

STANDING UP TO THE EXECUTIVE BRANCH FOR  
IMMIGRATION ENFORCEMENT ACT OF 2024

APRIL 2, 2024.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 7322]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill  
(H.R. 7322) to amend the Immigration and Nationality Act with re-  
spect to enforcement by an attorney general of a State, having con-  
sidered the same, reports favorably thereon with an amendment  
and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Standing Up to the Executive branch for Immigration Enforcement Act of 2024” or the “SUE for Immigration Enforcement Act of 2024”.

**SEC. 2. ENFORCEMENT BY ATTORNEY GENERAL OF A STATE.**

(a) INSPECTION OF APPLICANTS FOR ADMISSION.—Section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) is amended—

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

(2) by inserting after paragraph (2) the following:

“(3) ENFORCEMENT BY ATTORNEY GENERAL OF A STATE.—The attorney general of a State, or other authorized State officer, alleging a violation of the detention and removal requirements under paragraphs (1) or (2) that harms such State or its residents shall have standing to bring an action against the Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this paragraph to the greatest extent practicable. For purposes of this paragraph, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of \$100.”.

(b) APPREHENSION AND DETENTION OF ALIENS.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended—

(1) in subsection (e)—

(A) by striking “or release”; and

(B) by striking “grant, revocation, or denial” and insert “revocation or denial”; and

(2) by adding at the end the following:

“(f) ENFORCEMENT BY ATTORNEY GENERAL OF A STATE.—The attorney general of a State, or other authorized State officer, alleging an action or decision by the Attorney General or Secretary of Homeland Security under this section to release any alien or grant bond or parole to any alien that harms such State or its residents shall have standing to bring an action against the Attorney General or Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this subsection to the greatest extent practicable. For purposes of this subsection, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of \$100.”.

(c) PENALTIES.—Section 243 of the Immigration and Nationality Act (8 U.S.C. 1253) is amended by adding at the end the following:

“(e) ENFORCEMENT BY ATTORNEY GENERAL OF A STATE.—The attorney general of a State, or other authorized State officer, alleging a violation of the requirement to discontinue granting visas to citizens, subjects, nationals, and residents as described in subsection (d) that harms such State or its residents shall have standing to bring an action against the Secretary of State on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this subsection to the greatest extent practicable. For purposes of this subsection, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of \$100.”.

(d) CERTAIN CLASSES OF ALIENS.—Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)) is amended—

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

(2) by adding at the end the following:

“(C) The attorney general of a State, or other authorized State officer, alleging a violation of the limitation under subparagraph (A) that parole solely be granted on a case-by-case basis and solely for urgent humanitarian reasons or a significant public benefit, that harms such State or its residents shall have standing to bring an action against the Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this subparagraph to the greatest

extent practicable. For purposes of this subparagraph, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of \$100.”.

(e) DETENTION.—Section 241(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(2)) is amended—

(1) by striking “During the removal period,” and inserting the following:

“(A) IN GENERAL.—During the removal period,”; and

(2) by adding at the end the following:

“(B) ENFORCEMENT BY ATTORNEY GENERAL OF A STATE.—The attorney general of a State, or other authorized State officer, alleging a violation of the detention requirement under subparagraph (A) that harms such State or its residents shall have standing to bring an action against the Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this subparagraph to the greatest extent practicable. For purposes of this subparagraph, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of \$100.”.

(f) LIMIT ON INJUNCTIVE RELIEF.—Section 242(f) of the Immigration and Nationality Act (8 U.S.C. 1252(f)) is amended by adding at the end following:

“(3) CERTAIN ACTIONS.—Paragraph (1) shall not apply to an action brought pursuant to section 235(b)(3), subsections (e) or (f) of section 236, or section 241(a)(2)(B).”.

### Purpose and Summary

H.R. 7322, the Standing Up to the Executive branch for Immigration Enforcement Act, or the SUE for Immigration Enforcement Act, introduced by Rep. Dan Bishop (R-NC), would allow state attorneys general, or other authorized state officials, to bring a civil action against the Department of Homeland Security (DHS) Secretary, Secretary of State, or Attorney General for violations of certain immigration laws that harm the state or its residents. The bill allows such officials to bring a civil suit for violations of the case-by-case parole limitation under Immigration and Nationality Act (INA) § 212(d)(5), the detention and removal requirements under INA § 235, the parole and release limitations under INA § 236, the detention requirements under INA § 241(a)(2), and the visa sanctions requirements under INA § 243. It also expedites the disposition of such civil actions.

### Background and Need for the Legislation

With the unprecedented border crisis, President Biden and Secretary Mayorkas have abandoned states and localities that bear the brunt of the Administration’s open-borders policies. In Denver, Colorado, for example, Democrat Mayor Mike Johnston warned the city is “hitting a breaking point at which there’s just not enough . . . work or housing in the city to support this ongoing volume, not to mention the impact on city budgets.”<sup>1</sup> Meanwhile, according to the Texas Attorney General, the state of Texas paid between \$62 million and \$90 million per year to cover illegal aliens under its Emergency Medicaid program.<sup>2</sup>

While states have been forced to act alone to address the crisis, the Biden Administration has thwarted them every step of the

<sup>1</sup>Alayna Alvarez, *Denver’s migrant crisis hits a “breaking point,”* AXIOS (Jan. 3, 2024), <https://www.axios.com/local/denver/2024/01/03/migrant-crisis-breaking-point-mike-johnston>.

<sup>2</sup>Press Release, Att’y Gen. of Texas, AG Paxton: Illegal Immigration Costs Texas Taxpayers Over \$850 Million Each Year (Mar. 31, 2021), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-illegal-immigration-costs-texas-taxpayers-over-850-million-each-year>.

way—such as in Texas, where the Administration “ask[ed] the Supreme Court to allow Border Patrol agents to cut razor wire that Texas installed on the U.S.-Mexico border, while a lawsuit over the wire continues.”<sup>3</sup> At the same time, following a Supreme Court decision from June 2023, states may struggle to establish standing to sue to hold Administration officials accountable for the Administration’s violations of immigration law.<sup>4</sup> This legislation ensures that states have standing to bring civil actions against open-borders federal officials who refuse to enforce immigration law or violate it to the detriment of Americans.

#### THE BIDEN ADMINISTRATION’S OPEN-BORDERS POLICIES

The Biden Administration has dismantled any semblance of border security and interior immigration enforcement. Despite the Administration’s rampant violations of the law, states often are left powerless to challenge them in court. In *United States v. Texas*, Texas and Louisiana challenged DHS Secretary Mayorkas’s immigration “enforcement” guidelines, but the Supreme Court held that the states “lack[ed] Article III standing to bring [their] suit.”<sup>5</sup> In the Court’s opinion, Justice Kavanaugh wrote:

The States have not cited any precedent, history, or tradition of courts ordering the Executive Branch to change its arrest or prosecution policies so that the Executive Branch makes more arrests or initiates more prosecutions. On the contrary, this Court has previously ruled that a plaintiff lacks standing to bring such a suit.<sup>6</sup>

Under the Trump Administration, meanwhile, far-left groups had no trouble challenging pro-security and pro-enforcement policies and regulations. From Remain in Mexico,<sup>7</sup> to asylum reforms,<sup>8</sup> to policy changes at U.S. Citizenship and Immigration Services,<sup>9</sup> to visa policies,<sup>10</sup> leftist organizations managed, through the courts, to slow down, undermine, or even derail significant Trump-era policies that would have strengthened the U.S. immigration system. The Senate’s “border security” deal announced in February 2024 would have made it even more difficult for states to challenge left-wing abuse of immigration authorities, as it limited judicial review

<sup>3</sup>*Biden administration asks Supreme Court to allow border agents to cut razor wire installed by Texas*, ASSOCIATED PRESS (Jan. 2, 2024, 5:03 PM), <https://apnews.com/article/supreme-court-texas-immigration-border-patrol-5aa573c05bae06693572826e0154f956>.

<sup>4</sup>See *United States v. Texas*, 599 U.S. 670 (2023).

<sup>5</sup>*United States v. Texas*, 599 U.S. 670, 674 (2023).

<sup>6</sup>*Id.* at 677.

<sup>7</sup>Maria Sacchetti, *Federal judge blocks Trump administration program forcing asylum seekers to remain in Mexico while awaiting court hearings*, WASH. POST (Apr. 9, 2019, 6:04 AM), [https://www.washingtonpost.com/immigration/federal-judge-blocks-trump-administration-program-forcing-asylum-seekers-to-remain-in-mexico-while-awaiting-court-hearings/2019/04/08/68e96048-5a42-11e9-a00e-050dc7b82693\\_story.html](https://www.washingtonpost.com/immigration/federal-judge-blocks-trump-administration-program-forcing-asylum-seekers-to-remain-in-mexico-while-awaiting-court-hearings/2019/04/08/68e96048-5a42-11e9-a00e-050dc7b82693_story.html).

<sup>8</sup>Daniella Silva, *Federal appeals court rules against Trump in two major immigration cases*, NBC NEWS (Feb. 28, 2020, 1:27 PM), <https://www.nbcnews.com/news/us-news/federal-appeals-court-rules-against-trump-two-major-immigration-cases-n1145141>.

<sup>9</sup>Josh Gerstein, *Judge permanently blocks another Trump immigration policy*, POLITICO (Feb. 6, 2020, 5:31 PM), <https://www.politico.com/news/2020/02/06/judge-blocks-another-trump-immigration-policy-111705>.

<sup>10</sup>Stuart Anderson, *Judge Rules Against Trump’s H-1B Visa Ban: President Is Not A Monarch*, FORBES (Oct. 2, 2020, 12:27 AM), <https://www.forbes.com/sites/stuartanderson/2020/10/02/judge-rules-against-trumps-h-1b-visa-ban-president-is-not-a-monarch/?sh=2ebb49c251cc>.

of the bill's new immigration provisions solely to the U.S. District Court for the District of Columbia.<sup>11</sup>

This bill ensures that a Secretary of State's, DHS Secretary's, or Attorney General's violations of immigration law cannot go unchallenged by state attorneys general. H.R. 7322 follows the roadmap outlined in *United States v. Texas* by Justice Kavanaugh, who noted that "the standing analysis might differ when Congress elevates *de facto* injuries to the status of legally cognizable injuries redressable by a federal court."<sup>12</sup> Here, the bill explicitly authorizes states to bring lawsuits regarding five areas of the law that the Biden Administration has most frequently abused: parole under INA § 212(d)(5), detention and removal under INA § 235, parole and release under INA § 236, detention requirements pending removal under INA § 241(a)(2), and visa sanctions under INA § 243.

#### MASS PAROLE UNDER INA § 212(d)(5)

The Biden Administration has created new categorical parole programs that turn the parole statute on its head. Despite the parole statute requiring case-by-case determinations to grant the benefit, in late 2022 and early 2023, the Administration created categorical parole programs that allow up to 30,000 aliens per month from Haiti, Venezuela, Nicaragua, and Cuba to enter the U.S. through ports of entry and remain in the U.S.<sup>13</sup> In addition, on April 27, 2023, the Administration announced the creation of categorical parole programs for family members of nationals of El Salvador, Guatemala, Honduras, and Colombia.<sup>14</sup>

According to press reports, the Biden Administration has used these unlawful categorical parole programs to release into the United States well over half a million aliens.<sup>15</sup> Specifically, DHS has paroled 340,000 aliens through the Cuban, Haitian, Nicaraguan, and Venezuelan parole program; 176,000 aliens through the "Uniting for Ukraine" parole policy; 77,000 through the Afghan parole program; and 3,600 through "family reunification programs."<sup>16</sup>

Last year, Secretary Mayorkas boasted that bringing illegal aliens into the United States via routes such as parole is "working" to help secure the border.<sup>17</sup> On March 12, 2023, however, more than 1,000 illegal aliens from Venezuela, one of the categorical parole program countries, rushed and nearly breached the El Paso

<sup>11</sup>Emergency National Security Supplemental Appropriations Act, 2024, available at [https://www.appropriations.senate.gov/imo/media/doc/emergency\\_national\\_security\\_supplemental\\_bill\\_text.pdf](https://www.appropriations.senate.gov/imo/media/doc/emergency_national_security_supplemental_bill_text.pdf).

<sup>12</sup>*United States v. Texas*, 599 U.S. at 681–82.

<sup>13</sup>U.S. Citizenship and Immigration Servs., *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, U.S. DEPT OF HOMELAND SECURITY (last accessed Feb. 16, 2023), <https://www.uscis.gov/CHNV>.

<sup>14</sup>*Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration*, U.S. DEPT OF STATE (Apr. 27, 2023), <https://www.state.gov/u-s-government-announces-sweeping-new-actions-to-manage-regional-migration/>.

<sup>15</sup>Camilo Montoya-Galvez, *Biden administration has admitted more than 1 million migrants into U.S. under parole policy Congress is considering restricting*, CBS NEWS (Jan. 22, 2024), <https://www.cbsnews.com/news/immigration-parole-biden-administration-1-million-migrants/>.

<sup>16</sup>*Id.*

<sup>17</sup>*Unlawful Southwest Border Crossings Plummet Under New Border Enforcement Measures*, U.S. DEPT OF HOMELAND SECURITY (Jan. 25, 2023), <https://www.dhs.gov/news/2023/01/25/unlawful-southwest-border-crossings-plummet-under-new-border-enforcement-measures>.

Port of Entry.<sup>18</sup> In addition, in late April 2023, nearly 21,000 Venezuelan nationals crossed illegally into the Rio Grande Valley Border Patrol Sector in just 12 days.<sup>19</sup> Another 1,000-person caravan, largely made up of Venezuelan nationals, crossed from Guatemala into Mexico during the weekend of July 15–16, 2023, en route to the southwest U.S. border.<sup>20</sup> In October 2023, “Venezuelans passed Mexicans as the largest single nationality attempting to cross the southern border without visas,” providing even further proof that the Administration’s illegal categorical parole programs have only supercharged illegal immigration.<sup>21</sup>

#### FAILURE TO DETAIN UNDER INA § 235

Like its treatment of the parole statute, the Biden Administration has ignored and continually violated detention mandates. The INA mandates detention for aliens arriving at the border who express an intent to apply for asylum due to a fear of persecution.<sup>22</sup> The Supreme Court has emphasized that the mandatory detention requirements under § 235 “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”<sup>23</sup> A federal judge in Florida agreed, holding, “‘shall be detained’ means what it says and that is a mandatory requirement.”<sup>24</sup> The judge described how the Biden Administration’s failure to detain aliens has:

[E]ffectively turned the Southwest Border into a meaningless line in the sand and little more than a speedbump for aliens flooding into the country by prioritizing “alternatives to detention” over actual detention and by releasing more than a million aliens into the country—on “parole” or pursuant to the exercise of “prosecutorial discretion” under a wholly inapplicable statute—without even initiating removal proceedings.<sup>25</sup>

Despite such clear detention requirements, Secretary Mayorkas has routinely released illegal aliens into the United States.<sup>26</sup> Beginning in March 2021, Border Patrol authorized the release of aliens arriving at the southwest border without first serving them with a Notice to Appear (NTA) and placing them in removal pro-

<sup>18</sup>Greg Wehner, *Border Crisis: Over 1,000 migrants rush bridge linking Mexico to U.S. in El Paso, Texas*, FOX NEWS (Mar. 12, 2023), <https://www.foxnews.com/politics/border-crisis-migrants-rush-bridge-linking-mexico-u-s-el-paso-texas-video>.

<sup>19</sup>Bob Price and Randy Clark, *Exclusive: 21K Venezuelan migrants in 12 days crossed border into one Texas sector*, BREITBART (Apr. 30, 2023), <https://www.breitbart.com/border/2023/04/30/exclusive-21k-venezuelan-migrants-in-12-days-crossed-border-into-one-texas-sector/>.

<sup>20</sup>*Migrant Caravan Heads Toward U.S. Border* (Fox News television broadcast July 17, 2023), <https://www.foxnews.com/video/6331338079112>.

<sup>21</sup>Stef W. Kight, *Venezuelans surpass Mexicans crossing U.S. border*, AXIOS (Oct. 25, 2023), <https://www.axios.com/2023/10/25/venezuelans-surpass-mexicans-migrants-southern-border-biden>.

<sup>22</sup>See 8 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.”); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (“Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”); 8 U.S.C. § 1225(b)(2)(A) (“... the alien shall be detained for a proceeding under section 1229a of this title”).

<sup>23</sup>See *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018).

<sup>24</sup>*Florida v. United States*, 660 F. Supp. 3d 1239, 1273 (N.D. Fla. 2023).

<sup>25</sup>*Id.* at 1249.

<sup>26</sup>See 8 U.S.C. § 1225(b)(1)(B)(ii); see also 8 C.F.R. § 1239.1(a) (“Every removal proceeding conducted under [8 U.S.C. § 1229a] to determine the deportability or inadmissibility of an alien is commenced by the filing of a notice to appear with the immigration court.”).

ceedings, as the statute requires.<sup>27</sup> Instead, the Biden Administration issued aliens a Notice to Report, with instructions to report to a local ICE office to be served with an NTA.<sup>28</sup> Those offices, however, are backlogged for years, with New York City’s ICE office at 99 percent capacity through December 2033.<sup>29</sup> Offices in Miramar, Florida, were mostly booked through January 2029; in Chicago, through January 2028; and in Dallas, through January 2027.<sup>30</sup> Similarly, CBP also adopted a “Parole+ATD” policy, in which aliens were released into the United States through parole and “alternatives to detention,” which could have included ankle monitoring or an alien “periodically ‘checking in’ with ICE remotely through a smartphone app or over the telephone.”<sup>31</sup> Since January 2021, the Administration has released millions of illegal aliens into the United States, with at least 3,095,577 having “no confirmed departure from the United States as of September 30, 2023.”<sup>32</sup>

Although the Supreme Court has previously considered a portion of the statute—INA § 235(b)(2)(C)—and held that “the contiguous-territory return authority” (Migrant Protection Protocols) was not mandatory, the Court emphasized that it did not “resolve the parties’ arguments regarding whether [§] [235](b)(2)(A) must be read in light of traditional principles of law enforcement discretion, and whether the Government is lawfully exercising its parole authorities pursuant to [§ §] [212](d)(5) and [236](a).”<sup>33</sup> Instead, the Court “merely [held] that [§][235](b)(2)(C) means what it says: ‘may’ means ‘may,’ and the INA itself does not require the Secretary to continue exercising his discretionary authority under these circumstances.”<sup>34</sup> Therefore, challenges can still be made to an Administration’s violation of the detention and removal requirements under § 235.

#### MASS RELEASE AND PAROLE UNDER INA § 236

The Biden Administration has also abused the parole and release provisions under INA § 236 to mass release aliens into the United States. That provision contemplates an alien’s potential parole or release after having been arrested “[o]n a warrant issued by the [DHS Secretary].”<sup>35</sup> The Supreme Court has highlighted that § 236 “applies to aliens already present in the United States” and is distinct from the mandatory detention provisions for applicants for admission (i.e., illegal aliens who arrive at the border).<sup>36</sup> Nonetheless, the Biden Administration has used § 236 to release into the United

<sup>27</sup> *Florida*, 660 F. Supp. 3d at 1250, 1255–56.

<sup>28</sup> *Id.*

<sup>29</sup> Top 10 Parole/NTR Appointment Backlog Locations Chart provided to H. Comm. on the Judiciary Staff by U.S. Immigr. and Customs Enf’t (Jan. 31, 2024) (on file with Comm.).

<sup>30</sup> *Id.*

<sup>31</sup> *Florida*, 660 F. Supp. 3d at 1259.

<sup>32</sup> See H. Comm. on the Judiciary, Interim Staff Rep., New Data Reveal Worsening Magnitude of the Biden Border Crisis and Lack of Interior Immigr. Enf’t, at 2–3 (Jan. 18, 2024), [https://judiciary.house.gov/sites/evo-subsites/rep-publicans-judiciary.house.gov/files/evo-media-document/2024-01-18-new-data-reveal-worsening-magnitude-of-the-biden-border-crisis-and-lack-of-interior-immigration-enforcement.pdf?\\_gl=1\\*um0tzz\\*\\_ga\\*MTEwNTc0NDU4Ni4xNjc1ODY1NjU0\\*\\_ga\\_1818ZEQW81\\*MTcwNzQxNDIxNS4xMy4xLjE3MDc0MTU2NzQuMC4wLjA](https://judiciary.house.gov/sites/evo-subsites/rep-publicans-judiciary.house.gov/files/evo-media-document/2024-01-18-new-data-reveal-worsening-magnitude-of-the-biden-border-crisis-and-lack-of-interior-immigration-enforcement.pdf?_gl=1*um0tzz*_ga*MTEwNTc0NDU4Ni4xNjc1ODY1NjU0*_ga_1818ZEQW81*MTcwNzQxNDIxNS4xMy4xLjE3MDc0MTU2NzQuMC4wLjA) [hereinafter Jan. Interim Staff Rep.].

<sup>33</sup> *Biden v. Texas*, 597 U.S. 785, 807 (2022).

<sup>34</sup> *Id.*

<sup>35</sup> 8 U.S.C. § 1226(a).

<sup>36</sup> *Jennings*, 583 U.S. at 303.

States illegal aliens arriving at the southwest border.<sup>37</sup> A federal judge held that DHS violated § 236 by releasing such aliens instead of detaining them as required under § 235.<sup>38</sup> The judge noted the Biden Administration’s “administrative sophistry,” in which it “us[ed] an ‘arrest’ warrant as [a] de facto release warrant.”<sup>39</sup> On February 13, 2024, the U.S. Court of Appeals for the Eleventh Circuit remanded the case for the district court to determine whether it had standing to consider the challenge to the catch-and-release policies in light of the Supreme Court’s decision in *United States v. Texas*.<sup>40</sup>

#### FAILURE TO DETAIN AND REMOVE ALIENS UNDER INA § 241(a)(2)

Under INA § 241(a)(2), the DHS Secretary “shall detain” an alien<sup>41</sup> “for 90 days after entry of a final order of removal.”<sup>42</sup> The statute further requires that “[u]nder no circumstances during the removal period shall the [DHS Secretary] release an alien who has been found inadmissible” for having committed certain crimes or having engaged in terrorist activities.<sup>43</sup> This provision works alongside the arrest requirements under INA § 236, which requires DHS to arrest and detain certain criminal aliens.<sup>44</sup>

Despite these clear statutory mandates, Secretary Mayorkas and the Biden Administration have implemented guidelines that ignore the INA.<sup>45</sup> In challenging the Biden Administration’s refusal to enforce immigration law, Texas and Louisiana alleged that “the Department’s failure to comply with those statutory mandates impose[d] costs on the States,” because, for example, the states “must continue to incarcerate or supply social services such as healthcare and education to [aliens] who should be (but are not being) arrested by the Federal Government.”<sup>46</sup>

Although the Supreme Court held that the states lacked standing to challenge the Administration’s “enforcement priorities,” Justice Kavanaugh, writing for the Court, emphasized that “the standing analysis might differ when Congress elevates *de facto* injuries to the status of legally cognizable injuries redressable by a federal court.”<sup>47</sup> Justice Kavanaugh explained that “Congress might (i) specifically authorize suits against the Executive Branch by a defined set of plaintiffs who have suffered concrete harms from executive under-enforcement and (ii) specifically authorize the Judiciary to enter appropriate orders requiring additional arrests or prosecutions by the Executive Branch.”<sup>48</sup> By explicitly authorizing states to challenge such lack of enforcement, this bill heeds the words of

<sup>37</sup> See *Florida*, 660 F. Supp. 3d at 1277.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Daniel Wiessner, *US judge must rethink Florida’s challenge to ‘catch and release’ border policy*, REUTERS (Feb. 13, 2024, 4:26 PM), <https://www.reuters.com/legal/government/us-judge-must-rethink-floridas-challenge-catch-release-border-policy-2024-0902-0913/>.

<sup>41</sup> 8 U.S.C. § 1231(a)(2).

<sup>42</sup> *United States v. Texas*, 599 U.S. 670, 674 (2023).

<sup>43</sup> 8 U.S.C. § 1231(a)(2).

<sup>44</sup> See 8 U.S.C. § 1226(c).

<sup>45</sup> See generally Jan. Interim Staff Report; H. Comm. on the Judiciary, Rep. on The Biden Border Crisis: How the Biden Admin. Opened the Sw. Border and Abandoned Interior Immigr. Enft., at 11–16 (Oct. 9, 2023).

<sup>46</sup> *United States v. Texas*, 599 U.S. at 674.

<sup>47</sup> *Id.* at 681–82.

<sup>48</sup> *Id.* at 682. Justice Kavanaugh pointed out, however, that the Court “d[id] not take a position on whether such a statute would suffice for Article III purposes.” *Id.* at 682. He noted that the Court’s “only point [was] that no such statute is present in this case.” *Id.*



Justice Kavanaugh and allows states to seek relief against a federal government committed to not enforcing immigration law.

#### FAILURE TO APPLY VISA SANCTIONS UNDER INA § 243

Immigration and Customs Enforcement is tasked with “remov[ing] [aliens] subject to final orders of removal to their country of citizenship.”<sup>49</sup> In accomplishing that mission, “the U.S. government requests that foreign governments take appropriate steps to confirm the citizenship of individuals suspected to be their nationals—including by conducting interviews when necessary, the timely issuance of travel documents, where appropriate, and the acceptance of the physical return of their nationals by scheduled commercial flights or, where necessary, special charter flights.”<sup>50</sup>

Countries routinely fail to cooperate with ICE in the repatriation of their nationals.<sup>51</sup> In a transcribed interview with an ICE official in August 2023, the Committee confirmed that ICE designates such countries as “uncooperative” with removal efforts or “at risk of non-compliance” with removal efforts.<sup>52</sup> According to DHS, “[c]ountries classified by ICE as uncooperative are also known as recalcitrant.”<sup>53</sup> To determine whether a country is uncooperative or at risk of noncompliance, ICE considers: (1) a government’s timely issuance of travel documents; (2) a country’s acceptance of ICE charter flights for removal purposes; (3) a comparison of the ratio of the country’s citizens’ releases from ICE custody with the number of citizens removed; and (4) the average time from a final order of removal to removal from the United States.<sup>54</sup>

As of June 15, 2023, the uncooperative countries were Bhutan, Cambodia, China, Cuba, Eritrea, Ethiopia, Hong Kong, Iran, Laos, Pakistan, Russia, Samoa, and Somalia.<sup>55</sup> The countries at risk of noncompliance were Bosnia-Herzegovina, Cameroon, India, Iraq, Jamaica, Lebanon, the Marshall Islands, South Sudan, and Vietnam.<sup>56</sup> Recalcitrant countries cause delays in the removal process, leading to increased detention costs and even the release of “thousands of [aliens], including those with serious criminal convictions.”<sup>57</sup> In some cases, ICE officers even refuse to arrest an alien from a recalcitrant country in the first place.<sup>58</sup>

The Trump Administration responded to recalcitrant countries by imposing visa sanctions. In 2017, for example, DHS collaborated

<sup>49</sup> Visa Sanctions Against Multiple Countries Pursuant to Section 243(d) of the Immigration and Nationality Act, U.S. DEPT OF HOMELAND SECURITY, <https://www.ice.gov/visasanctions> (last accessed Feb. 7, 2024).

<sup>50</sup> *Id.*

<sup>51</sup> See generally JILL H. WILSON, CONG. RESEARCH SERV., IF11025, IMMIGR.: “RECALCITRANT” COUNTRIES AND THE USE OF VISA SANCTIONS TO ENCOURAGE COOPERATION WITH ALIEN REMOVALS (July 10, 2020), <https://crsreports.congress.gov/product/pdf/IF/IF11025>.

<sup>52</sup> Transcribed Interview of ICE Removal Div. Official, Enft and Removal Operations, at 28 (Aug. 22, 2023) (on file with Comm.).

<sup>53</sup> Visa Sanctions Against Multiple Countries Pursuant to Section 243(d) of the Immigration and Nationality Act, U.S. DEPT OF HOMELAND SECURITY, <https://www.ice.gov/visasanctions> (last accessed Feb. 7, 2024).

<sup>54</sup> Transcribed Interview of ICE Removal Div. Official, Enft and Removal Operations, at 29 (Aug. 22, 2023) (on file with Comm.).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Visa Sanctions Against Multiple Countries Pursuant to Section 243(d) of the Immigration and Nationality Act, U.S. DEPT OF HOMELAND SECURITY, <https://www.ice.gov/visasanctions> (last accessed Feb. 7, 2024).

<sup>58</sup> Transcribed Interview of ICE Enft Div. Official, Enft and Removal Operations, at 55–56 (June 27, 2023) (“[I]f I know I’m not going to be able to remove somebody, we would not make an arrest administratively.”).

with the Department of State to issue visa sanctions against four countries—Cambodia, Eritrea, Guinea, and Sierra Leone—because “the nations [were] not taking back their citizens the United States wants to deport.”<sup>59</sup> The next year, the Trump Administration stopped issuing certain visas to nationals of Myanmar and Laos because of the countries’ recalcitrance.<sup>60</sup> According to data from the Trump Administration, sanctions proved effective, as “countries with newly-issued visa sanctions ha[d] greater removals in [fiscal year] 2018 than in [fiscal year] 2017.”<sup>61</sup> In fact, there were 279 percent more removals to Cambodia in fiscal year 2018 than in fiscal year 2017, 189 percent more removals to Cuba, 51 percent more removals to Eritrea, 149 percent more removals to Guinea, and 80 percent more removals to Sierra Leone.<sup>62</sup> Nonetheless, in 2022, the Biden Administration removed visa sanctions on Laos, caving to pressure from advocacy groups and a far-left campaign that described the sanctions as a “backdoor immigration ban.”<sup>63</sup>

#### HOLDING OFFICIALS ACCOUNTABLE

Despite Biden Administration officials’ violation of immigration law, states may encounter roadblocks in challenging the open-borders policies that harm them and their residents, as reflected in the Supreme Court’s decision in *United States v. Texas*.<sup>64</sup> As Justice Alito wrote in his dissent in *Texas*, the Court’s decision damages the system of separation of powers “by improperly inflating the power of the Executive and cutting back the power of Congress and the authority of the Judiciary.”<sup>65</sup> The decision, he explained, “renders States already laboring under the effects of massive illegal immigration even more helpless.”<sup>66</sup> By providing statutory authority to bring a civil action against Administration officials who violate immigration law, H.R. 7322 seeks to avoid any further restriction on state standing in the immigration realm. The bill also expedites decision-making on the issues, which will provide quicker relief for states struggling under the immigration crisis created by the Biden Administration.

#### Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearing was used to develop H.R. 7322: “The Border Crisis: Is the Law Being Faithfully Executed?” a hearing held on June 7, 2023, before the Subcommittee on Immigration Integrity, Security, and Enforcement of the Committee on the Judiciary. The Subcommittee heard testimony from the following witnesses:

<sup>59</sup> Arshad Mohammed & Yeganeh Torbati, *U.S. will not issue some visas in four nations in deportation crackdown*, REUTERS (Sept. 13, 2017, 4:54 PM), <https://www.reuters.com/article/idUSKCN1BO1VS/>.

<sup>60</sup> Laignee Barron, *U.S. Imposes Visa Sanctions on Myanmar and Laos Over Their Refusal to Accept Deportees*, TIME (July 11, 2018, 12:04 AM), <https://time.com/5335281/us-visa-sanctions-myanmar-laos/>.

<sup>61</sup> U.S. Immigr. and Customs Enft., *Fiscal Year 2018 ICE Enft and Removal Operations Rep.*, U.S. DEP’T OF HOMELAND SEC. at 14, <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf>.

<sup>62</sup> *Id.*

<sup>63</sup> Kimmy Tam, *Biden administration lifts what critics call ‘backdoor immigration ban’ on Laos*, NBC NEWS (Feb. 8, 2022, 6:21 PM), <https://www.nbcnews.com/news/asian-america/biden-administration-lifts-critics-call-backdoor-immigration-ban-laos-rcna15429>.

<sup>64</sup> 99 U.S. 670.

<sup>65</sup> *Id.* at 730–731 (Alito, J., dissenting).

<sup>66</sup> *Id.* at 731.

- Chad Wolf, Former Acting Secretary, U.S. Department of Homeland Security; Executive Director and Chief Strategy Officer, America First Policy Institute;
- Joseph Edlow, Former Acting Director, U.S. Citizenship and Immigration Services; Founder, the Edlow Group;
- Steven G. Bradbury, Distinguished Fellow, Executive Vice President's Office, The Heritage Foundation; and
- Aaron Reichlin-Melnick, Policy Director, The American Immigration Council.

The hearing addressed how the Biden Administration has implemented policies that not only are designed to encourage illegal immigration but also violate immigration law as set by Congress.

### **Committee Consideration**

On February 15, 2024, the Committee met in open session and order the bill, H.R. 7322, favorably reported with an amendment in the nature of a substitute, by a roll call vote of 19 to 11, a quorum being present.

### **Committee Votes**

In compliance with clause 3(b) of House rule XIII, the following roll call votes occurred during the Committee's consideration of H.R. 7322:

1. Vote on Amendment #1 to H.R. 7322 ANS offered by Mr. Nadler—failed 12 ayes to 17 nays.
2. Vote on Amendment #2 to H.R. 7322 ANS offered by Ms. Jayapal—failed 10 ayes to 18 nays.
3. Vote on favorably reporting H.R. 7322, as amended—passed 19 ayes to 11 nays.

## COMMITTEE ON THE JUDICIARY

Date: 2/15/24

118<sup>th</sup> CONGRESS

25-19

ROLL CALL

Vote on: Nadler Amndt #1 to HR 7322 ANS

Roll Call #: 2

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)			
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. BIGGS (AZ)		✓		MR. JOHNSON (GA)			
MR. McCLINTOCK (CA)		✓		MR. SCHIFF (CA)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)	✓		
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)		✓		MR. CORREA (CA)			
MS. SPARTZ (IN)				MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)				MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. ARMSTRONG (ND)		✓		MS. ESCOBAR (TX)	✓		
MR. GOODEN (TX)		✓		MS. ROSS (NC)	✓		
MR. VAN DREW (NJ)		✓		MS. BUSH (MO)	✓		
MR. NEHLS (TX)				MR. IVEY (MD)	✓		
MR. MOORE (AL)		✓		MS. BALINT (VT)	✓		
MR. KILEY (CA)							
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)		✓					

Roll Call Totals:

Ayes:

12

Nays:

17

Present:

X

Passed: \_\_\_\_\_

Failed: \_\_\_\_\_

## COMMITTEE ON THE JUDICIARY

118<sup>th</sup> CONGRESS

25-19

ROLL CALL

Date: 2/15/24

Vote on: Jayapal Amndt #2 to HR 7322 ANS

Roll Call #: 3

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)			
MR. BUCK (CO)		✓		MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)				MR. COHEN (TN)			
MR. BIGGS (AZ)		✓		MR. JOHNSON (GA)			
MR. McCLINTOCK (CA)		✓		MR. SCHIFF (CA)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)	✓		
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)		✓		MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)		✓		MR. CORREA (CA)			
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)				MR. NEGUSE (CO)			
MR. BENTZ (OR)				MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. ARMSTRONG (ND)		✓		MS. ESCOBAR (TX)	✓		
MR. GOODEN (TX)		✓		MS. ROSS (NC)	✓		
MR. VAN DREW (NJ)				MS. BUSH (MO)			
MR. NEHLS (TX)		✓		MR. IVEY (MD)			
MR. MOORE (AL)		✓		MS. BALINT (VT)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)		✓					

Roll Call Totals: Ayes: 10 Nays: 18 Present: X  
 Passed: \_\_\_\_\_ Failed: \_\_\_\_\_

## COMMITTEE ON THE JUDICIARY

118<sup>th</sup> CONGRESS

25-19

ROLL CALL

Date: 2/15/24

Vote on: Final passage of HR 7322, as amended Roll Call #: 4

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>	✓			MR. NADLER (NY) <i>Ranking Member</i>		✓	
MR. ISSA (CA)	✓			MS. LOFGREN (CA)			
MR. BUCK (CO)	✓			MS. JACKSON LEE (TX)		✓	
MR. GAETZ (FL)				MR. COHEN (TN)			
MR. BIGGS (AZ)	✓			MR. JOHNSON (GA)			
MR. McCLINTOCK (CA)	✓			MR. SCHIFF (CA)			
MR. TIFFANY (WI)	✓			MR. SWALWELL (CA)		✓	
MR. MASSIE (KY)	✓			MR. LIEU (CA)			
MR. ROY (TX)	✓			MS. JAYAPAL (WA)		✓	
MR. BISHOP (NC)	✓			MR. CORREA (CA)			
MS. SPARTZ (IN)	✓			MS. SCANLON (PA)		✓	
MR. FITZGERALD (WI)				MR. NEGUSE (CO)			
MR. BENTZ (OR)				MS. McBATH (GA)		✓	
MR. CLINE (VA)	✓			MS. DEAN (PA)		✓	
MR. ARMSTRONG (ND)	✓			MS. ESCOBAR (TX)		✓	
MR. GOODEN (TX)	✓			MS. ROSS (NC)		✓	
MR. VAN DREW (NJ)				MS. BUSH (MO)			
MR. NEHLS (TX)	✓			MR. IVEY (MD)		✓	
MR. MOORE (AL)	✓			MS. BALINT (VT)		✓	
MR. KILEY (CA)	✓						
MS. HAGEMAN (WY)	✓						
MR. MORAN (TX)							
MS. LEE (FL)	✓						
MR. HUNT (TX)							
MR. FRY (SC)	✓						

Roll Call Totals:

Ayes: 19

Nays: 11

Present:

Passed: X

Failed: \_\_\_\_\_

### Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

### New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act of 1974* has been timely submitted prior to filing of the report and is included in the report. Such a cost estimate is included in this report.

### Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the enclosed cost estimate for H.R. 7322 from the Director of the Congressional Budget Office:

H.R. 7322, Standing Up to the Executive branch for Immigration Enforcement Act of 2024			
As ordered reported by the House Committee on the Judiciary on February 15, 2024			
By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	*	*	*
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	0	0	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply? Yes	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Mandate Effects	
		Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

H.R. 7322 would grant standing to state governments to bring action against the federal government in a federal district court for the purpose of seeking injunctive relief from immigration enforcement decisions that have harmed the state or its residents.

CBO expects that enacting H.R. 7322 could result in a small increase in the number of suits filed in federal courts related to immigration enforcement. The federal judiciary charges fees to file suit in a district court. Those fees are recorded as revenues and can be spent by the judiciary without further appropriation. Because the expected increase in the number of lawsuits is small, CBO estimates that enacting H.R. 7322 would increase revenues and the as-

sociated direct spending by less than \$500,000 over the 2024–2034 period. The net decrease in the deficit would be negligible.

Lawsuits brought by states under H.R. 7322 could result in injunctive relief that affects the federal budget. For example, injunctive relief could change the number or immigration status of people residing in the United States, which would affect their receipt of federal benefits. However, CBO has no basis to estimate the direction or magnitude of those effects because we cannot predict the number or content of future lawsuits that would occur under the legislation, the decisions made by federal agencies, or the outcomes of future litigation.

The CBO staff contacts for this estimate are David Rafferty and Kevin Laden. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,  
*Director, Congressional Budget Office.*

### **Committee Estimate of Budgetary Effects**

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*.

### **Duplication of Federal Programs**

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 7322 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

### **Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 7322 would allow state attorneys general, or other authorized state officials, to bring a civil action against the DHS Secretary, Secretary of State, or Attorney General for violations of certain immigration laws that harm the state or its residents.

### **Advisory on Earmarks**

In accordance with clause 9 of House rule XXI, H.R. 7322 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House Rule XXI.

### **Federal Mandates Statement**

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

### **Advisory Committee Statement**

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.



### Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Pub. L. 104–1).

### Section-by-Section Analysis

*Sec. 1. Short title.* The “Standing Up to the Executive branch for Immigration Enforcement Act,” or the “SUE for Immigration Enforcement Act.”

*Sec. 2. Enforcement by an Attorney General of a State.* This section authorizes state attorneys general to bring a civil action against the DHS Secretary, Secretary of State, or Attorney General for violations of certain immigration laws that harm the state or its residents. The bill allows such officials to bring a civil suit for violations of the case-by-case parole limitation under Immigration and Nationality Act (INA) § 212(d)(5), the detention and removal requirements under INA § 235, the parole and release limitations under INA § 236, the detention requirements under INA § 241(a)(2), and the visa sanctions requirements under INA § 243. It also expedites the disposition of such civil actions.

### Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

## IMMIGRATION AND NATIONALITY ACT

\* \* \* \* \*

### TITLE II—IMMIGRATION

\* \* \* \* \*

#### CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

\* \* \* \* \*

#### GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) HEALTH-RELATED GROUNDS.—

(A) IN GENERAL.—Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance;

(ii) except as provided in subparagraph (C), who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict,

is inadmissibility.

(B) WAIVER AUTHORIZED.—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

(C) EXCEPTION FROM IMMUNIZATION REQUIREMENT FOR ADOPTED CHILDREN 10 YEARS OF AGE OR YOUNGER.—Clause (ii) of subparagraph (A) shall not apply to a child who—

(i) is 10 years of age or younger,

(ii) is described in subparagraph (F) or (G) of section 101(b)(1); and

(iii) is seeking an immigrant visa as an immediate relative under section 201(b),

if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

(2) CRIMINAL AND RELATED GROUNDS.—

(A) CONVICTION OF CERTAIN CRIMES.—

(i) IN GENERAL.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

is inadmissible.

(ii) EXCEPTION.—Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) MULTIPLE CRIMINAL CONVICTIONS.—Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) CONTROLLED SUBSTANCE TRAFFICKERS.—Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,  
is inadmissible.

(D) PROSTITUTION AND COMMERCIALIZED VICE.—Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, entry, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

(E) CERTAIN ALIENS INVOLVED IN SERIOUS CRIMINAL ACTIVITY WHO HAVE ASSERTED IMMUNITY FROM PROSECUTION.—Any alien—

(i) who has committed in the United States at any time a serious criminal offense (as defined in section 101(h)),

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense,

is inadmissible.

(F) WAIVER AUTHORIZED.—For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

(G) FOREIGN GOVERNMENT OFFICIALS WHO HAVE COMMITTED PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402), is inadmissible.

(H) SIGNIFICANT TRAFFICKERS IN PERSONS.—

(i) IN GENERAL.—Any alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 103 of such Act, is inadmissible.

(ii) BENEFICIARIES OF TRAFFICKING.—Except as provided in clause (iii), any alien who the consular officer

or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(iii) EXCEPTION FOR CERTAIN SONS AND DAUGHTERS.—Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

(I) MONEY LAUNDERING.—Any alien—

(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18, United States Code (relating to laundering of monetary instruments); or

(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible.

(3) SECURITY AND RELATED GROUNDS.—

(A) IN GENERAL.—Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other unlawful activity, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is inadmissible.

(B) TERRORIST ACTIVITIES.—

(i) IN GENERAL.—Any alien who—

(I) has engaged in a terrorist activity;

(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(IV) is a representative (as defined in clause (v)) of—

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years, is inadmissible.

An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.

(ii) EXCEPTION.—Subclause (IX) of clause (i) does not apply to a spouse or child—

(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

(iii) TERRORIST ACTIVITY DEFINED.—As used in this Act, the term “terrorist activity” means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this Act, the term “engage in terrorist activity” means, in an individual capacity or as a member of an organization—

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for—

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(V) to solicit any individual—

(aa) to engage in conduct otherwise described in this subsection;

(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or

(dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

(v) REPRESENTATIVE DEFINED.—As used in this paragraph, the term “representative” includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(vi) TERRORIST ORGANIZATION DEFINED.—As used in this section, the term “terrorist organization” means an organization—

(I) designated under section 219;

(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or

(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

(C) FOREIGN POLICY.—

(i) IN GENERAL.—An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible.

(ii) EXCEPTION FOR OFFICIALS.—An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) solely because of the alien’s past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.

(iii) EXCEPTION FOR OTHER ALIENS.—An alien, not described in clause (ii), shall not be excludable or subject to restrictions or conditions on entry into the



United States under clause (i) because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest.

(iv) NOTIFICATION OF DETERMINATIONS.—If a determination is made under clause (iii) with respect to an alien, the Secretary of State must notify on a timely basis the chairmen of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identity of the alien and the reasons for the determination.

(D) IMMIGRANT MEMBERSHIP IN TOTALITARIAN PARTY.—

(i) IN GENERAL.—Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

(ii) EXCEPTION FOR INVOLUNTARY MEMBERSHIP.—Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

(iii) EXCEPTION FOR PAST MEMBERSHIP.—Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that—

(I) the membership or affiliation terminated at least—

(a) 2 years before the date of such application, or

(b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

(iv) EXCEPTION FOR CLOSE FAMILY MEMBERS.—The Attorney General may, in the Attorney General's discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humani-

tarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

(E) PARTICIPANTS IN NAZI PERSECUTION, GENOCIDE, OR THE COMMISSION OF ANY ACT OF TORTURE OR EXTRAJUDICIAL KILLING.—

(i) PARTICIPATION IN NAZI PERSECUTIONS.—Any alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(I) the Nazi government of Germany,

(II) any government in any area occupied by the military forces of the Nazi government of Germany,

(III) any government established with the assistance or cooperation of the Nazi government of Germany, or

(IV) any government which was an ally of the Nazi government of Germany, ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion is inadmissible.

(ii) PARTICIPATION IN GENOCIDE.—Any alien who ordered, incited, assisted, or otherwise participated in genocide, as defined in section 1091(a) of title 18, United States Code, is inadmissible

(iii) COMMISSION OF ACTS OF TORTURE OR EXTRAJUDICIAL KILLINGS.—Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of—

(I) any act of torture, as defined in section 2340 of title 18, United States Code; or

(II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note),

is inadmissible.

(F) ASSOCIATION WITH TERRORIST ORGANIZATIONS.—Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.

(G) RECRUITMENT OR USE OF CHILD SOLDIERS.—Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code, is inadmissible.

(4) PUBLIC CHARGE.—

(A) IN GENERAL.—Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of applica-

tion for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

(B) FACTORS TO BE TAKEN INTO ACCOUNT.—(i) In determining whether an alien is inadmissible under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's—

- (I) age;
- (II) health;
- (III) family status;
- (IV) assets, resources, and financial status; and
- (V) education and skills.

(ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 213A for purposes of exclusion under this paragraph.

(C) FAMILY-SPONSORED IMMIGRANTS.—Any alien who seeks admission or adjustment of status under a visa number issued under section 201(b)(2) or 203(a) is inadmissible under this paragraph unless—

(i) the alien has obtained—

- (I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A), or
- (II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B); or
- (III) classification or status as a VAWA self-petitioner; or

(ii) the person petitioning for the alien's admission (and any additional sponsor required under section 213A(f) or any alternative sponsor permitted under paragraph (5)(B) of such section) has executed an affidavit of support described in section 213A with respect to such alien.

(D) CERTAIN EMPLOYMENT-BASED IMMIGRANTS.—Any alien who seeks admission or adjustment of status under a visa number issued under section 203(b) by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is inadmissible under this paragraph unless such relative has executed an affidavit of support described in section 213A with respect to such alien.

(E) SPECIAL RULE FOR QUALIFIED ALIEN VICTIMS.—Subparagraphs (A), (B), and (C) shall not apply to an alien who—

- (i) is a VAWA self-petitioner;
- (ii) is an applicant for, or is granted, nonimmigrant status under section 101(a)(15)(U); or
- (iii) is a qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)).

(5) LABOR CERTIFICATION AND QUALIFICATIONS FOR CERTAIN IMMIGRANTS.—

(A) LABOR CERTIFICATION.—

(i) IN GENERAL.—Any alien who seeks to enter the United States for the purpose of performing skilled or

unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(ii) CERTAIN ALIENS SUBJECT TO SPECIAL RULE.—For purposes of clause (i)(I), an alien described in this clause is an alien who—

(I) is a member of the teaching profession, or

(II) has exceptional ability in the sciences or the arts.

(iii) PROFESSIONAL ATHLETES.—

(I) IN GENERAL.—A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for the certification.

(II) DEFINITION.—For purposes of subclause (I), the term “professional athlete” means an individual who is employed as an athlete by—

(aa) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(bb) any minor league team that is affiliated with such an association.

(iv) LONG DELAYED ADJUSTMENT APPLICANTS.—A certification made under clause (i) with respect to an individual whose petition is covered by section 204(j) shall remain valid with respect to a new job accepted by the individual after the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the certification was issued.

(B) UNQUALIFIED PHYSICIANS.—An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners

Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) UNCERTIFIED FOREIGN HEALTH-CARE WORKERS.—Subject to subsection (r), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that—

(i) the alien's education, training, license, and experience—

(I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

(II) are comparable with that required for an American health-care worker of the same type; and

(III) are authentic and, in the case of a license, unencumbered;

(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

(D) APPLICATION OF GROUNDS.—The grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 203(b).

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.—

## (A) ALIENS PRESENT WITHOUT ADMISSION OR PAROLE.—

(i) IN GENERAL.—An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

(ii) EXCEPTION FOR CERTAIN BATTERED WOMEN AND CHILDREN.—Clause (i) shall not apply to an alien who demonstrates that—

(I) the alien is a VAWA self-petitioner;

(II)(a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and

(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

(B) FAILURE TO ATTEND REMOVAL PROCEEDING.—Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

## (C) MISREPRESENTATION.—

(i) IN GENERAL.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) FALSELY CLAIMING CITIZENSHIP.—

(I) IN GENERAL.—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) EXCEPTION.—In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making

such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (i).

(D) STOWAWAYS.—Any alien who is a stowaway is inadmissible.

(E) SMUGGLERS.—

(i) IN GENERAL.—Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) SPECIAL RULE IN THE CASE OF FAMILY REUNIFICATION.—Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(11).

(F) SUBJECT OF CIVIL PENALTY.—

(i) IN GENERAL.—An alien who is the subject of a final order for violation of section 274C is inadmissible.

(ii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(12).

(G) STUDENT VISA ABUSERS.—An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(i) and who violates a term or condition of such status under section 214(l) is inadmissible until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

(7) DOCUMENTATION REQUIREMENTS.—

(A) IMMIGRANTS.—

(i) IN GENERAL.—Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission—

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a), or

(II) whose visa has been issued without compliance with the provisions of section 203,

is inadmissible.

(ii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (k).

(B) NONIMMIGRANTS.—

(i) IN GENERAL.—Any nonimmigrant who—

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission,

is inadmissible.

(ii) GENERAL WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(4).

(iii) GUAM AND NORTHERN MARIANA ISLANDS VISA WAIVER.—For provision authorizing waiver of clause (i) in the case of visitors to Guam or the Commonwealth of the Northern Mariana Islands, see subsection (l).

(iv) VISA WAIVER PROGRAM.—For authority to waive the requirement of clause (i) under a program, see section 217.

(8) INELIGIBLE FOR CITIZENSHIP.—

(A) IN GENERAL.—Any immigrant who is permanently ineligible to citizenship is inadmissible.

(B) DRAFT EVADERS.—Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is inadmissible, except that this subparagraph shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.

(9) ALIENS PREVIOUSLY REMOVED.—

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.—

(i) ARRIVING ALIENS.—Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) OTHER ALIENS.—Any alien not described in clause (i) who—

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20



years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) EXCEPTION.—Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

(B) ALIENS UNLAWFULLY PRESENT.—

(i) IN GENERAL.—Any alien (other than an alien lawfully admitted for permanent residence) who—

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States,

is inadmissible.

(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 Attorney General or is present in the United States without being admitted or paroled.

(iii) EXCEPTIONS.—

(I) MINORS.—No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(II) ASYLEES.—No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

(III) FAMILY UNITY.—No period of time in which the alien is a beneficiary of family unity protection pursuant to section 301 of the Immigration Act of 1990 shall be taken into account in determining the period of unlawful presence in the United 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 sub-

stituted for “unlawful entry into the United States” in subclause (III) of that paragraph.

(V) VICTIMS OF A SEVERE FORM OF TRAFFICKING IN PERSONS.—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.

(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 Attorney General, 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 Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

(C) ALIENS UNLAWFULLY PRESENT AFTER PREVIOUS IMMIGRATION VIOLATIONS.—

(i) IN GENERAL.—Any alien who—

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) EXCEPTION.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien’s last departure from the United States if, prior to the alien’s reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien’s reapplying for admission.

(iii) WAIVER.—The Secretary of Homeland Security may waive the application of clause (i) in the case of

an alien who is a VAWA self-petitioner if there is a connection between—

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

(10) MISCELLANEOUS.—

(A) PRACTICING POLYGAMISTS.—Any immigrant who is coming to the United States to practice polygamy is inadmissible.

(B) GUARDIAN REQUIRED TO ACCOMPANY HELPLESS ALIEN.—Any alien—

(i) who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy pursuant to section 232(c), and

(ii) whose protection or guardianship is determined to be required by the alien described in clause (i), is inadmissible.

(C) INTERNATIONAL CHILD ABDUCTION.—

(i) IN GENERAL.—Except as provided in clause (ii), any alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.

(ii) ALIENS SUPPORTING ABDUCTORS AND RELATIVES OF ABDUCTORS.—Any alien who—

(I) is known by the Secretary of State to have intentionally assisted an alien in the conduct described in clause (i),

(II) is known by the Secretary of State to be intentionally providing material support or safe haven to an alien described in clause (i), or

(III) is a spouse (other than the spouse who is the parent of the abducted child), child (other than the abducted child), parent, sibling, or agent of an alien described in clause (i), if such person has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion, is inadmissible until the child described in clause (i) is surrendered to the person granted custody by the order described in that clause, and such person and child are permitted to return to the United States or such person's place of residence.

(iii) EXCEPTIONS.—Clauses (i) and (ii) shall not apply—

(I) to a government official of the United States who is acting within the scope of his or her official duties;

(II) to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion; or

(III) so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(D) UNLAWFUL VOTERS.—

(i) IN GENERAL.—Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.

(ii) EXCEPTION.—In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such violation.

(E) FORMER CITIZENS WHO RENOUNCED CITIZENSHIP TO AVOID TAXATION.—Any alien who is a former citizen of the United States who officially renounces United States citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States is inadmissible.

(b) NOTICES OF DENIALS.—

(1) Subject to paragraphs (2) and (3), if an alien's application for a visa, for admission to the United States, or for adjustment of status is denied by an immigration or consular officer because the officer determines the alien to be inadmissible under subsection (a), the officer shall provide the alien with a timely written notice that—

(A) states the determination, and

(B) lists the specific provision or provisions of law under which the alien is excludable or ineligible for entry or adjustment of status.

(2) The Secretary of State may waive the requirements of paragraph (1) with respect to a particular alien or any class or classes of inadmissible aliens.

(3) Paragraph (1) does not apply to any alien inadmissible under paragraph (2) or (3) of subsection (a).

(d)(1) The Attorney General shall determine whether a ground for inadmissible exists with respect to a nonimmigrant described in section 101(a)(15)(S). The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(S), if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration and Naturalization Service

from instituting removal proceedings against an alien admitted as a nonimmigrant under section 101(a)(15)(S) for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under section 101(a)(15)(S).

(3)(A) Except as provided in this subsection, an alien (i) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (ii) who is inadmissible under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General. The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph.

(B)(i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may determine in such Secretary's sole unreviewable discretion that subsection (a)(3)(B) shall not apply with respect to an alien within the scope of that subsection or that subsection (a)(3)(B)(vi)(III) shall not apply to a group within the scope of that subsection, except that no such waiver may be extended to an alien who is within the scope of subsection (a)(3)(B)(i)(II), no such waiver may be extended to an alien who is a member or representative of, has voluntarily and knowingly engaged in or endorsed or espoused or persuaded others to endorse or espouse or support terrorist activity on behalf of, or has voluntarily and knowingly received military-type training from a terrorist organization that is described in subclause (I) or (II) of subsection (a)(3)(B)(vi), and no such waiver may be extended to a group that has engaged terrorist activity against the United States or another democratic country or that has purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians. Such a determination shall neither prejudice the ability of the United States Government to commence criminal or civil proceedings involving a beneficiary of such a determination or any other person, nor create any substantive or procedural right or benefit for a beneficiary of such a determination or any other person. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review such a determination or revocation except in a proceeding for review of a final order of removal pursuant

to section 1252 of this title, and review shall be limited to the extent provided in section 1252(a)(2)(D). The Secretary of State may not exercise the discretion provided in this clause with respect to an alien at any time during which the alien is the subject of pending removal proceedings under section 1229a of this title.

(ii) Not later than 90 days after the end of each fiscal year, the Secretary of State and the Secretary of Homeland Security shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Homeland Security of the House of Representatives a report on the aliens to whom such Secretary has applied clause (i). Within one week of applying clause (i) to a group, the Secretary of State or the Secretary of Homeland Security shall provide a report to such Committees.

(4) Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) may be waived by the Attorney General and the Secretary of State acting jointly (A) on the basis of unforeseen emergency in individual cases, or (B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or (C) in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 238(c).

(5)(A) The **Attorney General** *Secretary of Homeland Security* may, except as provided in subparagraph (B) or in section 214(f), in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the **Attorney General** *Secretary of Homeland Security*, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The **Attorney General** *Secretary of Homeland Security* may not parole into the United States an alien who is a refugee unless the **Attorney General** *Secretary of Homeland Security* determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

(C) *The attorney general of a State, or other authorized State officer, alleging a violation of the limitation under subparagraph (A) that parole solely be granted on a case-by-case basis and solely for urgent humanitarian reasons or a significant public benefit, that harms such State or its residents shall have standing to bring an action against the Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this subparagraph to the greatest extent practicable. For purposes of this subparagraph, a State or its residents shall be considered to have been harmed if the State or its*

*residents experience harm, including financial harm in excess of \$100.*

(7) The provisions of subsection (a) (other than paragraph (7)) shall be applicable to any alien who shall leave Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. Any alien described in this paragraph, who is denied admission to the United States, shall be immediately removed in the manner provided by section 241(c) of this Act.

(8) Upon a basis of reciprocity accredited officials of foreign governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs (3)(A), (3)(B), (3)(C), and (7)(B) of subsection (a) of this section.

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(12) The Attorney General may, in the discretion of the Attorney General for humanitarian purposes or to assure family unity, waive application of clause (i) of subsection (a)(6)(F)—

(A) in the case of an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under section 211(b), and

(B) in the case of an alien seeking admission or adjustment of status under section 201(b)(2)(A) or under section 203(a), if no previous civil money penalty was imposed against the alien under section 274C and the offense was committed solely to assist, aid, or support the alien's spouse or child (and not another individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this paragraph.

(13)(A) The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(T), except that the ground for inadmissibility described in subsection (a)(4) shall not apply with respect to such a nonimmigrant.

(B) In addition to any other waiver that may be available under this section, in the case of a nonimmigrant described in section 101(a)(15)(T), if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General's discretion, may waive the application of—

- (i) subsection (a)(1); and
- (ii) any other provision of subsection (a) (excluding paragraphs (3), (4), (10)(C), and (10(E))) if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I).

(14) The Secretary of Homeland Security shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(U). The Secretary of Homeland Security, in the Attorney General's discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(U), if the Secretary of Homeland Security considers it to be in the public or national interest to do so.

(e) No person admitted under section 101(a)(15)(J) or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of a least two years following departure from the United States: *Provided*, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States Government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(l): *And provided further*, That, except in the case of an alien described in clause (iii), the Attorney General may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the



foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

(f) Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.

(g) The Attorney General may waive the application of—

(1) subsection (a)(1)(A)(i) in the case of any alien who—

(A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa,

(B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; or

(C) is a VAWA self-petitioner,

in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe;

(2) subsection (a)(1)(A)(ii) in the case of any alien—

(A) who receives vaccination against the vaccine-preventable disease or diseases for which the alien has failed to present documentation of previous vaccination,

(B) for whom a civil surgeon, medical officer, or panel physician (as those terms are defined by section 34.2 of title 42 of the Code of Federal Regulations) certifies, according to such regulations as the Secretary of Health and Human Services may prescribe, that such vaccination would not be medically appropriate, or

(C) under such circumstances as the Attorney General provides by regulation, with respect to whom the requirement of such a vaccination would be contrary to the alien's religious beliefs or moral convictions; or

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it

relates to a single offense of simple possession of 30 grams or less of marijuana if—

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that—

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; or

(C) the alien is a VAWA self-petitioner; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or re-applying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

(i)(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

(j)(1) The additional requirements referred to in section 101(a)(15)(J) for an alien who is coming to the United States under

a program under which he will receive graduate medical education or training are as follows:

(A) A school of medicine or of one of the other health professions, which is accredited by a body or bodies approved for the purpose by the Secretary of Education, has agreed in writing to provide the graduate medical education or training under the program for which the alien is coming to the United States or to assume responsibility for arranging for the provision thereof by an appropriate public or nonprofit private institution or agency, except that, in the case of such an agreement by a school of medicine, any one or more of its affiliated hospitals which are to participate in the provision of the graduate medical education or training must join in the agreement.

(B) Before making such agreement, the accredited school has been satisfied that the alien (i) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States); or (ii)(I) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services), (II) has competency in oral and written English, (III) will be able to adapt to the educational and cultural environment in which he will be receiving his education or training, and (IV) has adequate prior education and training to participate satisfactorily in the program for which he is coming to the United States. For the purposes of this subparagraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) The alien has made a commitment to return to the country of his nationality or last residence upon completion of the education or training for which he is coming to the United States, and the government of the country of his nationality or last residence has provided a written assurance, satisfactory to the Secretary of Health and Human Services, that there is a need in that country for persons with the skills the alien will acquire in such education or training.

(D) The duration of the alien's participation in the program of graduate medical education or training for which the alien is coming to the United States is limited to the time typically required to complete such program, as determined by the Director of the United States Information Agency at the time of the alien's admission into the United States, based on criteria which are established in coordination with the Secretary of Health and Human Services and which take into consideration the published requirements of the medical specialty board which administers such education or training program; except that—

(i) such duration is further limited to seven years unless the alien has demonstrated to the satisfaction of the Director that the country to which the alien will return at the

end of such specialty education or training has an exceptional need for an individual trained in such specialty, and

(ii) the alien may, once and not later than two years after the date the alien is admitted to the United States as an exchange visitor or acquires exchange visitor status, change the alien's designated program of graduate medical education or training if the Director approves the change and if a commitment and written assurance with respect to the alien's new program have been provided in accordance with subparagraph (C).

(E) The alien furnishes the Attorney General each year with an affidavit (in such form as the Attorney General shall prescribe) that attests that the alien (i) is in good standing in the program of graduate medical education or training in which the alien is participating, and (ii) will return to the country of his nationality or last residence upon completion of the education or training for which he came to the United States.

(2) An alien who is a graduate of a medical school and who is coming to the United States to perform services as a member of the medical profession may not be admitted as a nonimmigrant under section 101(a)(15)(H)(i)(b) unless—

(A) the alien is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency, or

(B)(i) the alien has passed the Federation licensing examination (administered by the Federation of State Medical Boards of the United States) or an equivalent examination as determined by the Secretary of Health and Human Services, and

(ii)(I) has competency in oral and written English or (II) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States).

(3) The Director of the United States Information Agency annually shall transmit to the Congress a report on aliens who have submitted affidavits described in paragraph (1)(E), and shall include in such report the name and address of each such alien, the medical education or training program in which such alien is participating, and the status of such alien in that program.

(k) Any alien, inadmissible from the United States under paragraph (5)(A) or (7)(A)(i) of subsection (a), who is in possession of an immigrant visa may, if otherwise admissible, be admitted in the discretion of the Attorney General if the Attorney General is satisfied that inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, the immigrant before the time of departure of the vessel or aircraft from the last port outside the United States and outside foreign contiguous territory or, in the case of an immigrant coming from foreign contiguous territory, before the time of the immigrant's application for admission.

(l) GUAM AND NORTHERN MARIANA ISLANDS VISA WAIVER PROGRAM.—

(1) IN GENERAL.—The requirement of subsection (a)(7)(B)(i) may be waived by the Secretary of Homeland Security, in the

case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay in Guam or the Commonwealth of the Northern Mariana Islands for a period not to exceed 45 days, if the Secretary of Homeland Security, after consultation with the Secretary of the Interior, the Secretary of State, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands, determines that—

(A) an adequate arrival and departure control system has been developed in Guam and the Commonwealth of the Northern Mariana Islands; and

(B) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

(2) ALIEN WAIVER OF RIGHTS.—An alien may not be provided a waiver under this subsection unless the alien has waived any right—

(A) to review or appeal under this Act an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam or the Commonwealth of the Northern Mariana Islands; or

(B) to contest, other than on the basis of an application for withholding of removal under section 241(b)(3) of this Act or under the Convention Against Torture, or an application for asylum if permitted under section 208, any action for removal of the alien.

(3) REGULATIONS.—All necessary regulations to implement this subsection shall be promulgated by the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, on or before the 180th day after the date of enactment of the Consolidated Natural Resources Act of 2008. The promulgation of such regulations shall be considered a foreign affairs function for purposes of section 553(a) of title 5, United States Code. At a minimum, such regulations should include, but not necessarily be limited to—

(A) a listing of all countries whose nationals may obtain the waiver also provided by this subsection, except that such regulations shall provide for a listing of any country from which the Commonwealth has received a significant economic benefit from the number of visitors for pleasure within the one-year period preceding the date of enactment of the Consolidated Natural Resources Act of 2008, unless the Secretary of Homeland Security determines that such country's inclusion on such list would represent a threat to the welfare, safety, or security of the United States or its territories; and

(B) any bonding requirements for nationals of some or all of those countries who may present an increased risk of overstays or other potential problems, if different from such requirements otherwise provided by law for non-immigrant visitors.

(4) FACTORS.—In determining whether to grant or continue providing the waiver under this subsection to nationals of any country, the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State,

shall consider all factors that the Secretary deems relevant, including electronic travel authorizations, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems, and information exchange.

(5) **SUSPENSION.**—The Secretary of Homeland Security shall monitor the admission of nonimmigrant visitors to Guam and the Commonwealth of the Northern Mariana Islands under this subsection. If the Secretary determines that such admissions have resulted in an unacceptable number of visitors from a country remaining unlawfully in Guam or the Commonwealth of the Northern Mariana Islands, unlawfully obtaining entry to other parts of the United States, or seeking withholding of removal or asylum, or that visitors from a country pose a risk to law enforcement or security interests of Guam or the Commonwealth of the Northern Mariana Islands or of the United States (including the interest in the enforcement of the immigration laws of the United States), the Secretary shall suspend the admission of nationals of such country under this subsection. The Secretary of Homeland Security may in the Secretary's discretion suspend the Guam and Northern Mariana Islands visa waiver program at any time, on a country-by-country basis, for other good cause.

(6) **ADDITION OF COUNTRIES.**—The Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands may request the Secretary of the Interior and the Secretary of Homeland Security to add a particular country to the list of countries whose nationals may obtain the waiver provided by this subsection, and the Secretary of Homeland Security may grant such request after consultation with the Secretary of the Interior and the Secretary of State, and may promulgate regulations with respect to the inclusion of that country and any special requirements the Secretary of Homeland Security, in the Secretary's sole discretion, may impose prior to allowing nationals of that country to obtain the waiver provided by this subsection.

(m)(1) The qualifications referred to in section 101(a)(15)(H)(i)(c), with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—

(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States;

(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

(2)(A) The attestation referred to in section 101(a)(15)(H)(i)(c), with respect to a facility for which an alien will perform services, is an attestation as to the following:

(i) The facility meets all the requirements of paragraph (6).

(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.

(iii) The alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.

(iv) The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses.

(v) There is not a strike or lockout in the course of a labor dispute, the facility did not lay off and will not lay off a registered nurse employed by the facility within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(vi) At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(c), notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to the registered nurses employed at the facility through posting in conspicuous locations.

(vii) The facility will not, at any time, employ a number of aliens issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(c) that exceeds 33 percent of the total number of registered nurses employed by the facility.

(viii) The facility will not, with respect to any alien issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(c)—

(I) authorize the alien to perform nursing services at any worksite other than a worksite controlled by the facility; or

(II) transfer the place of employment of the alien from one worksite to another.

Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999. A copy of the attestation shall be provided, within 30 days of the date of filing, to registered nurses employed at the facility on the date of filing.

(B) For purposes of subparagraph (A)(iv), each of the following shall be considered a significant step reasonably designed to recruit and retain registered nurses:

(i) Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

(ii) Providing career development programs and other methods of facilitating health care workers to become registered nurses.

(iii) Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area.

(iv) Providing reasonable opportunities for meaningful salary advancement by registered nurses.

The steps described in this subparagraph shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of subparagraph (A)(iv). Nothing in this subparagraph shall require a facility to take more than one step if the facility can demonstrate that taking a second step is not reasonable.

(C) Subject to subparagraph (E), an attestation under subparagraph (A)—

(i) shall expire on the date that is the later of—

(I) the end of the one-year period beginning on the date of its filing with the Secretary of Labor; or

(II) the end of the period of admission under section 101(a)(15)(H)(i)(c) of the last alien with respect to whose admission it was applied (in accordance with clause (ii)); and

(ii) shall apply to petitions filed during the one-year period beginning on the date of its filing with the Secretary of Labor if the facility states in each such petition that it continues to comply with the conditions in the attestation.

(D) A facility may meet the requirements under this paragraph with respect to more than one registered nurse in a single petition.

(E)(i) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying facilities which have filed petitions for non-immigrants under section 101(a)(15)(H)(i)(c) and, for each such facility, a copy of the facility's attestation under subparagraph (A) (and accompanying documentation) and each such petition filed by the facility.

(ii) The Secretary of Labor shall establish a process, including reasonable time limits, for the receipt, investigation, and disposition of complaints respecting a facility's failure to meet conditions attested to or a facility's misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable cause to believe that a facility fails to meet conditions attested to. Subject to the time limits established under this clause, this subparagraph shall apply regardless of whether an attestation is expired or unexpired at the time a complaint is filed.

(iii) Under such process, the Secretary shall provide, within 180 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in clause (iv). If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility (for which an attestation is made) has



failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per nurse per violation, with the total penalty not to exceed \$10,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of at least one year for nurses to be employed by the facility.

(v) In addition to the sanctions provided for under clause (iv), if the Secretary of Labor finds, after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(iii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such amounts of back pay as may be required to comply with such condition.

(F)(i) The Secretary of Labor shall impose on a facility filing an attestation under subparagraph (A) a filing fee, in an amount prescribed by the Secretary based on the costs of carrying out the Secretary's duties under this subsection, but not exceeding \$250.

(ii) Fees collected under this subparagraph shall be deposited in a fund established for this purpose in the Treasury of the United States.

(iii) The collected fees in the fund shall be available to the Secretary of Labor, to the extent and in such amounts as may be provided in appropriations Acts, to cover the costs described in clause (i), in addition to any other funds that are available to the Secretary to cover such costs.

(3) The period of admission of an alien under section 101(a)(15)(H)(i)(c) shall be 3 years.

(4) The total number of nonimmigrant visas issued pursuant to petitions granted under section 101(a)(15)(H)(i)(c) in each fiscal year shall not exceed 500. The number of such visas issued for employment in each State in each fiscal year shall not exceed the following:

(A) For States with populations of less than 9,000,000, based upon the 1990 decennial census of population, 25 visas.

(B) For States with populations of 9,000,000 or more, based upon the 1990 decennial census of population, 50 visas.

(C) If the total number of visas available under this paragraph for a fiscal year quarter exceeds the number of qualified nonimmigrants who may be issued such visas during those quarters, the visas made available under this paragraph shall be issued without regard to the numerical limitation under subparagraph (A) or (B) of this paragraph during the last fiscal year quarter.

(5) A facility that has filed a petition under section 101(a)(15)(H)(i)(c) to employ a nonimmigrant to perform nursing services for the facility—

(A) shall provide the nonimmigrant a wage rate and working conditions commensurate with those of nurses similarly employed by the facility;

(B) shall require the nonimmigrant to work hours commensurate with those of nurses similarly employed by the facility; and

(C) shall not interfere with the right of the nonimmigrant to join or organize a union.

(6) For purposes of this subsection and section 101(a)(15)(H)(i)(c), the term “facility” means a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) that meets the following requirements:

(A) As of March 31, 1997, the hospital was located in a health professional shortage area (as defined in section 332 of the Public Health Service Act (42 U.S.C. 254e)).

(B) Based on its settled cost report filed under title XVIII of the Social Security Act for its cost reporting period beginning during fiscal year 1994—

(i) the hospital has not less than 190 licensed acute care beds;

(ii) the number of the hospital’s inpatient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of such title is not less than 35 percent of the total number of such hospital’s acute care inpatient days for such period; and

(iii) the number of the hospital’s inpatient days for such period which were made up of patients who (for such days) were eligible for medical assistance under a State plan approved under title XIX of the Social Security Act, is not less than 28 percent of the total number of such hospital’s acute care inpatient days for such period.

(7) For purposes of paragraph (2)(A)(v), the term “lay off”, with respect to a worker—

(A) 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, or the expiration of a grant or contract; but

(B) 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 or not the employee accepts the offer.

Nothing in this paragraph is intended to limit an employee’s or an employer’s rights under a collective bargaining agreement or other employment contract.

(n)(1) No alien may be admitted or provided status as an H-1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H-1B nonimmigrant wages that are at least—

(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, whichever is greater, based on the best information available as of the time of filing the application, and
  - (ii) will provide working conditions for such a non-immigrant that will not adversely affect the working conditions of workers similarly employed.
- (B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.
- (C) The employer, at the time of filing the application—
  - (i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought, or
  - (ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which H-1B nonimmigrants are sought.
- (D) The application shall contain a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.
- (E)(i) In the case of an application described in clause (ii), the employer did not displace and will not displace a United States worker (as defined in paragraph (4)) employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application.
- (ii) An application described in this clause is an application filed on or after the date final regulations are first promulgated to carry out this subparagraph, and before by an H-1B-dependent employer (as defined in paragraph (3)) or by an employer that has been found, on or after the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998, under paragraph (2)(C) or (5) to have committed a willful failure or misrepresentation during the 5-year period preceding the filing of the application. An application is not described in this clause if the only H-1B nonimmigrants sought in the application are exempt H-1B nonimmigrants.
- (F) In the case of an application described in subparagraph (E)(ii), the employer will not place the nonimmigrant with another employer (regardless of whether or not such other employer is an H-1B-dependent employer) where—
  - (i) the nonimmigrant performs duties in whole or in part at one or more worksites owned, operated, or controlled by such other employer; and
  - (ii) there are indicia of an employment relationship between the nonimmigrant and such other employer;
 unless the employer has inquired of the other employer as to whether, and has no knowledge that, within the period beginning 90 days before and ending 90 days after the date of the

placement of the nonimmigrant with the other employer, the other employer has displaced or intends to displace a United States worker employed by the other employer.

(G)(i) In the case of an application described in subparagraph (E)(ii), subject to clause (ii), the employer, prior to filing the application—

(I) has taken good faith steps to recruit, in the United States using procedures that meet industry-wide standards and offering compensation that is at least as great as that required to be offered to H-1B nonimmigrants under subparagraph (A), United States workers for the job for which the nonimmigrant or nonimmigrants is or are sought; and

(II) has offered the job to any United States worker who applies and is equally or better qualified for the job for which the nonimmigrant or nonimmigrants is or are sought.

(ii) The conditions described in clause (i) shall not apply to an application filed with respect to the employment of an H-1B nonimmigrant who is described in subparagraph (A), (B), or (C) of section 203(b)(1).

The employer shall make available for public examination, within one working day after the date on which an application under this paragraph 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). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary shall make such list available for public examination in Washington, D.C. The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 101(a)(15)(H)(i)(b) within 7 days of the date of the filing of the application. The application form shall include a clear statement explaining the liability under subparagraph (F) of a placing employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph. Nothing in subparagraph (G) shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal or customary to the type of job involved, so long as such criteria are not applied in a discriminatory manner.

(2)(A) Subject to paragraph (5)(A), the Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in an application submitted under paragraph (1) or a petitioner'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 12 months 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) Under such process, the Secretary 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). 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, within 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.

(C)(i) If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), (1)(E), or (1)(F), a substantial failure to meet a condition of paragraph (1)(C), (1)(D), or (1)(G)(i)(I), or a misrepresentation of material fact in an application—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall 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.

(ii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an application, or a violation of clause (iv)—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$5,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 2 years for aliens to be employed by the employer.

(iii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an application, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$35,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 3 years for aliens to be employed by the employer.

(iv) It is a violation of this clause for an employer who has filed an application under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee 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.

(v) The Secretary of Labor and the Attorney General shall devise a process under which an H-1B nonimmigrant who files a complaint regarding a violation of clause (iv) 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.

(vi)(I) It is a violation of this clause for an employer who has filed an application under this subsection 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.

(II) It is a violation of this clause for an employer who has filed an application under this subsection to require an alien who is the subject of a petition filed under section 214(c)(1), for which a fee is imposed under section 214(c)(9), to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee. It is a violation of this clause for such an employer otherwise to accept such reimbursement or compensation from such an alien.

(III) If the Secretary finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary may impose a civil monetary penalty of \$1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H-1B nonimmigrant designated as a full-time employee on the petition filed under section 214(c)(1) by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant's lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(II) It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H-1B nonimmigrant designated as a part-time employee on the petition filed under section 214(c)(1) by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on such petition consistent with the rate of pay identified on such petition.

(III) In the case of an H-1B nonimmigrant who has not yet entered into employment with an employer who has had approved an application under this subsection, and a petition under section 214(c)(1), with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States pursuant to the petition, or 60 days after the date the nonimmigrant becomes eligible to work for the employer (in the case of a nonimmigrant who is present in the United States on the date of the approval of the petition).

(IV) This clause does not apply to a failure to pay wages to an H-1B nonimmigrant for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to an H-1B nonimmigrant an established salary practice of the employer, under which the employer pays to H-1B nonimmigrants and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant's authorization under this Act to remain in the United States.

(VI) This clause shall not be construed as superseding clause (viii).

(viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an application under this subsection to fail to offer to an H-1B nonimmigrant, during the nonimmigrant's period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and noncash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

(D) If the Secretary finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified under the application and required under paragraph (1), the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the re-

quirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(E) If an H-1B-dependent employer places a nonexempt H-1B nonimmigrant with another employer as provided under paragraph (1)(F) and the other employer has displaced or displaces a United States worker employed by such other employer during the period described in such paragraph, such displacement shall be considered for purposes of this paragraph a failure, by the placing employer, to meet a condition specified in an application submitted under paragraph (1); except that the Attorney General may impose a sanction described in subclause (II) of subparagraph (C)(i), (C)(ii), or (C)(iii) only if the Secretary of Labor found that such placing employer—

(i) knew or had reason to know of such displacement at the time of the placement of the nonimmigrant with the other employer; or

(ii) has been subject to a sanction under this subparagraph based upon a previous placement of an H-1B nonimmigrant with the same other employer.

(F) The Secretary may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date (on or after the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998) on which the employer is found by the Secretary to have committed a willful failure to meet a condition of paragraph (1) (or has been found under paragraph (5) to have committed a willful failure to meet the condition of paragraph (1)(G)(i)(II)) or to have made a willful misrepresentation of material fact in an application. The preceding sentence shall apply to an employer regardless of whether or not the employer is an H-1B-dependent employer. The authority of the Secretary under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(G)(i) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(H)(i)(b) if the Secretary of Labor has reasonable cause to believe that the employer is not in compliance with this subsection. In the case of an investigation under this clause, the Secretary of Labor (or the acting Secretary in the case of the absence of disability of the Secretary of Labor) shall personally certify that reasonable cause exists and shall approve commencement of the investigation. The investigation may be initiated for reasons other than completeness and obvious inaccuracies by the employer in complying with this subsection.

(ii) If the Secretary of Labor receives specific credible information from a source who is likely to have knowledge of an employer's practices or employment conditions, or an employer's compliance with the employer's labor condition application under paragraph (1), and whose identity is known to the Secretary of Labor, and such information provides reasonable cause to believe that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor may conduct an



investigation into the alleged failure or failures. The Secretary of Labor 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 of Labor shall establish a procedure for any person desiring to provide to the Secretary of Labor information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary of Labor and completed by or on behalf of the person. The person may not be an officer or employee of the Department of Labor, unless the information satisfies the requirement of clause (iv)(II) (although an officer or employee of the Department of Labor may complete the form on behalf of the person).

(iv) Any investigation initiated or approved by the Secretary of Labor under clause (ii) shall be based on information that satisfies the requirements of such clause and that—

(I) originates from a source other than an officer or employee of the Department of Labor; or

(II) was lawfully obtained by the Secretary of Labor in the course of lawfully conducting another Department of Labor investigation under this Act or any other Act.

(v) The receipt by the Secretary of Labor of information submitted by an employer to the Attorney General or the Secretary of Labor for purposes of securing the employment of a nonimmigrant described in section 101(a)(15)(H)(i)(b) shall not be considered a receipt of information for purposes of clause (ii).

(vi) No investigation described in clause (ii) (or hearing described in clause (viii) based on such investigation) may be conducted with respect to information about a failure to meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months after the date of the alleged failure.

(vii) The Secretary of Labor shall provide notice to an employer with respect to whom there is reasonable cause to initiate an investigation described in clauses (i) or (ii), prior to the commencement of an investigation under such clauses, 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 of Labor is not required to comply with this clause if the Secretary of Labor determines that to do so would interfere with an effort by the Secretary of Labor to secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary of Labor under this clause.

(viii) An investigation under clauses (i) or (ii) may be conducted for a period of up to 60 days. If the Secretary of Labor determines after such an investigation that a reasonable basis exists to make a finding that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor shall provide for notice of such determination to the inter-

ested parties and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, within 120 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 120 days after the date of the hearing.

(H)(i) Except as provided in clauses (ii) and (iii), a person or entity is considered to have complied with the requirements of this subsection, notwithstanding a technical or procedural failure to meet such requirements, if there was a good faith attempt to comply with the requirements.

(ii) Clause (i) shall not apply if—

(I) the Department of Labor (or another enforcement agency) has explained to the person or entity the basis for the failure;

(II) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure; and

(III) the person or entity has not corrected the failure voluntarily within such period.

(iii) A person or entity that, in the course of an investigation, is found to have violated the prevailing wage requirements set forth in paragraph (1)(A), shall not be assessed fines or other penalties for such violation if the person or entity can establish that the manner in which the prevailing wage was calculated was consistent with recognized industry standards and practices.

(iv) Clauses (i) and (iii) shall not apply to a person or entity that has engaged in or is engaging in a pattern or practice of willful violations of this subsection.

(I) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this Act (such as the authorities under section 274B), or any other Act.

(3)(A) For purposes of this subsection, the term “H-1B-dependent employer” means an employer that—

(i)(I) has 25 or fewer full-time equivalent employees who are employed in the United States; and (II) employs more than 7 H-1B nonimmigrants;

(ii)(I) has at least 26 but not more than 50 full-time equivalent employees who are employed in the United States; and (II) employs more than 12 H-1B nonimmigrants; or

(iii)(I) has at least 51 full-time equivalent employees who are employed in the United States; and (II) employs H-1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

(B) For purposes of this subsection—

(i) the term “exempt H-1B nonimmigrant” means an H-1B nonimmigrant who—

(I) receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least \$60,000;

or

(II) has attained a master’s or higher degree (or its equivalent) in a specialty related to the intended employment; and

(ii) the term nonexempt H-1B nonimmigrant means an H-1B nonimmigrant who is not an exempt H-1B nonimmigrant.

(C) For purposes of subparagraph (A)—

(i) in computing the number of full-time equivalent employees and the number of H-1B nonimmigrants, exempt H-1B nonimmigrants shall not be taken into account during the longer of—

(I) the 6-month period beginning on the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998; or

(II) the period beginning on the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998 and ending on the date final regulations are issued to carry out this paragraph; and

(ii) any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer.

(4) For purposes of this subsection:

(A) The term “area of employment” means the area within normal commuting distance of the worksite or physical location where the work of the H-1B nonimmigrant 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.

(B) In the case of an application with respect to one or more H-1B nonimmigrants 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 nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another 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.

(C) The term “H-1B nonimmigrant” means an alien admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b).

(D)(i) The term “lays 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, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in subparagraph (E) or (F) of paragraph (1)); but

(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under paragraph (1)(F), with either employer described in such paragraph) 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.

(ii) Nothing in this subparagraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

(E) The term “United States worker” means an employee who—

- (i) is a citizen or national of the United States; or
- (ii) 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 Attorney General, to be employed.

(5)(A) This paragraph shall apply instead of subparagraphs (A) through (E) of paragraph (2) in the case of a violation described in subparagraph (B), but shall not be construed to limit or affect the authority of the Secretary or the Attorney General with respect to any other violation.

(B) The Attorney General shall establish a process for the receipt, initial review, and disposition in accordance with this paragraph of complaints respecting an employer’s failure to meet the condition of paragraph (1)(G)(i)(II) or a petitioner’s misrepresentation of material facts with respect to such condition. Complaints may be filed by an aggrieved individual who has submitted a résumé or otherwise applied in a reasonable manner for the job that is the subject of the condition. No proceeding shall be conducted under this paragraph on a complaint concerning such a failure or misrepresentation unless the Attorney General determines that the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively.

(C) If the Attorney General finds that a complaint has been filed in accordance with subparagraph (B) and there is reasonable cause to believe that such a failure or misrepresentation described in such complaint has occurred, the Attorney General shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by such Service. The procedure and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Attorney General shall pay the fee and expenses of the arbitrator.

(D)(i) The arbitrator shall make findings respecting whether a failure or misrepresentation described in subparagraph (B) occurred. If the arbitrator concludes that failure or misrepresentation was willful, the arbitrator shall make a finding to that effect. The arbitrator may not find such a failure or misrepresentation (or that such a failure or misrepresentation was willful) unless the complainant demonstrates such a failure or misrepresentation (or its willful character) by clear and convincing evidence. The arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Attorney General. Such findings shall be final and conclusive, and, except as provided in this subparagraph, no official or court of the United States shall have power or jurisdiction to review any such findings.

(ii) The Attorney General may review and reverse or modify the findings of an arbitrator only on the same bases as an award of an arbitrator may be vacated or modified under section 10 or 11 of title 9, United States Code.

(iii) With respect to the findings of an arbitrator, a court may review only the actions of the Attorney General under clause (ii) and may set aside such actions only on the grounds described in sub-

paragraph (A), (B), or (C) of section 706(a)(2) of title 5, United States Code. Notwithstanding any other provision of law, such judicial review may only be brought in an appropriate United States court of appeals.

(E) If the Attorney General receives a finding of an arbitrator under this paragraph that an employer has failed to meet the condition of paragraph (1)(G)(i)(II) or has misrepresented a material fact with respect to such condition, unless the Attorney General reverses or modifies the finding under subparagraph (D)(ii)—

(i) the Attorney General may impose administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per violation or \$5,000 per violation in the case of a willful failure or misrepresentation) as the Attorney General determines to be appropriate; and

(ii) the Attorney General is authorized to not approve petitions filed, with respect to that employer and for aliens to be employed by the employer, under section 204 or 214(c)—

(I) during a period of not more than 1 year; or

(II) in the case of a willful failure or willful misrepresentation, during a period of not more than 2 years.

(F) The Attorney General shall not delegate, to any other employee or official of the Department of Justice, any function of the Attorney General under this paragraph, until 60 days after the Attorney General has submitted a plan for such delegation to the Committees on the Judiciary of the United States House of Representatives and the Senate.

(o) An alien who has been physically present in the United States shall not be eligible to receive an immigrant visa within ninety days following departure therefrom unless—

(1) the alien was maintaining a lawful nonimmigrant status at the time of such departure, or

(2) the alien is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—

(A) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986;

(B) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(C) applied for benefits under section 301(a) of the Immigration Act of 1990.

(p)(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) in the case of an employee of—

(A) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965), or a related or affiliated nonprofit entity; or

(B) a nonprofit research organization or a Governmental research organization,

the prevailing wage level shall only take into account employees at such institutions and organizations in the area of employment.

(2) With respect to a professional athlete (as defined in subsection (a)(5)(A)(iii)(II)) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations shall be considered as not adversely affecting the wages of United States workers similarly employed and be considered the prevailing wage.

(3) The prevailing wage required to be paid pursuant to subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) shall be 100 percent of the wage determined pursuant to those sections.

(4) Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision. Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.

(q) Any alien admitted under section 101(a)(15)(B) may accept an honorarium payment and associated incidental expenses for a usual academic activity or activities (lasting not longer than 9 days at any single institution), as defined by the Attorney General in consultation with the Secretary of Education, if such payment is offered by an institution or organization described in subsection (p)(1) and is made for services conducted for the benefit of that institution or entity and if the alien has not accepted such payment or expenses from more than 5 institutions or organizations in the previous 6-month period.

(r) Subsection (a)(5)(C) shall not apply to an alien who seeks to enter the United States for the purpose of performing labor as a nurse who presents to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from the Commission on Graduates of Foreign Nursing Schools (or an equivalent independent credentialing organization approved for the certification of nurses under subsection (a)(5)(C) by the Attorney General in consultation with the Secretary of Health and Human Services) that—

(1) the alien has a valid and unrestricted license as a nurse in a State where the alien intends to be employed and such State verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(2) the alien has passed the National Council Licensure Examination (NCLEX);

(3) the alien is a graduate of a nursing program—

(A) in which the language of instruction was English;

(B) located in a country—

(i) designated by such commission not later than 30 days after the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999, based on such commission's assessment that the quality of nursing education in that country, and the English language proficiency of those who complete such programs in that country, justify the country's designation; or

(ii) designated on the basis of such an assessment by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) for the certification of nurses under this subsection; and

(C)(i) which was in operation on or before the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999; or

(ii) has been approved by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) for the certification of nurses under this subsection.

(s) In determining whether an alien described in subsection (a)(4)(C)(i) is inadmissible under subsection (a)(4) or ineligible to receive an immigrant visa or otherwise to adjust to the status of permanent resident by reason of subsection (a)(4), the consular officer or the Attorney General shall not consider any benefits the alien may have received that were authorized under section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1641(c)).

(t)(1) No alien may be admitted or provided status as a non-immigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) in an occupational classification unless the employer has filed with the Secretary of Labor an attestation stating the following:

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) wages that are at least—

(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, whichever is greater, based on the best information available as of the time of filing the attestation; and

(ii) will provide working conditions for such a non-immigrant that will not adversely affect the working conditions of workers similarly employed.

(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

(C) The employer, at the time of filing the attestation—

(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought; or

(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which nonimmigrants under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) are sought.

(D) A specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(2)(A) The employer shall make available for public examination, within one working day after the date on which an attestation under this subsection is filed, at the employer's principal place of business or worksite, a copy of each such attestation (and such accompanying documents as are necessary).

(B)(i) The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the attestations filed under this subsection. Such list shall include, with respect to each attestation, the wage rate, number of aliens sought, period of intended employment, and date of need.

(ii) The Secretary of Labor shall make such list available for public examination in Washington, D.C.

(C) The Secretary of Labor shall review an attestation filed under this subsection only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that an attestation is incomplete or obviously inaccurate, the Secretary of Labor shall provide the certification described in section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) within 7 days of the date of the filing of the attestation.

(3)(A) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting the failure of an employer to meet a condition specified in an attestation submitted under this subsection or misrepresentation by the employer of material facts in such an attestation. 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 paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) Under the process described in subparagraph (A), the Secretary of Labor shall provide, within 30 days after the date a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C). 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 by 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)(i) If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), a substantial failure to meet a condition of paragraph (1)(C) or (1)(D), or a misrepresentation of material fact in an attestation—



(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), 101(a)(15)(H)(i)(b1), or 101(a)(15)(E)(iii) or section 101(a)(15)(E)(iii) during a period of at least 1 year for aliens to be employed by the employer.

(ii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an attestation, or a violation of clause (iv)—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$5,000 per violation as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), 101(a)(15)(H)(i)(b1), or 101(a)(15)(E)(iii) or section 101(a)(15)(E)(iii) during a period of at least 2 years for aliens to be employed by the employer.

(iii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an attestation, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition or application supported by the attestation—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$35,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), 101(a)(15)(H)(i)(b1), or 101(a)(15)(E)(iii) or section 101(a)(15)(E)(iii) during a period of at least 3 years for aliens to be employed by the employer.

(iv) It is a violation of this clause for an employer who has filed an attestation under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evi-

dences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee 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.

(v) The Secretary of Labor and the Secretary of Homeland Security shall devise a process under which a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) who files a complaint regarding a violation of clause (iv) 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.

(vi)(I) It is a violation of this clause for an employer who has filed an attestation under this subsection to require a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. The Secretary of Labor shall determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.

(II) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary of Labor may impose a civil monetary penalty of \$1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) designated as a full-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant's lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(II) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) designated as a part-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on the attestation consistent with the rate of pay identified on the attestation.

(III) In the case of a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) who has not yet entered into employment with an employer who has had approved an attestation under this subsection with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States, or 60 days after the date the nonimmigrant becomes eligible to work for the employer in the

case of a nonimmigrant who is present in the United States on the date of the approval of the attestation filed with the Secretary of Labor.

(IV) This clause does not apply to a failure to pay wages to a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) an established salary practice of the employer, under which the employer pays to nonimmigrants under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant's authorization under this Act to remain in the United States.

(VI) This clause shall not be construed as superseding clause (viii).

(viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection to fail to offer to a nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii), during the nonimmigrant's period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and non-cash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

(D) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified in the attestation and required under paragraph (1), the Secretary of Labor shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(E) The Secretary of Labor may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date on which the employer is found by the Secretary of Labor to have committed a willful failure to meet a condition of paragraph (1) or to have made a willful misrepresentation of material fact in an attestation. The authority of the Secretary of Labor under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(F) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this Act (such as the authorities under section 274B), or any other Act.

(4) For purposes of this subsection:

(A) The term “area of employment” means the area within normal commuting distance of the worksite or physical location where the work of the nonimmigrant under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) 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.

(B) In the case of an attestation with respect to one or more nonimmigrants under section 101(a)(15)(H)(i)(b1) or section 101(a)(15)(E)(iii) 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 nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another 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.

(C)(i) The term “lays 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, or the expiration of a grant or contract; but

(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer 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.

(ii) Nothing in this subparagraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

(D) The term “United States worker” means an employee who—

(i) is a citizen or national of the United States; or

(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207 of this title, 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.

(t)(1) Except as provided in paragraph (2), no person admitted under section 101(a)(15)(Q)(ii)(I), or acquiring such status after admission, shall be eligible to apply for nonimmigrant status, an immigrant visa, or permanent residence under this Act until it is established that such person has resided and been physically present in the person’s country of nationality or last residence for an aggregate of at least 2 years following departure from the United States.

(2) The Secretary of Homeland Security may waive the requirement of such 2-year foreign residence abroad if the Secretary determines that—

(A) departure from the United States would impose exceptional hardship upon the alien’s spouse or child (if such spouse

or child is a citizen of the United States or an alien lawfully admitted for permanent residence); or

(B) the admission of the alien is in the public interest or the national interest of the United States.

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#### CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

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#### INSPECTION BY IMMIGRATION OFFICERS; EXPEDITED REMOVAL OF INADMISSIBLE ARRIVING ALIENS; REFERRAL FOR HEARING

##### SEC. 235. (a) INSPECTION.—

(1) ALIENS TREATED AS APPLICANTS FOR ADMISSION.—An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this Act an applicant for admission.

(2) STOWAWAYS.—An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum under section 208 or a fear of persecution, the officer shall refer the alien for an interview under subsection (b)(1)(B). A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution under subsection (b)(1)(B). In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 240.

(3) INSPECTION.—All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

(4) WITHDRAWAL OF APPLICATION FOR ADMISSION.—An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.

(5) STATEMENTS.—An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

##### (b) INSPECTION OF APPLICANTS FOR ADMISSION.—

(1) INSPECTION OF ALIENS ARRIVING IN THE UNITED STATES AND CERTAIN OTHER ALIENS WHO HAVE NOT BEEN ADMITTED OR PAROLED.—

###### (A) SCREENING.—

(i) IN GENERAL.—If an immigration officer determines that an alien (other than an alien described in

subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7), the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution.

(ii) CLAIMS FOR ASYLUM.—If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7) and the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) APPLICATION TO CERTAIN OTHER ALIENS.—

(I) IN GENERAL.—The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) ALIENS DESCRIBED.—An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

(B) ASYLUM INTERVIEWS.—

(i) CONDUCT BY ASYLUM OFFICERS.—An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) REFERRAL OF CERTAIN ALIENS.—If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

(iii) REMOVAL WITHOUT FURTHER REVIEW IF NO CREDIBLE FEAR OF PERSECUTION.—

(I) IN GENERAL.—Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(II) RECORD OF DETERMINATION.—The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the ap-

plicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(III) REVIEW OF DETERMINATION.—The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(IV) MANDATORY DETENTION.—Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.

(iv) INFORMATION ABOUT INTERVIEWS.—The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) CREDIBLE FEAR OF PERSECUTION DEFINED.—For purposes of this subparagraph, the term "credible fear of persecution" means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.

(C) LIMITATION ON ADMINISTRATIVE REVIEW.—Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order under subparagraph (A)(i) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 207, or to have been granted asylum under section 208.

(D) LIMIT ON COLLATERAL ATTACKS.—In any action brought against an alien under section 275(a) or section 276, the court shall not have jurisdiction to hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) ASYLUM OFFICER DEFINED.—As used in this paragraph, the term “asylum officer” means an immigration officer who—

(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 208, and

(ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.

(F) EXCEPTION.—Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

(G) COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—Nothing in this subsection shall be construed to authorize or require any person described in section 208(e) to be permitted to apply for asylum under section 208 at any time before January 1, 2014.

(2) INSPECTION OF OTHER ALIENS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 240.

(B) EXCEPTION.—Subparagraph (A) shall not apply to an alien—

(i) who is a crewman,

(ii) to whom paragraph (1) applies, or

(iii) who is a stowaway.

(C) TREATMENT OF ALIENS ARRIVING FROM CONTIGUOUS TERRITORY.—In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 240.

(3) ENFORCEMENT BY ATTORNEY GENERAL OF A STATE.—*The attorney general of a State, or other authorized State officer, alleging a violation of the detention and removal requirements under paragraphs (1) or (2) that harms such State or its residents shall have standing to bring an action against the Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this paragraph to the greatest extent practicable. For purposes of this paragraph, a State or its resi-*



*dents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of \$100.*

[(3)] (4) CHALLENGE OF DECISION.—The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 240.

(c) REMOVAL OF ALIENS INADMISSIBLE ON SECURITY AND RELATED GROUNDS.—

(1) REMOVAL WITHOUT FURTHER HEARING.—If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 212(a)(3), the officer or judge shall—

(A) order the alien removed, subject to review under paragraph (2);

(B) report the order of removal to the Attorney General; and

(C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) REVIEW OF ORDER.—(A) The Attorney General shall review orders issued under paragraph (1).

(B) If the Attorney General—

(i) is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 212(a)(3), and

(ii) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security,

the Attorney General may order the alien removed without further inquiry or hearing by an immigration judge.

(C) If the Attorney General does not order the removal of the alien under subparagraph (B), the Attorney General shall specify the further inquiry or hearing that shall be conducted in the case.

(3) SUBMISSION OF STATEMENT AND INFORMATION.—The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

(d) AUTHORITY RELATING TO INSPECTIONS.—

(1) AUTHORITY TO SEARCH CONVEYANCES.—Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States.

(2) AUTHORITY TO ORDER DETENTION AND DELIVERY OF ARRIVING ALIENS.—Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States—

(A) to detain the alien on the vessel or at the airport of arrival, and

(B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.

(3) ADMINISTRATION OF OATH AND CONSIDERATION OF EVIDENCE.—The Attorney General and any immigration officer shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service.

(4) SUBPOENA AUTHORITY.—(A) The Attorney General and any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States.

(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

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#### APPREHENSION AND DETENTION OF ALIENS

SEC. 236. (a) ARREST, DETENTION, AND RELEASE.—On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an “employment authorized” endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

(b) REVOCATION OF BOND OR PAROLE.—The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

(c) DETENTION OF CRIMINAL ALIENS.—

(1) CUSTODY.—The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 212(a)(2),

(B) is deportable by reason of having committed any offense covered in section 237(a)(2)(A)(ii), (A)(iii), (B), (C), or (D),

(C) is deportable under section 237(a)(2)(A)(i) on the basis of an offense for which the alien has been sentenced to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 212(a)(3)(B) or deportable under section 237(a)(4)(B), when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(2) RELEASE.—The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18, United States Code, that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) IDENTIFICATION OF CRIMINAL ALIENS.—(1) The Attorney General shall devise and implement a system—

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available—

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) JUDICIAL REVIEW.—The Attorney General's discretionary judgment regarding the application of this section shall not be sub-

ject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention [or release] of any alien or the [grant, revocation, or denial] *revocation or denial* of bond or parole.

(f) *ENFORCEMENT BY ATTORNEY GENERAL OF A STATE.*—The attorney general of a State, or other authorized State officer, alleging an action or decision by the Attorney General or Secretary of Homeland Security under this section to release any alien or grant bond or parole to any alien that harms such State or its residents shall have standing to bring an action against the Attorney General or Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this subsection to the greatest extent practicable. For purposes of this subsection, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of \$100.

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#### DETENTION AND REMOVAL OF ALIENS ORDERED REMOVED

#### SEC. 241. (a) DETENTION, RELEASE, AND REMOVAL OF ALIENS ORDERED REMOVED.—

##### (1) REMOVAL PERIOD.—

(A) *IN GENERAL.*—Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the “removal period”).

(B) *BEGINNING OF PERIOD.*—The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

(C) *SUSPENSION OF PERIOD.*—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure or conspires or acts to prevent the alien’s removal subject to an order of removal.

##### (2) DETENTION.—[During the removal period,]

(A) *IN GENERAL.*—During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 212(a)(2) or 212(a)(3)(B) or deportable under section 237(a)(2) or 237(a)(4)(B).

(B) *ENFORCEMENT BY ATTORNEY GENERAL OF A STATE.*—The attorney general of a State, or other authorized State officer, alleging a violation of the detention requirement under subparagraph (A) that harms such State or its residents shall have standing to bring an action against the Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this subparagraph to the greatest extent practicable. For purposes of this subparagraph, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of \$100.

(3) *SUPERVISION AFTER 90-DAY PERIOD.*—If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien—

(A) to appear before an immigration officer periodically for identification;

(B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;

(C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and

(D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

(4) *ALIENS IMPRISONED, ARRESTED, OR ON PAROLE, SUPERVISED RELEASE, OR PROBATION.*—

(A) *IN GENERAL.*—Except as provided in section 343(a) of the Public Health Service Act (42 U.S.C. 259(a)) and paragraph (2), the Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

(B) *EXCEPTION FOR REMOVAL OF NONVIOLENT OFFENDERS PRIOR TO COMPLETION OF SENTENCE OF IMPRISONMENT.*—The Attorney General is authorized to remove an alien in accordance with applicable procedures under this Act before the alien has completed a sentence of imprisonment—

(i) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 101(a)(43)(B), (C), (E), (I), or (L) and (II) the removal of the alien is appropriate and in the best interest of the United States; or

(ii) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State

official exercising authority with respect to the incarceration of the alien determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense described in section 101(a)(43)(C) or (E)), (II) the removal is appropriate and in the best interest of the State, and (III) submits a written request to the Attorney General that such alien be so removed.

(C) NOTICE.—Any alien removed pursuant to this paragraph shall be notified of the penalties under the laws of the United States relating to the reentry of removed aliens, particularly the expanded penalties for aliens removed under subparagraph (B).

(D) NO PRIVATE RIGHT.—No cause or claim may be asserted under this paragraph against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

(6) INADMISSIBLE OR CRIMINAL ALIENS.—An alien ordered removed who is inadmissible under section 212, removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

(7) EMPLOYMENT AUTHORIZATION.—No alien ordered removed shall be eligible to receive authorization to be employed in the United States unless the Attorney General makes a specific finding that—

(A) the alien cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien, or

(B) the removal of the alien is otherwise impracticable or contrary to the public interest.

(b) COUNTRIES TO WHICH ALIENS MAY BE REMOVED.—

(1) ALIENS ARRIVING AT THE UNITED STATES.—Subject to paragraph (3)—

(A) IN GENERAL.—Except as provided by subparagraphs (B) and (C), an alien who arrives at the United States and with respect to whom proceedings under section 240 were initiated at the time of such alien's arrival shall be removed to the country in which the alien boarded the vessel or aircraft on which the alien arrived in the United States.

(B) TRAVEL FROM CONTIGUOUS TERRITORY.—If the alien boarded the vessel or aircraft on which the alien arrived in the United States in a foreign territory contiguous to the United States, an island adjacent to the United States,

or an island adjacent to a foreign territory contiguous to the United States, and the alien is not a native, citizen, subject, or national of, or does not reside in, the territory or island, removal shall be to the country in which the alien boarded the vessel that transported the alien to the territory or island.

(C) ALTERNATIVE COUNTRIES.—If the government of the country designated in subparagraph (A) or (B) is unwilling to accept the alien into that country's territory, removal shall be to any of the following countries, as directed by the Attorney General:

- (i) The country of which the alien is a citizen, subject, or national.
- (ii) The country in which the alien was born.
- (iii) The country in which the alien has a residence.
- (iv) A country with a government that will accept the alien into the country's territory if removal to each country described in a previous clause of this subparagraph is impracticable, inadvisable, or impossible.

(2) OTHER ALIENS.—Subject to paragraph (3)—

(A) SELECTION OF COUNTRY BY ALIEN.—Except as otherwise provided in this paragraph—

- (i) any alien not described in paragraph (1) who has been ordered removed may designate one country to which the alien wants to be removed, and
- (ii) the Attorney General shall remove the alien to the country the alien so designates.

(B) LIMITATION ON DESIGNATION.—An alien may designate under subparagraph (A)(i) a foreign territory contiguous to the United States, an adjacent island, or an island adjacent to a foreign territory contiguous to the United States as the place to which the alien is to be removed only if the alien is a native, citizen, subject, or national of, or has resided in, that designated territory or island.

(C) DISREGARDING DESIGNATION.—The Attorney General may disregard a designation under subparagraph (A)(i) if—

- (i) the alien fails to designate a country promptly;
- (ii) the government of the country does not inform the Attorney General finally, within 30 days after the date the Attorney General first inquires, whether the government will accept the alien into the country;
- (iii) the government of the country is not willing to accept the alien into the country; or
- (iv) the Attorney General decides that removing the alien to the country is prejudicial to the United States.

(D) ALTERNATIVE COUNTRY.—If an alien is not removed to a country designated under subparagraph (A)(i), the Attorney General shall remove the alien to a country of which the alien is a subject, national, or citizen unless the government of the country—

- (i) does not inform the Attorney General or the alien finally, within 30 days after the date the Attorney General first inquires or within another period of time the Attorney General decides is reasonable, whether

the government will accept the alien into the country;  
or

(ii) is not willing to accept the alien into the country.

(E) ADDITIONAL REMOVAL COUNTRIES.—If an alien is not removed to a country under the previous subparagraphs of this paragraph, the Attorney General shall remove the alien to any of the following countries:

(i) The country from which the alien was admitted to the United States.

(ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.

(iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.

(iv) The country in which the alien was born.

(v) The country that had sovereignty over the alien's birthplace when the alien was born.

(vi) The country in which the alien's birthplace is located when the alien is ordered removed.

(vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

(F) REMOVAL COUNTRY WHEN UNITED STATES IS AT WAR.—When the United States is at war and the Attorney General decides that it is impracticable, inadvisable, inconvenient, or impossible to remove an alien under this subsection because of the war, the Attorney General may remove the alien—

(i) to the country that is host to a government in exile of the country of which the alien is a citizen or subject if the government of the host country will permit the alien's entry; or

(ii) if the recognized government of the country of which the alien is a citizen or subject is not in exile, to a country, or a political or territorial subdivision of a country, that is very near the country of which the alien is a citizen or subject, or, with the consent of the government of the country of which the alien is a citizen or subject, to another country.

(3) RESTRICTION ON REMOVAL TO A COUNTRY WHERE ALIEN'S LIFE OR FREEDOM WOULD BE THREATENED.—

(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

(B) EXCEPTION.—Subparagraph (A) does not apply to an alien deportable under section 237(a)(4)(D) or if the Attorney General decides that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual be-



cause of the individual's race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime is a danger to the community of the United States;

(iii) there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; or

(iv) there are reasonable grounds to believe that the alien is a danger to the security of the United States.

For purposes of clause (ii), an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime. The previous sentence shall not preclude the Attorney General from determining that, notwithstanding the length of sentence imposed, an alien has been convicted of a particularly serious crime. For purposes of clause (iv), an alien who is described in section 237(a)(4)(B) shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.

(C) SUSTAINING BURDEN OF PROOF; CREDIBILITY DETERMINATIONS.—In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a reason described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien's burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of section 208(b)(1)(B).

(c) REMOVAL OF ALIENS ARRIVING AT PORT OF ENTRY.—

(1) VESSELS AND AIRCRAFT.—An alien arriving at a port of entry of the United States who is ordered removed either without a hearing under section 235(b)(1) or 235(c) or pursuant to proceedings under section 240 initiated at the time of such alien's arrival shall be removed immediately on a vessel or aircraft owned by the owner of the vessel or aircraft on which the alien arrived in the United States, unless—

(A) it is impracticable to remove the alien on one of those vessels or aircraft within a reasonable time, or

(B) the alien is a stowaway—

(i) who has been ordered removed in accordance with section 235(a)(1),

(ii) who has requested asylum, and

(iii) whose application has not been adjudicated or whose asylum application has been denied but who has not exhausted all appeal rights.

(2) STAY OF REMOVAL.—

(A) IN GENERAL.—The Attorney General may stay the removal of an alien under this subsection if the Attorney General decides that—

(i) immediate removal is not practicable or proper;

or

(ii) the alien is needed to testify in the prosecution of a person for a violation of a law of the United States or of any State.

(B) PAYMENT OF DETENTION COSTS.—During the period an alien is detained because of a stay of removal under subparagraph (A)(ii), the Attorney General may pay from the appropriation “Immigration and Naturalization Service—Salaries and Expenses”—

- (i) the cost of maintenance of the alien; and
- (ii) a witness fee of \$1 a day.

(C) RELEASE DURING STAY.—The Attorney General may release an alien whose removal is stayed under subparagraph (A)(ii) on—

- (i) the alien’s filing a bond of at least \$500 with security approved by the Attorney General;
- (ii) condition that the alien appear when required as a witness and for removal; and
- (iii) other conditions the Attorney General may prescribe.

(3) COSTS OF DETENTION AND MAINTENANCE PENDING REMOVAL.—

(A) IN GENERAL.—Except as provided in subparagraph (B) and subsection (d), an owner of a vessel or aircraft bringing an alien to the United States shall pay the costs of detaining and maintaining the alien—

- (i) while the alien is detained under subsection (d)(1), and
- (ii) in the case of an alien who is a stowaway, while the alien is being detained pursuant to—

(I) subsection (d)(2)(A) or (d)(2)(B)(i),

(II) subsection (d)(2)(B)(ii) or (iii) for the period of time reasonably necessary for the owner to arrange for repatriation or removal of the stowaway, including obtaining necessary travel documents, but not to extend beyond the date on which it is ascertained that such travel documents cannot be obtained from the country to which the stowaway is to be returned, or

(III) section 235(b)(1)(B)(ii), for a period not to exceed 15 days (excluding Saturdays, Sundays, and holidays) commencing on the first such day which begins on the earlier of 72 hours after the time of the initial presentation of the stowaway for inspection or at the time the stowaway is determined to have a credible fear of persecution.

(B) NONAPPLICATION.—Subparagraph (A) shall not apply if—

- (i) the alien is a crewmember;
- (ii) the alien has an immigrant visa;
- (iii) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States and applies for admission not later than 120 days after the date the visa or documentation was issued;

(iv) the alien has a reentry permit and applies for admission not later than 120 days after the date of the alien's last inspection and admission;

(v)(I) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States or a reentry permit;

(II) the alien applies for admission more than 120 days after the date the visa or documentation was issued or after the date of the last inspection and admission under the reentry permit; and

(III) the owner of the vessel or aircraft satisfies the Attorney General that the existence of the condition relating to inadmissibility could not have been discovered by exercising reasonable care before the alien boarded the vessel or aircraft; or

(vi) the individual claims to be a national of the United States and has a United States passport.

(d) REQUIREMENTS OF PERSONS PROVIDING TRANSPORTATION.—

(1) REMOVAL AT TIME OF ARRIVAL.—An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crew-member) to the United States shall—

(A) receive an alien back on the vessel or aircraft or another vessel or aircraft owned or operated by the same interests if the alien is ordered removed under this part; and

(B) take the alien to the foreign country to which the alien is ordered removed.

(2) ALIEN STOWAWAYS.—An owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft arriving in the United States with an alien stowaway—

(A) shall detain the alien on board the vessel or aircraft, or at such place as the Attorney General shall designate, until completion of the inspection of the alien by an immigration officer;

(B) may not permit the stowaway to land in the United States, except pursuant to regulations of the Attorney General temporarily—

(i) for medical treatment,

(ii) for detention of the stowaway by the Attorney General, or

(iii) for departure or removal of the stowaway; and

(C) if ordered by an immigration officer, shall remove the stowaway on the vessel or aircraft or on another vessel or aircraft.

The Attorney General shall grant a timely request to remove the stowaway under subparagraph (C) on a vessel or aircraft other than that on which the stowaway arrived if the requester has obtained any travel documents necessary for departure or repatriation of the stowaway and removal of the stowaway will not be unreasonably delayed.

(3) REMOVAL UPON ORDER.—An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel, aircraft, or other transportation line shall comply with an order of the Attorney General to take on board, guard safe-

ly, and transport to the destination specified any alien ordered to be removed under this Act.

(e) PAYMENT OF EXPENSES OF REMOVAL.—

(1) COSTS OF REMOVAL AT TIME OF ARRIVAL.—In the case of an alien who is a stowaway or who is ordered removed either without a hearing under section 235(a)(1) or 235(c) or pursuant to proceedings under section 240 initiated at the time of such alien's arrival, the owner of the vessel or aircraft (if any) on which the alien arrived in the United States shall pay the transportation cost of removing the alien. If removal is on a vessel or aircraft not owned by the owner of the vessel or aircraft on which the alien arrived in the United States, the Attorney General may—

(A) pay the cost from the appropriation "Immigration and Naturalization Service—Salaries and Expenses"; and

(B) recover the amount of the cost in a civil action from the owner, agent, or consignee of the vessel or aircraft (if any) on which the alien arrived in the United States.

(2) COSTS OF REMOVAL TO PORT OF REMOVAL FOR ALIENS ADMITTED OR PERMITTED TO LAND.—In the case of an alien who has been admitted or permitted to land and is ordered removed, the cost (if any) of removal of the alien to the port of removal shall be at the expense of the appropriation for the enforcement of this Act.

(3) COSTS OF REMOVAL FROM PORT OF REMOVAL FOR ALIENS ADMITTED OR PERMITTED TO LAND.—

(A) THROUGH APPROPRIATION.—Except as provided in subparagraph (B), in the case of an alien who has been admitted or permitted to land and is ordered removed, the cost (if any) of removal of the alien from the port of removal shall be at the expense of the appropriation for the enforcement of this Act.

(B) THROUGH OWNER.—

(i) IN GENERAL.—In the case of an alien described in clause (ii), the cost of removal of the alien from the port of removal may be charged to any owner of the vessel, aircraft, or other transportation line by which the alien came to the United States.

(ii) ALIENS DESCRIBED.—An alien described in this clause is an alien who—

(I) is admitted to the United States (other than lawfully admitted for permanent residence) and is ordered removed within 5 years of the date of admission based on a ground that existed before or at the time of admission, or

(II) is an alien crewman permitted to land temporarily under section 252 and is ordered removed within 5 years of the date of landing.

(C) COSTS OF REMOVAL OF CERTAIN ALIENS GRANTED VOLUNTARY DEPARTURE.—In the case of an alien who has been granted voluntary departure under section 240B and who is financially unable to depart at the alien's own expense and whose removal the Attorney General deems to be in the best interest of the United States, the expense of such

removal may be paid from the appropriation for the enforcement of this Act.

(f) ALIENS REQUIRING PERSONAL CARE DURING REMOVAL.—

(1) IN GENERAL.—If the Attorney General believes that an alien being removed requires personal care because of the alien's mental or physical condition, the Attorney General may employ a suitable person for that purpose who shall accompany and care for the alien until the alien arrives at the final destination.

(2) COSTS.—The costs of providing the service described in paragraph (1) shall be defrayed in the same manner as the expense of removing the accompanied alien is defrayed under this section.

(g) PLACES OF DETENTION.—

(1) IN GENERAL.—The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal. When United States Government facilities are unavailable or facilities adapted or suitably located for detention are unavailable for rental, the Attorney General may expend from the appropriation "Immigration and Naturalization Service—Salaries and Expenses", without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), amounts necessary to acquire land and to acquire, build, remodel, repair, and operate facilities (including living quarters for immigration officers if not otherwise available) necessary for detention.

(2) DETENTION FACILITIES OF THE IMMIGRATION AND NATURALIZATION SERVICE.—Prior to initiating any project for the construction of any new detention facility for the Service, the Commissioner shall consider the availability for purchase or lease of any existing prison, jail, detention center, or other comparable facility suitable for such use.

(h) STATUTORY CONSTRUCTION.—Nothing in this section 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.

(i) INCARCERATION.—

(1) If the chief executive officer of a State (or, if appropriate, a political subdivision of the State) exercising authority with respect to the incarceration of an undocumented criminal alien submits a written request to the Attorney General, the Attorney General shall, as determined by the Attorney General—

(A) enter into a contractual arrangement which provides for compensation to the State or a political subdivision of the State, as may be appropriate, with respect to the incarceration of the undocumented criminal alien; or

(B) take the undocumented criminal alien into the custody of the Federal Government and incarcerate the alien.

(2) Compensation under paragraph (1)(A) shall be the average cost of incarceration of a prisoner in the relevant State as determined by the Attorney General.

(3) For purposes of this subsection, the term "undocumented criminal alien" means an alien who—

(A) has been convicted of a felony or two or more misdemeanors; and

(B)(i) entered the United States without inspection or at any time or place other than as designated by the Attorney General;

(ii) was the subject of exclusion or deportation proceedings at the time he or she was taken into custody by the State or a political subdivision of the State; or

(iii) was admitted as a nonimmigrant and at the time he or she was taken into custody by the State or a political subdivision of the State has failed to maintain the non-immigrant status in which the alien was admitted or to which it was changed under section 248, or to comply with the conditions of any such status.

(4)(A) In carrying out paragraph (1), the Attorney General shall give priority to the Federal incarceration of undocumented criminal aliens who have committed aggravated felonies.

(B) The Attorney General shall ensure that undocumented criminal aliens incarcerated in Federal facilities pursuant to this subsection are held in facilities which provide a level of security appropriate to the crimes for which they were convicted.

(5) There are authorized to be appropriated to carry out this subsection—

(A) \$750,000,000 for fiscal year 2006;

(B) \$850,000,000 for fiscal year 2007; and

(C) \$950,000,000 for each of the fiscal years 2008 through 2011.

(6) Amounts appropriated pursuant to the authorization of appropriations in paragraph (5) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes.

#### JUDICIAL REVIEW OF ORDERS OF REMOVAL

##### SEC. 242. (a) APPLICABLE PROVISIONS.—

(1) GENERAL ORDERS OF REMOVAL.—Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 235(b)(1)) is governed only by chapter 158 of title 28 of the United States Code, except as provided in subsection (b) and except that the court may not order the taking of additional evidence under section 2347(c) of such title.

(2) MATTERS NOT SUBJECT TO JUDICIAL REVIEW.—

(A) REVIEW RELATING TO SECTION 235(b)(1).—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review—

(i) except as provided in subsection (e), any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 235(b)(1),

(ii) except as provided in subsection (e), a decision by the Attorney General to invoke the provisions of such section,

(iii) the application of such section to individual aliens, including the determination made under section 235(b)(1)(B), or

(iv) except as provided in subsection (e), procedures and policies adopted by the Attorney General to implement the provisions of section 235(b)(1).

(B) DENIALS OF DISCRETIONARY RELIEF.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—

(i) any judgment regarding the granting of relief under section 212(h), 212(i), 240A, 240B, or 245, or

(ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this title to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 208(a).

(C) ORDERS AGAINST CRIMINAL ALIENS.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section 212(a)(2) or 237(a)(2)(A)(iii), (B), (C), or (D), or any offense covered by section 237(a)(2)(A)(ii) for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 237(a)(2)(A)(i).

(D) JUDICIAL REVIEW OF CERTAIN LEGAL CLAIMS.—Nothing in subparagraph (B) or (C), or in any other provision of this Act (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.

(3) TREATMENT OF CERTAIN DECISIONS.—No alien shall have a right to appeal from a decision of an immigration judge which is based solely on a certification described in section 240(c)(1)(B).

(4) CLAIMS UNDER THE UNITED NATIONS CONVENTION.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e).

(5) EXCLUSIVE MEANS OF REVIEW.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this Act, except as provided in subsection (e). For purposes of this Act, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms “judicial review” and “jurisdiction to review” include habeas corpus review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

(b) REQUIREMENTS FOR REVIEW OF ORDERS OF REMOVAL.—With respect to review of an order of removal under subsection (a)(1), the following requirements apply:

(1) DEADLINE.—The petition for review must be filed not later than 30 days after the date of the final order of removal.

(2) VENUE AND FORMS.—The petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings. The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs.

(3) SERVICE.—

(A) IN GENERAL.—The respondent is the Attorney General. The petition shall be served on the Attorney General and on the officer or employee of the Service in charge of the Service district in which the final order of removal under section 240 was entered.

(B) STAY OF ORDER.—Service of the petition on the officer or employee does not stay the removal of an alien pending the court’s decision on the petition, unless the court orders otherwise.

(C) ALIEN’S BRIEF.—The alien 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 Attorney General, and the court may not extend these deadlines except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.

(4) SCOPE AND STANDARD FOR REVIEW.—Except as provided in paragraph (5)(B)—

(A) the court of appeals shall decide the petition only on the administrative record on which the order of removal is based,

(B) the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary,



(C) a decision that an alien is not eligible for admission to the United States is conclusive unless manifestly contrary to law, and

(D) the Attorney General's discretionary judgment whether to grant relief under section 208(a) shall be conclusive unless manifestly contrary to the law and an abuse of discretion.

No court shall reverse a determination made by a trier of fact with respect to the availability of corroborating evidence, as described in section 208(b)(1)(B), 240(c)(4)(B), or 241(b)(3)(C), unless the court finds, pursuant to section 242(b)(4)(B), that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.

(5) TREATMENT OF NATIONALITY CLAIMS.—

(A) COURT DETERMINATION IF NO ISSUE OF FACT.—If the petitioner claims to be a national of the United States and the court of appeals finds from the pleadings and affidavits that no genuine issue of material fact about the petitioner's nationality is presented, the court shall decide the nationality claim.

(B) TRANSFER IF ISSUE OF FACT.—If the petitioner claims to be a national of the United States and the court of appeals finds that a genuine issue of material fact about the petitioner's nationality is presented, the court shall transfer the proceeding to the district court of the United States for the judicial district in which the petitioner resides for a new hearing on the nationality claim and a decision on that claim as if an action had been brought in the district court under section 2201 of title 28, United States Code.

(C) LIMITATION ON DETERMINATION.—The petitioner may have such nationality claim decided only as provided in this paragraph.

(6) CONSOLIDATION WITH REVIEW OF MOTIONS TO REOPEN OR RECONSIDER.—When a petitioner seeks review of an order under this section, any review sought of a motion to reopen or reconsider the order shall be consolidated with the review of the order.

(7) CHALLENGE TO VALIDITY OF ORDERS IN CERTAIN CRIMINAL PROCEEDINGS.—

(A) IN GENERAL.—If the validity of an order of removal has not been judicially decided, a defendant in a criminal proceeding charged with violating section 243(a) may challenge the validity of the order in the criminal proceeding only by filing a separate motion before trial. The district court, without a jury, shall decide the motion before trial.

(B) CLAIMS OF UNITED STATES NATIONALITY.—If the defendant claims in the motion to be a national of the United States and the district court finds that—

(i) no genuine issue of material fact about the defendant's nationality is presented, the court shall decide the motion only on the administrative record on which the removal order is based and the administrative findings of fact are conclusive if supported by reasonable, substantial, and probative evidence on the record considered as a whole; or

(ii) a genuine issue of material fact about the defendant's nationality is presented, the court shall hold a new hearing on the nationality claim and decide that claim as if an action had been brought under section 2201 of title 28, United States Code.

The defendant may have such nationality claim decided only as provided in this subparagraph.

(C) CONSEQUENCE OF INVALIDATION.—If the district court rules that the removal order is invalid, the court shall dismiss the indictment for violation of section 243(a). The United States Government may appeal the dismissal to the court of appeals for the appropriate circuit within 30 days after the date of the dismissal.

(D) LIMITATION ON FILING PETITIONS FOR REVIEW.—The defendant in a criminal proceeding under section 243(a) may not file a petition for review under subsection (a) during the criminal proceeding.

(8) CONSTRUCTION.—This subsection—

(A) does not prevent the Attorney General, after a final order of removal has been issued, from detaining the alien under section 241(a);

(B) does not relieve the alien from complying with section 241(a)(4) and section 243(g); and

(C) does not require the Attorney General to defer removal of the alien.

(9) CONSOLIDATION OF QUESTIONS FOR JUDICIAL REVIEW.—Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this title shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28, United States Code, or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

(c) REQUIREMENTS FOR PETITION.—A petition for review or for habeas corpus of an order of removal—

(1) shall attach a copy of such order, and

(2) shall state whether a court has upheld the validity of the order, and, if so, shall state the name of the court, the date of the court's ruling, and the kind of proceeding.

(d) REVIEW OF FINAL ORDERS.—A court may review a final order of removal only if—

(1) the alien has exhausted all administrative remedies available to the alien as of right, and

(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

(e) JUDICIAL REVIEW OF ORDERS UNDER SECTION 235(b)(1).—

(1) LIMITATIONS ON RELIEF.—Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may—

(A) enter declaratory, injunctive, or other equitable relief in any action pertaining to an order to exclude an alien in accordance with section 235(b)(1) except as specifically authorized in a subsequent paragraph of this subsection, or

(B) certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.

(2) HABEAS CORPUS PROCEEDINGS.—Judicial review of any determination made under section 235(b)(1) is available in habeas corpus proceedings, but shall be limited to determinations of—

(A) whether the petitioner is an alien,

(B) whether the petitioner was ordered removed under such section, and

(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 207, or has been granted asylum under section 208, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 235(b)(1)(C).

(3) CHALLENGES ON VALIDITY OF THE SYSTEM.—

(A) IN GENERAL.—Judicial review of determinations under section 235(b) and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

(i) whether such section, or any regulation issued to implement such section, is constitutional; or

(ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this title or is otherwise in violation of law.

(B) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this paragraph must be filed no later than 60 days after the date the challenged section, regulation, directive, guideline, or procedure described in clause (i) or (ii) of subparagraph (A) is first implemented.

(C) NOTICE OF APPEAL.—A notice of appeal of an order issued by the District Court under this paragraph may be filed not later than 30 days after the date of issuance of such order.

(D) EXPEDITIOUS CONSIDERATION OF CASES.—It shall be the duty of the District Court, the Court of Appeals, and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any case considered under this paragraph.

(4) DECISION.—In any case where the court determines that the petitioner—

(A) is an alien who was not ordered removed under section 235(b)(1), or

(B) has demonstrated by a preponderance of the evidence that the alien is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 207, or has been granted asylum under section 208, the court may order no remedy or relief other than to require that the petitioner be provided a hearing in accordance with section 240. Any alien who is provided a hearing under section 240 pursuant to this paragraph may thereafter obtain judicial review of any resulting final order of removal pursuant to subsection (a)(1).

(5) SCOPE OF INQUIRY.—In determining whether an alien has been ordered removed under section 235(b)(1), the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

(f) LIMIT ON INJUNCTIVE RELIEF.—

(1) IN GENERAL.—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 of chapter 4 of title II, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such chapter have been initiated.

(2) PARTICULAR CASES.—Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.

(3) CERTAIN ACTIONS.—*Paragraph (1) shall not apply to an action brought pursuant to section 235(b)(3), subsections (e) or (f) of section 236, or section 241(a)(2)(B).*

(g) EXCLUSIVE JURISDICTION.—Except as provided in this section and notwithstanding any other provision of law (statutory or non-statutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

#### PENALTIES RELATED TO REMOVAL

SEC. 243. (a) PENALTY FOR FAILURE TO DEPART.—

(1) IN GENERAL.—Any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in section 237(a), who—

(A) willfully fails or refuses to depart from the United States within a period of 90 days from the date of the final order of removal under administrative processes, or if judicial review is had, then from the date of the final order of the court,

(B) willfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure,

(C) connives or conspires, or takes any other action, designed to prevent or hamper or with the purpose of preventing or hampering the alien's departure pursuant to such, or

(D) willfully fails or refuses to present himself or herself for removal at the time and place required by the Attorney General pursuant to such order, shall be fined under title 18, United States Code, or imprisoned not more than four years (or 10 years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 237(a)), or both.

(2) EXCEPTION.—It is not a violation of paragraph (1) to take any proper steps for the purpose of securing cancellation of or exemption from such order of removal or for the purpose of securing the alien's release from incarceration or custody.

(3) SUSPENSION.—The court may for good cause suspend the sentence of an alien under this subsection and order the alien's release under such conditions as the court may prescribe. In determining whether good cause has been shown to justify releasing the alien, the court shall take into account such factors as—

(A) the age, health, and period of detention of the alien;

(B) the effect of the alien's release upon the national security and public peace or safety;

(C) the likelihood of the alien's resuming or following a course of conduct which made or would make the alien deportable;

(D) the character of the efforts made by such alien himself and by representatives of the country or countries to which the alien's removal is directed to expedite the alien's departure from the United States;

(E) the reason for the inability of the Government of the United States to secure passports, other travel documents, or removal facilities from the country or countries to which the alien has been ordered removed; and

(F) the eligibility of the alien for discretionary relief under the immigration laws.

(b) WILLFUL FAILURE TO COMPLY WITH TERMS OF RELEASE UNDER SUPERVISION.—An alien who shall willfully fail to comply with regulations or requirements issued pursuant to section 241(a)(3) or knowingly give false information in response to an inquiry under such section shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(c) PENALTIES RELATING TO VESSELS AND AIRCRAFT.—

(1) CIVIL PENALTIES.—

(A) FAILURE TO CARRY OUT CERTAIN ORDERS.—If the Attorney General is satisfied that a person has violated subsection (d) or (e) of section 241, the person shall pay to the Commissioner the sum of \$2,000 for each violation.

(B) FAILURE TO REMOVE ALIEN STOWAWAYS.—If the Attorney General is satisfied that a person has failed to remove an alien stowaway as required under section

241(d)(2), the person shall pay to the Commissioner the sum of \$5,000 for each alien stowaway not removed.

(C) NO COMPROMISE.—The Attorney General may not compromise the amount of such penalty under this paragraph.

(2) CLEARING VESSELS AND AIRCRAFT.—

(A) CLEARANCE BEFORE DECISION ON LIABILITY.—A vessel or aircraft may be granted clearance before a decision on liability is made under paragraph (1) only if a bond approved by the Attorney General or an amount sufficient to pay the civil penalty is deposited with the Commissioner.

(B) PROHIBITION ON CLEARANCE WHILE PENALTY UNPAID.—A vessel or aircraft may not be granted clearance if a civil penalty imposed under paragraph (1) is not paid.

(d) DISCONTINUING GRANTING VISAS TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after the Attorney General asks whether the government will accept the alien under this section, the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects, nationals, and residents of that country until the Attorney General notifies the Secretary that the country has accepted the alien.

(e) ENFORCEMENT BY ATTORNEY GENERAL OF A STATE.—*The attorney general of a State, or other authorized State officer, alleging a violation of the requirement to discontinue granting visas to citizens, subjects, nationals, and residents as described in subsection (d) that harms such State or its residents shall have standing to bring an action against the Secretary of State on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this subsection to the greatest extent practicable. For purposes of this subsection, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of \$100.*

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### Dissenting Views

After a string of setbacks for conservative governors and state attorneys general, in which courts have properly found that states have no standing to sue the federal government over certain immigration policies, Republicans are attempting to invent grounds for standing, where none plainly exists. For the reasons below, I urge all Members to oppose this legislation.

To begin with, this bill may very well be unconstitutional. It goes directly against the Supreme Court's settled precedent in *Spokeo, Inc. v. Robins*, which explicitly states that a statutory right to sue does not constitute an injury for purposes of standing.<sup>1</sup> Standing is a constitutional requirement under Article III, which vests the Ju-

<sup>1</sup> *Spokeo, Inc. v. Robins*, 578 U.S. 330 at 341 (2016).

dicial Branch with “[t]he judicial Power of the United States,”<sup>2</sup> but specifies that this power extends only to “Cases” and “Controversies.”<sup>3</sup> The Supreme Court has repeatedly noted the importance of standing in upholding our system of separation of powers, observing that “[n]o principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.”<sup>4</sup>

This is particularly salient in the immigration context, where the Executive Branch must exercise its discretion under its constitutional and statutory authority to enforce immigration law because of limited resources and the impact such decisions may have on its primary role in matters of foreign policy and commerce. Congress cannot by statute alone elevate all *de facto* injuries—if any—that may result from the Executive Branch’s exercise of discretion in immigration enforcement matters to meet the requirements of Article III standing. Here, this bill would deem that States have standing to sue so long as the state or its residents suffer any degree of harm, while appearing only to exclude financial harms that are less than \$100. This bill is a transparent attempt to permit States to dictate immigration policy to the federal government through the courts. Congress simply cannot ignore the Constitution’s standing requirements to do so.

The Supreme Court most recently addressed the issue of states’ standing to sue the federal government over immigration enforcement matters in *United States v. Texas*.<sup>5</sup> In that 2023 decision, the Court held, 8–1 that Texas and Louisiana lacked Article III standing to bring suit against the federal government over its purported violation of federal immigration statutes that, according to the states, required it to arrest more criminal noncitizens pending removal.<sup>6</sup> The states had argued that they had standing to bring suit because the federal government’s failure to comply with those statutory mandates had imposed costs on the states, such as the costs of incarceration or the provision of social services like health care and education to noncitizens who should have been arrested by the federal government.<sup>7</sup>

In outlining its standing analysis, the Court emphasized that “Article III of the Constitution confines the federal judicial power to ‘Cases’ and ‘Controversies,’” which “exist only if a plaintiff has standing to sue—a bedrock constitutional requirement . . .”<sup>8</sup> It further highlighted that the “principle of Article III standing is ‘built on a single basic idea—the idea of separation of powers.’”<sup>9</sup> And that “standing doctrine helps safeguard the Judiciary’s proper—and properly limited—role in our constitutional system,”<sup>10</sup> preventing “the judicial process from being used to usurp the powers of the political branches.”<sup>11</sup>

In rejecting the states’ standing argument, the Court noted that the states had failed to cite any precedent, history, or tradition of

<sup>2</sup> U.S. Const. Art. III, § 1.

<sup>3</sup> U.S. Const. Art. III, § 2.

<sup>4</sup> *Raines v. Byrd*, 521 U.S. 811, 818 (1997).

<sup>5</sup> 599 U.S. 670 (2023).

<sup>6</sup> *Id.* at 674, 676, 686.

<sup>7</sup> *Id.* at 674.

<sup>8</sup> *Id.* at 675.

<sup>9</sup> *Id.* (quoting *Allen v. Wright*, 468 U.S. 737, 752 (1984)).

<sup>10</sup> *Id.* at 675–676.

<sup>11</sup> *Id.* at 676 (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408 (2013)).

courts ordering the Executive Branch to change its arrest or prosecution policies so that it makes more arrests or initiates more prosecutions, and that it had, in fact, previously found that plaintiffs lack standing to bring such a suit.<sup>12</sup> The Court reasoned that there were several good reasons why this was the case, including the fact that when the Executive Branch chooses not to arrest or prosecute someone, it does not exercise coercive power over an individual and, therefore, does not infringe upon interests that courts normally protect.<sup>13</sup> Additionally, the Court noted, lawsuits alleging insufficient arrests or prosecution run against the Executive Branch's Article II authority to enforce the law, which includes the discretion to determine enforcement priorities in the face of lack of resources and shifting public safety and public welfare needs.<sup>14</sup> The Court noted that by "concluding that Texas and Louisiana lack standing here, we abide by and reinforce the proper role of the Federal Judiciary under Article III."<sup>15</sup>

Despite clear precedent that Congress cannot create standing where none exists, this bill attempts to provide an end-run around the Court's ruling in *United States v. Texas* and to give states standing to sue under certain provisions of the Immigration Nationality Act (INA), including the two sections specifically rejected by the Court in that case. To rectify this, at markup, I offered an amendment to strike those two sections from this bill. Republicans defeated this amendment on a party line vote. The majority did not provide substantive arguments against this amendment beyond arguing that dicta by Justice Kavanaugh in this opinion left open the idea of legislation by Congress.

Additionally, many of the immigration provisions covered in this bill contain standards that have never been met, and no Congress or administration has ever provided or requested the funding to attempt to meet them. Republicans likewise disagree with the administration's straightforward interpretation of the parole provision of the INA, which is in line with 70 years of presidential precedent. Any concerns about a "violation" of these provisions would be an expression of displeasure with policy choices and not an argument that an administration is willfully ignoring the law. Just as such policy differences could not provide a legitimate justification for the absurd impeachment of Secretary Mayorkas on similar grounds, they likewise do not constitute legitimate injuries for the purposes of standing.

To rectify this, at markup, Representative Jayapal (D-WA) offered an amendment to strike the parole section from this bill. Republicans defeated this amendment on a party line vote. The ma-

<sup>12</sup>*Id.* at 677.

<sup>13</sup>*Id.* at 678.

<sup>14</sup>*Id.*

<sup>15</sup>*Id.* at 681. In dicta, the Court noted several potential instances where it might find standing in cases concerning the Executive Branch's alleged failure to make more arrests or bring more prosecutions. These included (1) suits alleging selective prosecution claims under the Equal Protection Clause; (2) cases where Congress elevated de facto injuries to the status of legally cognizable injuries redressable by a federal court by defining a set of plaintiffs who have suffered "concrete harms" from executive under-enforcement and specifically authorizing courts to enter orders requiring the Executive Branch to make additional arrests or prosecutions; (3) cases where the Executive Branch wholly abandoned its statutory responsibilities to make arrests or bring prosecutions; (4) a challenge to Executive Branch policy involving both the Executive Branch's enforcement priorities and its provision of legal benefits or legal status; and (5) cases concerning policies governing the continued detention of noncitizens who have already been arrested. *Id.* at 681–683.



jority did not provide substantive arguments against this amendment beyond arguing that they do not like the current administration's use of parole.

For all of these reasons, I dissent, and I urge all of my colleagues to oppose this legislation.

JERROLD NADLER,  
*Ranking Member.*

