph closes, is in removal, deportation, or exclusion proceedings before the Executive Office for Immigration Review and is prima facie eligible for Lawful Pro-

spective Immigrant status under this section, the Secretary shall affirmatively communicate such determination to the Executive Office for Immigration Review. Upon consent of the alien, the Executive Office for Immigration Review shall terminate such proceedings without prejudice to future proceedings on any basis and permit the alien a reasonable opportunity to apply for such status;

(ii) if the Executive Office for Immigration Review determines that an alien, between the date of enactment of this Act and the date on which the period for application under subparagraph (B) of this paragraph closes, is in removal, deportation, or exclusion proceedings before the Executive Office for Immigration Review and is prima facie eligible for Lawful Prospective Immigrant status the Executive Office of Immigration Review shall notify the Secretary. If the Secretary does not dispute the determination of prima facie eligibility within 14 days, upon consent of the alien, the Executive Office for Immi-

gration Review shall terminate such proceedings without prejudice to future proceedings on any basis and permit the alien a reasonable opportunity to apply for such status.

(E) APPLICATION BY ALIENS WITH CERTAIN ORDERS.—

(i) IN GENERAL.—An alien who is present in the United States and has been ordered excluded, deported, or removed, or ordered to depart voluntarily from the United States under any provision of the Act—

(I) notwithstanding such order or section 241(a)(5) of the Act, may apply for Lawful Prospective Immigrant status under this title, provided all other conditions set forth in this section are met; and

(II) shall not be required to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal, or voluntary departure order.

(ii) APPLICATION GRANTED.—If the Secretary grants the application described in subparagraph (A) of this paragraph, the order described in clause (i) shall be rendered null and void by operation of law.

(iii) APPLICATION DENIED.—If the Secretary renders a final administrative decision to deny the application described in subparagraph (A) of this paragraph, the order described in clause (i) of this subparagraph shall be effective and enforceable to the same extent as if the application had not been made.

(2) APPLICATION FORM.—

(A) IN GENERAL.—The Secretary shall create an application form that an alien shall be required to complete as a condition of Lawful Prospective Immigrant status.

(B) LANGUAGE AND ASSISTANCE.—The Secretary shall make available forms and accompanying instructions in the most common languages spoken by persons in the United States, as determined by the Secretary in the Secretary's discretion. The Secretary shall create a plan for providing reasonable accommoda-

tion to individuals with disabilities consistent with applicable law.

(C) APPLICATION INFORMATION.—The application form shall request such information as the Secretary deems necessary and appropriate. The application, and all information submitted as part of the application process, shall be submitted in English.

(3) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—

(A) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC DATA.—The Secretary may not accord status as a Lawful Prospective Immigrant unless the alien submits biometric and biographic data in accordance with procedures established by the Secretary, or, with respect to overseas applications for visas or other documentation of status submitted pursuant to regulations promulgated under section 601(c)(1)(A)(ii), by the Secretary of State. The Secretary shall provide an alternative procedure for applicants who cannot provide the standard biometric data because of a physical impairment.

(B) BACKGROUND CHECKS.—The Secretary shall utilize biometric, biographic, and

other data that the Secretary deems appropriate to conduct security and law enforcement background checks and to determine whether there exist any criminal, national security, or other factors that would render the alien ineligible for status under this section. Such security and law enforcement background checks must be completed to the satisfaction of the Secretary before status as a Lawful Prospective Immigrant may be granted.

(4) FEES AND PENALTIES.—

(A) PROCESSING FEES.—

(i) IN GENERAL.—Aliens over the age of 14 making an application for status as a Lawful Prospective Immigrant, an application for extension of such status, or a petition for classification of a spouse or child outside the United States as a Lawful Prospective Immigrant, shall be required to pay a processing fee to the Department of Homeland Security. Spouses or children of Lawful Prospective immigrants applying at U.S. embassies or consulates for a visa or other documentation of status pursuant to regulations promul-

gated under paragraph (1)(A)(ii) of this subsection shall, regardless of age, be required to pay a processing fee to the Department of State. There shall be no waiver of these fees.

(ii) AMOUNT.—The amount of the respective fees shall be set by regulation at a level sufficient to recover the full cost of processing the application.

(B) PENALTIES.—An alien 21 years of age or older filing an initial application for the first extension of the initial period of Lawful Prospective Immigrant status shall be required to pay a penalty of $500 in addition to the processing fee in subparagraph (A) of this paragraph.

(C) DEPOSIT AND SPENDING OF FEES.—The processing fees described in subparagraph (A) of this paragraph shall be deposited as an offsetting collection in the appropriate account of the relevant agency identified in subparagraph (A)(i) of this paragraph and shall remain available until expended.

(D) DEPOSIT, ALLOCATION, AND SPENDING OF PENALTIES.—The penalty described in

subparagraph (B) of this paragraph shall be deposited and remain available as provided by section 550 of this Act.

(5) INTERVIEW.—The Secretary may interview an applicant for Lawful Prospective Immigrant status to determine eligibility for such status.

(6) ADJUDICATION OF APPLICATION FILED BY ALIEN.—

(A) IN GENERAL.—The Secretary may approve the issuance of documentation of Lawful Prospective Immigrant status, or documentation extending such status, as described in paragraph (7) of this subsection, to an applicant who establishes to the satisfaction of the Secretary that the applicant is eligible for such status, including provision of such documentary or other evidence of eligibility as the Secretary may require and only upon the completion of all background and security checks to the satisfaction of the Secretary.

(B) BURDEN OF PROOF.—An alien who is applying for Lawful Prospective Immigrant status under this section must prove, by a preponderance 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.

(7) EVIDENCE OF LAWFUL PROSPECTIVE IMMIGRANT STATUS.—

(A) IN GENERAL.—Documentary evidence of status as a Lawful Prospective Immigrant shall be issued to each alien whose application for such status has been approved.

(B) FEATURES OF DOCUMENTATION.—Documentary evidence of status as a Lawful Prospective Immigrant—

(i) shall be machine-readable and tamper-resistant, and shall contain a digitized photograph and at least one other biometric identifier that can be authenticated;

(ii) shall, during the alien's authorized period of admission under subsection (e)(3) of this section and any extension of such authorized period of admission under subsection (e)(4) of this section, serve as a valid travel and entry document for the purpose of applying for admission to the United States;

(iii) may be accepted during the period of its validity by an employer as evidence of employment authorization and

identity under section 274A(b)(1)(B) of the Act;

(iv) shall be issued to a Lawful Prospective Immigrant by the Secretary after final adjudication of such alien's application for such status or, in the case of an alien outside the United States, after admission to the United States as a Lawful Prospective Immigrant; and

(v) shall include such other features and information as the Secretary determines.

(d) LAWFUL PROSPECTIVE IMMIGRANT DEPENDENTS.—

(1) IN GENERAL.—The Secretary may classify an alien not present in the United States as a Lawful Prospective Immigrant if—

(A) the alien is the spouse or child, as defined in section 101(a)(35) of the Act (relating to spouse) and 101(b)(1) of the Act (relating to child), of a Lawful Prospective Immigrant;

(B) the spouse or child meets the eligibility requirements under subsection (b) (other than the physical presence requirements under sec-

tion (b)(1)(C)), except that section 212(a)(7) of the Act shall apply; and

(C) the Lawful Prospective Immigrant files a petition in the United States for status as a Lawful Prospective Immigrant on behalf of the spouse or child.

(2) REVOCATION OR DENIAL OF STATUS.—A petition for classification as a Lawful Prospective Immigrant filed on behalf of a spouse or child described in paragraph (1) of this subsection shall be denied, an approved petition for classification as a Lawful Prospective Immigrant for such spouse or child shall be revoked, and any Lawful Prospective Immigrant status granted to such spouse or child shall be revoked, if the alien who filed the petition on behalf of the spouse or child was not eligible for Lawful Prospective Immigrant status at the time the alien filed an application under section 501(a) of this title.

(e) TERMS AND CONDITIONS OF LAWFUL PROSPECTIVE IMMIGRANT STATUS.—

(1) BENEFITS PENDING ADJUDICATION OF APPLICATION.—

(A) IN GENERAL.—Until a final decision on the application for Lawful Prospective Immi-

grant status, an alien in the United States who files an application under this section for Lawful Prospective Immigrant status—

(i) may in the Secretary's discretion receive advance parole to re-enter the United States, but only when urgent humanitarian circumstances compel such travel; and

(ii) may not be detained by the Secretary or removed from the United States, unless the Secretary determines in her discretion that such alien is or has become—

(I) ineligible for Lawful Prospective Immigrant status under section (b)(2) of this section;

(II) inadmissible under section (b)(1)(B) of this section, without regard to the possibility of a waiver under section (b)(3)(A)(iii); or

(III) removable under subsection (a)(2)(A)(iii), (a)(2)(E)(i), or (a)(2)(E)(ii) of section 237 of the Act;

provided that nothing in this section shall prevent the Secretary from detaining an alien for up to 48 hours on the basis of

probable cause that the alien is a person described in clause (ii) of this subparagraph. Thereafter, detention is authorized in accordance with the provisions of the Immigration and Nationality Act governing the removal process.

(B) EVIDENCE OF APPLICATION FILING.—A document shall be issued by the Secretary showing receipt of an application for Lawful Prospective Immigrant status.

(C) CONTINUING EMPLOYMENT.—An employer who knows that an alien employee is an applicant for Lawful Prospective Immigrant status is not in violation of section 274A(a)(2) of the Act if the employer continues to employ the alien pending adjudication of the application.

(D) APPLICABILITY OF OTHER PROVISIONS.—Section 101(g) of the Act shall not apply to an alien granted advance permission under subparagraph (A)(ii) of this paragraph to re-enter the United States.

(2) BENEFITS OF LAWFUL PROSPECTIVE IMMIGRANT STATUS.—

(A) EMPLOYMENT.—Notwithstanding any other provision of law, including section 241(a)(7) of the Act, Lawful Prospective Immigrants shall be granted employment authorization incident to their Lawful Prospective Immigrant status.

(B) TRAVEL OUTSIDE THE UNITED STATES.—

(i) IN GENERAL.—A Lawful Prospective Immigrant may travel outside of the United States and may be admitted (if otherwise admissible) upon return to the United States without having to obtain a visa if—

(I) the alien is the bearer of valid, unexpired documentary evidence of Lawful Prospective Immigrant status that satisfies the conditions set forth in subsection (c)(7) of this section;

(II) the alien's absence from the United States was not for a period exceeding 6 months; and

(III) the alien is not subject to the bars on extension described in paragraph (4)(C) of this subsection.

(ii) ADMISSIBILITY.—On seeking readmission to the United States after travel outside the United States a Lawful Prospective Immigrant shall establish that he or she is not inadmissible in accordance with section 235 of the Act, except as provided by subsection (b)(3) of this section.

(iii) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under clause (i) of this subparagraph shall not extend the most recent period of authorized admission in the United States under paragraph (3) of this subsection.

(C) PROTECTION FROM DETENTION OR REMOVAL.—A Lawful Prospective Immigrant may not be detained by the Secretary or removed from the United States, unless—

(i) the Secretary determines in her discretion that such alien is or has become—

(I) ineligible for Lawful Prospective Immigrant status under subsection (b)(2) of this section;

(II) inadmissible under subsection (b)(1)(B) of this section; or

(III) removable under subsection (a)(2)(A)(iii), (a)(2)(E)(i), or (a)(2)(E)(ii) of section 237 of the Act; or

(ii) the alien's Lawful Prospective Immigrant status has expired or has been revoked under paragraph (6) of this subsection,

provided that nothing in this section shall prevent the Secretary from detaining a Lawful Prospective Immigrant for up to 48 hours on the basis of probable cause that the alien is a person described in clause (i) of this subparagraph. Thereafter, detention is authorized in accordance with the provisions of the Act governing the removal process.

(D) ADMISSION.—An alien granted status as a Lawful Prospective Immigrant shall be considered to have been admitted in Lawful Prospective Immigrant status as of the date of

approval of the alien's application or (in the case of an alien outside the United States) on the date such alien is admitted to the United States, whichever is later. An alien in Lawful Prospective Immigrant status is lawfully admitted, but is not a nonimmigrant or an alien who has been lawfully admitted for permanent residence.

(3) INITIAL PERIOD OF AUTHORIZED ADMISSION.—Except as provided under paragraph (4) of this subsection, the initial period of authorized admission for a Lawful Prospective Immigrant may not exceed 4 years from the date on which such status is conferred. The Secretary may in her discretion provide for shorter expiration dates among subsets of Lawful Prospective Immigrants, based upon date of filing or other appropriate factors, in order to encourage early filing, vary expiration dates, or otherwise improve the administration of the program.

(4) EXTENSION.—

(A) IN GENERAL.—The Secretary may extend a Lawful Prospective Immigrant's period of lawful admission beyond the initial period described in paragraph (3) of this subsection only where the Lawful Prospective Immigrant has

filed, in the United States, a timely application for extension. In no case, however, may the period of authorized admission provided in any such extension extend past the date that is 11 years after the date of enactment of this Act.

(B) ELIGIBILITY.—In order to be eligible for an extension of the period of authorized admission under this paragraph, an alien must demonstrate continuing eligibility for status as a Lawful Prospective Immigrant and not be subject to any of the bars to extension in subparagraph (C) of this paragraph.

(C) BARS TO EXTENSION.—A Lawful Prospective Immigrant shall not be eligible to extend such status if—

(i) the alien has violated any term or condition of his or her Lawful Prospective Immigrant status; or

(ii) the period of authorized admission of the Lawful Prospective Immigrant has expired or been revoked for any reason.

(D) FILING OF APPLICATION FOR EXTENSION.—

(i) IN GENERAL.—Except as provided in clause (ii) of this subparagraph, an ex-

tension of status under this subparagraph shall not be approved where status as a Lawful Prospective Immigrant expired or was revoked before the date on which the application was filed.

(ii) EXCEPTION.—Failure to file before the period of previously authorized admission expired or was revoked may be excused in the discretion of the Secretary, with any extension granted from the date the previously authorized period of admission expired, where it is demonstrated at the time of filing that—

(I) the delay was due to extraordinary circumstances beyond the control of the applicant, and the Secretary finds the delay commensurate with the circumstances; and

(II) the alien has not otherwise violated the terms or conditions of his or her status as a Lawful Prospective Immigrant.

(E) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—An alien applying for extension of status as a Lawful Prospective Im-

migrant shall be required to submit to renewed security and law enforcement background checks that shall be completed to the satisfaction of the Secretary before such extension may be granted.

(F) DENIAL OF APPLICATION FOR EXTENSION.—A denial of an application for extension of status as a Lawful Prospective Immigrant shall be considered a revocation of such status for purposes of this title.

(5) REGISTRATION REQUIREMENT.—Part VII of the Act (relating to registration of aliens) shall apply to Lawful Prospective Immigrants, except that the Secretary may in her discretion excuse a delay of up to 90 days in complying with the requirement under section 265 of the Act to file notice of change of address. An alien whose failure to timely file such notice of an address change has been excused by the Secretary shall not be subject to the penalty under section 266(b) of the Act for that failure.

(6) REVOCATION.—

(A) IN GENERAL.—At any time after an alien has been granted Lawful Prospective Immigrant status but has not yet adjusted from such status to that of an alien lawfully admitted

for permanent residence under section 502 of this title, the Secretary may revoke the alien's status following appropriate notice to the alien and exhaustion or waiver of all applicable administrative review procedures under section 503 of this title, if—

(i) the alien is or has become inadmissible under subsection (b)(1)(B) of this section or ineligible for such status under subsection (b)(2) of this section;

(ii) the alien knowingly used documentation issued under this section for unlawful or fraudulent purposes; or

(iii) the alien is or was absent from the United States for any single period of more than six months since the grant of Lawful Prospective Immigrant status.

(B) ADDITIONAL EVIDENCE.—In considering revocation, the Secretary may require the alien to submit additional evidence or to appear for an interview. A failure to comply with such requirements will result in revocation except where the alien demonstrates to the Secretary's satisfaction that such failure was reasonably excusable and not willful.

(C) INVALIDATION OF DOCUMENTATION.—Any documentation that is issued by the Secretary under subsection (c)(7) of this section to any alien shall automatically be rendered invalid for any purpose except departure, if the alien's status as a Lawful Prospective Immigrant is revoked under subparagraph (A) of this paragraph.

(7) MEDICAL EXAMINATION.—A Lawful Prospective Immigrant is required to undergo medical observation and examination. The Secretary, with the concurrence of the Secretary of Health and Human Services, shall prescribe policies and procedures for the nature, frequency, and timing of such observation and examination.

(8) CONSTRUCTION.—Nothing in this Act shall be construed to—

(A) require the Secretary to revoke status as a Lawful Prospective Immigrant before commencing removal proceedings with respect to an alien described in subsection (a) of this section who has been granted such status, or in any way prohibit the initiation of such proceedings against a Lawful Prospective Immigrant where

such proceedings are authorized under this Act; or

(B) authorize the Attorney General to adjudicate or grant any application for status as a Lawful Prospective Immigrant, to receive or consider an appeal from a denial or revocation of Lawful Prospective Immigrant status, or to adjust the status of any Lawful Prospective Immigrant to an alien lawfully admitted for permanent residence, unless the Secretary has delegated such authority to the Attorney General in appropriate cases pursuant to section 103(a)(6) of the Act.

(f) DISSEMINATION OF INFORMATION ON LAWFUL PROSPECTIVE IMMIGRANT PROGRAM.—After the enactment of this Act, the Secretary, in cooperation with entities approved by the Secretary, and in accordance with a plan adopted by the Secretary in the Secretary's discretion, shall broadly disseminate information regarding Lawful Prospective Immigrant status, the rights and benefits that flow from such status, and the requirements to be satisfied to obtain this status. Such information shall be disseminated in the top five principal languages, as determined by the Secretary in the Secretary's discretion, spoken by aliens who would qualify for status under this

section, including to television, radio, and print media to which such aliens would have access.

SEC. 502. ADJUSTMENT OF STATUS FOR LAWFUL PROSPECTIVE IMMIGRANTS.

(a) IN GENERAL.—Notwithstanding any other provision of law, including section 244(h) of the Act, the Secretary may adjust the status of a Lawful Prospective Immigrant to that of an alien lawfully admitted for permanent residence if the Lawful Prospective Immigrant satisfies, in addition to all other requirements imposed by law, the eligibility requirements under this section.

(b) ELIGIBILITY REQUIREMENTS.—

(1) LAWFUL PROSPECTIVE IMMIGRANT STATUS.—

(A) IN GENERAL.—The alien must be in a period of authorized admission as a Lawful Prospective Immigrant and must continue to satisfy—

(i) the eligibility requirements for such status under section 601(b) of this title; and

(ii) the terms and conditions of such status under section 601(d) of this title.

(B) MAINTENANCE OF WAIVERS OF ADMISSIBILITY.—

(i) IN GENERAL.—The grounds of inadmissibility under section 212(a) of the Act that are made inapplicable or previously waived for the alien under section 501(b)(3) of this title shall also be considered inapplicable for purposes of the alien's adjustment pursuant to this section.

(ii) EXCEPTION FOR POST-FILING CONDUCT.—No waiver previously granted shall apply to any inadmissibility under section 501(b)(1)(B) of this title arising out of conduct occurring after the date on which the application for Lawful Prospective Immigrant status was filed.

(C) PENDING REVOCATION PROCEEDINGS.—If the Secretary has sent the applicant a notice of intent to revoke the applicant's Lawful Prospective Immigrant status under section 501(e)(6)(A)(i) of this Act, an application for adjustment under this section may not be approved until the Secretary has made a final determination on whether to revoke the applicant's status.

(2) BASIC CITIZENSHIP SKILLS.—

(A) IN GENERAL.—Except as provided under subparagraph (C) of this paragraph, a Lawful Prospective Immigrant who is 14 years of age or older shall establish that he or she—

(i) meets the requirements under section 312 of the Act; or

(ii) is satisfactorily pursuing a course of study, pursuant to standards established by the Secretary of Education, in consultation with the Secretary, to achieve such an understanding of English and knowledge and understanding of the history and Government of the United States.

(B) RELATION TO NATURALIZATION EXAMINATION.—A Lawful Prospective Immigrant who demonstrates that he or she meets the requirements under section 312 of the Act may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III of the Act.

(C) EXCEPTIONS.—

(i) MANDATORY.—Subparagraph (A) of this paragraph shall not apply to any person who is unable to comply with those

requirements because of a physical or developmental disability or mental impairment as described in section 312(b)(1) of the Act.

(ii) DISCRETIONARY.—The Secretary may waive all or part of subparagraph (A) of this paragraph for a Lawful Prospective Immigrant who is at least 65 years of age on the date on which an application is filed for adjustment of status under this section.

(3) PAYMENT OF TAXES.—

(A) IN GENERAL.—Not later than the date on which the application for adjustment of status under this section is filed, the applicant shall satisfy any applicable Federal tax liability.

(B) APPLICABLE FEDERAL TAX LIABILITY.—For purposes of subparagraph (A) of this paragraph, the term ''applicable Federal tax liability'' means liability for unpaid assessed Federal taxes, including penalties and interest, owed.

(4) CONTINUOUS PHYSICAL PRESENCE.—The alien shall establish that the alien did not have a single absence from the United States of more than

6 months during the period of admission as a Lawful Prospective Immigrant.

(5) MILITARY SELECTIVE SERVICE.—The alien shall establish that the alien has registered under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), if the alien is subject to such registration under that Act.

(c) APPLICATION PROCEDURES.—

(1) IN GENERAL.—In accordance with the procedures described in section 508 of this title, the Secretary shall prescribe by regulation the procedures for an alien in the United States to apply for adjustment of status under this section and the evidence required to demonstrate eligibility for such adjustment.

(2) FILING OF APPLICATION.—

(A) BACK OF THE LINE.—An alien may not adjust status to that of an alien lawfully admitted for permanent residence under this section until the earlier of—

(i) 30 days after an immigrant visa has become available for all approved petitions filed under sections 201 and 203 of the Act that were filed before the date of enactment of this Act; or

(ii) 8 years after the date of enactment of this Act.

(B) ACCEPTANCE OF APPLICATIONS.—No application to adjust status under this section may be filed before the date that is 6 years after the initial grant of Lawful Prospective Immigrant status, regardless of whether such date is after the date on which, pursuant to subparagraph (A) of this paragraph, an alien may adjust status under this section.

(3) FEES AND PENALTIES.—

(A) PROCESSING FEES.—The Secretary shall impose a processing fee on applications for adjustment filed under this section which shall be sufficient to recover the full cost of adjudicating the application, including the cost of taking and processing biometrics, and the cost of expenses relating to prevention and investigation of fraud.

(B) PENALTIES.—An alien 21 years of age or over who is filing an application for adjustment of status under this section shall pay a $1000 penalty to the Secretary, in addition to the processing fee required under subparagraph (A) of this paragraph.

(C) DEPOSIT, ALLOCATION, AND SPENDING OF FEES AND PENALTIES.—Fees and penalties collected under subparagraph (B) of this paragraph shall be deposited and remain available as provided under section 501 of this Act.

(4) INTERVIEW.—The Secretary may interview an applicant for adjustment under this section to determine eligibility for such adjustment.

(5) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—An alien applying for adjustment under this section shall be required to submit to a renewed security and law enforcement background check that must be completed to the satisfaction of the Secretary before such adjustment may be granted.

(6) ADJUDICATION OF ADJUSTMENT APPLICATION.—

(A) EVIDENCE OF CONTINUOUS PHYSICAL PRESENCE.—The Secretary shall determine continuous physical presence based upon the Secretary's records of admission to the United States or such other relevant information as the Secretary may require.

(B) EVIDENCE OF PAYMENT OF TAXES.—

(i) IN GENERAL.—The alien may demonstrate compliance with the requirement under paragraph (b)(3) of this section by submitting documentation, in accordance with regulations promulgated by the Secretary, that establishes that—

(I) no such unpaid assessed Federal tax liability exists;

(II) all such outstanding liabilities have been met; or

(III) the alien has entered into, and is in compliance with, an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(ii) IRS COOPERATION.—The Secretary of the Treasury, in consultation with the Secretary, shall establish procedures pursuant to applicable provisions of section 6103 of title 26, U.S. Code, under which the Commissioner of Internal Revenue shall provide documentation whereby the Secretary or the applicant may establish the payment of all taxes required under this subsection, to verify that the in-

dividual meets the requirements of clause (i) of this subparagraph.

(C) BURDEN OF PROOF.—An alien who is applying for adjustment of status under this section must prove, by a preponderance of the evidence, that the alien has satisfied the requirements of this section.

SEC. 503. ADMINISTRATIVE REVIEW, REMOVAL PROCEEDINGS, AND JUDICIAL REVIEW FOR ALIENS WHO HAVE APPLIED FOR LAWFUL PROSPECTIVE IMMIGRANT STATUS.

(a) ADMINISTRATIVE REVIEW.—

(1) EXCLUSIVE ADMINISTRATIVE REVIEW.—Administrative review of a determination respecting an application for status as a Lawful Prospective Immigrant under section 501(b) of this title or respecting an application for adjustment of status under section 502 of this title shall be conducted solely as provided in this subsection.

(2) ADMINISTRATIVE APPELLATE REVIEW.—

(A) ESTABLISHMENT OF ADMINISTRATIVE APPELLATE AUTHORITY.—The Secretary shall establish or designate an appellate authority to provide for a single level of administrative appellate review of a determination respecting an

application for status or revocation of status as a Lawful Prospective Immigrant under section 501(b) of this title or respecting an application for adjustment of status under section 502 of this title. Any such application is not renewable in any proceeding before the Attorney General.

(B) SINGLE APPEAL.—

(i) LAWFUL PROSPECTIVE IMMIGRANT.—An alien in the United States whose application for status as a Lawful Prospective Immigrant under section 501(b) of this title has been denied or whose status as a Lawful Prospective Immigrant has been revoked, may file with the Secretary not more than 1 appeal of the denial or revocation.

(ii) ADJUSTMENT OF STATUS.—An alien in Lawful Prospective Immigrant status whose application under section 502 of this title for adjustment of status to that of an alien lawfully admitted for permanent residence has been denied may file with the Secretary not more than 1 appeal of the denial.

(iii) NOTICE OF APPEAL.—A notice of appeal filed under this subsection must be filed not later than 60 calendar days after the date of service of the decision of denial or revocation.

(C) SECRETARIAL REVIEW.—Nothing in this subsection shall be construed to limit the authority of the Secretary, in the Secretary's sole and unreviewable discretion, from certifying appeals to himself or herself for review and final administrative decision.

(D) DENIAL OF PETITIONS FOR DEPENDENTS.—Appeals of a decision to deny a petition filed by a Lawful Prospective Immigrant pursuant to regulations promulgated under section 501(c)(1)(A)(i) of this title to classify a spouse or child of such alien as a Lawful Prospective Immigrant shall be to the administrative appellate authority described in subsection (A) of this paragraph.

(E) STAY OF REMOVAL.—Aliens seeking administrative review under this section shall not be removed from the United States until a final decision is rendered establishing ineligi-

bility under this title, unless such removal is based on criminal or national security grounds.

(3) RECORD FOR REVIEW.—Administrative appellate review referred to in paragraph (2) of this subsection shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional newly discovered or previously unavailable evidence as the administrative appellate review authority may in its discretion decide to consider.

(4) LIMITATION ON MOTIONS TO REOPEN AND RECONSIDER.—

(A) NO MOTION TO REOPEN OR RECONSIDER INITIAL DECISION.—An alien may not file a motion to reopen or reconsider the denial of an application for status as a Lawful Prospective Immigrant or for adjustment of status under this title, or the revocation of an alien's status as a Lawful Prospective Immigrant under this title.

(B) ONE MOTION TO REOPEN OR RECONSIDER APPELLATE DECISION.—An alien may not file more than one motion to reopen or to reconsider the decision of the administrative appellate authority under this section. Such mo-

tions must be filed not later than 60 days after the date of service of the administrative appellate decision. The Secretary's decision whether to consider any such motion is committed to the Secretary's sole and unreviewable discretion and shall not be subject to any judicial review.

(b) SELF INITIATED REMOVAL AND NOTICE PRESERVING JUDICIAL REVIEW.—

(1) IN GENERAL.—Except as provided in subparagraphs (2) and (3) of this subsection, any alien who receives a denial of an administrative appeal filed under subsection (a) may request, not later than 60 calendar days after the date of service of the administrative appellate decision, that the Secretary place the alien in removal proceedings. That request shall serve as a notice preserving judicial review of the denial. The Secretary shall place such alien in removal proceedings to which the alien would otherwise be subject, provided that no court shall have jurisdiction to review the timing of the Secretary's initiation of such proceedings. If removal proceedings are not commenced within one year of the timely filing of the request specified in this section, the alien may petition for review as if an order of removal was filed within one year of the request.

(2) ALIENS IN REMOVAL PROCEEDINGS.—Any alien who is in removal, deportation, or exclusion proceedings that are not administratively final and who receives a denial of an administrative appeal filed under subsection (a) of this section, may file with the Secretary, not later than 60 calendar days after the date of service of the administrative appellate decision, a notice to preserve judicial review of that appeal.

(3) ALIENS WITH A FINAL REMOVAL ORDER.—Any alien who is subject to an administratively final, unexecuted order of removal, deportation, or exclusion and who receives a denial of an administrative appeal filed under subsection (a) of this section, may file with the Secretary, not later than 60 calendar days after the date of service of the administrative appellate decision, a notice to preserve judicial review of that appeal. Nothing in this subsection shall be construed to authorize motions to reopen or reconsider the removal order not otherwise permitted under statute or regulation.

(4) EFFECT OF MOTIONS TO REOPEN OR RECONSIDER.—The 60-day period described in paragraphs (1), (2), and (3) of this subsection shall not

be affected or extended by the filing of a motion to reopen or reconsider.

(5) EFFECT OF SERVICE BY MAIL.—If the administrative appellate decision described in paragraphs (1), (2), and (3) of this subsection is served by mail, the date of mailing shall be considered the date of service, and 3 days shall be added to the prescribed period that the alien has to file the request or notices under such paragraphs.

(c) JUDICIAL REVIEW.—Section 242 of the Act is amended—

(1) in subsection (b)(2), by striking ''completed the proceedings'' and inserting ''or the Secretary of Homeland Security completed the removal proceedings'';

(2) by amending subsection (d)(1) to read:

''(1) the alien has exhausted all administrative remedies available to the alien as of right, except that the alien need not file an administrative appeal of an order of an immigration judge if the alien seeks review solely of a denial or revocation of Lawful Prospective Immigrant status pursuant to subsection (i)(3), and''; and

(3) by adding at the end the following:

"(i) JUDICIAL REVIEW OF DETERMINATIONS RELATING TO LAWFUL PROSPECTIVE IMMIGRANT STATUS.—

"(1) DIRECT REVIEW.—A person whose application for classification or adjustment of status under this section is denied after administrative appellate review under Title V of the CIR Act of 2010 may seek review of such denial, in accordance with chapter 7 of title 5, United States Code, before the United States district court for the district in which the person resides.

"(2) REVIEW AFTER REMOVAL PROCEEDINGS.—There shall be judicial review in the Federal courts of appeal of the denial of an application for adjustment of status under Title V of the CIR Act of 2010 in conjunction with judicial review of an order of removal, deportation, or exclusion, but only if the validity of the denial has not been upheld in a prior judicial proceeding under paragraph (1).

"(3) STANDARD FOR JUDICIAL REVIEW.—Judicial review of a denial of an application under Title V of the CIR Act of 2010 shall be based upon the administrative record established at the time of the review, but the court may remand the case to the Secretary for consideration of additional evidence where the court finds that the evidence is material

and there were reasonable grounds for failure to adduce the evidence before the Secretary. Notwithstanding any other provision of law, judicial review of all questions arising from a denial of an application under Title V of the CIR Act of 2010 shall be governed by the standard of review set forth in chapter 7 of title 5, United States Code.

"(4) REMEDIAL POWERS.—Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any cause or claim arising from a pattern or practice of the Secretary of Homeland Security in the operation or implementation of Title V of the CIR Act of 2010 that is arbitrary, capricious, or otherwise contrary to law, and may order any appropriate relief. The district courts may order any appropriate relief in accordance with the preceding sentence without regard to exhaustion, ripeness, or other standing requirements (other than constitutionally-mandated requirements), if the court determines that resolution of such cause or claim will serve judicial and administrative efficiency or that a remedy would otherwise not be reasonably available or practicable.

"(5) STAY OF REMOVAL.—Aliens seeking judicial review under section 503 of the CIR Act of

2010 shall not be removed from the United States until a final decision is rendered establishing ineligibility under this title.

"(6) NO REVIEW FOR LATE FILINGS.—An alien may not file an application for Lawful Prospective Immigrant status, under title V of the CIR Act of 2010 beyond the period for receipt of such applications established by section 501(e)(1) of such Act. The denial of any application filed beyond the expiration of the period established by that subsection shall not be subject to judicial review or remedy, including under paragraph (5).

"(7) CHALLENGES ON VALIDITY OF THE SYSTEM ESTABLISHED BY TITLE V OF THE CIR ACT OF 2010.—

"(A) IN GENERAL.—Any claim that title V of the CIR Act of 2010, or any regulation, guideline, directive, or procedure issued to implement that title, violates the Constitution of the United States or is otherwise in violation of law is available exclusively in an action instituted in the United States District Court for the District of Columbia in accordance with the procedures prescribed in this paragraph. No claims challenging the validity of the system es-

tablished by title V of the CIR Act of 2010 may be initiated after the period for receipt of such applications established by subsection 501(c)(1) of title VI of the CIR Act of 2010 by or on behalf of an alien who did not timely file for Lawful Prospective Immigrant status.

"(B) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this paragraph shall, if it asserts a claim that this title or any regulation, guideline, directive, or procedure issued by or under the authority of the Secretary to implement that title violates the Constitution or is otherwise unlawful, be filed no later than one year after the date of the publication or promulgation of the challenged regulation, policy or directive or, in cases challenging the validity of the Act, within one year of enactment.

"(C) Subject to subparagraph (D), nothing in subparagraph (A) or (B) shall preclude an applicant for Lawful Prospective Immigrant status under title VI of the CIR Act of 2010 from asserting that an action taken or decision made by the Secretary with respect to his status under that title was contrary to law in a

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

and to the government. This subsection conveys no authority to stay proceedings initiated under any other section of the Act.

"(F) EXPEDITIOUS CONSIDERATION OF CASES.—It shall be the duty of the District Court, the Court of Appeals, and the United States Supreme Court to advance on the docket and to expedite to the greatest possible extent the disposition of any case considered under this section.".

SEC. 504. CONFIDENTIALITY OF INFORMATION.

(a) IN GENERAL.—Except as otherwise provided in this section and in section 507 of this title, no Federal agency or bureau, or any officer or employee of such agency or bureau, may, without the written consent of the applicant—

(1) use the information furnished by the applicant pursuant to an application filed under section 501 or 502 of this title, for any purpose, other than to make a determination on the application, including revocation of an application previously approved;

(2) make any publication through which the information furnished by any particular applicant can be identified; or

(3) permit anyone other than the sworn officers, employees or contractors of such agency or bureau, to examine individual applications that have been filed.

(b) REQUIRED DISCLOSURES.—

(1) The Secretary shall provide the information furnished pursuant to an application filed under section 501 or 502 of this title, and any other information derived from such furnished information, to—

(A) a Federal, state, tribal, or local law enforcement agency, intelligence agency, national security agency, component of the Department of Homeland Security, court, or grand jury in connection with a criminal investigation or prosecution, a background check conducted pursuant to the Brady Handgun Violence Protection Act, or for homeland security or national security purposes, in each instance about an individual, when such information is requested by such entity or consistent with an information sharing agreement or mechanism; or

(B) an official coroner for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

(2) Nothing in this section shall be construed as prohibiting any entity described in paragraph (1)(A) of this subsection from disseminating information provided to such entity under this subsection by the Secretary for any authorized purpose.

(c) INAPPLICABILITY AFTER DENIAL, REVOCATION, OR ABANDONMENT.—The limitations under subsection (a) of this section—

(1) shall apply only until an application filed under section 501 or 502 of this title is denied and all opportunities for administrative appeal of the denial have been exhausted;

(2) shall not apply to the use of the information furnished pursuant to such application in any removal proceeding or other criminal or civil case or action, including administrative action, relating to an alien whose application has been granted that is based upon any violation of law committed or discovered after such grant; and

(3) shall not apply in a case in which—

(A) the Secretary has revoked the alien's status as a Lawful Prospective Immigrant, or

(B) the alien's Lawful Prospective Immigrant status has expired.

(d) FRAUD IN APPLICATION PROCESS OR CRIMINAL CONDUCT.—Notwithstanding any other provision of this section, information concerning whether the applicant has engaged in fraud in the application for Lawful Prospective Immigrant status or for adjustment of status from Lawful Prospective Immigrant status or at any time committed a crime may be used or released for immigration enforcement, law enforcement, or national security purposes.

(e) AUDITING AND EVALUATION OF INFORMATION.—

(1) The Secretary may audit and evaluate information furnished as part of any application filed under section 501 or 502 of this title for purposes of identifying fraud or fraud schemes, and may use any evidence of fraud detected by means of audits, evaluations, or other means for purposes of investigating, prosecuting or referring for prosecution, denying, or terminating immigration benefits.

(2) Nothing in this section shall be construed as limiting the authority of the relevant Offices of Inspector General from conducting reviews, audits, oversight, and administrative, civil or criminal investigations.

(f) USE OF INFORMATION IN IMMIGRATION MATTERS SUBSEQUENT TO ADJUSTMENT OF STATUS.—If the Secretary has adjusted an alien's status to that of an alien

lawfully admitted for permanent residence pursuant to section 502 of this title, then at any time thereafter the Secretary may use the information furnished by the alien in the application for adjustment of status or in the applications for status pursuant to sections 501 of this title in any subsequent immigration matter.

(g) OTHER AUTHORIZED DISCLOSURES.—The Federal Bureau of Investigation may disclose information derived from biometric and biographic checks of the applicant to assist in the apprehension of a person who is the subject of a warrant of arrest, or to notify intelligence agencies of the location of a known or suspected terrorist.

(h) CIVIL PENALTY.—Whoever willfully uses, publishes, or permits information to be disclosed in violation of this section shall be subject to appropriate disciplinary action and subject to a civil monetary penalty of not more than $5,000.

(i) CONSTRUCTION.—Nothing in this section shall be construed to limit the use or release for immigration enforcement purposes of information contained in files or records of the Secretary or Attorney General pertaining to an application filed under section 501 or 502 of this title, other than information furnished by an applicant pursuant to the application, or any other information de-

rived from the application, that is not available from any other source.

(j) INTERAGENCY FRAUD PREVENTION COORDINATION.—The Secretary or the Secretary's designee shall convene an interagency committee to address issues relating to the identification, prevention, investigation, and prosecution of fraud and related conduct in connection with this program.

SEC. 505. ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.

Section 201(b)(1) of the Act (8 U.S.C. 1151(b)(1)), is amended by adding at the end the following:

"(N) Aliens whose status is adjusted from that of a Lawful Prospective Immigrant under section 502 of CIR Act of 2010.".

SEC. 506. EMPLOYER PROTECTIONS.

(a) USE OF EMPLOYMENT RECORDS.—Copies of employment records or other evidence of employment provided by an alien or by an alien"s employer in support of an alien"s application for Lawful Prospective Immigrant status under section 601 of this title shall not be used in a prosecution or investigation (civil or criminal) of that employer under section 274A of the Act or the tax laws of the United States for the prior unlawful employment of that alien, regardless of the adjudication of

such application or reconsideration by the Secretary of such alien's prima facie eligibility determination. This section does not apply to employment records submitted by aliens or employers that are deemed to be fraudulent.

(b) APPLICABILITY OF OTHER LAW.—Nothing in this section may be used to shield an employer from liability under section 274B of the Act or any other labor or employment law.

SEC. 507. ASSIGNMENT OF SOCIAL SECURITY NUMBER.

The Commissioner of the Social Security Administration, in coordination with the Secretary, shall implement a system to allow for the assignment of a Social Security number and issuance of a Social Security card after the Secretary has granted an alien status as a Lawful Prospective Immigrant. The Secretary shall provide to the Commissioner of Social Security information from the application filed under section 501(a) of this title and such other information as the Commissioner of Social Security deems necessary to assign a Social Security account number. The Commissioner of Social Security may use such information to assign such Social Security account numbers and to administer the programs for which the Commissioner of Social Security has responsibility. The Commissioner of Social Security may maintain, use, and dis-

close such information only as permitted by the Privacy Act and other federal law.

Subtitle B—Implementation

SEC. 511. RULEMAKING.

(a) IN GENERAL.—The Secretary and Attorney General separately shall issue interim final regulations within nine months of the date of enactment of this title to implement this title and the amendments made by this title. Such interim final regulations shall become effective immediately upon publication in the Federal Register.

(b) EXEMPTION FROM NATIONAL ENVIRONMENTAL POLICY ACT.—Any decision by the Secretary concerning any rulemaking action, plan or program described in this section shall not be considered to be a major Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

SEC. 512. EXEMPTION FROM GOVERNMENT CONTRACTING AND HIRING RULES.

(a) EXEMPTION FROM GOVERNMENT CONTRACTING RULES.—

(1) PROCUREMENT COMPETITION EXEMPTION.—Any Federal agency's determination to use a procurement competition exemption under section 253(c) of title 41, United States Code, or to use the authority granted in paragraph (2) of this sub-

section, for the purpose of implementing this title is not subject to challenge by protest to either the Government Accountability Office, under sections 3551 through 3556 of title 31, United States Code, or to the Court of Federal Claims, under section 1491 of title 28, United States Code. An agency shall immediately advise Congress of the exercise of the authority granted in this subsection.

(2) WAIVER OF COMPETITION REQUIREMENTS.—The competition requirement of section 253(a) of title 41, United States Code may be waived or modified by a Federal agency for any procurement conducted to implement this title pursuant to a determination and finding, approved by the senior procurement executive for the agency conducting the procurement, that explains why the waiver or modification is necessary; provided that such a determination and finding is furnished to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(b) EXEMPTION FROM GOVERNMENT HIRING RULES.—Notwithstanding any other provision of law, the Secretary shall have authority to make term, temporary,

limited, and part-time appointments for purposes of implementing this title without regard to the number of such employees, their ratio to permanent full-time employees, and the duration of their employment. Nothing in chapter 71 of title 5, United States Code, shall affect the authority of any Department management official to hire term, temporary, limited, or part-time employees under this subsection.

SEC. 513. AUTHORITY TO ACQUIRE LEASEHOLDS.

Notwithstanding any other provision of law, the Secretary may acquire a leasehold interest in real property, and may provide in a lease entered into under this subsection for the construction or modification of any facility on the leased property, if she determines that the acquisition of such interest, and such construction or modification, are necessary in order to facilitate the implementation of this title.

SEC. 514. PRIVACY AND CIVIL LIBERTIES.

(a) PROTECTION OF PRIVACY.—Consistent with section 504 of this title, the Secretary shall require appropriate administrative and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable information collected, maintained, and disseminated pursuant to sections 501 and 502 of this title.

(b) REQUIREMENT FOR IMPACT ASSESSMENTS.—Notwithstanding privacy requirements under section 222 of the Homeland Security Act and the E-Government Act of 2002, the Secretary shall conduct a privacy impact assessment and a civil liberties impact assessment of the legalization program established in sections 501 and 502 of this title during the pendency of the interim final rule.

SEC. 515. STATUTORY CONSTRUCTION.

Except as specifically provided otherwise, nothing in this title, or any amendment made by this title, shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

Subtitle C—Miscellaneous

SEC. 521. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—Section 208(e)(1) of the Social Security Act (42 U.S.C. 408(e)(1)) is amended—

(1) in subparagraph (B)(ii), by striking ''or'' at the end;

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

''(D) who is granted status as a Lawful Prospective Immigrant pursuant to section 501 of the CIR Act of 2010; or

"(E) whose status is adjusted to that of lawful permanent resident under section 502 of the CIR Act of 2010,"; and

(3) by striking "1990." and inserting "1990, or in the case of an alien described in subparagraph (D) or (E), if such conduct is alleged to have occurred before the date on which the alien submitted an application under section 501 of the CIR Act of 2010 for classification as a Lawful Prospective Immigrant.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the tenth month that begins after the date of the enactment of this Act.

SEC. 522. FRAUD PREVENTION PROGRAM.

(a) IN GENERAL.—The head of each Department responsible for the administration of a program related to this title or with authority to confer an immigration benefit, relief, or status under the immigration laws shall develop an administrative program to prevent fraud within or upon such program or authority. Subject to such modifications as the head of the Department may direct, the program shall provide for—

(1) fraud prevention training for the relevant administrative adjudicators within the Department;

(2) the regular audit of pending and approved applications for examples and patterns of fraud or abuse;

(3) the receipt and evaluation of reports of fraud or abuse;

(4) the identification of deficiencies in administrative practice or procedure that encourage fraud or abuse;

(5) the remedy of any identified deficiencies; and

(6) the referral of cases of identified or suspected fraud or other misconduct for investigation.

(b) IMPLEMENTATION.—Except as the head of the Department shall otherwise provide, the implementation of the administrative program referred to in subsection (a) shall be assigned to and made part of the component or agency within the Department that is responsible for conferring the relevant immigration benefit, relief, or status under the immigration laws.

(c) COORDINATION.—The heads of relevant Departments shall coordinate their respective efforts under this subsection.

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

SEC. 523. DATA COLLECTION REQUIREMENTS.

(a) IN GENERAL.—The head of each department or agency of the United States shall ensure that general demographic data provided by applicants under this title shall be made available in the aggregate in a searchable public database.

(b) DEMOGRAPHIC DATA.—General demographic data including gender, country of origin, age, education, annual earnings, employment, State of residence, marital status, date of arrival in the United States, method of entry into the United States, number and ages of children, and birthplace of children shall be made available to the public.

(c) PROTECTION OF CONFIDENTIALITY.—Data collected and gathered in the aggregate for purposes of research shall not be recorded in such a way that it violates confidentiality provisions under this title.

Subtitle D—Dream Act

SEC. 531. SHORT TITLE.

This subtitle may be cited as the ''Development, Relief, and Education for Alien Minors Act of 2010'' or the ''DREAM Act of 2010''.

SEC. 532. DEFINITIONS.

In this subtitle:

(1) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the

meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(2) UNIFORMED SERVICES.—The term ''uniformed services'' has the meaning given that term in section 101(a) of title 10, United States Code.

SEC. 533. RESTORATION OF STATE OPTION TO DETERMINE RESIDENCY FOR PURPOSES OF HIGHER EDUCATION BENEFITS.

(a) IN GENERAL.—Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) is repealed.

(b) EFFECTIVE DATE.—The repeal under subsection (a) shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 110 Stat. 3009-546).

SEC. 534. CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS OF CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.

(a) SPECIAL RULE FOR CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law and except as otherwise provided in

this subtitle, the Secretary may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, subject to the conditional basis described in section 5, an alien who is inadmissible or deportable from the United States, if the alien demonstrates that—

(A) the alien has been physically present in the United States for a continuous period of not less than 5 years immediately preceding the date of enactment of this subtitle, and had not yet reached the age of 16 years at the time of initial entry;

(B) the alien has been a person of good moral character since the time of application;

(C) the alien—

(i) is not inadmissible under paragraph (2), (3), (6)(E), or (10)(C) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)); and

(ii) is not deportable under paragraph (1)(E), (2), or (4) of section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a));

(D) the alien, at the time of application, has been admitted to an institution of higher

education in the United States, or has earned a high school diploma or obtained a general education development certificate in the United States;

(E) the alien has never been under a final administrative or judicial order of exclusion, deportation, or removal, unless the alien—

(i) has remained in the United States under color of law after such order was issued; or

(ii) received the order before attaining the age of 16 years; and

(F) the alien had not yet reached the age of 35 years on the date of the enactment of this subtitle.

(2) WAIVER.—Notwithstanding paragraph (1), the Secretary may waive the ground of ineligibility under section 212(a)(6)(E) of the Immigration and Nationality Act and the ground of deportability under paragraph (1)(E) of section 237(a) of that Act for humanitarian purposes or family unity or when it is otherwise in the public interest.

(3) PROCEDURES.—The Secretary shall provide a procedure by regulation allowing eligible individuals to apply affirmatively for the relief available

under this subsection without being placed in removal proceedings.

(b) TERMINATION OF CONTINUOUS PERIOD.—For purposes of this section, any period of continuous residence or continuous physical presence in the United States of an alien who applies for cancellation of removal under this section shall not terminate when the alien is served a notice to appear under section 239(a) of the Immigration and Nationality Act (8 U.S.C. 1229(a)).

(c) TREATMENT OF CERTAIN BREAKS IN PRESENCE.—

(1) IN GENERAL.—An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsection (a) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

(2) EXTENSIONS FOR EXCEPTIONAL CIRCUMSTANCES.—The Secretary may extend the time periods described in paragraph (1) if the alien demonstrates that the failure to timely return to the United States was due to exceptional circumstances. The exceptional circumstances determined sufficient to justify an extension should be no less compelling

than serious illness of the alien, or death or serious illness of a parent, grandparent, sibling, or child.

(d) EXEMPTION FROM NUMERICAL LIMITATIONS.—Nothing in this section may be construed to apply a numerical limitation on the number of aliens who may be eligible for cancellation of removal or adjustment of status under this section.

(e) REGULATIONS.—

(1) PROPOSED REGULATIONS.—Not later than 180 days after the date of enactment of this subtitle, the Secretary shall publish proposed regulations implementing this section. Such regulations shall be effective immediately on an interim basis, but are subject to change and revision after public notice and opportunity for a period for public comment.

(2) INTERIM, FINAL REGULATIONS.—Within a reasonable time after publication of the interim regulations in accordance with paragraph (1), the Secretary shall publish final regulations implementing this section.

(f) REMOVAL OF ALIEN.—The Secretary may not remove any alien who has a pending application for conditional status under this subtitle.

SEC. 535. CONDITIONAL PERMANENT RESIDENT STATUS.

(a) IN GENERAL.—

(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of law, and except as provided in section 6, an alien whose status has been adjusted under section 534 to that of an alien lawfully admitted for permanent residence shall be considered to have obtained such status on a conditional basis subject to the provisions of this section. Such conditional permanent resident status shall be valid for a period of 6 years, subject to termination under subsection (b).

(2) NOTICE OF REQUIREMENTS.—

(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien obtains permanent resident status on a conditional basis under paragraph (1), the Secretary shall provide for notice to the alien regarding the provisions of this section and the requirements of subsection (c) to have the conditional basis of such status removed.

(B) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Secretary to provide a notice under this paragraph—

(i) shall not affect the enforcement of the provisions of this subtitle with respect to the alien; and

(ii) shall not give rise to any private right of action by the alien.

(b) TERMINATION OF STATUS.—

(1) IN GENERAL.—The Secretary shall terminate the conditional permanent resident status of any alien who obtained such status under this subtitle, if the Secretary determines that the alien—

(A) ceases to meet the requirements of subparagraph (B) or (C) of section 4(a)(1);

(B) has become a public charge; or

(C) has received a dishonorable or other than honorable discharge from the uniformed services.

(2) RETURN TO PREVIOUS IMMIGRATION STATUS.—Any alien whose conditional permanent resident status is terminated under paragraph (1) shall return to the immigration status the alien had immediately prior to receiving conditional permanent resident status under this subtitle.

(c) REQUIREMENTS OF TIMELY PETITION FOR REMOVAL OF CONDITION.—

(1) IN GENERAL.—In order for the conditional basis of permanent resident status obtained by an alien under subsection (a) to be removed, the alien must file with the Secretary, in accordance with

paragraph (3), a petition which requests the removal of such conditional basis and which provides, under penalty of perjury, the facts and information so that the Secretary may make the determination described in paragraph (2)(A).

(2) ADJUDICATION OF PETITION TO REMOVE CONDITION.—

(A) IN GENERAL.—If a petition is filed in accordance with paragraph (1) for an alien, the Secretary shall make a determination as to whether the alien meets the requirements set out in subparagraphs (A) through (E) of subsection (d)(1).

(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Secretary determines that the alien meets such requirements, the Secretary shall notify the alien of such determination and immediately remove the conditional basis of the status of the alien.

(C) TERMINATION IF ADVERSE DETERMINATION.—If the Secretary determines that the alien does not meet such requirements, the Secretary shall notify the alien of such determination and terminate the conditional perma-

nent resident status of the alien as of the date of the determination.

(3) TIME TO FILE PETITION.—An alien may petition to remove the conditional basis to lawful resident status during the period beginning 180 days before and ending 2 years after either the date that is 6 years after the date of the granting of conditional permanent resident status or any other expiration date of the conditional permanent resident status as extended by the Secretary in accordance with this subtitle. The alien shall be deemed in conditional permanent resident status in the United States during the period in which the petition is pending.

(d) DETAILS OF PETITION.—

(1) CONTENTS OF PETITION.—Each petition for an alien under subsection (c)(1) shall contain information to permit the Secretary to determine whether each of the following requirements is met:

(A) The alien has demonstrated good moral character during the entire period the alien has been a conditional permanent resident.

(B) The alien is in compliance with section 534(a)(1)(C).

(C) The alien has not abandoned the alien's residence in the United States. The Secretary shall presume that the alien has abandoned such residence if the alien is absent from the United States for more than 365 days, in the aggregate, during the period of conditional residence, unless the alien demonstrates that alien has not abandoned the alien's residence. An alien who is absent from the United States due to active service in the uniformed services has not abandoned the alien's residence in the United States during the period of such service.

(D) The alien has completed at least 1 of the following:

(i) The alien has acquired a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the United States.

(ii) The alien has served in the uniformed services for at least 2 years and, if discharged, has received an honorable discharge.

(E) The alien has provided a list of each secondary school (as that term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) that the alien attended in the United States.

(2) HARDSHIP EXCEPTION.—

(A) IN GENERAL.—The Secretary may, in the Secretary's discretion, remove the conditional status of an alien if the alien—

(i) satisfies the requirements of subparagraphs (A), (B), and (C) of paragraph (1);

(ii) demonstrates compelling circumstances for the inability to complete the requirements described in paragraph (1)(D); and

(iii) demonstrates that the alien's removal from the United States would result in exceptional and extremely unusual hardship to the alien or the alien's spouse, parent, or child who is a citizen or a lawful permanent resident of the United States.

(B) EXTENSION.—Upon a showing of good cause, the Secretary may extend the period of conditional resident status for the purpose of

completing the requirements described in paragraph (1)(D).

(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.), in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence. However, the conditional basis must be removed before the alien may apply for naturalization.

SEC. 536. RETROACTIVE BENEFITS UNDER THIS SUBTITLE.

If, on the date of enactment of this subtitle, an alien has satisfied all the requirements of subparagraphs (A) through (E) of section 534(a)(1) and section 535(d)(1)(D), the Secretary may adjust the status of the alien to that of a conditional resident in accordance with section 534. The alien may petition for removal of such condition at the end of the conditional residence period in accordance with section 535(c) if the alien has met the requirements of subparagraphs (A), (B), and (C) of section 535(d)(1) during the entire period of conditional residence.

SEC. 537. EXCLUSIVE JURISDICTION.

(a) IN GENERAL.—The Secretary shall have exclusive jurisdiction to determine eligibility for relief under this subtitle, except where the alien has been placed into deportation, exclusion, or removal proceedings either prior to or after filing an application for relief under this subtitle, in which case the Attorney General shall have exclusive jurisdiction and shall assume all the powers and duties of the Secretary until proceedings are terminated, or if a final order of deportation, exclusion, or removal is entered the Secretary shall resume all powers and duties delegated to the Secretary under this subtitle.

(b) STAY OF REMOVAL OF CERTAIN ALIENS ENROLLED IN PRIMARY OR SECONDARY SCHOOL.—The Attorney General shall stay the removal proceedings of any alien who—

(1) meets all the requirements of subparagraphs (A), (B), (C), and (E) of section 534(a)(1);

(2) is at least 12 years of age; and

(3) is enrolled full time in a primary or secondary school.

(c) EMPLOYMENT.—An alien whose removal is stayed pursuant to subsection (b) may be engaged in employment in the United States consistent with the Fair Labor Standards Act (29 U.S.C. 201 et seq.) and State and local laws governing minimum age for employment.

(d) LIFT OF STAY.—The Attorney General shall lift the stay granted pursuant to subsection (b) if the alien—

(1) is no longer enrolled in a primary or secondary school; or

(2) ceases to meet the requirements of subsection (b)(1).

SEC. 538. PENALTIES FOR FALSE STATEMENTS IN APPLICATION.

Whoever files an application for relief under this subtitle and willfully and knowingly falsifies, misrepresents, or conceals a material fact or makes any false or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both.

SEC. 539. CONFIDENTIALITY OF INFORMATION.

(a) PROHIBITION.—Except as provided in subsection (b), no officer or employee of the United States may—

(1) use the information furnished by the applicant pursuant to an application filed under this subtitle to initiate removal proceedings against any persons identified in the application;

(2) make any publication whereby the information furnished by any particular individual pursuant

to an application under this subtitle can be identified; or

(3) permit anyone other than an officer or employee of the United States Government or, in the case of applications filed under this subtitle with a designated entity, that designated entity, to examine applications filed under this subtitle.

(b) REQUIRED DISCLOSURE.—The Attorney General or the Secretary shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(c) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

SEC. 540. EXPEDITED PROCESSING OF APPLICATIONS; PROHIBITION ON FEES.

Regulations promulgated under this subtitle shall provide that applications under this subtitle will be considered on an expedited basis and without a requirement for the payment by the applicant of any additional fee for such expedited processing.

SEC. 541. HIGHER EDUCATION ASSISTANCE.

Notwithstanding any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), with respect to assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), an alien who adjusts status to that of a lawful permanent resident under this subtitle shall be eligible only for the following assistance under such title:

(1) Student loans under parts B, D, and E of such title IV (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.), subject to the requirements of such parts.

(2) Federal work-study programs under part C of such title IV (42 U.S.C. 2751 et seq.), subject to the requirements of such part.

(3) Services under such title IV (20 U.S.C. 1070 et seq.), subject to the requirements for such services.

SEC. 542. GAO REPORT.

Not later than seven years after the date of enactment of this subtitle, the Comptroller General of the United States shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives setting forth—

(1) the number of aliens who were eligible for cancellation of removal and adjustment of status under section 534(a);

(2) the number of aliens who applied for adjustment of status under section 534(a);

(3) the number of aliens who were granted adjustment of status under section 534(a); and

(4) the number of aliens whose conditional permanent resident status was removed under section 535.

Subtitle E—Funding for the Department of Homeland Security

SEC. 550. EFFECTIVE FUNDING.

(a) DEPARTMENT OF HOMELAND SECURITY LEGALIZATION PROGRAM ACCOUNT.—

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

(2) SOURCE OF FUNDS.—Immediately upon the enactment of this Act, such sums as the Secretary determines shall be necessary shall be transferred from the general fund of the Treasury to the Department of Homeland Security Legalization Program Account.

(3) APPROPRIATIONS.—

(A) There are hereby appropriated such sums as are provided under paragraph (2) to remain available for obligation for ten years after enactment.

(B) These sums shall be authorized for the Secretary to implement and operate the legalization programs described in title V of this Act, including but not limited to—

(i) infrastructure, staffing, and adjudication;

(ii) outreach;

(iii) grants to community and faith-based organizations; and

(iv) anti-fraud programs and actions relating to such legalization programs.

(4) REPORTING.—The Secretary shall provide to the Committees on the Judiciary and Appropriations of the Senate and the House of Representa-

tives a plan for expenditure of the funds under paragraph (2) within 90 days of enactment of this Act, and update the plan annually, that—

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

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

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

(b) DEPARTMENT OF STATE LEGALIZATION PROGRAM ACCOUNT.—

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

(2) SOURCE OF FUNDS.—Immediately upon the enactment of this Act, such sums as the Secretary of State determines shall be necessary shall be transferred from the general fund of the Treasury to the Department of State Legalization Program Account.

(3) APPROPRIATIONS.—

(A) There are hereby appropriated such sums as are provided under paragraph (2) to remain available until ten years after enactment.

(B) These sums shall be available for the Secretary of State to implement and operate the legalization programs described in title V of this Act, including but not limited to—

(i) infrastructure, staffing, and adjudication;

(ii) outreach; and

(iii) anti-fraud programs and actions relating to such legalization programs.

(4) REPORTING.—The Secretary of State shall provide to the Committees on the Judiciary and Appropriations of the Senate and the House of Representatives a plan for expenditure of the funds under paragraph (2) within 90 days of enactment of this Act, and update the plan annually, that—

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

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

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

(c) IMMIGRATION REFORM PENALTY ACCOUNT.—

(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the "Immigration Reform Penalty Account". Notwithstanding any other section of this Act, there shall be deposited into the account all civil penalties collected under section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and title V of this Act, except as specifically provided otherwise in such title of this Act.

(2) USE OF FUNDS.—Funds deposited into the Immigration Reform Penalty Account shall remain available to the Secretary until expended solely for the following purposes—

(A) for any costs of implementing and operating the immigration services programs described in title V of this Act that are not covered by funds in the Department of Homeland Security Legalization Program Account or processing fees described in section 601(c)(4)(A) of this Act;

(B) after the amounts needed to cover the costs described in subparagraph (A) of this paragraph have been expended, funds remaining from this account shall be deposited into the general fund of the Treasury as repayment of funds transferred into the Department of Homeland Security Legalization Program Account under subsection (a)(2) of this section;

(C) after the amounts needed to reimburse the Treasury under subparagraph (B) of this paragraph have been deposited into the general fund of the Treasury, as follows—

(i) ⅓ to the Secretary to carry out investigation and prevention of fraud in—

(I) the legalization programs established under title V of this Act; and

(II) the employment verification programs established under title III of this Act;

(ii) ⅓ to the Secretary for immigrant integration programs, including English-language and U.S. civics instruction; and

(iii) ⅓ to the Secretary, to be spent as follows—

(I) ½ to carry out immigration services; and

(II) ½ to carry out immigration enforcement.

(d) CONSTRUCTION.—Nothing in this section shall be construed to modify or limit any authority to collect and use immigration fees as provided by this Act, section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) or any other law.

TITLE VI—IMMIGRANT INTEGRATION AND OTHER REFORMS

Subtitle A—Strengthen and Unite Communities With Civics Education and English Skills

CHAPTER 1—EXPANDING ENGLISH LITERACY, UNITED STATES HISTORY, AND CIVICS EDUCATION

SEC. 601. INCREASED INVESTMENT IN ENGLISH LITERACY, UNITED STATES HISTORY, AND CIVICS EDUCATION UNDER THE ADULT EDUCATION AND FAMILY LITERACY ACT.

(a) INTEGRATED ENGLISH LITERACY AND CIVICS EDUCATION PROGRAM.—Section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202) is amended—

(1) by redesignating paragraphs (12) through (18) as paragraphs (13) through (19), respectively; and

(2) by inserting after paragraph (11), the following:

"(12) INTEGRATED ENGLISH LITERACY, UNITED STATES HISTORY, AND CIVICS EDUCATION PROGRAM.—The term 'integrated English literacy, United States history, and civics education program' means a program of instruction designed to help an English language learner achieve competence in English through contextualized instruction on the rights and responsibilities of citizenship, naturalization procedures, civic participation, and United States history and Government to help such learner acquire the skills and knowledge to become an active and informed parent, worker, and community member.".

(b) STATE LEADERSHIP ACTIVITIES.—Section 223(a) of the Adult Education and Family Literacy Act (20 U.S.C. 9223(a)) is amended by inserting after paragraph (11) the following:

"(12) Technical assistance for grant applications of faith- and community-based organizations.".

(c) NATIONAL INSTITUTE FOR LITERACY.—Section 242(c)(1) of the Adult Education and Family Literacy Act (20 U.S.C. 9252(c)(1)) is amended—

(1) by redesignating subparagraphs (G), (H), and (I), as subparagraphs (I), (J), and (K), respectively; and

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

"(G) to coordinate and share information with national organizations and associations that are interested in integrated English literacy, United States history, and civics education programs;

"(H) to study the effectiveness of distance learning or self-study programs in assisting the English language learner population achieve competence in English;".

(d) REPORT.—Section 242(k) of the Adult Education and Family Literacy Act (20 U.S.C. 9252(k)) is amended—

(1) in paragraph (2), by striking "and" at the end;

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

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

"(3) a separate analysis of—

"(A) national and State adult English instruction needs;

"(B) data on the composition of recent immigration flows and immigration settlement patterns throughout the United States; and

"(C) estimated instructional needs based on the English ability and educational attainment of English language learners under recent migration patterns; and".

(e) NATIONAL LEADERSHIP ACTIVITIES.—Section 243 of the Adult Education and Family Literacy Act (20 U.S.C. 9253) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by inserting "and integrated English literacy, United States history, and civics education programs" before the semicolon at the end; and

(B) in subparagraph (B), by inserting "and integrated English literacy, United States history, and civics education programs" before ", based on scientific evidence"; and

(2) in paragraph (2)—

(A) in subparagraph (B), by inserting ''and integrated English literacy, United States history, and civics education programs'' before the semicolon at the end;

(B) in subparagraph (D)(ii), by inserting ''integrated English literacy, United States history, and civics education programs,'' before ''and workplace literacy programs''; and

(C) in subparagraph (E)—

(i) in clause (i), by inserting ''and integrated English literacy, United States history, and civics education programs'' before the semicolon at the end;

(ii) in clause (iii), by striking ''and'' at the end;

(iii) in clause (iv)—

(I) by striking ''section 231'' and inserting ''sections 231 and 244''; and

(II) by adding ''and'' at the end; and

(iv) by adding at the end the following:

''(v) the extent to which integrated English literacy, United States history, and civics education programs carried out

under section 244 lead participants in such programs to increase their civic participation and, if applicable, lead such participants to become United States citizens;''.

(f) INTEGRATED ENGLISH LITERACY, UNITED STATES HISTORY, AND CIVICS EDUCATION.—Chapter 4 of subtitle A of the Adult Education and Family Literacy Act (20 U.S.C. 9251 et seq.) is amended by adding at the end the following:

''SEC. 244. INTEGRATED ENGLISH LITERACY, UNITED STATES HISTORY, AND CIVICS EDUCATION PROGRAMS.

''(a) PROGRAM AUTHORIZED.—The Secretary shall award grants to States, from allocations under subsection (b), for integrated English literacy, United States history, and civics education programs.

''(b) ALLOCATIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall allocate for each fiscal year, from the amount appropriated pursuant to subsection (c) for such fiscal year—

''(A) 65 percent of such amount to States on the basis of a State's need for integrated English, United States history, and civics education programs, as determined by calculating

each State's share of a 10-year average of the data compiled by the Office of Immigration Statistics of the Department of Homeland Security, for immigrants admitted for lawful permanent residence during the 10 most recent fiscal years; and

"(B) 35 percent of such amount to the States on the basis of whether the State experienced growth, as measured by the average of the 3 most recent years for which data compiled by the Office of Immigration Statistics of the Department of Homeland Security are available, for immigrants admitted for lawful permanent residence.

"(2) MINIMUM.—Each State shall receive an allocation under paragraph (1) in an amount that is not less than $60,000.

"(c) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated to carry out this section—

"(1) $200,000,000 for fiscal year 2011;

"(2) $250,000,000 for fiscal year 2012; and

"(3) $300,000,000 for fiscal year 2013.".

SEC. 602. DEFINITIONS OF ENGLISH LANGUAGE LEARNER.

(a) ADULT EDUCATION AND FAMILY LITERACY ACT.—The Adult Education and Family Literacy Act (20 U.S.C. 9201 et seq.) is amended—

(1) in section 203 (20 U.S.C. 9202)—

(A) by redesignating paragraphs (6), (7), (8), (9), and (10), as paragraphs (7), (8), (9), (10), and (6), respectively;

(B) in paragraph (6), as redesignated—

(i) in the paragraph heading, by striking ''INDIVIDUAL OF LIMITED ENGLISH PROFICIENCY'' and inserting ''ENGLISH LANGUAGE LEARNER''; and

(ii) in the matter preceding subparagraph (A), by striking ''individual of limited English proficiency'' and inserting ''English language learner''; and

(C) in paragraph (7), as redesignated, by striking ''individuals of limited English proficiency'' and inserting ''English language learners'';

(2) in section 224(b)(10)(D) (20 U.S.C. 9224(b)(10)(D)), by striking ''individuals with limited English proficiency'' and inserting ''English language learners''; and

(3) in section 243(2)(D)(ii) (20 U.S.C. 9253(2)(D)(ii)), by striking ''individuals with limited English proficiency who are adults'' and inserting ''adult English language learners''.

(b) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—

(1) AMENDMENT.—Section 9101(25) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(25)) is amended by striking the matter preceding subparagraph (A) and inserting the following:

''(25) ENGLISH LANGUAGE LEARNER.—The term 'English language learner' means an individual—''.

(2) REFERENCES.—Any reference in the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) to an individual who is limited English proficient shall be construed to refer to an English language learner.

SEC. 603. CREDITS FOR TEACHERS OF ENGLISH LANGUAGE LEARNERS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is

amended by inserting after section 25D the following new section:

"SEC. 25E. TEACHERS OF ENGLISH LANGUAGE LEARNERS.

"(a) IN GENERAL.—In the case of an eligible teacher, there shall be allowed a credit against the tax imposed by this chapter for the taxable year an amount equal to—

"(1) $750, for each of the first 5 taxable years for which the taxpayer is allowed a credit under this section; and

"(2) $500, for any other taxable year.

"(b) CREDIT ALLOWED ONLY FOR 10 TAXABLE YEARS.—No credit shall be allowed under this section with respect to a taxpayer for any taxable year after the 10th taxable year for which such taxpayer is allowed a credit under this section.

"(c) ELIGIBLE TEACHER.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term `eligible teacher' means, with respect to a taxable year, any individual who is—

"(A) a full-time teacher of English as a second language or bilingual instruction for the academic year ending in such taxable year, or

"(B) an eligible part-time teacher of 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:

"SEC. 224. CERTIFICATION EXPENSES FOR TEACHERS OF ENGLISH LANGUAGE LEARNERS.

"(a) IN GENERAL.—In the case of an individual, there shall be allowed a deduction for eligible teacher certification expenses paid or incurred by the taxpayer for the taxable year.

"(b) ELIGIBLE TEACHER CERTIFICATION EXPENSES.—The term 'eligible teacher certification expenses'—

"(1) means the tuition and fees required for the enrollment or attendance of the taxpayer at an eligible educational institution (as defined in section 25A) for a course which is required for certification or licensure of such individual as qualified to provide English as a second language or bilingual instruction to elementary or secondary school students who are limited English proficient (as defined in section 9901 of the Elementary and Secondary Education Act of 1965); and

"(2) shall not include any amounts that are—

"(A) used for a course that is part of the individual's degree program; or

"(B) funded by another person or any governmental entity.

"(c) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this section for any expense for

which a deduction or credit is allowed under any other provision of this chapter.

"(d) TERMINATION.—This section shall not apply to expenses paid or incurred after December 31, 2014.".

(d) CERTIFICATION DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 of such Code is amended by inserting after paragraph (21) the following new paragraph:

"(22) TEACHER CERTIFICATION EXPENSES.—The deduction allowed by section 224.".

(e) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following new items:

"Sec. 224. Certification expenses for teachers of English language learners.
"Sec. 225. Cross reference.".

(f) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall promulgate regulations implementing the provisions of this section.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 604. RESEARCH IN ADULT EDUCATION.

(a) IN GENERAL.—Section 133(c)(2)(A) of the Education Sciences Reform Act of 2002 (20 U.S.C. 9533(c)(2)(A)) is amended by inserting ''education and'' before ''literacy''.

(b) NATIONAL RESEARCH AND DEVELOPMENT CENTER.—

(1) IN GENERAL.—The Secretary of Education shall direct the Commissioner for Education Research of the National Center for Education Research established pursuant to section 131 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9531) to establish a national research and development center for adult education and literacy (as described in section 133(c)(2)(A) of such Act).

(2) PROVISION FOR EXPANSION OF RESEARCH.—If, as of the date of the enactment of this Act, the Commissioner has established a center for adult literacy in accordance with section 133(c)(2)(A) of the Education Sciences Reform Act of 2002 (20 U.S.C. 9533(c)(2)(A)), the Commissioner shall expand the topic of research of such center to include adult education, in accordance with the amendment made by subsection (a).

CHAPTER 2—SUPPORTING ENGLISH LANGUAGE ACQUISITION AND ADULT EDUCATION IN THE WORKFORCE

SEC. 611. CREDIT FOR EMPLOYER-PROVIDED ADULT ENGLISH LITERACY AND BASIC EDUCATION PROGRAMS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following:

"SEC. 45R. EMPLOYER-PROVIDED ADULT ENGLISH LITERACY AND BASIC EDUCATION PROGRAMS.

''(a) IN GENERAL.—For the purposes of section 38, the credit determined under this section with respect to any employer for the taxable year is an amount equal to 20 percent of qualified education program expenses, but in no case shall the employer receive a credit in an amount of more than $1,000 per full-time employee participating in the qualified education program.

''(b) QUALIFIED EDUCATION PROGRAM EXPENSES.—For purposes of this section:

''(1) IN GENERAL.—The term 'qualified education program expenses' means expenses paid or incurred by an employer to make available qualified 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.''.

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of such Code (relating to the current year business credit) is amended—

(1) by striking ''plus'' at the end of paragraph (34);

(2) by striking the period at the end of paragraph (35) and inserting '', plus''; and

(3) by adding at the end the following new paragraph:

''(36) the adult English literacy and basic education programs credit determined under section 45R.''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the such Code is amended by adding at the end the following new item:

''Sec. 45R. Employer-provided adult English literacy and basic education programs.''.

(d) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall promulgate regulations implementing the provisions of this section.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31 of the year after enactment.

SEC. 612. PRESIDENTIAL AWARD FOR BUSINESS LEADERSHIP IN PROMOTING UNITED STATES CITIZENSHIP.

(a) ESTABLISHMENT.—The Presidential Award for Business Leadership in Promoting United States Citizenship (referred to in this section as the ''Presidential Citizenship Award'') shall be awarded by the President to companies and other organizations that make extraordinary efforts in assisting their employees and members to learn English and increase their understanding of United States history and civics.

(b) SELECTION AND PRESENTATION OF AWARD.—

(1) SELECTION.—The President shall periodically select, from a list of large and small companies and other organizations that the Secretary determines to have met the requirements under subsection (a), the recipients of the Presidential Citizenship Award.

(2) PRESENTATION.—The presentation of the Presidential Citizenship Award shall be made by the President, or a designee of the President, in conjunction with an appropriate ceremony.

CHAPTER 3—BUILDING STRONGER COMMUNITIES

SEC. 621. OFFICE OF CITIZENSHIP AND NEW AMERICANS.

(a) RENAMING THE OFFICE OF CITIZENSHIP.—

(1) IN GENERAL.—Beginning on the date of the enactment of this Act, the Office of Citizenship of United States Citizenship and Immigration Services shall be referred to as the ''Office of Citizenship and New Americans''.

(2) CONFORMING AMENDMENTS.—Section 451(f) of the Homeland Security Act of 2002 (6 U.S.C. 271(f)) is amended—

(A) in the subsection heading, by striking ''Citizenship.'' and inserting ''Citizenship and New Americans.'';

(B) in paragraph (1), by inserting ''and New Americans'' after ''Office of Citizenship''; and

(C) in paragraph (2), by inserting ''and New Americans'' after ''Office of Citizenship''.

(3) REFERENCES.—Any reference in a law, regulation, document, paper, or other record of the United States to the Office of Citizenship within United States Citizenship and Immigration Services shall be deemed to be a reference to the ''Office of Citizenship and New Americans''.

(b) FUNCTIONS.—Section 451(f)(2) of the Homeland Security Act of 2002 (6 U.S.C. 271(f)(2)), as amended by subsection (a)(2)(C), is further amended by striking

"for promoting" and all that follows through the period at the end and inserting the following: "for—

"(A) establishing national goals for introducing new immigrants into the United States and measuring the degree to which such goals are met;

"(B) assessing and coordinating Federal policies, regulations, task forces, and commissions related to introducing immigrants into the United States;

"(C) continuing with the efforts of the Task Force on New Americans established under Executive Order 13404—

"(i) to facilitate a dialogue among Federal agencies;

"(ii) make recommendations to the President; and

"(iii) follow through with initiatives administered by the Task Force under the authority of such Executive Order;

"(D) serving as a liaison and intermediary with State and local governments and other entities to assist in establishing local goals, task forces, and councils to assist in introducing immigrants into the United States;

"(E) coordinating with other Federal agencies to provide information to State and local governments on the demand for English acquisition programs and best practices in place on the Federal and State level for immigrants who have recently arrived in the United States;

"(F) assisting States in coordinating activities with the grant program carried out under this subtitle; and

"(G) promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials for such aliens.".

(c) DONATIONS.—Section 451(f) of the Homeland Security Act of 2002 (6 U.S.C. 271(f)), as amended by this section, is further amended by adding at the end the following:

"(3) DONATIONS.—

"(A) ACCEPTANCE OF DONATIONS.—The Chief of the Office of Citizenship and New Americans may accept monetary and in-kind donations to support the activities described in paragraph (2).

"(B) DEDICATION OF FUNDS.—Notwithstanding any other provision of law—

"(i) any amounts donated to the Office of Citizenship and New Americans to support the activities described in paragraph (2) shall be deposited into an account dedicated for such purpose;

"(ii) the amounts contained in the account described in clause (i) shall be used solely to support such activities; and

"(iii) amounts that were not donated for the exclusive purpose of supporting such activities may not be deposited into such account.".

(d) REPORT TO CONGRESS.—The Chief of the Office of Citizenship and New Americans shall submit a biennial report to the appropriate committees in Congress that describes the activities of the Office of Citizenship and New Americans.

SEC. 622. GRANTS TO STATES.

(a) AUTHORITY TO PROVIDE GRANTS.—Subject to subsections (c) and (d), the Chief of the Office of Citizenship and New Americans (referred to in this section as the "Chief") is authorized to provide competitive grants

to States to form State New American Councils to carry out the activities described in section 623.

(b) STATE NEW AMERICAN COUNCILS.—A State New American Council shall—

(1) consist of not fewer than 15 individuals and not more than 19 individuals from the State; and

(2) shall include, to the extent practicable, representatives from—

(A) business;

(B) faith-based organizations;

(C) civic organizations;

(D) philanthropic organizations;

(E) nonprofit organizations, including those with experience working with immigrant communities;

(F) key education stakeholders, such as State educational agencies, local educational agencies, community colleges, or teachers;

(G) State adult education offices;

(H) State or local public libraries; and

(I) State or local government officials.

(c) WAIVER OF REQUIREMENT.—

(1) AUTHORITY TO GRANT.—The Chief may award a grant under subsection (a) to a State without requiring the State to form a State New Amer-

ican Council if the Chief determines that the State is carrying out similar statewide initiatives to introduce immigrants into the State and into the United States.

(2) GUIDELINES.—The Chief shall establish guidelines for awarding grants to States described in paragraph (1).

(d) GRANTS TO LOCAL GOVERNMENTS.—The Chief may provide a grant under subsection (a) to a local government.

(e) APPLICATION.—An applicant for a grant under this section shall submit an application to the Chief at such time, in such manner, and containing such information as the Chief may reasonably require, including—

(1) if the applicant is a State seeking to form a State New American Council, an assurance that such State New American Council will meet the requirements under subsection (b);

(2) the number of immigrants in the State in which the applicant is located; and

(3) a description of the challenges in introducing new immigrants into the State and local community.

(f) DURATION.—A grant awarded under subsection (a) shall be for a period of 5 years.

(g) PRIORITY.—Priority shall be given to grant applications that—

(1) use matching funds from non-Federal sources, which may include in-kind contributions; and

(2) demonstrate collaboration with private entities to achieve the goals of their comprehensive plan.

(h) ADDITIONAL CONSIDERATION.—Additional consideration shall be given to grant applications submitted by States that have experienced a large increase in the population of immigrants during the most recent 10-year period relative to past migration patterns, based on data compiled by the Office of Immigration Statistics.

(i) GRANT AMOUNT.—The amount of a grant awarded under subsection (a) shall be not less than $500,000 and not more than $5,000,000 for each fiscal year.

(j) RESERVATIONS.—

(1) NATIONAL.—The Chief shall reserve not more than 1 percent of the amount appropriated to carry out this section for the administration of the Office of Citizenship and New Americans, including for the evaluation of funds distributed.

(2) STATES.—A State awarded a grant under subsection (a) may reserve not more than 10 percent

of such grant amount for the creation and operation of a State New American Council.

SEC. 623. AUTHORIZED ACTIVITIES.

(a) MANDATORY ACTIVITIES.—A grant awarded under section 621(a) shall be used—

(1) to develop, implement, expand, or enhance a comprehensive plan to introduce new immigrants into the State, including improving English literacy, knowledge of United States history, and civics education;

(2) to provide subgrants to local communities in accordance with subsection (c);

(3) if the grant is awarded to a State, to form a State New American Council, which shall meet not less frequently than once each quarter;

(4) to disseminate best practices and other information compiled by the Office of Citizenship and New Americans that pertains to effective programs for English acquisition and civics education; and

(5) to convene public hearings not less frequently than once each year to report on the activities carried out by such grant.

(b) PERMISSIBLE ACTIVITIES.—A grant awarded under section 621(a) may be used—

(1) to solicit and disseminate solutions and remedies to the challenges of introducing new immigrants in the State or municipality in which the grant is awarded;

(2) to provide technical assistance, training, or coordination for State or local agencies to improve programs to introduce new immigrants into the United States, such as English literacy, United States history, and civics education;

(3) to review and develop strategies to expand distance learning as a method of instruction for English literacy, United States history, and civics education and available technological programs that may supplement or supplant quality classroom instruction;

(4) to coordinate with entities of other States engaged in activities under this subtitle or other activities to introduce new immigrants into the State or community;

(5) to develop materials focused on preparation for the naturalization test;

(6) to engage in outreach and educational activities on the naturalization process; and

(7) to provide assistance to immigrants with the naturalization application, as appropriate.

(c) SUBGRANTS TO LOCAL COMMUNITIES.—

(1) REQUIREMENT TO AWARD.—A grant under section 108(a) shall be used to award subgrants to entities of local governments to assist communities with local efforts to introduce new Americans into the community.

(2) AUTHORIZED ACTIVITIES.—Subgrants shall be awarded under paragraph (1) to entities of local governments for use to carry out activities in accordance with—

(A) a comprehensive plan described in subsection (a)(1); and

(B) any guidance provided by the Chief of the Office of Citizenship and New Americans.

(3) SUBGRANT AMOUNT.—The amount of a subgrant awarded under this subsection shall be not less than $100,000 and not more than $600,000 for a fiscal year.

SEC. 624. REPORTING AND EVALUATION.

(a) REPORTING REQUIREMENT.—

(1) IN GENERAL.—Each entity awarded a grant under section 108(a) shall submit a report annually to the Office of Citizenship and New Americans that—

(A) describes the activities of the State New American Council and subgrant recipients and how these activities meet the goals of—

(i) the Chief of the Office of Citizenship and New Americans; and

(ii) the comprehensive plan described in section 109(a)(1); and

(B) describes the geographic areas being served, the number of immigrants in such areas, and the primary languages spoken there.

(2) OTHER REQUIREMENTS.—The Chief of the Office of Citizenship may set out other requirements as the Chief sees fit in order to—

(A) impose accountability; and

(B) measure the outcomes of the activities carried out with grants awarded under section 1083(a).

(b) ANNUAL EVALUATION.—The Chief of the Office of Citizenship and New Americans shall conduct an annual evaluation of the grant program established under this title and use such evaluation—

(1) to improve the effectiveness of programs carried out by the Chief;

(2) to assess future needs of immigrants and of State and local governments related to immigrants;

(3) to determine the effectiveness of such grant program; and

(4) to ensure that the grantees and subgrantees are acting within the scope and purpose of this title.

SEC. 625. NEW CITIZENS AWARD PROGRAM.

(a) ESTABLISHMENT.—There is established a new citizens award program to recognize citizens who—

(1) have made an outstanding contribution to the United States; and

(2) are naturalized during the 10-year period ending on the date of such recognition.

(b) PRESENTATION AUTHORIZED.—

(1) IN GENERAL.—The President is authorized to present a medal, in recognition of outstanding contributions to the United States, to citizens described in subsection (a).

(2) MAXIMUM NUMBER OF AWARDS.—Not more than 10 citizens may receive a medal under this section in any calendar year.

SEC. 626. RULE OF CONSTRUCTION.

Nothing in this title shall be construed to limit the authority of the Secretary, acting through the Director of United States Citizenship and Immigration Services or such other officials of the Department of Homeland Security as the Secretary may direct, to manage, direct, and

control the activities of the Chief of the Office of Citizenship and New Americans.

SEC. 627. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title $100,000,000 for each of the fiscal years 2011 through 2015.

CHAPTER 4—GRANTS

SEC. 631. GRANTS TO SUPPORT PUBLIC EDUCATION AND COMMUNITY TRAINING.

(a) GRANTS AUTHORIZED.—The Assistant Attorney General, Office of Justice Programs, may award grants to qualified nonprofit community organizations to educate, train, and support non-profit agencies, immigrant communities, and other interested entities regarding the provisions of this Act and the amendments made by this Act.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Grants awarded under this section shall be used—

(A) for public education, training, technical assistance, government liaison, and all related costs (including personnel and equipment) incurred by the grantee in providing services related to this Act; and

(B) to educate, train, and support nonprofit organizations, immigrant communities,

and other interested parties regarding this Act and the amendments made by this Act and on matters related to its implementation.

(2) EDUCATION.—In addition to the purposes described in paragraph (1), grants awarded under this section shall be used to—

(A) educate immigrant communities and other interested entities regarding—

(i) the individuals and organizations that can provide authorized legal representation in immigration matters under regulations prescribed by the Secretary; and

(ii) the dangers of securing legal advice and assistance from those who are not authorized to provide legal representation in immigration matters;

(B) educate interested entities regarding the requirements for obtaining nonprofit recognition and accreditation to represent immigrants under regulations prescribed by the Secretary;

(C) provide nonprofit agencies with training and technical assistance on the recognition and accreditation process; and

(D) educate nonprofit community organizations, immigrant communities, and other interested entities regarding—

(i) the process for obtaining benefits under this Act or under an amendment made by this Act; and

(ii) the availability of authorized legal representation for low-income persons who may qualify for benefits under this Act or under an amendment made by this Act.

(c) DIVERSITY.—The Assistant Attorney General shall ensure, to the extent possible, that the nonprofit community organizations receiving grants under this section serve geographically diverse locations and ethnically diverse populations who may qualify for benefits under the Act.

(d) FUNDING.—Fees and fines deposited in the Security and Prosperity Account under section 286(w)(3)(B) of the Immigration and Nationality Act may be used to carry out this section.

SEC. 632. GRANT PROGRAM TO ASSIST APPLICANTS FOR NATURALIZATION.

(a) PURPOSE.—The purpose of this section is to establish a grant program within United States Citizenship 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.

(B) ADJUSTMENT OF STATUS.—Assistance and instruction, including legal assistance, to aliens seeking to adjust their status in accordance with title 5 of this Act or section 245 of the Immigration and Nationality Act (8 U.S.C. 1255).

(C) CITIZENSHIP.—Assistance and instruction to applicants on—

(i) the rights and responsibilities of United States citizenship;

(ii) English as a second language;

(iii) civics; or

(iv) applying for United States citizenship.

(3) DURATION AND RENEWAL.—

(A) DURATION.—Subject to subparagraph (B), each grant awarded under this section shall be awarded for a period of not more than 3 years.

(B) RENEWAL.—The Secretary may renew any grant awarded under this section in 1-year increments.

(4) APPLICATION FOR GRANTS.—Each entity desiring an IEACA grant under this section shall submit an application to the Secretary at such time,

in such manner, and accompanied by such information as the Secretary may require.

(5) ELIGIBLE ORGANIZATIONS.—A community-based organization applying for a grant under this section to provide services described in subparagraph (A), (B), or (C)(iv) of paragraph (2) may not receive such a grant unless the organization is—

(A) recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations; or

(B) otherwise directed by a licensed attorney.

(6) SELECTION OF GRANTEES.—Grants awarded under this section shall be awarded on a competitive basis.

(7) GEOGRAPHIC DISTRIBUTION OF GRANTS.—The Secretary shall approve applications under this section in a manner that ensures, to the greatest extent practicable, that—

(A) not less than 50 percent of the funding for grants under this section are awarded to programs located in the 10 States with the highest percentage of residents who were born in foreign countries; and

(B) not less than 20 percent of the funding for grants under this section are awarded to programs located in States that are not described in subparagraph (A).

(8) ETHNIC DIVERSITY.—The Secretary shall ensure that community-based organizations receiving grants under this section provide services to an ethnically diverse population, to the greatest extent possible.

(d) LIAISON BETWEEN USCIS AND GRANTEES.—The Secretary shall establish a liaison between United States Citizenship and Immigration Services and the community of providers of services under this section to assure quality control, efficiency, and greater client willingness to come forward.

(e) REPORTS TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, and July 1 of each subsequent year, the Secretary shall submit a report to Congress that includes information regarding—

(1) the status of the implementation of this section;

(2) the grants issued pursuant to this section; and

(3) the activities carried out with such grants.

(f) SOURCE OF GRANT FUNDS.—

(1) APPLICATION FEES.—The Secretary may use funds made available under section 401(g)(2)(A) of this Act and section 218A(b)(3) of the Immigration and Nationality Act, as added by this Act, to carry out this section.

(2) FUNDING.—Fees and fines deposited in the Security and Prosperity Account under section 286(w)(3)(B) of the Immigration and Nationality Act may be used to carry out this section.

(g) DISTRIBUTION OF CONDITIONAL NONIMMIGRANT VISA FEES AND FINES.—Notwithstanding section 401(g)(2)(B), 2 percent of the fees and fines collected under section 401 shall be made available for grants under the Initial Entry, Adjustment, and Citizenship Assistance Grant Program established under this section.

Subtitle B—Emergency Relief for Certain Populations

SEC. 641. ADJUSTMENT OF STATUS FOR CERTAIN HAITIAN ORPHANS.

(a) IN GENERAL.—The Secretary may adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence if the alien—

(1) subject to subsection (c), applies for such adjustment;

(2) is physically present in the United States on the date the application for such adjustment is filed; and

(3) is admissible to the United States as an immigrant, except as provided in subsection (d).

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—An alien is described in this subsection if the alien was inspected and granted parole into the United States pursuant to the humanitarian parole policy for certain Haitian orphans announced on January 18, 2010, and suspended as to new applications on April 15, 2010.

(c) APPLICATION.—In the case of a minor, an application under this section may be submitted on behalf of the alien by—

(1) a parent; or

(2) a legal guardian.

(d) GROUNDS OF INADMISSIBILITY.—Paragraphs (4) and (7)(A) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply to adjustment of status under this section.

(e) VISA AVAILABILITY.—When an alien is granted the status of having been lawfully admitted for permanent residence under this section, the Secretary of State shall not be required to reduce the number of immigrant visas

authorized to be issued under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(f) ALIEN DEEMED TO MEET DEFINITION OF CHILD.—An alien described in subsection (b) shall be deemed to satisfy the requirements applicable to adopted children under section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) if, before the date on which the alien attains 18 years of age—

(1) the alien obtains adjustment of status under this section; and

(2) a United States citizen adopts the alien, regardless of whether the adoption occurs before, on, or after the date of the decision-granting adjustment of status under this section.

(g) NO IMMIGRATION BENEFITS FOR BIRTH PARENTS.—No birth parent of an alien who obtains adjustment of status under this section shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this section or the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

SEC. 642. ADJUSTMENT OF STATUS FOR CERTAIN LIBERIAN NATIONALS.

(a) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—

(A) ELIGIBILITY.—Except as provided under subparagraph (B), the Secretary shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence, if the alien—

(i) applies for adjustment before April 1, 2011; and

(ii) is otherwise eligible to receive an immigrant visa and admissible to the United States for permanent residence, except that, in determining such admissibility, the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(B) INELIGIBLE ALIENS.—An alien shall not be eligible for adjustment of status under this section if the Secretary determines that the alien has been convicted of—

(i) any aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)); or

(ii) (ii) 2 or more crimes involving moral turpitude.

(2) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—

(A) IN GENERAL.—An alien present in the United States who has been subject to an order of exclusion, deportation, or removal, or has been ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1) if otherwise qualified under such paragraph.

(B) SEPARATE MOTION NOT REQUIRED.—An alien described in subparagraph (A) may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate the order described in subparagraph (A).

(C) EFFECT OF DECISION BY SECRETARY.—If the Secretary grants an application under paragraph (1), the Secretary shall cancel the order described in subparagraph (A). If the Secretary makes a final decision to deny the application, the order shall be effective and

enforceable to the same extent as if the application had not been made.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—The benefits provided under subsection (a) shall apply to any alien—

(A) who is—

(i) a national of Liberia; and

(ii) has been continuously present in the United States from January 1, 2009, through the date of application under subsection (a); or

(B) who is the spouse, child, or unmarried son or daughter of an alien described in subparagraph (A).

(2) DETERMINATION OF CONTINUOUS PHYSICAL PRESENCE.—For purposes of establishing the period of continuous physical presence referred to in paragraph (1), an alien shall not be considered to have failed to maintain continuous physical presence by reasons of an absence, or absences, from the United States for any period or periods amounting in the aggregate to not more than 180 days.

(c) STAY OF REMOVAL.—

(1) IN GENERAL.—The Secretary shall provide by regulation for an alien who is subject to a final order of deportation or removal or exclusion to seek a stay of such order based on the filing of an application under subsection (a).

(2) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision in the Immigration and Nationality Act, the Secretary shall not order an alien to be removed from the United States if the alien is in exclusion, deportation, or removal proceedings under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Secretary has made a final determination to deny the application.

(3) WORK AUTHORIZATION.—

(A) IN GENERAL.—The Secretary may—

(i) authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application; and

(ii) provide the alien with an `employment authorized' endorsement or other appropriate document signifying authorization of employment.

(B) PENDING APPLICATIONS.—If an application for adjustment of status under subsection (a) is pending for a period exceeding 180 days and has not been denied, the Secretary shall authorize such employment.

(d) RECORD OF PERMANENT RESIDENCE.—Upon the approval of an alien's application for adjustment of status under subsection (a), the Secretary shall establish a record of the alien's admission for permanent record as of the date of the alien's arrival in the United States.

(e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—The Secretary shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255); and

(2) aliens subject to removal proceedings under section 240 of such Act (8 U.S.C. 1229a).

(f) LIMITATION ON JUDICIAL REVIEW.—A determination by the Secretary regarding the adjustment of status of any alien under this section is final and shall not be subject to review by any court.

(g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—If an alien is granted the status of having been lawfully

admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—

(1) DEFINITIONS.—Except as otherwise specifically provided in this Chapter, the definitions contained in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) shall apply in this section.

(2) SAVINGS PROVISION.—Nothing in this Chapter may be construed to repeal, amend, alter, modify, effect, or restrict the powers, duties, function, or authority of the Secretary in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.

(i) EFFECT OF ELIGIBILITY FOR ADJUSTMENT OF STATUS.—Eligibility to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude an alien from seeking any status under any other provision of law for which the alien may otherwise be eligible.

Subtitle C—Wartime Treatment Studies

PART I—COMMISSION ON WARTIME TREATMENT OF EUROPEAN AMERICANS

SEC. 651. FINDINGS.

Congress makes the following findings:

(1) During World War II, the United States Government deemed as ''enemy aliens'' more than 600,000 Italian-born and 300,000 German-born United States resident aliens and their families, requiring them to carry Certificates of Identification and limiting their travel and personal property rights. At that time, these groups were the two largest foreign-born groups in the United States.

(2) During World War II, the United States Government arrested, interned, or otherwise detained thousands of European Americans, some remaining in custody for years after cessation of World War II hostilities, and repatriated, exchanged, or deported European Americans, including American-born children, to European Axis nations, many to be exchanged for Americans held in those nations.

(3) Pursuant to a policy coordinated by the United States with Latin American nations, thousands of European Latin Americans, including Ger-

man and Austrian Jews, were arrested, relocated to the United States, and interned. Many were later repatriated or deported to European Axis nations during World War II and exchanged for Americans and Latin Americans held in those nations.

(4) Millions of European Americans served in the Armed Forces and thousands sacrificed their lives in defense of the United States.

(5) The wartime policies of the United States Government were devastating to the German American and Italian American communities, individuals, and their families. The detrimental effects are still being experienced.

(6) Prior to and during World War II, the United States restricted the entry of Jewish refugees who were fleeing persecution or genocide and sought safety in the United States. During the 1930s and 1940s, the quota system, immigration regulations, visa requirements, and the time required to process visa applications affected the number of Jewish refugees, particularly those from Germany and Austria, who could gain admittance to the United States.

(7) The United States Government should conduct an independent review to fully assess and acknowledge these actions. Congress has previously re-

viewed the United States Government's wartime treatment of Japanese Americans through the Commission on Wartime Relocation and Internment of Civilians. An independent review of the treatment of German Americans and Italian Americans and of Jewish refugees fleeing persecution and genocide has not yet been undertaken.

(8) Time is of the essence for the establishment of commissions, because of the increasing danger of destruction and loss of relevant documents, the advanced age of potential witnesses and, most importantly, the advanced age of those affected by the United States Government's policies. Many who suffered have already passed away and will never know of this effort.

SEC. 652. DEFINITIONS.

In this part:

(1) DURING WORLD WAR II.—The term ''during World War II'' refers to the period between September 1, 1939, through December 31, 1948.

(2) EUROPEAN AMERICANS.—

(A) IN GENERAL.—The term ''European Americans'' refers to United States citizens and resident aliens of European ancestry, including Italian Americans, German Americans, Hun-

garian Americans, Romanian Americans, and Bulgarian Americans.

(B) GERMAN AMERICANS.—The term ''German Americans'' refers to United States citizens and resident aliens of German ancestry.

(C) ITALIAN AMERICANS.—The term ''Italian Americans'' refers to United States citizens and resident aliens of Italian ancestry.

(3) EUROPEAN LATIN AMERICANS.—The term ''European Latin Americans'' refers to persons of European ancestry, including German or Italian ancestry, residing in a Latin American nation during World War II.

(4) LATIN AMERICAN NATION.—The term ''Latin American nation'' refers to any nation in Central America, South America, or the Caribbean.

SEC. 653. ESTABLISHMENT OF COMMISSION ON WARTIME TREATMENT OF EUROPEAN AMERICANS.

(a) IN GENERAL.—There is established the Commission on Wartime Treatment of European Americans (referred to in this part as the ''European American Commission'').

(b) MEMBERSHIP.—The European American Commission shall be composed of 7 members, who shall be ap-

pointed not later than 90 days after the date of enactment of this Act as follows:

(1) Three members shall be appointed by the President.

(2) Two members shall be appointed by the Speaker of the House of Representatives, in consultation with the minority leader.

(3) Two members shall be appointed by the majority leader of the Senate, in consultation with the minority leader.

(c) TERMS.—The term of office for members shall be for the life of the European American Commission. A vacancy in the European American Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(d) REPRESENTATION.—The European American Commission shall include 2 members representing the interests of Italian Americans and two members representing the interests of German Americans.

(e) MEETINGS.—The President shall call the first meeting of the European American Commission not later than 120 days after the date of enactment of this Act.

(f) QUORUM.—Four members of the European American Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) CHAIRMAN.—The European American Commission shall elect a Chairman and Vice Chairman from among its members. The term of office of each shall be for the life of the European American Commission.

(h) COMPENSATION.—

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

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

SEC. 654. DUTIES OF THE EUROPEAN AMERICAN COMMISSION.

(a) IN GENERAL.—It shall be the duty of the European American Commission to review the United States Government's wartime treatment of European Americans and European Latin Americans as provided in subsection (b).

(b) SCOPE OF REVIEW.—The European American Commission's review shall include the following:

(1) A comprehensive review of the facts and circumstances surrounding United States Government action during World War II with respect to European Americans and European Latin Americans

pursuant to United States laws and directives, including the Alien Enemies Acts (50 U.S.C. 21 et seq.), Presidential Proclamations 2526, 2527, 2655, 2662, and 2685, Executive Orders 9066 and 9095, and any directive of the United States Government pursuant to these and other pertinent laws, proclamations, or executive orders, including registration requirements, travel and property restrictions, establishment of restricted areas, raids, arrests, internment, exclusion, policies relating to the families and property that excludees and internees were forced to abandon, internee employment by American companies (including a list of such companies and the terms and type of employment), exchange, repatriation, and deportation, and the immediate and long-term effect of such actions, particularly internment, on the lives of those affected. This review shall also include a list of—

(A) all temporary detention and long-term internment facilities in the United States and Latin American nations that were used to detain or intern European Americans and European Latin Americans during World War II (in this paragraph referred to as ''World War II detention facilities'');

(B) the names of European Americans and European Latin Americans who died while in World War II detention facilities and where they were buried;

(C) the names of children of European Americans and European Latin Americans who were born in World War II detention facilities and where they were born; and

(D) the nations from which European Latin Americans were brought to the United States, the ships that transported them to the United States and their departure and disembarkation ports, the locations where European Americans and European Latin Americans were exchanged for persons held in European Axis nations, and the ships that transported them to Europe and their departure and disembarkation ports.

(2) An assessment of the underlying rationale of the decision of the United States Government to develop the programs and policies described in paragraph (1), the information the United States Government received or acquired suggesting these programs and policies were necessary, the perceived benefit of enacting such programs and policies, and

the immediate and long-term impact of such programs and policies on European Americans and European Latin Americans and their communities.

(3) A brief review of the participation by European Americans in the United States Armed Forces, including the participation of European Americans whose families were excluded, interned, repatriated, or exchanged.

(4) A recommendation of appropriate remedies, including public education programs and the creation of a comprehensive online database by the National Archives and Records Administration of documents related to the United States Government's wartime treatment of European Americans and European Latin Americans during World War II.

(c) FIELD HEARINGS.—The European American Commission shall hold public hearings in such cities of the United States as it deems appropriate.

(d) REPORT.—The European American Commission shall submit a written report of its findings and recommendations to Congress not later than 18 months after the date of the first meeting called pursuant to section 103(e).

SEC. 655. POWERS OF THE EUROPEAN AMERICAN COMMISSION.

(a) IN GENERAL.—The European American Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings and sit and act at such times and places, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandum, papers, and documents as the Commission or such subcommittee or member may deem advisable. The European American Commission may request the Attorney General to invoke the aid of an appropriate United States district court to require, by subpoena or otherwise, such attendance, testimony, or production.

(b) GOVERNMENT INFORMATION AND COOPERATION.—The European American Commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information that the European American Commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive branch of the Government shall cooperate with the European American Commission and furnish all information requested by the European American Commission

to the extent permitted by law, including information collected under the Commission on Wartime and Internment of Civilians Act (Public Law 96-317; 50 U.S.C. App. 1981 note) and the Wartime Violation of Italian Americans Civil Liberties Act (Public Law 106-451; 50 U.S.C. App. 1981 note). For purposes of section 552a(b)(9) of title 5, United States Code (commonly known as the ''Privacy Act of 1974''), the European American Commission shall be deemed to be a committee of jurisdiction.

SEC. 656. ADMINISTRATIVE PROVISIONS.

The European American Commission is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Commission may not exceed a rate equivalent to the rate payable under GS-15 of the General Schedule under section 5332 of such title;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of such title;

(3) obtain the detail of any Federal Government employee, and such detail shall be without reimbursement or interruption or loss of civil service status or privilege;

(4) enter into agreements with the Administrator of General Services for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator;

(5) procure supplies, services, and property by contract in accordance with applicable laws and regulations and to the extent or in such amounts as are provided in appropriation Acts; and

(6) enter into contracts with Federal or State agencies, private firms, institutions, and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of the duties of the Commission, to the extent or in such amounts as are provided in appropriation Acts.

SEC. 657. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $600,000 to carry out this part.

SEC. 658. SUNSET.

The European American Commission shall terminate 60 days after it submits its report to Congress.

PART II—COMMISSION ON WARTIME TREATMENT OF JEWISH REFUGEES

SEC. 661. ESTABLISHMENT OF COMMISSION ON WARTIME TREATMENT OF JEWISH REFUGEES.

(a) IN GENERAL.—There is established the Commission on Wartime Treatment of Jewish Refugees (referred to in this subchapter as the ''Jewish Refugee Commission'').

(b) MEMBERSHIP.—The Jewish Refugee Commission shall be composed of 7 members, who shall be appointed not later than 90 days after the date of enactment of this Act as follows:

(1) Three members shall be appointed by the President.

(2) Two members shall be appointed by the Speaker of the House of Representatives, in consultation with the minority leader.

(3) Two members shall be appointed by the majority leader of the Senate, in consultation with the minority leader.

(c) TERMS.—The term of office for members shall be for the life of the Jewish Refugee Commission. A vacancy in the Jewish Refugee Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(d) REPRESENTATION.—The Jewish Refugee Commission shall include two members representing the interests of Jewish refugees.

(e) MEETINGS.—The President shall call the first meeting of the Jewish Refugee Commission not later than 120 days after the date of enactment of this Act.

(f) QUORUM.—Four members of the Jewish Refugee Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) CHAIRMAN.—The Jewish Refugee Commission shall elect a Chairman and Vice Chairman from among its members. The term of office of each shall be for the life of the Jewish Refugee Commission.

(h) COMPENSATION.—

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

(2) REIMBURSEMENT OF EXPENSES.—All members of the Jewish Refugee Commission shall be reimbursed for reasonable travel and subsistence, and

other reasonable and necessary expenses incurred by them in the performance of their duties.

SEC. 662. DUTIES OF THE JEWISH REFUGEE COMMISSION.

(a) IN GENERAL.—It shall be the duty of the Jewish Refugee Commission to review the United States Government's refusal to allow Jewish and other refugees fleeing persecution or genocide in Europe entry to the United States as provided in subsection (b).

(b) SCOPE OF REVIEW.—The Jewish Refugee Commission's review shall cover the period between January 1, 1933, through December 31, 1945, and shall include, to the greatest extent practicable, the following:

(1) A review of the United States Government''s decision to deny Jewish and other refugees fleeing persecution or genocide entry to the United States, including a review of the underlying rationale of the United States Government''s decision to refuse the Jewish and other refugees entry, the information the United States Government received or acquired suggesting such refusal was necessary, the perceived benefit of such refusal, and the impact of such refusal on the refugees.

(2) A review of Federal refugee law and policy relating to those fleeing persecution or genocide, including recommendations for making it easier in the

future for victims of persecution or genocide to obtain refuge in the United States.

(c) FIELD HEARINGS.—The Jewish Refugee Commission shall hold public hearings in such cities of the United States as it deems appropriate.

(d) REPORT.—The Jewish Refugee Commission shall submit a written report of its findings and recommendations to Congress not later than 18 months after the date of the first meeting called pursuant to section 109(e).

SEC. 663. POWERS OF THE JEWISH REFUGEE COMMISSION.

(a) IN GENERAL.—The Jewish Refugee Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings and sit and act at such times and places, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandum, papers, and documents as the Commission or such subcommittee or member may deem advisable. The Jewish Refugee Commission may request the Attorney General to invoke the aid of an appropriate United States district court to require, by subpoena or otherwise, such attendance, testimony, or production.

(b) GOVERNMENT INFORMATION AND COOPERATION.—The Jewish Refugee Commission may acquire di-

rectly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information that the Jewish Refugee Commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive branch of the Government shall cooperate with the Jewish Refugee Commission and furnish all information requested by the Jewish Refugee Commission to the extent permitted by law. For purposes of section 552a(b)(9) of title 5, United States Code (commonly known as the ''Privacy Act of 1974''), the Jewish Refugee Commission shall be deemed to be a committee of jurisdiction.

SEC. 664. ADMINISTRATIVE PROVISIONS.

The Jewish Refugee Commission is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Commission may not exceed a rate equivalent to the rate

payable under GS-15 of the General Schedule under section 5332 of such title;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of such title;

(3) obtain the detail of any Federal Government employee, and such detail shall be without reimbursement or interruption or loss of civil service status or privilege;

(4) enter into agreements with the Administrator of General Services for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator;

(5) procure supplies, services, and property by contract in accordance with applicable laws and regulations and to the extent or in such amounts as are provided in appropriation Acts; and

(6) enter into contracts with Federal or State agencies, private firms, institutions, and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of the duties of the Commission, to the ex-

tent or in such amounts as are provided in appropriation Acts.

SEC. 665. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $600,000 to carry out this part.

SEC. 666. SUNSET.

The Jewish Refugee Commission shall terminate 60 days after it submits its report to Congress.

PART III—FUNDING SOURCE FOR THE WARTIME STUDIES

SEC. 671. FUNDING SOURCE.

Of the funds made available for the Department of Justice by the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Public Law 110-329), $1,200,000 is hereby rescinded.

Subtitle D—State Court Interpreter Grant Program

SEC. 681. FINDINGS.

Congress finds that—

(1) the fair administration of justice depends on the ability of all participants in a courtroom proceeding to understand that proceeding, regardless of their English proficiency;

(2) 19 percent of the population of the United States over 5 years of age speaks a language other than English at home;

(3) only qualified court interpreters can ensure that persons with limited English proficiency comprehend judicial proceedings in which they are a party;

(4) the knowledge and skills required of a qualified court interpreter differ substantially from those required in other interpretation settings, such as social service, medical, diplomatic, and conference interpreting;

(5) the Federal Government has demonstrated its commitment to equal administration of justice regardless of English proficiency;

(6) regulations implementing title VI of the Civil Rights Act of 1964, as well as the guidance issued by the Department of Justice pursuant to Executive Order 13166, issued August 11, 2000, clarify that all recipients of Federal financial assistance, including State courts, are required to take reasonable steps to provide meaningful access to their proceedings for persons with limited English proficiency;

(7) 40 States have developed, or are developing, qualified court interpreting programs;

(8) robust, effective court interpreter programs—

(A) actively recruit skilled individuals to be court interpreters;

(B) train those individuals in the interpretation of court proceedings;

(C) develop and use a thorough, systematic certification process for court interpreters; and

(D) have sufficient funding to ensure that a qualified interpreter will be available to the court whenever necessary; and

(9) Federal funding is necessary to—

(A) encourage State courts that do not have court interpreter programs to develop them;

(B) assist State courts with nascent court interpreter programs to implement them;

(C) assist State courts with limited court interpreter programs to enhance them; and

(D) assist State courts with robust court interpreter programs to make further improvements and share successful programs with other States.

SEC. 682. STATE COURT INTERPRETER PROGRAM.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Administrator of the Office of Justice Programs of the Department of Justice (referred to in this section as the ''Administrator'') shall make grants, in accordance with such regulations as the Attorney General may prescribe, to State courts to develop and implement programs to assist individuals with limited English proficiency to access and understand State court proceedings in which they are a party.

(2) TECHNICAL ASSISTANCE.—The Administrator shall allocate, for each fiscal year, $500,000 of the amount appropriated pursuant to section 4 to be used to establish a court interpreter technical assistance program to assist State courts receiving grants under this subchapter.

(b) USE OF GRANTS.—Grants awarded under subsection (a) may be used by State courts to—

(1) assess regional language demands;

(2) develop a court interpreter program for the State courts;

(3) develop, institute, and administer language certification examinations;

(4) recruit, train, and certify qualified court interpreters;

(5) pay for salaries, transportation, and technology necessary to implement the court interpreter program developed under paragraph (2); and

(6) engage in other related activities, as prescribed by the Attorney General.

(c) APPLICATION.—

(1) IN GENERAL.—The highest State court of each State desiring a grant under this section shall submit an application to the Administrator at such time, in such manner, and accompanied by such information as the Administrator may reasonably require.

(2) STATE COURTS.—The highest State court of each State submitting an application under paragraph (1) shall include in the application—

(A) a demonstration of need for the development, implementation, or expansion of a State court interpreter program;

(B) an identification of each State court in that State which would receive funds from the grant;

(C) the amount of funds each State court identified under subparagraph (B) would receive from the grant; and

(D) the procedures the highest State court would use to directly distribute grant funds to State courts identified under subparagraph (B).

(d) STATE COURT ALLOTMENTS.—

(1) BASE ALLOTMENT.—From amounts appropriated for each fiscal year pursuant to section 4, the Administrator shall allocate $100,000 to each of the highest State court of each State, which has an application approved under subsection (c).

(2) DISCRETIONARY ALLOTMENT.—From amounts appropriated for each fiscal year pursuant to section 4, the Administrator shall allocate $5,000,000 to be distributed among the highest State courts of States which have an application approved under subsection (c), and that have extraordinary needs that are required to be addressed in order to develop, implement, or expand a State court interpreter program.

(3) ADDITIONAL ALLOTMENT.—In addition to the allocations made under paragraphs (1) and (2), the Administrator shall allocate to each of the highest State court of each State, which has an application approved under subsection (c), an amount equal to the product reached by multiplying—

(A) the unallocated balance of the amount appropriated for each fiscal year pursuant to section 4; and

(B) the ratio between the number of people over 5 years of age who speak a language other than English at home in the State and the number of people over 5 years of age who speak a language other than English at home in all the States that receive an allocation under paragraph (1), as those numbers are determined by the Bureau of the Census.

(4) TREATMENT OF DISTRICT OF COLUMBIA.—For purposes of this section—

(A) the District of Columbia shall be treated as a State; and

(B) the District of Columbia Court of Appeals shall act as the highest State court for the District of Columbia.

SEC. 683. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $15,000,000 for each of the fiscal years 2010 through 2014 to carry out this subtitle.

Subtitle E—Other Matters

SEC. 691. ADJUSTMENT OF STATUS FOR CERTAIN VICTIMS OF TERRORISM.

(a) ADJUSTMENT OF STATUS.—The status of any alien described in subsection (b) may be adjusted by the Secretary to that of an alien lawfully admitted for permanent residence, if the alien—

(1) applies for such adjustment not later than 1 year after the date of the enactment of this Act;

(2) is not inadmissible to the United States under paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), or deportable under paragraph (2) or (4) of section 237(a) of such Act (8 U.S.C. 1227(a)); and

(3) not later than the date on which the application under paragraph (1) is submitted, satisfies any applicable Federal tax liability by establishing that—

(A) no such tax liability exists; or

(B) all outstanding liabilities have been paid.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—The benefit provided under subsection (a) shall apply to any alien who—

(A) was, on September 10, 2001, the spouse, child, unmarried son, or unmarried daughter of an alien who died as a direct result of the terrorist activity conducted against the United States on September 11, 2001;

(B) was deemed to be a beneficiary of, and by, the September 11th Victim Compensation Fund of 2001 (49 U.S.C. 40101); and

(C) made a proffer of information to the Secretary between April 24, 2008, and August 15, 2008, in connection with a request for immigration relief.

(2) EXCEPTION.—An alien shall not be provided any benefit under this section if the Secretary determines that the alien has willfully made a material misrepresentation or material omission in the proffer of information described in paragraph (1)(C).

(c) WORK AUTHORIZATION.—The Secretary may authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application.

(d) CONSTRUCTION.—Nothing in this section shall be construed to limit the existing authority of the Secretary on the date of the enactment of this Act to require any form or other submission of information or to perform any background or security check for the purpose of determining the admissibility, or eligibility under this section, of any alien.

(e) WAIVER OF REGULATIONS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall issue guidance to carry out this section. The Secretary shall not be required to promulgate regulations before implementing this section.

(f) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—At the time an alien is granted the status of having been lawfully admitted for permanent residence under this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.).

(g) DEFINITIONS.—

(1) APPLICABLE FEDERAL TAX LIABILITY DEFINED.—In this section, the term ''applicable Federal tax liability'' means liability for Federal taxes, including penalties and interest, owed for any year

for which the statutory period for assessment of any deficiency for such taxes has not expired.

(2) INCORPORATION BY REFERENCE.—Except as otherwise specifically provided in this section, the definitions used in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) (excluding the definitions applicable exclusively to title III of such Act) shall apply in the administration of this section.

SEC. 692. DEVELOPMENT OF ASSESSMENT AND STRATEGY ADDRESSING FACTORS DRIVING MIGRATION.

(a) DEVELOPMENT OF ASSESSMENT.—The General Accounting Office shall develop a baseline assessment of the primary factors driving migration in a prioritized group of ten countries with the highest rates of irregular migration to the United States within six months of the date of enactment of this Act. The report should, at a minimum, include factors driving migration in the prioritized countries, and any current impact of United States assistance, trade or foreign policy on migration trends in the prioritized countries.

(b) STRATEGY ADDRESS FACTORS DRIVING IMMIGRATION.—The Secretary of State, working with the Administrator of the United States Agency for International Development, shall subsequently submit to the Committee on Foreign Relations of the Senate and the Committee

on Foreign Affairs of the House of Representatives, a strategy which responds to the identified economic, social and security factors driving high rates of irregular migration from the prioritized countries identified. The strategy should incorporate consultation with the Bureau of Population, Refugees, and Migration of the Department of State, the Department of Labor, and the Office of the United States Trade Representative.

(c) ELEMENTS OF STRATEGY.—The strategy required by subsection (b) shall include the following:

(1) A summary and evaluation of current assistance provided by the Government of the United States to countries with the highest rates of irregular migration to the United States. Each country report should, at a minimum, identify regions and municipalities experiencing the highest emigration rates and the current level of United States aid or investment in these areas.

(2) Recommendations for future United States Government assistance and technical support to address key economic, social and development factors identified in the prioritized migration source countries. Such assistance should be designed to ensure appropriate engagement of national and local governments and civil society organizations.

SEC. 693. SENSE OF CONGRESS ON INCREASED UNITED STATES FOREIGN POLICY COHERENCY IN THE WESTERN HEMISPHERE.

It is the sense of Congress that the Secretary of State should review the United States foreign policy toward Latin America in order to strengthen hemispheric security through the reduction of poverty and inequality, expansion of equitable trade, support for democratic institutions, citizen security and the rule of law, as essential elements in consolidation of a well-managed regional migration policy.

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