

109TH CONGRESS
2^D SESSION

S. 2612

To provide for comprehensive immigration reform and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 7, 2006

Mr. HAGEL (for himself, Mr. MARTINEZ, Mr. SPECTER, Mr. MCCAIN, Mr. KENNEDY, Mr. GRAHAM, and Mr. BROWNBACK) introduced the following bill; which was read the first time

APRIL 24, 2006

Read the second time and ordered referred to the Committee on the Judiciary

A BILL

To provide for comprehensive immigration reform and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Comprehensive Immigration Reform Act of 2006”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Reference to the Immigration and Nationality Act.
- Sec. 3. Definitions.
- Sec. 4. Severability.

TITLE I—BORDER ENFORCEMENT

Subtitle A—Assets for Controlling United States Borders

- Sec. 101. Enforcement personnel.
- Sec. 102. Technological assets.
- Sec. 103. Infrastructure.
- Sec. 104. Border patrol checkpoints.
- Sec. 105. Ports of entry.
- Sec. 106. Construction of strategic border fencing and vehicle barriers.

Subtitle B—Border Security Plans, Strategies, and Reports

- Sec. 111. Surveillance plan.
- Sec. 112. National Strategy for Border Security.
- Sec. 113. Reports on improving the exchange of information on North American security.
- Sec. 114. Improving the security of Mexico's southern border.
- Sec. 115. Combating human smuggling.
- Sec. 116. Deaths at United States-Mexico border.

Subtitle C—Other Border Security Initiatives

- Sec. 121. Biometric data enhancements.
- Sec. 122. Secure communication.
- Sec. 123. Border patrol training capacity review.
- Sec. 124. US-VISIT System.
- Sec. 125. Document fraud detection.
- Sec. 126. Improved document integrity.
- Sec. 127. Cancellation of visas.
- Sec. 128. Biometric entry-exit system.
- Sec. 129. Border study.
- Sec. 130. Secure border initiative financial accountability.
- Sec. 131. Mandatory detention for aliens apprehended at or between ports of entry.
- Sec. 132. Evasion of inspection or violation of arrival, reporting, entry, or clearance requirements.

Subtitle D—Border Tunnel Prevention Act

- Sec. 141. Short title.
- Sec. 142. Construction of border tunnel or passage.
- Sec. 143. Directive to the United States Sentencing Commission.

Subtitle E—Border Law Enforcement Relief Act

- Sec. 151. Short title.
- Sec. 152. Findings.
- Sec. 153. Border relief grant program.
- Sec. 154. Enforcement of Federal immigration law.

TITLE II—INTERIOR ENFORCEMENT

- Sec. 201. Removal and denial of benefits to terrorist aliens.
- Sec. 202. Detention and removal of aliens ordered removed.
- Sec. 203. Aggravated felony.
- Sec. 204. Terrorist bars.

- Sec. 205. Increased criminal penalties related to gang violence, removal, and alien smuggling.
- Sec. 206. Illegal entry.
- Sec. 207. Illegal reentry.
- Sec. 208. Reform of passport, visa, and immigration fraud offenses.
- Sec. 209. Inadmissibility and removal for passport and immigration fraud offenses.
- Sec. 210. Incarceration of criminal aliens.
- Sec. 211. Encouraging aliens to depart voluntarily.
- Sec. 212. Deterring aliens ordered removed from remaining in the United States unlawfully.
- Sec. 213. Prohibition of the sale of firearms to, or the possession of firearms by certain aliens.
- Sec. 214. Uniform statute of limitations for certain immigration, naturalization, and peonage offenses.
- Sec. 215. Diplomatic security service.
- Sec. 216. Field agent allocation and background checks.
- Sec. 217. Construction.
- Sec. 218. State criminal alien assistance program.
- Sec. 219. Transportation and processing of illegal aliens apprehended by State and local law enforcement officers.
- Sec. 220. Reducing illegal immigration and alien smuggling on tribal lands.
- Sec. 221. Alternatives to detention.
- Sec. 222. Conforming amendment.
- Sec. 223. Reporting requirements.
- Sec. 224. State and local enforcement of Federal immigration laws.
- Sec. 225. Removal of drunk drivers.
- Sec. 226. Medical services in underserved areas.
- Sec. 227. Expedited removal.
- Sec. 228. Protecting immigrants from convicted sex offenders.
- Sec. 229. Law enforcement authority of States and political subdivisions and transfer to Federal custody.
- Sec. 230. Laundering of monetary instruments.
- Sec. 231. Listing of immigration violators in the National Crime Information Center database.
- Sec. 232. Cooperative enforcement programs.
- Sec. 233. Increase of Federal detention space and the utilization of facilities identified for closures as a result of the Defense Base Closure Realignment Act of 1990.
- Sec. 234. Determination of immigration status of individuals charged with Federal offenses.

TITLE III—UNLAWFUL EMPLOYMENT OF ALIENS

- Sec. 301. Unlawful employment of aliens.
- Sec. 302. Employer Compliance Fund.
- Sec. 303. Additional worksite enforcement and fraud detection agents.
- Sec. 304. Clarification of ineligibility for misrepresentation.

TITLE IV—NONIMMIGRANT AND IMMIGRANT VISA REFORM

Subtitle A—Temporary Guest Workers

- Sec. 401. Immigration impact study.
- Sec. 402. Nonimmigrant temporary worker.
- Sec. 403. Admission of nonimmigrant temporary guest workers.

- Sec. 404. Employer obligations.
- Sec. 405. Alien employment management system.
- Sec. 406. Rulemaking; effective date.
- Sec. 407. Recruitment of United States workers.
- Sec. 408. Temporary guest worker visa program task force.
- Sec. 409. Requirements for participating countries.
- Sec. 410. S visas.
- Sec. 411. L visa limitations.
- Sec. 412. Compliance investigators.
- Sec. 413. Authorization of appropriations.

Subtitle B—Immigration Injunction Reform

- Sec. 421. Short title.
- Sec. 422. Appropriate remedies for immigration legislation.
- Sec. 423. Effective date.

TITLE V—BACKLOG REDUCTION

- Sec. 501. Elimination of existing backlogs.
- Sec. 502. Country limits.
- Sec. 503. Allocation of immigrant visas.
- Sec. 504. Relief for minor children.
- Sec. 505. Shortage occupations.
- Sec. 506. Relief for widows and orphans.
- Sec. 507. Student visas.
- Sec. 508. Visas for individuals with advanced degrees.

TITLE VI—WORK AUTHORIZATION AND LEGALIZATION OF UNDOCUMENTED INDIVIDUALS

Subtitle A—Access to Earned Adjustment and Mandatory Departure and Reentry

- Sec. 601. Access to earned adjustment and mandatory departure and reentry.

Subtitle B—Agricultural Job Opportunities, Benefits, and Security

- Sec. 611. Short title.
- Sec. 612. Definitions.

CHAPTER 1—PILOT PROGRAM FOR EARNED STATUS ADJUSTMENT OF AGRICULTURAL WORKERS

- Sec. 613. Agricultural workers.
- Sec. 614. Correction of Social Security records.

CHAPTER 2—REFORM OF H-2A WORKER PROGRAM

- Sec. 615. Amendment to the Immigration and Nationality Act.

CHAPTER 3—MISCELLANEOUS PROVISIONS

- Sec. 616. Determination and use of user fees.
- Sec. 617. Regulations.
- Sec. 618. Report to Congress.
- Sec. 619. Effective date.

Subtitle C—DREAM Act

- Sec. 621. Short title.
- Sec. 622. Definitions.
- Sec. 623. Restoration of State option to determine residency for purposes of higher education benefits.
- Sec. 624. Cancellation of removal and adjustment of status of certain long-term residents who entered the United States as children.
- Sec. 625. Conditional permanent resident status.
- Sec. 626. Retroactive benefits.
- Sec. 627. Exclusive jurisdiction.
- Sec. 628. Penalties for false statements in application.
- Sec. 629. Confidentiality of information.
- Sec. 630. Expedited processing of applications; prohibition on fees.
- Sec. 631. Higher Education assistance.
- Sec. 632. GAO report.

Subtitle D—Grant Programs to Assist Nonimmigrant Workers

- Sec. 641. Grants to support public education and community training.
- Sec. 642. Funding for the Office of Citizenship.
- Sec. 643. Civics integration grant program.
- Sec. 644. Strengthening American citizenship.

TITLE VII—MISCELLANEOUS

Subtitle A—Immigration Litigation Reduction

CHAPTER 1—APPEALS AND REVIEW

- Sec. 701. Additional immigration personnel.

CHAPTER 2—IMMIGRATION REVIEW REFORM

- Sec. 702. Board of immigration appeals.
- Sec. 703. Immigration judges.
- Sec. 704. Removal and review of judges.
- Sec. 705. Legal orientation program.
- Sec. 706. Regulations.
- Sec. 707. GAO study on the appellate process for immigration appeals.

Subtitle B—Citizenship Assistance for Members of the Armed Services

- Sec. 711. Short title.
- Sec. 712. Waiver of requirement for fingerprints for members of the Armed Forces.
- Sec. 713. Provision of information on naturalization to members of the Armed Forces.
- Sec. 714. Provision of information on naturalization to the public.
- Sec. 715. Reports.

Subtitle C—State Court Interpreter Grant Program

- Sec. 721. Short title.
- Sec. 722. Findings.
- Sec. 723. State court interpreter program.
- Sec. 724. Authorization of appropriations.

Subtitle D—Border Infrastructure and Technology Modernization

- Sec. 731. Short title.
- Sec. 732. Definitions.
- Sec. 733. Port of Entry Infrastructure Assessment Study.
- Sec. 734. National Land Border Security Plan.
- Sec. 735. Expansion of commerce security programs.
- Sec. 736. Port of entry technology demonstration program.
- Sec. 737. Authorization of appropriations.

Subtitle E—Family Humanitarian Relief

- Sec. 741. Short title.
- Sec. 742. Adjustment of status for certain nonimmigrant victims of terrorism.
- Sec. 743. Cancellation of removal for certain immigrant victims of terrorism.
- Sec. 744. Exceptions.
- Sec. 745. Evidence of death.
- Sec. 746. Definitions.

Subtitle F—Other Matters

- Sec. 751. Noncitizen membership in the Armed Forces.
- Sec. 752. Nonimmigrant alien status for certain athletes.
- Sec. 753. Extension of returning worker exemption.
- Sec. 754. Surveillance technologies programs.
- Sec. 755. Comprehensive immigration efficiency review.
- Sec. 756. Northern Border Prosecution Initiative.
- Sec. 757. Southwest border prosecution initiative.
- Sec. 758. Grant program to assist eligible applicants.
- Sec. 759. Screening of municipal solid waste.
- Sec. 760. Access to immigration services in areas that are not accessible by road.
- Sec. 761. Border security on certain Federal land.
- Sec. 762. Unmanned aerial vehicles.
- Sec. 763. Relief for widows and orphans.
- Sec. 764. Terrorist activities.
- Sec. 765. Family unity.

1 SEC. 2. REFERENCE TO THE IMMIGRATION AND NATION-
2 ALITY ACT.

3 Except as otherwise expressly provided, whenever in
4 this Act an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a
7 section or other provision of the Immigration and Nation-
8 ality Act (8 U.S.C. 1101 et seq.).

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) DEPARTMENT.—Except as otherwise pro-
4 vided, the term “Department” means the Depart-
5 ment of Homeland Security.

6 (2) SECRETARY.—Except as otherwise provided,
7 the term “Secretary” means the Secretary of Home-
8 land Security.

9 **SEC. 4. SEVERABILITY.**

10 If any provision of this Act, any amendment made
11 by this Act, or the application of such provision or amend-
12 ment to any person or circumstance is held to be invalid
13 for any reason, the remainder of this Act, the amendments
14 made by this Act, and the application of the provisions
15 of such to any other person or circumstance shall not be
16 affected by such holding.

17 **TITLE I—BORDER**

18 **ENFORCEMENT**

19 **Subtitle A—Assets for Controlling**
20 **United States Borders**

21 **SEC. 101. ENFORCEMENT PERSONNEL.**

22 (a) ADDITIONAL PERSONNEL.—

23 (1) PORT OF ENTRY INSPECTORS.—In each of
24 the fiscal years 2007 through 2011, the Secretary
25 shall, subject to the availability of appropriations, in-
26 crease by not less than 500 the number of positions

1 for full-time active duty port of entry inspectors and
2 provide appropriate training, equipment, and sup-
3 port to such additional inspectors.

4 (2) INVESTIGATIVE PERSONNEL.—

5 (A) IMMIGRATION AND CUSTOMS EN-
6 FORCEMENT INVESTIGATORS.—Section 5203 of
7 the Intelligence Reform and Terrorism Preven-
8 tion Act of 2004 (Public Law 108–458; 118
9 Stat. 3734) is amended by striking “800” and
10 inserting “1000”.

11 (B) ADDITIONAL PERSONNEL.—In addi-
12 tion to the positions authorized under section
13 5203 of the Intelligence Reform and Terrorism
14 Prevention Act of 2004, as amended by sub-
15 paragraph (A), during each of the fiscal years
16 2007 through 2011, the Secretary shall, subject
17 to the availability of appropriations, increase by
18 not less than 200 the number of positions for
19 personnel within the Department assigned to
20 investigate alien smuggling.

21 (b) AUTHORIZATION OF APPROPRIATIONS.—

22 (1) PORT OF ENTRY INSPECTORS.—There are
23 authorized to be appropriated to the Secretary such
24 sums as may be necessary for each of the fiscal

1 years 2007 through 2011 to carry out paragraph (1)
2 of subsection (a).

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

7 **“SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL**
8 **AGENTS.**

9 “(a) **ANNUAL INCREASES.**—The Secretary of Home-
10 land Security shall, subject to the availability of appropria-
11 tions for such purpose, increase the number of positions
12 for full-time active-duty border patrol agents within the
13 Department of Homeland Security (above the number of
14 such positions for which funds were appropriated for the
15 preceding fiscal year), by—

16 “(1) 2,000 in fiscal year 2006;

17 “(2) 2,400 in fiscal year 2007;

18 “(3) 2,400 in fiscal year 2008;

19 “(4) 2,400 in fiscal year 2009;

20 “(5) 2,400 in fiscal year 2010; and

21 “(6) 2,400 in fiscal year 2011;

22 “(b) **NORTHERN BORDER.**—In each of the fiscal
23 years 2006 through 2011, in addition to the border patrol
24 agents assigned along the northern border of the United
25 States during the previous fiscal year, the Secretary shall

1 assign a number of border patrol agents equal to not less
2 than 20 percent of the net increase in border patrol agents
3 during each such fiscal year.

4 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated such sums as may be
6 necessary for each of fiscal years 2007 through 2011 to
7 carry out this section.”.

8 **SEC. 102. TECHNOLOGICAL ASSETS.**

9 (a) ACQUISITION.—Subject to the availability of ap-
10 propriations, the Secretary shall procure additional un-
11 manned aerial vehicles, cameras, poles, sensors, and other
12 technologies necessary to achieve operational control of the
13 international borders of the United States and to establish
14 a security perimeter known as a “virtual fence” along such
15 international borders to provide a barrier to illegal immi-
16 gration.

17 (b) INCREASED AVAILABILITY OF EQUIPMENT.—The
18 Secretary and the Secretary of Defense shall develop and
19 implement a plan to use authorities provided to the Sec-
20 retary of Defense under chapter 18 of title 10, United
21 States Code, to increase the availability and use of Depart-
22 ment of Defense equipment, including unmanned aerial
23 vehicles, tethered aerostat radars, and other surveillance
24 equipment, to assist the Secretary in carrying out surveil-
25 lance activities conducted at or near the international land

1 borders of the United States to prevent illegal immigra-
2 tion.

3 (c) REPORT.—Not later than 6 months after the date
4 of enactment of this Act, the Secretary and the Secretary
5 of Defense shall submit to Congress a report that con-
6 tains—

7 (1) a description of the current use of Depart-
8 ment of Defense equipment to assist the Secretary
9 in carrying out surveillance of the international land
10 borders of the United States and assessment of the
11 risks to citizens of the United States and foreign
12 policy interests associated with the use of such
13 equipment;

14 (2) the plan developed under subsection (b) to
15 increase the use of Department of Defense equip-
16 ment to assist such surveillance activities; and

17 (3) a description of the types of equipment and
18 other support to be provided by the Secretary of De-
19 fense under such plan during the 1-year period be-
20 ginning on the date of the submission of the report.

21 (d) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated to the Secretary such
23 sums as may be necessary for each of the fiscal years 2007
24 through 2011 to carry out subsection (a).

1 (e) CONSTRUCTION.—Nothing in this section may be
2 construed as altering or amending the prohibition on the
3 use of any part of the Army or the Air Force as a posse
4 comitatus under section 1385 of title 18, United States
5 Code.

6 **SEC. 103. INFRASTRUCTURE.**

7 (a) CONSTRUCTION OF BORDER CONTROL FACILI-
8 TIES.—Subject to the availability of appropriations, the
9 Secretary shall construct all-weather roads and acquire
10 additional vehicle barriers and facilities necessary to
11 achieve operational control of the international borders of
12 the United States.

13 (b) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to the Secretary such
15 sums as may be necessary for each of the fiscal years 2007
16 through 2011 to carry out subsection (a).

17 **SEC. 104. BORDER PATROL CHECKPOINTS.**

18 The Secretary may maintain temporary or permanent
19 checkpoints on roadways in border patrol sectors that are
20 located in proximity to the international border between
21 the United States and Mexico.

22 **SEC. 105. PORTS OF ENTRY.**

23 The Secretary is authorized to—

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

4 (2) make necessary improvements to the ports
5 of entry in existence on the date of the enactment
6 of this Act.

7 **SEC. 106. CONSTRUCTION OF STRATEGIC BORDER FENC-**
8 **ING AND VEHICLE BARRIERS.**

9 (a) TUCSON SECTOR.—The Secretary shall—

10 (1) replace all aged, deteriorating, or damaged
11 primary fencing in the Tucson Sector located proximate
12 to population centers in Douglas, Nogales,
13 Naco, and Lukeville, Arizona with double- or triple-
14 layered fencing running parallel to the international
15 border between the United States and Mexico;

16 (2) extend the double- or triple-layered fencing
17 for a distance of not less than 2 miles beyond urban
18 areas, except that the double- or triple-layered fence
19 shall extend west of Naco, Arizona, for a distance of
20 10 miles; and

21 (3) construct not less than 150 miles of vehicle
22 barriers and all-weather roads in the Tucson Sector
23 running parallel to the international border between
24 the United States and Mexico in areas that are
25 known transit points for illegal cross-border traffic.

1 (b) YUMA SECTOR.—The Secretary shall—

2 (1) replace all aged, deteriorating, or damaged
3 primary fencing in the Yuma Sector located proximate to population centers in Yuma, Somerton, and
4 San Luis, Arizona with double- or triple-layered
5 fencing running parallel to the international border
6 between the United States and Mexico;

7 (2) extend the double- or triple-layered fencing
8 for a distance of not less than 2 miles beyond urban
9 areas in the Yuma Sector; and

10 (3) construct not less than 50 miles of vehicle
11 barriers and all-weather roads in the Yuma Sector
12 running parallel to the international border between
13 the United States and Mexico in areas that are
14 known transit points for illegal cross-border traffic.

15 (c) CONSTRUCTION DEADLINE.—The Secretary shall
16 immediately commence construction of the fencing, barriers, and roads described in subsections (a) and (b), and
17 shall complete such construction not later than 2 years
18 after the date of the enactment of this Act.

19 (d) REPORT.—Not later than 1 year after the date
20 of the enactment of this Act, the Secretary shall submit
21 a report to the Committee on the Judiciary of the Senate
22 and the Committee on the Judiciary of the House of Representatives that describes the progress that has been
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24
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1 made in constructing the fencing, barriers, and roads de-
2 scribed in subsections (a) and (b).

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

6 **Subtitle B—Border Security Plans,** 7 **Strategies, and Reports**

8 **SEC. 111. SURVEILLANCE PLAN.**

9 (a) REQUIREMENT FOR PLAN.—The Secretary shall
10 develop a comprehensive plan for the systematic surveil-
11 lance of the international land and maritime borders of
12 the United States.

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

15 (1) An assessment of existing technologies em-
16 ployed on the international land and maritime bor-
17 ders of the United States.

18 (2) A description of the compatibility of new
19 surveillance technologies with surveillance tech-
20 nologies in use by the Secretary on the date of the
21 enactment of this Act.

22 (3) A description of how the Commissioner of
23 the United States Customs and Border Protection of
24 the Department is working, or is expected to work,
25 with the Under Secretary for Science and Tech-

1 nology of the Department to identify and test sur-
2 veillance technology.

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

5 (5) Identification of any obstacles that may im-
6 pede such deployment.

7 (6) A detailed estimate of all costs associated
8 with such deployment and with continued mainte-
9 nance of such technologies.

10 (7) A description of how the Secretary is work-
11 ing with the Administrator of the Federal Aviation
12 Administration on safety and airspace control issues
13 associated with the use of unmanned aerial vehicles.

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

18 **SEC. 112. NATIONAL STRATEGY FOR BORDER SECURITY.**

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

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

3 (1) The implementation schedule for the com-
4 prehensive plan for systematic surveillance described
5 in section 111.

6 (2) An assessment of the threat posed by ter-
7 rorists and terrorist groups that may try to infiltrate
8 the United States at locations along the inter-
9 national land and maritime borders of the United
10 States.

11 (3) A risk assessment for all United States
12 ports of entry and all portions of the international
13 land and maritime borders of the United States that
14 includes a description of activities being under-
15 taken—

16 (A) to prevent the entry of terrorists, other
17 unlawful aliens, instruments of terrorism, nar-
18 cotics, and other contraband into the United
19 States; and

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

22 (4) An assessment of the legal requirements
23 that prevent achieving and maintaining operational
24 control over the entire international land and mari-
25 time borders of the United States.

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

8 (6) An assessment of staffing needs for all bor-
9 der security functions, taking into account threat
10 and vulnerability information pertaining to the bor-
11 ders and the impact of new security programs, poli-
12 cies, and technologies.

13 (7) A description of the border security roles
14 and missions of Federal, State, regional, local, and
15 tribal authorities, and recommendations regarding
16 actions the Secretary can carry out to improve co-
17 ordination with such authorities to enable border se-
18 curity and enforcement activities to be carried out in
19 a more efficient and effective manner.

20 (8) An assessment of existing efforts and tech-
21 nologies used for border security and the effect of
22 the use of such efforts and technologies on civil
23 rights, personal property rights, privacy rights, and
24 civil liberties, including an assessment of efforts to
25 take into account asylum seekers, trafficking vic-

1 tims, unaccompanied minor aliens, and other vulner-
2 able populations.

3 (9) A prioritized list of research and develop-
4 ment objectives to enhance the security of the inter-
5 national land and maritime borders of the United
6 States.

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

12 (11) An assessment of additional detention fa-
13 cilities and beds that are needed to detain unlawful
14 aliens apprehended at United States ports of entry
15 or along the international land borders of the United
16 States.

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

20 (13) A schedule for the implementation of the
21 security measures described in such Strategy, includ-
22 ing a prioritization of security measures, realistic
23 deadlines for addressing the security and enforce-
24 ment needs, an estimate of the resources needed to

1 carry out such measures, and a description of how
2 such resources should be allocated.

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

6 (1) State, local, and tribal authorities with re-
7 sponsibility for locations along the international land
8 and maritime borders of the United States; and

9 (2) appropriate private sector entities, non-
10 governmental organizations, and affected commu-
11 nities that have expertise in areas related to border
12 security.

13 (d) COORDINATION.—The National Strategy for Bor-
14 der Security shall be consistent with the National Strategy
15 for Maritime Security developed pursuant to Homeland
16 Security Presidential Directive 13, dated December 21,
17 2004.

18 (e) SUBMISSION TO CONGRESS.—

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

23 (2) UPDATES.—The Secretary shall submit to
24 Congress any update of such Strategy that the Sec-

1 retary determines is necessary, not later than 30
2 days after such update is developed.

3 (f) IMMEDIATE ACTION.—Nothing in this section or
4 section 111 may be construed to relieve the Secretary of
5 the responsibility to take all actions necessary and appro-
6 priate to achieve and maintain operational control over the
7 entire international land and maritime borders of the
8 United States.

9 **SEC. 113. REPORTS ON IMPROVING THE EXCHANGE OF IN-**
10 **FORMATION ON NORTH AMERICAN SECU-**
11 **RITY.**

12 (a) REQUIREMENT FOR REPORTS.—Not later than 1
13 year after the date of the enactment of this Act, and annu-
14 ally thereafter, the Secretary of State, in coordination with
15 the Secretary and the heads of other appropriate Federal
16 agencies, shall submit to Congress a report on improving
17 the exchange of information related to the security of
18 North America.

19 (b) CONTENTS.—Each report submitted under sub-
20 section (a) shall contain a description of the following:

21 (1) SECURITY CLEARANCES AND DOCUMENT IN-
22 TEGRITY.—The progress made toward the develop-
23 ment of common enrollment, security, technical, and
24 biometric standards for the issuance, authentication,

1 validation, and repudiation of secure documents, in-
2 cluding—

3 (A) technical and biometric standards
4 based on best practices and consistent with
5 international standards for the issuance, au-
6 thentication, validation, and repudiation of trav-
7 el documents, including—

8 (i) passports;

9 (ii) visas; and

10 (iii) permanent resident cards;

11 (B) working with Canada and Mexico to
12 encourage foreign governments to enact laws to
13 combat alien smuggling and trafficking, and
14 laws to forbid the use and manufacture of
15 fraudulent travel documents and to promote in-
16 formation sharing;

17 (C) applying the necessary pressures and
18 support to ensure that other countries meet
19 proper travel document standards and are com-
20 mitted to travel document verification before
21 the citizens of such countries travel internation-
22 ally, including travel by such citizens to the
23 United States; and

24 (D) providing technical assistance for the
25 development and maintenance of a national

1 database built upon identified best practices for
2 biometrics associated with visa and travel docu-
3 ments.

4 (2) IMMIGRATION AND VISA MANAGEMENT.—

5 The progress of efforts to share information regard-
6 ing high-risk individuals who may attempt to enter
7 Canada, Mexico, or the United States, including the
8 progress made—

9 (A) in implementing the Statement of Mu-
10 tual Understanding on Information Sharing,
11 signed by Canada and the United States in
12 February 2003; and

13 (B) in identifying trends related to immi-
14 gration fraud, including asylum and document
15 fraud, and to analyze such trends.

16 (3) VISA POLICY COORDINATION AND IMMIGRA-

17 TION SECURITY.—The progress made by Canada,
18 Mexico, and the United States to enhance the secu-
19 rity of North America by cooperating on visa policy
20 and identifying best practices regarding immigration
21 security, including the progress made—

22 (A) in enhancing consultation among offi-
23 cials who issue visas at the consulates or em-
24 bassies of Canada, Mexico, or the United States

1 throughout the world to share information,
2 trends, and best practices on visa flows;

3 (B) in comparing the procedures and poli-
4 cies of Canada and the United States related to
5 visitor visa processing, including—

6 (i) application process;

7 (ii) interview policy;

8 (iii) general screening procedures;

9 (iv) visa validity;

10 (v) quality control measures; and

11 (vi) access to appeal or review;

12 (C) in exploring methods for Canada, Mex-
13 ico, and the United States to waive visa re-
14 quirements for nationals and citizens of the
15 same foreign countries;

16 (D) in providing technical assistance for
17 the development and maintenance of a national
18 database built upon identified best practices for
19 biometrics associated with immigration viola-
20 tors;

21 (E) in developing and implementing an im-
22 migration security strategy for North America
23 that works toward the development of a com-
24 mon security perimeter by enhancing technical
25 assistance for programs and systems to support

1 advance automated reporting and risk targeting
2 of international passengers;

3 (F) in sharing information on lost and sto-
4 len passports on a real-time basis among immi-
5 gration or law enforcement officials of Canada,
6 Mexico, and the United States; and

7 (G) in collecting 10 fingerprints from each
8 individual who applies for a visa.

9 (4) NORTH AMERICAN VISITOR OVERSTAY PRO-
10 GRAM.—The progress made by Canada and the
11 United States in implementing parallel entry-exit
12 tracking systems that, while respecting the privacy
13 laws of both countries, share information regarding
14 third country nationals who have overstayed their
15 period of authorized admission in either Canada or
16 the United States.

17 (5) TERRORIST WATCH LISTS.—The progress
18 made in enhancing the capacity of the United States
19 to combat terrorism through the coordination of
20 counterterrorism efforts, including the progress
21 made—

22 (A) in developing and implementing bilat-
23 eral agreements between Canada and the
24 United States and between Mexico and the
25 United States to govern the sharing of terrorist

1 watch list data and to comprehensively enu-
2 merate the uses of such data by the govern-
3 ments of each country;

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

7 (C) in exploring with foreign governments
8 the establishment of a multilateral watch list
9 mechanism that would facilitate direct coordina-
10 tion between the country that identifies an indi-
11 vidual as an individual included on a watch list,
12 and the country that owns such list, including
13 procedures that satisfy the security concerns
14 and are consistent with the privacy and other
15 laws of each participating country.

16 (6) MONEY LAUNDERING, CURRENCY SMUG-
17 GLING, AND ALIEN SMUGGLING.—The progress made
18 in improving information sharing and law enforce-
19 ment cooperation in combating organized crime, in-
20 cluding the progress made—

21 (A) in combating currency smuggling,
22 money laundering, alien smuggling, and traf-
23 ficking in alcohol, firearms, and explosives;

1 (B) in implementing the agreement be-
2 tween Canada and the United States known as
3 the Firearms Trafficking Action Plan;

4 (C) in determining the feasibility of formu-
5 lating a firearms trafficking action plan be-
6 tween Mexico and the United States;

7 (D) in developing a joint threat assessment
8 on organized crime between Canada and the
9 United States;

10 (E) in determining the feasibility of formu-
11 lating a joint threat assessment on organized
12 crime between Mexico and the United States;

13 (F) in developing mechanisms to exchange
14 information on findings, seizures, and capture
15 of individuals transporting undeclared currency;
16 and

17 (G) in developing and implementing a plan
18 to combat the transnational threat of illegal
19 drug trafficking.

20 (7) LAW ENFORCEMENT COOPERATION.—The
21 progress made in enhancing law enforcement co-
22 operation among Canada, Mexico, and the United
23 States through enhanced technical assistance for the
24 development and maintenance of a national database
25 built upon identified best practices for biometrics as-

1 sociated with known and suspected criminals or ter-
2 rorists, including exploring the formation of law en-
3 forcement teams that include personnel from the
4 United States and Mexico, and appropriate proce-
5 dures for such teams.

6 **SEC. 114. IMPROVING THE SECURITY OF MEXICO'S SOUTH-**
7 **ERN BORDER.**

8 (a) **TECHNICAL ASSISTANCE.**—The Secretary of
9 State, in coordination with the Secretary, shall work to
10 cooperate with the head of Foreign Affairs Canada and
11 the appropriate officials of the Government of Mexico to
12 establish a program—

13 (1) to assess the specific needs of Guatemala
14 and Belize in maintaining the security of the inter-
15 national borders of such countries;

16 (2) to use the assessment made under para-
17 graph (1) to determine the financial and technical
18 support needed by Guatemala and Belize from Can-
19 ada, Mexico, and the United States to meet such
20 needs;

21 (3) to provide technical assistance to Guatemala
22 and Belize to promote issuance of secure passports
23 and travel documents by such countries; and

24 (4) to encourage Guatemala and Belize—

1 (A) to control alien smuggling and traf-
2 ficking;

3 (B) to prevent the use and manufacture of
4 fraudulent travel documents; and

5 (C) to share relevant information with
6 Mexico, Canada, and the United States.

7 (b) BORDER SECURITY FOR BELIZE, GUATEMALA,
8 AND MEXICO.—The Secretary, in consultation with the
9 Secretary of State, shall work to cooperate—

10 (1) with the appropriate officials of the Govern-
11 ment of Guatemala and the Government of Belize to
12 provide law enforcement assistance to Guatemala
13 and Belize that specifically addresses immigration
14 issues to increase the ability of the Government of
15 Guatemala to dismantle human smuggling organiza-
16 tions and gain additional control over the inter-
17 national border between Guatemala and Belize; and

18 (2) with the appropriate officials of the Govern-
19 ment of Belize, the Government of Guatemala, the
20 Government of Mexico, and the governments of
21 neighboring contiguous countries to establish a pro-
22 gram to provide needed equipment, technical assist-
23 ance, and vehicles to manage, regulate, and patrol
24 the international borders between Mexico and Guate-
25 mala and between Mexico and Belize.

1 (c) TRACKING CENTRAL AMERICAN GANGS.—The
2 Secretary of State, in coordination with the Secretary and
3 the Director of the Federal Bureau of Investigation, shall
4 work to cooperate with the appropriate officials of the
5 Government of Mexico, the Government of Guatemala, the
6 Government of Belize, and the governments of other Cen-
7 tral American countries—

8 (1) to assess the direct and indirect impact on
9 the United States and Central America of deporting
10 violent criminal aliens;

11 (2) to establish a program and database to
12 track individuals involved in Central American gang
13 activities;

14 (3) to develop a mechanism that is acceptable
15 to the governments of Belize, Guatemala, Mexico,
16 the United States, and other appropriate countries
17 to notify such a government if an individual sus-
18 pected of gang activity will be deported to that coun-
19 try prior to the deportation and to provide support
20 for the reintegration of such deportees into that
21 country; and

22 (4) to develop an agreement to share all rel-
23 evant information related to individuals connected
24 with Central American gangs.

1 (d) LIMITATIONS ON ASSISTANCE.—Any funds made
2 available to carry out this section shall be subject to the
3 limitations contained in section 551 of the Foreign Oper-
4 ations, Export Financing, and Related Programs Appro-
5 priations Act of 2006 (Public Law 109–102; 119 Stat.
6 2218).

7 **SEC. 115. COMBATING HUMAN SMUGGLING.**

8 (a) REQUIREMENT FOR PLAN.—The Secretary shall
9 develop and implement a plan to improve coordination be-
10 tween the Bureau of Immigration and Customs Enforce-
11 ment and the Bureau of Customs and Border Protection
12 of the Department and any other Federal, State, local,
13 or tribal authorities, as determined appropriate by the
14 Secretary, to improve coordination efforts to combat
15 human smuggling.

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

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

20 (2) adequate and effective personnel training;

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

23 (4) effective utilization of—

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

1 (B) investigatory techniques, equipment,
2 and procedures that prevent, detect, and pros-
3 ecute international money laundering and other
4 operations that are utilized in smuggling;

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

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

11 (c) REPORT.—Not later than 1 year after imple-
12 menting the plan described in subsection (a), the Sec-
13 retary shall submit to Congress a report on such plan, in-
14 cluding any recommendations for legislative action to im-
15 prove efforts to combating human smuggling.

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

19 **SEC. 116. DEATHS AT UNITED STATES-MEXICO BORDER.**

20 (a) COLLECTION OF STATISTICS.—The Commis-
21 sioner of the Bureau of Customs and Border Protection
22 shall collect statistics relating to deaths occurring at the
23 border between the United States and Mexico, including—

24 (1) the causes of the deaths; and

25 (2) the total number of deaths.

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

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

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

10 **Subtitle C—Other Border Security** 11 **Initiatives**

12 **SEC. 121. BIOMETRIC DATA ENHANCEMENTS.**

13 Not later than October 1, 2007, the Secretary shall—

14 (1) in consultation with the Attorney General,
15 enhance connectivity between the Automated Bio-
16 metric Fingerprint Identification System (IDENT)
17 of the Department and the Integrated Automated
18 Fingerprint Identification System (IAFIS) of the
19 Federal Bureau of Investigation to ensure more ex-
20 peditious data searches; and

21 (2) in consultation with the Secretary of State,
22 collect all fingerprints from each alien required to
23 provide fingerprints during the alien's initial enroll-
24 ment in the integrated entry and exit data system
25 described in section 110 of the Illegal Immigration

1 Reform and Immigrant Responsibility Act of 1996
2 (8 U.S.C. 1365a).

3 **SEC. 122. SECURE COMMUNICATION.**

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

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

10 (2) between Border Patrol agents and their re-
11 spective Border Patrol stations;

12 (3) between Border Patrol agents and residents
13 in remote areas along the international land borders
14 of the United States; and

15 (4) between all appropriate border security
16 agencies of the Department and State, local, and
17 tribal law enforcement agencies.

18 **SEC. 123. BORDER PATROL TRAINING CAPACITY REVIEW.**

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

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

1 (1) An evaluation of the length and content of
2 the basic training curriculum provided to new Bor-
3 der Patrol agents by the Federal Law Enforcement
4 Training Center, including a description of how such
5 curriculum has changed since September 11, 2001,
6 and an evaluation of language and cultural diversity
7 training programs provided within such curriculum.

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

12 (3) A comparison, based on the review and
13 breakdown under paragraph (2), of the costs, effec-
14 tiveness, scope, and quality, including geographic
15 characteristics, with other similar training programs
16 provided by State and local agencies, nonprofit orga-
17 nizations, universities, and the private sector.

18 (4) An evaluation of whether utilizing com-
19 parable non-Federal training programs, proficiency
20 testing, and long-distance learning programs may af-
21 fect—

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

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

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

6 **SEC. 124. US-VISIT SYSTEM.**

7 Not later than 6 months after the date of the enact-
8 ment of this Act, the Secretary, in consultation with the
9 heads of other appropriate Federal agencies, shall submit
10 to Congress a schedule for—

11 (1) equipping all land border ports of entry of
12 the United States with the U.S.-Visitor and Immi-
13 grant Status Indicator Technology (US-VISIT) sys-
14 tem implemented under section 110 of the Illegal
15 Immigration Reform and Immigrant Responsibility
16 Act of 1996 (8 U.S.C. 1365a);

17 (2) developing and deploying at such ports of
18 entry the exit component of the US-VISIT system;
19 and

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

22 **SEC. 125. DOCUMENT FRAUD DETECTION.**

23 (a) TRAINING.—Subject to the availability of appro-
24 priations, the Secretary shall provide all Customs and
25 Border Protection officers with training in identifying and

1 detecting fraudulent travel documents. Such training shall
2 be developed in consultation with the head of the Forensic
3 Document Laboratory of the Bureau of Immigration and
4 Customs Enforcement.

5 (b) FORENSIC DOCUMENT LABORATORY.—The Sec-
6 retary shall provide all Customs and Border Protection of-
7 ficers with access to the Forensic Document Laboratory.

8 (c) ASSESSMENT.—

9 (1) REQUIREMENT FOR ASSESSMENT.—The In-
10 spector General of the Department shall conduct an
11 independent assessment of the accuracy and reli-
12 ability of the Forensic Document Laboratory.

13 (2) REPORT TO CONGRESS.—Not later than 6
14 months after the date of the enactment of this Act,
15 the Inspector General shall submit to Congress the
16 findings of the assessment required by paragraph
17 (1).

18 (d) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to the Secretary such
20 sums as may be necessary for each of fiscal years 2007
21 through 2011 to carry out this section.

22 **SEC. 126. IMPROVED DOCUMENT INTEGRITY.**

23 (a) IN GENERAL.—Section 303 of the Enhanced Bor-
24 der Security and Visa Entry Reform Act of 2002 (8
25 U.S.C. 1732) is amended—

1 (1) by striking “Attorney General” each place
2 it appears and inserting “Secretary of Homeland Se-
3 curity”;

4 (2) in the heading, by striking “**ENTRY AND**
5 **EXIT DOCUMENTS**” and inserting “**TRAVEL AND**
6 **ENTRY DOCUMENTS AND EVIDENCE OF STA-**
7 **TUS**”;

8 (3) in subsection (b)(1)—

9 (A) by striking “Not later than October
10 26, 2004, the” and inserting “The”; and

11 (B) by striking “visas and” both places it
12 appears and inserting “visas, evidence of status,
13 and”;

14 (4) by redesignating subsection (d) as sub-
15 section (e); and

16 (5) by inserting after subsection (c) the fol-
17 lowing:

18 “(d) **OTHER DOCUMENTS.**—Not later than October
19 26, 2007, every document, other than an interim docu-
20 ment, issued by the Secretary of Homeland Security,
21 which may be used as evidence of an alien’s status as an
22 immigrant, nonimmigrant, parolee, asylee, or refugee,
23 shall be machine-readable and tamper-resistant, and shall
24 incorporate a biometric identifier to allow the Secretary

1 of Homeland Security to verify electronically the identity
2 and status of the alien.”.

3 **SEC. 127. CANCELLATION OF VISAS.**

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

5 (1) in paragraph (1)—

6 (A) by striking “Attorney General” and in-
7 serting “Secretary of Homeland Security”; and

8 (B) by inserting “and any other non-
9 immigrant visa issued by the United States that
10 is in the possession of the alien” after “such
11 visa”; and

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

19 **SEC. 128. BIOMETRIC ENTRY-EXIT SYSTEM.**

20 (a) COLLECTION OF BIOMETRIC DATA FROM ALIENS

21 DEPARTING THE UNITED STATES.—Section 215 (8

22 U.S.C. 1185) is amended—

23 (1) by redesignating subsection (c) as sub-
24 section (g);

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

3 (3) by inserting after subsection (b) the fol-
4 lowing:

5 “(c) The Secretary of Homeland Security is author-
6 ized to require aliens departing the United States to pro-
7 vide biometric data and other information relating to their
8 immigration status.”.

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

12 “(5) AUTHORITY TO COLLECT BIOMETRIC
13 DATA.—In conducting inspections under subsection
14 (b), immigration officers are authorized to collect bi-
15 ometric data from—

16 “(A) any applicant for admission or alien
17 seeking to transit through the United States; or

18 “(B) any lawful permanent resident who is
19 entering the United States and who is not re-
20 garded as seeking admission pursuant to sec-
21 tion 101(a)(13)(C).”.

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

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

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

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

8 “(C) WITHHOLDERS OF BIOMETRIC
9 DATA.—Any alien who knowingly fails to com-
10 ply with a lawful request for biometric data
11 under section 215(e) or 235(d) is inadmis-
12 sible.”; and

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

15 “(2) The Secretary of Homeland Security shall
16 determine whether a ground for inadmissibility ex-
17 ists with respect to an alien described in subpara-
18 graph (C) of subsection (a)(7) and may waive the
19 application of such subparagraph for an individual
20 alien or a class of aliens, at the discretion of the
21 Secretary.”.

22 (e) IMPLEMENTATION.—Section 7208 of the 9/11
23 Commission Implementation Act of 2004 (8 U.S.C.
24 1365b) is amended—

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

3 “(3) IMPLEMENTATION.—In fully implementing
4 the automated biometric entry and exit data system
5 under this section, the Secretary is not required to
6 comply with the requirements of chapter 5 of title 5,
7 United States Code (commonly referred to as the
8 Administrative Procedure Act) or any other law re-
9 lating to rulemaking, information collection, or pub-
10 lication in the Federal Register.”; and

11 (2) in subsection (l)—

12 (A) by striking “There are authorized”
13 and inserting the following:

14 “(1) IN GENERAL.—There are authorized”; and

15 (B) by adding at the end the following:

16 “(2) IMPLEMENTATION AT ALL LAND BORDER
17 PORTS OF ENTRY.—There are authorized to be ap-
18 propriated such sums as may be necessary for each
19 of fiscal years 2007 and 2008 to implement the
20 automated biometric entry and exit data system at
21 all land border ports of entry.”.

22 **SEC. 129. BORDER STUDY.**

23 (a) SOUTHERN BORDER STUDY.—The Secretary, in
24 consultation with the Attorney General, the Secretary of
25 the Interior, the Secretary of Agriculture, the Secretary

1 of Defense, the Secretary of Commerce, and the Adminis-
2 trator of the Environmental Protection Agency, shall con-
3 duct a study on the construction of a system of physical
4 barriers along the southern international land and mari-
5 time border of the United States. The study shall in-
6 clude—

7 (1) an assessment of the necessity of con-
8 structing such a system, including the identification
9 of areas of high priority for the construction of such
10 a system determined after consideration of factors
11 including the amount of narcotics trafficking and
12 the number of illegal immigrants apprehended in
13 such areas;

14 (2) an assessment of the feasibility of con-
15 structing such a system;

16 (3) an assessment of the international, national,
17 and regional environmental impact of such a system,
18 including the impact on zoning, global climate
19 change, ozone depletion, biodiversity loss, and
20 transboundary pollution;

21 (4) an assessment of the necessity for ports of
22 entry along such a system;

23 (5) an assessment of the impact such a system
24 would have on international trade, commerce, and
25 tourism;

1 (6) an assessment of the effect of such a system
2 on private property rights including issues of emi-
3 nent domain and riparian rights;

4 (7) an estimate of the costs associated with
5 building a barrier system, including costs associated
6 with excavation, construction, and maintenance;

7 (8) an assessment of the effect of such a system
8 on Indian reservations and units of the National
9 Park System;

10 (9) an assessment of the necessity of con-
11 structing such a system after the implementation of
12 provisions of this Act relating to guest workers, visa
13 reform, and interior and worksite enforcement, and
14 the likely effect of such provisions on undocumented
15 immigration and the flow of illegal immigrants
16 across the international border of the United States;

17 (10) an assessment of the impact of such a sys-
18 tem on diplomatic relations between the United
19 States and Mexico, Central America, and South
20 America, including the likely impact of such a sys-
21 tem on existing and potential areas of bilateral and
22 multilateral cooperative enforcement efforts;

23 (11) an assessment of the impact of such a sys-
24 tem on the quality of life within border communities
25 in the United States and Mexico, including its im-

1 pact on noise and light pollution, housing, transpor-
2 tation, security, and environmental health;

3 (12) an assessment of the likelihood that such
4 a system would lead to increased violations of the
5 human rights, health, safety, or civil rights of indi-
6 viduals in the region near the southern international
7 border of the United States, regardless of the immi-
8 gration status of such individuals;

9 (13) an assessment of the effect such a system
10 would have on violence near the southern inter-
11 national border of the United States; and

12 (14) an assessment of the effect of such a sys-
13 tem on the vulnerability of the United States to in-
14 filtration by terrorists or other agents intending to
15 inflict direct harm on the United States.

16 (b) REPORT.—Not later than 9 months after the date
17 of the enactment of this Act, the Secretary shall submit
18 to Congress a report on the study described in subsection
19 (a).

20 **SEC. 130. SECURE BORDER INITIATIVE FINANCIAL AC-**
21 **COUNTABILITY.**

22 (a) IN GENERAL.—The Inspector General of the De-
23 partment shall review each contract action relating to the
24 Secure Border Initiative having a value of more than
25 \$20,000,000, to determine whether each such action fully

1 complies with applicable cost requirements, performance
2 objectives, program milestones, inclusion of small, minor-
3 ity, and women-owned business, and time lines. The In-
4 spector General shall complete a review under this sub-
5 section with respect to each contract action—

6 (1) not later than 60 days after the date of the
7 initiation of the action; and

8 (2) upon the conclusion of the performance of
9 the contract.

10 (b) INSPECTOR GENERAL.—

11 (1) ACTION.—If the Inspector General becomes
12 aware of any improper conduct or wrongdoing in the
13 course of conducting a contract review under sub-
14 section (a), the Inspector General shall, as expedi-
15 tiously as practicable, refer information relating to
16 such improper conduct or wrongdoing to the Sec-
17 retary, or to another appropriate official of the De-
18 partment, who shall determine whether to tempo-
19 rarily suspend the contractor from further participa-
20 tion in the Secure Border Initiative.

21 (2) REPORT.—Upon the completion of each re-
22 view described in subsection (a), the Inspector Gen-
23 eral shall submit to the Secretary a report con-
24 taining the findings of the review, including findings
25 regarding—

1 (A) cost overruns;

2 (B) significant delays in contract execu-
3 tion;

4 (C) lack of rigorous departmental contract
5 management;

6 (D) insufficient departmental financial
7 oversight;

8 (E) bundling that limits the ability of
9 small businesses to compete; or

10 (F) other high risk business practices.

11 (c) REPORTS BY THE SECRETARY.—

12 (1) IN GENERAL.—Not later than 30 days after
13 the receipt of each report required under subsection
14 (b)(2), the Secretary shall submit a report, to the
15 Committee on the Judiciary of the Senate and the
16 Committee on the Judiciary of the House of Rep-
17 resentatives, that describes—

18 (A) the findings of the report received
19 from the Inspector General; and

20 (B) the steps the Secretary has taken, or
21 plans to take, to address the problems identified
22 in such report.

23 (2) CONTRACTS WITH FOREIGN COMPANIES.—

24 Not later than 60 days after the initiation of each
25 contract action with a company whose headquarters

1 is not based in the United States, the Secretary
2 shall submit a report to the Committee on the Judi-
3 ciary of the Senate and the Committee on the Judi-
4 ciary of the House of Representatives, regarding the
5 Secure Border Initiative.

6 (d) REPORTS ON UNITED STATES PORTS.—Not later
7 that 30 days after receiving information regarding a pro-
8 posed purchase of a contract to manage the operations of
9 a United States port by a foreign entity, the Committee
10 on Foreign Investment in the United States shall submit
11 a report to Congress that describes—

12 (1) the proposed purchase;

13 (2) any security concerns related to the pro-
14 posed purchase; and

15 (3) the manner in which such security concerns
16 have been addressed.

17 (e) AUTHORIZATION OF APPROPRIATIONS.—In addi-
18 tion to amounts that are otherwise authorized to be appro-
19 priated to the Office of the Inspector General of the De-
20 partment, there are authorized to be appropriated to the
21 Office, to enable the Office to carry out this section—

22 (1) for fiscal year 2007, not less than 5 percent
23 of the overall budget of the Office for such fiscal
24 year;

1 (2) for fiscal year 2008, not less than 6 percent
2 of the overall budget of the Office for such fiscal
3 year; and

4 (3) for fiscal year 2009, not less than 7 percent
5 of the overall budget of the Office for such fiscal
6 year.

7 **SEC. 131. MANDATORY DETENTION FOR ALIENS APPRE-**
8 **HENDED AT OR BETWEEN PORTS OF ENTRY.**

9 (a) IN GENERAL.—Beginning on October 1, 2007, an
10 alien (other than a national of Mexico) who is attempting
11 to illegally enter the United States and who is appre-
12 hended at a United States port of entry or along the inter-
13 national land and maritime border of the United States
14 shall be detained until removed or a final decision granting
15 admission has been determined, unless the alien—

16 (1) is permitted to withdraw an application for
17 admission under section 235(a)(4) of the Immigra-
18 tion and Nationality Act (8 U.S.C. 1225(a)(4)) and
19 immediately departs from the United States pursu-
20 ant to such section; or

21 (2) is paroled into the United States by the
22 Secretary for urgent humanitarian reasons or sig-
23 nificant public benefit in accordance with section
24 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

1 (b) REQUIREMENTS DURING INTERIM PERIOD.—Be-
2 ginning 60 days after the date of the enactment of this
3 Act and before October 1, 2007, an alien described in sub-
4 section (a) may be released with a notice to appear only
5 if—

6 (1) the Secretary determines, after conducting
7 all appropriate background and security checks on
8 the alien, that the alien does not pose a national se-
9 curity risk; and

10 (2) the alien provides a bond of not less than
11 \$5,000.

12 (c) RULES OF CONSTRUCTION.—

13 (1) ASYLUM AND REMOVAL.—Nothing in this
14 section shall be construed as limiting the right of an
15 alien to apply for asylum or for relief or deferral of
16 removal based on a fear of persecution.

17 (2) TREATMENT OF CERTAIN ALIENS.—The
18 mandatory detention requirement in subsection (a)
19 does not apply to any alien who is a native or citizen
20 of a country in the Western Hemisphere with whose
21 government the United States does not have full dip-
22 lomatic relations.

23 (3) DISCRETION.—Nothing in this section shall
24 be construed as limiting the authority of the Sec-
25 retary, in the Secretary's sole unreviewable discre-

1 tion, to determine whether an alien described in
2 clause (ii) of section 235(b)(1)(B) of the Immigra-
3 tion and Nationality Act shall be detained or re-
4 leased after a finding of a credible fear of persecu-
5 tion (as defined in clause (v) of such section).

6 **SEC. 132. EVASION OF INSPECTION OR VIOLATION OF AR-**
7 **RIVAL, REPORTING, ENTRY, OR CLEARANCE**
8 **REQUIREMENTS.**

9 (a) IN GENERAL.—Chapter 27 of title 18, United
10 States Code, is amended by adding at the end the fol-
11 lowing:

12 **“§ 554. Evasion of inspection or during violation of**
13 **arrival, reporting, entry, or clearance re-**
14 **quirements**

15 “(a) PROHIBITION.—A person shall be punished as
16 described in subsection (b) if such person attempts to
17 elude or eludes customs, immigration, or agriculture in-
18 spection or fails to stop at the command of an officer or
19 employee of the United States charged with enforcing the
20 immigration, customs, or other laws of the United States
21 at a port of entry or customs or immigration checkpoint.

22 “(b) PENALTIES.—A person who commits an offense
23 described in subsection (a) shall be—

24 “(1) fined under this title;

1 “(2)(A) imprisoned for not more than 3 years,
2 or both;

3 “(B) imprisoned for not more than 10 years, or
4 both, if in commission of this violation, attempts to
5 inflict or inflicts bodily injury (as defined in section
6 1365(g) of this title); or

7 “(C) imprisoned for any term of years or for
8 life, or both, if death results, and may be sentenced
9 to death; or

10 “(3) both fined and imprisoned under this sub-
11 section.

12 “(c) CONSPIRACY.—If 2 or more persons conspire to
13 commit an offense described in subsection (a), and 1 or
14 more of such persons do any act to effect the object of
15 the conspiracy, each shall be punishable as a principal, ex-
16 cept that the sentence of death may not be imposed.

17 “(d) PRIMA FACIE EVIDENCE.—For the purposes of
18 seizure and forfeiture under applicable law, in the case of
19 use of a vehicle or other conveyance in the commission
20 of this offense, or in the case of disregarding or disobeying
21 the lawful authority or command of any officer or em-
22 ployee of the United States under section 111(b) of this
23 title, such conduct shall constitute prima facie evidence of
24 smuggling aliens or merchandise.”.

1 (b) CONFORMING AMENDMENT.—The table of sec-
 2 tions for chapter 27 of title 18, United States Code, is
 3 amended by inserting at the end:

“554. Evasion of inspection or during violation of arrival, reporting, entry, or
 clearance requirements.”.

4 (c) FAILURE TO OBEY BORDER ENFORCEMENT OF-
 5 FICERS.—Section 111 of title 18, United States Code, is
 6 amended by inserting after subsection (b) the following:

7 “(c) FAILURE TO OBEY LAWFUL ORDERS OF BOR-
 8 DER ENFORCEMENT OFFICERS.—Whoever willfully dis-
 9 regards or disobeys the lawful authority or command of
 10 any officer or employee of the United States charged with
 11 enforcing the immigration, customs, or other laws of the
 12 United States while engaged in, or on account of, the per-
 13 formance of official duties shall be fined under this title
 14 or imprisoned for not more than 5 years, or both.”.

15 **Subtitle D—Border Tunnel**
 16 **Prevention Act**

17 **SEC. 141. SHORT TITLE.**

18 This subtitle may be cited as the “Border Tunnel
 19 Prevention Act”.

20 **SEC. 142. CONSTRUCTION OF BORDER TUNNEL OR PAS-**
 21 **SAGE.**

22 (a) IN GENERAL.—Chapter 27 of title 18, United
 23 States Code, as amended by section 132, is further amend-
 24 ed by adding at the end the following:

1 **“§ 555. Border tunnels and passages**

2 “(a) Any person who knowingly constructs or fi-
3 nances the construction of a tunnel or subterranean pas-
4 sage that crosses the international border between the
5 United States and another country, other than a lawfully
6 authorized tunnel or passage known to the Secretary of
7 Homeland Security and subject to inspection by the Bu-
8 reau of Immigration and Customs Enforcement, shall be
9 fined under this title and imprisoned for not more than
10 20 years.

11 “(b) Any person who knows or recklessly disregards
12 the construction or use of a tunnel or passage described
13 in subsection (a) on land that the person owns or controls
14 shall be fined under this title and imprisoned for not more
15 than 10 years.

16 “(c) Any person who uses a tunnel or passage de-
17 scribed in subsection (a) to unlawfully smuggle an alien,
18 goods (in violation of section 545), controlled substances,
19 weapons of mass destruction (including biological weap-
20 ons), or a member of a terrorist organization (as defined
21 in section 212(a)(3)(B)(vi) of the Immigration and Na-
22 tionality Act (8 U.S.C. 1182(a)(3)(B)(vi))) shall be sub-
23 ject to a maximum term of imprisonment that is twice the
24 maximum term of imprisonment that would have other-
25 wise been applicable had the unlawful activity not made
26 use of such a tunnel or passage.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for chapter 27 of title 18, United States Code, as amended
3 by section 132, is further amended by adding at the end
4 the following:

“Sec. 555. Border tunnels and passages.”.

5 (c) CRIMINAL FORFEITURE.—Section 982(a)(6) of
6 title 18, United States Code, is amended by inserting
7 “555,” before “1425,”.

8 **SEC. 143. DIRECTIVE TO THE UNITED STATES SENTENCING**
9 **COMMISSION.**

10 (a) IN GENERAL.—Pursuant to its authority under
11 section 994 of title 28, United States Code, and in accord-
12 ance with this section, the United States Sentencing Com-
13 mission shall promulgate or amend sentencing guidelines
14 to provide for increased penalties for persons convicted of
15 offenses described in section 554 of title 18, United States
16 Code, as added by section 132.

17 (b) REQUIREMENTS.—In carrying out this section,
18 the United States Sentencing Commission shall—

19 (1) ensure that the sentencing guidelines, policy
20 statements, and official commentary reflect the seri-
21 ous nature of the offenses described in section 554
22 of title 18, United States Code, and the need for ag-
23 gressive and appropriate law enforcement action to
24 prevent such offenses;

1 (2) provide adequate base offense levels for of-
2 offenses under such section;

3 (3) account for any aggravating or mitigating
4 circumstances that might justify exceptions, includ-
5 ing—

6 (A) the use of a tunnel or passage de-
7 scribed in subsection (a) of such section to fa-
8 cilitate other felonies; and

9 (B) the circumstances for which the sen-
10 tencing guidelines currently provide applicable
11 sentencing enhancements;

12 (4) ensure reasonable consistency with other
13 relevant directives, other sentencing guidelines, and
14 statutes;

15 (5) make any necessary and conforming
16 changes to the sentencing guidelines and policy
17 statements; and

18 (6) ensure that the sentencing guidelines ade-
19 quately meet the purposes of sentencing set forth in
20 section 3553(a)(2) of title 18, United States Code.

21 **Subtitle E—Border Law**
22 **Enforcement Relief Act**

23 **SEC. 151. SHORT TITLE.**

24 This subtitle may be cited as the “Border Law En-
25 forcement Relief Act of 2006”.

1 **SEC. 152. FINDINGS.**

2 Congress finds the following:

3 (1) It is the obligation of the Federal Govern-
4 ment of the United States to adequately secure the
5 Nation's borders and prevent the flow of undocu-
6 mented persons and illegal drugs into the United
7 States.

8 (2) Despite the fact that the United States
9 Border Patrol apprehends over 1,000,000 people
10 each year trying to illegally enter the United States,
11 according to the Congressional Research Service, the
12 net growth in the number of unauthorized aliens has
13 increased by approximately 500,000 each year. The
14 Southwest border accounts for approximately 94
15 percent of all migrant apprehensions each year. Cur-
16 rently, there are an estimated 11,000,000 unauthor-
17 ized aliens in the United States.

18 (3) The border region is also a major corridor
19 for the shipment of drugs. According to the El Paso
20 Intelligence Center, 65 percent of the narcotics that
21 are sold in the markets of the United States enter
22 the country through the Southwest Border.

23 (4) Border communities continue to incur sig-
24 nificant costs due to the lack of adequate border se-
25 curity. A 2001 study by the United States-Mexico
26 Border Counties Coalition found that law enforce-

1 ment and criminal justice expenses associated with
2 illegal immigration exceed \$89,000,000 annually for
3 the Southwest border counties.

4 (5) In August 2005, the States of New Mexico
5 and Arizona declared states of emergency in order to
6 provide local law enforcement immediate assistance
7 in addressing criminal activity along the Southwest
8 border.

9 (6) While the Federal Government provides
10 States and localities assistance in covering costs re-
11 lated to the detention of certain criminal aliens and
12 the prosecution of Federal drug cases, local law en-
13 forcement along the border are provided no assist-
14 ance in covering such expenses and must use their
15 limited resources to combat drug trafficking, human
16 smuggling, kidnappings, the destruction of private
17 property, and other border-related crimes.

18 (7) The United States shares 5,525 miles of
19 border with Canada and 1,989 miles with Mexico.
20 Many of the local law enforcement agencies located
21 along the border are small, rural departments
22 charged with patrolling large areas of land. Counties
23 along the Southwest United States-Mexico border
24 are some of the poorest in the country and lack the
25 financial resources to cover the additional costs asso-

1 ciated with illegal immigration, drug trafficking, and
2 other border-related crimes.

3 (8) Federal assistance is required to help local
4 law enforcement operating along the border address
5 the unique challenges that arise as a result of their
6 proximity to an international border and the lack of
7 overall border security in the region

8 **SEC. 153. BORDER RELIEF GRANT PROGRAM.**

9 (a) GRANTS AUTHORIZED.—

10 (1) IN GENERAL.—The Secretary is authorized
11 to award grants, subject to the availability of appro-
12 priations, to an eligible law enforcement agency to
13 provide assistance to such agency to address—

14 (A) criminal activity that occurs in the ju-
15 risdiction of such agency by virtue of such
16 agency's proximity to the United States border;
17 and

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

20 (2) DURATION.—Grants may be awarded under
21 this subsection during fiscal years 2007 through
22 2011.

23 (3) COMPETITIVE BASIS.—The Secretary shall
24 award grants under this subsection on a competitive
25 basis, except that the Secretary shall give priority to

1 applications from any eligible law enforcement agen-
2 cy serving a community—

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

4 and

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

7 (i) Canada; or

8 (ii) Mexico.

9 (b) USE OF FUNDS.—Grants awarded pursuant to
10 subsection (a) may only be used to provide additional re-
11 sources for an eligible law enforcement agency to address
12 criminal activity occurring along any such border, includ-
13 ing—

14 (1) to obtain equipment;

15 (2) to hire additional personnel;

16 (3) to upgrade and maintain law enforcement
17 technology;

18 (4) to cover operational costs, including over-
19 time and transportation costs; and

20 (5) such other resources as are available to as-
21 sist that agency.

22 (c) APPLICATION.—

23 (1) IN GENERAL.—Each eligible law enforce-
24 ment agency seeking a grant under this section shall
25 submit an application to the Secretary at such time,

1 in such manner, and accompanied by such informa-
2 tion as the Secretary may reasonably require.

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

5 (A) describe the activities for which assist-
6 ance under this section is sought; and

7 (B) provide such additional assurances as
8 the Secretary determines to be essential to en-
9 sure compliance with the requirements of this
10 section.

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

12 (1) ELIGIBLE LAW ENFORCEMENT AGENCY.—
13 The term “eligible law enforcement agency” means
14 a tribal, State, or local law enforcement agency—

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

17 (i) Canada; or

18 (ii) Mexico; or

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

23 (2) HIGH IMPACT AREA.—The term “High Im-
24 pact Area” means any county designated by the Sec-
25 retary as such, taking into consideration—

1 (A) whether local law enforcement agencies
2 in that county have the resources to protect the
3 lives, property, safety, or welfare of the resi-
4 dents of that county;

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

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

12 (e) AUTHORIZATION OF APPROPRIATIONS.—

13 (1) IN GENERAL.—There are authorized to be
14 appropriated \$50,000,000 for each of fiscal years
15 2007 through 2011 to carry out the provisions of
16 this section.

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

19 (A) $\frac{2}{3}$ shall be set aside for eligible law en-
20 forcement agencies located in the 6 States with
21 the largest number of undocumented alien ap-
22 prehensions; and

23 (B) $\frac{1}{3}$ shall be set aside for areas des-
24 ignated as a High Impact Area under sub-
25 section (d).

1 (f) SUPPLEMENT NOT SUPPLANT.—Amounts appro-
 2 priated for grants under this section shall be used to sup-
 3 plement and not supplant other State and local public
 4 funds obligated for the purposes provided under this title.

5 **SEC. 154. ENFORCEMENT OF FEDERAL IMMIGRATION LAW.**

6 Nothing in this subtitle shall be construed to author-
 7 ize State or local law enforcement agencies or their officers
 8 to exercise Federal immigration law enforcement author-
 9 ity.

10 **TITLE II—INTERIOR**
 11 **ENFORCEMENT**

12 **SEC. 201. REMOVAL AND DENIAL OF BENEFITS TO TER-**
 13 **RORIST ALIENS.**

14 (a) ASYLUM.—Section 208(b)(2)(A)(v) (8 U.S.C.
 15 1158(b)(2)(A)(v)) is amended by striking “or (VI)” and
 16 inserting “(V), (VI), (VII), or (VIII)”.

17 (b) CANCELLATION OF REMOVAL.—Section
 18 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

19 (1) by striking “inadmissible under” and insert-
 20 ing “described in”; and

21 (2) by striking “deportable under” and insert-
 22 ing “described in”.

23 (c) VOLUNTARY DEPARTURE.—Section
 24 240B(b)(1)(C) (8 U.S.C. 1229c(b)(1)(C)) is amended by
 25 striking “deportable under section 237(a)(2)(A)(iii) or

1 section 237(a)(4)” and inserting “described in paragraph
2 (2)(A)(iii) or (4) of section 237(a)”.

3 (d) RESTRICTION ON REMOVAL.—Section
4 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

5 (1) in clause (iii), by striking “or” at the end;

6 (2) in clause (iv) by striking the period at the
7 end and inserting “; or”;

8 (3) by inserting after clause (iv) the following:

9 “(v) the alien is described in section
10 237(a)(4)(B) (other than an alien de-
11 scribed in section 212(a)(3)(B)(i)(IV) if
12 the Secretary of Homeland Security deter-
13 mines that there are not reasonable
14 grounds for regarding the alien as a dan-
15 ger to the security of the United States).”;

16 and

17 (4) in the undesignated paragraph, by striking
18 “For purposes of clause (iv), an alien who is de-
19 scribed in section 237(a)(4)(B) shall be considered
20 to be an alien with respect to whom there are rea-
21 sonable grounds for regarding as a danger to the se-
22 curity of the United States.”.

23 (e) RECORD OF ADMISSION.—Section 249 (8 U.S.C.
24 1259) is amended to read as follows:

1 **“SEC. 249. RECORD OF ADMISSION FOR PERMANENT RESI-**
2 **DENCE IN THE CASE OF CERTAIN ALIENS**
3 **WHO ENTERED THE UNITED STATES PRIOR**
4 **TO JANUARY 1, 1972.**

5 “A record of lawful admission for permanent resi-
6 dence may be made, in the discretion of the Secretary of
7 Homeland Security and under such regulations as the Sec-
8 retary may prescribe, for any alien, as of the date of the
9 approval of the alien’s application or, if entry occurred be-
10 fore July 1, 1924, as of the date of such entry if no such
11 record is otherwise available, if the alien establishes that
12 the alien—

13 “(1) is not described in section 212(a)(3)(E) or
14 in section 212(a) (insofar as it relates to criminals,
15 procurers, other immoral persons, subversives, viola-
16 tors of the narcotics laws, or smugglers of aliens);

17 “(2) entered the United States before January
18 1, 1972;

19 “(3) has resided in the United States continu-
20 ously since such entry;

21 “(4) is a person of good moral character;

22 “(5) is not ineligible for citizenship; and

23 “(6) is not described in section 237(a)(4)(B).”.

24 (f) **EFFECTIVE DATE AND APPLICATION.**—The
25 amendments made by this section shall—

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

3 (2) apply to any act or condition constituting a
4 ground for inadmissibility, excludability, or removal
5 occurring or existing on or after the date of the en-
6 actment of this Act.

7 **SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED**

8 **REMOVED.**

9 (a) IN GENERAL.—

10 (1) AMENDMENTS.—Section 241(a) (8 U.S.C.
11 1231(a)) is amended—

12 (A) by striking “Attorney General” the
13 first place it appears and inserting “Secretary
14 of Homeland Security”;

15 (B) by striking “Attorney General” any
16 other place it appears and inserting “Sec-
17 retary”;

18 (C) in paragraph (1)—

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

21 “(ii) If a court, the Board of Immi-
22 gration Appeals, or an immigration judge
23 orders a stay of the removal of the alien,
24 the expiration date of the stay of re-
25 moval.”;

1 (ii) by amending subparagraph (C) to
2 read as follows:

3 “(C) EXTENSION OF PERIOD.—The re-
4 moval period shall be extended beyond a period
5 of 90 days and the alien may remain in deten-
6 tion during such extended period if the alien
7 fails or refuses to—

8 “(i) make all reasonable efforts to
9 comply with the removal order; or

10 “(ii) fully cooperate with the Sec-
11 retary’s efforts to establish the alien’s
12 identity and carry out the removal order,
13 including failing to make timely application
14 in good faith for travel or other documents
15 necessary to the alien’s departure, or con-
16 spiring or acting to prevent the alien’s re-
17 moval.”; and

18 (iii) by adding at the end the fol-
19 lowing:

20 “(D) TOLLING OF PERIOD.—If, at the
21 time described in subparagraph (B), the alien is
22 not in the custody of the Secretary under the
23 authority of this Act, the removal period shall
24 not begin until the alien is taken into such cus-
25 tody. If the Secretary lawfully transfers custody

1 of the alien during the removal period to an-
2 other Federal agency or to a State or local gov-
3 ernment agency in connection with the official
4 duties of such agency, the removal period shall
5 be tolled, and shall recommence on the date on
6 which the alien is returned to the custody of the
7 Secretary.”;

8 (D) in paragraph (2), by adding at the end
9 the following: “If a court, the Board of Immi-
10 gration Appeals, or an immigration judge or-
11 ders a stay of removal of an alien who is sub-
12 ject to an administrative final order of removal,
13 the Secretary, in the exercise of discretion, may
14 detain the alien during the pendency of such
15 stay of removal.”;

16 (E) in paragraph (3), by amending sub-
17 paragraph (D) to read as follows:

18 “(D) to obey reasonable restrictions on the
19 alien’s conduct or activities, or to perform af-
20 firmative acts, that the Secretary prescribes for
21 the alien—

22 “(i) to prevent the alien from ab-
23 scending;

24 “(ii) for the protection of the commu-
25 nity; or

1 “(iii) for other purposes related to the
2 enforcement of the immigration laws.”;

3 (F) in paragraph (6), by striking “removal
4 period and, if released,” and inserting “removal
5 period, in the discretion of the Secretary, with-
6 out any limitations other than those specified in
7 this section, until the alien is removed. If an
8 alien is released, the alien”;

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

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

13 “(7) PAROLE.—If an alien detained pursuant to
14 paragraph (6) is an applicant for admission, the
15 Secretary of Homeland Security, in the Secretary’s
16 discretion, may parole the alien under section
17 212(d)(5) and may provide, notwithstanding section
18 212(d)(5), that the alien shall not be returned to
19 custody unless either the alien violates the conditions
20 of the alien’s parole or the alien’s removal becomes
21 reasonably foreseeable, provided that in no cir-
22 cumstance shall such alien be considered admitted.

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

1 “(A) DETENTION REVIEW PROCESS FOR
2 ALIENS WHO HAVE EFFECTED AN ENTRY AND
3 FULLY COOPERATE WITH REMOVAL.—The Sec-
4 retary of Homeland Security shall establish an
5 administrative review process to determine
6 whether an alien described in subparagraph (B)
7 should be detained or released after the removal
8 period in accordance with this paragraph.

9 “(B) ALIEN DESCRIBED.—An alien is de-
10 scribed in this subparagraph if the alien—

11 “(i) has effected an entry into the
12 United States;

13 “(ii) has made all reasonable efforts
14 to comply with the alien’s removal order;

15 “(iii) has cooperated fully with the
16 Secretary’s efforts to establish the alien’s
17 identity and to carry out the removal
18 order, including making timely application
19 in good faith for travel or other documents
20 necessary for the alien’s departure; and

21 “(iv) has not conspired or acted to
22 prevent removal.

23 “(C) EVIDENCE.—In making a determina-
24 tion under subparagraph (A), the Secretary—

1 “(i) shall consider any evidence sub-
2 mitted by the alien;

3 “(ii) may consider any other evidence,
4 including—

5 “(I) any information or assist-
6 ance provided by the Department of
7 State or other Federal agency; and

8 “(II) any other information avail-
9 able to the Secretary pertaining to the
10 ability to remove the alien.

11 “(D) AUTHORITY TO DETAIN FOR 90 DAYS
12 BEYOND REMOVAL PERIOD.—The Secretary, in
13 the exercise of the Secretary’s discretion and
14 without any limitations other than those speci-
15 fied in this section, may detain an alien for 90
16 days beyond the removal period (including any
17 extension of the removal period under para-
18 graph (1)(C)).

19 “(E) AUTHORITY TO DETAIN FOR ADDI-
20 TIONAL PERIOD.—The Secretary, in the exer-
21 cise of the Secretary’s discretion and without
22 any limitations other than those specified in
23 this section, may detain an alien beyond the 90-
24 day period authorized under subparagraph (D)
25 until the alien is removed, if the Secretary—

1 “(i) determines that there is a signifi-
2 cant likelihood that the alien will be re-
3 moved in the reasonably foreseeable future;
4 or

5 “(ii) certifies in writing—

6 “(I) in consultation with the Sec-
7 retary of Health and Human Services,
8 that the alien has a highly contagious
9 disease that poses a threat to public
10 safety;

11 “(II) after receipt of a written
12 recommendation from the Secretary of
13 State, that the release of the alien
14 would likely have serious adverse for-
15 eign policy consequences for the
16 United States;

17 “(III) based on information avail-
18 able to the Secretary (including classi-
19 fied, sensitive, or national security in-
20 formation, and regardless of the
21 grounds upon which the alien was or-
22 dered removed), that there is reason
23 to believe that the release of the alien
24 would threaten the national security
25 of the United States;

1 “(IV) that—

2 “(aa) the release of the alien
3 would threaten the safety of the
4 community or any person, and
5 conditions of release cannot rea-
6 sonably be expected to ensure the
7 safety of the community or any
8 person; and

9 “(bb) the alien—

10 “(AA) has been con-
11 victed of 1 or more aggra-
12 vated felonies (as defined in
13 section 101(a)(43)(A)), or of
14 1 or more attempts or con-
15 spiracies to commit any such
16 aggravated felonies for an
17 aggregate term of imprison-
18 ment of at least 5 years; or

19 “(BB) has committed a
20 crime of violence (as defined
21 in section 16 of title 18,
22 United States Code, but not
23 including a purely political
24 offense) and, because of a
25 mental condition or person-

1 ality disorder and behavior
2 associated with that condi-
3 tion or disorder, is likely to
4 engage in acts of violence in
5 the future; or

6 “(V) that—

7 “(aa) the release of the alien
8 would threaten the safety of the
9 community or any person, not-
10 withstanding conditions of release
11 designed to ensure the safety of
12 the community or any person;
13 and

14 “(bb) the alien has been
15 convicted of 1 or more aggra-
16 vated felonies (as defined in sec-
17 tion 101(a)(43)) for which the
18 alien was sentenced to an aggre-
19 gate term of imprisonment of not
20 less than 1 year.

21 “(F) ADMINISTRATIVE REVIEW PROC-
22 ESS.—The Secretary, without any limitations
23 other than those specified in this section, may
24 detain an alien pending a determination under
25 subparagraph (E)(ii), if the Secretary has initi-

1 ated the administrative review process identified
2 in subparagraph (A) not later than 30 days
3 after the expiration of the removal period (in-
4 cluding any extension of the removal period
5 under paragraph (1)(C)).

6 “(G) RENEWAL AND DELEGATION OF CER-
7 TIFICATION.—

8 “(i) RENEWAL.—The Secretary may
9 renew a certification under subparagraph
10 (E)(ii) every 6 months, without limitation,
11 after providing the alien with an oppor-
12 tunity to request reconsideration of the
13 certification and to submit documents or
14 other evidence in support of that request.
15 If the Secretary does not renew such cer-
16 tification, the Secretary shall release the
17 alien, pursuant to subparagraph (H).

18 “(ii) DELEGATION.—Notwithstanding
19 any other provision of law, the Secretary
20 may not delegate the authority to make or
21 renew a certification described in subclause
22 (II), (III), or (V) of subparagraph (E)(ii)
23 to any employee reporting to the Assistant
24 Secretary for Immigration and Customs
25 Enforcement.

1 “(iii) HEARING.—The Secretary may
2 request that the Attorney General, or a
3 designee of the Attorney General, provide
4 for a hearing to make the determination
5 described in subparagraph
6 (E)(ii)(IV)(bb)(BB).

7 “(H) RELEASE ON CONDITIONS.—If it is
8 determined that an alien should be released
9 from detention, the Secretary may, in the Sec-
10 retary’s discretion, impose conditions on release
11 in accordance with the regulations prescribed
12 pursuant to paragraph (3).

13 “(I) REDETENTION.—The Secretary, with-
14 out any limitations other than those specified in
15 this section, may detain any alien subject to a
16 final removal order who has previously been re-
17 leased from custody if—

18 “(i) the alien fails to comply with the
19 conditions of release;

20 “(ii) the alien fails to continue to sat-
21 isfy the conditions described in subpara-
22 graph (B); or

23 “(iii) upon reconsideration, the Sec-
24 retary determines that the alien can be de-
25 tained under subparagraph (E).

1 “(J) APPLICABILITY.—This paragraph and
2 paragraphs (6) and (7) shall apply to any alien
3 returned to custody under subparagraph (I) as
4 if the removal period terminated on the day of
5 the redetention.

6 “(K) DETENTION REVIEW PROCESS FOR
7 ALIENS WHO HAVE EFFECTED AN ENTRY AND
8 FAIL TO COOPERATE WITH REMOVAL.—The
9 Secretary shall detain an alien until the alien
10 makes all reasonable efforts to comply with a
11 removal order and to cooperate fully with the
12 Secretary’s efforts, if the alien—

13 “(i) has effected an entry into the
14 United States; and

15 “(ii)(I) and the alien faces a signifi-
16 cant likelihood that the alien will be re-
17 moved in the reasonably foreseeable future,
18 or would have been removed if the alien
19 had not—

20 “(aa) failed or refused to make
21 all reasonable efforts to comply with a
22 removal order;

23 “(bb) failed or refused to fully
24 cooperate with the Secretary’s efforts
25 to establish the alien’s identity and

1 carry out the removal order, including
2 the failure to make timely application
3 in good faith for travel or other docu-
4 ments necessary to the alien's depar-
5 ture; or

6 “(cc) conspired or acted to pre-
7 vent removal; or

8 “(II) the Secretary makes a certifi-
9 cation as specified in subparagraph (E), or
10 the renewal of a certification specified in
11 subparagraph (G).

12 “(L) DETENTION REVIEW PROCESS FOR
13 ALIENS WHO HAVE NOT EFFECTED AN
14 ENTRY.—Except as otherwise provided in this
15 subparagraph, the Secretary shall follow the
16 guidelines established in section 241.4 of title 8,
17 Code of Federal Regulations, when detaining
18 aliens who have not effected an entry. The Sec-
19 retary may decide to apply the review process
20 outlined in this paragraph.

21 “(9) JUDICIAL REVIEW.—Without regard to the
22 place of confinement, judicial review of any action or
23 decision made pursuant to paragraph (6), (7), or (8)
24 shall be available exclusively in a habeas corpus pro-
25 ceeding instituted in the United States District

1 Court for the District of Columbia and only if the
2 alien has exhausted all administrative remedies
3 (statutory and nonstatutory) available to the alien as
4 of right.”.

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

7 (A) shall take effect on the date of the en-
8 actment of this Act; and

9 (B) shall apply to—

10 (i) any alien subject to a final admin-
11 istrative removal, deportation, or exclusion
12 order that was issued before, on, or after
13 the date of the enactment of this Act; and

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

17 (b) CRIMINAL DETENTION OF ALIENS.—Section
18 3142 of title 18, United States Code, is amended—

19 (1) in subsection (e)—

20 (A) by redesignating paragraphs (1), (2),
21 and (3) as subparagraphs (A), (B), and (C), re-
22 spectively;

23 (B) by inserting “(1)” before “If, after a
24 hearing”;

1 (C) in subparagraphs (B) and (C), as re-
2 designated, by striking “paragraph (1)” and in-
3 serting “subparagraph (A)”; and

4 (D) by adding after subparagraph (C), as
5 redesignated, the following:

6 “(2) Subject to rebuttal by the person, it shall be pre-
7 sumed that no condition or combination of conditions will
8 reasonably assure the appearance of the person as re-
9 quired if the judicial officer finds that there is probable
10 cause to believe that the person—

11 “(A) is an alien; and

12 “(B)(i) has no lawful immigration status in the
13 United States;

14 “(ii) is the subject of a final order of removal;
15 or

16 “(iii) has committed a felony offense under sec-
17 tion 911, 922(g)(5), 1015, 1028, 1425, or 1426 of
18 this title, chapter 75 or 77 of this title, or section
19 243, 274, 275, 276, 277, or 278 of the Immigration
20 and Nationality Act (8 U.S.C. 1253, 1324, 1325,
21 1326, 2327, and 1328).”; and

22 (2) in subsection (g)(3)—

23 (A) in subparagraph (A), by striking
24 “and” at the end; and

25 (B) by adding at the end the following:

1 “(C) the person’s immigration status;
2 and”.

3 **SEC. 203. AGGRAVATED FELONY.**

4 (a) DEFINITION OF AGGRAVATED FELONY.—Section
5 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

6 (1) by striking “The term ‘aggravated felony’
7 means—” and inserting “Notwithstanding any other
8 provision of law (except for the provision providing
9 an effective date for section 203 of the Comprehen-
10 sive Reform Act of 2006), the term ‘aggravated fel-
11 ony’ applies to an offense described in this para-
12 graph, whether in violation of Federal or State law
13 and to such an offense in violation of the law of a
14 foreign country, for which the term of imprisonment
15 was completed within the previous 15 years, even if
16 the length of the term of imprisonment is based on
17 recidivist or other enhancements and regardless of
18 whether the conviction was entered before, on, or
19 after September 30, 1996, and means—”;

20 (2) in subparagraph (A), by striking “murder,
21 rape, or sexual abuse of a minor;” and inserting
22 “murder, rape, or sexual abuse of a minor, whether
23 or not the minority of the victim is established by
24 evidence contained in the record of conviction or by
25 evidence extrinsic to the record of conviction;”;

1 (3) in subparagraph (N), by striking “para-
2 graph (1)(A) or (2) of”;

3 (4) in subparagraph (O), by striking “section
4 275(a) or 276 committed by an alien who was pre-
5 viously deported on the basis of a conviction for an
6 offense described in another subparagraph of this
7 paragraph” and inserting “section 275 or 276 for
8 which the term of imprisonment is at least 1 year”;

9 (5) in subparagraph (U), by striking “an at-
10 tempt or conspiracy to commit an offense described
11 in this paragraph” and inserting “aiding or abetting
12 an offense described in this paragraph, or soliciting,
13 counseling, procuring, commanding, or inducing an-
14 other, attempting, or conspiring to commit such an
15 offense”; and

16 (6) by striking the undesignated matter fol-
17 lowing subparagraph (U).

18 (b) EFFECTIVE DATE AND APPLICATION.—

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

21 (A) take effect on the date of the enact-
22 ment of this Act; and

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

1 (2) APPLICATION OF IIRAIRA AMENDMENTS.—

2 The amendments to section 101(a)(43) of the Immi-
3 gration and Nationality Act made by section 321 of
4 the Illegal Immigration Reform and Immigrant Re-
5 sponsibility Act of 1996 (division C of Public Law
6 104–208; 110 Stat. 3009–627) shall continue to
7 apply, whether the conviction was entered before, on,
8 or after September 30, 1996.

9 **SEC. 204. TERRORIST BARS.**

10 (a) DEFINITION OF GOOD MORAL CHARACTER.—

11 Section 101(f) (8 U.S.C. 1101(f)) is amended—

12 (1) by inserting after paragraph (1) the fol-
13 lowing:

14 “(2) an alien described in section 212(a)(3) or
15 237(a)(4), as determined by the Secretary of Home-
16 land Security or Attorney General based upon any
17 relevant information or evidence, including classified,
18 sensitive, or national security information;”;

19 (2) in paragraph (8), by striking “(as defined
20 in subsection (a)(43))” and inserting the following:
21 “, regardless of whether the crime was defined as an
22 aggravated felony under subsection (a)(43) at the
23 time of the conviction, unless—

1 “(A) the person completed the term of im-
2 prisonment and sentence not later than 10
3 years before the date of application; and

4 “(B) the Secretary of Homeland Security
5 or the Attorney General waives the application
6 of this paragraph; or”); and

7 (3) in the undesignated matter following para-
8 graph (9), by striking “a finding that for other rea-
9 sons such person is or was not of good moral char-
10 acter” and inserting the following: “a discretionary
11 finding for other reasons that such a person is or
12 was not of good moral character. In determining an
13 applicant’s moral character, the Secretary of Home-
14 land Security and the Attorney General may take
15 into consideration the applicant’s conduct and acts
16 at any time and are not limited to the period during
17 which good moral character is required.”.

18 (b) PENDING PROCEEDINGS.—Section 204(b) (8
19 U.S.C. 1154(b)) is amended by adding at the end the fol-
20 lowing: “A petition may not be approved under this section
21 if there is any administrative or judicial proceeding
22 (whether civil or criminal) pending against the petitioner
23 that could directly or indirectly result in the petitioner’s
24 denaturalization or the loss of the petitioner’s lawful per-
25 manent resident status.”.

1 (c) CONDITIONAL PERMANENT RESIDENT STATUS.—

2 (1) IN GENERAL.—Section 216(e) (8 U.S.C.
3 1186a(e)) is amended by inserting “if the alien has
4 had the conditional basis removed pursuant to this
5 section” before the period at the end.

6 (2) CERTAIN ALIEN ENTREPRENEURS.—Section
7 216A(e) (8 U.S.C. 1186b(e)) is amended by insert-
8 ing “if the alien has had the conditional basis re-
9 moved pursuant to this section” before the period at
10 the end.

11 (d) JUDICIAL REVIEW OF NATURALIZATION APPLI-
12 CATIONS.—Section 310(e) (8 U.S.C. 1421(e)) is amend-
13 ed—

14 (1) by inserting “, not later than 120 days after
15 the Secretary of Homeland Security’s final deter-
16 mination,” after “may”; and

17 (2) by adding at the end the following: “Except
18 that in any proceeding, other than a proceeding
19 under section 340, the court shall review for sub-
20 stantial evidence the administrative record and find-
21 ings of the Secretary of Homeland Security regard-
22 ing whether an alien is a person of good moral char-
23 acter, understands and is attached to the principles
24 of the Constitution of the United States, or is well
25 disposed to the good order and happiness of the

1 United States. The petitioner shall have the burden
2 of showing that the Secretary’s denial of the applica-
3 tion was contrary to law.”.

4 (e) PERSONS ENDANGERING NATIONAL SECURITY.—
5 Section 316 (8 U.S.C. 1427) is amended by adding at the
6 end the following:

7 “(g) PERSONS ENDANGERING THE NATIONAL SECUR-
8 RITY.—A person may not be naturalized if the Secretary
9 of Homeland Security determines, based upon any rel-
10 evant information or evidence, including classified, sen-
11 sitive, or national security information, that the person
12 was once an alien described in section 212(a)(3) or
13 237(a)(4).”.

14 (f) CONCURRENT NATURALIZATION AND REMOVAL
15 PROCEEDINGS.—Section 318 (8 U.S.C. 1429) is amended
16 by striking “the Attorney General if” and all that follows
17 and inserting: “the Secretary of Homeland Security or any
18 court if there is pending against the applicant any removal
19 proceeding or other proceeding to determine the appli-
20 cant’s inadmissibility or deportability, or to determine
21 whether the applicant’s lawful permanent resident status
22 should be rescinded, regardless of when such proceeding
23 was commenced. The findings of the Attorney General in
24 terminating removal proceedings or canceling the removal
25 of an alien under this Act shall not be deemed binding

1 in any way upon the Secretary of Homeland Security with
2 respect to the question of whether such person has estab-
3 lished eligibility for naturalization in accordance with this
4 title.”.

5 (g) DISTRICT COURT JURISDICTION.—Section
6 336(b) (8 U.S.C. 1447(b)) is amended to read as follows:

7 “(b) REQUEST FOR HEARING BEFORE DISTRICT
8 COURT.—If there is a failure to render a final administra-
9 tive decision under section 335 before the end of the 180-
10 day period beginning on the date on which the Secretary
11 of Homeland Security completes all examinations and
12 interviews required under such section, the applicant may
13 apply to the district court for the district in which the
14 applicant resides for a hearing on the matter. The Sec-
15 retary shall notify the applicant when such examinations
16 and interviews have been completed. Such district court
17 shall only have jurisdiction to review the basis for delay
18 and remand the matter, with appropriate instructions, to
19 the Secretary for the Secretary’s determination on the ap-
20 plication.”.

21 (h) EFFECTIVE DATE.—The amendments made by
22 this section—

23 (1) shall take effect on the date of the enact-
24 ment of this Act; and

1 (2) shall apply to any act that occurred on or
2 after such date of enactment.

3 **SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO**
4 **GANG VIOLENCE, REMOVAL, AND ALIEN**
5 **SMUGGLING.**

6 (a) CRIMINAL STREET GANGS.—

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

9 (A) by redesignating subparagraph (F) as
10 subparagraph (J); and

11 (B) by inserting after subparagraph (E)
12 the following:

13 “(F) MEMBERS OF CRIMINAL STREET
14 GANGS.—Unless the Secretary of Homeland Se-
15 curity or the Attorney General waives the appli-
16 cation of this subparagraph, any alien who a
17 consular officer, the Attorney General, or the
18 Secretary of Homeland Security knows or has
19 reason to believe—

20 “(i) is, or has been, a member of a
21 criminal street gang (as defined in section
22 521(a) of title 18, United States Code); or

23 “(ii) has participated in the activities
24 of a criminal street gang, knowing or hav-
25 ing reason to know that such activities pro-

1 moted, furthered, aided, or supported the
2 illegal activity of the criminal gang,
3 is inadmissible.”.

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

7 “(F) MEMBERS OF CRIMINAL STREET
8 GANGS.—Unless the Secretary of Homeland Se-
9 curity or the Attorney General waives the appli-
10 cation of this subparagraph, any alien who the
11 Secretary of Homeland Security or the Attorney
12 General knows or has reason to believe—

13 “(i) is, or at any time after admission
14 has been, a member of a criminal street
15 gang (as defined in section 521(a) of title
16 18, United States Code); or

17 “(ii) has participated in the activities
18 of a criminal street gang, knowing or hav-
19 ing reason to know that such activities pro-
20 moted, furthered, aided, or supported the
21 illegal activity of the criminal gang,

22 is deportable.”.

23 (3) TEMPORARY PROTECTED STATUS.—Section
24 244 (8 U.S.C. 1254a) is amended—

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

4 (B) in subsection (b)(3)—

5 (i) in subparagraph (B), by striking
6 the last sentence and inserting the fol-
7 lowing: “Notwithstanding any other provi-
8 sion of this section, the Secretary of
9 Homeland Security may, for any reason
10 (including national security), terminate or
11 modify any designation under this section.
12 Such termination or modification is effec-
13 tive upon publication in the Federal Reg-
14 ister, or after such time as the Secretary
15 may designate in the Federal Register.”;

16 (ii) in subparagraph (C), by striking
17 “a period of 12 or 18 months” and insert-
18 ing “any other period not to exceed 18
19 months”;

20 (C) in subsection (c)—

21 (i) in paragraph (1)(B), by striking
22 “The amount of any such fee shall not ex-
23 ceed \$50.”;

24 (ii) in paragraph (2)(B)—

1 (I) in clause (i), by striking “,
2 or” at the end;

3 (II) in clause (ii), by striking the
4 period at the end and inserting “; or”;
5 and

6 (III) by adding at the end the
7 following:

8 “(iii) the alien is, or at any time after
9 admission has been, a member of a crimi-
10 nal street gang (as defined in section
11 521(a) of title 18, United States Code).”;
12 and

13 (D) in subsection (d)—

14 (i) by striking paragraph (3); and

15 (ii) in paragraph (4), by adding at the
16 end the following: “The Secretary of
17 Homeland Security may detain an alien
18 provided temporary protected status under
19 this section whenever appropriate under
20 any other provision of law.”.

21 (b) PENALTIES RELATED TO REMOVAL.—Section
22 243 (8 U.S.C. 1253) is amended—

23 (1) in subsection (a)(1)—

1 (A) in the matter preceding subparagraph
2 (A), by inserting “212(a) or” after “section”;
3 and

4 (B) in the matter following subparagraph
5 (D)—

6 (i) by striking “or imprisoned not
7 more than four years” and inserting “and
8 imprisoned for not less than 6 months or
9 more than 5 years”; and

10 (ii) by striking “, or both”;

11 (2) in subsection (b), by striking “not more
12 than \$1000 or imprisoned for not more than one
13 year, or both” and inserting “under title 18, United
14 States Code, and imprisoned for not less than 6
15 months or more than 5 years (or for not more than
16 10 years if the alien is a member of any of the class-
17 es described in paragraphs (1)(E), (2), (3), and (4)
18 of section 237(a)).”; and

19 (3) by amending subsection (d) to read as fol-
20 lows:

21 “(d) DENYING VISAS TO NATIONALS OF COUNTRY
22 DENYING OR DELAYING ACCEPTING ALIEN.—The Sec-
23 retary of Homeland Security, after making a determina-
24 tion that the government of a foreign country has denied
25 or unreasonably delayed accepting an alien who is a cit-

1 izen, subject, national, or resident of that country after
 2 the alien has been ordered removed, and after consultation
 3 with the Secretary of State, may instruct the Secretary
 4 of State to deny a visa to any citizen, subject, national,
 5 or resident of that country until the country accepts the
 6 alien that was ordered removed.”.

7 (c) ALIEN SMUGGLING AND RELATED OFFENSES.—

8 (1) IN GENERAL.—Section 274 (8 U.S.C.
 9 1324), is amended to read as follows:

10 **“SEC. 274. ALIEN SMUGGLING AND RELATED OFFENSES.**

11 **“(a) CRIMINAL OFFENSES AND PENALTIES.—**

12 **“(1) PROHIBITED ACTIVITIES.—**Except as pro-
 13 vided in paragraph (3), a person shall be punished
 14 as provided under paragraph (2), if the person—

15 **“(A)** facilitates, encourages, directs, or in-
 16 duces a person to come to or enter the United
 17 States, or to cross the border to the United
 18 States, knowing or in reckless disregard of the
 19 fact that such person is an alien who lacks law-
 20 ful authority to come to, enter, or cross the bor-
 21 der to the United States;

22 **“(B)** facilitates, encourages, directs, or in-
 23 duces a person to come to or enter the United
 24 States, or to cross the border to the United
 25 States, at a place other than a designated port

1 of entry or place other than as designated by
2 the Secretary of Homeland Security, knowing
3 or in reckless disregard of the fact that such
4 person is an alien and regardless of whether
5 such alien has official permission or lawful au-
6 thority to be in the United States;

7 “(C) transports, moves, harbors, conceals,
8 or shields from detection a person outside of
9 the United States knowing or in reckless dis-
10 regard of the fact that such person is an alien
11 in unlawful transit from 1 country to another
12 or on the high seas, under circumstances in
13 which the alien is seeking to enter the United
14 States without official permission or legal au-
15 thority;

16 “(D) encourages or induces a person to re-
17 side in the United States, knowing or in reck-
18 less disregard of the fact that such person is an
19 alien who lacks lawful authority to reside in the
20 United States;

21 “(E) transports or moves a person in the
22 United States, knowing or in reckless disregard
23 of the fact that such person is an alien who
24 lacks lawful authority to enter or be in the
25 United States, if the transportation or move-

1 ment will further the alien’s illegal entry into or
2 illegal presence in the United States;

3 “(F) harbors, conceals, or shields from de-
4 tection a person in the United States, knowing
5 or in reckless disregard of the fact that such
6 person is an alien who lacks lawful authority to
7 be in the United States; or

8 “(G) conspires or attempts to commit any
9 of the acts described in subparagraphs (A)
10 through (F).

11 “(2) CRIMINAL PENALTIES.—A person who vio-
12 lates any provision under paragraph (1)—

13 “(A) except as provided in subparagraphs
14 (C) through (G), if the offense was not com-
15 mitted for commercial advantage, profit, or pri-
16 vate financial gain, shall be fined under title 18,
17 United States Code, imprisoned for not more
18 than 5 years, or both;

19 “(B) except as provided in subparagraphs
20 (C) through (G), if the offense was committed
21 for commercial advantage, profit, or private fi-
22 nancial gain—

23 “(i) if the violation is the offender’s
24 first violation under this subparagraph,

1 shall be fined under such title, imprisoned
2 for not more than 20 years, or both; or

3 “(ii) if the violation is the offender’s
4 second or subsequent violation of this sub-
5 paragraph, shall be fined under such title,
6 imprisoned for not less than 3 years or
7 more than 20 years, or both;

8 “(C) if the offense furthered or aided the
9 commission of any other offense against the
10 United States or any State that is punishable
11 by imprisonment for more than 1 year, shall be
12 fined under such title, imprisoned for not less
13 than 5 years or more than 20 years, or both;

14 “(D) shall be fined under such title, im-
15 prisoned not less than 5 years or more than 20
16 years, or both, if the offense created a substan-
17 tial and foreseeable risk of death, a substantial
18 and foreseeable risk of serious bodily injury (as
19 defined in section 2119(2) of title 18, United
20 States Code), or inhumane conditions to an-
21 other person, including—

22 “(i) transporting the person in an en-
23 gine compartment, storage compartment,
24 or other confined space;

1 “(ii) transporting the person at an ex-
2 cessive speed or in excess of the rated ca-
3 pacity of the means of transportation; or

4 “(iii) transporting the person in, har-
5 boring the person in, or otherwise sub-
6 jecting the person to crowded or dangerous
7 conditions;

8 “(E) if the offense caused serious bodily
9 injury (as defined in section 2119(2) of title 18,
10 United States Code) to any person, shall be
11 fined under such title, imprisoned for not less
12 than 7 years or more than 30 years, or both;

13 “(F) shall be fined under such title and
14 imprisoned for not less than 10 years or more
15 than 30 years if the offense involved an alien
16 who the offender knew or had reason to believe
17 was—

18 “(i) engaged in terrorist activity (as
19 defined in section 212(a)(3)(B)); or

20 “(ii) intending to engage in terrorist
21 activity;

22 “(G) if the offense caused or resulted in
23 the death of any person, shall be punished by
24 death or imprisoned for a term of years not less

1 than 10 years and up to life, and fined under
2 title 18, United States Code.

3 “(3) LIMITATION.—It is not a violation of sub-
4 paragraph (D), (E), or (F) of paragraph (1)—

5 “(A) for a religious denomination having a
6 bona fide nonprofit, religious organization in
7 the United States, or the agents or officers of
8 such denomination or organization, to encour-
9 age, invite, call, allow, or enable an alien who
10 is present in the United States to perform the
11 vocation of a minister or missionary for the de-
12 nomination or organization in the United States
13 as a volunteer who is not compensated as an
14 employee, notwithstanding the provision of
15 room, board, travel, medical assistance, and
16 other basic living expenses, provided the min-
17 ister or missionary has been a member of the
18 denomination for at least 1 year; or

19 “(B) for an individual or organization, not
20 previously convicted of a violation of this sec-
21 tion, to provide an alien who is present in the
22 United States with humanitarian assistance, in-
23 cluding medical care, housing, counseling, vic-
24 tim services, and food, or to transport the alien

1 to a location where such assistance can be ren-
2 dered.

3 “(4) EXTRATERRITORIAL JURISDICTION.—

4 There is extraterritorial Federal jurisdiction over the
5 offenses described in this subsection.

6 “(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

7 “(1) CRIMINAL OFFENSE AND PENALTIES.—

8 Any person who, during any 12-month period, know-
9 ingly employs 10 or more individuals with actual
10 knowledge or in reckless disregard of the fact that
11 the individuals are aliens described in paragraph (2),
12 shall be fined under title 18, United States Code,
13 imprisoned for not more than 10 years, or both.

14 “(2) DEFINITION.—An alien described in this
15 paragraph is an alien who—

16 “(A) is an unauthorized alien (as defined
17 in section 274A(h)(3));

18 “(B) is present in the United States with-
19 out lawful authority; and

20 “(C) has been brought into the United
21 States in violation of this subsection.

22 “(c) SEIZURE AND FORFEITURE.—

23 “(1) IN GENERAL.—Any real or personal prop-
24 erty used to commit or facilitate the commission of
25 a violation of this section, the gross proceeds of such

1 violation, and any property traceable to such prop-
2 erty or proceeds, shall be subject to forfeiture.

3 “(2) APPLICABLE PROCEDURES.—Seizures and
4 forfeitures under this subsection shall be governed
5 by the provisions of chapter 46 of title 18, United
6 States Code, relating to civil forfeitures, except that
7 such duties as are imposed upon the Secretary of
8 the Treasury under the customs laws described in
9 section 981(d) shall be performed by such officers,
10 agents, and other persons as may be designated for
11 that purpose by the Secretary of Homeland Security.

12 “(3) PRIMA FACIE EVIDENCE IN DETERMINA-
13 TIONS OF VIOLATIONS.—In determining whether a
14 violation of subsection (a) has occurred, prima facie
15 evidence that an alien involved in the alleged viola-
16 tion lacks lawful authority to come to, enter, reside
17 in, remain in, or be in the United States or that
18 such alien had come to, entered, resided in, re-
19 mained in, or been present in the United States in
20 violation of law shall include—

21 “(A) any order, finding, or determination
22 concerning the alien’s status or lack of status
23 made by a Federal judge or administrative ad-
24 judicator (including an immigration judge or
25 immigration officer) during any judicial or ad-

1 ministrative proceeding authorized under Fed-
2 eral immigration law;

3 “(B) official records of the Department of
4 Homeland Security, the Department of Justice,
5 or the Department of State concerning the
6 alien’s status or lack of status; and

7 “(C) testimony by an immigration officer
8 having personal knowledge of the facts con-
9 cerning the alien’s status or lack of status.

10 “(d) AUTHORITY TO ARREST.—No officer or person
11 shall have authority to make any arrests for a violation
12 of any provision of this section except—

13 “(1) officers and employees designated by the
14 Secretary of Homeland Security, either individually
15 or as a member of a class; and

16 “(2) other officers responsible for the enforce-
17 ment of Federal criminal laws.

18 “(e) ADMISSIBILITY OF VIDEOTAPED WITNESS TES-
19 TIMONY.—Notwithstanding any provision of the Federal
20 Rules of Evidence, the videotaped or otherwise audio-
21 visually preserved deposition of a witness to a violation
22 of subsection (a) who has been deported or otherwise ex-
23 pelled from the United States, or is otherwise unavailable
24 to testify, may be admitted into evidence in an action
25 brought for that violation if—

1 “(1) the witness was available for cross exam-
2 ination at the deposition by the party, if any, oppos-
3 ing admission of the testimony; and

4 “(2) the deposition otherwise complies with the
5 Federal Rules of Evidence.

6 “(f) OUTREACH PROGRAM.—

7 “(1) IN GENERAL.—The Secretary of Homeland
8 Security, in consultation with the Attorney General
9 and the Secretary of State, as appropriate, shall—

10 “(A) develop and implement an outreach
11 program to educate people in and out of the
12 United States about the penalties for bringing
13 in and harboring aliens in violation of this sec-
14 tion; and

15 “(B) establish the American Local and In-
16 terior Enforcement Needs (ALIEN) Task Force
17 to identify and respond to the use of Federal,
18 State, and local transportation infrastructure to
19 further the trafficking of unlawful aliens within
20 the United States.

21 “(2) FIELD OFFICES.—The Secretary of Home-
22 land Security, after consulting with State and local
23 government officials, shall establish such field offices
24 as may be necessary to carry out this subsection.

1 “(3) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated such sums
3 are necessary for the fiscal years 2007 through 2011
4 to carry out this subsection.

5 “(g) DEFINITIONS.—In this section:

6 “(1) CROSSED THE BORDER INTO THE UNITED
7 STATES.—An alien is deemed to have crossed the
8 border into the United States regardless of whether
9 the alien is free from official restraint.

10 “(2) LAWFUL AUTHORITY.—The term ‘lawful
11 authority’ means permission, authorization, or li-
12 cense that is expressly provided for in the immigra-
13 tion laws of the United States or accompanying reg-
14 ulations. The term does not include any such au-
15 thority secured by fraud or otherwise obtained in
16 violation of law or authority sought, but not ap-
17 proved. No alien shall be deemed to have lawful au-
18 thority to come to, enter, reside in, remain in, or be
19 in the United States if such coming to, entry, resi-
20 dence, remaining, or presence was, is, or would be
21 in violation of law.

22 “(3) PROCEEDS.—The term ‘proceeds’ includes
23 any property or interest in property obtained or re-
24 tained as a consequence of an act or omission in vio-
25 lation of this section.

1 “(4) UNLAWFUL TRANSIT.—The term ‘unlawful
2 transit’ means travel, movement, or temporary pres-
3 ence that violates the laws of any country in which
4 the alien is present or any country from which the
5 alien is traveling or moving.”.

6 (2) CLERICAL AMENDMENT.—The table of con-
7 tents is amended by striking the item relating to sec-
8 tion 274 and inserting the following:

“Sec. 274. Alien smuggling and related offenses.”.

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

13 (1) in paragraph (1)—

14 (A) in subparagraph (A), by inserting “,
15 alien smuggling crime,” after “any crime of vio-
16 lence”;

17 (B) in subparagraph (A), by inserting “,
18 alien smuggling crime,” after “such crime of vi-
19 olence”;

20 (C) in subparagraph (D)(ii), by inserting
21 “, alien smuggling crime,” after “crime of vio-
22 lence”; and

23 (2) by adding at the end the following:

24 “(6) For purposes of this subsection, the term ‘alien
25 smuggling crime’ means any felony punishable under sec-

1 tion 274(a), 277, or 278 of the Immigration and Nation-
2 ality Act (8 U.S.C. 1324(a), 1327, and 1328).”.

3 **SEC. 206. ILLEGAL ENTRY.**

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

6 **“SEC. 275. ILLEGAL ENTRY.**

7 “(a) IN GENERAL.—

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

11 “(A) knowingly enters or crosses the bor-
12 der into the United States at any time or place
13 other than as designated by the Secretary of
14 Homeland Security;

15 “(B) knowingly eludes examination or in-
16 spection by an immigration officer (including
17 failing to stop at the command of such officer),
18 or a customs or agriculture inspection at a port
19 of entry; or

20 “(C) knowingly enters or crosses the bor-
21 der to the United States by means of a know-
22 ingly false or misleading representation or the
23 knowing concealment of a material fact (includ-
24 ing such representation or concealment in the
25 context of arrival, reporting, entry, or clearance

1 requirements of the customs law, immigration
2 laws, agriculture laws, or shipping laws).

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

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

8 “(B) shall, for a second or subsequent vio-
9 lation, or following an order of voluntary depar-
10 ture, be fined under such title, imprisoned not
11 more than 2 years, or both;

12 “(C) if the violation occurred after the
13 alien had been convicted of 3 or more mis-
14 demeanors or for a felony, shall be fined under
15 such title, imprisoned not more than 10 years,
16 or both;

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

23 “(E) if the violation occurred after the
24 alien had been convicted of a felony for which
25 the alien received a term of imprisonment of

1 not less than 60 months, such alien shall be
2 fined under such title, imprisoned not more
3 than 20 years, or both.

4 “(3) PRIOR CONVICTIONS.—The prior convic-
5 tions described in subparagraphs (C) through (E) of
6 paragraph (2) are elements of the offenses described
7 in that paragraph and the penalties in such subpara-
8 graphs shall apply only in cases in which the convic-
9 tion or convictions that form the basis for the addi-
10 tional penalty are—

11 “(A) alleged in the indictment or informa-
12 tion; and

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

15 “(4) DURATION OF OFFENSE.—An offense
16 under this subsection continues until the alien is dis-
17 covered within the United States by an immigration
18 officer.

19 “(5) ATTEMPT.—Whoever attempts to commit
20 any offense under this section shall be punished in
21 the same manner as for a completion of such of-
22 fense.

23 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
24 ALTIES.—

1 “(1) IN GENERAL.—Any alien who is appre-
2 hended while entering, attempting to enter, or know-
3 ingly crossing or attempting to cross the border to
4 the United States at a time or place other than as
5 designated by immigration officers shall be subject
6 to a civil penalty, in addition to any criminal or
7 other civil penalties that may be imposed under any
8 other provision of law, in an amount equal to—

9 “(A) not less than \$50 or more than \$250
10 for each such entry, crossing, attempted entry,
11 or attempted crossing; or

12 “(B) twice the amount specified in para-
13 graph (1) if the alien had previously been sub-
14 ject to a civil penalty under this subsection.

15 “(2) CROSSED THE BORDER DEFINED.—In this
16 section, an alien is deemed to have crossed the bor-
17 der if the act was voluntary, regardless of whether
18 the alien was under observation at the time of the
19 crossing.”.

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

 “Sec. 275. Illegal entry.”.

23 **SEC. 207. ILLEGAL REENTRY.**

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

1 **“SEC. 276. REENTRY OF REMOVED ALIEN.**

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

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

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

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

23 “(3) was convicted for a felony before such re-
24 moval or departure for which the alien was sen-
25 tenced to a term of imprisonment of not less than

1 60 months, the alien shall be fined under such title,
2 imprisoned not more than 20 years, or both;

3 “(4) was convicted for 3 felonies before such re-
4 moval or departure, the alien shall be fined under
5 such title, imprisoned not more than 20 years, or
6 both; or

7 “(5) was convicted, before such removal or de-
8 parture, for murder, rape, kidnaping, or a felony of-
9 fense described in chapter 77 (relating to peonage
10 and slavery) or 113B (relating to terrorism) of such
11 title, the alien shall be fined under such title, impris-
12 oned not more than 20 years, or both.

13 “(c) REENTRY AFTER REPEATED REMOVAL.—Any
14 alien who has been denied admission, excluded, deported,
15 or removed 3 or more times and thereafter enters, at-
16 tempts to enter, crosses the border to, attempts to cross
17 the border to, or is at any time found in the United States,
18 shall be fined under title 18, United States Code, impris-
19 oned not more than 10 years, or both.

20 “(d) PROOF OF PRIOR CONVICTIONS.—The prior
21 convictions described in subsection (b) are elements of the
22 crimes described in that subsection, and the penalties in
23 that subsection shall apply only in cases in which the con-
24 viction or convictions that form the basis for the additional
25 penalty are—

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

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

5 “(e) AFFIRMATIVE DEFENSES.—It shall be an af-
6 firmative defense to a violation of this section that—

7 “(1) prior to the alleged violation, the alien had
8 sought and received the express consent of the Sec-
9 retary of Homeland Security to reapply for admis-
10 sion into the United States; or

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

13 “(A) was not required to obtain such ad-
14 vance consent under the Immigration and Na-
15 tionality Act or any prior Act; and

16 “(B) had complied with all other laws and
17 regulations governing the alien’s admission into
18 the United States.

19 “(f) LIMITATION ON COLLATERAL ATTACK ON UN-
20 DERLYING REMOVAL ORDER.—In a criminal proceeding
21 under this section, an alien may not challenge the validity
22 of any prior removal order concerning the alien unless the
23 alien demonstrates by clear and convincing evidence
24 that—

1 “(1) the alien exhausted all administrative remedies that may have been available to seek relief
2 against the order;
3

4 “(2) the removal proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and
5
6

7 “(3) the entry of the order was fundamentally unfair.
8

9 “(g) REENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has expressly consented to the alien’s reentry. Such alien shall be subject to such other penalties relating to the reentry of removed aliens as may be available under this section or any other provision of law.
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23 “(h) LIMITATION.—It is not aiding and abetting a violation of this section for an individual to provide an alien with emergency humanitarian assistance, including
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1 emergency medical care and food, or to transport the alien
2 to a location where such assistance can be rendered with-
3 out compensation or the expectation of compensation.

4 “(i) DEFINITIONS.—In this section:

5 “(1) CROSSES THE BORDER.—The term
6 ‘crosses the border’ applies if an alien acts volun-
7 tarily, regardless of whether the alien was under ob-
8 servation at the time of the crossing.

9 “(2) FELONY.—Term ‘felony’ means any crimi-
10 nal offense punishable by a term of imprisonment of
11 more than 1 year under the laws of the United
12 States, any State, or a foreign government.

13 “(3) MISDEMEANOR.—The term ‘misdemeanor’
14 means any criminal offense punishable by a term of
15 imprisonment of not more than 1 year under the ap-
16 plicable laws of the United States, any State, or a
17 foreign government.

18 “(4) REMOVAL.—The term ‘removal’ includes
19 any denial of admission, exclusion, deportation, or
20 removal, or any agreement by which an alien stipu-
21 lates or agrees to exclusion, deportation, or removal.

22 “(5) STATE.—The term ‘State’ means a State
23 of the United States, the District of Columbia, and
24 any commonwealth, territory, or possession of the
25 United States.”.

1 **SEC. 208. REFORM OF PASSPORT, VISA, AND IMMIGRATION**2 **FRAUD OFFENSES.**

3 (a) PASSPORT, VISA, AND IMMIGRATION FRAUD.—

4 (1) IN GENERAL.—Chapter 75 of title 18,
5 United States Code, is amended to read as follows:6 **“CHAPTER 75—PASSPORT, VISA, AND**7 **IMMIGRATION FRAUD**

“Sec.

“1541. Trafficking in passports.

“1542. False statement in an application for a passport.

“1543. Forgery and unlawful production of a passport.

“1544. Misuse of a passport.

“1545. Schemes to defraud aliens.

“1546. Immigration and visa fraud.

“1547. Marriage fraud.

“1548. Attempts and conspiracies.

“1549. Alternative penalties for certain offenses.

“1550. Seizure and forfeiture.

“1551. Additional jurisdiction.

“1552. Additional venue.

“1553. Definitions.

“1554. Authorized law enforcement activities.

“1555. Exception for refugees and asylees.

8 **“§ 1541. Trafficking in passports**9 “(a) MULTIPLE PASSPORTS.—Any person who, dur-
10 ing any 3-year period, knowingly—11 “(1) and without lawful authority produces,
12 issues, or transfers 10 or more passports;13 “(2) forges, counterfeits, alters, or falsely
14 makes 10 or more passports;15 “(3) secures, possesses, uses, receives, buys,
16 sells, or distributes 10 or more passports, knowing
17 the passports to be forged, counterfeited, altered,

1 falsely made, stolen, procured by fraud, or produced
2 or issued without lawful authority; or

3 “(4) completes, mails, prepares, presents, signs,
4 or submits 10 or more applications for a United
5 States passport (including any supporting docu-
6 mentation), knowing the applications to contain any
7 false statement or representation,

8 shall be fined under this title, imprisoned not more than
9 20 years, or both.

10 “(b) PASSPORT MATERIALS.—Any person who know-
11 ingly and without lawful authority produces, counterfeits,
12 secures, possesses, or uses any official paper, seal,
13 hologram, image, text, symbol, stamp, engraving, plate, or
14 other material used to make a passport shall be fined
15 under this title, imprisoned not more than 20 years, or
16 both.

17 **“§ 1542. False statement in an application for a pass-**
18 **port**

19 “Any person who knowingly—

20 “(1) makes any false statement or representa-
21 tion in an application for a United States passport
22 (including any supporting documentation);

23 “(2) completes, mails, prepares, presents, signs,
24 or submits an application for a United States pass-
25 port (including any supporting documentation)

1 knowing the application to contain any false state-
2 ment or representation; or

3 “(3) causes or attempts to cause the production
4 of a passport by means of any fraud or false applica-
5 tion for a United States passport (including any
6 supporting documentation), if such production oc-
7 curs or would occur at a facility authorized by the
8 Secretary of State for the production of passports,
9 shall be fined under this title, imprisoned not more than
10 15 years, or both.

11 **“§ 1543. Forgery and unlawful production of a pass-
12 port**

13 “(a) FORGERY.—Any person who—

14 “(1) knowingly forges, counterfeits, alters, or
15 falsely makes any passport; or

16 “(2) knowingly transfers any passport knowing
17 it to be forged, counterfeited, altered, falsely made,
18 stolen, or to have been produced or issued without
19 lawful authority,

20 shall be fined under this title, imprisoned not more than
21 15 years, or both.

22 “(b) UNLAWFUL PRODUCTION.—Any person who
23 knowingly and without lawful authority—

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

4 “(2) produces, issues, authorizes, or verifies a
5 United States passport for or to any person not
6 owing allegiance to the United States; or

7 “(3) transfers or furnishes a passport to a per-
8 son for use when such person is not the person for
9 whom the passport was issued or designed,

10 shall be fined under this title, imprisoned not more than
11 15 years, or both.

12 **“§ 1544. Misuse of a passport**

13 “(a) IN GENERAL.—Any person who—

14 “(1) knowingly uses any passport issued or de-
15 signed for the use of another;

16 “(2) knowingly uses any passport in violation of
17 the conditions or restrictions therein contained, or in
18 violation of the laws, regulations, or rules governing
19 the issuance and use of the passport;

20 “(3) knowingly secures, possesses, uses, re-
21 ceives, buys, sells, or distributes any passport know-
22 ing it to be forged, counterfeited, altered, falsely
23 made, procured by fraud, or produced or issued
24 without lawful authority; or

1 “(4) knowingly violates the terms and condi-
2 tions of any safe conduct duly obtained and issued
3 under the authority of the United States,
4 shall be fined under this title, imprisoned not more than
5 15 years, or both.

6 “(b) ENTRY; FRAUD.—Any person who knowingly
7 uses any passport, knowing the passport to be forged,
8 counterfeited, altered, falsely made, procured by fraud,
9 produced or issued without lawful authority, or issued or
10 designed for the use of another—

11 “(1) to enter or to attempt to enter the United
12 States; or

13 “(2) to defraud the United States, a State, or
14 a political subdivision of a State,
15 shall be fined under this title, imprisoned not more than
16 15 years, or both.

17 **“§ 1545. Schemes to defraud aliens**

18 “(a) IN GENERAL.—Any person who knowingly exe-
19 cutes a scheme or artifice, in connection with any matter
20 that is authorized by or arises under Federal immigration
21 laws, or any matter the offender claims or represents is
22 authorized by or arises under Federal immigration laws—

23 “(1) to defraud any person, or

1 “(2) to obtain or receive from any person, by
2 means of false or fraudulent pretenses, representa-
3 tions, promises, money or anything else of value,
4 shall be fined under this title, imprisoned not more than
5 15 years, or both.

6 “(b) MISREPRESENTATION.—Any person who know-
7 ingly and falsely represents himself to be an attorney in
8 any matter arising under Federal immigration laws shall
9 be fined under this title, imprisoned not more than 15
10 years, or both.

11 **“§ 1546. Immigration and visa fraud**

12 “(a) IN GENERAL.—Any person who knowingly—

13 “(1) uses any immigration document issued or
14 designed for the use of another;

15 “(2) forges, counterfeits, alters, or falsely
16 makes any immigration document;

17 “(3) completes, mails, prepares, presents, signs,
18 or submits any immigration document knowing it to
19 contain any materially false statement or representa-
20 tion;

21 “(4) secures, possesses, uses, transfers, re-
22 ceives, buys, sells, or distributes any immigration
23 document knowing it to be forged, counterfeited, al-
24 tered, falsely made, stolen, procured by fraud, or
25 produced or issued without lawful authority;

1 “(5) adopts or uses a false or fictitious name to
2 evade or to attempt to evade the immigration laws;
3 or

4 “(6) transfers or furnishes an immigration docu-
5 ment to a person without lawful authority for use
6 if such person is not the person for whom the immi-
7 gration document was issued or designed,
8 shall be fined under this title, imprisoned not more than
9 15 years, or both.

10 “(b) MULTIPLE VIOLATIONS.—Any person who, dur-
11 ing any 3-year period, knowingly—

12 “(1) and without lawful authority produces,
13 issues, or transfers 10 or more immigration docu-
14 ments;

15 “(2) forges, counterfeits, alters, or falsely
16 makes 10 or more immigration documents;

17 “(3) secures, possesses, uses, buys, sells, or dis-
18 tributes 10 or more immigration documents, know-
19 ing the immigration documents to be forged, coun-
20 terfeited, altered, stolen, falsely made, procured by
21 fraud, or produced or issued without lawful author-
22 ity; or

23 “(4) completes, mails, prepares, presents, signs,
24 or submits 10 or more immigration documents

1 knowing the documents to contain any materially
2 false statement or representation,
3 shall be fined under this title, imprisoned not more than
4 20 years, or both.

5 “(c) IMMIGRATION DOCUMENT MATERIALS.—Any
6 person who knowingly and without lawful authority pro-
7 duces, counterfeits, secures, possesses, or uses any official
8 paper, seal, hologram, image, text, symbol, stamp, engrav-
9 ing, plate, or other material, used to make an immigration
10 document shall be fined under this title, imprisoned not
11 more than 20 years, or both.

12 **“§ 1547. Marriage fraud**

13 “(a) EVASION OR MISREPRESENTATION.—Any per-
14 son who—

15 “(1) knowingly enters into a marriage for the
16 purpose of evading any provision of the immigration
17 laws; or

18 “(2) knowingly misrepresents the existence or
19 circumstances of a marriage—

20 “(A) in an application or document author-
21 ized by the immigration laws; or

22 “(B) during any immigration proceeding
23 conducted by an administrative adjudicator (in-
24 cluding an immigration officer or examiner, a

1 consular officer, an immigration judge, or a
2 member of the Board of Immigration Appeals),
3 shall be fined under this title, imprisoned not more than
4 10 years, or both.

5 “(b) MULTIPLE MARRIAGES.—Any person who—

6 “(1) knowingly enters into 2 or more marriages
7 for the purpose of evading any immigration law; or

8 “(2) knowingly arranges, supports, or facilitates
9 2 or more marriages designed or intended to evade
10 any immigration law,

11 shall be fined under this title, imprisoned not more than
12 20 years, or both.

13 “(c) COMMERCIAL ENTERPRISE.—Any person who
14 knowingly establishes a commercial enterprise for the pur-
15 pose of evading any provision of the immigration laws
16 shall be fined under this title, imprisoned for not more
17 than 10 years, or both.

18 “(d) DURATION OF OFFENSE.—

19 “(1) IN GENERAL.—An offense under sub-
20 section (a) or (b) continues until the fraudulent na-
21 ture of the marriage or marriages is discovered by
22 an immigration officer.

23 “(2) COMMERCIAL ENTERPRISE.—An offense
24 under subsection (c) continues until the fraudulent

1 nature of commercial enterprise is discovered by an
2 immigration officer or other law enforcement officer.

3 **“§ 1548. Attempts and conspiracies**

4 “Any person who attempts or conspires to violate any
5 section of this chapter shall be punished in the same man-
6 ner as a person who completed a violation of that section.

7 **“§ 1549. Alternative penalties for certain offenses**

8 “(a) **TERRORISM.**—Any person who violates any sec-
9 tion of this chapter—

10 “(1) knowing that such violation will facilitate
11 an act of international terrorism or domestic ter-
12 rorism (as those terms are defined in section 2331);
13 or

14 “(2) with the intent to facilitate an act of inter-
15 national terrorism or domestic terrorism,
16 shall be fined under this title, imprisoned not more than
17 25 years, or both.

18 “(b) **OFFENSE AGAINST GOVERNMENT.**—Any person
19 who violates any section of this chapter—

20 “(1) knowing that such violation will facilitate
21 the commission of any offense against the United
22 States (other than an offense in this chapter) or
23 against any State, which offense is punishable by
24 imprisonment for more than 1 year; or

1 “(2) with the intent to facilitate the commission
2 of any offense against the United States (other than
3 an offense in this chapter) or against any State,
4 which offense is punishable by imprisonment for
5 more than 1 year,
6 shall be fined under this title, imprisoned not more than
7 20 years, or both.

8 **“§ 1550. Seizure and forfeiture**

9 “(a) FORFEITURE.—Any property, real or personal,
10 used to commit or facilitate the commission of a violation
11 of any section of this chapter, the gross proceeds of such
12 violation, and any property traceable to such property or
13 proceeds, shall be subject to forfeiture.

14 “(b) APPLICABLE LAW.—Seizures and forfeitures
15 under this section shall be governed by the provisions of
16 chapter 46 relating to civil forfeitures, except that such
17 duties as are imposed upon the Secretary of the Treasury
18 under the customs laws described in section 981(d) shall
19 be performed by such officers, agents, and other persons
20 as may be designated for that purpose by the Secretary
21 of Homeland Security, the Secretary of State, or the At-
22 torney General.

23 **“§ 1551. Additional jurisdiction**

24 “(a) IN GENERAL.—Any person who commits an of-
25 fense under this chapter within the special maritime and

1 territorial jurisdiction of the United States shall be pun-
2 ished as provided under this chapter.

3 “(b) EXTRATERRITORIAL JURISDICTION.—Any per-
4 son who commits an offense under this chapter outside
5 the United States shall be punished as provided under this
6 chapter if—

7 “(1) the offense involves a United States immi-
8 gration document (or any document purporting to be
9 such a document) or any matter, right, or benefit
10 arising under or authorized by Federal immigration
11 laws;

12 “(2) the offense is in or affects foreign com-
13 merce;

14 “(3) the offense affects, jeopardizes, or poses a
15 significant risk to the lawful administration of Fed-
16 eral immigration laws, or the national security of the
17 United States;

18 “(4) the offense is committed to facilitate an
19 act of international terrorism (as defined in section
20 2331) or a drug trafficking crime (as defined in sec-
21 tion 929(a)(2)) that affects or would affect the na-
22 tional security of the United States;

23 “(5) the offender is a national of the United
24 States (as defined in section 101(a)(22) of the Im-
25 migration and Nationality Act (8 U.S.C.

1 1101(a)(22))) or an alien lawfully admitted for per-
2 manent residence in the United States (as defined in
3 section 101(a)(20) of such Act); or

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

6 **“§ 1552. Additional venue**

7 “(a) IN GENERAL.—An offense under section 1542
8 may be prosecuted in—

9 “(1) any district in which the false statement or
10 representation was made;

11 “(2) any district in which the passport applica-
12 tion was prepared, submitted, mailed, received, proc-
13 essed, or adjudicated; or

14 “(3) in the case of an application prepared and
15 adjudicated outside the United States, in the district
16 in which the resultant passport was produced.

17 “(b) SAVINGS CLAUSE.—Nothing in this section lim-
18 its the venue otherwise available under sections 3237 and
19 3238.

20 **“§ 1553. Definitions**

21 “As used in this chapter:

22 “(1) The term ‘falsely make’ means to prepare
23 or complete an immigration document with knowl-
24 edge or in reckless disregard of the fact that the
25 document—

1 “(A) contains a statement or representa-
2 tion that is false, fictitious, or fraudulent;

3 “(B) has no basis in fact or law; or

4 “(C) otherwise fails to state a fact which
5 is material to the purpose for which the docu-
6 ment was created, designed, or submitted.

7 “(2) The term a ‘false statement or representa-
8 tion’ includes a personation or an omission.

9 “(3) The term ‘felony’ means any criminal of-
10 fense punishable by a term of imprisonment of more
11 than 1 year under the laws of the United States, any
12 State, or a foreign government.

13 “(4) The term ‘immigration document’—

14 “(A) means—

15 “(i) any passport or visa; or

16 “(ii) any application, petition, affi-
17 davit, declaration, attestation, form, identi-
18 fication card, alien registration document,
19 employment authorization document, bor-
20 der crossing card, certificate, permit,
21 order, license, stamp, authorization, grant
22 of authority, or other evidentiary docu-
23 ment, arising under or authorized by the
24 immigration laws of the United States; and

1 “(B) includes any document, photograph,
2 or other piece of evidence attached to or sub-
3 mitted in support of an immigration document.

4 “(5) The term ‘immigration laws’ includes—

5 “(A) the laws described in section
6 101(a)(17) of the Immigration and Nationality
7 Act (8 U.S.C. 1101(a)(17));

8 “(B) the laws relating to the issuance and
9 use of passports; and

10 “(C) the regulations prescribed under the
11 authority of any law described in paragraphs
12 (1) and (2).

13 “(6) The term ‘immigration proceeding’ in-
14 cludes an adjudication, interview, hearing, or review.

15 “(7) A person does not exercise ‘lawful author-
16 ity’ if the person abuses or improperly exercises law-
17 ful authority the person otherwise holds.

18 “(8) The term ‘passport’ means a travel docu-
19 ment attesting to the identity and nationality of the
20 bearer that is issued under the authority of the Sec-
21 retary of State, a foreign government, or an inter-
22 national organization; or any instrument purporting
23 to be the same.

24 “(9) The term ‘produce’ means to make, pre-
25 pare, assemble, issue, print, authenticate, or alter.

1 “(10) The term ‘State’ means a State of the
2 United States, the District of Columbia, or any com-
3 monwealth, territory, or possession of the United
4 States.

5 **“§ 1554. Authorized law enforcement activities**

6 “Nothing in this chapter shall prohibit any lawfully
7 authorized investigative, protective, or intelligence activity
8 of a law enforcement agency of the United States, a State,
9 or a political subdivision of a State, or an intelligence
10 agency of the United States, or any activity authorized
11 under title V of the Organized Crime Control Act of 1970
12 (84 Stat. 933).

13 **“§ 1555. Exception for refugees, asylees, and other**
14 **vulnerable persons**

15 “(a) IN GENERAL.—If a person believed to have vio-
16 lated section 1542, 1544, 1546, or 1548 while attempting
17 to enter the United States, without delay, indicates an in-
18 tention to apply for asylum under section 208 or 241(b)(3)
19 of the Immigration and Nationality Act (8 U.S.C. 1158
20 and 1231), or for relief under the Convention Against Tor-
21 ture and Other Cruel, Inhuman or Degrading Treatment
22 or Punishment (in accordance with section 208.17 of title
23 8, Code of Federal Regulations), or under section
24 101(a)(15)(T), 101(a)(15)(U), 101(a)(27)(J),
25 101(a)(51), 216(e)(4)(C), 240A(b)(2), or 244(a)(3) (as in

1 effect prior to March 31, 1997) of such Act, or a credible
2 fear of persecution or torture—

3 “(1) the person shall be referred to an appro-
4 priate Federal immigration official to review such
5 claim and make a determination if such claim is
6 warranted;

7 “(2) if the Federal immigration official deter-
8 mines that the person qualifies for the claimed relief,
9 the person shall not be considered to have violated
10 any such section; and

11 “(3) if the Federal immigration official deter-
12 mines that the person does not qualify for the
13 claimed relief, the person shall be referred to an ap-
14 propriate Federal official for prosecution under this
15 chapter.

16 “(b) SAVINGS PROVISION.—Nothing in this section
17 shall be construed to diminish, increase, or alter the obli-
18 gations of refugees or the United States under article
19 31(1) of the Convention Relating to the Status of Refu-
20 gees, done at Geneva July 28, 1951 (as made applicable
21 by the Protocol Relating to the Status of Refugees, done
22 at New York January 31, 1967 (19 UST 6223)).”.

23 (2) CLERICAL AMENDMENT.—The table of
24 chapters in title 18, United States Code, is amended

1 by striking the item relating to chapter 75 and in-
 2 sserting the following:

“75. Passport, visa, and immigration fraud 1541”.

3 (b) PROTECTION FOR LEGITIMATE REFUGEES AND
 4 ASYLUM SEEKERS.—Section 208 (8 U.S.C. 1158) is
 5 amended by adding at the end the following:

6 “(e) PROTECTION FOR LEGITIMATE REFUGEES AND
 7 ASYLUM SEEKERS.—The Attorney General, in consulta-
 8 tion with the Secretary of Homeland Security, shall de-
 9 velop binding prosecution guidelines for federal prosecu-
 10 tors to ensure that any prosecution of an alien seeking
 11 entry into the United States by fraud is consistent with
 12 the written terms and limitations of Article 31(1) of the
 13 Convention Relating to the Status of Refugees, done at
 14 Geneva July 28, 1951 (as made applicable by the Protocol
 15 Relating to the Status of Refugees, done at New York
 16 January 31, 1967 (19 UST 6223)).”.

17 **SEC. 209. INADMISSIBILITY AND REMOVAL FOR PASSPORT**
 18 **AND IMMIGRATION FRAUD OFFENSES.**

19 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8
 20 U.S.C. 1182(a)(2)(A)(i)) is amended—

21 (1) in subclause (I), by striking “, or” at the
 22 end and inserting a semicolon;

23 (2) in subclause (II), by striking the comma at
 24 the end and inserting “; or”; and

1 (3) by inserting after subclause (II) the fol-
2 lowing:

3 “(III) a violation of (or a con-
4 spiracy or attempt to violate) any pro-
5 vision of chapter 75 of title 18,
6 United States Code,”.

7 (b) REMOVAL.—Section 237(a)(3)(B)(iii) (8 U.S.C.
8 1227(a)(3)(B)(iii)) is amended to read as follows:

9 “(iii) of a violation of any provision of
10 chapter 75 of title 18, United States
11 Code,”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 subsections (a) and (b) shall apply to proceedings pending
14 on or after the date of the enactment of this Act, with
15 respect to conduct occurring on or after that date.

16 **SEC. 210. INCARCERATION OF CRIMINAL ALIENS.**

17 (a) INSTITUTIONAL REMOVAL PROGRAM.—

18 (1) CONTINUATION.—The Secretary shall con-
19 tinue to operate the Institutional Removal Program
20 (referred to in this section as the “Program”) or
21 shall develop and implement another program to—

22 (A) identify removable criminal aliens in
23 Federal and State correctional facilities;

24 (B) ensure that such aliens are not re-
25 leased into the community; and

1 (C) remove such aliens from the United
2 States after the completion of their sentences.

3 (2) EXPANSION.—The Secretary may extend
4 the scope of the Program to all States.

5 (b) AUTHORIZATION FOR DETENTION AFTER COM-
6 PLETION OF STATE OR LOCAL PRISON SENTENCE.—Law
7 enforcement officers of a State or political subdivision of
8 a State may—

9 (1) hold an illegal alien for a period not to ex-
10 ceed 14 days after the completion of the alien’s
11 State prison sentence to effectuate the transfer of
12 the alien to Federal custody if the alien is removable
13 or not lawfully present in the United States; or

14 (2) issue a detainer that would allow aliens who
15 have served a State prison sentence to be detained
16 by the State prison until authorized employees of the
17 Bureau of Immigration and Customs Enforcement
18 can take the alien into custody.

19 (c) TECHNOLOGY USAGE.—Technology, such as
20 videoconferencing, shall be used to the maximum extent
21 practicable to make the Program available in remote loca-
22 tions. Mobile access to Federal databases of aliens, such
23 as IDENT, and live scan technology shall be used to the
24 maximum extent practicable to make these resources

1 available to State and local law enforcement agencies in
2 remote locations.

3 (d) REPORT TO CONGRESS.—Not later than 6
4 months after the date of the enactment of this Act, and
5 annually thereafter, the Secretary shall submit a report
6 to Congress on the participation of States in the Program
7 and in any other program authorized under subsection (a).

8 (e) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated such sums as may be
10 necessary in each of the fiscal years 2007 through 2011
11 to carry out the Program.

12 **SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUN-**
13 **TARILY.**

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

16 (1) in subsection (a)—

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

19 “(1) INSTEAD OF REMOVAL PROCEEDINGS.—If
20 an alien is not described in paragraph (2)(A)(iii) or
21 (4) of section 237(a), the Secretary of Homeland Se-
22 curity may permit the alien to voluntarily depart the
23 United States at the alien’s own expense under this
24 subsection instead of being subject to proceedings
25 under section 240.”;

1 (B) by striking paragraph (3);

2 (C) by redesignating paragraph (2) as
3 paragraph (3);

4 (D) by adding after paragraph (1) the fol-
5 lowing:

6 “(2) BEFORE THE CONCLUSION OF REMOVAL
7 PROCEEDINGS.—If an alien is not described in para-
8 graph (2)(A)(iii) or (4) of section 237(a), the Attor-
9 ney General may permit the alien to voluntarily de-
10 part the United States at the alien’s own expense
11 under this subsection after the initiation of removal
12 proceedings under section 240 and before the con-
13 clusion of such proceedings before an immigration
14 judge.”;

15 (E) in paragraph (3), as redesignated—

16 (i) by amending subparagraph (A) to
17 read as follows:

18 “(A) INSTEAD OF REMOVAL.—Subject to
19 subparagraph (C), permission to voluntarily de-
20 part under paragraph (1) shall not be valid for
21 any period in excess of 120 days. The Secretary
22 may require an alien permitted to voluntarily
23 depart under paragraph (1) to post a voluntary
24 departure bond, to be surrendered upon proof

1 that the alien has departed the United States
2 within the time specified.”;

3 (ii) by redesignating subparagraphs
4 (B), (C), and (D) as paragraphs (C), (D),
5 and (E), respectively;

6 (iii) by adding after subparagraph (A)
7 the following:

8 “(B) BEFORE THE CONCLUSION OF RE-
9 MOVAL PROCEEDINGS.—Permission to volun-
10 tarily depart under paragraph (2) shall not be
11 valid for any period in excess of 60 days, and
12 may be granted only after a finding that the
13 alien has the means to depart the United States
14 and intends to do so. An alien permitted to vol-
15 untarily depart under paragraph (2) shall post
16 a voluntary departure bond, in an amount nec-
17 essary to ensure that the alien will depart, to be
18 surrendered upon proof that the alien has de-
19 parted the United States within the time speci-
20 fied. An immigration judge may waive the re-
21 quirement to post a voluntary departure bond
22 in individual cases upon a finding that the alien
23 has presented compelling evidence that the
24 posting of a bond will pose a serious financial
25 hardship and the alien has presented credible

1 evidence that such a bond is unnecessary to
2 guarantee timely departure.”;

3 (iv) in subparagraph (C), as redesignated,
4 by striking “subparagraphs (C)
5 and(D)(ii)” and inserting “subparagraphs
6 (D) and (E)(ii)”;

7 (v) in subparagraph (D), as redesignated,
8 by striking “subparagraph (B)”
9 each place that term appears and inserting
10 “subparagraph (C)”;

11 (vi) in subparagraph (E), as redesignated,
12 by striking “subparagraph (B)”
13 each place that term appears and inserting
14 “subparagraph (C)”;

15 (F) in paragraph (4), by striking “para-
16 graph (1)” and inserting “paragraphs (1) and
17 (2)”;

18 (2) in subsection (b)(2), by striking “a period
19 exceeding 60 days” and inserting “any period in ex-
20 cess of 45 days”;

21 (3) by amending subsection (c) to read as fol-
22 lows:

23 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

24 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

25 Voluntary departure may only be granted as part of

1 an affirmative agreement by the alien. A voluntary
2 departure agreement under subsection (b) shall in-
3 clude a waiver of the right to any further motion,
4 appeal, application, petition, or petition for review
5 relating to removal or relief or protection from re-
6 moval.

7 “(2) CONCESSIONS BY THE SECRETARY.—In
8 connection with the alien’s agreement to depart vol-
9 untarily under paragraph (1), the Secretary of
10 Homeland Security may agree to a reduction in the
11 period of inadmissibility under subparagraph (A) or
12 (B)(i) of section 212(a)(9).

13 “(3) ADVISALS.—Agreements relating to vol-
14 untary departure granted during removal pro-
15 ceedings under section 240, or at the conclusion of
16 such proceedings, shall be presented on the record
17 before the immigration judge. The immigration
18 judge shall advise the alien of the consequences of
19 a voluntary departure agreement before accepting
20 such agreement.

21 “(4) FAILURE TO COMPLY WITH AGREE-
22 MENT.—

23 “(A) IN GENERAL.—If an alien agrees to
24 voluntary departure under this section and fails
25 to depart the United States within the time al-

1 lowed for voluntary departure or fails to comply
2 with any other terms of the agreement (includ-
3 ing failure to timely post any required bond),
4 the alien is—

5 “(i) ineligible for the benefits of the
6 agreement;

7 “(ii) subject to the penalties described
8 in subsection (d); and

9 “(iii) subject to an alternate order of
10 removal if voluntary departure was granted
11 under subsection (a)(2) or (b).

12 “(B) EFFECT OF FILING TIMELY AP-
13 PEAL.—If, after agreeing to voluntary depart-
14 ure, the alien files a timely appeal of the immi-
15 gration judge’s decision granting voluntary de-
16 parture, the alien may pursue the appeal in-
17 stead of the voluntary departure agreement.
18 Such appeal operates to void the alien’s vol-
19 untary departure agreement and the con-
20 sequences of such agreement, but precludes the
21 alien from another grant of voluntary departure
22 while the alien remains in the United States.

23 “(5) VOLUNTARY DEPARTURE PERIOD NOT AF-
24 FECTED.—Except as expressly agreed to by the Sec-
25 retary in writing in the exercise of the Secretary’s

1 discretion before the expiration of the period allowed
2 for voluntary departure, no motion, appeal, applica-
3 tion, petition, or petition for review shall affect, rein-
4 state, enjoin, delay, stay, or toll the alien’s obligation
5 to depart from the United States during the period
6 agreed to by the alien and the Secretary.”;

7 (4) by amending subsection (d) to read as fol-
8 lows:

9 “(d) PENALTIES FOR FAILURE TO DEPART.—If an
10 alien is permitted to voluntarily depart under this section
11 and fails to voluntarily depart from the United States
12 within the time period specified or otherwise violates the
13 terms of a voluntary departure agreement, the alien will
14 be subject to the following penalties:

15 “(1) CIVIL PENALTY.—The alien shall be liable
16 for a civil penalty of \$3,000. The order allowing vol-
17 untary departure shall specify the amount of the
18 penalty, which shall be acknowledged by the alien on
19 the record. If the Secretary thereafter establishes
20 that the alien failed to depart voluntarily within the
21 time allowed, no further procedure will be necessary
22 to establish the amount of the penalty, and the Sec-
23 retary may collect the civil penalty at any time
24 thereafter and by whatever means provided by law.

1 An alien will be ineligible for any benefits under this
2 chapter until this civil penalty is paid.

3 “(2) INELIGIBILITY FOR RELIEF.—The alien
4 shall be ineligible during the time the alien remains
5 in the United States and for a period of 10 years
6 after the alien’s departure for any further relief
7 under this section and sections 240A, 245, 248, and
8 249. The order permitting the alien to depart volun-
9 tarily shall inform the alien of the penalties under
10 this subsection.

11 “(3) REOPENING.—The alien shall be ineligible
12 to reopen the final order of removal that took effect
13 upon the alien’s failure to depart, or upon the alien’s
14 other violations of the conditions for voluntary de-
15 parture, during the period described in paragraph
16 (2). This paragraph does not preclude a motion to
17 reopen to seek withholding of removal under section
18 241(b)(3) or protection against torture, if the mo-
19 tion—

20 “(A) presents material evidence of changed
21 country conditions arising after the date of the
22 order granting voluntary departure in the coun-
23 try to which the alien would be removed; and

1 “(B) makes a sufficient showing to the sat-
2 isfaction of the Attorney General that the alien
3 is otherwise eligible for such protection.”; and
4 (5) by amending subsection (e) to read as fol-
5 lows:

6 “(e) ELIGIBILITY.—

7 “(1) PRIOR GRANT OF VOLUNTARY DEPAR-
8 TURE.—An alien shall not be permitted to volun-
9 tarily depart under this section if the Secretary of
10 Homeland Security or the Attorney General pre-
11 viously permitted the alien to depart voluntarily.

12 “(2) RULEMAKING.—The Secretary may pro-
13 mulgate regulations to limit eligibility or impose ad-
14 ditional conditions for voluntary departure under
15 subsection (a)(1) for any class of aliens. The Sec-
16 retary or Attorney General may by regulation limit
17 eligibility or impose additional conditions for vol-
18 untary departure under subsections (a)(2) or (b) of
19 this section for any class or classes of aliens.”; and

20 (6) in subsection (f), by adding at the end the
21 following: “Notwithstanding section 242(a)(2)(D) of
22 this Act, sections 1361, 1651, and 2241 of title 28,
23 United States Code, any other habeas corpus provi-
24 sion, and any other provision of law (statutory or
25 nonstatutory), no court shall have jurisdiction to af-

1 fect, reinstate, enjoin, delay, stay, or toll the period
2 allowed for voluntary departure under this section.”.

3 (b) RULEMAKING.—The Secretary shall promulgate
4 regulations to provide for the imposition and collection of
5 penalties for failure to depart under section 240B(d) of
6 the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

7 (c) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall apply with respect to all orders granting vol-
11 untary departure under section 240B of the Immi-
12 gration and Nationality Act (8 U.S.C. 1229c) made
13 on or after the date that is 180 days after the enact-
14 ment of this Act.

15 (2) EXCEPTION.—The amendment made by
16 subsection (a)(6) shall take effect on the date of the
17 enactment of this Act and shall apply with respect
18 to any petition for review which is filed on or after
19 such date.

20 **SEC. 212. DETERRING ALIENS ORDERED REMOVED FROM**
21 **REMAINING IN THE UNITED STATES UNLAW-**
22 **FULLY.**

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

1 (1) in clause (i), by striking “seeks admission
2 within 5 years of the date of such removal (or within
3 20 years” and inserting “seeks admission not later
4 than 5 years after the date of the alien’s removal (or
5 not later than 20 years after the alien’s removal”;
6 and

7 (2) in clause (ii), by striking “seeks admission
8 within 10 years of the date of such alien’s departure
9 or removal (or within 20 years of” and inserting
10 “seeks admission not later than 10 years after the
11 date of the alien’s departure or removal (or not later
12 than 20 years after”.

13 (b) BAR ON DISCRETIONARY RELIEF.—Section 274D
14 (9 U.S.C. 324d) is amended—

15 (1) in subsection (a), by striking “Commis-
16 sioner” and inserting “Secretary of Homeland Secu-
17 rity”; and

18 (2) by adding at the end the following:

19 “(c) INELIGIBILITY FOR RELIEF.—

20 “(1) IN GENERAL.—Unless a timely motion to
21 reopen is granted under section 240(c)(6), an alien
22 described in subsection (a) shall be ineligible for any
23 discretionary relief from removal (including cancella-
24 tion of removal and adjustment of status) during the
25 time the alien remains in the United States and for

1 a period of 10 years after the alien’s departure from
2 the United States.

3 “(2) SAVINGS PROVISION.—Nothing in para-
4 graph (1) shall preclude a motion to reopen to seek
5 withholding of removal under section 241(b)(3) or
6 protection against torture, if the motion—

7 “(A) presents material evidence of changed
8 country conditions arising after the date of the
9 final order of removal in the country to which
10 the alien would be removed; and

11 “(B) makes a sufficient showing to the sat-
12 isfaction of the Attorney General that the alien
13 is otherwise eligible for such protection.”.

14 (c) EFFECTIVE DATES.—The amendments made by
15 this section shall take effect on the date of the enactment
16 of this Act with respect to aliens who are subject to a final
17 order of removal entered on or after such date.

18 **SEC. 213. PROHIBITION OF THE SALE OF FIREARMS TO, OR**
19 **THE POSSESSION OF FIREARMS BY CERTAIN**
20 **ALIENS.**

21 Section 922 of title 18, United States Code, is
22 amended—

23 (1) in subsection (d)(5)—

24 (A) in subparagraph (A), by striking “or”
25 at the end;

1 (B) in subparagraph (B), by striking
2 “(y)(2)” and all that follows and inserting “(y),
3 is in a nonimmigrant classification; or”; and

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

5 “(C) has been paroled into the United
6 States under section 212(d)(5) of the Immigra-
7 tion and Nationality Act (8 U.S.C.
8 1182(d)(5));”;

9 (2) in subsection (g)(5)—

10 (A) in subparagraph (A), by striking “or”
11 at the end;

12 (B) in subparagraph (B), by striking
13 “(y)(2)” and all that follows and inserting “(y),
14 is in a nonimmigrant classification; or”; and

15 (C) by adding at the end the following:

16 “(C) has been paroled into the United
17 States under section 212(d)(5) of the Immigra-
18 tion and Nationality Act (8 U.S.C.
19 1182(d)(5));” and

20 (3) in subsection (y)—

21 (A) in the header, by striking “ADMITTED
22 UNDER NONIMMIGRANT VISAS” and inserting
23 “IN A NONIMMIGRANT CLASSIFICATION”;

24 (B) in paragraph (1), by amending sub-
25 paragraph (B) to read as follows:

1 “(B) the term ‘nonimmigrant classifica-
 2 tion’ includes all classes of nonimmigrant aliens
 3 described in section 101(a)(15) of the Immigra-
 4 tion and Nationality Act (8 U.S.C.
 5 1101(a)(15)), or otherwise described in the im-
 6 migration laws (as defined in section
 7 101(a)(17) of such Act).”;

8 (C) in paragraph (2), by striking “has
 9 been lawfully admitted to the United States
 10 under a nonimmigrant visa” and inserting “is
 11 in a nonimmigrant classification”; and

12 (D) in paragraph (3)(A), by striking “Any
 13 individual who has been admitted to the United
 14 States under a nonimmigrant visa may receive
 15 a waiver from the requirements of subsection
 16 (g)(5)” and inserting “Any alien in a non-
 17 immigrant classification may receive a waiver
 18 from the requirements of subsection (g)(5)(B)”.

19 **SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CER-**
 20 **TAIN IMMIGRATION, NATURALIZATION, AND**
 21 **PEONAGE OFFENSES.**

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

1 **“§ 3291. Immigration, naturalization, and peonage of-**
2 **fenses**

3 “No person shall be prosecuted, tried, or punished
4 for a violation of any section of chapters 69 (relating to
5 nationality and citizenship offenses), 75 (relating to pass-
6 port, visa, and immigration offenses), or 77 (relating to
7 peonage, slavery, and trafficking in persons), for an at-
8 tempt or conspiracy to violate any such section, for a viola-
9 tion of any criminal provision under section 243, 266, 274,
10 275, 276, 277, or 278 of the Immigration and Nationality
11 Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and
12 1328), or for an attempt or conspiracy to violate any such
13 section, unless the indictment is returned or the informa-
14 tion filed not later than 10 years after the commission
15 of the offense.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 for chapter 213 of title 18, United States Code, is amend-
18 ed by striking the item relating to section 3291 and insert-
19 ing the following:

“3291. Immigration, naturalization, and peonage offenses.”.

20 **SEC. 215. DIPLOMATIC SECURITY SERVICE.**

21 Section 2709(a)(1) of title 22, United States Code,
22 is amended to read as follows:

23 “(1) conduct investigations concerning—

24 “(A) illegal passport or visa issuance or
25 use;

1 “(B) identity theft or document fraud af-
2 fecting or relating to the programs, functions,
3 and authorities of the Department of State;

4 “(C) violations of chapter 77 of title 18,
5 United States Code; and

6 “(D) Federal offenses committed within
7 the special maritime and territorial jurisdiction
8 of the United States (as defined in section 7(9)
9 of title 18, United States Code);”.

10 **SEC. 216. FIELD AGENT ALLOCATION AND BACKGROUND**

11 **CHECKS.**

12 (a) IN GENERAL.—Section 103 (8 U.S.C. 1103) is
13 amended—

14 (1) by amending subsection (f) to read as fol-
15 lows:

16 “(f) MINIMUM NUMBER OF AGENTS IN STATES.—

17 “(1) IN GENERAL.—The Secretary of Homeland
18 Security shall allocate to each State—

19 “(A) not fewer than 40 full-time active
20 duty agents of the Bureau of Immigration and
21 Customs Enforcement to—

22 “(i) investigate immigration viola-
23 tions; and

24 “(ii) ensure the departure of all re-
25 movable aliens; and

1 “(B) not fewer than 15 full-time active
2 duty agents of the Bureau of Citizenship and
3 Immigration Services to carry out immigration
4 and naturalization adjudication functions.

5 “(2) WAIVER.—The Secretary may waive the
6 application of paragraph (1) for any State with a
7 population of less than 2,000,000, as most recently
8 reported by the Bureau of the Census”; and

9 (2) by adding at the end the following:

10 “(i) Notwithstanding any other provision of law, ap-
11 propriate background and security checks, as determined
12 by the Secretary of Homeland Security, shall be completed
13 and assessed and any suspected or alleged fraud relating
14 to the granting of any status (including the granting of
15 adjustment of status), relief, protection from removal, or
16 other benefit under this Act shall be investigated and re-
17 solved before the Secretary or the Attorney General may—

18 “(1) grant or order the grant of adjustment of
19 status of an alien to that of an alien lawfully admit-
20 ted for permanent residence;

21 “(2) grant or order the grant of any other sta-
22 tus, relief, protection from removal, or other benefit
23 under the immigration laws; or

1 “(3) issue any documentation evidencing or re-
2 lated to such grant by the Secretary, the Attorney
3 General, or any court.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a)(1) shall take effect on the date that is 90
6 days after the date of the enactment of this Act.

7 **SEC. 217. CONSTRUCTION.**

8 (a) IN GENERAL.—Chapter 4 of title III (8 U.S.C.
9 1501 et seq.) is amended by adding at the end the fol-
10 lowing:

11 **“SEC. 362. CONSTRUCTION.**

12 “(a) IN GENERAL.—Nothing in this Act or in any
13 other provision of law shall be construed to require the
14 Secretary of Homeland Security, the Attorney General,
15 the Secretary of State, the Secretary of Labor, or any
16 other authorized head of any Federal agency to grant any
17 application, approve any petition, or grant or continue any
18 status or benefit under the immigration laws by, to, or
19 on behalf of—

20 “(1) any alien described in subparagraph (A)(i),
21 (A)(iii), (B), or (F) of section 212(a)(3) or subpara-
22 graph (A)(i), (A)(iii), or (B) of section 237(a)(4);

23 “(2) any alien with respect to whom a criminal
24 or other investigation or case is pending that is ma-

1 terial to the alien’s inadmissibility, deportability, or
2 eligibility for the status or benefit sought; or

3 “(3) any alien for whom all law enforcement
4 checks, as deemed appropriate by such authorized
5 official, have not been conducted and resolved.

6 “(b) DENIAL; WITHHOLDING.—An official described
7 in subsection (a) may deny or withhold (with respect to
8 an alien described in subsection (a)(1)) or withhold pend-
9 ing resolution of the investigation, case, or law enforce-
10 ment checks (with respect to an alien described in para-
11 graph (2) or (3) of subsection (a)) any such application,
12 petition, status, or benefit on such basis.”.

13 (b) CLERICAL AMENDMENT.—The table of contents
14 is amended by inserting after the item relating to section
15 361 the following:

 “Sec. 362. Construction.”.

16 **SEC. 218. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

17 (a) REIMBURSEMENT FOR COSTS ASSOCIATED WITH
18 PROCESSING CRIMINAL ILLEGAL ALIENS.—The Secretary
19 shall reimburse States and units of local government for
20 costs associated with processing undocumented criminal
21 aliens through the criminal justice system, including—

- 22 (1) indigent defense;
- 23 (2) criminal prosecution;
- 24 (3) autopsies;
- 25 (4) translators and interpreters; and

1 (5) courts costs.

2 (b) AUTHORIZATION OF APPROPRIATIONS.—

3 (1) PROCESSING CRIMINAL ILLEGAL ALIENS.—

4 There are authorized to be appropriated
5 \$400,000,000 for each of the fiscal years 2007
6 through 2012 to carry out subsection (a).

7 (2) COMPENSATION UPON REQUEST.—Section
8 241(i)(5) (8 U.S.C. 1231(i)) is amended to read as
9 follows:

10 “(5) There are authorized to be appropriated to
11 carry this subsection—

12 “(A) such sums as may be necessary for
13 fiscal year 2007;

14 “(B) \$750,000,000 for fiscal year 2008;

15 “(C) \$850,000,000 for fiscal year 2009;

16 and

17 “(D) \$950,000,000 for each of the fiscal
18 years 2010 through 2012.”.

19 (c) TECHNICAL AMENDMENT.—Section 501 of the
20 Immigration Reform and Control Act of 1986 (8 U.S.C.
21 1365) is amended by striking “Attorney General” each
22 place it appears and inserting “Secretary of Homeland Se-
23 curity”.

1 **SEC. 219. TRANSPORTATION AND PROCESSING OF ILLEGAL**
2 **ALIENS APPREHENDED BY STATE AND LOCAL**
3 **LAW ENFORCEMENT OFFICERS.**

4 (a) **IN GENERAL.**—The Secretary shall provide suffi-
5 cient transportation and officers to take illegal aliens ap-
6 prehended by State and local law enforcement officers into
7 custody for processing at a detention facility operated by
8 the Department.

9 (b) **AUTHORIZATION OF APPROPRIATIONS.**—There
10 are authorized to be appropriated such sums as may be
11 necessary for each of fiscal years 2007 through 2011 to
12 carry out this section.

13 **SEC. 220. REDUCING ILLEGAL IMMIGRATION AND ALIEN**
14 **SMUGGLING ON TRIBAL LANDS.**

15 (a) **GRANTS AUTHORIZED.**—The Secretary may
16 award grants to Indian tribes with lands adjacent to an
17 international border of the United States that have been
18 adversely affected by illegal immigration.

19 (b) **USE OF FUNDS.**—Grants awarded under sub-
20 section (a) may be used for—

- 21 (1) law enforcement activities;
- 22 (2) health care services;
- 23 (3) environmental restoration; and
- 24 (4) the preservation of cultural resources.

25 (c) **REPORT.**—Not later than 180 days after the date
26 of the enactment of this Act, the Secretary shall submit

1 a report to the Committee on the Judiciary of the Senate
2 and the Committee on the Judiciary of the House of Rep-
3 resentatives that—

4 (1) describes the level of access of Border Pa-
5 trol agents on tribal lands;

6 (2) describes the extent to which enforcement of
7 immigration laws may be improved by enhanced ac-
8 cess to tribal lands;

9 (3) contains a strategy for improving such ac-
10 cess through cooperation with tribal authorities; and

11 (4) identifies grants provided by the Depart-
12 ment for Indian tribes, either directly or through
13 State or local grants, relating to border security ex-
14 penses.

15 (d) **AUTHORIZATION OF APPROPRIATIONS.**—There
16 are authorized to be appropriated such sums as may be
17 necessary for each of the fiscal years 2007 through 2011
18 to carry out this section.

19 **SEC. 221. ALTERNATIVES TO DETENTION.**

20 The Secretary shall conduct a study of—

21 (1) the effectiveness of alternatives to detention,
22 including electronic monitoring devices and intensive
23 supervision programs, in ensuring alien appearance
24 at court and compliance with removal orders;

1 (2) the effectiveness of the Intensive Super-
2 vision Appearance Program and the costs and bene-
3 fits of expanding that program to all States; and

4 (3) other alternatives to detention, including—

5 (A) release on an order of recognizance;

6 (B) appearance bonds; and

7 (C) electronic monitoring devices.

8 **SEC. 222. CONFORMING AMENDMENT.**

9 Section 101(a)(43)(P) (8 U.S.C. 1101(a)(43)(P)) is
10 amended—

11 (1) by striking “(i) which either is falsely mak-
12 ing, forging, counterfeiting, mutilating, or altering a
13 passport or instrument in violation of section 1543
14 of title 18, United States Code, or is described in
15 section 1546(a) of such title (relating to document
16 fraud) and (ii)” and inserting “which is described in
17 chapter 75 of title 18, United States Code, and”;
18 and

19 (2) by inserting the following: “that is not de-
20 scribed in section 1548 of such title (relating to in-
21 creased penalties), and” after “first offense”.

22 **SEC. 223. REPORTING REQUIREMENTS.**

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

25 (1) in subsection (a)—

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

6 (B) by striking “the Attorney General may
7 require by regulation” and inserting “the Sec-
8 retary may require”; and

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

16 (2) in subsection (b), by striking “Attorney
17 General” each place such term appears and inserting
18 “Secretary”;

19 (3) in subsection (c), by striking “given to such
20 parent” and inserting “given by such parent”; and

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

22 “(d) ADDRESS TO BE PROVIDED.—

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

1 be the alien’s current residential mailing address,
2 and shall not be a post office box or other non-resi-
3 dential mailing address or the address of an attor-
4 ney, representative, labor organization, or employer.

5 “(2) SPECIFIC REQUIREMENTS.—The Secretary
6 may provide specific requirements with respect to—

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

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

13 “(3) DETENTION.—An alien who is being de-
14 tained by the Secretary under this Act is not re-
15 quired to report the alien’s current address under
16 this section during the time the alien remains in de-
17 tention, but shall be required to notify the Secretary
18 of the alien’s address under this section at the time
19 of the alien’s release from detention.

20 “(e) USE OF MOST RECENT ADDRESS PROVIDED BY
21 THE ALIEN.—

22 “(1) IN GENERAL.—Notwithstanding any other
23 provision of law, the Secretary may provide for the
24 appropriate coordination and cross referencing of
25 address information provided by an alien under this

1 section with other information relating to the alien’s
2 address under other Federal programs, including—

3 “(A) any information pertaining to the
4 alien, which is submitted in any application, pe-
5 tition, or motion filed under this Act with the
6 Secretary of Homeland Security, the Secretary
7 of State, or the Secretary of Labor;

8 “(B) any information available to the At-
9 torney General with respect to an alien in a
10 proceeding before an immigration judge or an
11 administrative appeal or judicial review of such
12 proceeding;

13 “(C) any information collected with respect
14 to nonimmigrant foreign students or exchange
15 program participants under section 641 of the
16 Illegal Immigration Reform and Immigrant Re-
17 sponsibility Act of 1996 (8 U.S.C. 1372); and

18 “(D) any information collected from State
19 or local correctional agencies pursuant to the
20 State Criminal Alien Assistance Program.

21 “(2) RELIANCE.—The Secretary may rely on
22 the most recent address provided by the alien under
23 this section or section 264 to send to the alien any
24 notice, form, document, or other matter pertaining
25 to Federal immigration laws, including service of a

1 notice to appear. The Attorney General and the Sec-
2 retary may rely on the most recent address provided
3 by the alien under section 239(a)(1)(F) to contact
4 the alien about pending removal proceedings.

5 “(3) OBLIGATION.—The alien’s provision of an
6 address for any other purpose under the Federal im-
7 migration laws does not excuse the alien’s obligation
8 to submit timely notice of the alien’s address to the
9 Secretary under this section (or to the Attorney
10 General under section 239(a)(1)(F) with respect to
11 an alien in a proceeding before an immigration judge
12 or an administrative appeal of such proceeding).”.

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

16 (1) in section 262(c), by striking “Attorney
17 General” and inserting “Secretary of Homeland Se-
18 curity”;

19 (2) in section 263(a), by striking “Attorney
20 General” and inserting “Secretary of Homeland Se-
21 curity”; and

22 (3) in section 264—

23 (A) in subsections (a), (b), (c), and (d), by
24 striking “Attorney General” each place it ap-

1 pears and inserting “Secretary of Homeland
2 Security”; and

3 (B) in subsection (f)—

4 (i) by striking “Attorney General is
5 authorized” and inserting “Secretary of
6 Homeland Security and Attorney General
7 are authorized”; and

8 (ii) by striking “Attorney General or
9 the Service” and inserting “Secretary or
10 the Attorney General”.

11 (c) PENALTIES.—Section 266 (8 U.S.C. 1306) is
12 amended—

13 (1) by amending subsection (b) to read as fol-
14 lows:

15 “(b) FAILURE TO PROVIDE NOTICE OF ALIEN’S CUR-
16 RENT ADDRESS.—

17 “(1) CRIMINAL PENALTIES.—Any alien or any
18 parent or legal guardian in the United States of any
19 minor alien who fails to notify the Secretary of
20 Homeland Security of the alien’s current address in
21 accordance with section 265 shall be fined under
22 title 18, United States Code, imprisoned for not
23 more than 6 months, or both.

24 “(2) EFFECT ON IMMIGRATION STATUS.—Any
25 alien who violates section 265 (regardless of whether

1 the alien is punished under paragraph (1)) and does
2 not establish to the satisfaction of the Secretary that
3 such failure was reasonably excusable or was not
4 willful shall be taken into custody in connection with
5 removal of the alien. If the alien has not been in-
6 spected or admitted, or if the alien has failed on
7 more than 1 occasion to submit notice of the alien's
8 current address as required under section 265, the
9 alien may be presumed to be a flight risk. The Sec-
10 retary or the Attorney General, in considering any
11 form of relief from removal which may be granted
12 in the discretion of the Secretary or the Attorney
13 General, may take into consideration the alien's fail-
14 ure to comply with section 265 as a separate nega-
15 tive factor. If the alien failed to comply with the re-
16 quirements of section 265 after becoming subject to
17 a final order of removal, deportation, or exclusion,
18 the alien's failure shall be considered as a strongly
19 negative factor with respect to any discretionary mo-
20 tion for reopening or reconsideration filed by the
21 alien.”;

22 (2) in subsection (c), by inserting “or a notice
23 of current address” before “containing statements”;
24 and

1 (3) in subsections (c) and (d), by striking “At-
2 torney General” each place it appears and inserting
3 “Secretary”.

4 (d) EFFECTIVE DATES.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), the amendments made by this section
7 shall apply to proceedings initiated on or after the
8 date of the enactment of this Act.

9 (2) CONFORMING AND TECHNICAL AMEND-
10 MENTS.—The amendments made by paragraphs
11 (1)(A), (1)(B), (2) and (3) of subsection (a) are ef-
12 fective as if enacted on March 1, 2003.

13 **SEC. 224. STATE AND LOCAL ENFORCEMENT OF FEDERAL**
14 **IMMIGRATION LAWS.**

15 (a) IN GENERAL.—Section 287(g) (8 U.S.C.
16 1357(g)) is amended—

17 (1) in paragraph (2), by adding at the end the
18 following: “If such training is provided by a State or
19 political subdivision of a State to an officer or em-
20 ployee of such State or political subdivision of a
21 State, the cost of such training (including applicable
22 overtime costs) shall be reimbursed by the Secretary
23 of Homeland Security.”; and

24 (2) in paragraph (4), by adding at the end the
25 following: “The cost of any equipment required to be

1 purchased under such written agreement and nec-
2 essary to perform the functions under this sub-
3 section shall be reimbursed by the Secretary of
4 Homeland Security.”.

5 (b) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to the Secretary such
7 sums as may be necessary to carry out this section and
8 the amendments made by this section.

9 **SEC. 225. REMOVAL OF DRUNK DRIVERS.**

10 (a) IN GENERAL.—Section 101(a)(43)(F) (8 U.S.C.
11 1101(a)(43)(F)) is amended by inserting “, including a
12 third drunk driving conviction, regardless of the States in
13 which the convictions occurred or whether the offenses are
14 classified as misdemeanors or felonies under State law,”
15 after “offense)”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall—

18 (1) take effect on the date of the enactment of
19 this Act; and

20 (2) apply to convictions entered before, on, or
21 after such date.

22 **SEC. 226. MEDICAL SERVICES IN UNDERSERVED AREAS.**

23 Section 220(c) of the Immigration and Nationality
24 Technical Corrections Act of 1994 (8 U.S.C. 1182 note)
25 is amended by striking “and before June 1, 2006.”.

1 **SEC. 227. EXPEDITED REMOVAL.**

2 (a) IN GENERAL.—Section 238 (8 U.S.C. 1228) is
3 amended—

4 (1) by striking the section heading and insert-
5 ing “EXPEDITED REMOVAL OF CRIMINAL ALIENS”;

6 (2) in subsection (a), by striking the subsection
7 heading and inserting: “EXPEDITED REMOVAL
8 FROM CORRECTIONAL FACILITIES.—”;

9 (3) in subsection (b), by striking the subsection
10 heading and inserting: “REMOVAL OF CRIMINAL
11 ALIENS.—”;

12 (4) in subsection (b), by striking paragraphs
13 (1) and (2) and inserting the following:

14 “(1) IN GENERAL.—The Secretary of Homeland
15 Security may, in the case of an alien described in
16 paragraph (2), determine the deportability of such
17 alien and issue an order of removal pursuant to the
18 procedures set forth in this subsection or section
19 240.

20 “(2) ALIENS DESCRIBED.—An alien is de-
21 scribed in this paragraph if the alien—

22 “(A) has not been lawfully admitted to the
23 United States for permanent residence; and

24 “(B) was convicted of any criminal offense
25 described in subparagraph (A)(iii), (C), or (D)
26 of section 237(a)(2).”;

1 (5) in the subsection (c) that relates to pre-
2 sumption of deportability, by striking “convicted of
3 an aggravated felony” and inserting “described in
4 subsection (b)(2)”;

5 (6) by redesignating the subsection (c) that re-
6 lates to judicial removal as subsection (d); and

7 (7) in subsection (d)(5) (as so redesignated), by
8 striking “, who is deportable under this Act,”.

9 (b) APPLICATION TO CERTAIN ALIENS.—

10 (1) IN GENERAL.—Section 235(b)(1)(A)(iii) (8
11 U.S.C. 1225(b)(1)(A)(iii)) is amended—

12 (A) in subclause (I), by striking “Attorney
13 General” and inserting “Secretary of Homeland
14 Security” each place it appears; and

15 (B) by adding at the end the following new
16 subclause:

17 “(III) EXCEPTION.—Notwith-
18 standing subclauses (I) and (II), the
19 Secretary of Homeland Security shall
20 apply clauses (i) and (ii) of this sub-
21 paragraph to any alien (other than an
22 alien described in subparagraph (F))
23 who is not a national of a country
24 contiguous to the United States, who
25 has not been admitted or paroled into

1 the United States, and who is appre-
2 hended within 100 miles of an inter-
3 national land border of the United
4 States and within 14 days of entry.”.

5 (2) EXCEPTIONS.—Section 235(b)(1)(F) of the
6 Immigration and Nationality Act (8 U.S.C.
7 1225(b)(1)(F)) is amended—

8 (A) by striking “and who arrives by air-
9 craft at a port of entry” and inserting
10 “and—”; and

11 (B) by adding at the end the following:

12 “(i) who arrives by aircraft at a port
13 of entry; or

14 “(ii) who is present in the United
15 States and arrived in any manner at or be-
16 tween a port of entry.”.

17 (c) LIMIT ON INJUNCTIVE RELIEF.—Section
18 242(f)(2) (8 U.S.C. 1252(f)(2)) is amended by inserting
19 “or stay, whether temporarily or otherwise,” after “en-
20 join”.

21 (d) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date of the enactment
23 of this Act and shall apply to all aliens apprehended or
24 convicted on or after such date.

1 **SEC. 228. PROTECTING IMMIGRANTS FROM CONVICTED**
2 **SEX OFFENDERS.**

3 (a) IMMIGRANTS.—Section 204(a)(1) (8 U.S.C.
4 1154(a)(1)), is amended—

5 (1) in subparagraph (A)(i), by striking “Any”
6 and inserting “Except as provided in clause (vii),
7 any”;

8 (2) in subparagraph (A), by inserting after
9 clause (vi) the following:

10 “(vii) Clause (i) shall not apply to a citizen of the
11 United States who has been convicted of an offense de-
12 scribed in subparagraph (A), (I), or (K) of section
13 101(a)(43), unless the Secretary of Homeland Security,
14 in the Secretary’s sole and unreviewable discretion, deter-
15 mines that the citizen poses no risk to the alien with re-
16 spect to whom a petition described in clause (i) is filed.”;
17 and

18 (3) in subparagraph (B)(i)—

19 (A) by striking “Any alien” and inserting
20 the following: “(I) Except as provided in sub-
21 clause (II), any alien”; and

22 (B) by adding at the end the following:

23 “(II) Subclause (I) shall not apply in the case of an
24 alien admitted for permanent residence who has been con-
25 victed of an offense described in subparagraph (A), (I),
26 or (K) of section 101(a)(43), unless the Secretary of

1 Homeland Security, in the Secretary’s sole and
 2 unreviewable discretion, determines that the alien lawfully
 3 admitted for permanent residence poses no risk to the
 4 alien with respect to whom a petition described in sub-
 5 clause (I) is filed.”.

6 (b) NONIMMIGRANTS.—Section 101(a)(15)(K) (8
 7 U.S.C. 1101(a)(15)(K)), is amended by inserting “(other
 8 than a citizen described in section 204(a)(1)(A)(vii))”
 9 after “citizen of the United States” each place that phrase
 10 appears.

11 **SEC. 229. LAW ENFORCEMENT AUTHORITY OF STATES AND**
 12 **POLITICAL SUBDIVISIONS AND TRANSFER TO**
 13 **FEDERAL CUSTODY.**

14 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et. seq.)
 15 is amended by adding after section 240C the following new
 16 section:

17 **“SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES**
 18 **AND POLITICAL SUBDIVISIONS AND TRANS-**
 19 **FER OF ALIENS TO FEDERAL CUSTODY.**

20 “(a) AUTHORITY.—Notwithstanding any other provi-
 21 sion of law, law enforcement personnel of a State, or a
 22 political subdivision of a State, have the inherent authority
 23 of a sovereign entity to investigate, apprehend, arrest, de-
 24 tain, or transfer to Federal custody (including the trans-
 25 portation across State lines to detention centers) an alien

1 for the purpose of assisting in the enforcement of the
2 criminal provisions of the immigration laws of the United
3 States in the normal course of carrying out the law en-
4 forcement duties of such personnel. This State authority
5 has never been displaced or preempted by a Federal law.

6 “(b) CONSTRUCTION.—Nothing in this section shall
7 be construed to require law enforcement personnel of a
8 State or a political subdivision to assist in the enforcement
9 of the immigration laws of the United States.

10 “(c) TRANSFER.—If the head of a law enforcement
11 entity of a State (or, if appropriate, a political subdivision
12 of the State) exercising authority with respect to the ap-
13 prehension or arrest of an alien submits a request to the
14 Secretary of Homeland Security that the alien be taken
15 into Federal custody, the Secretary of Homeland Secu-
16 rity—

17 “(1) shall—

18 “(A) deem the request to include the in-
19 quiry to verify immigration status described in
20 section 642(c) of the Illegal Immigration Re-
21 form and Immigrant Responsibility Act of 1996
22 (8 U.S.C. 1373(c)), and expeditiously inform
23 the requesting entity whether such individual is
24 an alien lawfully admitted to the United States

1 or is otherwise lawfully present in the United
2 States; and

3 “(B) if the individual is an alien who is not
4 lawfully admitted to the United States or other-
5 wise is not lawfully present in the United
6 States—

7 “(i) take the illegal alien into the cus-
8 tody of the Federal Government not later
9 than 72 hours after—

10 “(I) the conclusion of the State
11 charging process or dismissal process;
12 or

13 “(II) the illegal alien is appre-
14 hended, if no State charging or dis-
15 missal process is required; or

16 “(ii) request that the relevant State or
17 local law enforcement agency temporarily
18 detain or transport the alien to a location
19 for transfer to Federal custody; and

20 “(2) shall designate at least 1 Federal, State,
21 or local prison or jail or a private contracted prison
22 or detention facility within each State as the central
23 facility for that State to transfer custody of aliens
24 to the Department of Homeland Security.

25 “(d) REIMBURSEMENT.—

1 “(1) IN GENERAL.—The Secretary of Homeland
2 Security shall reimburse a State, or a political sub-
3 division of a State, for expenses, as verified by the
4 Secretary, incurred by the State or political subdivi-
5 sion in the detention and transportation of an alien
6 as described in subparagraphs (A) and (B) of sub-
7 section (c)(1).

8 “(2) COST COMPUTATION.—Compensation pro-
9 vided for costs incurred under subparagraphs (A)
10 and (B) of subsection (c)(1) shall be—

11 “(A) the product of—

12 “(i) the average daily cost of incarcer-
13 ation of a prisoner in the relevant State, as
14 determined by the chief executive officer of
15 a State (or, as appropriate, a political sub-
16 division of the State); multiplied by

17 “(ii) the number of days that the alien
18 was in the custody of the State or political
19 subdivision; plus

20 “(B) the cost of transporting the alien
21 from the point of apprehension or arrest to the
22 location of detention, and if the location of de-
23 tention and of custody transfer are different, to
24 the custody transfer point; plus

1 “(C) the cost of uncompensated emergency
2 medical care provided to a detained alien during
3 the period between the time of transmittal of
4 the request described in subsection (c) and the
5 time of transfer into Federal custody.

6 “(e) REQUIREMENT FOR APPROPRIATE SECURITY.—

7 The Secretary of Homeland Security shall ensure that—

8 “(1) aliens incarcerated in a Federal facility
9 pursuant to this section are held in facilities which
10 provide an appropriate level of security; and

11 “(2) if practicable, aliens detained solely for
12 civil violations of Federal immigration law are sepa-
13 rated within a facility or facilities.

14 “(f) REQUIREMENT FOR SCHEDULE.—In carrying
15 out this section, the Secretary of Homeland Security shall
16 establish a regular circuit and schedule for the prompt
17 transportation of apprehended aliens from the custody of
18 those States, and political subdivisions of States, which
19 routinely submit requests described in subsection (c), into
20 Federal custody.

21 “(g) AUTHORITY FOR CONTRACTS.—

22 “(1) IN GENERAL.—The Secretary of Homeland
23 Security may enter into contracts or cooperative
24 agreements with appropriate State and local law en-

1 enforcement and detention agencies to implement this
2 section.

3 “(2) DETERMINATION BY SECRETARY.—Prior
4 to entering into a contract or cooperative agreement
5 with a State or political subdivision of a State under
6 paragraph (1), the Secretary shall determine wheth-
7 er the State, or if appropriate, the political subdivi-
8 sion in which the agencies are located, has in place
9 any formal or informal policy that violates section
10 642 of the Illegal Immigration Reform and Immig-
11 rant Responsibility Act of 1996 (8 U.S.C. 1373).
12 The Secretary shall not allocate any of the funds
13 made available under this section to any State or po-
14 litical subdivision that has in place a policy that vio-
15 lates such section.”.

16 (b) AUTHORIZATION OF APPROPRIATIONS FOR THE
17 DETENTION AND TRANSPORTATION TO FEDERAL CUS-
18 TODY OF ALIENS NOT LAWFULLY PRESENT.—There are
19 authorized to be appropriated \$850,000,000 for fiscal year
20 2007 and each subsequent fiscal year for the detention
21 and removal of aliens not lawfully present in the United
22 States under the Immigration and Nationality Act (8
23 U.S.C. 1101 et. seq.).

1 **SEC. 230. LAUNDERING OF MONETARY INSTRUMENTS.**

2 Section 1956(c)(7)(D) of title 18, United States
3 Code, is amended—

4 (1) by inserting “section 1590 (relating to traf-
5 ficking with respect to peonage, slavery, involuntary
6 servitude, or forced labor),” after “section 1363 (re-
7 lating to destruction of property within the special
8 maritime and territorial jurisdiction),”; and

9 (2) by inserting “section 274(a) of the Immi-
10 gration and Nationality Act (8 U.S.C.1324(a)) (re-
11 lating to bringing in and harboring certain aliens),”
12 after “section 590 of the Tariff Act of 1930 (19
13 U.S.C. 1590) (relating to aviation smuggling),”.

14 **SEC. 231. LISTING OF IMMIGRATION VIOLATORS IN THE NA-**
15 **TIONAL CRIME INFORMATION CENTER DATA-**
16 **BASE.**

17 (a) PROVISION OF INFORMATION TO THE NATIONAL
18 CRIME INFORMATION CENTER.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (3), not later than 180 days after the date of
21 the enactment of this Act, the Secretary shall pro-
22 vide to the head of the National Crime Information
23 Center of the Department of Justice the information
24 that the Secretary has or maintains related to any
25 alien—

1 (A) against whom a final order of removal
2 has been issued;

3 (B) who enters into a voluntary departure
4 agreement, or is granted voluntary departure by
5 an immigration judge, whose period for depart-
6 ure has expired under subsection (a)(3) of sec-
7 tion 240B of the Immigration and Nationality
8 Act (8 U.S.C. 1229e) (as amended by section
9 211(a)(1)(C)), subsection (b)(2) of such section
10 240B, or who has violated a condition of a vol-
11 untary departure agreement under such section
12 240B;

13 (C) whom a Federal immigration officer
14 has confirmed to be unlawfully present in the
15 United States; and

16 (D) whose visa has been revoked.

17 (2) REMOVAL OF INFORMATION.—The head of
18 the National Crime Information Center should
19 promptly remove any information provided by the
20 Secretary under paragraph (1) related to an alien
21 who is granted lawful authority to enter or remain
22 legally in the United States.

23 (3) PROCEDURE FOR REMOVAL OF ERRONEOUS
24 INFORMATION.—The Secretary, in consultation with
25 the head of the National Crime Information Center

1 of the Department of Justice, shall develop and im-
2 plement a procedure by which an alien may petition
3 the Secretary or head of the National Crime Infor-
4 mation Center, as appropriate, to remove any erro-
5 neous information provided by the Secretary under
6 paragraph (1) related to such alien. Under such pro-
7 cedures, failure by the alien to receive notice of a
8 violation of the immigration laws shall not constitute
9 cause for removing information provided by the Sec-
10 retary under paragraph (1) related to such alien, un-
11 less such information is erroneous. Notwithstanding
12 the 180-day time period set forth in paragraph (1),
13 the Secretary shall not provide the information re-
14 quired under paragraph (1) until the procedures re-
15 quired by this paragraph are developed and imple-
16 mented.

17 (b) INCLUSION OF INFORMATION IN THE NATIONAL
18 CRIME INFORMATION CENTER DATABASE.—Section
19 534(a) of title 28, United States Code, is amended—

20 (1) in paragraph (3), by striking “and” at the
21 end;

22 (2) by redesignating paragraph (4) as para-
23 graph (5); and

24 (3) by inserting after paragraph (3) the fol-
25 lowing new paragraph:

1 “(4) acquire, collect, classify, and preserve
2 records of violations of the immigration laws of the
3 United States; and”.

4 **SEC. 232. COOPERATIVE ENFORCEMENT PROGRAMS.**

5 Not later than 2 years after the date of the enact-
6 ment of this Act, the Secretary shall negotiate and exe-
7 cute, where practicable, a cooperative enforcement agree-
8 ment described in section 287(g) of the Immigration and
9 Nationality Act (8 U.S.C. 1357(g)) with at least 1 law
10 enforcement agency in each State, to train law enforce-
11 ment officers in the detection and apprehension of individ-
12 uals engaged in transporting, harboring, sheltering, or en-
13 couraging aliens in violation of section 274 of such Act
14 (8 U.S.C. 1324).

15 **SEC. 233. INCREASE OF FEDERAL DETENTION SPACE AND**
16 **THE UTILIZATION OF FACILITIES IDENTIFIED**
17 **FOR CLOSURES AS A RESULT OF THE DE-**
18 **FENSE BASE CLOSURE REALIGNMENT ACT**
19 **OF 1990.**

20 (a) CONSTRUCTION OR ACQUISITION OF DETENTION
21 FACILITIES.—

22 (1) IN GENERAL.—The Secretary shall con-
23 struct or acquire, in addition to existing facilities for
24 the detention of aliens, 20 detention facilities in the
25 United States that have the capacity to detain a

1 combined total of not less than 10,000 individuals at
2 any time for aliens detained pending removal or a
3 decision on removal of such aliens from the United
4 States.

5 (2) DETERMINATION OF LOCATION.—The loca-
6 tion of any detention facility built or acquired in ac-
7 cordance with this subsection shall be determined
8 with the concurrence of the Secretary by the senior
9 officer responsible for Detention and Removal Oper-
10 ations in the Department. The detention facilities
11 shall be located so as to enable the officers and em-
12 ployees of the Department to increase to the max-
13 imum extent practicable the annual rate and level of
14 removals of illegal aliens from the United States.

15 (3) USE OF INSTALLATIONS UNDER BASE CLO-
16 SURE LAWS.—In acquiring detention facilities under
17 this subsection, the Secretary shall consider the
18 transfer of appropriate portions of military installa-
19 tions approved for closure or realignment under the
20 Defense Base Closure and Realignment Act of 1990
21 (part A of title XXIX of Public Law 101–510; 10
22 U.S.C. 2687 note) for use in accordance with para-
23 graph (1).

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—
2 Section 241(g)(1) (8 U.S.C. 1231(g)(1)) is amended by
3 striking “may expend” and inserting “shall expend”.

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

7 **SEC. 234. DETERMINATION OF IMMIGRATION STATUS OF**
8 **INDIVIDUALS CHARGED WITH FEDERAL OF-**
9 **FENSES.**

10 (a) RESPONSIBILITY OF UNITED STATES ATTOR-
11 NEYS.—Beginning not later than 2 years after the date
12 of the enactment of this Act, the office of the United
13 States Attorney that is prosecuting a criminal case in a
14 Federal court—

15 (1) shall determine, not later than 30 days
16 after filing the initial pleadings in the case, whether
17 each defendant in the case is lawfully present in the
18 United States (subject to subsequent legal pro-
19 ceedings to determine otherwise);

20 (2)(A) if the defendant is determined to be an
21 alien lawfully present in the United States, shall no-
22 tify the court in writing of the determination and
23 the current status of the alien under the Immigra-
24 tion and Nationality Act (8 U.S.C. 1101 et seq.);
25 and

1 (B) if the defendant is determined not to be
2 lawfully present in the United States, shall notify
3 the court in writing of the determination, the de-
4 fendant's alien status, and, to the extent possible,
5 the country of origin or legal residence of the de-
6 fendant; and

7 (3) ensure that the information described in
8 paragraph (2) is included in the case file and the
9 criminal records system of the office of the United
10 States attorney.

11 (b) GUIDELINES.—A determination made under sub-
12 section (a)(1) shall be made in accordance with guidelines
13 of the Executive Office for Immigration Review of the De-
14 partment of Justice.

15 (c) RESPONSIBILITIES OF FEDERAL COURTS.—

16 (1) MODIFICATIONS OF RECORDS AND CASE
17 MANAGERMENTS SYSTEMS.—Not later than 2 years
18 after the date of the enactment of this Act, all Fed-
19 eral courts that hear criminal cases, or appeals of
20 criminal cases, shall modify their criminal records
21 and case management systems, in accordance with
22 guidelines which the Director of the Administrative
23 Office of the United States Courts shall establish, so
24 as to enable accurate reporting of information de-
25 scribed in subsection (a)(2).

1 (2) DATA ENTRIES.—Beginning not later than
2 2 years after the date of the enactment of this Act,
3 each Federal court described in paragraph (1) shall
4 enter into its electronic records the information con-
5 tained in each notification to the court under sub-
6 section (a)(2).

7 (d) CONSTRUCTION.—Nothing in this section may be
8 construed to provide a basis for admitting evidence to a
9 jury or releasing information to the public regarding an
10 alien’s immigration status.

11 (e) ANNUAL REPORT TO CONGRESS.—The Director
12 of the Administrative Office of the United States Courts
13 shall include, in the annual report filed with Congress
14 under section 604 of title 28, United States Code—

15 (1) statistical information on criminal trials of
16 aliens in the courts and criminal convictions of
17 aliens in the lower courts and upheld on appeal, in-
18 cluding the type of crime in each case and including
19 information on the legal status of the aliens; and

20 (2) recommendations on whether additional
21 court resources are needed to accommodate the vol-
22 ume of criminal cases brought against aliens in the
23 Federal courts.

24 (f) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated for each of fiscal years

1 2007 through 2011, such sums as may be necessary to
2 carry out this Act. Funds appropriated pursuant to this
3 subsection in any fiscal year shall remain available until
4 expended.

5 **TITLE III—UNLAWFUL**
6 **EMPLOYMENT OF ALIENS**

7 **SEC. 301. UNLAWFUL EMPLOYMENT OF ALIENS.**

8 (a) IN GENERAL.—Section 274A (8 U.S.C. 1324a)
9 is amended to read as follows:

10 **“SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.**

11 “(a) MAKING EMPLOYMENT OF UNAUTHORIZED
12 ALIENS UNLAWFUL.—

13 “(1) IN GENERAL.—It is unlawful for an em-
14 ployer—

15 “(A) to hire, or to recruit or refer for a
16 fee, an alien for employment in the United
17 States knowing, or with reckless disregard, that
18 the alien is an unauthorized alien with respect
19 to such employment; or

20 “(B) to hire, or to recruit or refer for a
21 fee, for employment in the United States an in-
22 dividual unless such employer meets the re-
23 quirements of subsections (c) and (d).

24 “(2) CONTINUING EMPLOYMENT.—It is unlaw-
25 ful for an employer, after lawfully hiring an alien for

1 employment, to continue to employ the alien in the
2 United States knowing that the alien is (or has be-
3 come) an unauthorized alien with respect to such
4 employment.

5 “(3) USE OF LABOR THROUGH CONTRACT.—

6 Any employer who uses a contract, subcontract, or
7 exchange to obtain the labor of an alien in the
8 United States knowing that the alien is an unau-
9 thorized alien with respect to performing such labor
10 shall be considered to have hired the alien for em-
11 ployment in the united States in violation of para-
12 graph (1)(A). Any employer who uses a contract,
13 subcontract, or exchange to obtain the labor of a
14 person in the United States shall be in violation of
15 paragraph (1)(B) unless—

16 “(A) the employer includes in the contract
17 or subcontract or other binding agreement a re-
18 quirement that the person hiring the alien shall
19 comply with this section and keep records nec-
20 essary to demonstrate compliance with this sec-
21 tion; and

22 “(B) the employer exercises reasonable
23 diligence to ensure that person complies with
24 this section.

25 “(4) DEFENSE.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), an employer that establishes that
3 the employer has complied in good faith with
4 the requirements of subsections (c) and (d) has
5 established an affirmative defense that the em-
6 ployer has not violated paragraph (1)(A) with
7 respect to such hiring, recruiting, or referral.

8 “(B) EXCEPTION.—Until the date that an
9 employer is required to participate in the Elec-
10 tronic Employment Verification System under
11 subsection (d) or is permitted to participate in
12 such System on a voluntary basis, the employer
13 may establish an affirmative defense under sub-
14 paragraph (A) by complying with the require-
15 ments of subsection (c).

16 “(b) ORDER OF INTERNAL REVIEW AND CERTIFI-
17 CATION OF COMPLIANCE.—

18 “(1) AUTHORITY TO REQUIRE CERTIFI-
19 CATION.—If the Secretary has reasonable cause to
20 believe that an employer has failed to comply with
21 this section, the Secretary is authorized, at any time,
22 to require that the employer certify that the em-
23 ployer is in compliance with this section, or has in-
24 stituted a program to come into compliance.

1 “(2) CONTENT OF CERTIFICATION.—Not later
2 than 60 days after the date an employer receives a
3 request for a certification under paragraph (1) the
4 chief executive officer or similar official of the em-
5 ployer shall certify under penalty of perjury that—

6 “(A) the employer is in compliance with
7 the requirements of subsections (c) and (d); or

8 “(B) that the employer has instituted a
9 program to come into compliance with such re-
10 quirements.

11 “(3) EXTENSION.—The 60-day period referred
12 to in paragraph (2), may be extended by the Sec-
13 retary for good cause, at the request of the em-
14 ployer.

15 “(4) PUBLICATION.—The Secretary is author-
16 ized to publish in the Federal Register standards or
17 methods for certification and for specific record
18 keeping practices with respect to such certification,
19 and procedures for the audit of any records related
20 to such certification.

21 “(c) DOCUMENT VERIFICATION REQUIREMENTS.—
22 An employer hiring, or recruiting or referring for a fee,
23 an individual for employment in the United States shall
24 verify that the individual is eligible for such employment

1 by meeting the requirements of subsection (d) and the fol-
2 lowing paragraphs:

3 “(1) ATTESTATION BY EMPLOYER.—

4 “(A) REQUIREMENTS.—

5 “(i) IN GENERAL.—The employer
6 shall attest, under penalty of perjury and
7 on a form prescribed by the Secretary, that
8 the employer has verified the identity and
9 eligibility for employment of the individual
10 by examining—

11 “(I) a document described in
12 subparagraph (B); or

13 “(II) a document described in
14 subparagraph (C) and a document de-
15 scribed in subparagraph (D).

16 “(ii) SIGNATURE REQUIREMENTS.—
17 An attestation required by clause (i) may
18 be manifested by a handwritten or elec-
19 tronic signature.

20 “(iii) STANDARDS FOR EXAMINA-
21 TION.—An employer has complied with the
22 requirement of this paragraph with respect
23 to examination of documentation if, based
24 on the totality of the circumstances, a rea-
25 sonable person would conclude that the

1 document examined is genuine and estab-
2 lishes the individual's identity and eligi-
3 bility for employment in the United States.

4 “(iv) REGISTRATION OF EMPLOY-
5 ERS.—An employer shall register the em-
6 ployer's participation in the System in the
7 manner prescribed by the Secretary prior
8 to the date the employer is required or per-
9 mitted to submit information with respect
10 to an employee under paragraph (3) or (4)
11 of subsection (d).

12 “(v) REQUIREMENTS FOR EMPLOY-
13 MENT ELIGIBILITY SYSTEM PARTICI-
14 PANTS.—A participant in the Electronic
15 Employment Verification System estab-
16 lished under subsection (d), regardless of
17 whether such participation is voluntary or
18 mandatory, shall be permitted to utilize
19 any technology that is consistent with this
20 section and with any regulation or guid-
21 ance from the Secretary to streamline the
22 procedures to comply with the attestation
23 requirement, and to comply with the em-
24 ployment eligibility verification require-
25 ments contained in this section.

1 “(B) DOCUMENTS ESTABLISHING BOTH
2 EMPLOYMENT ELIGIBILITY AND IDENTITY.—A
3 document described in this subparagraph is an
4 individual’s—

5 “(i) United States passport; or

6 “(ii) permanent resident card or other
7 document designated by the Secretary, if
8 the document—

9 “(I) contains a photograph of the
10 individual and such other personal
11 identifying information relating to the
12 individual that the Secretary pro-
13 scribes in regulations is sufficient for
14 the purposes of this subparagraph;

15 “(II) is evidence of eligibility for
16 employment in the United States; and

17 “(III) contains security features
18 to make the document resistant to
19 tampering, counterfeiting, and fraudu-
20 lent use.

21 “(C) DOCUMENTS EVIDENCING EMPLOY-
22 MENT ELIGIBILITY.—A document described in
23 this subparagraph is an individual’s social secu-
24 rity account number card issued by the Com-
25 missioner of Social Security (other than a card

1 which bears the legend ‘not valid for employ-
2 ment’ or ‘valid for work only with DHS author-
3 ization’).

4 “(D) DOCUMENTS ESTABLISHING IDEN-
5 TITY OF INDIVIDUAL.—A document described in
6 this subparagraph is an individual’s—

7 “(i) driver’s license or identity card
8 issued by a State, the Commonwealth of
9 the Northern Mariana Islands, or an out-
10 lying possession of the United States that
11 satisfies the requirements of the REAL ID
12 Act of 2005 (division B of Public Law
13 109–13; 119 Stat. 302);

14 “(ii) employee identification card
15 issued by a Federal agency or department,
16 including a branch of the Armed Forces,
17 or an agency or department of a State, or
18 a Native American tribal document, pro-
19 vided that such card or document—

20 “(I) contains the individual’s
21 photograph or information including
22 the individual’s name, date of birth,
23 gender, eye color, and address; and

24 “(II) contains security features
25 to make the card resistant to tam-

1 pering, counterfeiting, and fraudulent
2 use; or

3 “(iii) in the case of an individual who
4 is unable to obtain a document described
5 in clause (i) or (ii), a document of personal
6 identity of such other type that—

7 “(I) the Secretary determines is
8 a reliable means of identification;

9 “(II) contains the individual’s
10 photograph or information including
11 the individual’s name, date of birth,
12 gender, and address; and

13 “(III) contains security features
14 to make the document resistant to
15 tampering, counterfeiting, and fraudu-
16 lent use.

17 “(E) AUTHORITY TO PROHIBIT USE OF
18 CERTAIN DOCUMENTS.—

19 “(i) AUTHORITY.—If the Secretary
20 finds that a document or class of docu-
21 ments described in subparagraph (B), (C),
22 or (D) is not reliable to establish identity
23 or eligibility for employment (as the case
24 may be) or is being used fraudulently to an
25 unacceptable degree, the Secretary is au-

1 thorized to prohibit, or impose conditions,
2 on the use of such document or class of
3 documents for purposes of this subsection.

4 “(ii) REQUIREMENT FOR PUBLICA-
5 TION.—The Secretary shall publish notice
6 of any findings under clause (i) in the Fed-
7 eral Register.

8 “(2) ATTESTATION OF EMPLOYEE.—

9 “(A) REQUIREMENTS.—

10 “(i) IN GENERAL.—The individual
11 shall attest, under penalty of perjury on
12 the form prescribed by the Secretary, that
13 the individual is a national of the United
14 States, an alien lawfully admitted for per-
15 manent residence, or an alien who is au-
16 thorized under this Act or by the Secretary
17 to be hired, or to be recruited or referred
18 for a fee, in the United States.

19 “(ii) SIGNATURE FOR EXAMINA-
20 TION.—An attestation required by clause
21 (i) may be manifested by a handwritten or
22 electronic signature.

23 “(B) PENALTIES.—An individual who
24 falsely represents that the individual is eligible
25 for employment in the United States in an at-

1 testation required by subparagraph (A) shall,
2 for each such violation, be subject to a fine of
3 not more than \$5,000, a term of imprisonment
4 not to exceed 3 years, or both.

5 “(3) RETENTION OF ATTESTATION.—An em-
6 ployer shall retain a paper, microfiche, microfilm, or
7 electronic version of an attestation submitted under
8 paragraph (1) or (2) for an individual and make
9 such attestations available for inspection by an offi-
10 cer of the Department of Homeland Security, any
11 other person designated by the Secretary, the Spe-
12 cial Counsel for Immigration-Related Unfair Em-
13 ployment Practices of the Department of Justice, or
14 the Secretary of Labor during a period beginning on
15 the date of the hiring, or recruiting or referring for
16 a fee, of the individual and ending—

17 “(A) in the case of the recruiting or refer-
18 ral for a fee (without hiring) of an individual,
19 7 years after the date of the recruiting or refer-
20 ral; or

21 “(B) in the case of the hiring of an indi-
22 vidual the later of—

23 “(i) 7 years after the date of such hir-
24 ing;

1 “(ii) 1 year after the date the individ-
2 ual’s employment is terminated; or

3 “(iii) in the case of an employer or
4 class of employers, a period that is less
5 than the applicable period described in
6 clause (i) or (ii) if the Secretary reduces
7 such period for such employer or class of
8 employers.

9 “(4) DOCUMENT RETENTION AND RECORD-
10 KEEPING REQUIREMENTS.—

11 “(A) RETENTION OF DOCUMENTS.—An
12 employer shall retain, for the applicable period
13 described in paragraph (3), the following docu-
14 ments:

15 “(i) IN GENERAL.—Notwithstanding
16 any other provision of law, the employer
17 shall copy all documents presented by an
18 individual pursuant to this subsection and
19 shall retain paper, microfiche, microfilm,
20 or electronic copies of such documents.
21 Such copies shall be designated as copied
22 documents and reflect the signature of the
23 employer and the individual and the date
24 of receipt of such documents.

1 “(ii) USE OF RETAINED DOCU-
2 MENTS.—An employer shall use copies re-
3 tained under clause (i) only for the pur-
4 poses of complying with the requirements
5 of this subsection, except as otherwise per-
6 mitted under law.

7 “(B) RETENTION OF CLARIFICATION DOC-
8 UMENTS.—The employer shall maintain records
9 of any actions and copies of any correspondence
10 or action taken by the employer to clarify or re-
11 solve any issue that raises reasonable doubt as
12 to the validity of the individual’s identity or eli-
13 gibility for employment in the United States.

14 “(5) PENALTIES.—An employer that fails to
15 comply with the requirement of this subsection shall
16 be subject to the penalties described in subsection
17 (e)(4)(B).

18 “(6) NO AUTHORIZATION OF NATIONAL IDENTI-
19 FICATION CARDS.—Nothing in this section may be
20 construed to authorize, directly or indirectly, the
21 issuance, use, or establishment of a national identi-
22 fication card.

23 “(d) ELECTRONIC EMPLOYMENT VERIFICATION SYS-
24 TEM.—

1 “(1) REQUIREMENT FOR SYSTEM.—The Sec-
2 retary, in cooperation with the Commissioner of So-
3 cial Security, shall implement an Electronic Employ-
4 ment Verification System (referred to in this sub-
5 section as the ‘System’) as described in this sub-
6 section.

7 “(2) MANAGEMENT OF SYSTEM.—

8 “(A) IN GENERAL.—The Secretary shall,
9 through the System—

10 “(i) provide a response to an inquiry
11 made by an employer through the Internet
12 or other electronic media or over a tele-
13 phone line regarding an individual’s iden-
14 tity and eligibility for employment in the
15 United States;

16 “(ii) establish a set of codes to be pro-
17 vided through the System to verify such
18 identity and authorization; and

19 “(iii) maintain a record of each such
20 inquiry and the information and codes pro-
21 vided in response to such inquiry.

22 “(B) INITIAL RESPONSE.—Not later than
23 3 days after an employer submits an inquiry to
24 the System regarding an individual, the Sec-

1 retary shall provide, through the System, to the
2 employer—

3 “(i) if the System is able to confirm
4 the individual’s identity and eligibility for
5 employment in the United States, a con-
6 firmation notice, including the appropriate
7 codes on such confirmation notice; or

8 “(ii) if the System is unable to con-
9 firm the individual’s identity or eligibility
10 for employment in the United States, a
11 tentative nonconfirmation notice, including
12 the appropriate codes for such noncon-
13 firmation notice.

14 “(C) VERIFICATION PROCESS IN CASE OF A
15 TENTATIVE NONCONFIRMATION NOTICE.—

16 “(i) IN GENERAL.—If a tentative non-
17 confirmation notice is issued under sub-
18 paragraph (B)(ii), not later than 10 busi-
19 ness days after the date an individual sub-
20 mits information to contest such notice
21 under paragraph (7)(C)(ii)(III), the Sec-
22 retary, through the System, shall issue a
23 final confirmation notice or a final noncon-
24 firmation notice to the employer, including
25 the appropriate codes for such notice.

1 “(ii) EXTENSION OF TIME.—The Sec-
2 retary, in consultation with the Commis-
3 sioner of Social Security, may extend the
4 10-day period described in clause (i) for no
5 more than 180 days if the information
6 needed to resolve an initial negative re-
7 sponse cannot be obtained by or submitted
8 to the Secretary or the Commissioner and
9 verified or entered into the System within
10 such 10-day period.

11 “(iii) AUTOMATIC EXTENSION.—If the
12 most recent previous report submitted by
13 the Comptroller General of the United
14 States under paragraph (12) includes an
15 assessment that the System is not able to
16 issue, during a period that averages 10
17 days or less, a final notice in at least 99
18 percent of the cases in which the notice re-
19 lates to an individual who is eligible for
20 employment in the United States, the Sec-
21 retary shall automatically extend the 10-
22 day period referred to in clause (i) to a pe-
23 riod of not less than 180 days.

24 “(iv) DEVELOPMENT OF PROCESS.—
25 The Secretary shall consult with the Com-

1 missioner of Social Security to develop a
2 verification process to be used to provide a
3 final confirmation notice or a final noncon-
4 firmation notice under clause (i).

5 “(D) DESIGN AND OPERATION OF SYS-
6 TEM.—The Secretary, in consultation with the
7 Commissioner of Social Security, shall design
8 and operate the System—

9 “(i) to maximize reliability and ease of
10 use by employers in a manner that pro-
11 tects and maintains the privacy and secu-
12 rity of the information maintained in the
13 System;

14 “(ii) to respond to each inquiry made
15 by an employer;

16 “(iii) to track and record any occur-
17 rence when the System is inoperable;

18 “(iv) to include appropriate adminis-
19 trative, technical, and physical safeguards
20 to prevent unauthorized disclosure of per-
21 sonal information;

22 “(v) to allow for monitoring of the use
23 of the System and provide an audit capa-
24 bility;

1 “(vi) to have reasonable safeguards,
2 developed in consultation with the Attorney
3 General, to prevent employers from using
4 the System to engage in unlawful discrimi-
5 natory practices, based on national origin
6 or citizenship status; and

7 “(vii) to establish a process to allow
8 an individual to verify the individual’s em-
9 ployment eligibility prior to obtaining or
10 changing employment to facilitate the up-
11 dating and correction of information used
12 by the System.

13 “(E) RESPONSIBILITIES OF THE COMMIS-
14 SIONER OF SOCIAL SECURITY.—The responsibil-
15 ities of the Commissioner of Social Security
16 with respect to the System are set out in sec-
17 tion 205(c)(2) of the Social Security Act.

18 “(F) RESPONSIBILITIES OF THE SEC-
19 RETARY.—The Secretary shall establish a reli-
20 able, secure method to provide through the Sys-
21 tem, within the time periods required by sub-
22 paragraphs (B) and (C)—

23 “(i) a determination of whether the
24 name and alien identification or authoriza-
25 tion number provided in an inquiry by an

1 employer is consistent with such informa-
2 tion maintained by the Secretary in order
3 to confirm the validity of the information
4 provided;

5 “(ii) a determination of whether such
6 number was issued to the named indi-
7 vidual;

8 “(iii) a determination of whether the
9 individual is authorized to be employed in
10 the United States; and

11 “(iv) any other related information
12 that the Secretary may require.

13 “(G) UPDATING INFORMATION.—The Sec-
14 retary shall update the information maintained
15 in the System in a manner that promotes max-
16 imum accuracy and shall provide a process for
17 the prompt correction of erroneous information.

18 “(3) REQUIREMENTS FOR PARTICIPATION.—
19 Except as provided in paragraph (4), the Secretary
20 shall require employers to participate in the System
21 as follows:

22 “(A) CRITICAL EMPLOYERS.—As of the
23 date that is 180 days after the date of the en-
24 actment of the Comprehensive Immigration Re-
25 form Act of 2006, the Secretary may require

1 any employer or class of employers to partici-
2 pate in the System with respect to employees
3 hired prior to, on, or after such date of enact-
4 ment if the Secretary designates such employer
5 or class of employers, in the Secretary's sole
6 and unreviewable discretion, as a critical em-
7 ployer based on critical infrastructure, national
8 security, or homeland security needs.

9 “(B) REMAINING EMPLOYERS.—The Sec-
10 retary shall require all employers in the United
11 States to participate in the System, with re-
12 spect to all employees hired by the employer on
13 or after the date that is 18 months after the
14 date that funds are appropriated and made
15 available to the Secretary to implement this
16 subsection.

17 “(4) OTHER PARTICIPATION IN SYSTEM.—Not-
18 withstanding paragraph (3), the Secretary has the
19 authority, in the Secretary's sole and unreviewable
20 discretion—

21 “(A) to permit any employer that is not re-
22 quired to participate in the System under para-
23 graph (3) to participate in the System on a vol-
24 untary basis; and

1 “(B) to require any employer that is re-
2 quired to participate in the System under para-
3 graph (3) with respect to newly hired employees
4 to participate in the System with respect to all
5 employees hired by the employer prior to, on, or
6 after the date of the enactment of the Com-
7 prehensive Immigration Reform Act of 2006, if
8 the Secretary has reasonable causes to believe
9 that the employer has engaged in violations of
10 the immigration laws.

11 “(5) REQUIREMENT TO PUBLISH.—The Sec-
12 retary shall publish in the Federal Register the re-
13 quirements for participation in the System as de-
14 scribed in paragraphs (3) and (4) prior to the effec-
15 tive date of such requirements.

16 “(6) CONSEQUENCE OF FAILURE TO PARTICI-
17 PATE.—If an employer is required to participate in
18 the System and fails to comply with the require-
19 ments of the System with respect to an individual—

20 “(A) such failure shall be treated as a vio-
21 lation of subsection (a)(1)(B) of this section
22 with respect to such individual; and

23 “(B) a rebuttable presumption is created
24 that the employer has violated subsection
25 (a)(1)(A) of this section, however such pre-

1 sumption may not apply to a prosecution under
2 subsection (f)(1).

3 “(7) SYSTEM REQUIREMENTS.—

4 “(A) IN GENERAL.—An employer that par-
5 ticipates in the System shall, with respect to the
6 hiring, or recruiting or referring for a fee, any
7 individual for employment in the United States,
8 shall—

9 “(i) obtain from the individual and
10 record on the form designated by the Sec-
11 retary—

12 “(I) the individual’s name and
13 date of birth;

14 “(II) the individual’s social secu-
15 rity account number; and

16 “(III) in the case of an individual
17 who does not attest that the indi-
18 vidual is a national of the United
19 States under subsection (c)(2), such
20 alien identification or authorization
21 number that the Secretary shall re-
22 quire;

23 “(ii) retain the original of such form
24 and make such form available for inspec-

1 tion for the periods and in the manner de-
2 scribed in subsection (c)(3).

3 “(B) INITIAL INQUIRY.—The employer
4 shall submit an inquiry through the System to
5 seek confirmation of the individual’s identity
6 and eligibility for employment in the United
7 States—

8 “(i) not later than 3 working days (or
9 such other reasonable time as may be spec-
10 ified by the Secretary of Homeland Secu-
11 rity) after the date of the hiring, or re-
12 cruiting or referring for a fee, of the indi-
13 vidual (as the case may be); or

14 “(ii) in the case of an employee hired
15 prior to the date of enactment of the Com-
16 prehensive Immigration Reform Act of
17 2006, at such time as the Secretary shall
18 specify.

19 “(C) CONFIRMATION OR NONCONFIRMA-
20 TION.—

21 “(i) CONFIRMATION UPON INITIAL IN-
22 QUIRY.—If an employer receives a con-
23 firmation notice under paragraph (2)(B)(i)
24 for an individual, the employer shall
25 record, on the form specified by the Sec-

1 retary, the appropriate code provided in
2 such notice.

3 “(ii) NONCONFIRMATION AND
4 VERIFICATION.—

5 “(I) NONCONFIRMATION.—If an
6 employer receives a tentative noncon-
7 firmation notice under paragraph
8 (2)(B)(ii) for an individual, the em-
9 ployer shall inform such individual of
10 the issuances of such notice in writing
11 and shall provide the individual with
12 detailed information about the right
13 to contest the tentative nonconfirma-
14 tion and the procedures established by
15 the Secretary and the Commissioner
16 of Social Security for contesting such
17 nonconfirmation.

18 “(II) NO CONTEST.—If the indi-
19 vidual does not contest the tentative
20 nonconfirmation notice under sub-
21 clause (I) within 10 business days of
22 receiving notice from the individual’s
23 employer, the notice shall become final
24 and the employer shall record on the
25 form specified by the Secretary, the

1 appropriate code provided in the non-
2 confirmation notice.

3 “(III) CONTEST.—If the indi-
4 vidual contests the tentative noncon-
5 firmation notice under subclause (I),
6 the individual shall submit appro-
7 priate information to contest such no-
8 tice under procedures prescribed by
9 the Secretary, in consultation with the
10 Commissioners of Social Security, not
11 later than 10 business days after re-
12 ceiving the notice from the individ-
13 ual’s employer and shall utilize the
14 verification process developed under
15 paragraph (2)(C)(iii).

16 “(IV) EFFECTIVE PERIOD OF
17 TENTATIVE NONCONFIRMATION.—A
18 tentative nonconfirmation notice shall
19 remain in effect until such notice be-
20 comes final under clause (II) or a
21 final confirmation notice or final non-
22 confirmation notice is issued by the
23 System.

24 “(V) PROHIBITION ON TERMI-
25 NATION.—An employer may not ter-

1 minate the employment of an indi-
2 vidual based on a tentative noncon-
3 firmation notice until such notice be-
4 comes final under clause (II) or a
5 final nonconfirmation notice is issued
6 for the individual by the System.
7 Nothing in this clause shall apply to a
8 termination of employment for any
9 reason other than such tentative non-
10 confirmation.

11 “(VI) RECORDING OF CONCLU-
12 SION ON FORM.—If a final confirma-
13 tion or nonconfirmation is provided by
14 the System regarding an individual,
15 the employer shall record on the form
16 designated by the Secretary the ap-
17 propriate code that is provided under
18 the System to indicate a confirmation
19 or nonconfirmation of the identity and
20 employment eligibility of the indi-
21 vidual.

22 “(D) CONSEQUENCES OF NONCONFIRMA-
23 TION.—If the employer has received a final
24 nonconfirmation regarding an individual, the
25 employer shall terminate the employment, re-

1 recruitment, or referral of the individual. Such
2 employer shall provide to the Secretary any in-
3 formation relating to the individual that the
4 Secretary determines would assist the Secretary
5 in enforcing or administering the immigration
6 laws. If the employer continues to employ, re-
7 cruit, or refer the individual after receiving
8 final nonconfirmation, a rebuttable presumption
9 is created that the employer has violated sub-
10 sections (a)(1)(A) and (a)(2). Such presump-
11 tion may not apply to a prosecution under sub-
12 section (f)(1).

13 “(8) CONSTRUCTION.—Nothing in this section
14 shall be construed to limit the right of an individual
15 who claims to be a national of the United States to
16 pursue that claim as provided for in section 360(a).

17 “(9) PROTECTION FROM LIABILITY.—No em-
18 ployer that participates in the System shall be liable
19 under any law for any employment-related action
20 taken with respect to an individual in good faith reli-
21 ance on information provided by the System.

22 “(10) LIMITATION ON USE OF THE SYSTEM.—
23 Notwithstanding any other provision of law, nothing
24 in this subsection shall be construed to permit or
25 allow any department, bureau, or other agency of

1 the United States to utilize any information, data-
2 base, or other records used in the System for any
3 purpose other than as provided for under any provi-
4 sion of law.

5 “(11) MODIFICATION AUTHORITY.—The Sec-
6 retary, after notice is submitted to Congress and
7 provided to the public in the Federal Register, is au-
8 thorized to modify the requirements of this sub-
9 section with respect to completion of forms, method
10 of storage, attestations, copying of documents, sig-
11 natures, methods of transmitting information, and
12 other operational and technical aspects to improve
13 the efficiency, accuracy, and security of the System.

14 “(12) ANNUAL GAO STUDY AND REPORT.—

15 “(A) REQUIREMENT.—The Comptroller
16 General of the United States shall conduct an
17 annual study of the System.

18 “(B) PURPOSE.—The study shall evaluate
19 the accuracy, integrity, and impact of the Sys-
20 tem.

21 “(C) REPORT.—Not later than 12 months
22 after the date of the enactment of the Initial
23 Entry, Adjustment, and Citizenship Assistance
24 Grant Act of 2006, and annually thereafter, the
25 Comptroller General shall submit to Congress a

1 report containing the findings of the study car-
2 ried out under this paragraph. Such report
3 shall include, at a minimum, the following:

4 “(i) An assessment of System per-
5 formance with respect to the rate at which
6 individuals who are eligible for employment
7 in the United States are correctly approved
8 within 10 days, including the assessment
9 described in paragraph (2)(C)(iii).

10 “(ii) An assessment of the privacy and
11 security of the System and its impact on
12 identity fraud or the misuse of personal
13 data.

14 “(iii) An assessment of the impact of
15 the System on the employment of unau-
16 thorized aliens and employment discrimina-
17 tion based on national origin or citizenship.

18 “(e) COMPLIANCE.—

19 “(1) COMPLAINTS AND INVESTIGATIONS.—The
20 Secretary shall establish procedures—

21 “(A) for individuals and entities to file
22 complaints regarding potential violations of sub-
23 section (a);

1 “(B) for the investigation of such com-
2 plaints that the Secretary determines are ap-
3 propriate to investigate; and

4 “(C) for the investigation of other viola-
5 tions of subsection (a) that the Secretary deter-
6 mines are appropriate.

7 “(2) AUTHORITY IN INVESTIGATIONS.—

8 “(A) IN GENERAL.—In conducting inves-
9 tigations and hearings under this subsection, of-
10 ficers and employees of the Department of
11 Homeland Security—

12 “(i) shall have reasonable access to
13 examine evidence of any employer being in-
14 vestigated; and

15 “(ii) if designated by the Secretary,
16 may compel by subpoena the attendance of
17 witnesses and the production of evidence at
18 any designated place in an investigation or
19 case under this subsection.

20 “(B) FAILURE TO COOPERATE.—In case of
21 refusal to obey a subpoena lawfully issued
22 under subparagraph (A)(ii), the Secretary may
23 request that the Attorney General apply in an
24 appropriate district court of the United States
25 for an order requiring compliance with such

1 subpoena, and any failure to obey such order
2 may be punished by such court as contempt.

3 “(C) DEPARTMENT OF LABOR.—The Sec-
4 retary of Labor shall have the investigative au-
5 thority provided under section 11(a) of the Fair
6 Labor Standards Act of 1938 (29 U.S.C.
7 211(a)) to ensure compliance with the provi-
8 sions of this section.

9 “(3) COMPLIANCE PROCEDURES.—

10 “(A) PREPENALTY NOTICE.—If the Sec-
11 retary has reasonable cause to believe that
12 there has been a violation of a requirement of
13 this section and determines that further pro-
14 ceedings related to such violation are war-
15 ranted, the Secretary shall issue to the em-
16 ployer concerned a written notice of the Sec-
17 retary’s intention to issue a claim for a fine or
18 other penalty. Such notice shall—

19 “(i) describe the violation;

20 “(ii) specify the laws and regulations
21 allegedly violated;

22 “(iii) disclose the material facts which
23 establish the alleged violation; and

24 “(iv) inform such employer that the
25 employer shall have a reasonable oppor-

1 tunity to make representations as to why a
2 claim for a monetary or other penalty
3 should not be imposed.

4 “(B) REMISSION OR MITIGATION OF PEN-
5 ALTIES.—

6 “(i) PETITION BY EMPLOYER.—When-
7 ever any employer receives written notice
8 of a fine or other penalty in accordance
9 with subparagraph (A), the employer may
10 file within 30 days from receipt of such no-
11 tice, with the Secretary a petition for the
12 remission or mitigation of such fine or
13 penalty, or a petition for termination of
14 the proceedings. The petition may include
15 any relevant evidence or proffer of evidence
16 the employer wishes to present, and shall
17 be filed and considered in accordance with
18 procedures to be established by the Sec-
19 retary.

20 “(ii) REVIEW BY SECRETARY.—If the
21 Secretary finds that such fine or other
22 penalty was incurred erroneously, or finds
23 the existence of such mitigating cir-
24 cumstances as to justify the remission or
25 mitigation of such fine or penalty, the Sec-

1 retary may remit or mitigate such fine or
2 other penalty on the terms and conditions
3 as the Secretary determines are reasonable
4 and just, or order termination of any pro-
5 ceedings related to the notice. Such miti-
6 gating circumstances may include good
7 faith compliance and participation in, or
8 agreement to participate in, the System, if
9 not otherwise required.

10 “(iii) APPLICABILITY.—This subpara-
11 graph may not apply to an employer that
12 has or is engaged in a pattern or practice
13 of violations of paragraph (1)(A), (1)(B),
14 or (2) of subsection (a) or of any other re-
15 quirements of this section.

16 “(C) PENALTY CLAIM.—After considering
17 evidence and representations offered by the em-
18 ployer pursuant to subparagraph (B), the Sec-
19 retary shall determine whether there was a vio-
20 lation and promptly issue a written final deter-
21 mination setting forth the findings of fact and
22 conclusions of law on which the determination
23 is based and the appropriate penalty.

24 “(4) CIVIL PENALTIES.—

1 “(A) HIRING OR CONTINUING TO EMPLOY
2 UNAUTHORIZED ALIENS.—Any employer that
3 violates any provision of paragraph (1)(A) or
4 (2) of subsection (a) shall pay civil penalties as
5 follows:

6 “(i) Pay a civil penalty of not less
7 than \$500 and not more than \$4,000 for
8 each unauthorized alien with respect to
9 each such violation.

10 “(ii) If the employer has previously
11 been fined 1 time under this subparagraph,
12 pay a civil penalty of not less than \$4,000
13 and not more than \$10,000 for each unau-
14 thorized alien with respect to each such
15 violation.

16 “(iii) If the employer has previously
17 been fined more than 1 time under this
18 subparagraph or has failed to comply with
19 a previously issued and final order related
20 to any such provision, pay a civil penalty
21 of not less than \$6,000 and not more than
22 \$20,000 for each unauthorized alien with
23 respect to each such violation.

24 “(B) RECORDKEEPING OR VERIFICATION
25 PRACTICES.—Any employer that violates or fails

1 to comply with the requirements of subsections
2 (c) and (d), shall pay a civil penalty as follows:

3 “(i) Pay a civil penalty of not less
4 than \$200 and not more than \$2,000 for
5 each such violation.

6 “(ii) If the employer has previously
7 been fined 1 time under this subparagraph,
8 pay a civil penalty of not less than \$400
9 and not more than \$4,000 for each such
10 violation.

11 “(iii) If the employer has previously
12 been fined more than 1 time under this
13 subparagraph or has failed to comply with
14 a previously issued and final order related
15 to such requirements, pay a civil penalty of
16 \$6,000 for each such violation.

17 “(C) OTHER PENALTIES.—Notwith-
18 standing subparagraphs (A) and (B), the Sec-
19 retary may impose additional penalties for vio-
20 lations, including cease and desist orders, spe-
21 cially designed compliance plans to prevent fur-
22 ther violations, suspended fines to take effect in
23 the event of a further violation, and in appro-
24 priate cases, the civil penalty described in sub-
25 section (g)(2).

1 “(D) REDUCTION OF PENALTIES.—Not-
2 withstanding subparagraphs (A), (B), and (C),
3 the Secretary is authorized to reduce or miti-
4 gate penalties imposed upon employers, based
5 upon factors including the employer’s hiring
6 volume, compliance history, good faith imple-
7 mentation of a compliance program, participa-
8 tion in a temporary worker program, and vol-
9 untary disclosure of violations of this subsection
10 to the Secretary.

11 “(E) ADJUSTMENT FOR INFLATION.—All
12 penalties in this section may be adjusted every
13 4 years to account for inflation, as provided by
14 law.

15 “(5) JUDICIAL REVIEW.—An employer ad-
16 versely affected by a final determination may, within
17 45 days after the date the final determination is
18 issued, file a petition in the Court of Appeals for the
19 appropriate circuit for review of the order. The filing
20 of a petition as provided in this paragraph shall stay
21 the Secretary’s determination until entry of judg-
22 ment by the court. The burden shall be on the em-
23 ployer to show that the final determination was not
24 supported by substantial evidence. The Secretary is
25 authorized to require that the petitioner provide,

1 prior to filing for review, security for payment of
2 fines and penalties through bond or other guarantee
3 of payment acceptable to the Secretary.

4 “(6) ENFORCEMENT OF ORDERS.—If an em-
5 ployer fails to comply with a final determination
6 issued against that employer under this subsection,
7 and the final determination is not subject to review
8 as provided in paragraph (5), the Attorney General
9 may file suit to enforce compliance with the final de-
10 termination in any appropriate district court of the
11 United States. In any such suit, the validity and ap-
12 propriateness of the final determination shall not be
13 subject to review.

14 “(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR
15 PATTERN OR PRACTICE VIOLATIONS.—

16 “(1) CRIMINAL PENALTY.—An employer that
17 engages in a pattern or practice of knowing viola-
18 tions of subsection (a)(1)(A) or (a)(2) shall be fined
19 not more than \$20,000 for each unauthorized alien
20 with respect to whom such a violation occurs, im-
21 prisoned for not more than 6 months for the entire
22 pattern or practice, or both.

23 “(2) ENJOINING OF PATTERN OR PRACTICE
24 VIOLATIONS.—If the Secretary or the Attorney Gen-
25 eral has reasonable cause to believe that an employer

1 is engaged in a pattern or practice of employment,
2 recruitment, or referral in violation of paragraph
3 (1)(A) or (2) of subsection (a), the Attorney General
4 may bring a civil action in the appropriate district
5 court of the United States requesting such relief, in-
6 cluding a permanent or temporary injunction, re-
7 straining order, or other order against the employer,
8 as the Secretary deems necessary.

9 “(g) PROHIBITION OF INDEMNITY BONDS.—

10 “(1) PROHIBITION.—It is unlawful for an em-
11 ployer, in the hiring, recruiting, or referring for a
12 fee, of an individual, to require the individual to post
13 a bond or security, to pay or agree to pay an
14 amount, or otherwise to provide a financial guar-
15 antee or indemnity, against any potential liability
16 arising under this section relating to such hiring, re-
17 cruiting, or referring of the individual.

18 “(2) CIVIL PENALTY.—Any employer which is
19 determined, after notice and opportunity for mitiga-
20 tion of the monetary penalty under subsection (e), to
21 have violated paragraph (1) of this subsection shall
22 be subject to a civil penalty of \$10,000 for each vio-
23 lation and to an administrative order requiring the
24 return of any amounts received in violation of such
25 paragraph to the employee or, if the employee can-

1 not be located, to the Employer Compliance Fund
2 established under section 286(w).

3 “(h) PROHIBITION ON AWARD OF GOVERNMENT
4 CONTRACTS, GRANTS, AND AGREEMENTS.—

5 “(1) EMPLOYERS WITH NO CONTRACTS,
6 GRANTS, OR AGREEMENTS.—

7 “(A) IN GENERAL.—If an employer who
8 does not hold a Federal contract, grant, or co-
9 operative agreement is determined by the Sec-
10 retary to be a repeat violator of this section or
11 is convicted of a crime under this section, the
12 employer shall be debarred from the receipt of
13 a Federal contract, grant, or cooperative agree-
14 ment for a period of 2 years. The Secretary or
15 the Attorney General shall advise the Adminis-
16 trator of General Services of such a debarment,
17 and the Administrator of General Services shall
18 list the employer on the List of Parties Ex-
19 cluded from Federal Procurement and Non-
20 procurement Programs for a period of 2 years.

21 “(B) WAIVER.—The Administrator of Gen-
22 eral Services, in consultation with the Secretary
23 and the Attorney General, may waive operation
24 of this subsection or may limit the duration or
25 scope of the debarment.

1 “(2) EMPLOYERS WITH CONTRACTS, GRANTS,
2 OR AGREEMENTS.—

3 “(A) IN GENERAL.—An employer who
4 holds a Federal contract, grant, or cooperative
5 agreement and is determined by the Secretary
6 to be a repeat violator of this section or is con-
7 victed of a crime under this section, shall be
8 debarred from the receipt of Federal contracts,
9 grants, or cooperative agreements for a period
10 of 2 years.

11 “(B) NOTICE TO AGENCIES.—Prior to de-
12 barring the employer under subparagraph (A),
13 the Secretary, in cooperation with the Adminis-
14 trator of General Services, shall advise any
15 agency or department holding a contract, grant,
16 or cooperative agreement with the employer of
17 the Government’s intention to debar the em-
18 ployer from the receipt of new Federal con-
19 tracts, grants, or cooperative agreements for a
20 period of 2 years.

21 “(C) WAIVER.—After consideration of the
22 views of any agency or department that holds
23 a contract, grant, or cooperative agreement
24 with the employer, the Secretary may, in lieu of
25 debarring the employer from the receipt of new

1 Federal contracts, grants, or cooperative agree-
2 ments for a period of 2 years, waive operation
3 of this subsection, limit the duration or scope of
4 the debarment, or may refer to an appropriate
5 lead agency the decision of whether to debar the
6 employer, for what duration, and under what
7 scope in accordance with the procedures and
8 standards prescribed by the Federal Acquisition
9 Regulation. However, any proposed debarment
10 predicated on an administrative determination
11 of liability for civil penalty by the Secretary or
12 the Attorney General shall not be reviewable in
13 any debarment proceeding. The decision of
14 whether to debar or take alternate action under
15 this subparagraph shall not be judicially re-
16 viewed.

17 “(3) SUSPENSION.—Indictments for violations
18 of this section or adequate evidence of actions that
19 could form the basis for debarment under this sub-
20 section shall be considered a cause for suspension
21 under the procedures and standards for suspension
22 prescribed by the Federal Acquisition Regulation.

23 “(i) MISCELLANEOUS PROVISIONS.—

24 “(1) DOCUMENTATION.—In providing docu-
25 mentation or endorsement of authorization of aliens

1 (other than aliens lawfully admitted for permanent
2 residence) eligible to be employed in the United
3 States, the Secretary shall provide that any limita-
4 tions with respect to the period or type of employ-
5 ment or employer shall be conspicuously stated on
6 the documentation or endorsement.

7 “(2) PREEMPTION.—The provisions of this sec-
8 tion preempt any State or local law—

9 “(A) imposing civil or criminal sanctions
10 (other than through licensing and similar laws)
11 upon those who employ, or recruit or refer for
12 a fee for employment, unauthorized aliens; or

13 “(B) requiring as a condition of con-
14 ducting, continuing, or expanding a business
15 that a business entity—

16 “(i) provide, build, fund, or maintain
17 a shelter, structure, or designated area for
18 use by day laborers at or near its place of
19 business; or

20 “(ii) take other steps that facilitate
21 the employment of day laborers by others.

22 “(j) DEPOSIT OF AMOUNTS RECEIVED.—Except as
23 otherwise specified, civil penalties collected under this sec-
24 tion shall be deposited by the Secretary into the Employer
25 Compliance Fund established under section 286(w).

1 “(k) DEFINITIONS.—In this section:

2 “(1) EMPLOYER.—The term ‘employer’ means
3 any person or entity, including any entity of the
4 Government of the United States, hiring, recruiting,
5 or referring an individual for employment in the
6 United States.

7 “(2) SECRETARY.—Except as otherwise pro-
8 vided, the term ‘Secretary’ means the Secretary of
9 Homeland Security.

10 “(3) UNAUTHORIZED ALIEN.—The term ‘unau-
11 thorized alien’ means, with respect to the employ-
12 ment of an alien at a particular time, that the alien
13 is not at that time either—

14 “(A) an alien lawfully admitted for perma-
15 nent residence; or

16 “(B) authorized to be so employed by this
17 Act or by the Secretary.”.

18 (b) CONFORMING AMENDMENTS.—

19 (1) AMENDMENTS.—

20 (A) REPEAL OF BASIC PILOT.—Sections
21 401, 402, 403, 404, and 405 of the Illegal Im-
22 migration Reform and Immigrant Responsibility
23 Act of 1996 (division C of Public Law 104–
24 208; 8 U.S.C. 1324a note) are repealed.

1 (B) REPEAL OF REPORTING REQUIRE-
2 MENTS.—

3 (i) REPORT ON EARNINGS OF ALIENS
4 NOT AUTHORIZED TO WORK.—Subsection
5 (c) of section 290 (8 U.S.C. 1360) is re-
6 pealed.

7 (ii) REPORT ON FRAUDULENT USE OF
8 SOCIAL SECURITY ACCOUNT NUMBERS.—
9 Subsection (b) of section 414 of the Illegal
10 Immigration Reform and Immigrant Re-
11 sponsibility Act of 1996 (division C of
12 Public Law 104–208; 8 U.S.C. 1360 note)
13 is repealed.

14 (2) CONSTRUCTION.—Nothing in this sub-
15 section or in subsection (d) of section 274A, as
16 amended by subsection (a), may be construed to
17 limit the authority of the Secretary to allow or con-
18 tinue to allow the participation of employers who
19 participated in the basic pilot program under sec-
20 tions 401, 402, 403, 404, and 405 of the Illegal Im-
21 migration Reform and Immigrant Responsibility Act
22 of 1996 (division C of Public Law 104–208; 8
23 U.S.C. 1324a note) in the Electronic Employment
24 Verification System established pursuant to such
25 subsection (d).

1 (c) TECHNICAL AMENDMENTS.—

2 (1) DEFINITION OF UNAUTHORIZED ALIEN.—

3 Sections 218(i)(1) (8 U.S.C. 1188(i)(1)), 245(c)(8)

4 (8 U.S.C. 1255(c)(8)), 274(a)(3)(B)(i) (8 U.S.C.

5 1324(a)(3)(B)(i), and 274B(a)(1) (8 U.S.C.

6 1324b(a)(1)) are amended by striking “274A(h)(3)”

7 and inserting “274A”.

8 (2) DOCUMENT REQUIREMENTS.—Section 274B

9 (8 U.S.C. 1324b) is amended—

10 (A) in subsections (a)(6) and (g)(2)(B), by

11 striking “274A(b)” and inserting “274A(d)”;

12 and

13 (B) in subsection (g)(2)(B)(ii), by striking

14 “274A(b)(5)” and inserting “274A(d)”.

15 (d) AMENDMENTS TO THE SOCIAL SECURITY ACT.—

16 Section 205(c)(2) of the Social Security Act (42 U.S.C.

17 405(c)(2)) is amended by adding at the end the following

18 new subparagraphs:

19 “(I)(i) The Commissioner of Social Security shall es-

20 tablish a reliable, secure method to provide through the

21 Electronic Employment Verification System established

22 pursuant to subsection (d) of section 274A of the Immi-

23 gration and Nationality Act (referred to in this subpara-

24 graph as the ‘System’), within the time periods required

25 by paragraphs (2)(B) and (2)(C) of such subsection—

1 “(I) a determination of whether the name and
2 social security account number of an individual pro-
3 vided in an inquiry made to the System by an em-
4 ployer is consistent with such information main-
5 tained by the Commissioner in order to confirm the
6 validity of the information provided;

7 “(II) a determination of whether such social se-
8 curity account number was issued to such individual;

9 “(III) determination of the citizenship status
10 associated with such name and social security ac-
11 count number, according to the records maintained
12 by the Commissioner;

13 “(IV) a determination of whether the name and
14 number belongs to an individual who is deceased, ac-
15 cording to the records maintained by the Commis-
16 sioner;

17 “(V) a determination of whether the name and
18 number is blocked in accordance with clause (ii); and

19 “(VI) a confirmation notice or a nonconfirma-
20 tion notice described in such paragraph (2)(B) or
21 (2)(C), in a manner that ensures that other informa-
22 tion maintained by the Commissioner is not dis-
23 closed or released to employers through the System.

24 “(ii) The Commissioner of Social Security shall pre-
25 vent the fraudulent or other misuse of a social security

1 account number by establishing procedures under which
 2 an individual who has been assigned a social security ac-
 3 count number may block the use of such number under
 4 the System and remove such block.

5 “(J) In assigning social security account numbers to
 6 aliens who are authorized to work in the United States
 7 under section 218A of the Immigration and Nationality
 8 Act, the Commissioner of Social Security shall, to the
 9 maximum extent practicable, assign such numbers by em-
 10 ploying the enumeration procedure administered jointly by
 11 the Commissioner, the Secretary of State, and the Sec-
 12 retary.”.

13 (e) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY
 14 INFORMATION.—

15 (1) IN GENERAL.—Section 6103(l) of the Inter-
 16 nal Revenue Code of 1986 is amended by adding at
 17 the end the following new paragraph:

18 “(21) DISCLOSURE OF CERTAIN TAXPAYER
 19 IDENTITY INFORMATION BY SOCIAL SECURITY AD-
 20 MINISTRATION TO DEPARTMENT OF HOMELAND SE-
 21 CURITY.—

22 “(A) IN GENERAL.—From taxpayer iden-
 23 tity information which has been disclosed to the
 24 Social Security Administration and upon writ-
 25 ten request by the Secretary of Homeland Secu-

1 rity, the Commissioner of Social Security shall
2 disclose directly to officers, employees, and con-
3 tractors of the Department of Homeland Secu-
4 rity the following information:

5 “(i) DISCLOSURE OF EMPLOYER NO
6 MATCH NOTICES.—Taxpayer identity infor-
7 mation of each person who has filed an in-
8 formation return required by reason of sec-
9 tion 6051 who has received written notice
10 from the Commissioner of Social Security
11 during calendar year 2005, 2006, or 2007
12 that such person reported remuneration on
13 such a return—

14 “(I) with more than 100 names
15 and taxpayer identifying numbers of
16 employees (within the meaning of
17 such section) that did not match the
18 records maintained by the Commis-
19 sioner of Social Security, or

20 “(II) with more than 10 names
21 of employees (within the meaning of
22 such section) with the same taxpayer
23 identifying number.

24 “(ii) DISCLOSURE OF INFORMATION
25 REGARDING USE OF DUPLICATE EMPLOYEE

1 TAXPAYER IDENTIFYING INFORMATION.—
2 Taxpayer identity information of each per-
3 son who has filed an information return re-
4 quired by reason of section 6051 which the
5 Commissioner of Social Security has rea-
6 son to believe is the result of identity fraud
7 due to the use by multiple persons filing
8 such returns of the same taxpayer identi-
9 fying number (assigned under section
10 6109) of an employee (within the meaning
11 of section 6051).

12 “(iii) DISCLOSURE OF INFORMATION
13 REGARDING NONPARTICIPATING EMPLOY-
14 ERS.—Taxpayer identity information of
15 each person who has filed an information
16 return required by reason of section 6051
17 and for which the Commissioner of Social
18 Security has reason to believe is not re-
19 corded as participating in the Electronic
20 Employment Verification System author-
21 ized under section 274A(d) of the Immi-
22 gration and Nationality Act (hereafter in
23 this paragraph referred to as the ‘Sys-
24 tem’).

1 “(iv) DISCLOSURE OF INFORMATION
2 REGARDING NEW EMPLOYEES OF NON-
3 PARTICIPATING EMPLOYERS.—Upon cer-
4 tification by the Secretary of Homeland
5 Security that each person identified by
6 such request based on the records of the
7 Department of Homeland Security is not
8 recorded as participating in the System,
9 taxpayer identity information of all em-
10 ployees (within the meaning of section
11 6051) of such person hired after the date
12 which such person is required to partici-
13 pate in the System under section
14 274A(d)(3)(B) of the Immigration and Na-
15 tionality Act.

16 “(v) DISCLOSURE OF INFORMATION
17 REGARDING EMPLOYEES OF CERTAIN DES-
18 IGNATED EMPLOYERS.—Upon certification
19 by the Secretary of Homeland Security
20 that each person identified by such request
21 based on the records of the Department of
22 Homeland Security is designated by the
23 Secretary of Homeland Security under sec-
24 tion 274A(d)(3)(A) of the Immigration and
25 Nationality Act or is required by the Sec-

1 retary of Homeland Security to participate
2 in the System under section 274A(d)(4)(B)
3 of such Act, taxpayer identity information
4 of all employees (within the meaning of
5 section 6051) of such person.

6 “(vi) DISCLOSURE OF NEW HIRE TAX-
7 PAYER IDENTITY INFORMATION.—Tax-
8 payer identity information of each person
9 participating in the System and taxpayer
10 identity information of all employees (with-
11 in the meaning of section 6051) of such
12 person hired during the period beginning
13 with the later of—

14 “(I) the earlier of the date such
15 person volunteers to participate in the
16 System or the date such person is re-
17 quired to participate in the System, or

18 “(II) the date of the request im-
19 mediately preceding the most recent
20 request under this clause.

21 “(B) RESTRICTION ON DISCLOSURE.—The
22 Commissioner of Social Security shall disclose
23 taxpayer identity information under subpara-
24 graph (A) only for purposes of, and to the ex-
25 tent necessary in—

1 “(i) establishing and enforcing em-
2 ployer participation in the System,

3 “(ii) carrying out, including through
4 civil administrative and civil judicial pro-
5 ceedings, of sections 212, 217, 235, 237,
6 238, 274A, and 274C of the Immigration
7 and Nationality Act, and

8 “(iii) the civil operation of the Alien
9 Terrorist Removal Court.

10 “(C) REIMBURSEMENT.—The Commis-
11 sioner of Social Security shall prescribe a rea-
12 sonable fee schedule for furnishing taxpayer
13 identity information under this paragraph and
14 collect such fees in advance from the Secretary
15 of Homeland Security.

16 “(D) TERMINATION.—This paragraph
17 shall not apply to any request made after the
18 date which is 3 years after the date of the en-
19 actment of this paragraph.”.

20 (2) COMPLIANCE BY DHS CONTRACTORS WITH
21 CONFIDENTIALITY SAFEGUARDS.—

22 (A) IN GENERAL.—Section 6103(p) of
23 such Code is amended by adding at the end the
24 following new paragraph:

1 “(9) DISCLOSURE TO DHS CONTRACTORS.—
2 Notwithstanding any other provision of this section,
3 no return or return information shall be disclosed to
4 any contractor of the Department of Homeland Se-
5 curity unless such Department, to the satisfaction of
6 the Secretary—

7 “(A) has requirements in effect which re-
8 quire each such contractor which would have
9 access to returns or return information to pro-
10 vide safeguards (within the meaning of para-
11 graph (4)) to protect the confidentiality of such
12 returns or return information,

13 “(B) agrees to conduct an on-site review
14 every 3 years (mid-point review in the case of
15 contracts or agreements of less than 1 year in
16 duration) of each contractor to determine com-
17 pliance with such requirements,

18 “(C) submits the findings of the most re-
19 cent review conducted under subparagraph (B)
20 to the Secretary as part of the report required
21 by paragraph (4)(E), and

22 “(D) certifies to the Secretary for the most
23 recent annual period that such contractor is in
24 compliance with all such requirements.

1 The certification required by subparagraph (D) shall
2 include the name and address of each contractor, a
3 description of the contract or agreement with such
4 contractor, and the duration of such contract or
5 agreement.”.

6 (3) CONFORMING AMENDMENTS.—

7 (A) Section 6103(a)(3) of such Code is
8 amended by striking “or (20)” and inserting
9 “(20), or (21)”.

10 (B) Section 6103(p)(3)(A) of such Code is
11 amended by adding at the end the following
12 new sentence: “The Commissioner of Social Se-
13 curity shall provide to the Secretary such infor-
14 mation as the Secretary may require in carrying
15 out this paragraph with respect to return infor-
16 mation inspected or disclosed under the author-
17 ity of subsection (l)(21).”.

18 (C) Section 6103(p)(4) of such Code is
19 amended—

20 (i) by striking “or (17)” both places it
21 appears and inserting “(17), or (21)”, and

22 (ii) by striking “or (20)” each place it
23 appears and inserting “(20), or (21)”.

1 (D) Section 6103(p)(8)(B) of such Code is
2 amended by inserting “or paragraph (9)” after
3 “subparagraph (A)”.

4 (E) Section 7213(a)(2) of such Code is
5 amended by striking “or (20)” and inserting
6 “(20), or (21)”.

7 (f) AUTHORIZATION OF APPROPRIATIONS.—

8 (1) IN GENERAL.—There are authorized to be
9 appropriated to the Secretary such sums as are nec-
10 essary to carry out the amendments made by this
11 section.

12 (2) LIMITATION ON VERIFICATION RESPON-
13 SIBILITIES OF COMMISSIONER OF SOCIAL SECUR-
14 RITY.—The Commissioner of Social Security is au-
15 thorized to perform activities with respect to car-
16 rying out the Commissioner’s responsibilities in this
17 title or the amendments made by this title, but only
18 to the extent the Secretary of Homeland Security
19 has provided, in advance, funds to cover the Com-
20 missioner’s full costs in carrying out such respon-
21 sibilities. In no case shall funds from the Federal
22 Old-Age and Survivors Insurance Trust Fund or the
23 Federal Disability Insurance Trust Fund be used to
24 carry out such responsibilities.

25 (g) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
2 subsections (a), (b), (c), and (d) shall take effect on
3 the date that is 180 days after the date of the enact-
4 ment of this Act.

5 (2) SUBSECTION (e).—

6 (A) IN GENERAL.—The amendments made
7 by subsection (e) shall apply to disclosures
8 made after the date of the enactment of this
9 Act.

10 (B) CERTIFICATIONS.—The first certifi-
11 cation under section 6103(p)(9)(D) of the In-
12 ternal Revenue Code of 1986, as added by sub-
13 section (e)(2), shall be made with respect to cal-
14 endar year 2007.

15 **SEC. 302. EMPLOYER COMPLIANCE FUND.**

16 Section 286 (8 U.S.C. 1356) is amended by adding
17 at the end the following new subsection:

18 “(w) EMPLOYER COMPLIANCE FUND.—

19 “(1) IN GENERAL.—There is established in the
20 general fund of the Treasury, a separate account,
21 which shall be known as the ‘Employer Compliance
22 Fund’ (referred to in this subsection as the ‘Fund’).

23 “(2) DEPOSITS.—There shall be deposited as
24 offsetting receipts into the Fund all civil monetary

1 penalties collected by the Secretary of Homeland Se-
2 curity under section 274A.

3 “(3) PURPOSE.—Amounts refunded to the Sec-
4 retary from the Fund shall be used for the purposes
5 of enhancing and enforcing employer compliance
6 with section 274A.

7 “(4) AVAILABILITY OF FUNDS.—Amounts de-
8 posited into the Fund shall remain available until
9 expended and shall be refunded out of the Fund by
10 the Secretary of the Treasury, at least on a quar-
11 terly basis, to the Secretary of Homeland Security.”.

12 **SEC. 303. ADDITIONAL WORKSITE ENFORCEMENT AND**
13 **FRAUD DETECTION AGENTS.**

14 (a) WORKSITE ENFORCEMENT.—

15 (1) INCREASE IN NUMBER OF INVESTIGA-
16 TORS.—The Secretary shall, subject to the avail-
17 ability of appropriations for such purpose, annually
18 increase, by not less than 2,000, the number of posi-
19 tions for investigators dedicated to enforcing compli-
20 ance with sections 274 and 274A of the Immigration
21 and Nationality Act (8 U.S.C. 1324, and 1324a)
22 during the 5-year period beginning on the date of
23 the enactment of this Act.

24 (2) USE OF ENFORCEMENT PERSONNEL.—The
25 Secretary shall ensure that not less than 20 percent

1 of all the hours expended by personnel of the Bu-
2 reau of Immigration and Customs Enforcement of
3 the Department to enforce the immigration and cus-
4 toms laws shall be used to enforce compliance with
5 section 274A of the Immigration and Nationality
6 Act (8 U.S.C. 1324a), as amended by section
7 301(a).

8 (b) FRAUD DETECTION.—The Secretary shall, sub-
9 ject to the availability of appropriations for such purpose,
10 increase by not less than 1,000 the number of positions
11 for agents of the Bureau of Immigration and Customs En-
12 forcement dedicated to immigration fraud detection during
13 the 5-year period beginning on the date of the enactment
14 of this Act.

15 (c) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to the Secretary for
17 each of the fiscal years 2007 through 2011 such sums as
18 may be necessary to carry out this section.

19 **SEC. 304. CLARIFICATION OF INELIGIBILITY FOR MIS-**
20 **REPRESENTATION.**

21 Section 212(a)(6)(C)(ii)(I) (8 U.S.C.
22 1182(a)(6)(C)(ii)(I)), is amended by striking “citizen”
23 and inserting “national”.

1 **TITLE IV—NONIMMIGRANT AND**
2 **IMMIGRANT VISA REFORM**
3 **Subtitle A—Temporary Guest**
4 **Workers**

5 **SEC. 401. IMMIGRATION IMPACT STUDY.**

6 (a) **EFFECTIVE DATE.**—Any regulation that would
7 increase the number of aliens who are eligible for legal
8 status may not take effect before 90 days after the date
9 on which the Director of the Bureau of the Census sub-
10 mits a report to Congress under subsection (c).

11 (b) **STUDY.**—The Director of the Bureau of the Cen-
12 sus, jointly with the Secretary, the Secretary of Agri-
13 culture, the Secretary of Education, the Secretary of En-
14 ergy, the Secretary of Health and Human Services, the
15 Secretary of Housing and Urban Development, the Sec-
16 retary of the Interior, the Secretary of Labor, the Sec-
17 retary of Transportation, the Secretary of the Treasury,
18 the Attorney General, and the Administrator of the Envi-
19 ronmental Protection Agency, shall undertake a study ex-
20 amining the impacts of the current and proposed annual
21 grants of legal status, including immigrant and non-
22 immigrant status, along with the current level of illegal
23 immigration, on the infrastructure of and quality of life
24 in the United States.

1 (c) REPORT.—Not later than 90 days after the date
2 of the enactment of this Act, the Director of the Bureau
3 of the Census shall submit to Congress a report on the
4 findings of the study required by subsection (b), including
5 the following information:

6 (1) An estimate of the total legal and illegal im-
7 migrant populations of the United States, as they
8 relate to the total population.

9 (2) The projected impact of legal and illegal im-
10 migration on the size of the population of the United
11 States over the next 50 years, which regions of the
12 country are likely to experience the largest increases,
13 which small towns and rural counties are likely to
14 lose their character as a result of such growth, and
15 how the proposed regulations would affect these pro-
16 jections.

17 (3) The impact of the current and projected
18 foreign-born populations on the natural environment,
19 including the consumption of nonrenewable re-
20 sources, waste production and disposal, the emission
21 of pollutants, and the loss of habitat and productive
22 farmland, an estimate of the public expenditures re-
23 quired to maintain current standards in each of
24 these areas, the degree to which current standards
25 will deteriorate if such expenditures are not forth-

1 coming, and the additional effects the proposed reg-
2 ulations would have.

3 (4) The impact of the current and projected
4 foreign-born populations on employment and wage
5 rates, particularly in industries such as agriculture
6 and services in which the foreign born are con-
7 centrated, an estimate of the associated public costs,
8 and the additional effects the proposed regulations
9 would have.

10 (5) The impact of the current and projected
11 foreign-born populations on the need for additions
12 and improvements to the transportation infrastruc-
13 ture of the United States, an estimate of the public
14 expenditures required to meet this need, the impact
15 on Americans' mobility if such expenditures are not
16 forthcoming, and the additional effect the proposed
17 regulations would have.

18 (6) The impact of the current and projected
19 foreign-born populations on enrollment, class size,
20 teacher-student ratios, and the quality of education
21 in public schools, an estimate of the public expendi-
22 tures required to maintain current median stand-
23 ards, the degree to those standards will deteriorate
24 if such expenditures are not forthcoming, and the

1 additional effect the proposed regulations would
2 have.

3 (7) The impact of the current and projected
4 foreign-born populations on home ownership rates,
5 housing prices, and the demand for low-income and
6 subsidized housing, the public expenditures required
7 to maintain current median standards in these
8 areas, the degree to which those standards will dete-
9 riorate if such expenditures are not forthcoming, and
10 the additional effect the proposed regulations would
11 have.

12 (8) The impact of the current and projected
13 foreign-born populations on access to quality health
14 care and on the cost of health care and health insur-
15 ance, an estimate of the public expenditures required
16 to maintain current median standards, the degree to
17 which those standards will deteriorate if such ex-
18 penditures are not forthcoming, and the additional
19 effect the proposed regulations would have.

20 (9) The impact of the current and projected
21 foreign-born populations on the criminal justice sys-
22 tem in the United States, an estimate of the associ-
23 ated public costs, and the additional effect the pro-
24 posed regulations would have.

1 **SEC. 402. NONIMMIGRANT TEMPORARY WORKER.**

2 (a) TEMPORARY WORKER CATEGORY.—Section
3 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is amended to
4 read as follows:

5 “(H) an alien—

6 “(i)(b) subject to section 212(j)(2)—

7 “(aa) who is coming temporarily
8 to the United States to perform serv-
9 ices (other than services described in
10 clause (ii)(a) or subparagraph (O) or
11 (P)) in a specialty occupation de-
12 scribed in section 214(i)(1) or as a
13 fashion model;

14 “(bb) who meets the require-
15 ments for the occupation specified in
16 section 214(i)(2) or, in the case of a
17 fashion model, is of distinguished
18 merit and ability; and

19 “(cc) with respect to whom the
20 Secretary of Labor determines and
21 certifies to the Secretary of Homeland
22 Security that the intending employer
23 has filed an application with the Sec-
24 retary in accordance with section
25 212(n)(1);

1 “(b1)(aa) who is entitled to enter the
2 United States under the provisions of an
3 agreement listed in section 214(g)(8)(A);

4 “(bb) who is engaged in a specialty
5 occupation described in section 214(i)(3);
6 and

7 “(cc) with respect to whom the Sec-
8 retary of Labor determines and certifies to
9 the Secretary of Homeland Security and
10 the Secretary of State that the intending
11 employer has filed an attestation with the
12 Secretary of Labor in accordance with sec-
13 tion 212(t)(1); or

14 “(c)(aa) who is coming temporarily to
15 the United States to perform services as a
16 registered nurse;

17 “(bb) who meets the qualifications de-
18 scribed in section 212(m)(1); and

19 “(cc) with respect to whom the Sec-
20 retary of Labor determines and certifies to
21 the Secretary of Homeland Security that
22 an unexpired attestation is on file and in
23 effect under section 212(m)(2) for the fa-
24 cility (as defined in section 212(m)(6)) for

1 which the alien will perform the services;

2 or

3 “(ii)(a) who—

4 “(aa) has a residence in a foreign
5 country which the alien has no inten-
6 tion of abandoning; and

7 “(bb) is coming temporarily to
8 the United States to perform agricul-
9 tural labor or services (as defined by
10 the Secretary of Labor), including ag-
11 ricultural labor (as defined in section
12 3121(g) of the Internal Revenue Code
13 of 1986), agriculture (as defined in
14 section 3(f) of the Fair Labor Stand-
15 ards Act of 1938 (29 U.S.C. 203(f))),
16 and the pressing of apples for cider on
17 a farm, of a temporary or seasonal
18 nature;

19 “(b) who—

20 “(aa) has a residence in a foreign
21 country which the alien has no inten-
22 tion of abandoning;

23 “(bb) is coming temporarily to
24 the United States to perform non-
25 agricultural work or services of a tem-

1 temporary or seasonal nature (if unem-
2 ployed persons capable of performing
3 such work or services cannot be found
4 in the United States), excluding med-
5 ical school graduates coming to the
6 United States to perform services as
7 members of the medical profession; or
8 “(c) who—

9 “(aa) has a residence in a foreign
10 country which the alien has no inten-
11 tion of abandoning;

12 “(bb) is coming temporarily to
13 the United States to perform tem-
14 porary labor or services other than the
15 labor or services described in clause
16 (i)(b), (i)(c), (ii)(a), or (iii), or sub-
17 paragraph (L), (O), (P), or (R) (if
18 unemployed persons capable of per-
19 forming such labor or services cannot
20 be found in the United States); and

21 “(cc) meets the requirements of
22 section 218A, including the filing of a
23 petition under such section on behalf
24 of the alien;

25 “(iii) who—

1 “(a) has a residence in a foreign
2 country which the alien has no inten-
3 tion of abandoning; and

4 “(b) is coming temporarily to the
5 United States as a trainee (other than
6 to receive graduate medical education
7 or training) in a training program
8 that is not designed primarily to pro-
9 vide productive employment; or

10 “(iv) who—

11 “(a) is the spouse or a minor
12 child of an alien described in clause
13 (iii); and

14 “(b) is accompanying or following
15 to join such alien.”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall take effect on the date which is 1 year
18 after the date of the enactment of this Act and shall apply
19 to aliens, who, on such effective date, are outside of the
20 United States.

21 **SEC. 403. ADMISSION OF NONIMMIGRANT TEMPORARY**
22 **GUEST WORKERS.**

23 (a) TEMPORARY GUEST WORKERS.—

1 (1) IN GENERAL.—Chapter 2 of title II (8
2 U.S.C. 1181 et seq.) is amended by inserting after
3 section 218 the following:

4 **“SEC. 218A. ADMISSION OF H-2C NONIMMIGRANTS.**

5 “(a) AUTHORIZATION.—The Secretary of State may
6 grant a temporary visa to an H-2C nonimmigrant who
7 demonstrates an intent to perform labor or services in the
8 United States (other than the labor or services described
9 in clause (i)(b) or (ii)(a) of section 101(a)(15)(H) or sub-
10 paragraph (L), (O), (P), or (R)) of section 101(a)(15).

11 “(b) REQUIREMENTS FOR ADMISSION.—An alien
12 shall be eligible for H-2C nonimmigrant status if the alien
13 meets the following requirements:

14 “(1) ELIGIBILITY TO WORK.—The alien shall
15 establish that the alien is capable of performing the
16 labor or services required for an occupation under
17 section 101(a)(15)(H)(ii)(c).

18 “(2) EVIDENCE OF EMPLOYMENT.—The alien
19 shall establish that the alien has received a job offer
20 from an employer who has complied with the re-
21 quirements of 218B.

22 “(3) FEE.—The alien shall pay a \$500 visa
23 issuance fee in addition to the cost of processing and
24 adjudicating such application. Nothing in this para-

1 graph shall be construed to affect consular proce-
2 dures for charging reciprocal fees.

3 “(4) MEDICAL EXAMINATION.—The alien shall
4 undergo a medical examination (including a deter-
5 mination of immunization status), at the alien’s ex-
6 pense, that conforms to generally accepted standards
7 of medical practice.

8 “(5) APPLICATION CONTENT AND WAIVER.—

9 “(A) APPLICATION FORM.—The alien shall
10 submit to the Secretary a completed applica-
11 tion, on a form designed by the Secretary of
12 Homeland Security, including proof of evidence
13 of the requirements under paragraphs (1) and
14 (2).

15 “(B) CONTENT.—In addition to any other
16 information that the Secretary requires to de-
17 termine an alien’s eligibility for H-2C non-
18 immigrant status, the Secretary shall require an
19 alien to provide information concerning the
20 alien’s—

21 “(i) physical and mental health;

22 “(ii) criminal history and gang mem-
23 bership;

24 “(iii) immigration history; and

1 “(iv) involvement with groups or indi-
2 viduals that have engaged in terrorism,
3 genocide, persecution, or who seek the
4 overthrow of the United States Govern-
5 ment.

6 “(C) KNOWLEDGE.—The alien shall in-
7 clude with the application submitted under this
8 paragraph a signed certification in which the
9 alien certifies that—

10 “(i) the alien has read and under-
11 stands all of the questions and statements
12 on the application form;

13 “(ii) the alien certifies under penalty
14 of perjury under the laws of the United
15 States that the application, and any evi-
16 dence submitted with it, are all true and
17 correct; and

18 “(iii) the applicant authorizes the re-
19 lease of any information contained in the
20 application and any attached evidence for
21 law enforcement purposes.

22 “(c) GROUNDS OF INADMISSIBILITY.—

23 “(1) IN GENERAL.—In determining an alien’s
24 admissibility as an H-2C nonimmigrant—

1 “(A) paragraphs (5), (6)(A), (7), (9)(B),
2 and (9)(C) of section 212(a) may be waived for
3 conduct that occurred before the effective date
4 of the Initial Entry, Adjustment, and Citizen-
5 ship Assistance Grant Act of 2006;

6 “(B) the Secretary of Homeland Security
7 may not waive the application of—

8 “(i) subparagraph (A), (B), (C), (E),
9 (G), (H), or (I) of section 212(a)(2) (relat-
10 ing to criminals);

11 “(ii) section 212(a)(3) (relating to se-
12 curity and related grounds); or

13 “(iii) subparagraph (A), (C) or (D) of
14 section 212(a)(10) (relating to polygamists
15 and child abductors); and

16 “(C) for conduct that occurred before the
17 date of the enactment of the Initial Entry, Ad-
18 justment, and Citizenship Assistance Grant Act
19 of 2006, the Secretary of Homeland Security
20 may waive the application of any provision of
21 section 212(a) not listed in subparagraph (B)
22 on behalf of an individual alien—

23 “(i) for humanitarian purposes;

24 “(ii) to ensure family unity; or

1 “(iii) if such a waiver is otherwise in
2 the public interest.

3 “(2) RENEWAL OF AUTHORIZED ADMISSION
4 AND SUBSEQUENT ADMISSIONS.—An alien seeking
5 renewal of authorized admission or subsequent ad-
6 mission as an H-2C nonimmigrant shall establish
7 that the alien is not inadmissible under section
8 212(a).

9 “(d) BACKGROUND CHECKS.—The Secretary of
10 Homeland Security shall not admit, and the Secretary of
11 State shall not issue a visa to, an alien seeking H-2C non-
12 immigrant status unless all appropriate background
13 checks have been completed.

14 “(e) INELIGIBLE TO CHANGE NONIMMIGRANT CLAS-
15 SIFICATION.—An H-2C nonimmigrant may not change
16 nonimmigrant classification under section 248.

17 “(f) PERIOD OF AUTHORIZED ADMISSION.—

18 “(1) AUTHORIZED PERIOD AND RENEWAL.—
19 The initial period of authorized admission as an H-
20 2C nonimmigrant shall be 3 years, and the alien
21 may seek 1 extension for an additional 3-year pe-
22 riod.

23 “(2) INTERNATIONAL COMMUTERS.—An alien
24 who resides outside the United States and commutes
25 into the United States to work as an H-2C non-

1 immigrant, is not subject to the time limitations
2 under paragraph (1).

3 “(3) LOSS OF EMPLOYMENT.—

4 “(A) IN GENERAL.—Subject to subsection
5 (e), the period of authorized admission of an
6 H–2C nonimmigrant shall terminate if the alien
7 is unemployed for 60 or more consecutive days.

8 “(B) RETURN TO FOREIGN RESIDENCE.—

9 Any alien whose period of authorized admission
10 terminates under subparagraph (A) shall be re-
11 quired to leave the United States.

12 “(C) PERIOD OF VISA VALIDITY.—Any

13 alien, whose period of authorized admission ter-
14 minates under subparagraph (A), who leaves
15 the United States under subparagraph (B),
16 may reenter the United States as an H–2C
17 nonimmigrant to work for an employer, if the
18 alien has complied with the requirements of
19 subsections (b) and (f)(2). The Secretary may,
20 in the Secretary’s sole and unreviewable discre-
21 tion, reauthorize such alien for admission as an
22 H–2C nonimmigrant without requiring the
23 alien’s departure from the United States.

24 “(4) VISITS OUTSIDE UNITED STATES.—

1 “(A) IN GENERAL.—Under regulations es-
2 tablished by the Secretary of Homeland Secu-
3 rity, an H-2C nonimmigrant—

4 “(i) may travel outside of the United
5 States; and

6 “(ii) may be readmitted without hav-
7 ing to obtain a new visa if the period of
8 authorized admission has not expired.

9 “(B) EFFECT ON PERIOD OF AUTHORIZED
10 ADMISSION.—Time spent outside the United
11 States under subparagraph (A) shall not extend
12 the period of authorized admission in the
13 United States.

14 “(5) BARS TO EXTENSION OR ADMISSION.—An
15 alien may not be granted H-2C nonimmigrant sta-
16 tus, or an extension of such status, if—

17 “(A) the alien has violated any material
18 term or condition of such status granted pre-
19 viously, including failure to comply with the
20 change of address reporting requirements under
21 section 265;

22 “(B) the alien is inadmissible as a non-
23 immigrant; or

24 “(C) the granting of such status or exten-
25 sion of such status would allow the alien to ex-

1 ceed 6 years as an H-2C nonimmigrant, unless
2 the alien has resided and been physically
3 present outside the United States for at least 1
4 year after the expiration of such H-2C non-
5 immigrant status.

6 “(g) EVIDENCE OF NONIMMIGRANT STATUS.—Each
7 H-2C nonimmigrant shall be issued documentary evidence
8 of nonimmigrant status, which—

9 “(1) shall be machine-readable, tamper-resist-
10 ant, and allow for biometric authentication;

11 “(2) shall be designed in consultation with the
12 Forensic Document Laboratory of the Bureau of
13 Immigration and Customs Enforcement;

14 “(3) shall, during the alien’s authorized period
15 of admission under subsection (f), serve as a valid
16 entry document for the purpose of applying for ad-
17 mission to the United States—

18 “(A) instead of a passport and visa if the
19 alien—

20 “(i) is a national of a foreign territory
21 contiguous to the United States; and

22 “(ii) is applying for admission at a
23 land border port of entry; and

1 “(B) in conjunction with a valid passport,
2 if the alien is applying for admission at an air
3 or sea port of entry;

4 “(4) may be accepted during the period of its
5 validity by an employer as evidence of employment
6 authorization and identity under section
7 274A(b)(1)(B); and

8 “(5) shall be issued to the H-2C nonimmigrant
9 by the Secretary of Homeland Security promptly
10 after the final adjudication of such alien’s applica-
11 tion for H-2C nonimmigrant status.

12 “(h) PENALTY FOR FAILURE TO DEPART.—If an H-
13 2C nonimmigrant fails to depart the United States before
14 the date which is 10 days after the date that the alien’s
15 authorized period of admission as an H-2C nonimmigrant
16 terminates, the H-2C nonimmigrant may not apply for
17 or receive any immigration relief or benefit under this Act
18 or any other law, except for relief under sections 208 and
19 241(b)(3) and relief under the Convention Against Tor-
20 ture and Other Cruel, Inhuman or Degrading Treatment
21 or Punishment, for an alien who indicates either an inten-
22 tion to apply for asylum under section 208 or a fear of
23 persecution or torture.

24 “(i) PENALTY FOR ILLEGAL ENTRY OR OVERSTAY.—
25 Any alien who enters, attempts to enter, or crosses the

1 border after the date of the enactment of this section, and
2 is physically present in the United States after such date
3 in violation of this Act or of any other Federal law, may
4 not receive, for a period of 10 years—

5 “(1) any relief under sections 240A and 240B;
6 or

7 “(2) nonimmigrant status under section
8 101(a)(15).

9 “(j) PORTABILITY.—A nonimmigrant alien described
10 in this section, who was previously issued a visa or other-
11 wise provided H-2C nonimmigrant status, may accept a
12 new offer of employment with a subsequent employer, if—

13 “(1) the employer complies with section 218B;
14 and

15 “(2) the alien, after lawful admission to the
16 United States, did not work without authorization.

17 “(k) CHANGE OF ADDRESS.—An H-2C non-
18 immigrant shall comply with the change of address report-
19 ing requirements under section 265 through either elec-
20 tronic or paper notification.

21 “(l) COLLECTION OF FEES.—All fees collected under
22 this section shall be deposited in the Treasury in accord-
23 ance with section 286(e).

24 “(m) ISSUANCE OF H-4 NONIMMIGRANT VISAS FOR
25 SPOUSE AND CHILDREN.—

1 “(1) IN GENERAL.—The alien spouse and chil-
2 dren of an H-2C nonimmigrant (referred to in this
3 section as ‘dependent aliens’) who are accompanying
4 or following to join the H-2C nonimmigrant may be
5 issued nonimmigrant visas under section
6 101(a)(15)(H)(iv).

7 “(2) REQUIREMENTS FOR ADMISSION.—A de-
8 pendent alien is eligible for nonimmigrant status
9 under 101(a)(15)(H)(iv) if the dependant alien
10 meets the following requirements:

11 “(A) ELIGIBILITY.—The dependent alien is
12 admissible as a nonimmigrant and does not fall
13 within a class of aliens ineligible for H-4A non-
14 immigrant status listed under subsection (c).

15 “(B) MEDICAL EXAMINATION.—Before a
16 nonimmigrant visa is issued to a dependent
17 alien under this subsection, the dependent alien
18 may be required to submit to a medical exam-
19 ination (including a determination of immuniza-
20 tion status) at the alien’s expense, that con-
21 forms to generally accepted standards of med-
22 ical practice.

23 “(C) BACKGROUND CHECKS.—Before a
24 nonimmigrant visa is issued to a dependent
25 alien under this section, the consular officer

1 shall conduct such background checks as the
2 Secretary of State, in consultation with the Sec-
3 retary of Homeland Security, considers appro-
4 priate.

5 “(n) DEFINITIONS.—In this section and sections
6 218B, 218C, and 218D:

7 “(1) AGGRIEVED PERSON.—The term ‘ag-
8 grievied person’ means a person adversely affected by
9 an alleged violation of this section, including—

10 “(A) a worker whose job, wages, or work-
11 ing conditions are adversely affected by the vio-
12 lation; and

13 “(B) a representative for workers whose
14 jobs, wages, or working conditions are adversely
15 affected by the violation who brings a complaint
16 on behalf of such worker.

17 “(2) AREA OF EMPLOYMENT.—The terms ‘area
18 of employment’ and ‘area of intended employment’
19 mean the area within normal commuting distance of
20 the worksite or physical location at which the work
21 of the temporary worker is or will be performed. If
22 such worksite or location is within a Metropolitan
23 Statistical Area, any place within such area is
24 deemed to be within the area of employment.

1 “(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible
2 individual’ means, with respect to employment, an
3 individual who is not an unauthorized alien (as de-
4 fined in section 274A) with respect to that employ-
5 ment.

6 “(4) EMPLOY; EMPLOYEE; EMPLOYER.—The
7 terms ‘employ’, ‘employee’, and ‘employer’ have the
8 meanings given such terms in section 3 of the Fair
9 Labor Standards Act of 1938 (29 U.S.C. 203).

10 “(5) FOREIGN LABOR CONTRACTOR.—The term
11 ‘foreign labor contractor’ means any person who for
12 any compensation or other valuable consideration
13 paid or promised to be paid, performs any foreign
14 labor contracting activity.

15 “(6) FOREIGN LABOR CONTRACTING ACTIV-
16 ITY.—The term ‘foreign labor contracting activity’
17 means recruiting, soliciting, hiring, employing, or
18 furnishing, an individual who resides outside of the
19 United States for employment in the United States
20 as a nonimmigrant alien described in section
21 101(a)(15)(H)(ii)(c).

22 “(7) H-2C NONIMMIGRANT.—The term ‘H-2C
23 nonimmigrant’ means a nonimmigrant described in
24 section 101(a)(15)(H)(ii)(c).

1 “(8) SEPARATION FROM EMPLOYMENT.—The
2 term ‘separation from employment’ means the work-
3 er’s loss of employment, other than through a dis-
4 charge for inadequate performance, violation of
5 workplace rules, cause, voluntary departure, vol-
6 untary retirement, or the expiration of a grant or
7 contract. The term does not include any situation in
8 which the worker is offered, as an alternative to
9 such loss of employment, a similar employment op-
10 portunity with the same employer at equivalent or
11 higher compensation and benefits than the position
12 from which the employee was discharged, regardless
13 of whether the employee accepts the offer. Nothing
14 in this paragraph shall limit an employee’s rights
15 under a collective bargaining agreement or other em-
16 ployment contract.

17 “(9) UNITED STATES WORKER.—The term
18 ‘United States worker’ means an employee who is—

19 “(A) a citizen or national of the United
20 States; or

21 “(B) an alien who is—

22 “(i) lawfully admitted for permanent
23 residence;

24 “(ii) admitted as a refugee under sec-
25 tion 207;

1 “(iii) granted asylum under section
2 208; or

3 “(iv) otherwise authorized, under this
4 Act or by the Secretary of Homeland Secu-
5 rity, to be employed in the United States.”.

6 (2) CLERICAL AMENDMENT.—The table of con-
7 tents for the Immigration and Nationality Act (8
8 U.S.C. 1101 et seq.) is amended by inserting after
9 the item relating to section 218 the following:

 “Sec. 218A. Admission of temporary H-2C workers.”.

10 (b) CREATION OF STATE IMPACT ASSISTANCE AC-
11 COUNT.—Section 286 (8 U.S.C. 1356) is amended by add-
12 ing at the end the following:

13 “(x) STATE IMPACT ASSISTANCE ACCOUNT.—There
14 is established in the general fund of the Treasury a sepa-
15 rate account, which shall be known as the ‘State Impact
16 Aid Account’. Notwithstanding any other provision under
17 this Act, there shall be deposited as offsetting receipts into
18 the account all family supplemental visa and family sup-
19 plemental extension of status fees collected under sections
20 218A and 218B.”.

21 **SEC. 404. EMPLOYER OBLIGATIONS.**

22 (a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.)
23 is amended by inserting after section 218A, as added by
24 section 403, the following:

1 **“SEC. 218B. EMPLOYER OBLIGATIONS.**

2 “(a) GENERAL REQUIREMENTS.—Each employer
3 who employs an H-2C nonimmigrant shall—

4 “(1) file a petition in accordance with sub-
5 section (b); and

6 “(2) pay the appropriate fee, as determined by
7 the Secretary of Labor.

8 “(b) PETITION.—A petition to hire an H-2C non-
9 immigrant under this section shall include an attestation
10 by the employer of the following:

11 “(1) PROTECTION OF UNITED STATES WORK-
12 ERS.—The employment of an H-2C non-
13 immigrant—

14 “(A) will not adversely affect the wages
15 and working conditions of workers in the
16 United States similarly employed; and

17 “(B) did not and will not cause the separa-
18 tion from employment of a United States work-
19 er employed by the employer within the 180-day
20 period beginning 90 days before the date on
21 which the petition is filed.

22 “(2) WAGES.—

23 “(A) IN GENERAL.—The H-2C non-
24 immigrant will be paid not less than the greater
25 of—

1 “(i) the actual wage level paid by the
2 employer to all other individuals with simi-
3 lar experience and qualifications for the
4 specific employment in question; or

5 “(ii) the prevailing wage level for the
6 occupational classification in the area of
7 employment, taking into account experi-
8 ence and skill levels of employees.

9 “(B) CALCULATION.—The wage levels
10 under subparagraph (A) shall be calculated
11 based on the best information available at the
12 time of the filing of the application.

13 “(C) PREVAILING WAGE LEVEL.—For pur-
14 poses of subparagraph (A)(ii), the prevailing
15 wage level shall be determined in accordance
16 with this subparagraph. If the job opportunity
17 is covered by a collective bargaining agreement
18 between a union and the employer, the pre-
19 vailing wage shall be the wage rate set forth in
20 the collective bargaining agreement. If the job
21 opportunity is not covered by such an agree-
22 ment, and it is in an occupation that is covered
23 by a wage determination under a provision of
24 subchapter IV of chapter 31 of title 40, United
25 States Code, or the Service Contract Act of

1 1965 (41 U.S.C. 351 et seq.), the prevailing
2 wage level shall be the appropriate statutory
3 wage.

4 “(3) WORKING CONDITIONS.—All workers in
5 the occupation at the place of employment at which
6 the H-2C nonimmigrant will be employed will be
7 provided the working conditions and benefits that
8 are normal to workers similarly employed in the area
9 of intended employment.

10 “(4) LABOR DISPUTE.—There is not a strike,
11 lockout, or work stoppage in the course of a labor
12 dispute in the occupation at the place of employment
13 at which the H-2C nonimmigrant will be employed.
14 If such strike, lockout, or work stoppage occurs fol-
15 lowing submission of the petition, the employer will
16 provide notification in accordance with regulations
17 promulgated by the Secretary of Labor.

18 “(5) PROVISION OF INSURANCE.—If the posi-
19 tion for which the H-2C nonimmigrant is sought is
20 not covered by the State workers’ compensation law,
21 the employer will provide, at no cost to the H-2C
22 nonimmigrant, insurance covering injury and disease
23 arising out of, and in the course of, the worker’s em-
24 ployment, which will provide benefits at least equal

1 to those provided under the State workers' com-
2 pensation law for comparable employment.

3 “(6) NOTICE TO EMPLOYEES.—

4 “(A) IN GENERAL.—The employer has pro-
5 vided notice of the filing of the petition to the
6 bargaining representative of the employer's em-
7 ployees in the occupational classification and
8 area of employment for which the H-2C non-
9 immigrant is sought.

10 “(B) NO BARGAINING REPRESENTATIVE.—

11 If there is no such bargaining representative,
12 the employer has—

13 “(i) posted a notice of the filing of the
14 petition in a conspicuous location at the
15 place or places of employment for which
16 the H-2C nonimmigrant is sought; or

17 “(ii) electronically disseminated such
18 a notice to the employer's employees in the
19 occupational classification for which the
20 H-2C nonimmigrant is sought.

21 “(7) RECRUITMENT.—Except where the Sec-
22 retary of Labor has determined that there is a
23 shortage of United States workers in the occupation
24 and area of intended employment for which the H-
25 2C nonimmigrant is sought—

1 “(A) there are not sufficient workers who
2 are able, willing, and qualified, and who will be
3 available at the time and place needed, to per-
4 form the labor or services involved in the peti-
5 tion; and

6 “(B) good faith efforts have been taken to
7 recruit United States workers, in accordance
8 with regulations promulgated by the Secretary
9 of Labor, which efforts included—

10 “(i) the completion of recruitment
11 during the period beginning on the date
12 that is 90 days before the date on which
13 the petition was filed with the Department
14 of Homeland Security and ending on the
15 date that is 14 days before such filing
16 date; and

17 “(ii) the actual wage paid by the em-
18 ployer for the occupation in the areas of
19 intended employment was used in con-
20 ducting recruitment.

21 “(8) INELIGIBILITY.—The employer is not cur-
22 rently ineligible from using the H-2C nonimmigrant
23 program described in this section.

1 “(9) BONAFIDE OFFER OF EMPLOYMENT.—The
2 job for which the H-2C nonimmigrant is sought is
3 a bona fide job—

4 “(A) for which the employer needs labor or
5 services;

6 “(B) which has been and is clearly open to
7 any United States worker; and

8 “(C) for which the employer will be able to
9 place the H-2C nonimmigrant on the payroll.

10 “(10) PUBLIC AVAILABILITY AND RECORDS RE-
11 TENTION.—A copy of each petition filed under this
12 section and documentation supporting each attesta-
13 tion, in accordance with regulations promulgated by
14 the Secretary of Labor, will—

15 “(A) be provided to every H-2C non-
16 immigrant employed under the petition;

17 “(B) be made available for public examina-
18 tion at the employer’s place of business or work
19 site;

20 “(C) be made available to the Secretary of
21 Labor during any audit; and

22 “(D) remain available for examination for
23 5 years after the date on which the petition is
24 filed.

1 “(11) NOTIFICATION UPON SEPARATION FROM
2 OR TRANSFER OF EMPLOYMENT.—The employer will
3 notify the Secretary of Labor and the Secretary of
4 Homeland Security of an H–2C nonimmigrant’s sep-
5 aration from employment or transfer to another em-
6 ployer not more than 3 business days after the date
7 of such separation or transfer, in accordance with
8 regulations promulgated by the Secretary of Home-
9 land Security.

10 “(12) ACTUAL NEED FOR LABOR OR SERV-
11 ICES.—The petition was filed not more than 60 days
12 before the date on which the employer needed labor
13 or services for which the H–2C nonimmigrant is
14 sought.

15 “(c) AUDIT OF ATTESTATIONS.—

16 “(1) REFERRALS BY SECRETARY OF HOMELAND
17 SECURITY.—The Secretary of Homeland Security
18 shall refer all approved petitions for H–2C non-
19 immigrants to the Secretary of Labor for potential
20 audit.

21 “(2) AUDITS AUTHORIZED.—The Secretary of
22 Labor may audit any approved petition referred pur-
23 suant to paragraph (1), in accordance with regula-
24 tions promulgated by the Secretary of Labor.

25 “(d) INELIGIBLE EMPLOYERS.—

1 “(1) IN GENERAL.—The Secretary of Homeland
2 Security shall not approve an employer’s petitions,
3 applications, certifications, or attestations under any
4 immigrant or nonimmigrant program if the Sec-
5 retary of Labor determines, after notice and an op-
6 portunity for a hearing, that the employer submit-
7 ting such documents—

8 “(A) has, with respect to the attestations
9 required under subsection (b)—

10 “(i) misrepresented a material fact;

11 “(ii) made a fraudulent statement; or

12 “(iii) failed to comply with the terms
13 of such attestations; or

14 “(B) failed to cooperate in the audit proc-
15 ess in accordance with regulations promulgated
16 by the Secretary of Labor.

17 “(2) LENGTH OF INELIGIBILITY.—An employer
18 described in paragraph (1) shall be ineligible to par-
19 ticipate in the labor certification programs of the
20 Secretary of Labor for not less than the time period
21 determined by the Secretary, not to exceed 3 years.

22 “(3) EMPLOYERS IN HIGH UNEMPLOYMENT
23 AREAS.—Beginning on the date that is 1 year after
24 the date of the enactment of the Initial Entry, Ad-
25 justment, and Citizenship Assistance Grant Act of

1 2006, the Secretary of Homeland Security may not
2 approve any employer’s petition under subsection (b)
3 if the work to be performed by the H–2C non-
4 immigrant is located in a metropolitan or
5 micropolitan statistical area (as defined by the Of-
6 fice of Management and Budget) in which the unem-
7 ployment rate for unskilled and low-skilled workers
8 during the most recently completed 6-month period
9 averaged more than 11.0 percent.

10 “(e) REGULATION OF FOREIGN LABOR CONTRAC-
11 TORS.—

12 “(1) COVERAGE.—Notwithstanding any other
13 provision of law, an H–2C nonimmigrant may not be
14 treated as an independent contractor.

15 “(2) APPLICABILITY OF LAWS.—An H–2C non-
16 immigrant shall not be denied any right or any rem-
17 edy under Federal, State, or local labor or employ-
18 ment law that would be applicable to a United
19 States worker employed in a similar position with
20 the employer because of the alien’s status as a non-
21 immigrant worker.

22 “(3) TAX RESPONSIBILITIES.—With respect to
23 each employed H–2C nonimmigrant, an employer
24 shall comply with all applicable Federal, State, and
25 local tax and revenue laws.

1 “(f) WHISTLEBLOWER PROTECTION.—It shall be un-
2 lawful for an employer or a labor contractor of an H-2C
3 nonimmigrant to intimidate, threaten, restrain, coerce, re-
4 taliate, discharge, or in any other manner, discriminate
5 against an employee or former employee because the em-
6 ployee or former employee—

7 “(1) discloses information to the employer or
8 any other person that the employee or former em-
9 ployee reasonably believes demonstrates a violation
10 of this Act; or

11 “(2) cooperates or seeks to cooperate in an in-
12 vestigation or other proceeding concerning compli-
13 ance with the requirements of this Act.

14 “(g) LABOR RECRUITERS.—

15 “(1) IN GENERAL.—Each employer that en-
16 engages in foreign labor contracting activity and each
17 foreign labor contractor shall ascertain and disclose,
18 to each such worker who is recruited for employment
19 at the time of the worker’s recruitment—

20 “(A) the place of employment;

21 “(B) the compensation for the employ-
22 ment;

23 “(C) a description of employment activi-
24 ties;

25 “(D) the period of employment;

1 “(E) any other employee benefit to be pro-
2 vided and any costs to be charged for each ben-
3 efit;

4 “(F) any travel or transportation expenses
5 to be assessed;

6 “(G) the existence of any labor organizing
7 effort, strike, lockout, or other labor dispute at
8 the place of employment;

9 “(H) the existence of any arrangement
10 with any owner, employer, foreign contractor,
11 or its agent where such person receives a com-
12 mission from the provision of items or services
13 to workers;

14 “(I) the extent to which workers will be
15 compensated through workers’ compensation,
16 private insurance, or otherwise for injuries or
17 death, including—

18 “(i) work related injuries and death
19 during the period of employment;

20 “(ii) the name of the State workers’
21 compensation insurance carrier or the
22 name of the policyholder of the private in-
23 surance;

1 “(iii) the name and the telephone
2 number of each person who must be noti-
3 fied of an injury or death; and

4 “(iv) the time period within which
5 such notice must be given;

6 “(J) any education or training to be pro-
7 vided or required, including—

8 “(i) the nature and cost of such train-
9 ing;

10 “(ii) the entity that will pay such
11 costs; and

12 “(iii) whether the training is a condi-
13 tion of employment, continued employ-
14 ment, or future employment; and

15 “(K) a statement, in a form specified by
16 the Secretary of Labor, describing the protec-
17 tions of this Act for workers recruited abroad.

18 “(2) FALSE OR MISLEADING INFORMATION.—
19 No foreign labor contractor or employer who en-
20 gages in foreign labor contracting activity shall
21 knowingly provide material false or misleading infor-
22 mation to any worker concerning any matter re-
23 quired to be disclosed in paragraph (1).

24 “(3) LANGUAGES.—The information required to
25 be disclosed under paragraph (1) shall be provided

1 in writing in English or, as necessary and reason-
2 able, in the language of the worker being recruited.
3 The Secretary of Labor shall make forms available
4 in English, Spanish, and other languages, as nec-
5 essary, which may be used in providing workers with
6 information required under this section.

7 “(4) FEES.—A person conducting a foreign
8 labor contracting activity shall not assess any fee to
9 a worker for such foreign labor contracting activity.

10 “(5) TERMS.—No employer or foreign labor
11 contractor shall, without justification, violate the
12 terms of any agreement made by that contractor or
13 employer regarding employment under this program.

14 “(6) TRAVEL COSTS.—If the foreign labor con-
15 tractor or employer charges the employee for trans-
16 portation such transportation costs shall be reason-
17 able.

18 “(7) OTHER WORKER PROTECTIONS.—

19 “(A) NOTIFICATION.—Not less frequently
20 than once every 2 years, each employer shall
21 notify the Secretary of Labor of the identity of
22 any foreign labor contractor engaged by the em-
23 ployer in any foreign labor contractor activity
24 for, or on behalf of, the employer.

1 “(B) REGISTRATION OF FOREIGN LABOR
2 CONTRACTORS.—

3 “(i) IN GENERAL.—No person shall
4 engage in foreign labor recruiting activity
5 unless such person has a certificate of reg-
6 istration from the Secretary of Labor
7 specifying the activities that such person is
8 authorized to perform. An employer who
9 retains the services of a foreign labor con-
10 tractor shall only use those foreign labor
11 contractors who are registered under this
12 subparagraph.

13 “(ii) ISSUANCE.—The Secretary shall
14 promulgate regulations to establish an effi-
15 cient electronic process for the investiga-
16 tion and approval of an application for a
17 certificate of registration of foreign labor
18 contractors not later than 14 days after
19 such application is filed, including—

20 “(I) requirements under para-
21 graphs (1), (4), and (5) of section 102
22 of the Migrant and Seasonal Agricul-
23 tural Worker Protection Act (29
24 U.S.C. 1812);

1 “(II) an expeditious means to up-
2 date registrations and renew certifi-
3 cates; and

4 “(III) any other requirements
5 that the Secretary may prescribe.

6 “(iii) TERM.—Unless suspended or re-
7 voked, a certificate under this subpara-
8 graph shall be valid for 2 years.

9 “(iv) REFUSAL TO ISSUE; REVOCA-
10 TION; SUSPENSION.—In accordance with
11 regulations promulgated by the Secretary
12 of Labor, the Secretary may refuse to issue
13 or renew, or may suspend or revoke, a cer-
14 tificate of registration under this subpara-
15 graph if—

16 “(I) the application or holder of
17 the certification has knowingly made a
18 material misrepresentation in the ap-
19 plication for such certificate;

20 “(II) the applicant for, or holder
21 of, the certification is not the real
22 party in interest in the application or
23 certificate of registration and the real
24 party in interest—

1 “(aa) is a person who has
2 been refused issuance or renewal
3 of a certificate;

4 “(bb) has had a certificate
5 suspended or revoked; or

6 “(cc) does not qualify for a
7 certificate under this paragraph;
8 or

9 “(III) the applicant for or holder
10 of the certification has failed to com-
11 ply with this Act.

12 “(C) REMEDY FOR VIOLATIONS.—An em-
13 ployer engaging in foreign labor contracting ac-
14 tivity and a foreign labor contractor that vio-
15 lates the provisions of this subsection shall be
16 subject to remedies for foreign labor contractor
17 violations under subsections (h) and (i). If a
18 foreign labor contractor acting as an agent of
19 an employer violates any provision of this sub-
20 section, the employer shall also be subject to
21 remedies under subsections (h) and (i). An em-
22 ployer that violates a provision of this sub-
23 section relating to employer obligations shall be
24 subject to remedies under subsections (h) and
25 (i).

1 “(D) EMPLOYER NOTIFICATION.—An em-
2 ployer shall notify the Secretary of Labor if the
3 employer becomes aware of a violation of this
4 subsection by a foreign labor recruiter.

5 “(E) WRITTEN AGREEMENTS.—A foreign
6 labor contractor may not violate the terms of
7 any written agreements made with an employer
8 relating to any contracting activity or worker
9 protection under this subsection.

10 “(F) BONDING REQUIREMENT.—The Sec-
11 retary of Labor may require a foreign labor
12 contractor to post a bond in an amount suffi-
13 cient to ensure the protection of individuals re-
14 cruited by the foreign labor contractor. The
15 Secretary may consider the extent to which the
16 foreign labor contractor has sufficient ties to
17 the United States to adequately enforce this
18 subsection.

19 “(h) ENFORCEMENT.—

20 “(1) IN GENERAL.—The Secretary of Labor
21 shall promulgate regulations for the receipt, inves-
22 tigation, and disposition of complaints by an ag-
23 grieved person respecting a violation of this section.

24 “(2) FILING DEADLINE.—No investigation or
25 hearing shall be conducted on a complaint con-

1 cerning a violation under this section unless the
2 complaint was filed not later than 12 months after
3 the date of such violation.

4 “(3) REASONABLE CAUSE.—The Secretary of
5 Labor shall conduct an investigation under this sub-
6 section if there is reasonable cause to believe that a
7 violation of this section has occurred. The process
8 established under this subsection shall provide that,
9 not later than 30 days after a complaint is filed, the
10 Secretary shall determine if there is reasonable
11 cause to find such a violation.

12 “(4) NOTICE AND HEARING.—

13 “(A) IN GENERAL.—Not later than 60
14 days after the Secretary of Labor makes a de-
15 termination of reasonable cause under para-
16 graph (4), the Secretary shall issue a notice to
17 the interested parties and offer an opportunity
18 for a hearing on the complaint, in accordance
19 with section 556 of title 5, United States Code.

20 “(B) COMPLAINT.—If the Secretary of
21 Labor, after receiving a complaint under this
22 subsection, does not offer the aggrieved party
23 or organization an opportunity for a hearing
24 under subparagraph (A), the Secretary shall no-
25 tify the aggrieved party or organization of such

1 determination and the aggrieved party or orga-
2 nization may seek a hearing on the complaint
3 in accordance with such section 556.

4 “(C) HEARING DEADLINE.—Not later than
5 60 days after the date of a hearing under this
6 paragraph, the Secretary of Labor shall make a
7 finding on the matter in accordance with para-
8 graph (5).

9 “(5) ATTORNEYS’ FEES.—A complainant who
10 prevails with respect to a claim under this sub-
11 section shall be entitled to an award of reasonable
12 attorneys’ fees and costs.

13 “(6) POWER OF THE SECRETARY.—The Sec-
14 retary may bring an action in any court of com-
15 petent jurisdiction—

16 “(A) to seek remedial action, including in-
17 junctive relief;

18 “(B) to recover the damages described in
19 subsection (i); or

20 “(C) to ensure compliance with terms and
21 conditions described in subsection (g).

22 “(7) SOLICITOR OF LABOR.—Except as pro-
23 vided in section 518(a) of title 28, United States
24 Code, the Solicitor of Labor may appear for and rep-
25 resent the Secretary of Labor in any civil litigation

1 brought under this subsection. All such litigation
 2 shall be subject to the direction and control of the
 3 Attorney General.

4 “(8) PROCEDURES IN ADDITION TO OTHER
 5 RIGHTS OF EMPLOYEES.—The rights and remedies
 6 provided to workers under this section are in addi-
 7 tion to any other contractual or statutory rights and
 8 remedies of the workers, and are not intended to
 9 alter or affect such rights and remedies.

10 “(i) PENALTIES.—

11 “(1) IN GENERAL.—If, after notice and an op-
 12 portunity for a hearing, the Secretary of Labor finds
 13 a violation of subsection (b), (e), (f), or (g), the Sec-
 14 retary may impose administrative remedies and pen-
 15 alties, including—

16 “(A) back wages;

17 “(B) benefits; and

18 “(C) civil monetary penalties.

19 “(2) CIVIL PENALTIES.—The Secretary of
 20 Labor may impose, as a civil penalty—

21 “(A) for a violation of subsection (e) or
 22 (f)—

23 “(i) a fine in an amount not to exceed
 24 \$2,000 per violation per affected worker;

1 “(ii) if the violation was willful viola-
2 tion, a fine in an amount not to exceed
3 \$5,000 per violation per affected worker;

4 “(iii) if the violation was willful and if
5 in the course of such violation a United
6 States worker was harmed, a fine in an
7 amount not to exceed \$25,000 per viola-
8 tion per affected worker; and

9 “(B) for a violation of subsection (g)—

10 “(i) a fine in an amount not less than
11 \$500 and not more than \$4,000 per viola-
12 tion per affected worker;

13 “(ii) if the violation was willful, a fine
14 in an amount not less than \$2,000 and not
15 more than \$5,000 per violation per af-
16 fected worker; and

17 “(iii) if the violation was willful and if
18 in the course of such violation a United
19 States worker was harmed, a fine in an
20 amount not less than \$6,000 and not more
21 than \$35,000 per violation per affected
22 worker.

23 “(3) USE OF CIVIL PENALTIES.—All penalties
24 collected under this subsection shall be deposited in
25 the Treasury in accordance with section 286(w).

1 “(4) CRIMINAL PENALTIES.—If a willful and
2 knowing violation of subsection (g) causes extreme
3 physical or financial harm to an individual, the per-
4 son in violation of such subsection may be impris-
5 oned for not more than 6 months, fined in an
6 amount not more than \$35,000, or both.”.

7 (b) CLERICAL AMENDMENT.—The table of contents
8 is amended by inserting after the item relating to section
9 218A, as added by section 403, the following:

 “Sec. 218B. Employer obligations.”.

10 **SEC. 405. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

11 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)
12 is amended by inserting after section 218B, as added by
13 section 404, the following:

14 **“SEC. 218C. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

15 “(a) ESTABLISHMENT.—The Secretary of Homeland
16 Security, in consultation with the Secretary of Labor, the
17 Secretary of State, and the Commission of Social Security,
18 shall develop and implement a program (referred to in this
19 section as the ‘alien employment management system’) to
20 manage and track the employment of aliens described in
21 sections 218A and 218D.

22 “(b) REQUIREMENTS.—The alien employment man-
23 agement system shall—

24 “(1) provide employers who seek employees with
25 an opportunity to recruit and advertise employment

1 opportunities available to United States workers be-
2 fore hiring an H-2C nonimmigrant;

3 “(2) collect sufficient information from employ-
4 ers to enable the Secretary of Homeland Security to
5 determine—

6 “(A) if the nonimmigrant is employed;

7 “(B) which employers have hired an H-2C
8 nonimmigrant;

9 “(C) the number of H-2C nonimmigrants
10 that an employer is authorized to hire and is
11 currently employing;

12 “(D) the occupation, industry, and length
13 of time that an H-2C nonimmigrant has been
14 employed in the United States;

15 “(3) allow employers to request approval of
16 multiple H-2C nonimmigrant workers; and

17 “(4) permit employers to submit applications
18 under this section in an electronic form.”.

19 (b) CLERICAL AMENDMENT.—The table of contents
20 for the Immigration and Nationality Act (8 U.S.C. 1101
21 et seq.) is amended by inserting after the item relating
22 to section 218B, as added by section 404, the following:

“Sec. 218C. Alien employment management system.”.

23 **SEC. 406. RULEMAKING; EFFECTIVE DATE.**

24 (a) RULEMAKING.—Not later than 6 months after
25 the date of enactment of this Act, the Secretary of Labor

1 shall promulgate regulations, in accordance with the notice
2 and comment provisions of section 553 of title 5, United
3 States Code, to carry out the provisions of sections 218A,
4 218B, and 218C, as added by this Act.

5 (b) EFFECTIVE DATE.—The amendments made by
6 sections 403, 404, and 405 shall take effect on the date
7 that is 1 year after the date of the enactment of this Act
8 with regard to aliens, who, on such effective date, are in
9 the foreign country where they maintain residence.

10 **SEC. 407. RECRUITMENT OF UNITED STATES WORKERS.**

11 (a) ELECTRONIC JOB REGISTRY.—The Secretary of
12 Labor shall establish a publicly accessible Web page on
13 the Internet website of the Department of Labor that pro-
14 vides a single Internet link to each State workforce agen-
15 cy's statewide electronic registry of jobs available through-
16 out the United States to United States workers.

17 (b) RECRUITMENT OF UNITED STATES WORKERS.—

18 (1) POSTING.—An employer shall attest that
19 the employer has posted an employment opportunity
20 at a prevailing wage level (as described in section
21 218B(b)(2)(C) of the Immigration and Nationality
22 Act).

23 (2) RECORDS.—An employer shall maintain
24 records for not less than 1 year after the date on
25 which an H-2C nonimmigrant is hired that describe

1 the reasons for not hiring any of the United States
2 workers who may have applied for such position.

3 (c) OVERSIGHT AND MAINTENANCE OF RECORDS.—

4 The Secretary of Labor shall promulgate regulations re-
5 garding the maintenance of electronic job registry records
6 for the purpose of audit or investigation.

7 (d) ACCESS TO ELECTRONIC JOB REGISTRY.—The
8 Secretary of Labor shall ensure that job opportunities ad-
9 vertised on an electronic job registry established under
10 this section are accessible—

11 (1) by the State workforce agencies, which may
12 further disseminate job opportunity information to
13 other interested parties; and

14 (2) through the Internet, for access by workers,
15 employers, labor organizations, and other interested
16 parties.

17 **SEC. 408. TEMPORARY GUEST WORKER VISA PROGRAM**
18 **TASK FORCE.**

19 (a) ESTABLISHMENT.—There is established a task
20 force to be known as the “Temporary Worker Task
21 Force” (referred to in this section as the “Task Force”).

22 (b) PURPOSES.—The purposes of the Task Force
23 are—

24 (1) to study the impact of the admission of
25 aliens under section 101(a)(15)(ii)(c) on the wages,

1 working conditions, and employment of United
2 States workers; and

3 (2) to make recommendations to the Secretary
4 of Labor regarding the need for an annual numerical
5 limitation on the number of aliens that may be ad-
6 mitted in any fiscal year under section
7 101(a)(15)(ii)(c).

8 (c) MEMBERSHIP.—

9 (1) IN GENERAL.—The Task Force shall be
10 composed of 10 members, of whom—

11 (A) 1 shall be appointed by the President
12 and shall serve as chairman of the Task Force;

13 (B) 1 shall be appointed by the leader of
14 the minority party in the Senate, in consulta-
15 tion with the leader of the minority party in the
16 House of Representatives, and shall serve as
17 vice chairman of the Task Force;

18 (C) 2 shall be appointed by the majority
19 leader of the Senate;

20 (D) 2 shall be appointed by the minority
21 leader of the Senate;

22 (E) 2 shall be appointed by the Speaker of
23 the House of Representatives; and

24 (F) 2 shall be appointed by the minority
25 leader of the House of Representatives.

1 (2) DEADLINE FOR APPOINTMENT.—All mem-
2 bers of the Task Force shall be appointed not later
3 than 6 months after the date of the enactment of
4 this Act.

5 (3) VACANCIES.—Any vacancy in the Task
6 Force shall not affect its powers, but shall be filled
7 in the same manner in which the original appoint-
8 ment was made.

9 (4) QUORUM.—Six members of the Task Force
10 shall constitute a quorum.

11 (d) QUALIFICATIONS.—

12 (1) IN GENERAL.—Members of the Task Force
13 shall be—

14 (A) individuals with expertise in economics,
15 demography, labor, business, or immigration or
16 other pertinent qualifications or experience; and

17 (B) representative of a broad cross-section
18 of perspectives within the United States, includ-
19 ing the public and private sectors and aca-
20 demia.

21 (2) POLITICAL AFFILIATION.—Not more than 5
22 members of the Task Force may be members of the
23 same political party.

24 (3) NONGOVERNMENTAL APPOINTEES.—An in-
25 dividual appointed to the Task Force may not be an

1 officer or employee of the Federal Government or of
2 any State or local government.

3 (e) MEETINGS.—

4 (1) INITIAL MEETING.—The Task Force shall
5 meet and begin the operations of the Task Force as
6 soon as practicable.

7 (2) SUBSEQUENT MEETINGS.—After its initial
8 meeting, the Task Force shall meet upon the call of
9 the chairman or a majority of its members.

10 (f) REPORT.—Not later than 18 months after the
11 date of the enactment of this Act, the Task Force shall
12 submit, to Congress, the Secretary of Labor, and the Sec-
13 retary, a report that contains—

14 (1) findings with respect to the duties of the
15 Task Force; and

16 (2) recommendations for imposing a numerical
17 limit.

18 (g) NUMERICAL LIMITATIONS.—Section 214(g)(1) (8
19 U.S.C. 1184(g)(1)) is amended—

20 (1) in subparagraph (B), by striking the period
21 at the end and inserting “; and”; and

22 (2) by adding at the end the following:

23 “(C) under section 101(a)(15)(H)(ii)(c)
24 may not exceed—

1 “(i) 325,000 for the first fiscal year
2 in which the program is implemented;

3 “(ii) in any subsequent fiscal year—

4 “**(I)** if the total number of visas
5 allocated for that fiscal year are allot-
6 ted within the first quarter of that fis-
7 cal year, then an additional 20 per-
8 cent of the allocated number shall be
9 made available immediately and the
10 allocated amount for the following fis-
11 cal year shall increase by 20 percent
12 of the original allocated amount in the
13 prior fiscal year;

14 “**(II)** if the total number of visas
15 allocated for that fiscal year are allot-
16 ted within the second quarter of that
17 fiscal year, then an additional 15 per-
18 cent of the allocated number shall be
19 made available immediately and the
20 allocated amount for the following fis-
21 cal year shall increase by 15 percent
22 of the original allocated amount in the
23 prior fiscal year;

24 “**(III)** if the total number of visas
25 allocated for that fiscal year are allot-

1 ted within the third quarter of that
2 fiscal year, then an additional 10 per-
3 cent of the allocated number shall be
4 made available immediately and the
5 allocated amount for the following fis-
6 cal year shall increase by 10 percent
7 of the original allocated amount in the
8 prior fiscal year;

9 “(IV) if the total number of visas
10 allocated for that fiscal year are allot-
11 ted within the last quarter of that fis-
12 cal year, then the allocated amount
13 for the following fiscal year shall in-
14 crease by 10 percent of the original
15 allocated amount in the prior fiscal
16 year; and

17 “(V) with the exception of the
18 first subsequent fiscal year to the fis-
19 cal year in which the program is im-
20 plemented, if fewer visas were allotted
21 the previous fiscal year than the num-
22 ber of visas allocated for that year
23 and the reason was not due to proc-
24 essing delays or delays in promul-
25 gating regulations, then the allocated

1 amount for the following fiscal year
2 shall decrease by 10 percent of the al-
3 located amount in the prior fiscal
4 year.”.

5 (h) ADJUSTMENT TO LAWFUL PERMANENT RESI-
6 DENT STATUS.—Section 245 (8 U.S.C. 1255) is amended
7 by adding at the end the following:

8 “(n)(1) For purposes of adjustment of status under
9 subsection (a), employment-based immigrant visas shall be
10 made available to an alien having nonimmigrant status de-
11 scribed in section 101(a)(15)(H)(ii)(c) upon the filing of
12 a petition for such a visa—

13 “(A) by the alien’s employer; or

14 “(B) by the alien, if the alien has maintained
15 such nonimmigrant status in the United States for
16 a cumulative total of 4 years.

17 “(2) An alien having nonimmigrant status described
18 in section 101(a)(15)(H)(ii)(c) may not apply for adjust-
19 ment of status under this section unless the alien—

20 “(A) is physically present in the United States;

21 and

22 “(B) the alien establishes that the alien—

23 “(i) meets the requirements of section 312;

24 or

1 “(ii) is satisfactorily pursuing a course of
2 study to achieve such an understanding of
3 English and knowledge and understanding of
4 the history and government of the United
5 States.

6 “(3) An alien who demonstrates that the alien meets
7 the requirements of section 312 may be considered to have
8 satisfied the requirements of that section for purposes of
9 becoming naturalized as a citizen of the United States
10 under title III.

11 “(4) Filing a petition under paragraph (1) on behalf
12 of an alien or otherwise seeking permanent residence in
13 the United States for such alien shall not constitute evi-
14 dence of the alien’s ineligibility for nonimmigrant status
15 under section 101(a)(15)(H)(ii)(c).

16 “(5) The Secretary of Homeland Security shall ex-
17 tend, in 1-year increments, the stay of an alien for whom
18 a labor certification petition filed under section 203(b) or
19 an immigrant visa petition filed under section 204(b) is
20 pending until a final decision is made on the alien’s lawful
21 permanent residence.

22 “(6) Nothing in this subsection shall be construed to
23 prevent an alien having nonimmigrant status described in
24 section 101(a)(15)(H)(ii)(c) from filing an application for

1 adjustment of status under this section in accordance with
2 any other provision of law.”.

3 **SEC. 409. REQUIREMENTS FOR PARTICIPATING COUN-**
4 **TRIES.**

5 (a) IN GENERAL.—The Secretary of State, in co-
6 operation with the Secretary and the Attorney General,
7 shall negotiate with each home country of aliens described
8 in section 101(a)(15)(H)(ii)(c) of the Immigration and
9 Nationality Act, as added by section 402, to enter into
10 a bilateral agreement with the United States that con-
11 forms to the requirements under subsection (b).

12 (b) REQUIREMENTS OF BILATERAL AGREEMENTS.—
13 Each agreement negotiated under subsection (a) shall re-
14 quire the participating home country to—

15 (1) accept the return of nationals who are or-
16 dered removed from the United States within 3 days
17 of such removal;

18 (2) cooperate with the United States Govern-
19 ment to—

20 (A) identify, track, and reduce gang mem-
21 bership, violence, and human trafficking and
22 smuggling; and

23 (B) control illegal immigration;

24 (3) provide the United States Government
25 with—

1 (A) passport information and criminal
2 records of aliens who are seeking admission to,
3 or are present in, the United States; and

4 (B) admission and entry data to facilitate
5 United States entry-exit data systems; and

6 (4) educate nationals of the home country re-
7 garding United States temporary worker programs
8 to ensure that such nationals are not exploited; and
9 (5) evaluate means to provide housing incen-
10 tives in the alien's home country for returning work-
11 ers.

12 **SEC. 410. S VISAS.**

13 (a) EXPANSION OF S VISA CLASSIFICATION.—Sec-
14 tion 101(a)(15)(S) (8 U.S.C. 1101(a)(15)(S)) is amend-
15 ed—

16 (1) in clause (i)—

17 (A) by striking “Attorney General” each
18 place that term appears and inserting “Sec-
19 retary of Homeland Security”;

20 (B) in subclause (I), by inserting before
21 the semicolon, ‘, including a criminal enterprise
22 undertaken by a foreign government, its agents,
23 representatives, or officials’;

24 (C) in subclause (III), by inserting “where
25 the information concerns a criminal enterprise

1 undertaken by an individual or organization
2 that is not a foreign government, its agents,
3 representatives, or officials,” before “whose”;
4 and

5 (D) by striking “or” at the end; and

6 (2) in clause (ii)—

7 (A) by striking “Attorney General” and in-
8 serting “Secretary of Homeland Security”; and

9 (B) by striking “1956,” and all that fol-
10 lows through “the alien;” and inserting the fol-
11 lowing: “1956; or

12 “(iii) who the Secretary of Homeland Se-
13 curity and the Secretary of State, in consulta-
14 tion with the Director of Central Intelligence,
15 jointly determine—

16 “(I) is in possession of critical reliable
17 information concerning the activities of
18 governments or organizations, or their
19 agents, representatives, or officials, with
20 respect to weapons of mass destruction
21 and related delivery systems, if such gov-
22 ernments or organizations are at risk of
23 developing, selling, or transferring such
24 weapons or related delivery systems; and

1 “(II) is willing to supply or has sup-
2 plied, fully and in good faith, information
3 described in subclause (I) to appropriate
4 persons within the United States Govern-
5 ment;

6 “and, if the Secretary of Homeland Security (or
7 with respect to clause (ii), the Secretary of State
8 and the Secretary of Homeland Security jointly)
9 considers it to be appropriate, the spouse, married
10 and unmarried sons and daughters, and parents of
11 an alien described in clause (i), (ii), or (iii) if accom-
12 panying, or following to join, the alien;”.

13 (b) NUMERICAL LIMITATION.—Section 214(k)(1) (8
14 U.S.C. 1184(k)(1)) is amended by striking “The number
15 of aliens” and all that follows through the period and in-
16 serting the following: “The number of aliens who may be
17 provided a visa as nonimmigrants under section
18 101(a)(15)(S) in any fiscal year may not exceed 1,000.”.

19 (c) REPORTS.—

20 (1) CONTENT.—Paragraph (4) of section
21 214(k) (8 U.S.C. 1184(k)) is amended—

22 (A) in the matter preceding subparagraph

23 (A)—

1 (i) by striking “The Attorney Gen-
2 eral” and inserting “The Secretary of
3 Homeland Security”; and

4 (ii) by striking “concerning—” and
5 inserting “that includes—”;

6 (B) in subparagraph (D), by striking
7 “and”;

8 (C) in subparagraph (E), by striking the
9 period at the end and inserting “; and”; and

10 (D) by inserting at the end the following:

11 “(F) in the event that the total number of such
12 nonimmigrants admitted is fewer than 25 percent of
13 the total number provided for under paragraph (1)
14 of this subsection—

15 “(i) the reasons why the number of such
16 nonimmigrants admitted is fewer than 25 per-
17 cent of that provided for by law;

18 “(ii) the efforts made by the Secretary of
19 Homeland Security to admit such non-
20 immigrants; and

21 “(iii) any extenuating circumstances that
22 contributed to the admission of a number of
23 such nonimmigrants that is fewer than 25 per-
24 cent of that provided for by law.”.

1 (2) FORM OF REPORT.—Section 214(k) (8
2 U.S.C. 1184(k)) is amended by adding at the end
3 the following new paragraph:

4 “(5) To the extent required by law and if it is
5 in the interests of national security or the security
6 of such nonimmigrants that are admitted, as deter-
7 mined by the Secretary of Homeland Security, the
8 information contained in a report described in para-
9 graph (4) may be classified, and the Secretary of
10 Homeland Security shall, to the extent feasible, sub-
11 mit a non-classified version of the report to the
12 Committee on the Judiciary of the House of Rep-
13 resentatives and the Committee on the Judiciary of
14 the Senate.”.

15 **SEC. 411. L VISA LIMITATIONS.**

16 Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amend-
17 ed—

18 (1) by striking “Attorney General” each place
19 it appears and inserting “Secretary of Homeland Se-
20 curity”;

21 (2) in subparagraph (E), by striking “In the
22 case” and inserting “Except as provided in subpara-
23 graph (H), in the case”; and

24 (3) by adding at the end the following:

1 “(G)(i) If the beneficiary of a petition under
2 this subsection is coming to the United States to
3 open, or be employed in, a new facility, the petition
4 may be approved for a period not to exceed 12
5 months only if the employer operating the new facil-
6 ity has—

7 “(I) a business plan;

8 “(II) sufficient physical premises to carry
9 out the proposed business activities; and

10 “(III) the financial ability to commence
11 doing business immediately upon the approval
12 of the petition.

13 “(ii) An extension of the approval period under
14 clause (i) may not be granted until the importing
15 employer submits to the Secretary of Homeland Se-
16 curity—

17 “(I) evidence that the importing employer
18 meets the requirements of this subsection;

19 “(II) evidence that the beneficiary meets
20 the requirements of section 101(a)(15)(L);

21 “(III) a statement summarizing the origi-
22 nal petition;

23 “(IV) evidence that the importing employer
24 has fully complied with the business plan sub-
25 mitted under clause (i);

1 “(V) evidence of the truthfulness of any
2 representations made in connection with the fil-
3 ing of the original petition;

4 “(VI) evidence that the importing em-
5 ployer, during the previous 12 months, has been
6 doing business at the new facility through reg-
7 ular, systematic, and continuous provision of
8 goods or services, or has otherwise been taking
9 commercially reasonable steps to establish the
10 new facility as a commercial enterprise;

11 “(VII) a statement of the duties the bene-
12 ficiary has performed at the new facility during
13 the previous 12 months and the duties the ben-
14 eficiary will perform at the new facility during
15 the extension period approved under this clause;

16 “(VIII) a statement describing the staffing
17 at the new facility, including the number of em-
18 ployees and the types of positions held by such
19 employees;

20 “(IX) evidence of wages paid to employees
21 if the beneficiary will be employed in a manage-
22 rial or executive capacity;

23 “(X) evidence of the financial status of the
24 new facility; and

1 “(XI) any other evidence or data pre-
2 scribed by the Secretary.

3 “(iii) Notwithstanding subclauses (I) through
4 (VI) of clause (ii) and subject to the maximum pe-
5 riod of authorized admission set forth in subpara-
6 graph (D), the Secretary of Homeland Security may
7 approve a subsequently filed petition on behalf of the
8 beneficiary to continue employment at the facility
9 described in this subsection for a period beyond the
10 initially granted 12-month period if the importing
11 employer demonstrates that the failure to satisfy any
12 of the requirements described in those subclauses
13 was directly caused by extraordinary circumstances
14 beyond the control of the importing employer.

15 “(H)(i) The Secretary of Homeland Security
16 may not authorize the spouse of an alien described
17 under section 101(a)(15)(L), who is a dependent of
18 a beneficiary under subparagraph (G), to engage in
19 employment in the United States during the initial
20 9-month period described in subparagraph (G)(i).

21 “(ii) A spouse described in clause (i) may be
22 provided employment authorization upon the ap-
23 proval of an extension under subparagraph (G)(ii).

24 “(I) For purposes of determining the eligibility
25 of an alien for classification under Section

1 101(a)(15)(L) of this Act, the Secretary of Home-
2 land Security shall establish a program to work co-
3 operatively with the Department of State to verify a
4 company or facility's existence in the United States
5 and abroad.”.

6 **SEC. 412. COMPLIANCE INVESTIGATORS.**

7 The Secretary of Labor shall, subject to the avail-
8 ability of appropriations for such purpose, annually in-
9 crease, by not less than 2,000, the number of positions
10 for compliance investigators dedicated to enforcing compli-
11 ance with this title, and the amendments made by this
12 title.

13 **SEC. 413. AUTHORIZATION OF APPROPRIATIONS.**

14 There are authorized to be appropriated to the Sec-
15 retary such sums as may be necessary to carry out this
16 subtitle and the amendments made by this subtitle for the
17 first fiscal year beginning before the date of enactment
18 of this Act and each of the subsequent fiscal years begin-
19 ning not more than 7 years after the effective date of the
20 regulations promulgated by the Secretary to implement
21 this subtitle.

1 **Subtitle B—Immigration Injunction**
2 **Reform**

3 **SEC. 421. SHORT TITLE.**

4 This subtitle may be cited as the “Fairness in Immi-
5 gration Litigation Act of 2006”.

6 **SEC. 422. APPROPRIATE REMEDIES FOR IMMIGRATION**
7 **LEGISLATION.**

8 (a) **REQUIREMENTS FOR AN ORDER GRANTING PRO-**
9 **SPECTIVE RELIEF AGAINST THE GOVERNMENT.—**

10 (1) **IN GENERAL.—**If a court determines that
11 prospective relief should be ordered against the Gov-
12 ernment in any civil action pertaining to the admin-
13 istration or enforcement of the immigration laws of
14 the United States, the court shall—

15 (A) limit the relief to the minimum nec-
16 essary to correct the violation of law;

17 (B) adopt the least intrusive means to cor-
18 rect the violation of law;

19 (C) minimize, to the greatest extent prac-
20 ticable, the adverse impact on national security,
21 border security, immigration administration and
22 enforcement, and public safety, and

23 (D) provide for the expiration of the relief
24 on a specific date, which is not later than the

1 earliest date necessary for the Government to
2 remedy the violation.

3 (2) WRITTEN EXPLANATION.—The require-
4 ments described in subsection (1) shall be discussed
5 and explained in writing in the order granting pro-
6 spective relief and must be sufficiently detailed to
7 allow review by another court.

8 (3) EXPIRATION OF PRELIMINARY INJUNCTIVE
9 RELIEF.—Preliminary injunctive relief shall auto-
10 matically expire on the date that is 90 days after the
11 date on which such relief is entered, unless the
12 court—

13 (A) makes the findings required under
14 paragraph (1) for the entry of permanent pro-
15 spective relief; and

16 (B) makes the order final before expiration
17 of such 90-day period.

18 (4) REQUIREMENTS FOR ORDER DENYING MO-
19 TION.—This subsection shall apply to any order de-
20 nying the Government’s motion to vacate, modify,
21 dissolve or otherwise terminate an order granting
22 prospective relief in any civil action pertaining to the
23 administration or enforcement of the immigration
24 laws of the United States.

1 (b) PROCEDURE FOR MOTION AFFECTING ORDER
2 GRANTING PROSPECTIVE RELIEF AGAINST THE GOVERN-
3 MENT.—

4 (1) IN GENERAL.—A court shall promptly rule
5 on the Government’s motion to vacate, modify, dis-
6 solve or otherwise terminate an order granting pro-
7 spective relief in any civil action pertaining to the
8 administration or enforcement of the immigration
9 laws of the United States.

10 (2) AUTOMATIC STAYS.—

11 (A) IN GENERAL.—The Government’s mo-
12 tion to vacate, modify, dissolve, or otherwise
13 terminate an order granting prospective relief
14 made in any civil action pertaining to the ad-
15 ministration or enforcement of the immigration
16 laws of the United States shall automatically,
17 and without further order of the court, stay the
18 order granting prospective relief on the date
19 that is 15 days after the date on which such
20 motion is filed unless the court previously has
21 granted or denied the Government’s motion.

22 (B) DURATION OF AUTOMATIC STAY.—An
23 automatic stay under subparagraph (A) shall
24 continue until the court enters an order grant-
25 ing or denying the Government’s motion.

1 (C) POSTPONEMENT.—The court, for good
2 cause, may postpone an automatic stay under
3 subparagraph (A) for not longer than 15 days.

4 (D) ORDERS BLOCKING AUTOMATIC
5 STAYS.—Any order staying, suspending, delay-
6 ing, or otherwise barring the effective date of
7 the automatic stay described in subparagraph
8 (A), other than an order to postpone the effec-
9 tive date of the automatic stay for not longer
10 than 15 days under subparagraph (C), shall
11 be—

12 (i) treated as an order refusing to va-
13 cate, modify, dissolve or otherwise termi-
14 nate an injunction; and

15 (ii) immediately appealable under sec-
16 tion 1292(a)(1) of title 28, United States
17 Code.

18 (e) SETTLEMENTS.—

19 (1) CONSENT DECREES.—In any civil action
20 pertaining to the administration or enforcement of
21 the immigration laws of the United States, the court
22 may not enter, approve, or continue a consent decree
23 that does not comply with subsection (a).

24 (2) PRIVATE SETTLEMENT AGREEMENTS.—
25 Nothing in this section shall preclude parties from

1 entering into a private settlement agreement that
2 does not comply with subsection (a) if the terms of
3 that agreement are not subject to court enforcement
4 other than reinstatement of the civil proceedings
5 that the agreement settled.

6 (d) DEFINITIONS.—In this section:

7 (1) CONSENT DECREE.—The term “consent de-
8 cree”—

9 (A) means any relief entered by the court
10 that is based in whole or in part on the consent
11 or acquiescence of the parties; and

12 (B) does not include private settlements.

13 (2) GOOD CAUSE.—The term “good cause”
14 does not include discovery or congestion of the
15 court’s calendar.

16 (3) GOVERNMENT.—The term “Government”
17 means the United States, any Federal department or
18 agency, or any Federal agent or official acting with-
19 in the scope of official duties.

20 (4) PERMANENT RELIEF.—The term “perma-
21 nent relief” means relief issued in connection with a
22 final decision of a court.

23 (5) PRIVATE SETTLEMENT AGREEMENT.—The
24 term “private settlement agreement” means an
25 agreement entered into among the parties that is not

1 subject to judicial enforcement other than the rein-
2 statement of the civil action that the agreement set-
3 tled.

4 (6) PROSPECTIVE RELIEF.—The term “pro-
5 spective relief” means temporary, preliminary, or
6 permanent relief other than compensatory monetary
7 damages.

8 (e) EXPEDITED PROCEEDINGS.—It shall be the duty
9 of every court to advance on the docket and to expedite
10 the disposition of any civil action or motion considered
11 under this section.

12 **SEC. 423. EFFECTIVE DATE.**

13 (a) IN GENERAL.—This subtitle shall apply with re-
14 spect to all orders granting prospective relief in any civil
15 action pertaining to the administration or enforcement of
16 the immigration laws of the United States, whether such
17 relief was ordered before, on, or after the date of the en-
18 actment of this Act.

19 (b) PENDING MOTIONS.—Every motion to vacate,
20 modify, dissolve or otherwise terminate an order granting
21 prospective relief in any such action, which motion is
22 pending on the date of the enactment of this Act, shall
23 be treated as if it had been filed on such date of enact-
24 ment.

25 (c) AUTOMATIC STAY FOR PENDING MOTIONS.—

1 (1) IN GENERAL.—An automatic stay with re-
2 spect to the prospective relief that is the subject of
3 a motion described in subsection (b) shall take effect
4 without further order of the court on the date which
5 is 10 days after the date of the enactment of this
6 Act if the motion—

7 (A) was pending for 45 days as of the date
8 of the enactment of this Act; and

9 (B) is still pending on the date which is 10
10 days after such date of enactment.

11 (2) DURATION OF AUTOMATIC STAY.—An auto-
12 matic stay that takes effect under paragraph (1)
13 shall continue until the court enters an order grant-
14 ing or denying the Government’s motion under sec-
15 tion 422(b). There shall be no further postponement
16 of the automatic stay with respect to any such pend-
17 ing motion under section 422(b)(2). Any order, stay-
18 ing, suspending, delaying or otherwise barring the
19 effective date of this automatic stay with respect to
20 pending motions described in subsection (b) shall be
21 an order blocking an automatic stay subject to im-
22 mediate appeal under section 422(b)(2)(D).

1 TITLE V—BACKLOG REDUCTION**2 SEC. 501. ELIMINATION OF EXISTING BACKLOGS.**

3 (a) FAMILY-SPONSORED IMMIGRANTS.—Section
4 201(c) (8 U.S.C. 1151(c)) is amended to read as follows:

5 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED
6 IMMIGRANTS.—The worldwide level of family-sponsored
7 immigrants under this subsection for a fiscal year is equal
8 to the sum of—

9 “(1) 480,000;

10 “(2) the difference between the maximum num-
11 ber of visas authorized to be issued under this sub-
12 section during the previous fiscal year and the num-
13 ber of visas issued during the previous fiscal year;

14 “(3) the difference between—

15 “(A) the maximum number of visas au-
16 thorized to be issued under this subsection dur-
17 ing fiscal years 2001 through 2005 minus the
18 number of visas issued under this subsection
19 during those fiscal years; and

20 “(B) the number of visas calculated under
21 subparagraph (A) that were issued after fiscal
22 year 2005.”.

23 (b) EMPLOYMENT-BASED IMMIGRANTS.—Section
24 201(d) (8 U.S.C. 1151(d)) is amended to read as follows:

1 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
2 IMMIGRANTS.—

3 “(1) IN GENERAL.—Subject to paragraph (2),
4 the worldwide level of employment-based immigrants
5 under this subsection for a fiscal year is equal to the
6 sum of—

7 “(A)(i) 450,000, for each of the fiscal
8 years 2007 through 2016; or

9 “(ii) 290,000, for fiscal year 2017 and
10 each subsequent fiscal year;

11 “(B) the difference between the maximum
12 number of visas authorized to be issued under
13 this subsection during the previous fiscal year
14 and the number of visas issued during the pre-
15 vious fiscal year; and

16 “(C) the difference between—

17 “(i) the maximum number of visas au-
18 thorized to be issued under this subsection
19 during fiscal years 2001 through 2005 and
20 the number of visa numbers issued under
21 this subsection during those fiscal years;
22 and

23 “(ii) the number of visas calculated
24 under clause (i) that were issued after fis-
25 cal year 2005.

1 “(2) VISAS FOR SPOUSES AND CHILDREN.—Im-
 2 migrant visas issued on or after October 1, 2004, to
 3 spouses and children of employment-based immi-
 4 grants shall not be counted against the numerical
 5 limitation set forth in paragraph (1).”.

6 **SEC. 502. COUNTRY LIMITS.**

7 Section 202(a) (8 U.S.C. 1152(a)) is amended—

8 (1) in paragraph (2)—

9 (A) by striking “, (4), and (5)” and insert-
 10 ing “and (4)”; and

11 (B) by striking “7 percent (in the case of
 12 a single foreign state) or 2 percent” and insert-
 13 ing “10 percent (in the case of a single foreign
 14 state) or 5 percent”; and

15 (2) by striking paragraph (5).

16 **SEC. 503. ALLOCATION OF IMMIGRANT VISAS.**

17 (a) PREFERENCE ALLOCATION FOR FAMILY-SPON-
 18 SORED IMMIGRANTS.—Section 203(a) (8 U.S.C. 1153(a))
 19 is amended to read as follows:

20 “(a) PREFERENCE ALLOCATIONS FOR FAMILY-SPON-
 21 SORED IMMIGRANTS.—Aliens subject to the worldwide
 22 level specified in section 201(c) for family-sponsored immi-
 23 grants shall be allocated visas as follows:

24 “(1) UNMARRIED SONS AND DAUGHTERS OF
 25 CITIZENS.—Qualified immigrants who are the un-

1 married sons or daughters of citizens of the United
2 States shall be allocated visas in a quantity not to
3 exceed the sum of—

4 “(A) 10 percent of such worldwide level;

5 and

6 “(B) any visas not required for the class
7 specified in paragraph (4).

8 “(2) SPOUSES AND UNMARRIED SONS AND
9 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—

10 “(A) IN GENERAL.—Visas in a quantity
11 not to exceed 50 percent of such worldwide level
12 plus any visas not required for the class speci-
13 fied in paragraph (1) shall be allocated to quali-
14 fied immigrants who are—

15 “(i) the spouses or children of an
16 alien lawfully admitted for permanent resi-
17 dence; or

18 “(ii) the unmarried sons or daughters
19 of an alien lawfully admitted for perma-
20 nent residence.

21 “(B) MINIMUM PERCENTAGE.—Visas allo-
22 cated to individuals described in subparagraph
23 (A)(i) shall constitute not less than 77 percent
24 of the visas allocated under this paragraph.

1 “(3) MARRIED SONS AND DAUGHTERS OF CITI-
2 ZENS.—Qualified immigrants who are the married
3 sons and daughters of citizens of the United States
4 shall be allocated visas in a quantity not to exceed
5 the sum of—

6 “(A) 10 percent of such worldwide level;
7 and

8 “(B) any visas not required for the classes
9 specified in paragraphs (1) and (2).

10 “(4) BROTHERS AND SISTERS OF CITIZENS.—
11 Qualified immigrants who are the brothers or sisters
12 of a citizen of the United States who is at least 21
13 years of age shall be allocated visas in a quantity
14 not to exceed 30 percent of the worldwide level.”.

15 (b) PREFERENCE ALLOCATION FOR EMPLOYMENT-
16 BASED IMMIGRANTS.—Section 203(b) (8 U.S.C. 1153(b))
17 is amended—

18 (1) in paragraph (1), by striking “28.6 per-
19 cent” and inserting “15 percent”;

20 (2) in paragraph (2)(A), by striking “28.6 per-
21 cent” and inserting “15 percent”;

22 (3) in paragraph (3)(A)—

23 (A) by striking “28.6 percent” and insert-
24 ing “35 percent”; and

25 (B) by striking clause (iii);

1 (4) by striking paragraph (4);

2 (5) by redesignating paragraph (5) as para-
3 graph (4);

4 (6) in paragraph (4)(A), as redesignated, by
5 striking “7.1 percent” and inserting “5 percent”;

6 (7) by inserting after paragraph (4), as redesign-
7 nated, the following:

8 “(5) OTHER WORKERS.—

9 “(A) IN GENERAL.—Visas shall be made
10 available, in a number not to exceed 30 percent
11 of such worldwide level, plus any visa numbers
12 not required for the classes specified in para-
13 graphs (1) through (4), to qualified immigrants
14 who are capable, at the time of petitioning for
15 classification under this paragraph, of per-
16 forming unskilled labor that is not of a tem-
17 porary or seasonal nature, for which qualified
18 workers are determined to be unavailable in the
19 United States.

20 “(B) PRIORITY IN ALLOCATING VISAS.—In
21 allocating visas under subparagraph (A) for
22 each of the fiscal years 2007 through 2017, the
23 Secretary shall reserve 30 percent of such visas
24 for qualified immigrants who were physically

1 present in the United States before January 7,
2 2004.”; and

3 (8) by striking paragraph (6).

4 (c) CONFORMING AMENDMENTS.—

5 (1) DEFINITION OF SPECIAL IMMIGRANT.—Sec-
6 tion 101(a)(27)(M) (8 U.S.C. 1101(a)(27)(M)) is
7 amended by striking “subject to the numerical limi-
8 tations of section 203(b)(4),”.

9 (2) REPEAL OF TEMPORARY REDUCTION IN
10 WORKERS’ VISAS.—Section 203(e) of the Nicaraguan
11 Adjustment and Central American Relief Act (Public
12 Law 105–100; 8 U.S.C. 1153 note) is repealed.

13 **SEC. 504. RELIEF FOR MINOR CHILDREN.**

14 (a) IN GENERAL.—Section 201(b)(2) (8 U.S.C.
15 1151(b)(2)) is amended to read as follows:

16 “(2)(A)(i) Aliens admitted under section 211(a)
17 on the basis of a prior issuance of a visa under sec-
18 tion 203(a) to their accompanying parent who is an
19 immediate relative.

20 “(ii) In this subparagraph, the term ‘immediate
21 relative’ means a child, spouse, or parent of a citizen
22 of the United States (and each child of such child,
23 spouse, or parent who is accompanying or following
24 to join the child, spouse, or parent), except that, in

1 the case of parents, such citizens shall be at least 21
2 years of age.

3 “(iii) An alien who was the spouse of a citizen
4 of the United States for not less than 2 years at the
5 time of the citizen’s death and was not legally sepa-
6 rated from the citizen at the time of the citizen’s
7 death, and each child of such alien, shall be consid-
8 ered, for purposes of this subsection, to remain an
9 immediate relative after the date of the citizen’s
10 death if the spouse files a petition under section
11 204(a)(1)(A)(ii) before the earlier of—

12 “(I) 2 years after such date; or

13 “(II) the date on which the spouse remar-
14 ries.

15 “(iv) In this clause, an alien who has filed a pe-
16 tition under clause (iii) or (iv) of section
17 204(a)(1)(A) remains an immediate relative if the
18 United States citizen spouse or parent loses United
19 States citizenship on account of the abuse.

20 “(B) Aliens born to an alien lawfully admitted
21 for permanent residence during a temporary visit
22 abroad.”.

23 (b) PETITION.—Section 204(a)(1)(A)(ii) (8 U.S.C.
24 1154 (a)(1)(A)(ii)) is amended by striking “in the second
25 sentence of section 201(b)(2)(A)(i) also” and inserting “in

1 section 201(b)(2)(A)(iii) or an alien child or alien parent
2 described in the 201(b)(2)(A)(iv)”.

3 **SEC. 505. SHORTAGE OCCUPATIONS.**

4 (a) EXCEPTION TO DIRECT NUMERICAL LIMITA-
5 TIONS.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is
6 amended by adding at the end the following new subpara-
7 graph:

8 “(F)(i) During the period beginning on the
9 date of the enactment the Comprehensive Immigra-
10 tion Reform Act of 2006 and ending on Sep-
11 tember 30, 2017, an alien—

12 “(I) who is otherwise described in sec-
13 tion 203(b); and

14 “(II) who is seeking admission to the
15 United States to perform labor in shortage
16 occupations designated by the Secretary of
17 Labor for blanket certification under sec-
18 tion 212(a)(5)(A) due to the lack of suffi-
19 cient United States workers able, willing,
20 qualified, and available for such occupa-
21 tions and for which the employment of
22 aliens will not adversely affect the terms
23 and conditions of similarly employed
24 United States workers.

1 “(ii) During the period described in clause
2 (i), the spouse or dependents of an alien de-
3 scribed in clause (i), if accompanying or fol-
4 lowing to join such alien.”.

5 (b) EXCEPTION TO NONDISCRIMINATION REQUIRE-
6 MENTS.—Section 202(a)(1)(A) (8 U.S.C. 1152(a)(1)(A))
7 is amended by striking “201(b)(2)(A)(i)” and inserting
8 “201(b)”.

9 (c) EXCEPTION TO PER COUNTRY LEVELS FOR FAM-
10 ILY-SPONSORED AND EMPLOYMENT-BASED IMMI-
11 GRANTS.—Section 202(a)(2) (8 U.S.C. 1152(a)(2)), as
12 amended by section 502(1), is further amended by insert-
13 ing “, except for aliens described in section 201(b),” after
14 “any fiscal year”.

15 (d) INCREASING THE DOMESTIC SUPPLY OF NURSES
16 AND PHYSICAL THERAPISTS.—Not later than January 1,
17 2007, the Secretary of Health and Human Services
18 shall—

19 (1) submit to Congress a report on the source
20 of newly licensed nurses and physical therapists in
21 each State, which report shall—

22 (A) include the past 3 years for which data
23 are available;

24 (B) provide separate data for each occupa-
25 tion and for each State;

1 (C) separately identify those receiving their
2 initial license and those licensed by endorse-
3 ment from another State;

4 (D) within those receiving their initial li-
5 cense in each year, identify the number who re-
6 ceived their professional education in the
7 United States and those who received such edu-
8 cation outside the United States; and

9 (E) to the extent possible, identify, by
10 State of residence and country of education, the
11 number of nurses and physical therapists who
12 were educated in any of the 5 countries (other
13 than the United States) from which the most
14 nurses and physical therapists arrived;

15 (F) identify the barriers to increasing the
16 supply of nursing faculty, domestically trained
17 nurses, and domestically trained physical thera-
18 pists;

19 (G) recommend strategies to be followed by
20 Federal and State governments that would be
21 effective in removing such barriers, including
22 strategies that address barriers to advancement
23 to become registered nurses for other health
24 care workers, such as home health aides and
25 nurses assistants;

1 (H) recommend amendments to Federal
2 legislation that would increase the supply of
3 nursing faculty, domestically trained nurses,
4 and domestically trained physical therapists;

5 (I) recommend Federal grants, loans, and
6 other incentives that would provide increases in
7 nurse educators, nurse training facilities, and
8 other steps to increase the domestic education
9 of new nurses and physical therapists;

10 (J) identify the effects of nurse emigration
11 on the health care systems in their countries of
12 origin; and

13 (K) recommend amendments to Federal
14 law that would minimize the effects of health
15 care shortages in the countries of origin from
16 which immigrant nurses arrived;

17 (2) enter into a contract with the National
18 Academy of Sciences Institute of Medicine to deter-
19 mine the level of Federal investment under titles VII
20 and VIII of the Public Health Service Act necessary
21 to eliminate the domestic nursing and physical ther-
22 apist shortage not later than 7 years from the date
23 on which the report is published; and

24 (3) collaborate with other agencies, as appro-
25 priate, in working with ministers of health or other

1 appropriate officials of the 5 countries from which
2 the most nurses and physical therapists arrived,
3 to—

4 (A) address health worker shortages
5 caused by emigration;

6 (B) ensure that there is sufficient human
7 resource planning or other technical assistance
8 needed to reduce further health worker short-
9 ages in such countries.

10 **SEC. 506. RELIEF FOR WIDOWS AND ORPHANS.**

11 (a) **SHORT TITLE.**—This section may be cited as the
12 “Widows and Orphans Act of 2006”.

13 (b) **NEW SPECIAL IMMIGRANT CATEGORY.**—

14 (1) **CERTAIN CHILDREN AND WOMEN AT RISK**
15 **OF HARM.**—Section 101(a)(27) (8 U.S.C.
16 1101(a)(27)) is amended—

17 (A) in subparagraph (L), by inserting a
18 semicolon at the end;

19 (B) in subparagraph (M), by striking the
20 period at the end and inserting “; or”; and

21 (C) by adding at the end the following:

22 “(N) subject to subsection (j), an immi-
23 grant who is not present in the United States—

24 “(i) who is—

1 “(I) referred to a consular, immi-
2 gration, or other designated official by
3 a United States Government agency,
4 an international organization, or rec-
5 ognized nongovernmental entity des-
6 ignated by the Secretary of State for
7 purposes of such referrals; and

8 “(II) determined by such official
9 to be a minor under 18 years of age
10 (as determined under subsection
11 (j)(5))—

12 “(aa) for whom no parent or
13 legal guardian is able to provide
14 adequate care;

15 “(bb) who faces a credible
16 fear of harm related to his or her
17 age;

18 “(cc) who lacks adequate
19 protection from such harm; and

20 “(dd) for whom it has been
21 determined to be in his or her
22 best interests to be admitted to
23 the United States; or

24 “(ii) who is—

1 “(I) referred to a consular or im-
2 migration official by a United States
3 Government agency, an international
4 organization or recognized nongovern-
5 mental entity designated by the Sec-
6 retary of State for purposes of such
7 referrals; and

8 “(II) determined by such official
9 to be a female who has—

10 “(aa) a credible fear of
11 harm related to her sex; and

12 “(bb) a lack of adequate
13 protection from such harm.”.

14 (2) STATUTORY CONSTRUCTION.—Section 101
15 (8 U.S.C. 1101) is amended by adding at the end
16 the following:

17 “(j)(1) No natural parent or prior adoptive parent
18 of any alien provided special immigrant status under sub-
19 section (a)(27)(N)(i) shall thereafter, by virtue of such
20 parentage, be accorded any right, privilege, or status
21 under this Act.

22 “(2)(A) No alien who qualifies for a special immi-
23 grant visa under subsection (a)(27)(N)(ii) may apply for
24 derivative status or petition for any spouse who is rep-
25 resented by the alien as missing, deceased, or the source

1 of harm at the time of the alien’s application and admis-
2 sion. The Secretary of Homeland Security may waive this
3 requirement for an alien who demonstrates that the alien’s
4 representations regarding the spouse were bona fide.

5 “(B) An alien who qualifies for a special immigrant
6 visa under subsection (a)(27)(N) may apply for derivative
7 status or petition for any sibling under the age of 18 years
8 or children under the age of 18 years of any such alien,
9 if accompanying or following to join the alien. For pur-
10 poses of this subparagraph, a determination of age shall
11 be made using the age of the alien on the date the petition
12 is filed with the Department of Homeland Security.

13 “(3) An alien who qualifies for a special immigrant
14 visa under subsection (a)(27)(N) shall be treated in the
15 same manner as a refugee solely for purposes of section
16 412.

17 “(4) The provisions of paragraphs (4), (5), and
18 (7)(A) of section 212(a) shall not be applicable to any
19 alien seeking admission to the United States under sub-
20 section (a)(27)(N), and the Secretary of Homeland Secu-
21 rity may waive any other provision of such section (other
22 than paragraph 2(C) or subparagraph (A), (B), (C), or
23 (E) of paragraph (3) with respect to such an alien for
24 humanitarian purposes, to assure family unity, or when
25 it is otherwise in the public interest. Any such waiver by

1 the Secretary of Homeland Security shall be in writing
2 and shall be granted only on an individual basis following
3 an investigation. The Secretary of Homeland Security
4 shall provide for the annual reporting to Congress of the
5 number of waivers granted under this paragraph in the
6 previous fiscal year and a summary of the reasons for
7 granting such waivers.

8 “(5) For purposes of subsection (a)(27)(N)(i)(II), a
9 determination of age shall be made using the age of the
10 alien on the date on which the alien was referred to the
11 consular, immigration, or other designated official.

12 “(6) The Secretary of Homeland Security shall waive
13 any application fee for a special immigrant visa for an
14 alien described in section 101(a)(27)(N).”.

15 (3) EXPEDITED PROCESS.—Not later than 45
16 days after the date of referral to a consular, immi-
17 gration, or other designated official (as described in
18 section 101(a)(27)(N) of the Immigration and Na-
19 tionality Act, as added by paragraph (1))—

20 (A) special immigrant status shall be adju-
21 dicated; and

22 (B) if special immigrant status is granted,
23 the alien shall be paroled to the United States
24 pursuant to section 212(d)(5) of that Act (8
25 U.S.C. 1182(d)(5)) and allowed to apply for ad-

1 justment of status to permanent residence
2 under section 245 of that Act (8 U.S.C. 1255)
3 within 1 year after the alien's arrival in the
4 United States.

5 (4) REPORT TO CONGRESS.—Not later than 1
6 year after the date of the enactment of this Act, the
7 Secretary shall submit a report to the Committee on
8 the Judiciary of the Senate and the Committee on
9 the Judiciary of the House of Representatives on the
10 progress of the implementation of this section and
11 the amendments made by this section, including—

12 (A) data related to the implementation of
13 this section and the amendments made by this
14 section;

15 (B) data regarding the number of place-
16 ments of females and children who faces a cred-
17 ible fear of harm as referred to in section
18 101(a)(27)(N) of the Immigration and Nation-
19 ality Act, as added by paragraph (1); and

20 (C) any other information that the Sec-
21 retary considers appropriate.

22 (5) AUTHORIZATION OF APPROPRIATIONS.—
23 There are authorized to be appropriated such sums
24 as may be necessary to carry out this subsection and
25 the amendments made by this subsection.

1 (c) REQUIREMENTS FOR ALIENS.—

2 (1) REQUIREMENT PRIOR TO ENTRY INTO THE
3 UNITED STATES.—

4 (A) DATABASE SEARCH.—An alien may
5 not be admitted to the United States unless the
6 Secretary has ensured that a search of each
7 database maintained by an agency or depart-
8 ment of the United States has been conducted
9 to determine whether such alien is ineligible to
10 be admitted to the United States on criminal,
11 security, or related grounds.

12 (B) COOPERATION AND SCHEDULE.—The
13 Secretary and the head of each appropriate
14 agency or department of the United States shall
15 work cooperatively to ensure that each database
16 search required by subparagraph (A) is com-
17 pleted not later than 45 days after the date on
18 which an alien files a petition seeking a special
19 immigration visa under section 101(a)(27)(N)
20 of the Immigration and Nationality Act, as
21 added by subsection (b)(1).

22 (2) REQUIREMENT AFTER ENTRY INTO THE
23 UNITED STATES.—

24 (A) REQUIREMENT TO SUBMIT FINGER-
25 PRINTS.—

1 (i) IN GENERAL.—Not later than 30
2 days after the date that an alien enters the
3 United States, the alien shall be
4 fingerprinted and submit to the Secretary
5 such fingerprints and any other personal
6 biometric data required by the Secretary.

7 (ii) OTHER REQUIREMENTS.—The
8 Secretary may prescribe regulations that
9 permit fingerprints submitted by an alien
10 under section 262 of the Immigration and
11 Nationality Act (8 U.S.C. 1302) or any
12 other provision of law to satisfy the re-
13 quirement to submit fingerprints of clause
14 (i).

15 (B) DATABASE SEARCH.—The Secretary
16 shall ensure that a search of each database that
17 contains fingerprints that is maintained by an
18 agency or department of the United States be
19 conducted to determine whether such alien is
20 ineligible for an adjustment of status under any
21 provision of the Immigration and Nationality
22 Act (8 U.S.C. 1101 et seq.) on criminal, secu-
23 rity, or related grounds.

24 (C) COOPERATION AND SCHEDULE.—The
25 Secretary and the head of each appropriate

1 agency or department of the United States shall
2 work cooperatively to ensure that each database
3 search required by subparagraph (B) is com-
4 pleted not later than 180 days after the date on
5 which the alien enters the United States.

6 (D) ADMINISTRATIVE AND JUDICIAL RE-
7 VIEW.—

8 (i) IN GENERAL.—There may be no
9 review of a determination by the Secretary,
10 after a search required by subparagraph
11 (B), that an alien is ineligible for an ad-
12 justment of status, under any provision of
13 the Immigration and Nationality Act (8
14 U.S.C. 1101 et seq.) on criminal, security,
15 or related grounds except as provided in
16 this subparagraph.

17 (ii) ADMINISTRATIVE REVIEW.—An
18 alien may appeal a determination described
19 in clause (i) through the Administrative
20 Appeals Office of the Bureau of Citizen-
21 ship and Immigration Services. The Sec-
22 retary shall ensure that a determination on
23 such appeal is made not later than 60 days
24 after the date that the appeal is filed.

1 (iii) JUDICIAL REVIEW.—There may
2 be no judicial review of a determination de-
3 scribed in clause (i).

4 **SEC. 507. STUDENT VISAS.**

5 (a) IN GENERAL.—Section 101(a)(15)(F) (8 U.S.C.
6 1101(a)(15)(F)) is amended—

7 (1) in clause (i)—

8 (A) by striking “he has no intention of
9 abandoning, who is” and inserting the fol-
10 lowing: “except in the case of an alien described
11 in clause (iv), the alien has no intention of
12 abandoning, who is—

13 “(I);

14 (B) by striking “consistent with section
15 214(l)” and inserting “(except for a graduate
16 program described in clause (iv)) consistent
17 with section 214(m)”;

18 (C) by striking the comma at the end and
19 inserting the following: “; or

20 “(II) engaged in temporary employment
21 for optional practical training related to the
22 alien’s area of study, which practical training
23 shall be authorized for a period or periods of up
24 to 24 months;”;

25 (2) in clause (ii)—

1 (A) by inserting “or (iv)” after “clause
2 (i)”; and

3 (B) by striking “, and” and inserting a
4 semicolon;

5 (3) in clause (iii), by adding “and” at the end;
6 and

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

8 “(iv) an alien described in clause (i)
9 who has been accepted and plans to attend
10 an accredited graduate program in mathe-
11 matics, engineering, technology, or the
12 sciences in the United States for the pur-
13 pose of obtaining an advanced degree.”.

14 (b) ADMISSION OF NONIMMIGRANTS.—Section
15 214(b) (8 U.S.C. 1184(b)) is amended by striking “sub-
16 paragraph (L) or (V)” and inserting “subparagraph
17 (F)(iv), (L), or (V)”.

18 (c) REQUIREMENTS FOR F-4 VISA.—Section 214(m)
19 (8 U.S.C. 1184(m)) is amended—

20 (1) by inserting before paragraph (1) the fol-
21 lowing:

22 “(m) NONIMMIGRANT ELEMENTARY, SECONDARY,
23 AND POST-SECONDARY SCHOOL STUDENTS.—”; and

24 (2) by adding at the end the following:

1 “(3) A visa issued to an alien under section
2 101(a)(15)(F)(iv) shall be valid—

3 “(A) during the intended period of study in a
4 graduate program described in such section;

5 “(B) for an additional period, not to exceed 1
6 year after the completion of the graduate program,
7 if the alien is actively pursuing an offer of employ-
8 ment related to the knowledge and skills obtained
9 through the graduate program; and

10 “(C) for the additional period necessary for the
11 adjudication of any application for labor certifi-
12 cation, employment-based immigrant petition, and
13 application under section 245(a)(2) to adjust such
14 alien’s status to that of an alien lawfully admitted
15 for permanent residence, if such application for
16 labor certification or employment-based immigrant
17 petition has been filed not later than 1 year after
18 the completion of the graduate program.”.

19 (d) OFF CAMPUS WORK AUTHORIZATION FOR FOR-
20 EIGN STUDENTS.—

21 (1) IN GENERAL.—Aliens admitted as non-
22 immigrant students described in section
23 101(a)(15)(F) of the Immigration and Nationality
24 Act (8 U.S.C. 1101(a)(15)(F)) may be employed in

1 an off-campus position unrelated to the alien's field
2 of study if—

3 (A) the alien has enrolled full time at the
4 educational institution and is maintaining good
5 academic standing;

6 (B) the employer provides the educational
7 institution and the Secretary of Labor with an
8 attestation that the employer—

9 (i) has spent at least 21 days recruit-
10 ing United States citizens to fill the posi-
11 tion; and

12 (ii) will pay the alien and other simi-
13 larly situated workers at a rate equal to
14 not less than the greater of—

15 (I) the actual wage level for the
16 occupation at the place of employ-
17 ment; or

18 (II) the prevailing wage level for
19 the occupation in the area of employ-
20 ment; and

21 (C) the alien will not be employed more
22 than—

23 (i) 20 hours per week during the aca-
24 demic term; or

1 (ii) 40 hours per week during vacation
2 periods and between academic terms.

3 (2) DISQUALIFICATION.—If the Secretary of
4 Labor determines that an employer has provided an
5 attestation under paragraph (1)(B) that is materi-
6 ally false or has failed to pay wages in accordance
7 with the attestation, the employer, after notice and
8 opportunity for a hearing, shall be disqualified from
9 employing an alien student under paragraph (1).

10 (e) ADJUSTMENT OF STATUS.—Section 245(a) (8
11 U.S.C. 1255(a)) is amended to read as follows:

12 “(a) AUTHORIZATION.—

13 “(1) IN GENERAL.—The status of an alien, who
14 was inspected and admitted or paroled into the
15 United States, or who has an approved petition for
16 classification under subparagraph (A)(iii), (A)(iv),
17 (B)(ii), or (B)(iii) of section 204(a)(1), may be ad-
18 justed by the Secretary of Homeland Security or the
19 Attorney General, under such regulations as the Sec-
20 retary or the Attorney General may prescribe, to
21 that of an alien lawfully admitted for permanent res-
22 idence if—

23 “(A) the alien makes an application for
24 such adjustment;

1 “(B) the alien is eligible to receive an im-
2 migrant visa;

3 “(C) the alien is admissible to the United
4 States for permanent residence; and

5 “(D) an immigrant visa is immediately
6 available to the alien at the time the application
7 is filed.

8 “(2) STUDENT VISAS.—Notwithstanding the re-
9 quirement under paragraph (1)(D), an alien may file
10 an application for adjustment of status under this
11 section if—

12 “(A) the alien has been issued a visa or
13 otherwise provided nonimmigrant status under
14 section 101(a)(15)(F)(iv), or would have quali-
15 fied for such nonimmigrant status if section
16 101(a)(15)(F)(iv) had been enacted before such
17 alien’s graduation;

18 “(B) the alien has earned an advanced de-
19 gree in the sciences, technology, engineering, or
20 mathematics;

21 “(C) the alien is the beneficiary of a peti-
22 tion filed under subparagraph (E) or (F) of sec-
23 tion 204(a)(1); and

24 “(D) a fee of \$2,000 is remitted to the
25 Secretary on behalf of the alien.

1 “(3) LIMITATION.—An application for adjust-
2 ment of status filed under this section may not be
3 approved until an immigrant visa number becomes
4 available.”.

5 (f) USE OF FEES.—

6 (1) JOB TRAINING; SCHOLARSHIPS.—Section
7 286(s)(1) (8 U.S.C. 1356(s)(1)) is amended by in-
8 serting “and 80 percent of the fees collected under
9 section 245(a)(2)(D)” before the period at the end.

10 (2) FRAUD PREVENTION AND DETECTION.—
11 Section 286(v)(1) (8 U.S.C. 1356(v)(1)) is amended
12 by inserting “and 20 percent of the fees collected
13 under section 245(a)(2)(D)” before the period at the
14 end.

15 **SEC. 508. VISAS FOR INDIVIDUALS WITH ADVANCED DE-**
16 **GREES.**

17 (a) ALIENS WITH CERTAIN ADVANCED DEGREES
18 NOT SUBJECT TO NUMERICAL LIMITATIONS ON EMPLOY-
19 MENT BASED IMMIGRANTS.—

20 (1) IN GENERAL.—Section 201(b)(1) (8 U.S.C.
21 1151(b)(1)), as amended by section 505, is amended
22 by adding at the end the following:

23 “(G) Aliens who have earned an advanced
24 degree in science, technology, engineering, or
25 math and have been working in a related field

1 in the United States under a nonimmigrant visa
2 during the 3-year period preceding their appli-
3 cation for an immigrant visa under section
4 203(b).

5 “(H) Aliens described in subparagraph (A)
6 or (B) of section 203(b)(1)(A) or who have re-
7 ceived a national interest waiver under section
8 203(b)(2)(B).

9 “(I) The spouse and minor children of an
10 alien who is admitted as an employment-based
11 immigrant under section 203(b).”.

12 (2) APPLICABILITY.—The amendment made by
13 paragraph (1) shall apply to any visa application—

14 (A) pending on the date of the enactment
15 of this Act; or

16 (B) filed on or after such date of enact-
17 ment.

18 (b) LABOR CERTIFICATION.—Section
19 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amend-
20 ed—

21 (1) in subclause (I), by striking “or” at the
22 end;

23 (2) in subclause (II), by striking the period at
24 the end and inserting “; or”; and

25 (3) by adding at the end the following:

1 “(III) has an advanced degree in
2 the sciences, technology, engineering,
3 or mathematics from an accredited
4 university in the United States and is
5 employed in a field related to such de-
6 gree.”.

7 (c) TEMPORARY WORKERS.—Section 214(g) (8
8 U.S.C. 1184(g)) is amended—

9 (1) in paragraph (1)—

10 (A) by striking “(beginning with fiscal year
11 1992)”; and

12 (B) in subparagraph (A)—

13 (i) in clause (vii), by striking “each
14 succeeding fiscal year; or” and inserting
15 “each of fiscal years 2004, 2005, and
16 2006;”; and

17 (ii) by adding after clause (vii) the
18 following:

19 “(viii) 115,000 in the first fiscal year
20 beginning after the date of the enactment
21 of this clause; and

22 “(ix) the number calculated under
23 paragraph (9) in each fiscal year after the
24 year described in clause (viii); or”;

25 (2) in paragraph (5)—

1 (A) in subparagraph (B), by striking “or”
2 at the end;

3 (B) in subparagraph (C), by striking the
4 period at the end and inserting “; or”; and

5 (C) by adding at the end the following:

6 “(D) has earned an advanced degree in
7 science, technology, engineering, or math.”;

8 (3) by redesignating paragraphs (9), (10), and
9 (11) as paragraphs (10), (11), and (12), respec-
10 tively; and

11 (4) by inserting after paragraph (8) the fol-
12 lowing:

13 “(9) If the numerical limitation in paragraph
14 (1)(A)—

15 “(A) is reached during a given fiscal year,
16 the numerical limitation under paragraph
17 (1)(A)(ix) for the subsequent fiscal year shall
18 be equal to 120 percent of the numerical limita-
19 tion of the given fiscal year; or

20 “(B) is not reached during a given fiscal
21 year, the numerical limitation under paragraph
22 (1)(A)(ix) for the subsequent fiscal year shall
23 be equal to the numerical limitation of the given
24 fiscal year.”.

1 (d) APPLICABILITY.—The amendment made by sub-
 2 section (c)(2) shall apply to any visa application—

3 (1) pending on the date of the enactment of
 4 this Act; or

5 (2) filed on or after such date of enactment.

6 **TITLE VI—WORK AUTHORIZA-**
 7 **TION AND LEGALIZATION OF**
 8 **UNDOCUMENTED INDIVID-**
 9 **UALS**

10 **Subtitle A—Access to Earned Ad-**
 11 **justment and Mandatory Depart-**
 12 **ture and Reentry**

13 **SEC. 601. ACCESS TO EARNED ADJUSTMENT AND MANDA-**
 14 **TORY DEPARTURE AND REENTRY.**

15 (a) SHORT TITLE.—This section may be cited as the
 16 “Immigrant Accountability Act of 2006”.

17 (b) ADJUSTMENT OF STATUS.—

18 (1) IN GENERAL.—Chapter 5 of title II (8
 19 U.S.C. 1255 et seq.) is amended by inserting after
 20 section 245A the following:

21 **“SEC. 245B. ACCESS TO EARNED ADJUSTMENT.**

22 **“(a) ADJUSTMENT OF STATUS.—**

23 **“(1) PRINCIPAL ALIENS.—**Notwithstanding any
 24 other provision of law, including section 244(h) of
 25 this Act, the Secretary of Homeland Security shall

1 adjust to the status of an alien lawfully admitted for
2 permanent residence, an alien who satisfies the fol-
3 lowing requirements:

4 “(A) APPLICATION.—The alien shall file
5 an application establishing eligibility for adjust-
6 ment of status and pay the fine required under
7 subsection (m) and any additional amounts
8 owed under that subsection.

9 “(B) CONTINUOUS PHYSICAL PRESENCE.—

10 “(i) IN GENERAL.—The alien shall es-
11 tablish that the alien—

12 “(I) was physically present in the
13 United States on or before the date
14 that is 5 years before April 5, 2006;

15 “(II) was not legally present in
16 the United States on April 5, 2006,
17 under any classification set forth in
18 section 101(a)(15); and

19 “(III) did not depart from the
20 United States during the 5-year pe-
21 riod ending on April 5, 2006, except
22 for brief, casual, and innocent depart-
23 tures.

24 “(ii) LEGALLY PRESENT.—For pur-
25 poses of this subparagraph, an alien who

1 has violated any conditions of his or her
2 visa shall be considered not to be legally
3 present in the United States.

4 “(C) ADMISSIBLE UNDER IMMIGRATION
5 LAWS.—The alien shall establish that the alien
6 is not inadmissible under section 212(a) except
7 for any provision of that section that is waived
8 under subsection (b) of this section.

9 “(D) EMPLOYMENT IN UNITED STATES.—

10 “(i) IN GENERAL.—The alien shall
11 have been employed in the United States,
12 in the aggregate, for—

13 “(I) at least 3 years during the
14 5-year period ending on April 5, 2006;
15 and

16 “(II) at least 6 years after the
17 date of enactment of the Immigrant
18 Accountability Act of 2006.

19 “(ii) EXCEPTIONS.—

20 “(I) The employment require-
21 ment in clause (i)(I) shall not apply to
22 an individual who is under 20 years of
23 age on the date of enactment of the
24 Immigrant Accountability Act of
25 2006.

1 “(II) The employment require-
2 ment in clause (i)(II) shall be reduced
3 for an individual who cannot dem-
4 onstrate employment based on a phys-
5 ical or mental disability or as a result
6 of pregnancy.

7 “(III) The employment require-
8 ment in clause (i)(II) shall be reduced
9 for an individual who is under 20
10 years of age on the date of enactment
11 of the Immigrant Accountability Act
12 of 2006 by a period of time equal to
13 the time period beginning on such
14 date of enactment and ending on the
15 date on which the individual reaches
16 20 years of age.

17 “(IV) The employment require-
18 ments in clause (i) shall be reduced by
19 1 year for each year of full time post-
20 secondary study in the United States
21 during the relevant period.

22 “(iii) PORTABILITY.—An alien shall
23 not be required to complete the employ-
24 ment requirements in clause (i) with the
25 same employer.

1 “(iv) EVIDENCE OF EMPLOYMENT.—

2 “(I) CONCLUSIVE DOCUMENTS.—

3 For purposes of satisfying the require-
4 ments in clause (i), the alien shall
5 submit at least 2 of the following doc-
6 uments for each period of employ-
7 ment, which shall be considered con-
8 clusive evidence of such employment:

9 “(aa) Records maintained by
10 the Social Security Administra-
11 tion.

12 “(bb) Records maintained by
13 an employer, such as pay stubs,
14 time sheets, or employment work
15 verification.

16 “(cc) Records maintained by
17 the Internal Revenue Service.

18 “(dd) Records maintained
19 by a union or day labor center.

20 “(ee) Records maintained by
21 any other government agency,
22 such as worker compensation
23 records, disability records, or
24 business licensing records.

1 “(II) OTHER DOCUMENTS.—
2 Aliens unable to submit documents
3 described in subclause (I) shall submit
4 at least 3 other types of reliable docu-
5 ments, including sworn declarations,
6 for each period of employment to sat-
7 isfy the requirement in clause (i).

8 “(III) INTENT OF CONGRESS.—It
9 is the intent of Congress that the re-
10 quirement in clause (i) be interpreted
11 and implemented in a manner that
12 recognizes and takes into account the
13 difficulties encountered by aliens in
14 obtaining evidence of employment due
15 to the undocumented status of the
16 alien.

17 “(v) BURDEN OF PROOF.—An alien
18 applying for adjustment of status under
19 this subsection has the burden of proving
20 by a preponderance of the evidence that
21 the alien has satisfied the employment re-
22 quirements in clause (i). An alien may sat-
23 isfy such burden of proof by producing suf-
24 ficient evidence to show the extent of that
25 employment as a matter of just and rea-

1 sonable inference. Once the burden is met,
2 the burden shall shift to the Secretary of
3 Homeland Security to disprove the alien’s
4 evidence with a showing which negates the
5 reasonableness of the inference to be
6 drawn from the evidence.

7 “(E) PAYMENT OF INCOME TAXES.—Not
8 later than the date on which status is adjusted
9 under this subsection, the alien shall establish
10 the payment of all Federal and State income
11 taxes owed for employment during the period of
12 employment required under subparagraph
13 (D)(i). The alien may satisfy such requirement
14 by establishing that—

15 “(i) no such tax liability exists;

16 “(ii) all outstanding liabilities have
17 been met; or

18 “(iii) the alien has entered into an
19 agreement for payment of all outstanding
20 liabilities with the Internal Revenue Serv-
21 ice and with the department of revenue of
22 each State to which taxes are owed.

23 “(F) BASIC CITIZENSHIP SKILLS.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), the alien shall dem-
3 onstrate that the alien either—

4 “(I) meets the requirements of
5 section 312(a) (relating to minimal
6 understanding of ordinary English
7 and a knowledge and understanding
8 of the history and Government of the
9 United States); or

10 “(II) is satisfactorily pursuing a
11 course of study, recognized by the
12 Secretary of Homeland Security, to
13 achieve such understanding of English
14 and the history and Government of
15 the United States.

16 “(ii) EXCEPTIONS.—

17 “(I) MANDATORY.—The require-
18 ments of clause (i) shall not apply to
19 any person who is unable to comply
20 with those requirements because of a
21 physical or developmental disability or
22 mental impairment.

23 “(II) DISCRETIONARY.—The Sec-
24 retary of Homeland Security may
25 waive all or part of the requirements

1 of clause (i) in the case of an alien
2 who is 65 years of age or older as of
3 the date of the filing of the applica-
4 tion for adjustment of status.

5 “(G) SECURITY AND LAW ENFORCEMENT
6 CLEARANCES.—The alien shall submit finger-
7 prints in accordance with procedures estab-
8 lished by the Secretary of Homeland Security.
9 Such fingerprints shall be submitted to relevant
10 Federal agencies to be checked against existing
11 databases for information relating to criminal,
12 national security, or other law enforcement ac-
13 tions that would render the alien ineligible for
14 adjustment of status under this subsection. The
15 relevant Federal agencies shall work to ensure
16 that such clearances are completed within 90
17 days of the submission of fingerprints. An ap-
18 peal of a security clearance determination by
19 the Secretary of Homeland Security shall be
20 processed through the Department of Home-
21 land Security.

22 “(H) MILITARY SELECTIVE SERVICE.—The
23 alien shall establish that if the alien is within
24 the age period required under the Military Se-

1 lective Service Act (50 U.S.C. App. 451 et seq.)
2 that such alien has registered under that Act.

3 “(I) ADJUSTMENT OF STATUS.—An alien
4 may not adjust to an immigrant classification
5 under this section until after the earlier of—

6 “(i) the consideration of all applica-
7 tions filed under section 201, 202, or 203
8 before the date of enactment of this sec-
9 tion; or

10 “(ii) 8 years after the date of enact-
11 ment of this section.

12 “(2) SPOUSES AND CHILDREN.—

13 “(A) IN GENERAL.—

14 “(i) ADJUSTMENT OF STATUS.—Not-
15 withstanding any other provision of law,
16 the Secretary of Homeland Security shall,
17 if otherwise eligible under subparagraph
18 (B), adjust the status to that of a lawful
19 permanent resident for—

20 “(I) the spouse, or child who was
21 under 21 years of age on the date of
22 enactment of the Immigrant Account-
23 ability Act of 2006, of an alien who
24 adjusts status or is eligible to adjust

1 status to that of a permanent resident
2 under paragraph (1); or

3 “(II) an alien who, within 5
4 years preceding the date of enactment
5 of the Immigrant Accountability Act
6 of 2006, was the spouse or child of an
7 alien who adjusts status to that of a
8 permanent resident under paragraph
9 (1), if—

10 “(aa) the termination of the
11 qualifying relationship was con-
12 nected to domestic violence; or

13 “(bb) the spouse or child
14 has been battered or subjected to
15 extreme cruelty by the spouse or
16 parent who adjusts status or is
17 eligible to adjust status to that of
18 a permanent resident under para-
19 graph (1).

20 “(ii) APPLICATION OF OTHER LAW.—

21 In acting on applications filed under this
22 paragraph with respect to aliens who have
23 been battered or subjected to extreme cru-
24 elty, the Secretary of Homeland Security
25 shall apply the provisions of section

1 204(a)(1)(J) and the protections, prohibi-
2 tions, and penalties under section 384 of
3 the Illegal Immigration Reform and Immig-
4 grant Responsibility Act of 1996 (8 U.S.C.
5 1367).

6 “(B) GROUNDS OF INADMISSIBILITY NOT
7 APPLICABLE.—In establishing admissibility to
8 the United States, the spouse or child described
9 in subparagraph (A) shall establish that they
10 are not inadmissible under section 212(a), ex-
11 cept for any provision of that section that is
12 waived under subsection (b) of this section.

13 “(C) SECURITY AND LAW ENFORCEMENT
14 CLEARANCE.—The spouse or child, if that child
15 is 14 years of age or older, described in sub-
16 paragraph (A) shall submit fingerprints in ac-
17 cordance with procedures established by the
18 Secretary of Homeland Security. Such finger-
19 prints shall be submitted to relevant Federal
20 agencies to be checked against existing data-
21 bases for information relating to criminal, na-
22 tional security, or other law enforcement actions
23 that would render the alien ineligible for adjust-
24 ment of status under this subsection. The rel-
25 evant Federal agencies shall work to ensure

1 that such clearances are completed within 90
2 days of the submission of fingerprints. An ap-
3 peal of a denial by the Secretary of Homeland
4 Security shall be processed through the Depart-
5 ment of Homeland Security.

6 “(3) NONAPPLICABILITY OF NUMERICAL LIM-
7 TATIONS.—When an alien is granted lawful perma-
8 nent resident status under this subsection, the num-
9 ber of immigrant visas authorized to be issued under
10 any provision of this Act shall not be reduced.

11 “(b) GROUNDS OF INADMISSIBILITY.—

12 “(1) APPLICABLE PROVISIONS.—In the deter-
13 mination of an alien’s admissibility under para-
14 graphs (1)(C) and (2) of subsection (a), the fol-
15 lowing provisions of section 212(a) shall apply and
16 may not be waived by the Secretary of Homeland
17 Security under paragraph (3)(A):

18 “(A) Paragraph (1) (relating to health).

19 “(B) Paragraph (2) (relating to criminals).

20 “(C) Paragraph (3) (relating to security
21 and related grounds).

22 “(D) Subparagraphs (A) and (C) of para-
23 graph (10) (relating to polygamists and child
24 abductors).

1 “(2) GROUNDS OF INADMISSIBILITY NOT APPLI-
2 CABLE.—The provisions of paragraphs (5), (6)(A),
3 (6)(B), (6)(C), (6)(F), (6)(G), (7), (9), and (10)(B)
4 of section 212(a) shall not apply to an alien who is
5 applying for adjustment of status under subsection
6 (a).

7 “(3) WAIVER OF OTHER GROUNDS.—

8 “(A) IN GENERAL.—Except as provided in
9 paragraph (1), the Secretary of Homeland Se-
10 curity may waive any provision of section
11 212(a) in the case of individual aliens for hu-
12 manitarian purposes, to ensure family unity, or
13 when it is otherwise in the public interest.

14 “(B) CONSTRUCTION.—Nothing in this
15 paragraph shall be construed as affecting the
16 authority of the Secretary of Homeland Secu-
17 rity, other than under this subparagraph, to
18 waive the provisions of section 212(a).

19 “(4) SPECIAL RULE FOR DETERMINATION OF
20 PUBLIC CHARGE.—An alien is not ineligible for ad-
21 justment of status under subsection (a) by reason of
22 a ground of inadmissibility under section 212(a)(4)
23 if the alien establishes a history of employment in
24 the United States evidencing self-support without
25 public cash assistance.

1 “(5) SPECIAL RULE FOR INDIVIDUALS WHERE
2 THERE IS NO COMMERCIAL PURPOSE.—An alien is
3 not ineligible for adjustment of status under sub-
4 section (a) by reason of a ground of inadmissibility
5 under section 212(a)(6)(E) if the alien establishes
6 that the action referred to in that section was taken
7 for humanitarian purposes, to ensure family unity,
8 or was otherwise in the public interest.

9 “(6) APPLICABILITY OF OTHER PROVISIONS.—
10 Section 241(a)(5) and section 240B(d) shall not
11 apply with respect to an alien who is applying for
12 adjustment of status under subsection (a).

13 “(c) TREATMENT OF APPLICANTS.—

14 “(1) IN GENERAL.—An alien who files an appli-
15 cation under subsection (a)(1)(A) for adjustment of
16 status, including a spouse or child who files for ad-
17 justment of status under subsection (b)—

18 “(A) shall be granted employment author-
19 ization pending final adjudication of the alien’s
20 application for adjustment of status;

21 “(B) shall be granted permission to travel
22 abroad pursuant to regulation pending final ad-
23 judication of the alien’s application for adjust-
24 ment of status;

1 “(C) shall not be detained, determined in-
2 admissible or deportable, or removed pending
3 final adjudication of the alien’s application for
4 adjustment of status, unless the alien commits
5 an act which renders the alien ineligible for
6 such adjustment of status; and

7 “(D) shall not be considered an unauthor-
8 ized alien as defined in section 274A(h)(3) until
9 such time as employment authorization under
10 subparagraph (A) is denied.

11 “(2) DOCUMENT OF AUTHORIZATION.—The
12 Secretary of Homeland Security shall provide each
13 alien described in paragraph (1) with a counterfeit-
14 resistant document of authorization that—

15 “(A) meets all current requirements estab-
16 lished by the Secretary of Homeland Security
17 for travel documents, including the require-
18 ments under section 403 of the Illegal Immigra-
19 tion Reform and Immigrant Responsibility Act
20 of 1996 (8 U.S.C. 1324a note); and

21 “(B) reflects the benefits and status set
22 forth in paragraph (1).

23 “(3) SECURITY AND LAW ENFORCEMENT
24 CLEARANCE.—Before an alien is granted employ-
25 ment authorization or permission to travel under

1 paragraph (1), the alien shall be required to undergo
2 a name check against existing databases for infor-
3 mation relating to criminal, national security, or
4 other law enforcement actions. The relevant Federal
5 agencies shall work to ensure that such name checks
6 are completed not later than 90 days after the date
7 on which the name check is requested.

8 “(4) TERMINATION OF PROCEEDINGS.—An
9 alien in removal proceedings who establishes prima
10 facie eligibility for adjustment of status under sub-
11 section (a) shall be entitled to termination of the
12 proceedings pending the outcome of the alien’s appli-
13 cation, unless the removal proceedings are based on
14 criminal or national security grounds.

15 “(d) APPREHENSION BEFORE APPLICATION PE-
16 RIOD.—The Secretary of Homeland Security shall provide
17 that in the case of an alien who is apprehended before
18 the beginning of the application period described in sub-
19 section (a) and who can establish prima facie eligibility
20 to have the alien’s status adjusted under that subsection
21 (but for the fact that the alien may not apply for such
22 adjustment until the beginning of such period), until the
23 alien has had the opportunity during the first 180 days
24 of the application period to complete the filing of an appli-
25 cation for adjustment, the alien may not be removed from

1 the United States unless the alien is removed on the basis
2 that the alien has engaged in criminal conduct or is a
3 threat to the national security of the United States.

4 “(e) CONFIDENTIALITY OF INFORMATION.—

5 “(1) IN GENERAL.—Except as otherwise pro-
6 vided in this section, no Federal agency or bureau,
7 nor any officer or employee of such agency or bu-
8 reau, may—

9 “(A) use the information furnished by the
10 applicant pursuant to an application filed under
11 paragraph (1) or (2) of subsection (a) for any
12 purpose other than to make a determination on
13 the application;

14 “(B) make any publication through which
15 the information furnished by any particular ap-
16 plicant can be identified; or

17 “(C) permit anyone other than the sworn
18 officers and employees of such agency, bureau,
19 or approved entity, as approved by the Sec-
20 retary of Homeland Security, to examine indi-
21 vidual applications that have been filed.

22 “(2) REQUIRED DISCLOSURES.—The Secretary
23 of Homeland Security and the Secretary of State
24 shall provide the information furnished pursuant to
25 an application filed under paragraph (1) or (2) of

1 subsection (a), and any other information derived
2 from such furnished information, to a duly recog-
3 nized law enforcement entity in connection with a
4 criminal investigation or prosecution or a national
5 security investigation or prosecution, in each in-
6 stance about an individual suspect or group of sus-
7 pects, when such information is requested in writing
8 by such entity.

9 “(3) CRIMINAL PENALTY.—Any person who
10 knowingly uses, publishes, or permits information to
11 be examined in violation of this subsection shall be
12 fined not more than \$10,000.

13 “(f) PENALTIES FOR FALSE STATEMENTS IN APPLI-
14 CATIONS.—

15 “(1) CRIMINAL PENALTY.—

16 “(A) VIOLATION.—It shall be unlawful for
17 any person to—

18 “(i) file or assist in filing an applica-
19 tion for adjustment of status under this
20 section and knowingly and willfully falsify,
21 conceal, or cover up a material fact or
22 make any false, fictitious, or fraudulent
23 statements or representations, or make or
24 use any false writing or document knowing

1 the same to contain any false, fictitious, or
2 fraudulent statement or entry; or

3 “(ii) create or supply a false writing
4 or document for use in making such an ap-
5 plication.

6 “(B) PENALTY.—Any person who violates
7 subparagraph (A) shall be fined in accordance
8 with title 18, United States Code, or imprisoned
9 not more than 5 years, or both.

10 “(2) INADMISSIBILITY.—An alien who is con-
11 victed of a crime under paragraph (1) shall be con-
12 sidered to be inadmissible to the United States.

13 “(3) EXCEPTION.—Notwithstanding paragraphs
14 (1) and (2), any alien or other entity (including an
15 employer or union) that submits an employment
16 record that contains incorrect data that the alien
17 used in order to obtain such employment, shall not
18 have violated this subsection.

19 “(g) INELIGIBILITY FOR PUBLIC BENEFITS.—For
20 purposes of section 403 of the Personal Responsibility and
21 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.
22 1613), an alien whose status has been adjusted in accord-
23 ance with subsection (a) shall not be eligible for any Fed-
24 eral means-tested public benefit unless the alien meets the

1 alien eligibility criteria for such benefit under title IV of
2 such Act (8 U.S.C. 1601 et seq.).

3 “(h) RELATIONSHIPS OF APPLICATION TO CERTAIN
4 ORDERS.—

5 “(1) IN GENERAL.—An alien who is present in
6 the United States and has been ordered excluded,
7 deported, removed, or to depart voluntarily from the
8 United States or is subject to reinstatement of re-
9 moval under any provision of this Act may, notwith-
10 standing such order, apply for adjustment of status
11 under subsection (a). Such an alien shall not be re-
12 quired, as a condition of submitting or granting such
13 application, to file a separate motion to reopen, re-
14 consider, or vacate the exclusion, deportation, re-
15 moval or voluntary departure order. If the Secretary
16 of Homeland Security grants the application, the
17 order shall be canceled. If the Secretary of Home-
18 land Security renders a final administrative decision
19 to deny the application, such order shall be effective
20 and enforceable. Nothing in this paragraph shall af-
21 fect the review or stay of removal under subsection
22 (j).

23 “(2) STAY OF REMOVAL.—The filing of an ap-
24 plication described in paragraph (1) shall stay the
25 removal or detainment of the alien pending final ad-

1 judication of the application, unless the removal or
2 detainment of the alien is based on criminal or na-
3 tional security grounds.

4 “(i) APPLICATION OF OTHER PROVISIONS.—Nothing
5 in this section shall preclude an alien who may be eligible
6 to be granted adjustment of status under subsection (a)
7 from seeking such status under any other provision of law
8 for which the alien may be eligible.

9 “(j) ADMINISTRATIVE AND JUDICIAL REVIEW.—

10 “(1) IN GENERAL.—Except as provided in this
11 subsection, there shall be no administrative or judi-
12 cial review of a determination respecting an applica-
13 tion for adjustment of status under subsection (a).

14 “(2) ADMINISTRATIVE REVIEW.—

15 “(A) SINGLE LEVEL OF ADMINISTRATIVE
16 APPELLATE REVIEW.—The Secretary of Home-
17 land Security shall establish an appellate au-
18 thority to provide for a single level of adminis-
19 trative appellate review of a determination re-
20 specting an application for adjustment of status
21 under subsection (a).

22 “(B) STANDARD FOR REVIEW.—Adminis-
23 trative appellate review referred to in subpara-
24 graph (A) shall be based solely upon the admin-
25 istrative record established at the time of the

1 determination on the application and upon the
2 presentation of additional or newly discovered
3 evidence during the time of the pending appeal.

4 “(3) JUDICIAL REVIEW.—

5 “(A) DIRECT REVIEW.—A person whose
6 application for adjustment of status under sub-
7 section (a) is denied after administrative appel-
8 late review under paragraph (2) may seek re-
9 view of such denial, in accordance with chapter
10 7 of title 5, United States Code, before the
11 United States district court for the district in
12 which the person resides.

13 “(B) REVIEW AFTER REMOVAL PRO-
14 CEEDINGS.—There shall be judicial review in
15 the Federal courts of appeal of the denial of an
16 application for adjustment of status under sub-
17 section (a) in conjunction with judicial review of
18 an order of removal, deportation, or exclusion,
19 but only if the validity of the denial has not
20 been upheld in a prior judicial proceeding under
21 subparagraph (A). Notwithstanding any other
22 provision of law, the standard for review of
23 such a denial shall be governed by subpara-
24 graph (C).

1 “(C) STANDARD FOR JUDICIAL REVIEW.—
2 Judicial review of a denial of an application
3 under this section shall be based solely upon the
4 administrative record established at the time of
5 the review. The findings of fact and other de-
6 terminations contained in the record shall be
7 conclusive unless the applicant can establish
8 abuse of discretion or that the findings are di-
9 rectly contrary to clear and convincing facts
10 contained in the record, considered as a whole.

11 “(4) STAY OF REMOVAL.—Aliens seeking ad-
12 ministrative or judicial review under this subsection
13 shall not be removed from the United States until a
14 final decision is rendered establishing ineligibility
15 under this section, unless such removal is based on
16 criminal or national security grounds.

17 “(k) DISSEMINATION OF INFORMATION ON ADJUST-
18 MENT PROGRAM.—During the 12 months following the
19 issuance of final regulations in accordance with subsection
20 (o), the Secretary of Homeland Security, in cooperation
21 with approved entities, approved by the Secretary of
22 Homeland Security, shall broadly disseminate information
23 respecting adjustment of status under this section and the
24 requirements to be satisfied to obtain such status. The
25 Secretary of Homeland Security shall also disseminate in-

1 formation to employers and labor unions to advise them
2 of the rights and protections available to them and to
3 workers who file applications under this section. Such in-
4 formation shall be broadly disseminated, in the languages
5 spoken by the top 15 source countries of the aliens who
6 would qualify for adjustment of status under this section,
7 including to television, radio, and print media such aliens
8 would have access to.

9 “(1) EMPLOYER PROTECTIONS.—

10 “(1) IMMIGRATION STATUS OF ALIEN.—Em-
11 ployers of aliens applying for adjustment of status
12 under this section shall not be subject to civil and
13 criminal tax liability relating directly to the employ-
14 ment of such alien.

15 “(2) PROVISION OF EMPLOYMENT RECORDS.—

16 Employers that provide unauthorized aliens with
17 copies of employment records or other evidence of
18 employment pursuant to an application for adjust-
19 ment of status under this section or any other appli-
20 cation or petition pursuant to other provisions of the
21 immigration laws, shall not be subject to civil and
22 criminal liability pursuant to section 274A for em-
23 ploying such unauthorized aliens.

24 “(3) APPLICABILITY OF OTHER LAW.—Nothing

25 in this subsection shall be used to shield an employer

1 from liability pursuant to section 274B or any other
2 labor and employment law provisions.

3 “(m) AUTHORIZATION OF FUNDS; FINES.—

4 “(1) AUTHORIZATION OF APPROPRIATIONS.—

5 There are authorized to be appropriated to the De-
6 partment of Homeland Security such sums as are
7 necessary to commence the processing of applica-
8 tions filed under this section.

9 “(2) FINE.—An alien who files an application
10 under this section shall pay a fine commensurate
11 with levels charged by the Department of Homeland
12 Security for other applications for adjustment of sta-
13 tus.

14 “(3) ADDITIONAL AMOUNTS OWED.—Prior to
15 the adjudication of an application for adjustment of
16 status filed under this section, the alien shall pay an
17 amount equaling \$2,000, but such amount shall not
18 be required from an alien under the age of 18.

19 “(4) USE OF AMOUNTS COLLECTED.—The Sec-
20 retary of Homeland Security shall deposit payments
21 received under this subsection in the Immigration
22 Examinations Fee Account, and these payments in
23 such account shall be available, without fiscal year
24 limitation, such that—

1 “(A) 80 percent of such funds shall be
2 available to the Department of Homeland Secu-
3 rity for border security purposes;

4 “(B) 10 percent of such funds shall be
5 available to the Department of Homeland Secu-
6 rity for implementing and processing applica-
7 tions under this section; and

8 “(C) 10 percent of such funds shall be
9 available to the Department of Homeland Secu-
10 rity and the Department of State to cover ad-
11 ministrative and other expenses incurred in con-
12 nection with the review of applications filed by
13 immediate relatives of aliens applying for ad-
14 justment of status under this section.

15 “(n) MANDATORY DEPARTURE AND REENTRY.—Any
16 alien who was physically present in the United States on
17 January 7, 2004, who seeks to adjust status under this
18 section, but does not satisfy the requirements of subpara-
19 graph (B) or (D) of subsection (a)(1), shall be eligible to
20 depart the United States and to seek admission as a non-
21 immigrant or an immigrant alien described in section
22 245C.

23 “(o) ISSUANCE OF REGULATIONS.—Not later than
24 120 days after the date of enactment of the Immigrant
25 Accountability Act of 2006, the Secretary of Homeland

1 Security shall issue regulations to implement this sec-
2 tion.”.

3 (2) TABLE OF CONTENTS.—The table of con-
4 tents (8 U.S.C. 1101 et seq.) is amended by insert-
5 ing after the item relating to section 245A the fol-
6 lowing:

“245B. Access to Earned Adjustment.”.

7 (c) MANDATORY DEPARTURE AND REENTRY.—

8 (1) IN GENERAL.—Chapter 5 of title II (8
9 U.S.C. 1255 et seq.), as amended by subsection
10 (b)(1), is further amended by inserting after section
11 245B the following: “

12 **“SEC. 245C. MANDATORY DEPARTURE AND REENTRY.**

13 “(a) IN GENERAL.—The Secretary of Homeland Se-
14 curity may grant Deferred Mandatory Departure status
15 to aliens who are in the United States illegally to allow
16 such aliens time to depart the United States and to seek
17 admission as a nonimmigrant or immigrant alien.

18 “(b) REQUIREMENTS.—An alien desiring an adjust-
19 ment of status under subsection (a) shall meet the fol-
20 lowing requirements:

21 “(1) PRESENCE.—The alien shall establish that
22 the alien—

23 “(A) was physically present in the United
24 States on January 7, 2004;

1 “(B) has been continuously in the United
2 States since such date, except for brief, casual,
3 and innocent departures; and

4 “(C) was not legally present in the United
5 States on that date under any classification set
6 forth in section 101(a)(15).

7 “(2) EMPLOYMENT.—

8 “(A) IN GENERAL.—The alien shall estab-
9 lish that the alien—

10 “(i) was employed in the United
11 States, whether full time, part time, sea-
12 sonally, or self-employed, before January
13 7, 2004; and

14 “(ii) has been continuously employed
15 in the United States since that date, ex-
16 cept for brief periods of unemployment
17 lasting not longer than 60 days.

18 “(B) EVIDENCE OF EMPLOYMENT.—

19 “(i) IN GENERAL.—An alien may con-
20 clusively establish employment status in
21 compliance with subparagraph (A) by sub-
22 mitting to the Secretary of Homeland Se-
23 curity records demonstrating such employ-
24 ment maintained by—

1 “(I) the Social Security Adminis-
2 tration, Internal Revenue Service, or
3 by any other Federal, State, or local
4 government agency;

5 “(II) an employer; or

6 “(III) a labor union, day labor
7 center, or an organization that assists
8 workers in matters related to employ-
9 ment.

10 “(ii) OTHER DOCUMENTS.—An alien
11 who is unable to submit a document de-
12 scribed in subclauses (I) through (III) of
13 clause (i) may satisfy the requirement in
14 subparagraph (A) by submitting to the
15 Secretary at least 2 other types of reliable
16 documents that provide evidence of em-
17 ployment, including—

18 “(I) bank records;

19 “(II) business records;

20 “(III) sworn affidavits from non-
21 relatives who have direct knowledge of
22 the alien’s work; or

23 “(IV) remittance records.

24 “(iii) INTENT OF CONGRESS.—It is
25 the intent of Congress that the require-

1 ment in this subsection be interpreted and
2 implemented in a manner that recognizes
3 and takes into account the difficulties en-
4 countered by aliens in obtaining evidence
5 of employment due to the undocumented
6 status of the alien.

7 “(iv) BURDEN OF PROOF.—An alien
8 who is applying for adjustment of status
9 under this section has the burden of prov-
10 ing by a preponderance of the evidence
11 that the alien has satisfied the require-
12 ments of this subsection. An alien may
13 meet such burden of proof by producing
14 sufficient evidence to demonstrate such
15 employment as a matter of reasonable in-
16 ference.

17 “(3) ADMISSIBILITY.—

18 “(A) IN GENERAL.—The alien shall estab-
19 lish that such alien—

20 “(i) is admissible to the United
21 States, except as provided as in (B); and

22 “(ii) has not assisted in the persecu-
23 tion of any person or persons on account
24 of race, religion, nationality, membership

1 in a particular social group, or political
2 opinion.

3 “(B) GROUNDS NOT APPLICABLE.—The
4 provisions of paragraphs (5), (6)(A), (7), and
5 (9)(B) of section 212(a) shall not apply.

6 “(C) WAIVER.—The Secretary of Home-
7 land Security may waive any other provision of
8 section 212(a), or a ground of ineligibility
9 under paragraph (4), in the case of individual
10 aliens for humanitarian purposes, to assure
11 family unity, or when it is otherwise in the pub-
12 lic interest.

13 “(4) INELIGIBLE.—The alien is ineligible for
14 Deferred Mandatory Departure status if the alien—

15 “(A) has been ordered excluded, deported,
16 removed, or to depart voluntarily from the
17 United States; or

18 “(B) fails to comply with any request for
19 information by the Secretary of Homeland Se-
20 curity.

21 “(5) MEDICAL EXAMINATION.—The alien may
22 be required, at the alien’s expense, to undergo such
23 a medical examination (including a determination of
24 immunization status) as is appropriate and conforms

1 to generally accepted professional standards of med-
2 ical practice.

3 “(6) TERMINATION.—The Secretary of Home-
4 land Security may terminate an alien’s Deferred
5 Mandatory Departure status if—

6 “(A) the Secretary of Homeland Security
7 determines that the alien was not in fact eligi-
8 ble for such status; or

9 “(B) the alien commits an act that makes
10 the alien removable from the United States.

11 “(7) APPLICATION CONTENT AND WAIVER.—

12 “(A) APPLICATION FORM.—The Secretary
13 of Homeland Security shall create an applica-
14 tion form that an alien shall be required to
15 complete as a condition of obtaining Deferred
16 Mandatory Departure status.

17 “(B) CONTENT.—In addition to any other
18 information that the Secretary requires to de-
19 termine an alien’s eligibility for Deferred Man-
20 datory Departure, the Secretary shall require
21 an alien to answer questions concerning the
22 alien’s physical and mental health, criminal his-
23 tory, gang membership, renunciation of gang
24 affiliation, immigration history, involvement
25 with groups or individuals that have engaged in

1 terrorism, genocide, persecution, or who seek
2 the overthrow of the United States Government,
3 voter registration history, claims to United
4 States citizenship, and tax history.

5 “(C) WAIVER.—The Secretary of Home-
6 land Security shall require an alien to include
7 with the application a waiver of rights that ex-
8 plains to the alien that, in exchange for the dis-
9 cretionary benefit of obtaining Deferred Manda-
10 tory Departure status, the alien agrees to waive
11 any right to administrative or judicial review or
12 appeal of an immigration officer’s determina-
13 tion as to the alien’s eligibility, or to contest
14 any removal action, other than on the basis of
15 an application for asylum or restriction of re-
16 moval pursuant to the provisions contained in
17 section 208 or 241(b)(3), or under the Conven-
18 tion Against Torture and Other Cruel, Inhuman
19 or Degrading Treatment or Punishment, done
20 at New York December 10, 1984, or cancella-
21 tion of removal pursuant to section 240A(a).

22 “(D) KNOWLEDGE.—The Secretary of
23 Homeland Security shall require an alien to in-
24 clude with the application a signed certification
25 in which the alien certifies that the alien has

1 read and understood all of the questions and
2 statements on the application form, and that
3 the alien certifies under penalty of perjury
4 under the laws of the United States that the
5 application, and any evidence submitted with it,
6 are all true and correct, and that the applicant
7 authorizes the release of any information con-
8 tained in the application and any attached evi-
9 dence for law enforcement purposes.

10 “(c) IMPLEMENTATION AND APPLICATION TIME PE-
11 RIODS.—

12 “(1) IN GENERAL.—The Secretary of Homeland
13 Security shall ensure that the application process is
14 secure and incorporates antifraud protection. The
15 Secretary of Homeland Security shall interview an
16 alien to determine eligibility for Deferred Mandatory
17 Departure status and shall utilize biometric authen-
18 tication at time of document issuance.

19 “(2) INITIAL RECEIPT OF APPLICATIONS.—The
20 Secretary of Homeland Security shall begin accept-
21 ing applications for Deferred Mandatory Departure
22 status not later than 3 months after the date on
23 which the application form is first made available.

24 “(3) APPLICATION.—An alien must submit an
25 initial application for Deferred Mandatory Departure

1 ture status not later than 6 months after the date
2 on which the application form is first made avail-
3 able. An alien that fails to comply with this require-
4 ment is ineligible for Deferred Mandatory Departure
5 status.

6 “(4) COMPLETION OF PROCESSING.—The Sec-
7 retary of Homeland Security shall ensure that all
8 applications for Deferred Mandatory Departure sta-
9 tus are processed not later than 12 months after the
10 date on which the application form is first made
11 available.

12 “(d) SECURITY AND LAW ENFORCEMENT BACK-
13 GROUND CHECKS.—An alien may not be granted Deferred
14 Mandatory Departure status unless the alien submits bio-
15 metric data in accordance with procedures established by
16 the Secretary of Homeland Security. The Secretary of
17 Homeland Security may not grant Deferred Mandatory
18 Departure status until all appropriate background checks
19 are completed to the satisfaction of the Secretary of
20 Homeland Security.

21 “(e) ACKNOWLEDGMENT.—

22 “(1) IN GENERAL.—An alien who applies for
23 Deferred Mandatory Departure status shall submit
24 to the Secretary of Homeland Security—

1 “(A) an acknowledgment made in writing
2 and under oath that the alien—

3 “(i) is unlawfully present in the
4 United States and subject to removal or
5 deportation, as appropriate, under this
6 Act; and

7 “(ii) understands the terms of the
8 terms of Deferred Mandatory Departure;

9 “(B) any Social Security account number
10 or card in the possession of the alien or relied
11 upon by the alien;

12 “(C) any false or fraudulent documents in
13 the alien’s possession.

14 “(2) USE OF INFORMATION.—None of the doc-
15 uments or other information provided in accordance
16 with paragraph (1) may be used in a criminal pro-
17 ceeding against the alien providing such documents
18 or information.

19 “(f) MANDATORY DEPARTURE.—

20 “(1) IN GENERAL.—The Secretary of Homeland
21 Security shall grant Deferred Mandatory Departure
22 status to an alien who meets the requirements of
23 this section for a period not to exceed 3 years.

1 “(2) REGISTRATION AT TIME OF DEPAR-
2 TURE.—An alien granted Deferred Mandatory De-
3 parture shall—

4 “(A) depart from the United States before
5 the expiration of the period of Deferred Manda-
6 tory Departure status;

7 “(B) register with the Secretary of Home-
8 land Security at the time of departure; and

9 “(C) surrender any evidence of Deferred
10 Mandatory Departure status at the time of de-
11 parture.

12 “(3) APPLICATION FOR READMISSION.—

13 “(A) IN GENERAL.—An alien under this
14 section may apply for admission to the United
15 States as an immigrant or nonimmigrant while
16 in the United States or from any location out-
17 side of the United States, but may not be
18 granted admission until the alien has departed
19 from the United States in accordance with
20 paragraph (2).

21 “(B) APPROVAL.—The Secretary may ap-
22 prove an application under subparagraph (A)
23 during the period in which the alien is present
24 in the United States under Deferred Mandatory
25 Departure status.

1 “(C) US-VISIT.—An alien in Deferred
2 Mandatory Departure status who is seeking ad-
3 mission as a nonimmigrant or immigrant alien
4 may exit the United States and immediately re-
5 enter the United States at any land port of
6 entry at which the US-VISIT exit and entry
7 system can process such alien for admission
8 into the United States.

9 “(D) INTERVIEW REQUIREMENTS.—Not-
10 withstanding any other provision of law, any
11 admission requirement involving in-person
12 interviews at a consulate of the United States
13 shall be waived for aliens granted Deferred
14 Mandatory Departure status under this section.

15 “(E) WAIVER OF NUMERICAL LIMITA-
16 TIONS.—The numerical limitations under sec-
17 tion 214 shall not apply to any alien who is ad-
18 mitted as a nonimmigrant under this para-
19 graph.

20 “(4) EFFECT OF READMISSION ON SPOUSE OR
21 CHILD.—The spouse or child of an alien granted De-
22 ferred Mandatory Departure and subsequently
23 granted an immigrant or nonimmigrant visa before
24 departing the United States shall be—

1 “(A) deemed to have departed under this
2 section upon the successful admission of the
3 principal alien; and

4 “(B) eligible for the derivative benefits as-
5 sociated with the immigrant or nonimmigrant
6 visa granted to the principal alien without re-
7 gard to numerical caps related to such visas.

8 “(5) WAIVERS.—The Secretary of Homeland
9 Security may waive the departure requirement under
10 this subsection if the alien—

11 “(A) is granted an immigrant or non-
12 immigrant visa; and

13 “(B) can demonstrate that the departure
14 of the alien would create a substantial hardship
15 on the alien or an immediate family member of
16 the alien.

17 “(6) RETURN IN LEGAL STATUS.—An alien who
18 complies with the terms of Deferred Mandatory De-
19 parture status and who departs before the expiration
20 of such status—

21 “(A) shall not be subject to section
22 212(a)(9)(B);

23 “(B) if otherwise eligible, may immediately
24 seek admission as a nonimmigrant or immi-
25 grant; and

1 “(C) is exempt from the requirements of
2 section 218B.

3 “(7) FAILURE TO DEPART.—An alien who fails
4 to depart the United States prior to the expiration
5 of Mandatory Deferred Departure status is not eligi-
6 ble and may not apply for or receive any immigra-
7 tion relief or benefit under this Act or any other law
8 for a period of 10 years, with the exception of sec-
9 tion 208 or 241(b)(3) or the Convention Against
10 Torture and Other Cruel, Inhuman or Degrading
11 Treatment or Punishment, done at New York De-
12 cember 10, 1984, in the case of an alien who indi-
13 cates either an intention to apply for asylum under
14 section 208 or a fear of persecution or torture.

15 “(8) PENALTIES FOR DELAYED DEPARTURE.—
16 An alien who fails to depart immediately shall be
17 subject to—

18 “(A) no fine if the alien departs not later
19 than 1 year after the grant of Deferred Manda-
20 tory Departure;

21 “(B) a fine of \$2,000 if the alien does not
22 depart within 2 years after the grant of De-
23 ferred Mandatory Departure; and

1 “(C) a fine of \$3,000 if the alien does not
2 depart within 3 years after the grant of De-
3 ferred Mandatory Departure.

4 “(g) EVIDENCE OF DEFERRED MANDATORY DEPAR-
5 TURE STATUS.—Evidence of Deferred Mandatory Depart-
6 ture status shall be machine-readable and tamper-resist-
7 ant, shall allow for biometric authentication, and shall
8 comply with the requirements under section 403 of the
9 Illegal Immigration Reform and Immigrant Responsibility
10 Act of 1996 (8 U.S.C. 1324a note). The Secretary of
11 Homeland Security is authorized to incorporate inte-
12 grated-circuit technology into the document. The Sec-
13 retary of Homeland Security shall consult with the Foren-
14 sic Document Laboratory in designing the document. The
15 document may serve as a travel, entry, and work author-
16 ization document during the period of its validity. The
17 document may be accepted by an employer as evidence of
18 employment authorization and identity under section
19 274A(b)(1)(B).

20 “(h) TERMS OF STATUS.—

21 “(1) REPORTING.—During the period of De-
22 ferred Mandatory Departure, an alien shall comply
23 with all registration requirements under section 264.

24 “(2) TRAVEL.—

1 “(A) An alien granted Deferred Mandatory
2 Departure is not subject to section 212(a)(9)
3 for any unlawful presence that occurred prior to
4 the Secretary of Homeland Security granting
5 the alien Deferred Mandatory Departure status.

6 “(B) Under regulations established by the
7 Secretary of Homeland Security, an alien grant-
8 ed Deferred Mandatory Departure—

9 “(i) may travel outside of the United
10 States and may be readmitted if the period
11 of Deferred Mandatory Departure status
12 has not expired; and

13 “(ii) must establish at the time of ap-
14 plication for admission that the alien is ad-
15 missible under section 212.

16 “(C) EFFECT ON PERIOD OF AUTHORIZED
17 ADMISSION.—Time spent outside the United
18 States under subparagraph (B) shall not extend
19 the period of Deferred Mandatory Departure
20 status.

21 “(3) BENEFITS.—During the period in which
22 an alien is granted Deferred Mandatory Departure
23 under this section—

24 “(A) the alien shall not be considered to be
25 permanently residing in the United States

1 under the color of law and shall be treated as
2 a nonimmigrant admitted under section 214;
3 and

4 “(B) the alien may be deemed ineligible for
5 public assistance by a State (as defined in sec-
6 tion 101(a)(36)) or any political subdivision
7 thereof which furnishes such assistance.

8 “(i) PROHIBITION ON CHANGE OF STATUS OR AD-
9 JUSTMENT OF STATUS.—

10 “(1) IN GENERAL.—Before leaving the United
11 States, an alien granted Deferred Mandatory Departure
12 status may not apply to change status under
13 section 248.

14 “(2) ADJUSTMENT OF STATUS.—An alien may
15 not adjust to an immigrant classification under this
16 section until after the earlier of—

17 “(A) the consideration of all applications
18 filed under section 201, 202, or 203 before the
19 date of enactment of this section; or

20 “(B) 8 years after the date of enactment
21 of this section.

22 “(j) APPLICATION FEE.—

23 “(1) IN GENERAL.—An alien seeking a grant of
24 Deferred Mandatory Departure status shall submit,

1 in addition to any other fees authorized by law, an
2 application fee of \$1,000.

3 “(2) USE OF FEE.—The fees collected under
4 paragraph (1) shall be available for use by the Sec-
5 retary of Homeland Security for activities to iden-
6 tify, locate, or remove illegal aliens.

7 “(k) FAMILY MEMBERS.—

8 “(1) IN GENERAL.—Subject subsection (f)(4),
9 the spouse or child of an alien granted Deferred
10 Mandatory Departure status is subject to the same
11 terms and conditions as the principal alien.

12 “(2) APPLICATION FEE.—

13 “(A) IN GENERAL.—The spouse or child of
14 an alien seeking Deferred Mandatory Departure
15 status shall submit, in addition to any other fee
16 authorized by law, an additional fee of \$500.

17 “(B) USE OF FEE.—The fees collected
18 under subparagraph (A) shall be available for
19 use by the Secretary of Homeland Security for
20 activities to identify, locate, or remove aliens
21 who are removable under section 237.

22 “(l) EMPLOYMENT.—

23 “(1) IN GENERAL.—An alien who has applied
24 for or has been granted Deferred Mandatory Departure
25 status may be employed in the United States.

1 “(2) CONTINUOUS EMPLOYMENT.—An alien
2 granted Deferred Mandatory Departure status must
3 be employed while in the United States. An alien
4 who fails to be employed for 60 days is ineligible for
5 hire until the alien has departed the United States
6 and reentered. The Secretary of Homeland Security
7 may reauthorize an alien for employment without re-
8 quiring the alien’s departure from the United States.

9 “(m) ENUMERATION OF SOCIAL SECURITY NUM-
10 BER.—The Secretary of Homeland Security, in coordina-
11 tion with the Commissioner of the Social Security system,
12 shall implement a system to allow for the enumeration of
13 a Social Security number and production of a Social Secu-
14 rity card at the time the Secretary of Homeland Security
15 grants an alien Deferred Mandatory Departure status.

16 “(n) PENALTIES FOR FALSE STATEMENTS IN APPLI-
17 CATION FOR DEFERRED MANDATORY DEPARTURE.—

18 “(1) CRIMINAL PENALTY.—

19 “(A) VIOLATION.—It shall be unlawful for
20 any person—

21 “(i) to file or assist in filing an appli-
22 cation for adjustment of status under this
23 section and knowingly and willfully falsify,
24 misrepresent, conceal, or cover up a mate-
25 rial fact or make any false, fictitious, or

1 fraudulent statements or representations,
2 or make or use any false writing or docu-
3 ment knowing the same to contain any
4 false, fictitious, or fraudulent statement or
5 entry; or

6 “(ii) to create or supply a false writ-
7 ing or document for use in making such an
8 application.

9 “(B) PENALTY.—Any person who violates
10 subparagraph (A) shall be fined in accordance
11 with title 18, United States Code, imprisoned
12 not more than 5 years, or both.

13 “(2) INADMISSIBILITY.—An alien who is con-
14 victed of a crime under paragraph (1) shall be con-
15 sidered to be inadmissible to the United States on
16 the ground described in section 212(a)(6)(C)(i).

17 “(o) RELATION TO CANCELLATION OF REMOVAL.—
18 With respect to an alien granted Deferred Mandatory De-
19 parture status under this section, the period of such status
20 shall not be counted as a period of physical presence in
21 the United States for purposes of section 240A(a), unless
22 the Secretary of Homeland Security determines that ex-
23 treme hardship exists.

24 “(p) WAIVER OF RIGHTS.—An alien is not eligible
25 for Deferred Mandatory Departure status, unless the alien

1 has waived any right to contest, other than on the basis
2 of an application for asylum, restriction of removal, or
3 protection under the Convention Against Torture and
4 Other Cruel, Inhuman or Degrading Treatment or Pun-
5 ishment, done at New York December 10, 1984, or can-
6 cellation of removal pursuant to section 240A(a), any ac-
7 tion for deportation or removal of the alien that is insti-
8 tuted against the alien subsequent to a grant of Deferred
9 Mandatory Departure status.

10 “(q) DENIAL OF DISCRETIONARY RELIEF.—The de-
11 termination of whether an alien is eligible for a grant of
12 Deferred Mandatory Departure status is solely within the
13 discretion of the Secretary of Homeland Security. Not-
14 withstanding any other provision of law, no court shall
15 have jurisdiction to review—

16 “(1) any judgment regarding the granting of
17 relief under this section; or

18 “(2) any other decision or action of the Sec-
19 retary of Homeland Security the authority for which
20 is specified under this section to be in the discretion
21 of the Secretary, other than the granting of relief
22 under section 208(a).

23 “(r) JUDICIAL REVIEW.—

24 “(1) LIMITATIONS ON RELIEF.—Without regard
25 to the nature of the action or claim and without re-

1 gard to the identity of the party or parties bringing
2 the action, no court may—

3 “(A) enter declaratory, injunctive, or other
4 equitable relief in any action pertaining to—

5 “(i) an order or notice denying an
6 alien a grant of Deferred Mandatory De-
7 parture status or any other benefit arising
8 from such status; or

9 “(ii) an order of removal, exclusion, or
10 deportation entered against an alien after
11 a grant of Deferred Mandatory Departure
12 status; or

13 “(B) certify a class under Rule 23 of the
14 Federal Rules of Civil Procedure in any action
15 for which judicial review is authorized under a
16 subsequent paragraph of this subsection.

17 “(2) CHALLENGES TO VALIDITY.—

18 “(A) IN GENERAL.—Any right or benefit
19 not otherwise waived or limited pursuant this
20 section is available in an action instituted in the
21 United States District Court for the District of
22 Columbia, but shall be limited to determina-
23 tions of—

24 “(i) whether such section, or any reg-
25 ulation issued to implement such section,

1 violates the Constitution of the United
2 States; or

3 “(ii) whether such a regulation, or a
4 written policy directive, written policy
5 guideline, or written procedure issued by
6 or under the authority of the Secretary of
7 Homeland Security to implement such sec-
8 tion, is not consistent with applicable pro-
9 visions of this section or is otherwise in
10 violation of law.”.

11 (2) TABLE OF CONTENTS.—The table of con-
12 tents (8 U.S.C. 1101 et seq.), as amended by this
13 subsection (b)(2), is further amended by inserting
14 after the item relating to section 245B the following:

“245C. Mandatory Departure and Reentry.”.

15 (3) CONFORMING AMENDMENT.—Section
16 237(a)(2)(A)(i)(II) (8 U.S.C. 1227(a)(2)(A)(i)(II))
17 is amended by inserting “(or 6 months in the case
18 of an alien granted Deferred Mandatory Departure
19 status under section 245C)” after “imposed”.

20 (4) STATUTORY CONSTRUCTION.—Nothing in
21 this subsection, or any amendment made by this
22 subsection, shall be construed to create any sub-
23 stantive or procedural right or benefit that is legally
24 enforceable by any party against the United States
25 or its agencies or officers or any other person.

1 (5) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated such
3 amounts as may be necessary for facilities, personnel
4 (including consular officers), training, technology,
5 and processing necessary to carry out the amend-
6 ments made by this subsection.

7 (d) CORRECTION OF SOCIAL SECURITY RECORDS.—

8 Section 208(e)(1) of the Social Security Act (42 U.S.C.
9 408(e)(1)) is amended—

10 (1) in subparagraph (B)(ii), by striking “or” at
11 the end;

12 (2) in subparagraph (C), by inserting “or” at
13 the end;

14 (3) by inserting after subparagraph (C) the fol-
15 lowing:

16 “(D) whose status is adjusted to that of
17 lawful permanent resident under section 245B
18 of the Immigration and Nationality Act,”; and

19 (4) by striking “1990.” and inserting “1990, or
20 in the case of an alien described in subparagraph
21 (D), if such conduct is alleged to have occurred prior
22 to the date on which the alien became lawfully ad-
23 mitted for temporary residence.”.

1 **Subtitle B—Agricultural Job Op-**
2 **portunities, Benefits, and Secu-**
3 **rity**

4 **SEC. 611. SHORT TITLE.**

5 This subtitle may be cited as the “Agricultural Job
6 Opportunities, Benefits, and Security Act of 2006” or the
7 “AgJOBS Act of 2006”.

8 **SEC. 612. DEFINITIONS.**

9 In this subtitle:

10 (1) **AGRICULTURAL EMPLOYMENT.**—The term
11 “agricultural employment” means any service or ac-
12 tivity that is considered to be agricultural under sec-
13 tion 3(f) of the Fair Labor Standards Act of 1938
14 (29 U.S.C. 203(f)) or agricultural labor under sec-
15 tion 3121(g) of the Internal Revenue Code of 1986
16 (26 U.S.C. 3121(g)). For purposes of this para-
17 graph, agricultural employment includes employment
18 under section 101(a)(15)(H)(ii)(a) of the Immigra-
19 tion and Nationality Act (8 U.S.C.
20 1101(a)(15)(H)(ii)(a)).

21 (2) **BLUE CARD STATUS.**—The term “blue card
22 status” means the status of an alien who has been
23 lawfully admitted into the United States for tem-
24 porary residence under section 613(a).

1 (3) EMPLOYER.—The term “employer” means
2 any person or entity, including any farm labor con-
3 tractor and any agricultural association, that em-
4 ploys workers in agricultural employment.

5 (4) JOB OPPORTUNITY.—The term “job oppor-
6 tunity” means a job opening for temporary full-time
7 employment at a place in the United States to which
8 United States workers can be referred.

9 (5) TEMPORARY.—A worker is employed on a
10 “temporary” basis where the employment is in-
11 tended not to exceed 10 months.

12 (6) UNITED STATES WORKER.—The term
13 “United States worker” means any worker, whether
14 a United States citizen or national, a lawfully admit-
15 ted permanent resident alien, or any other alien,
16 who is authorized to work in the job opportunity
17 within the United States, except an alien admitted
18 or otherwise provided status under section
19 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
20 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

21 (7) WORK DAY.—The term “work day” means
22 any day in which the individual is employed 1 or
23 more hours in agriculture consistent with the defini-
24 tion of “man-day” under section 3(u) of the Fair
25 Labor Standards Act of 1938 (29 U.S.C. 203(u)).

1 **CHAPTER 1—PILOT PROGRAM FOR**
2 **EARNED STATUS ADJUSTMENT OF AG-**
3 **RICULTURAL WORKERS**

4 **SEC. 613. AGRICULTURAL WORKERS.**

5 (a) BLUE CARD PROGRAM.—

6 (1) IN GENERAL.—Notwithstanding any other
7 provision of law, the Secretary shall confer blue card
8 status upon an alien who qualifies under this sub-
9 section if the Secretary determines that the alien—

10 (A) has performed agricultural employment
11 in the United States for at least 863 hours or
12 150 work days, whichever is less, during the
13 24-month period ending on December 31, 2005;

14 (B) applied for such status during the 18-
15 month application period beginning on the first
16 day of the seventh month that begins after the
17 date of enactment of this Act; and

18 (C) is otherwise admissible to the United
19 States under section 212 of the Immigration
20 and Nationality Act (8 U.S.C. 1182), except as
21 otherwise provided under subsection (e)(2).

22 (2) AUTHORIZED TRAVEL.—An alien in blue
23 card status has the right to travel abroad (including
24 commutation from a residence abroad) in the same

1 manner as an alien lawfully admitted for permanent
2 residence.

3 (3) AUTHORIZED EMPLOYMENT.—An alien in
4 blue card status shall be provided an “employment
5 authorized” endorsement or other appropriate work
6 permit, in the same manner as an alien lawfully ad-
7 mitted for permanent residence.

8 (4) TERMINATION OF BLUE CARD STATUS.—

9 (A) IN GENERAL.—The Secretary may ter-
10 minate blue card status granted under this sub-
11 section only upon a determination under this
12 subtitle that the alien is deportable.

13 (B) GROUNDS FOR TERMINATION OF BLUE
14 CARD STATUS.—Before any alien becomes eligi-
15 ble for adjustment of status under subsection
16 (c), the Secretary may deny adjustment to per-
17 manent resident status and provide for termi-
18 nation of the blue card status granted such
19 alien under paragraph (1) if—

20 (i) the Secretary finds, by a prepon-
21 derance of the evidence, that the adjust-
22 ment to blue card status was the result of
23 fraud or willful misrepresentation (as de-
24 scribed in section 212(a)(6)(C)(i) of the

1 Immigration and Nationality Act (8 U.S.C.
2 1182(a)(6)(C)(i)); or

3 (ii) the alien—

4 (I) commits an act that makes
5 the alien inadmissible to the United
6 States as an immigrant, except as
7 provided under subsection (e)(2);

8 (II) is convicted of a felony or 3
9 or more misdemeanors committed in
10 the United States; or

11 (III) is convicted of an offense,
12 an element of which involves bodily in-
13 jury, threat of serious bodily injury,
14 or harm to property in excess of \$500.

15 (5) RECORD OF EMPLOYMENT.—

16 (A) IN GENERAL.—Each employer of a
17 worker granted status under this subsection
18 shall annually—

19 (i) provide a written record of employ-
20 ment to the alien; and

21 (ii) provide a copy of such record to
22 the Secretary.

23 (B) SUNSET.—The obligation under sub-
24 paragraph (A) shall terminate on the date that

1 is 6 years after the date of the enactment of
2 this Act.

3 (6) REQUIRED FEATURES OF BLUE CARD.—The
4 Secretary shall provide each alien granted blue card
5 status and the spouse and children of each such
6 alien residing in the United States with a card that
7 contains—

8 (A) an encrypted, machine-readable, elec-
9 tronic identification strip that is unique to the
10 alien to whom the card is issued;

11 (B) biometric identifiers, including finger-
12 prints and a digital photograph; and

13 (C) physical security features designed to
14 prevent tampering, counterfeiting, or duplica-
15 tion of the card for fraudulent purposes.

16 (7) FINE.—An alien granted blue card status
17 shall pay a fine to the Secretary in an amount equal
18 to \$100.

19 (8) MAXIMUM NUMBER.—The Secretary may
20 issue not more than 1,500,000 blue cards during the
21 5-year period beginning on the date of the enact-
22 ment of this Act.

23 (b) RIGHTS OF ALIENS GRANTED BLUE CARD STA-
24 TUS.—

1 (1) IN GENERAL.—Except as otherwise pro-
2 vided under this subsection, an alien in blue card
3 status shall be considered to be an alien lawfully ad-
4 mitted for permanent residence for purposes of any
5 law other than any provision of the Immigration and
6 Nationality Act (8 U.S.C. 1101 et seq.).

7 (2) DELAYED ELIGIBILITY FOR CERTAIN FED-
8 ERAL PUBLIC BENEFITS.—An alien in blue card sta-
9 tus shall not be eligible, by reason of such status, for
10 any form of assistance or benefit described in section
11 403(a) of the Personal Responsibility and Work Op-
12 portunity Reconciliation Act of 1996 (8 U.S.C.
13 1613(a)) until 5 years after the date on which the
14 Secretary confers blue card status upon that alien.

15 (3) TERMS OF EMPLOYMENT RESPECTING
16 ALIENS ADMITTED UNDER THIS SECTION.—

17 (A) PROHIBITION.—No alien granted blue
18 card status may be terminated from employ-
19 ment by any employer during the period of blue
20 card status except for just cause.

21 (B) TREATMENT OF COMPLAINTS.—

22 (i) ESTABLISHMENT OF PROCESS.—
23 The Secretary shall establish a process for
24 the receipt, initial review, and disposition
25 of complaints by aliens granted blue card

1 status who allege that they have been ter-
2 minated without just cause. No proceeding
3 shall be conducted under this subpara-
4 graph with respect to a termination unless
5 the Secretary determines that the com-
6 plaint was filed not later than 6 months
7 after the date of the termination.

8 (ii) INITIATION OF ARBITRATION.—If
9 the Secretary finds that a complaint has
10 been filed in accordance with clause (i) and
11 there is reasonable cause to believe that
12 the complainant was terminated without
13 just cause, the Secretary shall initiate
14 binding arbitration proceedings by request-
15 ing the Federal Mediation and Conciliation
16 Service to appoint a mutually agreeable ar-
17 bitrator from the roster of arbitrators
18 maintained by such Service for the geo-
19 graphical area in which the employer is lo-
20 cated. The procedures and rules of such
21 Service shall be applicable to the selection
22 of such arbitrator and to such arbitration
23 proceedings. The Secretary shall pay the
24 fee and expenses of the arbitrator, subject

1 to the availability of appropriations for
2 such purpose.

3 (iii) ARBITRATION PROCEEDINGS.—

4 The arbitrator shall conduct the pro-
5 ceeding in accordance with the policies and
6 procedures promulgated by the American
7 Arbitration Association applicable to pri-
8 vate arbitration of employment disputes.

9 The arbitrator shall make findings respect-
10 ing whether the termination was for just
11 cause. The arbitrator may not find that
12 the termination was for just cause unless
13 the employer so demonstrates by a prepon-
14 derance of the evidence. If the arbitrator
15 finds that the termination was not for just
16 cause, the arbitrator shall make a specific
17 finding of the number of days or hours of
18 work lost by the employee as a result of
19 the termination. The arbitrator shall have
20 no authority to order any other remedy, in-
21 cluding, but not limited to, reinstatement,
22 back pay, or front pay to the affected em-
23 ployee. Within 30 days from the conclusion
24 of the arbitration proceeding, the arbi-
25 trator shall transmit the findings in the

1 form of a written opinion to the parties to
2 the arbitration and the Secretary. Such
3 findings shall be final and conclusive, and
4 no official or court of the United States
5 shall have the power or jurisdiction to re-
6 view any such findings.

7 (iv) EFFECT OF ARBITRATION FIND-
8 INGS.—If the Secretary receives a finding
9 of an arbitrator that an employer has ter-
10 minated an alien granted blue card status
11 without just cause, the Secretary shall
12 credit the alien for the number of days or
13 hours of work lost for purposes of the re-
14 quirement of subsection (c)(1).

15 (v) TREATMENT OF ATTORNEY'S
16 FEES.—The parties shall bear the cost of
17 their own attorney's fees involved in the
18 litigation of the complaint.

19 (vi) NONEXCLUSIVE REMEDY.—The
20 complaint process provided for in this sub-
21 paragraph is in addition to any other
22 rights an employee may have in accordance
23 with applicable law.

24 (vii) EFFECT ON OTHER ACTIONS OR
25 PROCEEDINGS.—Any finding of fact or

1 law, judgment, conclusion, or final order
2 made by an arbitrator in the proceeding
3 before the Secretary shall not be conclusive
4 or binding in any separate or subsequent
5 action or proceeding between the employee
6 and the employee's current or prior em-
7 ployer brought before an arbitrator, admin-
8 istrative agency, court, or judge of any
9 State or the United States, regardless of
10 whether the prior action was between the
11 same or related parties or involved the
12 same facts, except that the arbitrator's
13 specific finding of the number of days or
14 hours of work lost by the employee as a re-
15 sult of the employment termination may be
16 referred to the Secretary pursuant to
17 clause (iv).

18 (C) CIVIL PENALTIES.—

19 (i) IN GENERAL.—If the Secretary
20 finds, after notice and opportunity for a
21 hearing, that an employer of an alien
22 granted blue card status has failed to pro-
23 vide the record of employment required
24 under subsection (a)(5) or has provided a
25 false statement of material fact in such a

1 record, the employer shall be subject to a
2 civil money penalty in an amount not to
3 exceed \$1,000 per violation.

4 (ii) LIMITATION.—The penalty appli-
5 cable under clause (i) for failure to provide
6 records shall not apply unless the alien has
7 provided the employer with evidence of em-
8 ployment authorization granted under this
9 section.

10 (c) ADJUSTMENT TO PERMANENT RESIDENCE.—

11 (1) AGRICULTURAL WORKERS.—

12 (A) IN GENERAL.—Except as provided in
13 subparagraph (B), the Secretary shall adjust
14 the status of an alien granted blue card status
15 to that of an alien lawfully admitted for perma-
16 nent residence if the Secretary determines that
17 the following requirements are satisfied:

18 (i) QUALIFYING EMPLOYMENT.—The
19 alien has performed at least—

20 (I) 5 years of agricultural em-
21 ployment in the United States, for at
22 least 100 work days or 575 hours, but
23 in no case less than 575 hours per
24 year, during the 5-year period begin-

1 ning on the date of the enactment of
2 this Act; or

3 (II) 3 years of agricultural em-
4 ployment in the United States, for at
5 least 150 work days or 863 hours, but
6 in no case less than 863 hours per
7 year, during the 5-year period begin-
8 ning on the date of the enactment of
9 this Act.

10 (ii) PROOF.—An alien may dem-
11 onstrate compliance with the requirement
12 under clause (i) by submitting—

13 (I) the record of employment de-
14 scribed in subsection (a)(5); or

15 (II) such documentation as may
16 be submitted under subsection (d)(3).

17 (iii) EXTRAORDINARY CIR-
18 CUMSTANCES.—In determining whether an
19 alien has met the requirement under clause
20 (i)(I), the Secretary may credit the alien
21 with not more than 12 additional months
22 to meet the requirement under clause (i) if
23 the alien was unable to work in agricul-
24 tural employment due to—

1 (I) pregnancy, injury, or disease,
2 if the alien can establish such preg-
3 nancy, disabling injury, or disease
4 through medical records;

5 (II) illness, disease, or other spe-
6 cial needs of a minor child, if the alien
7 can establish such illness, disease, or
8 special needs through medical records;
9 or

10 (III) severe weather conditions
11 that prevented the alien from engag-
12 ing in agricultural employment for a
13 significant period of time.

14 (iv) APPLICATION PERIOD.—The alien
15 applies for adjustment of status not later
16 than 7 years after the date of the enact-
17 ment of this Act.

18 (v) FINE.—The alien pays a fine to
19 the Secretary in an amount equal to \$400.

20 (B) GROUNDS FOR DENIAL OF ADJUST-
21 MENT OF STATUS.—The Secretary may deny an
22 alien adjustment to permanent resident status,
23 and provide for termination of the blue card
24 status granted such alien, if—

1 (i) the Secretary finds by a prepon-
2 derance of the evidence that the adjust-
3 ment to blue card status was the result of
4 fraud or willful misrepresentation, as de-
5 scribed in section 212(a)(6)(C)(i) of the
6 Immigration and Nationality Act (8 U.S.C.
7 1182(a)(6)(C)(i)); or

8 (ii) the alien—

9 (I) commits an act that makes
10 the alien inadmissible to the United
11 States under section 212 of the Immi-
12 gration and Nationality Act (8 U.S.C.
13 1182), except as provided under sub-
14 section (e)(2);

15 (II) is convicted of a felony or 3
16 or more misdemeanors committed in
17 the United States; or

18 (III) is convicted of a single mis-
19 demeanor for which the actual sen-
20 tence served is 6 months or longer.

21 (C) GROUNDS FOR REMOVAL.—Any alien
22 granted blue card status who does not apply for
23 adjustment of status under this subsection be-
24 fore the expiration of the application period de-
25 scribed in subparagraph (A)(iv), or who fails to

1 meet the other requirements of subparagraph
2 (A) by the end of the applicable period, is de-
3 portable and may be removed under section 240
4 of the Immigration and Nationality Act (8
5 U.S.C. 1229a).

6 (D) PAYMENT OF INCOME TAXES.—

7 (i) IN GENERAL.—Not later than the
8 date on which an alien's status is adjusted
9 under this subsection, the alien shall estab-
10 lish the payment of all Federal income
11 taxes owed for employment during the pe-
12 riod of employment required under para-
13 graph (1)(A) by establishing that—

14 (I) no such tax liability exists;

15 (II) all outstanding liabilities
16 have been met; or

17 (III) the alien has entered into
18 an agreement for payment of all out-
19 standing liabilities with the Internal
20 Revenue Service.

21 (ii) IRS COOPERATION.—The Com-
22 missioner of Internal Revenue shall provide
23 documentation to an alien upon request to
24 establish the payment of all income taxes
25 required under this paragraph.

1 (2) SPOUSES AND MINOR CHILDREN.—

2 (A) IN GENERAL.—Notwithstanding any
3 other provision of law, the Secretary shall con-
4 fer the status of lawful permanent resident on
5 the spouse and minor child of an alien granted
6 status under paragraph (1), including any indi-
7 vidual who was a minor child on the date such
8 alien was granted blue card status, if the
9 spouse or minor child applies for such status, or
10 if the principal alien includes the spouse or
11 minor child in an application for adjustment of
12 status to that of a lawful permanent resident.

13 (B) TREATMENT OF SPOUSES AND MINOR
14 CHILDREN BEFORE ADJUSTMENT OF STATUS.—

15 (i) REMOVAL.—The spouse and any
16 minor child of an alien granted blue card
17 status may not be removed while such
18 alien maintains such status, except as pro-
19 vided in subparagraph (C).

20 (ii) TRAVEL.—The spouse and any
21 minor child of an alien granted blue card
22 status may travel outside the United
23 States in the same manner as an alien law-
24 fully admitted for permanent residence.

1 (iii) EMPLOYMENT.—The spouse of an
2 alien granted blue card status may apply
3 to the Secretary for a work permit to au-
4 thorize such spouse to engage in any law-
5 ful employment in the United States while
6 such alien maintains blue card status.

7 (C) GROUNDS FOR DENIAL OF ADJUST-
8 MENT OF STATUS AND REMOVAL.—The Sec-
9 retary may deny an alien spouse or child ad-
10 justment of status under subparagraph (A) and
11 may remove such spouse or child under section
12 240 of the Immigration and Nationality Act (8
13 U.S.C. 1229a) if the spouse or child—

14 (i) commits an act that makes the
15 alien spouse or child inadmissible to the
16 United States under section 212 of such
17 Act (8 U.S.C. 1182), except as provided
18 under subsection (e)(2);

19 (ii) is convicted of a felony or 3 or
20 more misdemeanors committed in the
21 United States; or

22 (iii) is convicted of a single mis-
23 demeanor for which the actual sentence
24 served is 6 months or longer.

25 (d) APPLICATIONS.—

1 (1) TO WHOM MAY BE MADE.—The Secretary
2 shall provide that—

3 (A) applications for blue card status may
4 be filed—

5 (i) with the Secretary, but only if the
6 applicant is represented by an attorney or
7 a non-profit religious, charitable, social
8 service, or similar organization recognized
9 by the Board of Immigration Appeals
10 under section 292.2 of title 8, Code of
11 Federal Regulations; or

12 (ii) with a qualified designated entity
13 (designated under paragraph (2)), but only
14 if the applicant consents to the forwarding
15 of the application to the Secretary; and

16 (B) applications for adjustment of status
17 under subsection (c) shall be filed directly with
18 the Secretary.

19 (2) DESIGNATION OF ENTITIES TO RECEIVE AP-
20 PPLICATIONS.—

21 (A) IN GENERAL.—For purposes of receiv-
22 ing applications under subsection (a), the Sec-
23 retary—

1 (i) shall designate qualified farm labor
2 organizations and associations of employ-
3 ers; and

4 (ii) may designate such other persons
5 as the Secretary determines are qualified
6 and have substantial experience, dem-
7 onstrate competence, and have traditional
8 long-term involvement in the preparation
9 and submission of applications for adjust-
10 ment of status under section 209, 210, or
11 245 of the Immigration and Nationality
12 Act, Public Law 89–732, Public Law 95–
13 145, or the Immigration Reform and Con-
14 trol Act of 1986.

15 (B) REFERENCES.—Organizations, asso-
16 ciations, and persons designated under subpara-
17 graph (A) are referred to in this subtitle as
18 “qualified designated entities”.

19 (3) PROOF OF ELIGIBILITY.—

20 (A) IN GENERAL.—An alien may establish
21 that the alien meets the requirement of sub-
22 section (a)(1)(A) or (c)(1)(A) through govern-
23 ment employment records or records supplied
24 by employers or collective bargaining organiza-
25 tions, and other reliable documentation as the

1 alien may provide. The Secretary shall establish
2 special procedures to properly credit work in
3 cases in which an alien was employed under an
4 assumed name.

5 (B) DOCUMENTATION OF WORK HIS-
6 TORY.—

7 (i) BURDEN OF PROOF.—An alien ap-
8 plying for status under subsection (a)(1)
9 or (c)(1) has the burden of proving by a
10 preponderance of the evidence that the
11 alien has worked the requisite number of
12 hours or days (as required under sub-
13 section (a)(1)(A) or (c)(1)(A)).

14 (ii) TIMELY PRODUCTION OF
15 RECORDS.—If an employer or farm labor
16 contractor employing such an alien has
17 kept proper and adequate records respect-
18 ing such employment, the alien's burden of
19 proof under clause (i) may be met by se-
20 curing timely production of those records
21 under regulations to be promulgated by the
22 Secretary.

23 (iii) SUFFICIENT EVIDENCE.—An
24 alien can meet the burden of proof under
25 clause (i) to establish that the alien has

1 performed the work described in subsection
2 (a)(1)(A) or (c)(1)(A) by producing suffi-
3 cient evidence to show the extent of that
4 employment as a matter of just and rea-
5 sonable inference.

6 (4) TREATMENT OF APPLICATIONS BY QUALI-
7 FIED DESIGNATED ENTITIES.—Each qualified des-
8 ignated entity shall agree to forward to the Sec-
9 retary applications filed with it in accordance with
10 paragraph (1)(A)(i)(II) but shall not forward to the
11 Secretary applications filed with it unless the appli-
12 cant has consented to such forwarding. No such en-
13 tity may make a determination required by this sec-
14 tion to be made by the Secretary. Upon the request
15 of the alien, a qualified designated entity shall assist
16 the alien in obtaining documentation of the work
17 history of the alien.

18 (5) LIMITATION ON ACCESS TO INFORMA-
19 TION.—Files and records prepared for purposes of
20 this subsection by qualified designated entities oper-
21 ating under this subsection are confidential and the
22 Secretary shall not have access to such files or
23 records relating to an alien without the consent of
24 the alien, except as allowed by a court order issued
25 pursuant to paragraph (6).

1 (6) CONFIDENTIALITY OF INFORMATION.—

2 (A) IN GENERAL.—Except as otherwise
3 provided in this subsection, neither the Sec-
4 retary, nor any other official or employee of the
5 Department, or a bureau or agency of the De-
6 partment, may—

7 (i) use the information furnished by
8 the applicant pursuant to an application
9 filed under this section, the information
10 provided to the applicant by a person des-
11 ignated under paragraph (2)(A), or any in-
12 formation provided by an employer or
13 former employer, for any purpose other
14 than to make a determination on the appli-
15 cation, or for enforcement of paragraph
16 (7);

17 (ii) make any publication whereby the
18 information furnished by any particular in-
19 dividual can be identified; or

20 (iii) permit anyone other than the
21 sworn officers and employees of the De-
22 partment, or a bureau or agency of the
23 Department, or, with respect to applica-
24 tions filed with a qualified designated enti-

1 ty, that qualified designated entity, to ex-
2 amine individual applications.

3 (B) REQUIRED DISCLOSURES.—The Sec-
4 retary shall provide the information furnished
5 under this section, or any other information de-
6 rived from such furnished information, to—

7 (i) a duly recognized law enforcement
8 entity in connection with a criminal inves-
9 tigation or prosecution, if such information
10 is requested in writing by such entity; or

11 (ii) an official coroner, for purposes of
12 affirmatively identifying a deceased indi-
13 vidual, whether or not the death of such
14 individual resulted from a crime.

15 (C) CONSTRUCTION.—

16 (i) IN GENERAL.—Nothing in this
17 paragraph shall be construed to limit the
18 use, or release, for immigration enforce-
19 ment purposes or law enforcement pur-
20 poses of information contained in files or
21 records of the Department pertaining to an
22 application filed under this section, other
23 than information furnished by an applicant
24 pursuant to the application, or any other

1 information derived from the application,
2 that is not available from any other source.

3 (ii) CRIMINAL CONVICTIONS.—Infor-
4 mation concerning whether the applicant
5 has at any time been convicted of a crime
6 may be used or released for immigration
7 enforcement or law enforcement purposes.

8 (D) CRIME.—Any person who knowingly
9 uses, publishes, or permits information to be ex-
10 amined in violation of this paragraph shall be
11 subject to a fine in an amount not to exceed
12 \$10,000.

13 (7) PENALTIES FOR FALSE STATEMENTS IN AP-
14 PPLICATIONS.—

15 (A) CRIMINAL PENALTY.—Any person
16 who—

17 (i) files an application for status
18 under subsection (a) or (c) and knowingly
19 and willfully falsifies, conceals, or covers
20 up a material fact or makes any false, fic-
21 titious, or fraudulent statements or rep-
22 resentations, or makes or uses any false
23 writing or document knowing the same to
24 contain any false, fictitious, or fraudulent
25 statement or entry; or

1 (ii) creates or supplies a false writing
2 or document for use in making such an ap-
3 plication,
4 shall be fined in accordance with title 18,
5 United States Code, imprisoned not more than
6 5 years, or both.

7 (B) INADMISSIBILITY.—An alien who is
8 convicted of a crime under subparagraph (A)
9 shall be considered to be inadmissible to the
10 United States on the ground described in sec-
11 tion 212(a)(6)(C)(i) of the Immigration and
12 Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

13 (8) ELIGIBILITY FOR LEGAL SERVICES.—Sec-
14 tion 504(a)(11) of Public Law 104–134 (110 Stat.
15 1321–53 et seq.) shall not be construed to prevent
16 a recipient of funds under the Legal Services Cor-
17 poration Act (42 U.S.C. 2996 et seq.) from pro-
18 viding legal assistance directly related to an applica-
19 tion for adjustment of status under this section.

20 (9) APPLICATION FEES.—

21 (A) FEE SCHEDULE.—The Secretary shall
22 provide for a schedule of fees that—

23 (i) shall be charged for the filing of
24 applications for status under subsections
25 (a) and (c); and

1 (ii) may be charged by qualified des-
2 ignated entities to help defray the costs of
3 services provided to such applicants.

4 (B) PROHIBITION ON EXCESS FEES BY
5 QUALIFIED DESIGNATED ENTITIES.—A quali-
6 fied designated entity may not charge any fee
7 in excess of, or in addition to, the fees author-
8 ized under subparagraph (A)(ii) for services
9 provided to applicants.

10 (C) DISPOSITION OF FEES.—

11 (i) IN GENERAL.—There is established
12 in the general fund of the Treasury a sepa-
13 rate account, which shall be known as the
14 “Agricultural Worker Immigration Status
15 Adjustment Account”. Notwithstanding
16 any other provision of law, there shall be
17 deposited as offsetting receipts into the ac-
18 count all fees collected under subparagraph
19 (A)(i).

20 (ii) USE OF FEES FOR APPLICATION
21 PROCESSING.—Amounts deposited in the
22 “Agricultural Worker Immigration Status
23 Adjustment Account” shall remain avail-
24 able to the Secretary until expended for

1 processing applications for status under
2 subsections (a) and (c).

3 (e) WAIVER OF NUMERICAL LIMITATIONS AND CER-
4 TAIN GROUNDS FOR INADMISSIBILITY.—

5 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—

6 The numerical limitations of sections 201 and 202
7 of the Immigration and Nationality Act (8 U.S.C.
8 1151 and 1152) shall not apply to the adjustment
9 of aliens to lawful permanent resident status under
10 this section.

11 (2) WAIVER OF CERTAIN GROUNDS OF INAD-

12 MISSIBILITY.—In the determination of an alien’s eli-
13 gibility for status under subsection (a)(1)(C) or an
14 alien’s eligibility for adjustment of status under sub-
15 section (c)(1)(B)(ii)(I), the following rules shall
16 apply:

17 (A) GROUNDS OF EXCLUSION NOT APPLI-

18 CABLE.—The provisions of paragraphs (5),
19 (6)(A), (7), and (9) of section 212(a) of the Im-
20 migration and Nationality Act (8 U.S.C.
21 1182(a)) shall not apply.

22 (B) WAIVER OF OTHER GROUNDS.—

23 (i) IN GENERAL.—Except as provided
24 in clause (ii), the Secretary may waive any
25 other provision of such section 212(a) in

1 the case of individual aliens for humani-
2 tarian purposes, to ensure family unity, or
3 if otherwise in the public interest.

4 (ii) GROUNDS THAT MAY NOT BE
5 WAIVED.—Paragraphs (2)(A), (2)(B),
6 (2)(C), (3), and (4) of such section 212(a)
7 may not be waived by the Secretary under
8 clause (i).

9 (iii) CONSTRUCTION.—Nothing in this
10 subparagraph shall be construed as affect-
11 ing the authority of the Secretary other
12 than under this subparagraph to waive
13 provisions of such section 212(a).

14 (C) SPECIAL RULE FOR DETERMINATION
15 OF PUBLIC CHARGE.—An alien is not ineligible
16 for status under this section by reason of a
17 ground of inadmissibility under section
18 212(a)(4) of the Immigration and Nationality
19 Act (8 U.S.C. 1182(a)(4)) if the alien dem-
20 onstrates a history of employment in the United
21 States evidencing self-support without reliance
22 on public cash assistance.

23 (f) TEMPORARY STAY OF REMOVAL AND WORK AU-
24 THORIZATION FOR CERTAIN APPLICANTS.—

1 (1) BEFORE APPLICATION PERIOD.—Effective
2 on the date of enactment of this Act, the Secretary
3 shall provide that, in the case of an alien who is ap-
4 prehended before the beginning of the application
5 period described in subsection (a)(1)(B) and who
6 can establish a nonfrivolous case of eligibility for
7 blue card status (but for the fact that the alien may
8 not apply for such status until the beginning of such
9 period), until the alien has had the opportunity dur-
10 ing the first 30 days of the application period to
11 complete the filing of an application for blue card
12 status, the alien—

13 (A) may not be removed; and

14 (B) shall be granted authorization to en-
15 gage in employment in the United States and
16 be provided an “employment authorized” en-
17 dorsement or other appropriate work permit for
18 such purpose.

19 (2) DURING APPLICATION PERIOD.—The Sec-
20 retary shall provide that, in the case of an alien who
21 presents a nonfrivolous application for blue card sta-
22 tus during the application period described in sub-
23 section (a)(1)(B), including an alien who files such
24 an application within 30 days of the alien’s appre-
25 hension, and until a final determination on the ap-

1 plication has been made in accordance with this sec-
2 tion, the alien—

3 (A) may not be removed; and

4 (B) shall be granted authorization to en-
5 gage in employment in the United States and
6 be provided an “employment authorized” en-
7 dorsement or other appropriate work permit for
8 such purpose.

9 (g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

10 (1) IN GENERAL.—There shall be no adminis-
11 trative or judicial review of a determination respect-
12 ing an application for status under subsection (a) or
13 (c) except in accordance with this subsection.

14 (2) ADMINISTRATIVE REVIEW.—

15 (A) SINGLE LEVEL OF ADMINISTRATIVE
16 APPELLATE REVIEW.—The Secretary shall es-
17 tablish an appellate authority to provide for a
18 single level of administrative appellate review of
19 such a determination.

20 (B) STANDARD FOR REVIEW.—Such ad-
21 ministrative appellate review shall be based
22 solely upon the administrative record estab-
23 lished at the time of the determination on the
24 application and upon such additional or newly

1 discovered evidence as may not have been avail-
2 able at the time of the determination.

3 (3) JUDICIAL REVIEW.—

4 (A) LIMITATION TO REVIEW OF RE-
5 MOVAL.—There shall be judicial review of such
6 a determination only in the judicial review of an
7 order of removal under section 242 of the Im-
8 migration and Nationality Act (8 U.S.C. 1252).

9 (B) STANDARD FOR JUDICIAL REVIEW.—

10 Such judicial review shall be based solely upon
11 the administrative record established at the
12 time of the review by the appellate authority
13 and the findings of fact and determinations
14 contained in such record shall be conclusive un-
15 less the applicant can establish abuse of discre-
16 tion or that the findings are directly contrary to
17 clear and convincing facts contained in the
18 record considered as a whole.

19 (h) DISSEMINATION OF INFORMATION ON ADJUST-
20 MENT PROGRAM.—Beginning not later than the first day
21 of the application period described in subsection (a)(1)(B),
22 the Secretary, in cooperation with qualified designated en-
23 tities, shall broadly disseminate information respecting the
24 benefits that aliens may receive under this section and the
25 requirements to be satisfied to obtain such benefits.

1 (i) REGULATIONS.—The Secretary shall issue regula-
2 tions to implement this section not later than the first day
3 of the seventh month that begins after the date of enact-
4 ment of this Act.

5 (j) EFFECTIVE DATE.—This section shall take effect
6 on the date that regulations are issued implementing this
7 section on an interim or other basis.

8 (k) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated to the Secretary to carry
10 out this section \$40,000,000 for each of fiscal years 2007
11 through 2010.

12 **SEC. 614. CORRECTION OF SOCIAL SECURITY RECORDS.**

13 (a) IN GENERAL.—Section 208(d)(1) of the Social
14 Security Act (42 U.S.C. 408(d)(1)) is amended—

15 (1) in subparagraph (B)(ii), by striking “or” at
16 the end;

17 (2) in subparagraph (C), by inserting “or” at
18 the end;

19 (3) by inserting after subparagraph (C) the fol-
20 lowing:

21 “(D) who is granted blue card status under the
22 Agricultural Job Opportunity, Benefits, and Security
23 Act of 2006,”; and

24 (4) by striking “1990.” and inserting “1990, or
25 in the case of an alien described in subparagraph

1 (D), if such conduct is alleged to have occurred be-
2 fore the date on which the alien was granted blue
3 card status.”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 subsection (a) shall take effect on the first day of the sev-
6 enth month that begins after the date of the enactment
7 of this Act.

8 **CHAPTER 2—REFORM OF H-2A WORKER**
9 **PROGRAM**

10 **SEC. 615. AMENDMENT TO THE IMMIGRATION AND NATION-**
11 **ALITY ACT.**

12 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)
13 is amended—

14 (1) by striking section 218 and inserting the
15 following:

16 **“SEC. 218. H-2A EMPLOYER APPLICATIONS.**

17 **“(a) APPLICATIONS TO THE SECRETARY OF**
18 **LABOR.—**

19 **“(1) IN GENERAL.—**No alien may be admitted
20 to the United States as an H-2A worker, or other-
21 wise provided status as an H-2A worker, unless the
22 employer has filed with the Secretary of Labor an
23 application containing—

24 **“(A) the assurances described in sub-**
25 **section (b);**

1 “(B) a description of the nature and loca-
2 tion of the work to be performed;

3 “(C) the anticipated period (expected be-
4 ginning and ending dates) for which the work-
5 ers will be needed; and

6 “(D) the number of job opportunities in
7 which the employer seeks to employ the work-
8 ers.

9 “(2) ACCOMPANIED BY JOB OFFER.—Each ap-
10 plication filed under paragraph (1) shall be accom-
11 panied by a copy of the job offer describing the
12 wages and other terms and conditions of employ-
13 ment and the bona fide occupational qualifications
14 that shall be possessed by a worker to be employed
15 in the job opportunity in question.

16 “(b) ASSURANCES FOR INCLUSION IN APPLICA-
17 TIONS.—The assurances referred to in subsection (a)(1)
18 are the following:

19 “(1) JOB OPPORTUNITIES COVERED BY COL-
20 LECTIVE BARGAINING AGREEMENTS.—With respect
21 to a job opportunity that is covered under a collec-
22 tive bargaining agreement:

23 “(A) UNION CONTRACT DESCRIBED.—The
24 job opportunity is covered by a union contract

1 which was negotiated at arm's length between a
2 bona fide union and the employer.

3 “(B) STRIKE OR LOCKOUT.—The specific
4 job opportunity for which the employer is re-
5 questing an H-2A worker is not vacant because
6 the former occupant is on strike or being locked
7 out in the course of a labor dispute.

8 “(C) NOTIFICATION OF BARGAINING REP-
9 PRESENTATIVES.—The employer, at the time of
10 filing the application, has provided notice of the
11 filing under this paragraph to the bargaining
12 representative of the employer's employees in
13 the occupational classification at the place or
14 places of employment for which aliens are
15 sought.

16 “(D) TEMPORARY OR SEASONAL JOB OP-
17 PORTUNITIES.—The job opportunity is tem-
18 porary or seasonal.

19 “(E) OFFERS TO UNITED STATES WORK-
20 ERS.—The employer has offered or will offer
21 the job to any eligible United States worker
22 who applies and is equally or better qualified
23 for the job for which the nonimmigrant is, or
24 the nonimmigrants are, sought and who will be
25 available at the time and place of need.

1 “(F) PROVISION OF INSURANCE.—If the
2 job opportunity is not covered by the State
3 workers’ compensation law, the employer will
4 provide, at no cost to the worker, insurance cov-
5 ering injury and disease arising out of, and in
6 the course of, the worker’s employment which
7 will provide benefits at least equal to those pro-
8 vided under the State’s workers’ compensation
9 law for comparable employment.

10 “(2) JOB OPPORTUNITIES NOT COVERED BY
11 COLLECTIVE BARGAINING AGREEMENTS.—With re-
12 spect to a job opportunity that is not covered under
13 a collective bargaining agreement:

14 “(A) STRIKE OR LOCKOUT.—The specific
15 job opportunity for which the employer is re-
16 questing an H-2A worker is not vacant because
17 the former occupant is on strike or being locked
18 out in the course of a labor dispute.

19 “(B) TEMPORARY OR SEASONAL JOB OP-
20 PORTUNITIES.—The job opportunity is tem-
21 porary or seasonal.

22 “(C) BENEFIT, WAGE, AND WORKING CON-
23 DITIONS.—The employer will provide, at a min-
24 imum, the benefits, wages, and working condi-
25 tions required by section 218E to all workers

1 employed in the job opportunities for which the
2 employer has applied under subsection (a) and
3 to all other workers in the same occupation at
4 the place of employment.

5 “(D) NONDISPLACEMENT OF UNITED
6 STATES WORKERS.—The employer did not dis-
7 place and will not displace a United States
8 worker employed by the employer during the
9 period of employment and for a period of 30
10 days preceding the period of employment in the
11 occupation at the place of employment for
12 which the employer seeks approval to employ
13 H–2A workers.

14 “(E) REQUIREMENTS FOR PLACEMENT OF
15 NONIMMIGRANT WITH OTHER EMPLOYERS.—
16 The employer will not place the nonimmigrant
17 with another employer unless—

18 “(i) the nonimmigrant performs du-
19 ties in whole or in part at 1 or more work
20 sites owned, operated, or controlled by
21 such other employer;

22 “(ii) there are indicia of an employ-
23 ment relationship between the non-
24 immigrant and such other employer; and

1 “(iii) the employer has inquired of the
2 other employer as to whether, and has no
3 actual knowledge or notice that, during the
4 period of employment and for a period of
5 30 days preceding the period of employ-
6 ment, the other employer has displaced or
7 intends to displace a United States worker
8 employed by the other employer in the oc-
9 cupation at the place of employment for
10 which the employer seeks approval to em-
11 ploy H-2A workers.

12 “(F) STATEMENT OF LIABILITY.—The ap-
13 plication form shall include a clear statement
14 explaining the liability under subparagraph (E)
15 of an employer if the other employer described
16 in such subparagraph displaces a United States
17 worker as described in such subparagraph.

18 “(G) PROVISION OF INSURANCE.—If the
19 job opportunity is not covered by the State
20 workers’ compensation law, the employer will
21 provide, at no cost to the worker, insurance cov-
22 ering injury and disease arising out of and in
23 the course of the worker’s employment which
24 will provide benefits at least equal to those pro-

1 vided under the State’s workers’ compensation
2 law for comparable employment.

3 “(H) EMPLOYMENT OF UNITED STATES
4 WORKERS.—

5 “(i) RECRUITMENT.—The employer
6 has taken or will take the following steps
7 to recruit United States workers for the
8 job opportunities for which the H–2A non-
9 immigrant is, or H–2A nonimmigrants are,
10 sought:

11 “(I) CONTACTING FORMER
12 WORKERS.—The employer shall make
13 reasonable efforts through the sending
14 of a letter by United States Postal
15 Service mail, or otherwise, to contact
16 any United States worker the em-
17 ployer employed during the previous
18 season in the occupation at the place
19 of intended employment for which the
20 employer is applying for workers and
21 has made the availability of the em-
22 ployer’s job opportunities in the occu-
23 pation at the place of intended em-
24 ployment known to such previous
25 workers, unless the worker was termi-

1 nated from employment by the em-
2 ployer for a lawful job-related reason
3 or abandoned the job before the work-
4 er completed the period of employ-
5 ment of the job opportunity for which
6 the worker was hired.

7 “(II) FILING A JOB OFFER WITH
8 THE LOCAL OFFICE OF THE STATE
9 EMPLOYMENT SECURITY AGENCY.—

10 Not later than 28 days before the
11 date on which the employer desires to
12 employ an H-2A worker in a tem-
13 porary or seasonal agricultural job op-
14 portunity, the employer shall submit a
15 copy of the job offer described in sub-
16 section (a)(2) to the local office of the
17 State employment security agency
18 which serves the area of intended em-
19 ployment and authorize the posting of
20 the job opportunity on ‘America’s Job
21 Bank’ or other electronic job registry,
22 except that nothing in this subclause
23 shall require the employer to file an
24 interstate job order under section 653

1 of title 20, Code of Federal Regula-
2 tions.

3 “(III) ADVERTISING OF JOB OP-
4 PORTUNITIES.—Not later than 14
5 days before the date on which the em-
6 ployer desires to employ an H-2A
7 worker in a temporary or seasonal ag-
8 ricultural job opportunity, the em-
9 ployer shall advertise the availability
10 of the job opportunities for which the
11 employer is seeking workers in a pub-
12 lication in the local labor market that
13 is likely to be patronized by potential
14 farm workers.

15 “(IV) EMERGENCY PROCE-
16 DURES.—The Secretary of Labor
17 shall, by regulation, provide a proce-
18 dure for acceptance and approval of
19 applications in which the employer
20 has not complied with the provisions
21 of this subparagraph because the em-
22 ployer’s need for H-2A workers could
23 not reasonably have been foreseen.

24 “(ii) JOB OFFERS.—The employer has
25 offered or will offer the job to any eligible

1 United States worker who applies and is
2 equally or better qualified for the job for
3 which the nonimmigrant is, or non-
4 immigrants are, sought and who will be
5 available at the time and place of need.

6 “(iii) PERIOD OF EMPLOYMENT.—The
7 employer will provide employment to any
8 qualified United States worker who applies
9 to the employer during the period begin-
10 ning on the date on which the foreign
11 worker departs for the employer’s place of
12 employment and ending on the date on
13 which 50 percent of the period of employ-
14 ment for which the foreign worker who is
15 in the job was hired has elapsed, subject to
16 the following requirements:

17 “(I) PROHIBITION.—No person
18 or entity shall willfully and knowingly
19 withhold United States workers before
20 the arrival of H-2A workers in order
21 to force the hiring of United States
22 workers under this clause.

23 “(II) COMPLAINTS.—Upon re-
24 ceipt of a complaint by an employer
25 that a violation of subclause (I) has

1 occurred, the Secretary of Labor shall
2 immediately investigate. The Sec-
3 retary of Labor shall, within 36 hours
4 of the receipt of the complaint, issue
5 findings concerning the alleged viola-
6 tion. If the Secretary of Labor finds
7 that a violation has occurred, the Sec-
8 retary of Labor shall immediately sus-
9 pend the application of this clause
10 with respect to that certification for
11 that date of need.

12 “(III) PLACEMENT OF UNITED
13 STATES WORKERS.—Before referring
14 a United States worker to an em-
15 ployer during the period described in
16 the matter preceding subclause (I),
17 the Secretary of Labor shall make all
18 reasonable efforts to place the United
19 States worker in an open job accept-
20 able to the worker, if there are other
21 job offers pending with the job service
22 that offer similar job opportunities in
23 the area of intended employment.

24 “(iv) STATUTORY CONSTRUCTION.—
25 Nothing in this subparagraph shall be con-

1 strued to prohibit an employer from using
2 such legitimate selection criteria relevant
3 to the type of job that are normal or cus-
4 tomary to the type of job involved so long
5 as such criteria are not applied in a dis-
6 criminatorial manner.

7 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
8 OF EMPLOYER MEMBERS.—

9 “(1) IN GENERAL.—An agricultural association
10 may file an application under subsection (a) on be-
11 half of 1 or more of its employer members that the
12 association certifies in its application has or have
13 agreed in writing to comply with the requirements of
14 this section and sections 218E through 218G.

15 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
16 EMPLOYERS.—If an association filing an application
17 under paragraph (1) is a joint or sole employer of
18 the temporary or seasonal agricultural workers re-
19 quested on the application, the certifications granted
20 under subsection (e)(2)(B) to the association may be
21 used for the certified job opportunities of any of its
22 producer members named on the application, and
23 such workers may be transferred among such pro-
24 ducer members to perform the agricultural services

1 of a temporary or seasonal nature for which the cer-
2 tifications were granted.

3 “(d) WITHDRAWAL OF APPLICATIONS.—

4 “(1) IN GENERAL.—An employer may withdraw
5 an application filed pursuant to subsection (a), ex-
6 cept that if the employer is an agricultural associa-
7 tion, the association may withdraw an application
8 filed pursuant to subsection (a) with respect to 1 or
9 more of its members. To withdraw an application,
10 the employer or association shall notify the Sec-
11 retary of Labor in writing, and the Secretary of
12 Labor shall acknowledge in writing the receipt of
13 such withdrawal notice. An employer who withdraws
14 an application under subsection (a), or on whose be-
15 half an application is withdrawn, is relieved of the
16 obligations undertaken in the application.

17 “(2) LIMITATION.—An application may not be
18 withdrawn while any alien provided status under sec-
19 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
20 tion is employed by the employer.

21 “(3) OBLIGATIONS UNDER OTHER STATUTES.—
22 Any obligation incurred by an employer under any
23 other law or regulation as a result of the recruit-
24 ment of United States workers or H-2A workers
25 under an offer of terms and conditions of employ-

1 ment required as a result of making an application
2 under subsection (a) is unaffected by withdrawal of
3 such application.

4 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

5 “(1) RESPONSIBILITY OF EMPLOYERS.—The
6 employer shall make available for public examina-
7 tion, within 1 working day after the date on which
8 an application under subsection (a) is filed, at the
9 employer’s principal place of business or work site,
10 a copy of each such application (and such accom-
11 panying documents as are necessary).

12 “(2) RESPONSIBILITY OF THE SECRETARY OF
13 LABOR.—

14 “(A) COMPILATION OF LIST.—The Sec-
15 retary of Labor shall compile, on a current
16 basis, a list (by employer and by occupational
17 classification) of the applications filed under
18 this subsection. Such list shall include the wage
19 rate, number of workers sought, period of in-
20 tended employment, and date of need. The Sec-
21 retary of Labor shall make such list available
22 for examination in the District of Columbia.

23 “(B) REVIEW OF APPLICATIONS.—The
24 Secretary of Labor shall review such an applica-
25 tion only for completeness and obvious inac-

1 curacies. Unless the Secretary of Labor finds
2 that the application is incomplete or obviously
3 inaccurate, the Secretary of Labor shall certify
4 that the intending employer has filed with the
5 Secretary of Labor an application as described
6 in subsection (a). Such certification shall be
7 provided within 7 days of the filing of the appli-
8 cation.”; and

9 (2) by inserting after section 218D, as added
10 by section 601 of this Act, the following:

11 **“SEC. 218E. H-2A EMPLOYMENT REQUIREMENTS.**

12 “(a) PREFERENTIAL TREATMENT OF ALIENS PRO-
13 HIBITED.—Employers seeking to hire United States work-
14 ers shall offer the United States workers no less than the
15 same benefits, wages, and working conditions that the em-
16 ployer is offering, intends to offer, or will provide to H-
17 2A workers. Conversely, no job offer may impose on
18 United States workers any restrictions or obligations
19 which will not be imposed on the employer’s H-2A work-
20 ers.

21 “(b) MINIMUM BENEFITS, WAGES, AND WORKING
22 CONDITIONS.—Except in cases where higher benefits,
23 wages, or working conditions are required by the provi-
24 sions of subsection (a), in order to protect similarly em-
25 ployed United States workers from adverse effects with

1 respect to benefits, wages, and working conditions, every
2 job offer which shall accompany an application under sec-
3 tion 218(b)(2) shall include each of the following benefit,
4 wage, and working condition provisions:

5 “(1) REQUIREMENT TO PROVIDE HOUSING OR A
6 HOUSING ALLOWANCE.—

7 “(A) IN GENERAL.—An employer applying
8 under section 218(a) for H-2A workers shall
9 offer to provide housing at no cost to all work-
10 ers in job opportunities for which the employer
11 has applied under that section and to all other
12 workers in the same occupation at the place of
13 employment, whose place of residence is beyond
14 normal commuting distance.

15 “(B) TYPE OF HOUSING.—In complying
16 with subparagraph (A), an employer may, at
17 the employer’s election, provide housing that
18 meets applicable Federal standards for tem-
19 porary labor camps or secure housing that
20 meets applicable local standards for rental or
21 public accommodation housing or other sub-
22 stantially similar class of habitation, or in the
23 absence of applicable local standards, State
24 standards for rental or public accommodation
25 housing or other substantially similar class of

1 habitation. In the absence of applicable local or
2 State standards, Federal temporary labor camp
3 standards shall apply.

4 “(C) FAMILY HOUSING.—When it is the
5 prevailing practice in the occupation and area
6 of intended employment to provide family hous-
7 ing, family housing shall be provided to workers
8 with families who request it.

9 “(D) WORKERS ENGAGED IN THE RANGE
10 PRODUCTION OF LIVESTOCK.—The Secretary of
11 Labor shall issue regulations that address the
12 specific requirements for the provision of hous-
13 ing to workers engaged in the range production
14 of livestock.

15 “(E) LIMITATION.—Nothing in this para-
16 graph shall be construed to require an employer
17 to provide or secure housing for persons who
18 were not entitled to such housing under the
19 temporary labor certification regulations in ef-
20 fect on June 1, 1986.

21 “(F) CHARGES FOR HOUSING.—

22 “(i) CHARGES FOR PUBLIC HOUS-
23 ING.—If public housing provided for mi-
24 grant agricultural workers under the aus-
25 pices of a local, county, or State govern-

1 ment is secured by an employer, and use of
2 the public housing unit normally requires
3 charges from migrant workers, such
4 charges shall be paid by the employer di-
5 rectly to the appropriate individual or enti-
6 ty affiliated with the housing's manage-
7 ment.

8 “(ii) DEPOSIT CHARGES.—Charges in
9 the form of deposits for bedding or other
10 similar incidentals related to housing shall
11 not be levied upon workers by employers
12 who provide housing for their workers. An
13 employer may require a worker found to
14 have been responsible for damage to such
15 housing which is not the result of normal
16 wear and tear related to habitation to re-
17 imburse the employer for the reasonable
18 cost of repair of such damage.

19 “(G) HOUSING ALLOWANCE AS ALTER-
20 NATIVE.—

21 “(i) IN GENERAL.—If the requirement
22 under clause (ii) is satisfied, the employer
23 may provide a reasonable housing allow-
24 ance instead of offering housing under sub-
25 paragraph (A). Upon the request of a

1 worker seeking assistance in locating hous-
2 ing, the employer shall make a good faith
3 effort to assist the worker in identifying
4 and locating housing in the area of in-
5 tended employment. An employer who of-
6 fers a housing allowance to a worker, or
7 assists a worker in locating housing which
8 the worker occupies, pursuant to this
9 clause shall not be deemed a housing pro-
10 vider under section 203 of the Migrant and
11 Seasonal Agricultural Worker Protection
12 Act (29 U.S.C. 1823) solely by virtue of
13 providing such housing allowance. No
14 housing allowance may be used for housing
15 which is owned or controlled by the em-
16 ployer.

17 “(ii) CERTIFICATION.—The require-
18 ment of this clause is satisfied if the Gov-
19 ernor of the State certifies to the Secretary
20 of Labor that there is adequate housing
21 available in the area of intended employ-
22 ment for migrant farm workers, and H-2A
23 workers, who are seeking temporary hous-
24 ing while employed at farm work. Such

1 certification shall expire after 3 years un-
2 less renewed by the Governor of the State.

3 “(iii) AMOUNT OF ALLOWANCE.—

4 “(I) NONMETROPOLITAN COUN-
5 TIES.—If the place of employment of
6 the workers provided an allowance
7 under this subparagraph is a non-
8 metropolitan county, the amount of
9 the housing allowance under this sub-
10 paragraph shall be equal to the state-
11 wide average fair market rental for
12 existing housing for nonmetropolitan
13 counties for the State, as established
14 by the Secretary of Housing and
15 Urban Development pursuant to sec-
16 tion 8(c) of the United States Hous-
17 ing Act of 1937 (42 U.S.C. 1437f(c)),
18 based on a 2 bedroom dwelling unit
19 and an assumption of 2 persons per
20 bedroom.

21 “(II) METROPOLITAN COUN-
22 TIES.—If the place of employment of
23 the workers provided an allowance
24 under this paragraph is in a metro-
25 politan county, the amount of the

1 housing allowance under this subpara-
2 graph shall be equal to the statewide
3 average fair market rental for existing
4 housing for metropolitan counties for
5 the State, as established by the Sec-
6 retary of Housing and Urban Devel-
7 opment pursuant to section 8(c) of
8 the United States Housing Act of
9 1937 (42 U.S.C. 1437f(c)), based on
10 a 2-bedroom dwelling unit and an as-
11 sumption of 2 persons per bedroom.

12 “(2) REIMBURSEMENT OF TRANSPORTATION.—

13 “(A) TO PLACE OF EMPLOYMENT.—A
14 worker who completes 50 percent of the period
15 of employment of the job opportunity for which
16 the worker was hired shall be reimbursed by the
17 employer for the cost of the worker’s transpor-
18 tation and subsistence from the place from
19 which the worker came to work for the em-
20 ployer (or place of last employment, if the
21 worker traveled from such place) to the place of
22 employment.

23 “(B) FROM PLACE OF EMPLOYMENT.—A
24 worker who completes the period of employment
25 for the job opportunity involved shall be reim-

1 bursed by the employer for the cost of the
2 worker's transportation and subsistence from
3 the place of employment to the place from
4 which the worker, disregarding intervening em-
5 ployment, came to work for the employer, or to
6 the place of next employment, if the worker has
7 contracted with a subsequent employer who has
8 not agreed to provide or pay for the worker's
9 transportation and subsistence to such subse-
10 quent employer's place of employment.

11 “(C) LIMITATION.—

12 “(i) AMOUNT OF REIMBURSEMENT.—

13 Except as provided in clause (ii), the
14 amount of reimbursement provided under
15 subparagraph (A) or (B) to a worker or
16 alien shall not exceed the lesser of—

17 “(I) the actual cost to the worker
18 or alien of the transportation and sub-
19 sistence involved; or

20 “(II) the most economical and
21 reasonable common carrier transpor-
22 tation charges and subsistence costs
23 for the distance involved.

24 “(ii) DISTANCE TRAVELED.—No reim-
25 bursement under subparagraph (A) or (B)

1 shall be required if the distance traveled is
2 100 miles or less, or the worker is not re-
3 siding in employer-provided housing or
4 housing secured through an allowance as
5 provided in paragraph (1)(G).

6 “(D) EARLY TERMINATION.—If the worker
7 is laid off or employment is terminated for con-
8 tract impossibility (as described in paragraph
9 (4)(D)) before the anticipated ending date of
10 employment, the employer shall provide the
11 transportation and subsistence required by sub-
12 paragraph (B) and, notwithstanding whether
13 the worker has completed 50 percent of the pe-
14 riod of employment, shall provide the transpor-
15 tation reimbursement required by subparagraph
16 (A).

17 “(E) TRANSPORTATION BETWEEN LIVING
18 QUARTERS AND WORK SITE.—The employer
19 shall provide transportation between the work-
20 er’s living quarters and the employer’s work site
21 without cost to the worker, and such transpor-
22 tation will be in accordance with applicable laws
23 and regulations.

24 “(3) REQUIRED WAGES.—

1 “(A) IN GENERAL.—An employer applying
2 for workers under section 218(a) shall offer to
3 pay, and shall pay, all workers in the occupa-
4 tion for which the employer has applied for
5 workers, not less (and is not required to pay
6 more) than the greater of the prevailing wage
7 in the occupation in the area of intended em-
8 ployment or the adverse effect wage rate. No
9 worker shall be paid less than the greater of the
10 hourly wage prescribed under section 6(a)(1) of
11 the Fair Labor Standards Act of 1938 (29
12 U.S.C. 206(a)(1)) or the applicable State min-
13 imum wage.

14 “(B) LIMITATION.—Effective on the date
15 of the enactment of the Agricultural Job Op-
16 portunities, Benefits, and Security Act of 2006
17 and continuing for 3 years thereafter, no ad-
18 verse effect wage rate for a State may be more
19 than the adverse effect wage rate for that State
20 in effect on January 1, 2003, as established by
21 section 655.107 of title 20, Code of Federal
22 Regulations.

23 “(C) REQUIRED WAGES AFTER 3-YEAR
24 FREEZE.—

1 “(i) FIRST ADJUSTMENT.—If Con-
2 gress does not set a new wage standard
3 applicable to this section before the first
4 March 1 that is not less than 3 years after
5 the date of enactment of this section, the
6 adverse effect wage rate for each State be-
7 ginning on such March 1 shall be the wage
8 rate that would have resulted if the ad-
9 verse effect wage rate in effect on January
10 1, 2003, had been annually adjusted, be-
11 ginning on March 1, 2006, by the lesser
12 of—

13 “(I) the 12 month percentage
14 change in the Consumer Price Index
15 for All Urban Consumers between De-
16 cember of the second preceding year
17 and December of the preceding year;
18 and

19 “(II) 4 percent.

20 “(ii) SUBSEQUENT ANNUAL ADJUST-
21 MENTS.—Beginning on the first March 1
22 that is not less than 4 years after the date
23 of enactment of this section, and each
24 March 1 thereafter, the adverse effect

1 wage rate then in effect for each State
2 shall be adjusted by the lesser of—

3 “(I) the 12 month percentage
4 change in the Consumer Price Index
5 for All Urban Consumers between De-
6 cember of the second preceding year
7 and December of the preceding year;
8 and

9 “(II) 4 percent.

10 “(D) DEDUCTIONS.—The employer shall
11 make only those deductions from the worker’s
12 wages that are authorized by law or are reason-
13 able and customary in the occupation and area
14 of employment. The job offer shall specify all
15 deductions not required by law which the em-
16 ployer will make from the worker’s wages.

17 “(E) FREQUENCY OF PAY.—The employer
18 shall pay the worker not less frequently than
19 twice monthly, or in accordance with the pre-
20 vailing practice in the area of employment,
21 whichever is more frequent.

22 “(F) HOURS AND EARNINGS STATE-
23 MENTS.—The employer shall furnish to the
24 worker, on or before each payday, in 1 or more
25 written statements—

1 “(i) the worker’s total earnings for
2 the pay period;

3 “(ii) the worker’s hourly rate of pay,
4 piece rate of pay, or both;

5 “(iii) the hours of employment which
6 have been offered to the worker (broken
7 out by hours offered in accordance with
8 and over and above the three-quarters
9 guarantee described in paragraph (4);

10 “(iv) the hours actually worked by the
11 worker;

12 “(v) an itemization of the deductions
13 made from the worker’s wages; and

14 “(vi) if piece rates of pay are used,
15 the units produced daily.

16 “(G) REPORT ON WAGE PROTECTIONS.—
17 Not later than December 31, 2008, the Comp-
18 troller General of the United States shall pre-
19 pare and transmit to the Secretary of Labor,
20 the Committee on the Judiciary of the Senate,
21 and Committee on the Judiciary of the House
22 of Representatives, a report that addresses—

23 “(i) whether the employment of H-2A
24 or unauthorized aliens in the United States
25 agricultural work force has depressed

1 United States farm worker wages below
2 the levels that would otherwise have pre-
3 vailed if alien farm workers had not been
4 employed in the United States;

5 “(ii) whether an adverse effect wage
6 rate is necessary to prevent wages of
7 United States farm workers in occupations
8 in which H-2A workers are employed from
9 falling below the wage levels that would
10 have prevailed in the absence of the em-
11 ployment of H-2A workers in those occu-
12 pations;

13 “(iii) whether alternative wage stand-
14 ards, such as a prevailing wage standard,
15 would be sufficient to prevent wages in oc-
16 cupations in which H-2A workers are em-
17 ployed from falling below the wage level
18 that would have prevailed in the absence of
19 H-2A employment;

20 “(iv) whether any changes are war-
21 ranted in the current methodologies for
22 calculating the adverse effect wage rate
23 and the prevailing wage; and

24 “(v) recommendations for future wage
25 protection under this section.

1 “(H) COMMISSION ON WAGE STAND-
2 ARDS.—

3 “(i) ESTABLISHMENT.—There is es-
4 tablished the Commission on Agricultural
5 Wage Standards under the H-2A program
6 (in this subparagraph referred to as the
7 ‘Commission’).

8 “(ii) COMPOSITION.—The Commission
9 shall consist of 10 members as follows:

10 “(I) 4 representatives of agricul-
11 tural employers and 1 representative
12 of the Department of Agriculture,
13 each appointed by the Secretary of
14 Agriculture.

15 “(II) 4 representatives of agricul-
16 tural workers and 1 representative of
17 the Department of Labor, each ap-
18 pointed by the Secretary of Labor.

19 “(iii) FUNCTIONS.—The Commission
20 shall conduct a study that shall address—

21 “(I) whether the employment of
22 H-2A or unauthorized aliens in the
23 United States agricultural workforce
24 has depressed United States farm
25 worker wages below the levels that

1 would otherwise have prevailed if alien
2 farm workers had not been employed
3 in the United States;

4 “(II) whether an adverse effect
5 wage rate is necessary to prevent
6 wages of United States farm workers
7 in occupations in which H-2A work-
8 ers are employed from falling below
9 the wage levels that would have pre-
10 vailed in the absence of the employ-
11 ment of H-2A workers in those occu-
12 pations;

13 “(III) whether alternative wage
14 standards, such as a prevailing wage
15 standard, would be sufficient to pre-
16 vent wages in occupations in which
17 H-2A workers are employed from fall-
18 ing below the wage level that would
19 have prevailed in the absence of H-2A
20 employment;

21 “(IV) whether any changes are
22 warranted in the current methodolo-
23 gies for calculating the adverse effect
24 wage rate and the prevailing wage
25 rate; and

1 “(V) recommendations for future
2 wage protection under this section.

3 “(iv) FINAL REPORT.—Not later than
4 December 31, 2008, the Commission shall
5 submit a report to the Congress setting
6 forth the findings of the study conducted
7 under clause (iii).

8 “(v) TERMINATION DATE.—The Com-
9 mission shall terminate upon submitting
10 its final report.

11 “(4) GUARANTEE OF EMPLOYMENT.—

12 “(A) OFFER TO WORKER.—The employer
13 shall guarantee to offer the worker employment
14 for the hourly equivalent of at least three-
15 fourths of the work days of the total period of
16 employment, beginning with the first work day
17 after the arrival of the worker at the place of
18 employment and ending on the expiration date
19 specified in the job offer. For purposes of this
20 subparagraph, the hourly equivalent means the
21 number of hours in the work days as stated in
22 the job offer and shall exclude the worker’s
23 Sabbath and Federal holidays. If the employer
24 affords the United States or H-2A worker less
25 employment than that required under this para-

1 graph, the employer shall pay such worker the
2 amount which the worker would have earned
3 had the worker, in fact, worked for the guaran-
4 teed number of hours.

5 “(B) FAILURE TO WORK.—Any hours
6 which the worker fails to work, up to a max-
7 imum of the number of hours specified in the
8 job offer for a work day, when the worker has
9 been offered an opportunity to do so, and all
10 hours of work actually performed (including vol-
11 untary work in excess of the number of hours
12 specified in the job offer in a work day, on the
13 worker’s Sabbath, or on Federal holidays) may
14 be counted by the employer in calculating
15 whether the period of guaranteed employment
16 has been met.

17 “(C) ABANDONMENT OF EMPLOYMENT,
18 TERMINATION FOR CAUSE.—If the worker vol-
19 untarily abandons employment before the end
20 of the contract period, or is terminated for
21 cause, the worker is not entitled to the ‘three-
22 fourths guarantee’ described in subparagraph
23 (A).

24 “(D) CONTRACT IMPOSSIBILITY.—If, be-
25 fore the expiration of the period of employment

1 specified in the job offer, the services of the
2 worker are no longer required for reasons be-
3 yond the control of the employer due to any
4 form of natural disaster, including but not lim-
5 ited to a flood, hurricane, freeze, earthquake,
6 fire, drought, plant or animal disease or pest in-
7 festation, or regulatory drought, before the
8 guarantee in subparagraph (A) is fulfilled, the
9 employer may terminate the worker's employ-
10 ment. In the event of such termination, the em-
11 ployer shall fulfill the employment guarantee in
12 subparagraph (A) for the work days that have
13 elapsed from the first work day after the arrival
14 of the worker to the termination of employ-
15 ment. In such cases, the employer will make ef-
16 forts to transfer the United States worker to
17 other comparable employment acceptable to the
18 worker. If such transfer is not effected, the em-
19 ployer shall provide the return transportation
20 required in paragraph (2)(D).

21 “(5) MOTOR VEHICLE SAFETY.—

22 “(A) MODE OF TRANSPORTATION SUBJECT
23 TO COVERAGE.—

24 “(i) IN GENERAL.—Except as pro-
25 vided in clauses (iii) and (iv), this sub-

1 section applies to any H-2A employer that
2 uses or causes to be used any vehicle to
3 transport an H-2A worker within the
4 United States.

5 “(ii) DEFINED TERM.—In this para-
6 graph, the term ‘uses or causes to be
7 used’—

8 “(I) applies only to transpor-
9 tation provided by an H-2A employer
10 to an H-2A worker, or by a farm
11 labor contractor to an H-2A worker
12 at the request or direction of an H-
13 2A employer; and

14 “(II) does not apply to—

15 “(aa) transportation pro-
16 vided, or transportation arrange-
17 ments made, by an H-2A work-
18 er, unless the employer specifi-
19 cally requested or arranged such
20 transportation; or

21 “(bb) car pooling arrange-
22 ments made by H-2A workers
23 themselves, using 1 of the work-
24 ers’ own vehicles, unless specifi-
25 cally requested by the employer

1 directly or through a farm labor
2 contractor.

3 “(iii) CLARIFICATION.—Providing a
4 job offer to an H-2A worker that causes
5 the worker to travel to or from the place
6 of employment, or the payment or reim-
7 bursment of the transportation costs of
8 an H-2A worker by an H-2A employer,
9 shall not constitute an arrangement of, or
10 participation in, such transportation.

11 “(iv) AGRICULTURAL MACHINERY AND
12 EQUIPMENT EXCLUDED.—This subsection
13 does not apply to the transportation of an
14 H-2A worker on a tractor, combine, har-
15 vester, picker, or other similar machinery
16 or equipment while such worker is actually
17 engaged in the planting, cultivating, or
18 harvesting of agricultural commodities or
19 the care of livestock or poultry or engaged
20 in transportation incidental thereto.

21 “(v) COMMON CARRIERS EX-
22 CLUDED.—This subsection does not apply
23 to common carrier motor vehicle transpor-
24 tation in which the provider holds itself out
25 to the general public as engaging in the

1 transportation of passengers for hire and
2 holds a valid certification of authorization
3 for such purposes from an appropriate
4 Federal, State, or local agency.

5 “(B) APPLICABILITY OF STANDARDS, LI-
6 CENSING, AND INSURANCE REQUIREMENTS.—

7 “(i) IN GENERAL.—When using, or
8 causing to be used, any vehicle for the pur-
9 pose of providing transportation to which
10 this subparagraph applies, each employer
11 shall—

12 “(I) ensure that each such vehi-
13 cle conforms to the standards pre-
14 scribed by the Secretary of Labor
15 under section 401(b) of the Migrant
16 and Seasonal Agricultural Worker
17 Protection Act (29 U.S.C. 1841(b))
18 and other applicable Federal and
19 State safety standards;

20 “(II) ensure that each driver has
21 a valid and appropriate license, as
22 provided by State law, to operate the
23 vehicle; and

24 “(III) have an insurance policy
25 or a liability bond that is in effect

1 which insures the employer against li-
2 ability for damage to persons or prop-
3 erty arising from the ownership, oper-
4 ation, or causing to be operated, of
5 any vehicle used to transport any H-
6 2A worker.

7 “(ii) AMOUNT OF INSURANCE RE-
8 QUIRED.—The level of insurance required
9 shall be determined by the Secretary of
10 Labor pursuant to regulations to be issued
11 under this subsection.

12 “(iii) EFFECT OF WORKERS’ COM-
13 PENSATION COVERAGE.—If the employer
14 of any H-2A worker provides workers’
15 compensation coverage for such worker in
16 the case of bodily injury or death as pro-
17 vided by State law, the following adjust-
18 ments in the requirements of subparagraph
19 (B)(i)(III) relating to having an insurance
20 policy or liability bond apply:

21 “(I) No insurance policy or liabil-
22 ity bond shall be required of the em-
23 ployer, if such workers are trans-
24 ported only under circumstances for

1 which there is coverage under such
2 State law.

3 “(II) An insurance policy or li-
4 ability bond shall be required of the
5 employer for circumstances under
6 which coverage for the transportation
7 of such workers is not provided under
8 such State law.

9 “(c) COMPLIANCE WITH LABOR LAWS.—An em-
10 ployer shall assure that, except as otherwise provided in
11 this section, the employer will comply with all applicable
12 Federal, State, and local labor laws, including laws affect-
13 ing migrant and seasonal agricultural workers, with re-
14 spect to all United States workers and alien workers em-
15 ployed by the employer, except that a violation of this as-
16 surance shall not constitute a violation of the Migrant and
17 Seasonal Agricultural Worker Protection Act (29 U.S.C.
18 1801 et seq.).

19 “(d) COPY OF JOB OFFER.—The employer shall pro-
20 vide to the worker, not later than the day the work com-
21 mences, a copy of the employer’s application and job offer
22 described in section 218(a), or, if the employer will require
23 the worker to enter into a separate employment contract
24 covering the employment in question, such separate em-
25 ployment contract.

1 “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing
2 in this section, section 218, or section 218F shall preclude
3 the Secretary of Labor and the Secretary from continuing
4 to apply special procedures and requirements to the ad-
5 mission and employment of aliens in occupations involving
6 the range production of livestock.

7 **“SEC. 218F. PROCEDURE FOR ADMISSION AND EXTENSION**
8 **OF STAY OF H-2A WORKERS.**

9 “(a) PETITIONING FOR ADMISSION.—An employer,
10 or an association acting as an agent or joint employer for
11 its members, that seeks the admission into the United
12 States of an H-2A worker may file a petition with the
13 Secretary. The petition shall be accompanied by an accept-
14 ed and currently valid certification provided by the Sec-
15 retary of Labor under section 218(e)(2)(B) covering the
16 petitioner.

17 “(b) EXPEDITED ADJUDICATION BY THE SEC-
18 RETARY.—The Secretary shall establish a procedure for
19 expedited adjudication of petitions filed under subsection
20 (a) and within 7 working days shall, by fax, cable, or other
21 means assuring expedited delivery, transmit a copy of no-
22 tice of action on the petition to the petitioner and, in the
23 case of approved petitions, to the appropriate immigration
24 officer at the port of entry or United States consulate (as
25 the case may be) where the petitioner has indicated that

1 the alien beneficiary (or beneficiaries) will apply for a visa
2 or admission to the United States.

3 “(c) CRITERIA FOR ADMISSIBILITY.—

4 “(1) IN GENERAL.—An H-2A worker shall be
5 considered admissible to the United States if the
6 alien is otherwise admissible under this section, sec-
7 tion 218, and section 218E, and the alien is not in-
8 eligible under paragraph (2).

9 “(2) DISQUALIFICATION.—An alien shall be
10 considered inadmissible to the United States and in-
11 eligible for nonimmigrant status under section
12 101(a)(15)(H)(ii)(a) if the alien has, at any time
13 during the past 5 years—

14 “(A) violated a material provision of this
15 section, including the requirement to promptly
16 depart the United States when the alien’s au-
17 thorized period of admission under this section
18 has expired; or

19 “(B) otherwise violated a term or condition
20 of admission into the United States as a non-
21 immigrant, including overstaying the period of
22 authorized admission as such a nonimmigrant.

23 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
24 FUL PRESENCE.—

1 “(A) IN GENERAL.—An alien who has not
2 previously been admitted into the United States
3 pursuant to this section, and who is otherwise
4 eligible for admission in accordance with para-
5 graphs (1) and (2), shall not be deemed inad-
6 missible by virtue of section 212(a)(9)(B). If an
7 alien described in the preceding sentence is
8 present in the United States, the alien may
9 apply from abroad for H-2A status, but may
10 not be granted that status in the United States.

11 “(B) MAINTENANCE OF WAIVER.—An
12 alien provided an initial waiver of ineligibility
13 pursuant to subparagraph (A) shall remain eli-
14 gible for such waiver unless the alien violates
15 the terms of this section or again becomes ineli-
16 gible under section 212(a)(9)(B) by virtue of
17 unlawful presence in the United States after
18 the date of the initial waiver of ineligibility pur-
19 suant to subparagraph (A).

20 “(d) PERIOD OF ADMISSION.—

21 “(1) IN GENERAL.—The alien shall be admitted
22 for the period of employment in the application cer-
23 tified by the Secretary of Labor pursuant to section
24 218(e)(2)(B), not to exceed 10 months, supple-
25 mented by a period of not more than 1 week before

1 the beginning of the period of employment for the
2 purpose of travel to the work site and a period of
3 14 days following the period of employment for the
4 purpose of departure or extension based on a subse-
5 quent offer of employment, except that—

6 “(A) the alien is not authorized to be em-
7 ployed during such 14-day period except in the
8 employment for which the alien was previously
9 authorized; and

10 “(B) the total period of employment, in-
11 cluding such 14-day period, may not exceed 10
12 months.

13 “(2) CONSTRUCTION.—Nothing in this sub-
14 section shall limit the authority of the Secretary to
15 extend the stay of the alien under any other provi-
16 sion of this Act.

17 “(e) ABANDONMENT OF EMPLOYMENT.—

18 “(1) IN GENERAL.—An alien admitted or pro-
19 vided status under section 101(a)(15)(H)(ii)(a) who
20 abandons the employment which was the basis for
21 such admission or status shall be considered to have
22 failed to maintain nonimmigrant status as an H-2A
23 worker and shall depart the United States or be sub-
24 ject to removal under section 237(a)(1)(C)(i).

1 “(2) REPORT BY EMPLOYER.—The employer, or
2 association acting as agent for the employer, shall
3 notify the Secretary not later than 7 days after an
4 H–2A worker prematurely abandons employment.

5 “(3) REMOVAL BY THE SECRETARY.—The Sec-
6 retary shall promptly remove from the United States
7 any H–2A worker who violates any term or condi-
8 tion of the worker’s nonimmigrant status.

9 “(4) VOLUNTARY TERMINATION.—Notwith-
10 standing paragraph (1), an alien may voluntarily
11 terminate his or her employment if the alien prompt-
12 ly departs the United States upon termination of
13 such employment.

14 “(f) REPLACEMENT OF ALIEN.—

15 “(1) IN GENERAL.—Upon presentation of the
16 notice to the Secretary required by subsection (e)(2),
17 the Secretary of State shall promptly issue a visa to,
18 and the Secretary shall admit into the United
19 States, an eligible alien designated by the employer
20 to replace an H–2A worker—

21 “(A) who abandons or prematurely termi-
22 nates employment; or

23 “(B) whose employment is terminated
24 after a United States worker is employed pur-
25 suant to section 218(b)(2)(H)(iii), if the United

1 States worker voluntarily departs before the
2 end of the period of intended employment or if
3 the employment termination is for a lawful job-
4 related reason.

5 “(2) CONSTRUCTION.—Nothing in this sub-
6 section is intended to limit any preference required
7 to be accorded United States workers under any
8 other provision of this Act.

9 “(g) IDENTIFICATION DOCUMENT.—

10 “(1) IN GENERAL.—Each alien authorized to be
11 admitted under section 101(a)(15)(H)(ii)(a) shall be
12 provided an identification and employment eligibility
13 document to verify eligibility for employment in the
14 United States and verify such person’s proper iden-
15 tity.

16 “(2) REQUIREMENTS.—No identification and
17 employment eligibility document may be issued
18 which does not meet the following requirements:

19 “(A) The document shall be capable of re-
20 liably determining whether—

21 “(i) the individual with the identifica-
22 tion and employment eligibility document
23 whose eligibility is being verified is in fact
24 eligible for employment;

1 “(ii) the individual whose eligibility is
2 being verified is claiming the identity of
3 another person; and

4 “(iii) the individual whose eligibility is
5 being verified is authorized to be admitted
6 into, and employed in, the United States
7 as an H-2A worker.

8 “(B) The document shall be in a form that
9 is resistant to counterfeiting and to tampering.

10 “(C) The document shall—

11 “(i) be compatible with other data-
12 bases of the Secretary for the purpose of
13 excluding aliens from benefits for which
14 they are not eligible and determining
15 whether the alien is unlawfully present in
16 the United States; and

17 “(ii) be compatible with law enforce-
18 ment databases to determine if the alien
19 has been convicted of criminal offenses.

20 “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE
21 UNITED STATES.—

22 “(1) EXTENSION OF STAY.—If an employer
23 seeks approval to employ an H-2A alien who is law-
24 fully present in the United States, the petition filed
25 by the employer or an association pursuant to sub-

1 section (a), shall request an extension of the alien's
2 stay and a change in the alien's employment.

3 “(2) LIMITATION ON FILING A PETITION FOR
4 EXTENSION OF STAY.—A petition may not be filed
5 for an extension of an alien's stay—

6 “(A) for a period of more than 10 months;

7 or

8 “(B) to a date that is more than 3 years
9 after the date of the alien's last admission to
10 the United States under this section.

11 “(3) WORK AUTHORIZATION UPON FILING A
12 PETITION FOR EXTENSION OF STAY.—

13 “(A) IN GENERAL.—An alien who is law-
14 fully present in the United States may com-
15 mence the employment described in a petition
16 under paragraph (1) on the date on which the
17 petition is filed.

18 “(B) DEFINITION.—For purposes of sub-
19 paragraph (A), the term ‘file’ means sending
20 the petition by certified mail via the United
21 States Postal Service, return receipt requested,
22 or delivered by guaranteed commercial delivery
23 which will provide the employer with a docu-
24 mented acknowledgment of the date of receipt
25 of the petition.

1 “(C) HANDLING OF PETITION.—The em-
2 ployer shall provide a copy of the employer’s pe-
3 tition to the alien, who shall keep the petition
4 with the alien’s identification and employment
5 eligibility document as evidence that the peti-
6 tion has been filed and that the alien is author-
7 ized to work in the United States.

8 “(D) APPROVAL OF PETITION.—Upon ap-
9 proval of a petition for an extension of stay or
10 change in the alien’s authorized employment,
11 the Secretary shall provide a new or updated
12 employment eligibility document to the alien in-
13 dicating the new validity date, after which the
14 alien is not required to retain a copy of the pe-
15 tition.

16 “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-
17 TION OF ALIENS WITHOUT VALID IDENTIFICATION
18 AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-
19 pired identification and employment eligibility docu-
20 ment, together with a copy of a petition for exten-
21 sion of stay or change in the alien’s authorized em-
22 ployment that complies with the requirements of
23 paragraph (1), shall constitute a valid work author-
24 ization document for a period of not more than 60
25 days beginning on the date on which such petition

1 is filed, after which time only a currently valid iden-
2 tification and employment eligibility document shall
3 be acceptable.

4 “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN
5 STATUS.—

6 “(A) MAXIMUM PERIOD.—The maximum
7 continuous period of authorized status as an
8 H-2A worker (including any extensions) is 3
9 years.

10 “(B) REQUIREMENT TO REMAIN OUTSIDE
11 THE UNITED STATES.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), in the case of an alien outside the
14 United States whose period of authorized
15 status as an H-2A worker (including any
16 extensions) has expired, the alien may not
17 again apply for admission to the United
18 States as an H-2A worker unless the alien
19 has remained outside the United States for
20 a continuous period equal to at least $\frac{1}{5}$
21 the duration of the alien’s previous period
22 of authorized status as an H-2A worker
23 (including any extensions).

24 “(ii) EXCEPTION.—Clause (i) shall
25 not apply in the case of an alien if the

1 alien's period of authorized status as an
2 H-2A worker (including any extensions)
3 was for a period of not more than 10
4 months and such alien has been outside
5 the United States for at least 2 months
6 during the 12 months preceding the date
7 the alien again is applying for admission to
8 the United States as an H-2A worker.

9 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS
10 SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORK-
11 ERS.—Notwithstanding any provision of the Agricultural
12 Job Opportunities, Benefits, and Security Act of 2006, an
13 alien admitted under section 101(a)(15)(H)(ii)(a) for em-
14 ployment as a shepherd, goat herder, or dairy worker—

15 “(1) may be admitted for an initial period of 12
16 months;

17 “(2) subject to subsection (j)(5), may have such
18 initial period of admission extended for a period of
19 up to 3 years; and

20 “(3) shall not be subject to the requirements of
21 subsection (h)(5) (relating to periods of absence
22 from the United States).

23 “(j) ADJUSTMENT TO LAWFUL PERMANENT RESI-
24 DENT STATUS FOR ALIENS EMPLOYED AS SHEEP-
25 HERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

1 “(1) ELIGIBLE ALIEN.—For purposes of this
2 subsection, the term ‘eligible alien’ means an alien—

3 “(A) having nonimmigrant status under
4 section 101(a)(15)(H)(ii)(a) based on employ-
5 ment as a shepherd, goat herder, or dairy
6 worker;

7 “(B) who has maintained such non-
8 immigrant status in the United States for a cu-
9 mulative total of 36 months (excluding any pe-
10 riod of absence from the United States); and

11 “(C) who is seeking to receive an immi-
12 grant visa under section 203(b)(3)(A)(iii).

13 “(2) CLASSIFICATION PETITION.—In the case
14 of an eligible alien, the petition under section 204
15 for classification under section 203(b)(3)(A)(iii) may
16 be filed by—

17 “(A) the alien’s employer on behalf of an
18 eligible alien; or

19 “(B) the eligible alien.

20 “(3) NO LABOR CERTIFICATION REQUIRED.—
21 Notwithstanding section 203(b)(3)(C), no deter-
22 mination under section 212(a)(5)(A) is required with
23 respect to an immigrant visa described in paragraph
24 (1)(C) for an eligible alien.

1 “(4) EFFECT OF PETITION.—The filing of a pe-
2 tition described in paragraph (2) or an application
3 for adjustment of status based on the approval of
4 such a petition, shall not constitute evidence of an
5 alien’s ineligibility for nonimmigrant status under
6 section 101(a)(15)(H)(ii)(a).

7 “(5) EXTENSION OF STAY.—The Secretary of
8 Homeland Security shall extend the stay of an eligi-
9 ble alien having a pending or approved classification
10 petition described in paragraph (2) in 1-year incre-
11 ments until a final determination is made on the
12 alien’s eligibility for adjustment of status to that of
13 an alien lawfully admitted for permanent residence.

14 “(6) CONSTRUCTION.—Nothing in this sub-
15 section shall be construed to prevent an eligible alien
16 from seeking adjustment of status in accordance
17 with any other provision of law.

18 **“SEC. 218G. WORKER PROTECTIONS AND LABOR STAND-**
19 **ARDS ENFORCEMENT.**

20 “(a) ENFORCEMENT AUTHORITY.—

21 “(1) INVESTIGATION OF COMPLAINTS.—

22 “(A) AGGRIEVED PERSON OR THIRD-PARTY
23 COMPLAINTS.—The Secretary of Labor shall es-
24 tablish a process for the receipt, investigation,
25 and disposition of complaints respecting a peti-

1 tioner’s failure to meet a condition specified in
2 section 218(b), or an employer’s misrepresenta-
3 tion of material facts in an application under
4 section 218(a). Complaints may be filed by any
5 aggrieved person or organization (including bar-
6 gaining representatives). No investigation or
7 hearing shall be conducted on a complaint con-
8 cerning such a failure or misrepresentation un-
9 less the complaint was filed not later than 12
10 months after the date of the failure, or mis-
11 representation, respectively. The Secretary of
12 Labor shall conduct an investigation under this
13 subparagraph if there is reasonable cause to be-
14 lieve that such a failure or misrepresentation
15 has occurred.

16 “(B) DETERMINATION ON COMPLAINT.—
17 Under such process, the Secretary of Labor
18 shall provide, within 30 days after the date
19 such a complaint is filed, for a determination as
20 to whether or not a reasonable basis exists to
21 make a finding described in subparagraph (C),
22 (D), (E), or (H). If the Secretary of Labor de-
23 termines that such a reasonable basis exists,
24 the Secretary of Labor shall provide for notice
25 of such determination to the interested parties

1 and an opportunity for a hearing on the com-
2 plaint, in accordance with section 556 of title 5,
3 United States Code, within 60 days after the
4 date of the determination. If such a hearing is
5 requested, the Secretary of Labor shall make a
6 finding concerning the matter not later than 60
7 days after the date of the hearing. In the case
8 of similar complaints respecting the same appli-
9 cant, the Secretary of Labor may consolidate
10 the hearings under this subparagraph on such
11 complaints.

12 “(C) FAILURES TO MEET CONDITIONS.—If
13 the Secretary of Labor finds, after notice and
14 opportunity for a hearing, a failure to meet a
15 condition of paragraph (1)(A), (1)(B), (1)(D),
16 (1)(F), (2)(A), (2)(B), or (2)(G) of section
17 218(b), a substantial failure to meet a condition
18 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),
19 (2)(E), or (2)(H) of section 218(b), or a mate-
20 rial misrepresentation of fact in an application
21 under section 218(a)—

22 “(i) the Secretary of Labor shall no-
23 tify the Secretary of such finding and may,
24 in addition, impose such other administra-
25 tive remedies (including civil money pen-

1 alties in an amount not to exceed \$1,000
2 per violation) as the Secretary of Labor
3 determines to be appropriate; and

4 “(ii) the Secretary may disqualify the
5 employer from the employment of aliens
6 described in section 101(a)(15)(H)(ii)(a)
7 for a period of 1 year.

8 “(D) WILLFUL FAILURES AND WILLFUL
9 MISREPRESENTATIONS.—If the Secretary of
10 Labor finds, after notice and opportunity for
11 hearing, a willful failure to meet a condition of
12 section 218(b), a willful misrepresentation of a
13 material fact in an application under section
14 218(a), or a violation of subsection (d)(1)—

15 “(i) the Secretary of Labor shall no-
16 tify the Secretary of such finding and may,
17 in addition, impose such other administra-
18 tive remedies (including civil money pen-
19 alties in an amount not to exceed \$5,000
20 per violation) as the Secretary of Labor
21 determines to be appropriate;

22 “(ii) the Secretary of Labor may seek
23 appropriate legal or equitable relief to ef-
24 fectuate the purposes of subsection (d)(1);
25 and

1 “(iii) the Secretary may disqualify the
2 employer from the employment of H-2A
3 workers for a period of 2 years.

4 “(E) DISPLACEMENT OF UNITED STATES
5 WORKERS.—If the Secretary of Labor finds,
6 after notice and opportunity for hearing, a will-
7 ful failure to meet a condition of section 218(b)
8 or a willful misrepresentation of a material fact
9 in an application under section 218(a), in the
10 course of which failure or misrepresentation the
11 employer displaced a United States worker em-
12 ployed by the employer during the period of em-
13 ployment on the employer’s application under
14 section 218(a) or during the period of 30 days
15 preceding such period of employment—

16 “(i) the Secretary of Labor shall no-
17 tify the Secretary of such finding and may,
18 in addition, impose such other administra-
19 tive remedies (including civil money pen-
20 alties in an amount not to exceed \$15,000
21 per violation) as the Secretary of Labor
22 determines to be appropriate; and

23 “(ii) the Secretary may disqualify the
24 employer from the employment of H-2A
25 workers for a period of 3 years.

1 “(F) LIMITATIONS ON CIVIL MONEY PEN-
2 ALTIES.—The Secretary of Labor shall not im-
3 pose total civil money penalties with respect to
4 an application under section 218(a) in excess of
5 \$90,000.

6 “(G) FAILURES TO PAY WAGES OR RE-
7 QUIRED BENEFITS.—If the Secretary of Labor
8 finds, after notice and opportunity for a hear-
9 ing, that the employer has failed to pay the
10 wages, or provide the housing allowance, trans-
11 portation, subsistence reimbursement, or guar-
12 antee of employment, required under section
13 218E(b), the Secretary of Labor shall assess
14 payment of back wages, or other required bene-
15 fits, due any United States worker or H-2A
16 worker employed by the employer in the specific
17 employment in question. The back wages or
18 other required benefits under section 218E(b)
19 shall be equal to the difference between the
20 amount that should have been paid and the
21 amount that actually was paid to such worker.

22 “(2) STATUTORY CONSTRUCTION.—Nothing in
23 this section shall be construed as limiting the au-
24 thority of the Secretary of Labor to conduct any
25 compliance investigation under any other labor law,

1 including any law affecting migrant and seasonal ag-
2 ricultural workers, or, in the absence of a complaint
3 under this section, under section 218 or 218E.

4 “(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF
5 ACTION.—H-2A workers may enforce the following rights
6 through the private right of action provided in subsection
7 (c), and no other right of action shall exist under Federal
8 or State law to enforce such rights:

9 “(1) The providing of housing or a housing al-
10 lowance as required under section 218E(b)(1).

11 “(2) The reimbursement of transportation as
12 required under section 218E(b)(2).

13 “(3) The payment of wages required under sec-
14 tion 218E(b)(3) when due.

15 “(4) The benefits and material terms and con-
16 ditions of employment expressly provided in the job
17 offer described in section 218(a)(2), not including
18 the assurance to comply with other Federal, State,
19 and local labor laws described in section 218E(c),
20 compliance with which shall be governed by the pro-
21 visions of such laws.

22 “(5) The guarantee of employment required
23 under section 218E(b)(4).

24 “(6) The motor vehicle safety requirements
25 under section 218E(b)(5).

1 “(7) The prohibition of discrimination under
2 subsection (d)(2).

3 “(c) PRIVATE RIGHT OF ACTION.—

4 “(1) MEDIATION.—Upon the filing of a com-
5 plaint by an H-2A worker aggrieved by a violation
6 of rights enforceable under subsection (b), and with-
7 in 60 days of the filing of proof of service of the
8 complaint, a party to the action may file a request
9 with the Federal Mediation and Conciliation Service
10 to assist the parties in reaching a satisfactory reso-
11 lution of all issues involving all parties to the dis-
12 pute. Upon a filing of such request and giving of no-
13 tice to the parties, the parties shall attempt medi-
14 ation within the period specified in subparagraph
15 (B).

16 “(A) MEDIATION SERVICES.—The Federal
17 Mediation and Conciliation Service shall be
18 available to assist in resolving disputes arising
19 under subsection (b) between H-2A workers
20 and agricultural employers without charge to
21 the parties.

22 “(B) 90-DAY LIMIT.—The Federal Medi-
23 ation and Conciliation Service may conduct me-
24 diation or other non-binding dispute resolution
25 activities for a period not to exceed 90 days be-

1 ginning on the date on which the Federal Medi-
2 ation and Conciliation Service receives the re-
3 quest for assistance unless the parties agree to
4 an extension of this period of time.

5 “(C) AUTHORIZATION.—

6 “(i) IN GENERAL.—Subject to clause
7 (ii), there are authorized to be appro-
8 priated to the Federal Mediation and Con-
9 ciliation Service \$500,000 for each fiscal
10 year to carry out this section.

11 “(ii) MEDIATION.—Notwithstanding
12 any other provision of law, the Director of
13 the Federal Mediation and Conciliation
14 Service is authorized to conduct the medi-
15 ation or other dispute resolution activities
16 from any other appropriated funds avail-
17 able to the Director and to reimburse such
18 appropriated funds when the funds are ap-
19 propriated pursuant to this authorization,
20 such reimbursement to be credited to ap-
21 propriations currently available at the time
22 of receipt.

23 “(2) MAINTENANCE OF CIVIL ACTION IN DIS-
24 TRICT COURT BY AGGRIEVED PERSON.—An H-2A
25 worker aggrieved by a violation of rights enforceable

1 under subsection (b) by an agricultural employer or
2 other person may file suit in any district court of the
3 United States having jurisdiction of the parties,
4 without regard to the amount in controversy, with-
5 out regard to the citizenship of the parties, and
6 without regard to the exhaustion of any alternative
7 administrative remedies under this Act, not later
8 than 3 years after the date the violation occurs.

9 “(3) ELECTION.—An H-2A worker who has
10 filed an administrative complaint with the Secretary
11 of Labor may not maintain a civil action under
12 paragraph (2) unless a complaint based on the same
13 violation filed with the Secretary of Labor under
14 subsection (a)(1) is withdrawn before the filing of
15 such action, in which case the rights and remedies
16 available under this subsection shall be exclusive.

17 “(4) PREEMPTION OF STATE CONTRACT
18 RIGHTS.—Nothing in this Act shall be construed to
19 diminish the rights and remedies of an H-2A worker
20 under any other Federal or State law or regulation
21 or under any collective bargaining agreement, except
22 that no court or administrative action shall be avail-
23 able under any State contract law to enforce the
24 rights created by this Act.

1 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-
2 ments by employees purporting to waive or modify
3 their rights under this Act shall be void as contrary
4 to public policy, except that a waiver or modification
5 of the rights or obligations in favor of the Secretary
6 of Labor shall be valid for purposes of the enforce-
7 ment of this Act. The preceding sentence may not
8 be construed to prohibit agreements to settle private
9 disputes or litigation.

10 “(6) AWARD OF DAMAGES OR OTHER EQUI-
11 TABLE RELIEF.—

12 “(A) If the court finds that the respondent
13 has intentionally violated any of the rights en-
14 forceable under subsection (b), it shall award
15 actual damages, if any, or equitable relief.

16 “(B) Any civil action brought under this
17 section shall be subject to appeal as provided in
18 chapter 83 of title 28, United States Code.

19 “(7) WORKERS’ COMPENSATION BENEFITS; EX-
20 CLUSIVE REMEDY.—

21 “(A) Notwithstanding any other provision
22 of this section, where a State’s workers’ com-
23 pensation law is applicable and coverage is pro-
24 vided for an H-2A worker, the workers’ com-
25 pensation benefits shall be the exclusive remedy

1 for the loss of such worker under this section
2 in the case of bodily injury or death in accord-
3 ance with such State’s workers’ compensation
4 law.

5 “(B) The exclusive remedy prescribed in
6 subparagraph (A) precludes the recovery under
7 paragraph (6) of actual damages for loss from
8 an injury or death but does not preclude other
9 equitable relief, except that such relief shall not
10 include back or front pay or in any manner, di-
11 rectly or indirectly, expand or otherwise alter or
12 affect—

13 “(i) a recovery under a State workers’
14 compensation law; or

15 “(ii) rights conferred under a State
16 workers’ compensation law.

17 “(8) TOLLING OF STATUTE OF LIMITATIONS.—

18 If it is determined under a State workers’ compensa-
19 tion law that the workers’ compensation law is not
20 applicable to a claim for bodily injury or death of an
21 H-2A worker, the statute of limitations for bringing
22 an action for actual damages for such injury or
23 death under subsection (c) shall be tolled for the pe-
24 riod during which the claim for such injury or death
25 under such State workers’ compensation law was

1 pending. The statute of limitations for an action for
2 actual damages or other equitable relief arising out
3 of the same transaction or occurrence as the injury
4 or death of the H-2A worker shall be tolled for the
5 period during which the claim for such injury or
6 death was pending under the State workers' com-
7 pensation law.

8 “(9) PRECLUSIVE EFFECT.—Any settlement by
9 an H-2A worker and an H-2A employer or any per-
10 son reached through the mediation process required
11 under subsection (c)(1) shall preclude any right of
12 action arising out of the same facts between the par-
13 ties in any Federal or State court or administrative
14 proceeding, unless specifically provided otherwise in
15 the settlement agreement.

16 “(10) SETTLEMENTS.—Any settlement by the
17 Secretary of Labor with an H-2A employer on be-
18 half of an H-2A worker of a complaint filed with the
19 Secretary of Labor under this section or any finding
20 by the Secretary of Labor under subsection
21 (a)(1)(B) shall preclude any right of action arising
22 out of the same facts between the parties under any
23 Federal or State court or administrative proceeding,
24 unless specifically provided otherwise in the settle-
25 ment agreement.

1 “(d) DISCRIMINATION PROHIBITED.—

2 “(1) IN GENERAL.—It is a violation of this sub-
3 section for any person who has filed an application
4 under section 218(a), to intimidate, threaten, re-
5 strain, coerce, blacklist, discharge, or in any other
6 manner discriminate against an employee (which
7 term, for purposes of this subsection, includes a
8 former employee and an applicant for employment)
9 because the employee has disclosed information to
10 the employer, or to any other person, that the em-
11 ployee reasonably believes evidences a violation of
12 section 218 or 218E or any rule or regulation per-
13 taining to section 218 or 218E, or because the em-
14 ployee cooperates or seeks to cooperate in an inves-
15 tigation or other proceeding concerning the employ-
16 er’s compliance with the requirements of section 218
17 or 218E or any rule or regulation pertaining to ei-
18 ther of such sections.

19 “(2) DISCRIMINATION AGAINST H-2A WORK-
20 ERS.—It is a violation of this subsection for any per-
21 son who has filed an application under section
22 218(a), to intimidate, threaten, restrain, coerce,
23 blacklist, discharge, or in any manner discriminate
24 against an H-2A employee because such worker has,
25 with just cause, filed a complaint with the Secretary

1 of Labor regarding a denial of the rights enumer-
2 ated and enforceable under subsection (b) or insti-
3 tuted, or caused to be instituted, a private right of
4 action under subsection (c) regarding the denial of
5 the rights enumerated under subsection (b), or has
6 testified or is about to testify in any court pro-
7 ceeding brought under subsection (c).

8 “(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE
9 EMPLOYMENT.—The Secretary of Labor and the Sec-
10 retary shall establish a process under which an H-2A
11 worker who files a complaint regarding a violation of sub-
12 section (d) and is otherwise eligible to remain and work
13 in the United States may be allowed to seek other appro-
14 priate employment in the United States for a period not
15 to exceed the maximum period of stay authorized for such
16 nonimmigrant classification.

17 “(f) ROLE OF ASSOCIATIONS.—

18 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
19 TION.—An employer on whose behalf an application
20 is filed by an association acting as its agent is fully
21 responsible for such application, and for complying
22 with the terms and conditions of sections 218 and
23 218E, as though the employer had filed the applica-
24 tion itself. If such an employer is determined, under
25 this section, to have committed a violation, the pen-

1 alty for such violation shall apply only to that mem-
2 ber of the association unless the Secretary of Labor
3 determines that the association or other member
4 participated in, had knowledge, or reason to know,
5 of the violation, in which case the penalty shall be
6 invoked against the association or other association
7 member as well.

8 “(2) VIOLATIONS BY AN ASSOCIATION ACTING
9 AS AN EMPLOYER.—If an association filing an appli-
10 cation as a sole or joint employer is determined to
11 have committed a violation under this section, the
12 penalty for such violation shall apply only to the as-
13 sociation unless the Secretary of Labor determines
14 that an association member or members participated
15 in or had knowledge, or reason to know of the viola-
16 tion, in which case the penalty shall be invoked
17 against the association member or members as well.

18 **“SEC. 218H. DEFINITIONS.**

19 “For purposes of this section, section 218, and sec-
20 tions 218E through 218G:

21 “(1) AGRICULTURAL EMPLOYMENT.—The term
22 ‘agricultural employment’ means any service or ac-
23 tivity that is considered to be agricultural under sec-
24 tion 3(f) of the Fair Labor Standards Act of 1938
25 (29 U.S.C. 203(f)) or agricultural labor under sec-

1 tion 3121(g) of the Internal Revenue Code of 1986
2 (26 U.S.C. 3121(g)). For purposes of this para-
3 graph, agricultural employment includes employment
4 under section 101(a)(15)(H)(ii)(a).

5 “(2) BONA FIDE UNION.—The term ‘bona fide
6 union’ means any organization in which employees
7 participate and which exists for the purpose of deal-
8 ing with employers concerning grievances, labor dis-
9 putes, wages, rates of pay, hours of employment, or
10 other terms and conditions of work for agricultural
11 employees. Such term does not include an organiza-
12 tion formed, created, administered, supported, domi-
13 nated, financed, or controlled by an employer or em-
14 ployer association or its agents or representatives.

15 “(3) DISPLACE.—The term ‘displace’, in the
16 case of an application with respect to 1 or more H-
17 2A workers by an employer, means laying off a
18 United States worker from a job for which the H-
19 2A worker or workers is or are sought.

20 “(4) ELIGIBLE.—The term ‘eligible’, when used
21 with respect to an individual, means an individual
22 who is not an unauthorized alien (as defined in sec-
23 tion 274A).

24 “(5) EMPLOYER.—The term ‘employer’ means
25 any person or entity, including any farm labor con-

1 tractor and any agricultural association, that em-
2 ploys workers in agricultural employment.

3 “(6) H-2A EMPLOYER.—The term ‘H-2A em-
4 ployer’ means an employer who seeks to hire 1 or
5 more nonimmigrant aliens described in section
6 101(a)(15)(H)(ii)(a).

7 “(7) H-2A WORKER.—The term ‘H-2A worker’
8 means a nonimmigrant described in section
9 101(a)(15)(H)(ii)(a).

10 “(8) JOB OPPORTUNITY.—The term ‘job oppor-
11 tunity’ means a job opening for temporary full-time
12 employment at a place in the United States to which
13 United States workers can be referred.

14 “(9) LAYS OFF.—

15 “(A) IN GENERAL.—The term ‘lays off’,
16 with respect to a worker—

17 “(i) means to cause the worker’s loss
18 of employment, other than through a dis-
19 charge for inadequate performance, viola-
20 tion of workplace rules, cause, voluntary
21 departure, voluntary retirement, contract
22 impossibility (as described in section
23 218E(b)(4)(D)), or temporary layoffs due
24 to weather, markets, or other temporary
25 conditions; but

1 “(ii) does not include any situation in
2 which the worker is offered, as an alter-
3 native to such loss of employment, a simi-
4 lar employment opportunity with the same
5 employer (or, in the case of a placement of
6 a worker with another employer under sec-
7 tion 218(b)(2)(E), with either employer de-
8 scribed in such section) at equivalent or
9 higher compensation and benefits than the
10 position from which the employee was dis-
11 charged, regardless of whether or not the
12 employee accepts the offer.

13 “(B) STATUTORY CONSTRUCTION.—Noth-
14 ing in this paragraph is intended to limit an
15 employee’s rights under a collective bargaining
16 agreement or other employment contract.

17 “(10) REGULATORY DROUGHT.—The term ‘reg-
18 ulatory drought’ means a decision subsequent to the
19 filing of the application under section 218 by an en-
20 tity not under the control of the employer making
21 such filing which restricts the employer’s access to
22 water for irrigation purposes and reduces or limits
23 the employer’s ability to produce an agricultural
24 commodity, thereby reducing the need for labor.

1 “(11) SEASONAL.—Labor is performed on a
2 ‘seasonal’ basis if—

3 “(A) ordinarily, it pertains to or is of the
4 kind exclusively performed at certain seasons or
5 periods of the year; and

6 “(B) from its nature, it may not be contin-
7 uous or carried on throughout the year.

8 “(12) SECRETARY.—The term ‘Secretary’
9 means the Secretary of Homeland Security.

10 “(13) TEMPORARY.—A worker is employed on a
11 ‘temporary’ basis where the employment is intended
12 not to exceed 10 months.

13 “(14) UNITED STATES WORKER.—The term
14 ‘United States worker’ means any worker, whether
15 a United States citizen or national, a lawfully admit-
16 ted permanent resident alien, or any other alien,
17 who is authorized to work in the job opportunity
18 within the United States, except an alien admitted
19 or otherwise provided status under section
20 101(a)(15)(H)(ii)(a).”.

21 (b) TABLE OF CONTENTS.—The table of contents (8
22 U.S.C. 1101 et seq.) is amended—

23 (1) by striking the item relating to section 218
24 and inserting the following:

“Sec. 218. H-2A employer applications.”; and

1 (2) by inserting after the item relating to sec-
 2 tion 218D, as added by section 601 of this Act, the
 3 following:

“Sec. 218E. H-2A employment requirements.

“Sec. 218F. Procedure for admission and extension of stay of H-2A workers.

“Sec. 218G. Worker protections and labor standards enforcement.

“Sec. 218H. Definitions.”.

4 **CHAPTER 3—MISCELLANEOUS**
 5 **PROVISIONS**

6 **SEC. 616. DETERMINATION AND USE OF USER FEES.**

7 (a) SCHEDULE OF FEES.—The Secretary shall estab-
 8 lish and periodically adjust a schedule of fees for the em-
 9 ployment of aliens under this subtitle and the amendments
 10 made by this subtitle, and a collection process for such
 11 fees from employers participating in the program provided
 12 under this subtitle. Such fees shall be the only fees charge-
 13 able to employers for services provided under this subtitle.

14 (b) DETERMINATION OF SCHEDULE.—

15 (1) IN GENERAL.—The schedule under sub-
 16 section (a) shall reflect a fee rate based on the num-
 17 ber of job opportunities indicated in the employer’s
 18 application under section 218 of the Immigration
 19 and Nationality Act, as added by section 615 of this
 20 Act, and sufficient to provide for the direct costs of
 21 providing services related to an employer’s author-
 22 ization to employ eligible aliens pursuant to this sub-
 23 title, to include the certification of eligible employ-

1 ers, the issuance of documentation, and the admis-
2 sion of eligible aliens.

3 (2) PROCEDURE.—

4 (A) IN GENERAL.—In establishing and ad-
5 justing such a schedule, the Secretary shall
6 comply with Federal cost accounting and fee
7 setting standards.

8 (B) PUBLICATION AND COMMENT.—The
9 Secretary shall publish in the Federal Register
10 an initial fee schedule and associated collection
11 process and the cost data or estimates upon
12 which such fee schedule is based, and any sub-
13 sequent amendments thereto, pursuant to which
14 public comment shall be sought and a final rule
15 issued.

16 (c) USE OF PROCEEDS.—Notwithstanding any other
17 provision of law, all proceeds resulting from the payment
18 of the alien employment user fees shall be available with-
19 out further appropriation and shall remain available with-
20 out fiscal year limitation to reimburse the Secretary, the
21 Secretary of State, and the Secretary of Labor for the
22 costs of carrying out sections 218 and 218F of the Immi-
23 gration and Nationality Act, as added by section 615 of
24 this Act, and the provisions of this subtitle.

1 **SEC. 617. REGULATIONS.**

2 (a) REGULATIONS OF THE SECRETARY.—The Sec-
3 retary shall consult with the Secretary of Labor and the
4 Secretary of Agriculture on all regulations to implement
5 the duties of the Secretary under this subtitle and the
6 amendments made by this subtitle.

7 (b) REGULATIONS OF THE SECRETARY OF STATE.—
8 The Secretary of State shall consult with the Secretary,
9 the Secretary of Labor, and the Secretary of Agriculture
10 on all regulations to implement the duties of the Secretary
11 of State under this subtitle and the amendments made by
12 this subtitle.

13 (c) REGULATIONS OF THE SECRETARY OF LABOR.—
14 The Secretary of Labor shall consult with the Secretary
15 of Agriculture and the Secretary on all regulations to im-
16 plement the duties of the Secretary of Labor under this
17 subtitle and the amendments made by this subtitle.

18 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—
19 All regulations to implement the duties of the Secretary,
20 the Secretary of State, and the Secretary of Labor created
21 under sections 218, 218E, 218F, and 218G of the Immi-
22 gration and Nationality Act, as added by section 615 of
23 this Act, shall take effect on the effective date of section
24 615 and shall be issued not later than 1 year after the
25 date of enactment of this Act.

1 **SEC. 618. REPORT TO CONGRESS.**

2 Not later than September 30 of each year, the Sec-
3 retary shall submit a report to Congress that identifies,
4 for the previous year—

5 (1) the number of job opportunities approved
6 for employment of aliens admitted under section
7 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the
9 number of workers actually admitted, by State and
10 by occupation;

11 (2) the number of such aliens reported to have
12 abandoned employment pursuant to subsection
13 218F(e)(2) of such Act;

14 (3) the number of such aliens who departed the
15 United States within the period specified in sub-
16 section 218F(d) of such Act;

17 (4) the number of aliens who applied for adjust-
18 ment of status pursuant to section 613(a);

19 (5) the number of such aliens whose status was
20 adjusted under section 613(a);

21 (6) the number of aliens who applied for perma-
22 nent residence pursuant to section 613(c); and

23 (7) the number of such aliens who were ap-
24 proved for permanent residence pursuant section
25 613(c).

1 **SEC. 619. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as otherwise provided, sec-
3 tions 615 and 616 shall take effect 1 year after the date
4 of the enactment of this Act.

5 (b) REPORT.—Not later than 180 days after the date
6 of the enactment of this Act, the Secretary shall prepare
7 and submit to the appropriate committees of Congress a
8 report that describes the measures being taken and the
9 progress made in implementing this subtitle.

10 **Subtitle C—DREAM Act**

11 **SEC. 621. SHORT TITLE.**

12 This subtitle may be cited as the “Development, Re-
13 lief, and Education for Alien Minors Act of 2006” or the
14 “DREAM Act of 2006”.

15 **SEC. 622. DEFINITIONS.**

16 In this subtitle:

17 (1) INSTITUTION OF HIGHER EDUCATION.—The
18 term “institution of higher education” has the
19 meaning given that term in section 101 of the High-
20 er Education Act of 1965 (20 U.S.C. 1001).

21 (2) UNIFORMED SERVICES.—The term “uni-
22 formed services” has the meaning given that term in
23 section 101(a) of title 10, United States Code.

1 **SEC. 623. RESTORATION OF STATE OPTION TO DETERMINE**
2 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**
3 **CATION BENEFITS.**

4 (a) IN GENERAL.—Section 505 of the Illegal Immi-
5 gration Reform and Immigrant Responsibility Act of 1996
6 (8 U.S.C. 1623) is repealed.

7 (b) EFFECTIVE DATE.—The repeal under subsection
8 (a) shall take effect as if included in the enactment of the
9 Illegal Immigration Reform and Immigrant Responsibility
10 Act of 1996.

11 **SEC. 624. CANCELLATION OF REMOVAL AND ADJUSTMENT**
12 **OF STATUS OF CERTAIN LONG-TERM RESI-**
13 **DENTS WHO ENTERED THE UNITED STATES**
14 **AS CHILDREN.**

15 (a) SPECIAL RULE FOR CERTAIN LONG-TERM RESI-
16 DENTS WHO ENTERED THE UNITED STATES AS CHIL-
17 DREN.—

18 (1) IN GENERAL.—Notwithstanding any other
19 provision of law and except as otherwise provided in
20 this subtitle, the Secretary may cancel removal of,
21 and adjust to the status of an alien lawfully admit-
22 ted for permanent residence, subject to the condi-
23 tional basis described in section 625, an alien who
24 is inadmissible or deportable from the United States,
25 if the alien demonstrates that—

1 (A) the alien has been physically present in
2 the United States for a continuous period of
3 not less than 5 years immediately preceding the
4 date of enactment of this Act, and had not yet
5 reached the age of 16 years at the time of ini-
6 tial entry;

7 (B) the alien has been a person of good
8 moral character since the time of application;

9 (C) the alien—

10 (i) is not inadmissible under para-
11 graph (2), (3), (6)(B), (6)(C), (6)(E),
12 (6)(F), or (6)(G) of section 212(a) of the
13 Immigration and Nationality Act (8 U.S.C.
14 1182(a)), or, if inadmissible solely under
15 subparagraph (C) or (F) of paragraph (6)
16 of such subsection, the alien was under the
17 age of 16 years at the time the violation
18 was committed; and

19 (ii) is not deportable under paragraph
20 (1)(E), (1)(G), (2), (3)(B), (3)(C), (3)(D),
21 (4), or (6) of section 237(a) of the Immi-
22 gration and Nationality Act (8 U.S.C.
23 1227(a)), or, if deportable solely under
24 subparagraphs (C) or (D) of paragraph (3)
25 of such subsection, the alien was under the

1 age of 16 years at the time the violation
2 was committed;

3 (D) the alien, at the time of application,
4 has been admitted to an institution of higher
5 education in the United States, or has earned
6 a high school diploma or obtained a general
7 education development certificate in the United
8 States; and

9 (E) the alien has never been under a final
10 administrative or judicial order of exclusion, de-
11 portation, or removal, unless the alien has re-
12 mained in the United States under color of law
13 or received the order before attaining the age of
14 16 years.

15 (2) WAIVER.—The Secretary may waive the
16 grounds of ineligibility under section 212(a)(6) of
17 the Immigration and Nationality Act and the
18 grounds of deportability under paragraphs (1), (3),
19 and (6) of section 237(a) of that Act for humani-
20 tarian purposes or family unity or when it is other-
21 wise in the public interest.

22 (3) PROCEDURES.—The Secretary shall provide
23 a procedure by regulation allowing eligible individ-
24 uals to apply affirmatively for the relief available

1 under this subsection without being placed in re-
2 moval proceedings.

3 (b) TERMINATION OF CONTINUOUS PERIOD.—For
4 purposes of this section, any period of continuous resi-
5 dence or continuous physical presence in the United States
6 of an alien who applies for cancellation of removal under
7 this section shall not terminate when the alien is served
8 a notice to appear under section 239(a) of the Immigra-
9 tion and Nationality Act (8 U.S.C. 1229(a)).

10 (c) TREATMENT OF CERTAIN BREAKS IN PRES-
11 ENCE.—

12 (1) IN GENERAL.—An alien shall be considered
13 to have failed to maintain continuous physical pres-
14 ence in the United States under subsection (a) if the
15 alien has departed from the United States for any
16 period in excess of 90 days or for any periods in the
17 aggregate exceeding 180 days.

18 (2) EXTENSIONS FOR EXCEPTIONAL CIR-
19 CUMSTANCES.—The Secretary may extend the time
20 periods described in paragraph (1) if the alien dem-
21 onstrates that the failure to timely return to the
22 United States was due to exceptional circumstances.
23 The exceptional circumstances determined sufficient
24 to justify an extension should be no less compelling

1 than serious illness of the alien, or death or serious
2 illness of a parent, grandparent, sibling, or child.

3 (d) EXEMPTION FROM NUMERICAL LIMITATIONS.—

4 Nothing in this section may be construed to apply a nu-
5 merical limitation on the number of aliens who may be
6 eligible for cancellation of removal or adjustment of status
7 under this section.

8 (e) REGULATIONS.—

9 (1) PROPOSED REGULATIONS.—Not later than
10 180 days after the date of enactment of this Act, the
11 Secretary shall publish proposed regulations imple-
12 menting this section. Such regulations shall be effec-
13 tive immediately on an interim basis, but are subject
14 to change and revision after public notice and oppor-
15 tunity for a period for public comment.

16 (2) INTERIM, FINAL REGULATIONS.—Within a
17 reasonable time after publication of the interim reg-
18 ulations in accordance with paragraph (1), the Sec-
19 retary shall publish final regulations implementing
20 this section.

21 (f) REMOVAL OF ALIEN.—The Secretary may not re-
22 move any alien who has a pending application for condi-
23 tional status under this subtitle.

24 **SEC. 625. CONDITIONAL PERMANENT RESIDENT STATUS.**

25 (a) IN GENERAL.—

1 (1) **CONDITIONAL BASIS FOR STATUS.**—Not-
2 withstanding any other provision of law, and except
3 as provided in section 626, an alien whose status has
4 been adjusted under section 624 to that of an alien
5 lawfully admitted for permanent residence shall be
6 considered to have obtained such status on a condi-
7 tional basis subject to the provisions of this section.
8 Such conditional permanent resident status shall be
9 valid for a period of 6 years, subject to termination
10 under subsection (b).

11 (2) **NOTICE OF REQUIREMENTS.**—

12 (A) **AT TIME OF OBTAINING PERMANENT**
13 **RESIDENCE.**—At the time an alien obtains per-
14 manent resident status on a conditional basis
15 under paragraph (1), the Secretary shall pro-
16 vide for notice to the alien regarding the provi-
17 sions of this section and the requirements of
18 subsection (c) to have the conditional basis of
19 such status removed.

20 (B) **EFFECT OF FAILURE TO PROVIDE NO-**
21 **TICE.**—The failure of the Secretary to provide
22 a notice under this paragraph—

23 (i) shall not affect the enforcement of
24 the provisions of this subtitle with respect
25 to the alien; and

1 (ii) shall not give rise to any private
2 right of action by the alien.

3 (b) TERMINATION OF STATUS.—

4 (1) IN GENERAL.—The Secretary shall termi-
5 nate the conditional permanent resident status of
6 any alien who obtained such status under this sub-
7 title, if the Secretary determines that the alien—

8 (A) ceases to meet the requirements of
9 subparagraph (B) or (C) of section 624(a)(1);

10 (B) has become a public charge; or

11 (C) has received a dishonorable or other
12 than honorable discharge from the uniformed
13 services.

14 (2) RETURN TO PREVIOUS IMMIGRATION STA-
15 TUS.—Any alien whose conditional permanent resi-
16 dent status is terminated under paragraph (1) shall
17 return to the immigration status the alien had im-
18 mediately prior to receiving conditional permanent
19 resident status under this subtitle.

20 (c) REQUIREMENTS OF TIMELY PETITION FOR RE-
21 MOVAL OF CONDITION.—

22 (1) IN GENERAL.—In order for the conditional
23 basis of permanent resident status obtained by an
24 alien under subsection (a) to be removed, the alien
25 must file with the Secretary, in accordance with

1 paragraph (3), a petition which requests the removal
2 of such conditional basis and which provides, under
3 penalty of perjury, the facts and information so that
4 the Secretary may make the determination described
5 in paragraph (2)(A).

6 (2) ADJUDICATION OF PETITION TO REMOVE
7 CONDITION.—

8 (A) IN GENERAL.—If a petition is filed in
9 accordance with paragraph (1) for an alien, the
10 Secretary shall make a determination as to
11 whether the alien meets the requirements set
12 out in subparagraphs (A) through (E) of sub-
13 section (d)(1).

14 (B) REMOVAL OF CONDITIONAL BASIS IF
15 FAVORABLE DETERMINATION.—If the Secretary
16 determines that the alien meets such require-
17 ments, the Secretary shall notify the alien of
18 such determination and immediately remove the
19 conditional basis of the status of the alien.

20 (C) TERMINATION IF ADVERSE DETER-
21 MINATION.—If the Secretary determines that
22 the alien does not meet such requirements, the
23 Secretary shall notify the alien of such deter-
24 mination and terminate the conditional perma-

1 nent resident status of the alien as of the date
2 of the determination.

3 (3) TIME TO FILE PETITION.—An alien may pe-
4 tition to remove the conditional basis to lawful resi-
5 dent status during the period beginning 180 days
6 before and ending 2 years after either the date that
7 is 6 years after the date of the granting of condi-
8 tional permanent resident status or any other expi-
9 ration date of the conditional permanent resident
10 status as extended by the Secretary in accordance
11 with this subtitle. The alien shall be deemed in con-
12 ditional permanent resident status in the United
13 States during the period in which the petition is
14 pending.

15 (d) DETAILS OF PETITION.—

16 (1) CONTENTS OF PETITION.—Each petition
17 for an alien under subsection (c)(1) shall contain in-
18 formation to permit the Secretary to determine
19 whether each of the following requirements is met:

20 (A) The alien has demonstrated good
21 moral character during the entire period the
22 alien has been a conditional permanent resi-
23 dent.

24 (B) The alien is in compliance with section
25 624(a)(1)(C).

1 (C) The alien has not abandoned the
2 alien's residence in the United States. The Sec-
3 retary shall presume that the alien has aban-
4 doned such residence if the alien is absent from
5 the United States for more than 365 days, in
6 the aggregate, during the period of conditional
7 residence, unless the alien demonstrates that
8 alien has not abandoned the alien's residence.
9 An alien who is absent from the United States
10 due to active service in the uniformed services
11 has not abandoned the alien's residence in the
12 United States during the period of such service.

13 (D) The alien has completed at least 1 of
14 the following:

15 (i) The alien has acquired a degree
16 from an institution of higher education in
17 the United States or has completed at
18 least 2 years, in good standing, in a pro-
19 gram for a bachelor's degree or higher de-
20 gree in the United States.

21 (ii) The alien has served in the uni-
22 formed services for at least 2 years and, if
23 discharged, has received an honorable dis-
24 charge.

1 (E) The alien has provided a list of all of
2 the secondary educational institutions that the
3 alien attended in the United States.

4 (2) HARDSHIP EXCEPTION.—

5 (A) IN GENERAL.—The Secretary may, in
6 the Secretary’s discretion, remove the condi-
7 tional status of an alien if the alien—

8 (i) satisfies the requirements of sub-
9 paragraphs (A), (B), and (C) of paragraph
10 (1);

11 (ii) demonstrates compelling cir-
12 cumstances for the inability to complete
13 the requirements described in paragraph
14 (1)(D); and

15 (iii) demonstrates that the alien’s re-
16 moval from the United States would result
17 in exceptional and extremely unusual hard-
18 ship to the alien or the alien’s spouse, par-
19 ent, or child who is a citizen or a lawful
20 permanent resident of the United States.

21 (B) EXTENSION.—Upon a showing of good
22 cause, the Secretary may extend the period of
23 the conditional resident status for the purpose
24 of completing the requirements described in
25 paragraph (1)(D).

1 (e) TREATMENT OF PERIOD FOR PURPOSES OF NAT-
2 URALIZATION.—For purposes of title III of the Immigra-
3 tion and Nationality Act (8 U.S.C. 1401 et seq.), in the
4 case of an alien who is in the United States as a lawful
5 permanent resident on a conditional basis under this sec-
6 tion, the alien shall be considered to have been admitted
7 as an alien lawfully admitted for permanent residence and
8 to be in the United States as an alien lawfully admitted
9 to the United States for permanent residence. However,
10 the conditional basis must be removed before the alien
11 may apply for naturalization.

12 **SEC. 626. RETROACTIVE BENEFITS.**

13 If, on the date of enactment of this Act, an alien has
14 satisfied all the requirements of subparagraphs (A)
15 through (E) of section 624(a)(1) and section
16 625(d)(1)(D), the Secretary may adjust the status of the
17 alien to that of a conditional resident in accordance with
18 section 624. The alien may petition for removal of such
19 condition at the end of the conditional residence period
20 in accordance with section 625(c) if the alien has met the
21 requirements of subparagraphs (A), (B), and (C) of sec-
22 tion 625(d)(1) during the entire period of conditional resi-
23 dence.

1 **SEC. 627. EXCLUSIVE JURISDICTION.**

2 (a) IN GENERAL.—The Secretary shall have exclusive
3 jurisdiction to determine eligibility for relief under this
4 subtitle, except where the alien has been placed into depor-
5 tation, exclusion, or removal proceedings either prior to
6 or after filing an application for relief under this subtitle,
7 in which case the Attorney General shall have exclusive
8 jurisdiction and shall assume all the powers and duties
9 of the Secretary until proceedings are terminated, or if
10 a final order of deportation, exclusion, or removal is en-
11 tered the Secretary shall resume all powers and duties del-
12 egated to the Secretary under this subtitle.

13 (b) STAY OF REMOVAL OF CERTAIN ALIENS EN-
14 ROLLED IN PRIMARY OR SECONDARY SCHOOL.—The At-
15 torney General shall stay the removal proceedings of any
16 alien who—

17 (1) meets all the requirements of subpara-
18 graphs (A), (B), (C), and (E) of section 624(a)(1);

19 (2) is at least 12 years of age; and

20 (3) is enrolled full time in a primary or sec-
21 ondary school.

22 (c) EMPLOYMENT.—An alien whose removal is stayed
23 pursuant to subsection (b) may be engaged in employment
24 in the United States, consistent with the Fair Labor
25 Standards Act (29 U.S.C. 201 et seq.), and State and
26 local laws governing minimum age for employment.

1 (d) LIFT OF STAY.—The Attorney General shall lift
2 the stay granted pursuant to subsection (b) if the alien—

3 (1) is no longer enrolled in a primary or sec-
4 ondary school; or

5 (2) ceases to meet the requirements of sub-
6 section (b)(1).

7 **SEC. 628. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**
8 **TION.**

9 Whoever files an application for relief under this sub-
10 title and willfully and knowingly falsifies, misrepresents,
11 or conceals a material fact or makes any false or fraudu-
12 lent statement or representation, or makes or uses any
13 false writing or document knowing the same to contain
14 any false or fraudulent statement or entry, shall be fined
15 in accordance with title 18, United States Code, or impris-
16 oned not more than 5 years, or both.

17 **SEC. 629. CONFIDENTIALITY OF INFORMATION.**

18 (a) PROHIBITION.—No officer or employee of the
19 United States may—

20 (1) use the information furnished by the appli-
21 cant pursuant to an application filed under this sub-
22 title to initiate removal proceedings against any per-
23 sons identified in the application;

24 (2) make any publication whereby the informa-
25 tion furnished by any particular individual pursuant

1 to an application under this subtitle can be identi-
2 fied; or

3 (3) permit anyone other than an officer or em-
4 ployee of the United States Government or, in the
5 case of applications filed under this subtitle with a
6 designated entity, that designated entity, to examine
7 applications filed under this subtitle.

8 (b) REQUIRED DISCLOSURE.—The Attorney General
9 or the Secretary shall provide the information furnished
10 under this section, and any other information derived from
11 such furnished information, to—

12 (1) a duly recognized law enforcement entity in
13 connection with an investigation or prosecution of an
14 offense described in paragraph (2) or (3) of section
15 212(a) of the Immigration and Nationality Act (8
16 U.S.C. 1182(a)), when such information is requested
17 in writing by such entity; or

18 (2) an official coroner for purposes of affirma-
19 tively identifying a deceased individual (whether or
20 not such individual is deceased as a result of a
21 crime).

22 (c) PENALTY.—Whoever knowingly uses, publishes,
23 or permits information to be examined in violation of this
24 section shall be fined not more than \$10,000.

1 **SEC. 630. EXPEDITED PROCESSING OF APPLICATIONS; PRO-**
2 **HIBITION ON FEES.**

3 Regulations promulgated under this subtitle shall
4 provide that applications under this subtitle will be consid-
5 ered on an expedited basis and without a requirement for
6 the payment by the applicant of any additional fee for
7 such expedited processing.

8 **SEC. 631. HIGHER EDUCATION ASSISTANCE.**

9 Notwithstanding any provision of the Higher Edu-
10 cation Act of 1965 (20 U.S.C. 1001 et seq.), with respect
11 to assistance provided under title IV of the Higher Edu-
12 cation Act of 1965 (20 U.S.C. 1070 et seq.), an alien who
13 adjusts status to that of a lawful permanent resident
14 under this subtitle shall be eligible only for the following
15 assistance under such title IV:

16 (1) Student loans under parts B, D, and E of
17 such title IV (20 U.S.C. 1071 et seq., 1087a et seq.,
18 1087aa et seq.), subject to the requirements of such
19 parts.

20 (2) Federal work-study programs under part C
21 of such title IV (42 U.S.C. 2751 et seq.), subject to
22 the requirements of such part.

23 (3) Services under such title IV (20 U.S.C.
24 1070 et seq.), subject to the requirements for such
25 services.

1 **SEC. 632. GAO REPORT.**

2 Seven years after the date of enactment of this Act,
3 the Comptroller General of the United States shall submit
4 a report to the Committee on the Judiciary of the Senate
5 and the Committee on the Judiciary of the House of Rep-
6 resentatives, which sets forth—

7 (1) the number of aliens who were eligible for
8 cancellation of removal and adjustment of status
9 under section 624(a);

10 (2) the number of aliens who applied for adjust-
11 ment of status under section 624(a);

12 (3) the number of aliens who were granted ad-
13 justment of status under section 624(a); and

14 (4) the number of aliens whose conditional per-
15 manent resident status was removed under section
16 625.

17 **Subtitle D—Grant Programs to**
18 **Assist Nonimmigrant Workers**

19 **SEC. 641. GRANTS TO SUPPORT PUBLIC EDUCATION AND**
20 **COMMUNITY TRAINING.**

21 (a) GRANTS AUTHORIZED.—The Assistant Attorney
22 General, Office of Justice Programs, may award grants
23 to qualified non-profit community organizations to edu-
24 cate, train, and support non-profit agencies, immigrant
25 communities, and other interested entities regarding the

1 provisions of this Act and the amendments made by this
2 Act.

3 (b) USE OF FUNDS.—

4 (1) IN GENERAL.—Grants awarded under this
5 section shall be used—

6 (A) for public education, training, technical
7 assistance, government liaison, and all related
8 costs (including personnel and equipment) in-
9 curred by the grantee in providing services re-
10 lated to this Act; and

11 (B) to educate, train, and support non-
12 profit organizations, immigrant communities,
13 and other interested parties regarding this Act
14 and the amendments made by this Act and on
15 matters related to its implementation.

16 (2) EDUCATION.—In addition to the purposes
17 described in paragraph (1), grants awarded under
18 this section shall be used to—

19 (A) educate immigrant communities and
20 other interested entities regarding—

21 (i) the individuals and organizations
22 that can provide authorized legal represen-
23 tation in immigration matters under regu-
24 lations prescribed by the Secretary; and

1 (ii) the dangers of securing legal ad-
2 vice and assistance from those who are not
3 authorized to provide legal representation
4 in immigration matters;

5 (B) educate interested entities regarding
6 the requirements for obtaining nonprofit rec-
7 ognition and accreditation to represent immi-
8 grants under regulations prescribed by the Sec-
9 retary;

10 (C) provide nonprofit agencies with train-
11 ing and technical assistance on the recognition
12 and accreditation process; and

13 (D) educate nonprofit community organi-
14 zations, immigrant communities, and other in-
15 terested entities regarding—

16 (i) the process for obtaining benefits
17 under this Act or under an amendment
18 made by this Act; and

19 (ii) the availability of authorized legal
20 representation for low-income persons who
21 may qualify for benefits under this Act or
22 under an amendment made by this Act.

23 (c) DIVERSITY.—The Assistant Attorney General
24 shall ensure, to the extent possible, that the nonprofit
25 community organizations receiving grants under this sec-

1 tion serve geographically diverse locations and ethnically
2 diverse populations who may qualify for benefits under the
3 Act.

4 (d) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Office of Justice
6 Programs of the Department of Justice such sums as may
7 be necessary for each of the fiscal years 2007 through
8 2009 to carry out this section.

9 **SEC. 642. FUNDING FOR THE OFFICE OF CITIZENSHIP.**

10 (a) AUTHORIZATION.—The Secretary, acting through
11 the Director of the Bureau of Citizenship and Immigration
12 Services, is authorized to establish the United States Citi-
13 zenship and Immigration Foundation (referred to in this
14 subtitle as the “Foundation”).

15 (b) PURPOSE.—The Foundation shall be incor-
16 porated in the District of Columbia, exclusively for chari-
17 table and educational purposes to support the functions
18 of the Office of Citizenship of the Bureau of Citizenship
19 and Immigration Services.

20 (c) GIFTS.—

21 (1) TO FOUNDATION.—The Foundation may so-
22 licit, accept, and make gifts of money and other
23 property in accordance with section 501(c)(3) of the
24 Internal Revenue Code of 1986.

1 (2) FROM FOUNDATION.—The Office of Citizen-
2 ship may accept gifts from the Foundation to sup-
3 port the functions of the Office.

4 (d) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated such sums as may be
6 necessary to carry out the mission of the Office of Citizen-
7 ship.

8 **SEC. 643. CIVICS INTEGRATION GRANT PROGRAM.**

9 (a) IN GENERAL.—The Secretary shall establish a
10 competitive grant program to provide financial assistance
11 to nonprofit organizations, including faith-based organiza-
12 tions, to support—

13 (1) efforts by entities certified by the Office of
14 Citizenship to provide civics and English as a second
15 language courses; and

16 (2) other activities approved by the Secretary to
17 promote civics and English as a second language.

18 (b) ACCEPTANCE OF GIFTS.—The Secretary may ac-
19 cept and use gifts from the Foundation for grants under
20 this section.

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

1 **SEC. 644. STRENGTHENING AMERICAN CITIZENSHIP.**

2 (a) **SHORT TITLE.**—This section may be cited as the
3 “Strengthening American Citizenship Act of 2006”.

4 (b) **DEFINITION.**—In this section, the term “Oath of
5 Allegiance” means the binding oath (or affirmation) of al-
6 legiance required to be naturalized as a citizen of the
7 United States, as prescribed in section 337(e) of the Im-
8 migration and Nationality Act, as added by subsection
9 (h)(1)(B).

10 (c) **ENGLISH FLUENCY.**—

11 (1) **EDUCATION GRANTS.**—

12 (A) **ESTABLISHMENT.**—The Chief of the
13 Office of Citizenship of the Department (re-
14 ferred to in this paragraph as the “Chief”)
15 shall establish a grant program to provide
16 grants in an amount not to exceed \$500 to as-
17 sist legal residents of the United States who de-
18 clare an intent to apply for citizenship in the
19 United States to meet the requirements under
20 section 312 of the Immigration and Nationality
21 Act (8 U.S.C. 1423).

22 (B) **USE OF FUNDS.**—Grant funds award-
23 ed under this paragraph shall be paid directly
24 to an accredited institution of higher education
25 or other qualified educational institution (as de-
26 termined by the Chief) for tuition, fees, books,

1 and other educational resources required by a
2 course on the English language in which the
3 legal resident is enrolled.

4 (C) APPLICATION.—A legal resident desir-
5 ing a grant under this paragraph shall submit
6 an application to the Chief at such time, in
7 such manner, and accompanied by such infor-
8 mation as the Chief may reasonably require.

9 (D) PRIORITY.—If insufficient funds are
10 available to award grants to all qualified appli-
11 cants, the Chief shall give priority based on the
12 financial need of the applicants.

13 (E) NOTICE.—The Secretary, upon rel-
14 evant registration of a legal resident with the
15 Department, shall notify such legal resident of
16 the availability of grants under this paragraph
17 for legal residents who declare an intent to
18 apply for United States citizenship.

19 (F) DEFINITION.—For purposes of this
20 subsection, the term “legal resident” means a
21 lawful permanent resident or a lawfully admit-
22 ted alien who, in order to adjust status to that
23 of a lawful permanent resident must dem-
24 onstrate a knowledge of the English language
25 or satisfactory pursuit of a course of study to

1 acquire such knowledge of the English lan-
2 guage.

3 (2) FASTER CITIZENSHIP FOR ENGLISH FLU-
4 ENCY.—Section 316 (8 U.S.C. 1427) is amended by
5 adding at the end the following:

6 “(g) A lawful permanent resident of the United
7 States who demonstrates English fluency, in accordance
8 with regulations prescribed by the Secretary of Homeland
9 Security, in consultation with the Secretary of State, will
10 satisfy the residency requirement under subsection (a)
11 upon the completion of 4 years of continuous legal resi-
12 dency in the United States.”.

13 (3) SAVINGS PROVISION.—Nothing in this sub-
14 section shall be construed to—

15 (A) modify the English language require-
16 ments for naturalization under section
17 312(a)(1) of the Immigration and Nationality
18 Act (8 U.S.C. 1423(a)(1)); or

19 (B) influence the naturalization test rede-
20 sign process of the Office of Citizenship (except
21 for the requirement under subsection (h)(2)).

22 (d) AMERICAN CITIZENSHIP GRANT PROGRAM.—

23 (1) IN GENERAL.—The Secretary shall establish
24 a competitive grant program to provide financial as-
25 sistance for—

1 (A) efforts by entities (including veterans
2 and patriotic organizations) certified by the Of-
3 fice of Citizenship to promote the patriotic inte-
4 gration of prospective citizens into the Amer-
5 ican way of life by providing civics, history, and
6 English as a second language courses, with a
7 specific emphasis on attachment to principles of
8 the Constitution of the United States, the he-
9 roes of American history (including military he-
10 roes), and the meaning of the Oath of Alle-
11 giance; and

12 (B) other activities approved by the Sec-
13 retary to promote the patriotic integration of
14 prospective citizens and the implementation of
15 the Immigration and Nationality Act (8 U.S.C.
16 1101 et seq.), including grants—

17 (i) to promote an understanding of
18 the form of government and history of the
19 United States; and

20 (ii) to promote an attachment to the
21 principles of the Constitution of the United
22 States and the well being and happiness of
23 the people of the United States.

24 (2) ACCEPTANCE OF GIFTS.—The Secretary
25 may accept and use gifts from the United States

1 Citizenship Foundation, if the foundation is estab-
2 lished under subsection (e), for grants under this
3 subsection.

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

7 (e) FUNDING FOR THE OFFICE OF CITIZENSHIP.—

8 (1) AUTHORIZATION.—The Secretary, acting
9 through the Director of the Bureau of Citizenship
10 and Immigration Services, is authorized to establish
11 the United States Citizenship Foundation (referred
12 to in this subsection as the “Foundation”), an orga-
13 nization duly incorporated in the District of Colum-
14 bia, exclusively for charitable and educational pur-
15 poses to support the functions of the Office of Citi-
16 zenship.

17 (2) DEDICATED FUNDING.—

18 (A) IN GENERAL.—Not less than 1.5 per-
19 cent of the funds made available to the Bureau
20 of Citizenship and Immigration Services from
21 fees shall be dedicated to the functions of the
22 Office of Citizenship, which shall include the
23 patriotic integration of prospective citizens
24 into—

1 (i) American common values and tra-
2 ditions, including an understanding of
3 American history and the principles of the
4 Constitution of the United States; and

5 (ii) civic traditions of the United
6 States, including the Pledge of Allegiance,
7 respect for the flag of the United States,
8 and voting in public elections.

9 (B) SENSE OF CONGRESS.—It is the sense
10 of Congress that dedicating increased funds to
11 the Office of Citizenship should not result in an
12 increase in fees charged by the Bureau of Citi-
13 zenship and Immigration Services.

14 (3) GIFTS.—

15 (A) TO FOUNDATION.—The Foundation
16 may solicit, accept, and make gifts of money
17 and other property in accordance with section
18 501(c)(3) of the Internal Revenue Code of
19 1986.

20 (B) FROM FOUNDATION.—The Office of
21 Citizenship may accept gifts from the Founda-
22 tion to support the functions of the Office.

23 (4) AUTHORIZATION OF APPROPRIATIONS.—

24 There are authorized to be appropriated such sums
25 as may be necessary to carry out the mission of the

1 Office of Citizenship, including the functions de-
2 scribed in paragraph (2)(A).

3 (f) RESTRICTION ON USE OF FUNDS.—No funds ap-
4 propriated to carry out a program under this subsection
5 (d) or (e) may be used to organize individuals for the pur-
6 pose of political activism or advocacy.

7 (g) REPORTING REQUIREMENT.—

8 (1) IN GENERAL.—The Chief of the Office of
9 Citizenship shall submit an annual report to the
10 Committee on Health, Education, Labor, and Pen-
11 sions of the Senate, the Committee on the Judiciary
12 of the Senate, the Committee on Education and the
13 Workforce of the House of Representatives, and the
14 Committee on the Judiciary of the House of Rep-
15 resentatives.

16 (2) CONTENTS.—The report submitted under
17 paragraph (1) shall include—

18 (A) a list of the entities that have received
19 funds from the Office of Citizenship during the
20 reporting period under this section and the
21 amount of funding received by each such entity;

22 (B) an evaluation of the extent to which
23 grants received under this section successfully
24 promoted an understanding of—

25 (i) the English language; and

1 (ii) American history and government,
2 including the heroes of American history,
3 the meaning of the Oath of Allegiance, and
4 an attachment to the principles of the Con-
5 stitution of the United States; and

6 (C) information about the number of legal
7 residents who were able to achieve the knowl-
8 edge described under paragraph (2) as a result
9 of the grants provided under this section.

10 (h) OATH OR AFFIRMATION OF RENUNCIATION AND
11 ALLEGIANCE.—

12 (1) REVISION OF OATH.—Section 337 (8 U.S.C.
13 1448) is amended—

14 (A) in subsection (a), by striking “under
15 section 310(b) an oath” and all that follows
16 through “personal moral code.” and inserting
17 “under section 310(b), the oath (or affirmation)
18 of allegiance prescribed in subsection (e).”; and

19 (B) by adding at the end the following:

20 “(e)(1) Subject to paragraphs (2) and (3), the oath
21 (or affirmation) of allegiance prescribed in this subsection
22 is as follows: ‘I take this oath solemnly, freely, and without
23 any mental reservation. I absolutely and entirely renounce
24 all allegiance to any foreign state or power of which I have
25 been a subject or citizen. My fidelity and allegiance from

1 this day forward are to the United States of America. I
2 will bear true faith and allegiance to the Constitution and
3 laws of the United States, and will support and defend
4 them against all enemies, foreign and domestic. I will bear
5 arms, or perform noncombatant military or civilian serv-
6 ice, on behalf of the United States when required by law.
7 This I do solemnly swear, so help me God.’.

8 “(2) If a person, by reason of religious training and
9 belief (or individual interpretation thereof) or for other
10 reasons of good conscience, cannot take the oath pre-
11 scribed in paragraph (1)—

12 “(A) with the term ‘oath’ included, the term
13 ‘affirmation’ shall be substituted for the term ‘oath’;
14 and

15 “(B) with the phrase ‘so help me God’ included,
16 the phrase ‘so help me God’ shall be omitted.

17 “(3) If a person shows by clear and convincing evi-
18 dence to the satisfaction of the Attorney General that such
19 person, by reason of religious training and belief, cannot
20 take the oath prescribed in paragraph (1)—

21 “(A) because such person is opposed to the
22 bearing of arms in the Armed Forces of the United
23 States, the words ‘bear arms, or’ shall be omitted;
24 and

1 “(B) because such person is opposed to any
2 type of service in the Armed Forces of the United
3 States, the words ‘bear arms, or’ and ‘noncombatant
4 military or’ shall be omitted.

5 “(4) As used in this subsection, the term ‘religious
6 training and belief’—

7 “(A) means a belief of an individual in relation
8 to a Supreme Being involving duties superior to
9 those arising from any human relation; and

10 “(B) does not include essentially political, socio-
11 logical, or philosophical views or a merely personal
12 moral code.

13 “(5) Any reference in this title to ‘oath’ or ‘oath of
14 allegiance’ under this section shall be deemed to refer to
15 the oath (or affirmation) of allegiance prescribed under
16 this subsection.”.

17 (2) HISTORY AND GOVERNMENT TEST.—The
18 Secretary shall incorporate a knowledge and under-
19 standing of the meaning of the Oath of Allegiance
20 into the history and government test given to appli-
21 cants for citizenship.

22 (3) NOTICE TO FOREIGN EMBASSIES.—Upon
23 the naturalization of a new citizen, the Secretary, in
24 cooperation with the Secretary of State, shall notify

1 the embassy of the country of which the new citizen
2 was a citizen or subject that such citizen has—

3 (A) renounced allegiance to that foreign
4 country; and

5 (B) sworn allegiance to the United States.

6 (4) EFFECTIVE DATE.—The amendments made
7 by paragraph (1) shall take effect on the date that
8 is 6 months after the date of enactment of this Act.

9 (i) ESTABLISHMENT OF NEW CITIZENS AWARD PRO-
10 GRAM.—

11 (1) ESTABLISHMENT.—There is established a
12 new citizens award program to recognize citizens
13 who—

14 (A) have made an outstanding contribution
15 to the United States; and

16 (B) were naturalized during the 10-year
17 period ending on the date of such recognition.

18 (2) PRESENTATION AUTHORIZED.—

19 (A) IN GENERAL.—The President is au-
20 thorized to present a medal, in recognition of
21 outstanding contributions to the United States,
22 to citizens described in paragraph (1).

23 (B) MAXIMUM NUMBER OF AWARDS.—Not
24 more than 10 citizens may receive a medal
25 under this subsection in any calendar year.

1 (3) DESIGN AND STRIKING.—The Secretary of
2 the Treasury shall strike a medal with suitable em-
3 blems, devices, and inscriptions, to be determined by
4 the President.

5 (4) NATIONAL MEDALS.—The medals struck
6 pursuant to this subsection are national medals for
7 purposes of chapter 51 of title 31, United States
8 Code.

9 (j) NATURALIZATION CEREMONIES.—

10 (1) IN GENERAL.—The Secretary, in consulta-
11 tion with the Director of the National Park Service,
12 the Archivist of the United States, and other appro-
13 priate Federal officials, shall develop and implement
14 a strategy to enhance the public awareness of natu-
15 ralization ceremonies.

16 (2) VENUES.—In developing the strategy under
17 this subsection, the Secretary shall consider the use
18 of outstanding and historic locations as venues for
19 select naturalization ceremonies.

20 (3) REPORTING REQUIREMENT.—The Secretary
21 shall submit an annual report to Congress that in-
22 cludes—

23 (A) the content of the strategy developed
24 under this subsection; and

1 (B) the progress made towards the imple-
2 mentation of such strategy.

3 **TITLE VII—MISCELLANEOUS**
4 **Subtitle A—Immigration Litigation**
5 **Reduction**

6 **CHAPTER 1—APPEALS AND REVIEW**

7 **SEC. 701. ADDITIONAL IMMIGRATION PERSONNEL.**

8 (a) DEPARTMENT OF HOMELAND SECURITY.—

9 (1) TRIAL ATTORNEYS.—In each of fiscal years
10 2007 through 2011, the Secretary shall, subject to
11 the availability of appropriations for such purpose,
12 increase the number of positions for attorneys in the
13 Office of General Counsel of the Department who
14 represent the Department in immigration matters by
15 not less than 100 above the number of such posi-
16 tions for which funds were made available during
17 each preceding fiscal year.

18 (2) AUTHORIZATION OF APPROPRIATIONS.—

19 There are authorized to be appropriated to the Sec-
20 retary for each of fiscal years 2007 through 2011
21 such sums as may be necessary to carry out this
22 subsection.

23 (b) DEPARTMENT OF JUSTICE.—

24 (1) LITIGATION ATTORNEYS.—In each of fiscal
25 years 2007 through 2011, the Attorney General

1 shall, subject to the availability of appropriations for
2 such purpose, increase by not less than 50 the num-
3 ber of positions for attorneys in the Office of Immi-
4 gration Litigation of the Department of Justice.

5 (2) UNITED STATES ATTORNEYS.—In each of
6 fiscal years 2007 through 2011, the Attorney Gen-
7 eral shall, subject to the availability of appropria-
8 tions for such purpose, increase by not less than 50
9 the number of attorneys in the United States Attor-
10 neys' office to litigate immigration cases in the Fed-
11 eral courts.

12 (3) IMMIGRATION JUDGES.—In each of fiscal
13 years 2007 through 2011, the Attorney General
14 shall, subject to the availability of appropriations for
15 such purpose—

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

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

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

3 (4) STAFF ATTORNEYS.—In each of fiscal years
4 2007 through 2011, the Attorney General shall, sub-
5 ject to the availability of appropriations for such
6 purpose—

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

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

19 (5) AUTHORIZATION OF APPROPRIATIONS.—
20 There are authorized to be appropriated to the At-
21 torney General for each of the fiscal years 2007
22 through 2011 such sums as may be necessary to
23 carry out this subsection, including the hiring of
24 necessary support staff.

1 (c) ADMINISTRATIVE OFFICE OF THE UNITED
2 STATES COURTS.—In each of the fiscal years 2007
3 through 2011, the Director of the Administrative Office
4 of the United States Courts shall, subject to the avail-
5 ability of appropriations, increase by not less than 50 the
6 number of attorneys in the Federal Defenders Program
7 who litigate criminal immigration cases in the Federal
8 courts.

9 **CHAPTER 2—IMMIGRATION REVIEW**

10 **REFORM**

11 **SEC. 702. BOARD OF IMMIGRATION APPEALS.**

12 (a) COMPOSITION AND APPOINTMENT.—Notwith-
13 standing any other provision of law, the Board of Immi-
14 gration Appeals of the Department of Justice (referred to
15 in this section as the “Board”), shall be composed of a
16 Chair and 22 other immigration appeals judges, who shall
17 be appointed by the Attorney General to 6-year, staggered,
18 terms. Upon the expiration of a term of office, a Board
19 member may continue to act until a successor has been
20 appointed and qualified.

21 (b) QUALIFICATIONS.—Each member of the Board,
22 including the Chair, shall—

23 (1) be an attorney in good standing of a bar of
24 a State or the District of Columbia;

25 (2) have at least—

1 (A) 7 years of professional, legal expertise;

2 or

3 (B) 5 years of professional, legal expertise

4 in immigration and nationality law; and

5 (3) meet the minimum appointment require-

6 ments of an administrative law judge under title 5,

7 United States Code.

8 (c) DUTIES OF THE CHAIR.—The Chair of the Board,
9 subject to the supervision of the Director of the Executive
10 Office for Immigration Review, shall—

11 (1) be responsible, on behalf of the Board, for
12 the administrative operations of the Board and shall
13 have the power to appoint such administrative as-
14 sistants, attorneys, clerks, and other personnel as
15 may be needed for that purpose;

16 (2) direct, supervise, and establish internal op-
17 erating procedures and policies of the Board;

18 (3) designate a member of the Board to act as
19 Chair if the Chair is absent or unavailable;

20 (4) adjudicate cases as a member of the Board;

21 (5) form 3-member panels as provided by sub-
22 section (g);

23 (6) direct that a case be heard en banc as pro-
24 vided by subsection (h); and

1 (7) exercise such other authorities as the Direc-
2 tor may provide.

3 (d) BOARD MEMBERS DUTIES.—In deciding a case
4 before the Board, the Board—

5 (1) shall exercise independent judgment and
6 discretion; and

7 (2) may take any action that is appropriate and
8 necessary for the disposition of such case that is
9 consistent with the authority provided in this section
10 and any regulations established in accordance with
11 this section.

12 (e) JURISDICTION.—

13 (1) IN GENERAL.—The Board shall have juris-
14 diction to hear appeals described in section
15 1003.1(b) of title 8, Code of Federal Regulations (or
16 any corresponding similar regulation).

17 (2) LIMITATION.—The Board shall not have ju-
18 risdiction to hear an appeal of a decision of an im-
19 migration judge for an order of removal entered in
20 absentia.

21 (f) SCOPE OF REVIEW.—

22 (1) FINDINGS OR FACT.—The Board shall—

23 (A) accept findings of fact determined by
24 an immigration judge, including findings as to

1 the credibility of testimony, unless the findings
2 are clearly erroneous; and

3 (B) give due deference to an immigration
4 judge's application of the law to the facts.

5 (2) QUESTIONS OF LAW.—The Board shall re-
6 view de novo questions of law, discretion, and judg-
7 ment, and all other issues in appeals from decisions
8 of immigration judges.

9 (3) APPEALS FROM OFFICERS' DECISIONS.—

10 (A) STANDARD OF REVIEW.—The Board
11 shall review de novo all questions arising in ap-
12 peals from decisions issued by officers of the
13 Department.

14 (B) PROHIBITION OF FACT FINDING.—Ex-
15 cept for taking administrative notice of com-
16 monly known facts such as current events or
17 the contents of official documents, the Board
18 may not engage in fact-finding in the course of
19 deciding appeals.

20 (C) REMAND.—A party asserting that the
21 Board cannot properly resolve an appeal with-
22 out further fact-finding shall file a motion for
23 remand. If further fact-finding is needed in a
24 case, the Board shall remand the proceeding to

1 the immigration judge or, as appropriate, to the
2 Secretary.

3 (g) PANELS.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (5) all cases shall be subject to review by a
6 3-member panel. The Chair shall divide the Board
7 into 3-member panels and designate a presiding
8 member.

9 (2) AUTHORITY.—Each panel may exercise the
10 appropriate authority of the Board that is necessary
11 for the adjudication of cases before the Board.

12 (3) QUORUM.—Two members appointed to a
13 panel shall constitute a quorum for such panel.

14 (4) CHANGES IN COMPOSITION.—The Chair
15 may from time to time make changes in the com-
16 position of a panel and of the presiding member of
17 a panel.

18 (5) PRESIDING MEMBER DECISIONS.—The pre-
19 siding member of a panel may act alone on any mo-
20 tion as provided in paragraphs (3) and (4) of sub-
21 section (i) and may not otherwise dismiss or deter-
22 mine an appeal as a single Board member.

23 (h) EN BANC PROCESS.—

1 (1) IN GENERAL.—The Board may on its own
2 motion, by a majority vote of the Board members,
3 or by direction of the Chair—

4 (A) consider any case as the full Board en
5 banc; or

6 (B) reconsider as the full Board en banc
7 any case that has been considered or decided by
8 a 3-member panel or by a limited en banc
9 panel.

10 (2) QUORUM.—A majority of the Board mem-
11 bers shall constitute a quorum of the Board sitting
12 en banc.

13 (i) DECISIONS OF THE BOARD.—

14 (1) AFFIRMANCE WITHOUT OPINION.—Upon in-
15 dividualized review of a case, the Board may affirm
16 the decision of an immigration judge without opinion
17 only if—

18 (A) the decision of the immigration judge
19 resolved all issues in the case;

20 (B) the issue on appeal is squarely con-
21 trolled by existing Board or Federal court
22 precedent and does not involve the application
23 of precedent to a novel fact situation;

24 (C) the factual and legal questions raised
25 on appeal are so insubstantial that the case

1 does not warrant the issuance of a written opin-
2 ion in the case; and

3 (D) the Board approves both the result
4 reached in the decision below and all of the rea-
5 soning of that decision.

6 (2) SUMMARY DISMISSAL OF APPEALS.—The 3-
7 member panel or the presiding member acting alone
8 may summarily dismiss any appeal or portion of any
9 appeal in any case which—

10 (A) the party seeking the appeal fails to
11 specify the reasons for the appeal;

12 (B) the only reason for the appeal specified
13 by such party involves a finding of fact or a
14 conclusion of law that was conceded by that
15 party at a prior proceeding;

16 (C) the appeal is from an order that grant-
17 ed such party the relief that had been re-
18 quested;

19 (D) the appeal is determined to be filed for
20 an improper purpose, such as to cause unneces-
21 sary delay; or

22 (E) the appeal lacks an arguable basis in
23 fact or in law and is not supported by a good
24 faith argument for extension, modification, or
25 reversal of existing law.

1 (3) UNOPPOSED DISPOSITIONS.—The 3-member
2 panel or the presiding member acting alone may—

3 (A) grant an unopposed motion or a mo-
4 tion to withdraw an appeal pending before the
5 Board; or

6 (B) adjudicate a motion to remand any ap-
7 peal—

8 (i) from the decision of an officer of
9 the Department if the appropriate official
10 of the Department requests that the mat-
11 ter be remanded back for further consider-
12 ation;

13 (ii) if remand is required because of a
14 defective or missing transcript; or

15 (iii) if remand is required for any
16 other procedural or ministerial issue.

17 (4) NOTICE OF RIGHT TO APPEAL.—The deci-
18 sion by the Board shall include notice to the alien
19 of the alien’s right to file a petition for review in a
20 United States Court of Appeals not later than 30
21 days after the date of the decision.

22 **SEC. 703. IMMIGRATION JUDGES.**

23 (a) APPOINTMENT OF IMMIGRATION JUDGES.—

24 (1) IN GENERAL.—The Chief Immigration
25 Judge (as described in section 1003.9 of title 8,

1 Code of Federal Regulations, or any corresponding
2 similar regulation) and other immigration judges
3 shall be appointed by the Attorney General to a 7-
4 year term. Upon the expiration of a term of office,
5 the immigration judge may continue to act until a
6 successor has been appointed and qualified.

7 (2) QUALIFICATIONS.—Each immigration
8 judge, including the Chief Immigration Judge, shall
9 be an attorney in good standing of a bar of a State
10 or the District of Columbia and shall have at least
11 5 years of professional, legal expertise or at least 3
12 years professional or legal expertise in immigration
13 and nationality law.

14 (b) JURISDICTION.—An Immigration judge shall
15 have the authority to hear matters related to any removal
16 proceeding pursuant to section 240 of the Immigration
17 and Nationality Act (8 U.S.C. 1229a) described in section
18 1240.1(a) of title 8, Code of Federal Regulations (or any
19 corresponding similar regulation).

20 (c) DUTIES OF IMMIGRATION JUDGES.—In deciding
21 a case, an immigration judge—

22 (1) shall exercise independent judgment and
23 discretion; and

24 (2) may take any action that is appropriate and
25 necessary for the disposition of such case that is

1 consistent with their authorities under this section
2 and regulations established in accordance with this
3 section.

4 (d) REVIEW.—Decisions of immigration judges are
5 subject to review by the Board of Immigration Appeals
6 in any case in which the Board has jurisdiction.

7 **SEC. 704. REMOVAL AND REVIEW OF JUDGES.**

8 No immigration judge or member of the Board may
9 be removed or otherwise subject to disciplinary or adverse
10 action for their exercise of independent judgment and dis-
11 cretion as prescribed by this chapter.

12 **SEC. 705. LEGAL ORIENTATION PROGRAM.**

13 (a) CONTINUED OPERATION.—The Director of the
14 Executive Office for Immigration Review shall continue to
15 operate a legal orientation program to provide basic infor-
16 mation about immigration court procedures for immigra-
17 tion detainees and shall expand the legal orientation pro-
18 gram to provide such information on a nationwide basis.

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

22 **SEC. 706. REGULATIONS.**

23 Not later than 180 days after the date of the enact-
24 ment of this Act, the Attorney General shall issue regula-
25 tions to implement this subtitle.

1 **SEC. 707. GAO STUDY ON THE APPELLATE PROCESS FOR**
2 **IMMIGRATION APPEALS.**

3 (a) IN GENERAL.—The Comptroller General of the
4 United States shall, not later than 180 days after enact-
5 ment of this Act, conduct a study on the appellate process
6 for immigration appeals.

7 (b) REQUIREMENTS.—In conducting the study under
8 subsection (a), the Comptroller General shall consider the
9 possibility of consolidating all appeals from the Board of
10 Immigration Appeals and habeas corpus petitions in immi-
11 gration cases into 1 United States Court of Appeals, by—

12 (1) consolidating all such appeals into an exist-
13 ing circuit court, such as the United States Court of
14 Appeals for the Federal Circuit;

15 (2) consolidating all such appeals into a central-
16 ized appellate court consisting of active circuit court
17 judges temporarily assigned from the various cir-
18 cuits, in a manner similar to the Foreign Intel-
19 ligence Surveillance Court or the Temporary Emer-
20 gency Court of Appeals; or

21 (3) implementing a mechanism by which a
22 panel of active circuit court judges shall have the au-
23 thority to reassign such appeals from circuits with
24 relatively high caseloads to circuits with relatively
25 low caseloads.

1 (c) FACTORS TO CONSIDER.—In conducting the
2 study under subsection (a), the Comptroller General, in
3 consultation with the Attorney General, the Secretary, and
4 the Judicial Conference of the United States, shall con-
5 sider—

6 (1) the resources needed for each alternative,
7 including judges, attorneys and other support staff,
8 case management techniques including technological
9 requirements, physical infrastructure, and other pro-
10 cedural and logistical issues as appropriate;

11 (2) the impact of each plan on various circuits,
12 including their caseload in general and caseload per
13 panel;

14 (3) the possibility of utilizing case management
15 techniques to reduce the impact of any consolidation
16 option, such as requiring certificates of reviewability,
17 similar to procedures for habeas and existing sum-
18 mary dismissal procedures in local rules of the
19 courts of appeals;

20 (4) the effect of reforms in this Act on the abil-
21 ity of the circuit courts to adjudicate such appeals;

22 (5) potential impact, if any, on litigants; and

23 (6) other reforms to improve adjudication of
24 immigration matters, including appellate review of
25 motions to reopen and reconsider, and attorney fee

1 awards with respect to review of final orders of re-
2 moval.

3 **Subtitle B—Citizenship Assistance**
4 **for Members of the Armed Services**

5 **SEC. 711. SHORT TITLE.**

6 This subtitle may be cited as the “Kendell Frederick
7 Citizenship Assistance Act”.

8 **SEC. 712. WAIVER OF REQUIREMENT FOR FINGERPRINTS**
9 **FOR MEMBERS OF THE ARMED FORCES.**

10 Notwithstanding any other provision of law or any
11 regulation, the Secretary shall use the fingerprints pro-
12 vided by an individual at the time the individual enlists
13 in the Armed Forces to satisfy any requirement for finger-
14 prints as part of an application for naturalization if the
15 individual—

16 (1) may be naturalized pursuant to section 328
17 or 329 of the Immigration and Nationality Act (8
18 U.S.C. 1439 or 1440);

19 (2) was fingerprinted in accordance with the re-
20 quirements of the Department of Defense at the
21 time the individual enlisted in the Armed Forces;
22 and

23 (3) submits an application for naturalization
24 not later than 12 months after the date the indi-
25 vidual enlisted in the Armed Forces.

1 **SEC. 713. PROVISION OF INFORMATION ON NATURALIZA-**
2 **TION TO MEMBERS OF THE ARMED FORCES.**

3 (a) **CITIZENSHIP ADVOCATE.**—The Secretary of De-
4 fense shall establish the position of Citizenship Advocate
5 at each Military Entry Processing Station to provide infor-
6 mation and assistance related to the naturalization process
7 to members of the Armed Forces. An individual serving
8 as a Citizenship Advocate may be a civilian.

9 (b) **WRITTEN MATERIALS.**—The Secretary of De-
10 fense shall ensure that written information describing the
11 naturalization process for members of the Armed Forces
12 is provided to each individual who is not a citizen of the
13 United States at the time that the individual enlists in
14 the Armed Forces.

15 (c) **TELEPHONE HOT LINE.**—The Secretary shall—

16 (1) establish a dedicated toll free telephone
17 service available only to members of the Armed
18 Forces and the families of such members to provide
19 information related to naturalization pursuant to
20 section 328 or 329 of the Immigration and Nation-
21 ality Act (8 U.S.C. 1439 or 1440), including the sta-
22 tus of an application for such naturalization;

23 (2) ensure that the telephone service required
24 by paragraph (1) is operated by employees of the
25 Department who—

1 (A) have received specialized training on
2 the naturalization process for members of the
3 Armed Forces and the families of such mem-
4 bers; and

5 (B) are physically located in the same unit
6 as the military processing unit that adjudicates
7 applications for naturalization pursuant to such
8 section 328 or 329; and

9 (3) implement a quality control program to
10 monitor, on a regular basis, the accuracy and quality
11 of information provided by the employees who oper-
12 ate the telephone service required by paragraph (1),
13 including the breadth of the knowledge related to the
14 naturalization process of such employees.

15 **SEC. 714. PROVISION OF INFORMATION ON NATURALIZA-**
16 **TION TO THE PUBLIC.**

17 Not later than 30 days after the date that a modifica-
18 tion to any law or regulation related to the naturalization
19 process becomes effective, the Secretary shall update the
20 appropriate application form for naturalization, the in-
21 structions and guidebook for obtaining naturalization, and
22 the Internet website maintained by the Secretary to reflect
23 such modification.

1 **SEC. 715. REPORTS.**

2 (a) ADJUDICATION PROCESS.—Not later than 120
3 days after the date of the enactment of this Act, the
4 Comptroller General of the United States shall submit to
5 the appropriate congressional committees a report on the
6 entire process for the adjudication of an application for
7 naturalization filed pursuant to section 328 or 329 of the
8 Immigration and Nationality Act (8 U.S.C. 1439 or
9 1440), including the process that begins at the time the
10 application is mailed to, or received by, the Secretary, re-
11 gardless of whether the Secretary determines that such
12 application is complete, through the final disposition of
13 such application. Such report shall include shall include
14 a description of—

15 (1) the methods of the Secretary and the Sec-
16 retary of Defense to prepare, handle, and adjudicate
17 such applications;

18 (2) the effectiveness of the chain of authority,
19 supervision, and training of employees of the Gov-
20 ernment or of other entities, including contract em-
21 ployees, who have any role in the such process or ad-
22 judication; and

23 (3) the ability of the Secretary and the Sec-
24 retary of Defense to use technology to facilitate or
25 accomplish any aspect of such process or adjudica-
26 tion.

1 (b) IMPLEMENTATION.—

2 (1) STUDY.—The Comptroller General of the
3 United States shall conduct a study on the imple-
4 mentation of this subtitle by the Secretary and the
5 Secretary of Defense, including studying any tech-
6 nology that may be used to improve the efficiency of
7 the naturalization process for members of the Armed
8 Forces.

9 (2) REPORT.—Not later than 180 days after
10 the date that the Comptroller General submits the
11 report required by subsection (a), the Comptroller
12 General shall submit to the appropriate congres-
13 sional committees a report on the study required by
14 paragraph (1). The report shall include any rec-
15 ommendations of the Comptroller General for im-
16 proving the implementation of this subtitle by the
17 Secretary or the Secretary of Defense.

18 (c) APPROPRIATE CONGRESSIONAL COMMITTEES DE-
19 FINED.—In this section, the term “appropriate congres-
20 sional committees” means—

21 (1) the Committee on Armed Services and the
22 Committee on the Judiciary of the Senate; and

23 (2) the Committee on Armed Services and the
24 Committee on the Judiciary of the House of Rep-
25 resentatives.

1 **Subtitle C—State Court Interpreter**
2 **Grant Program**

3 **SEC. 721. SHORT TITLE.**

4 This subtitle may be cited as the “State Court Inter-
5 preter Grant Program Act”.

6 **SEC. 722. FINDINGS.**

7 Congress finds that—

8 (1) the fair administration of justice depends on
9 the ability of all participants in a courtroom pro-
10 ceeding to understand that proceeding, regardless of
11 their English proficiency;

12 (2) 19 percent of the population of the United
13 States over 5 years of age speaks a language other
14 than English at home;

15 (3) only qualified court interpreters can ensure
16 that persons with limited English proficiency com-
17 prehend judicial proceedings in which they are a
18 party;

19 (4) the knowledge and skills required of a quali-
20 fied court interpreter differ substantially from those
21 required in other interpretation settings, such as so-
22 cial service, medical, diplomatic, and conference in-
23 terpreting;

1 (5) the Federal Government has demonstrated
2 its commitment to equal administration of justice re-
3 gardless of English proficiency;

4 (6) regulations implementing title VI of the
5 Civil Rights Act of 1964, as well as the guidance
6 issued by the Department of Justice pursuant to Ex-
7 ecutive Order 13166, issued August 11, 2000, clar-
8 ify that all recipients of Federal financial assistance,
9 including State courts, are required to take reason-
10 able steps to provide meaningful access to their pro-
11 ceedings for persons with limited English pro-
12 ficiency;

13 (7) 34 States have developed, or are developing,
14 court interpreting programs;

15 (8) robust, effective court interpreter pro-
16 grams—

17 (A) actively recruit skilled individuals to be
18 court interpreters;

19 (B) train those individuals in the interpre-
20 tation of court proceedings;

21 (C) develop and use a thorough, systematic
22 certification process for court interpreters; and

23 (D) have sufficient funding to ensure that
24 a qualified interpreter will be available to the
25 court whenever necessary; and

1 (9) Federal funding is necessary to—

2 (A) encourage State courts that do not
3 have court interpreter programs to develop
4 them;

5 (B) assist State courts with nascent court
6 interpreter programs to implement them;

7 (C) assist State courts with limited court
8 interpreter programs to enhance them; and

9 (D) assist State courts with robust court
10 interpreter programs to make further improve-
11 ments and share successful programs with other
12 States.

13 **SEC. 723. STATE COURT INTERPRETER PROGRAM.**

14 (a) GRANTS AUTHORIZED.—

15 (1) IN GENERAL.—The Administrator of the
16 Office of Justice Programs of the Department of
17 Justice (referred to in this section as the “Adminis-
18 trator”) shall make grants, in accordance with such
19 regulations as the Attorney General may prescribe,
20 to State courts to develop and implement programs
21 to assist individuals with limited English proficiency
22 to access and understand State court proceedings in
23 which they are a party.

24 (2) TECHNICAL ASSISTANCE.—The Adminis-
25 trator shall allocate, for each fiscal year, \$500,000

1 of the amount appropriated pursuant to section 4 to
2 be used to establish a court interpreter technical as-
3 sistance program to assist State courts receiving
4 grants under this subtitle.

5 (b) USE OF GRANTS.—Grants awarded under sub-
6 section (a) may be used by State courts to—

7 (1) assess regional language demands;

8 (2) develop a court interpreter program for the
9 State courts;

10 (3) develop, institute, and administer language
11 certification examinations;

12 (4) recruit, train, and certify qualified court in-
13 terpreters;

14 (5) pay for salaries, transportation, and tech-
15 nology necessary to implement the court interpreter
16 program developed under paragraph (2); and

17 (6) engage in other related activities, as pre-
18 scribed by the Attorney General.

19 (c) APPLICATION.—

20 (1) IN GENERAL.—The highest State court of
21 each State desiring a grant under this section shall
22 submit an application to the Administrator at such
23 time, in such manner, and accompanied by such in-
24 formation as the Administrator may reasonably re-
25 quire.

1 (2) STATE COURTS.—The highest State court
2 of each State submitting an application under para-
3 graph (1) shall include in the application—

4 (A) an identification of each State court in
5 that State which would receive funds from the
6 grant;

7 (B) the amount of funds each State court
8 identified under subparagraph (A) would re-
9 ceive from the grant; and

10 (C) the procedures the highest State court
11 would use to directly distribute grant funds to
12 State courts identified under subparagraph (A).

13 (d) STATE COURT ALLOTMENTS.—

14 (1) BASE ALLOTMENT.—From amounts appro-
15 priated for each fiscal year pursuant to section 724,
16 the Administrator shall allocate \$100,000 to each of
17 the highest State court of each State, which has an
18 application approved under subsection (c).

19 (2) DISCRETIONARY ALLOTMENT.—From
20 amounts appropriated for each fiscal year pursuant
21 to section 724, the Administrator shall allocate a
22 total of \$5,000,000 to the highest State court of
23 States that have extraordinary needs that must be
24 addressed in order to develop, implement, or expand
25 a State court interpreter program.

1 (3) *ADDITIONAL ALLOTMENT.*—In addition to
2 the allocations made under paragraphs (1) and (2),
3 the Administrator shall allocate to each of the high-
4 est State court of each State, which has an applica-
5 tion approved under subsection (c), an amount equal
6 to the product reached by multiplying—

7 (A) the unallocated balance of the amount
8 appropriated for each fiscal year pursuant to
9 section 724; and

10 (B) the ratio between the number of people
11 over 5 years of age who speak a language other
12 than English at home in the State and the
13 number of people over 5 years of age who speak
14 a language other than English at home in all
15 the States that receive an allocation under
16 paragraph (1), as those numbers are deter-
17 mined by the Bureau of the Census.

18 **SEC. 724. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated \$15,000,000
20 for each of the fiscal years 2007 through 2010 to carry
21 out this subtitle.

1 **Subtitle D—Border Infrastructure**
2 **and Technology Modernization**

3 **SEC. 731. SHORT TITLE.**

4 This subtitle may be cited as the “Border Infrastruc-
5 ture and Technology Modernization Act”.

6 **SEC. 732. DEFINITIONS.**

7 In this subtitle:

8 (1) COMMISSIONER.—The term “Commis-
9 sioner” means the Commissioner of the Bureau of
10 Customs and Border Protection of the Department
11 of Homeland Security.

12 (2) MAQUILADORA.—The term “maquiladora”
13 means an entity located in Mexico that assembles
14 and produces goods from imported parts for export
15 to the United States.

16 (3) NORTHERN BORDER.—The term “northern
17 border” means the international border between the
18 United States and Canada.

19 (4) SOUTHERN BORDER.—The term “southern
20 border” means the international border between the
21 United States and Mexico.

22 **SEC. 733. PORT OF ENTRY INFRASTRUCTURE ASSESSMENT**
23 **STUDY.**

24 (a) REQUIREMENT TO UPDATE.—Not later than Jan-
25 uary 31 of each year, the Administrator of General Serv-

1 ices shall update the Port of Entry Infrastructure Assess-
2 ment Study prepared by the Bureau of Customs and Bor-
3 der Protection in accordance with the matter relating to
4 the ports of entry infrastructure assessment that is set
5 out in the joint explanatory statement in the conference
6 report accompanying H.R. 2490 of the 106th Congress,
7 1st session (House of Representatives Rep. No. 106–319,
8 on page 67) and submit such updated study to Congress.

9 (b) CONSULTATION.—In preparing the updated stud-
10 ies required in subsection (a), the Administrator of Gen-
11 eral Services shall consult with the Director of the Office
12 of Management and Budget, the Secretary, and the Com-
13 missioner.

14 (c) CONTENT.—Each updated study required in sub-
15 section (a) shall—

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

20 (2) include the projects identified in the Na-
21 tional Land Border Security Plan required by sec-
22 tion 734; and

23 (3) prioritize the projects described in para-
24 graphs (1) and (2) based on the ability of a project
25 to—

1 (A) fulfill immediate security requirements;
2 and

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

5 (d) PROJECT IMPLEMENTATION.—The Commissioner
6 shall implement the infrastructure and technology im-
7 provement projects described in subsection (c) in the order
8 of priority assigned to each project under subsection
9 (c)(3).

10 (e) DIVERGENCE FROM PRIORITIES.—The Commis-
11 sioner may diverge from the priority order if the Commis-
12 sioner determines that significantly changed cir-
13 cumstances, such as immediate security needs or changes
14 in infrastructure in Mexico or Canada, compellingly alter
15 the need for a project in the United States.

16 **SEC. 734. NATIONAL LAND BORDER SECURITY PLAN.**

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

25 (b) VULNERABILITY ASSESSMENT.—

1 (1) IN GENERAL.—The plan required in sub-
2 section (a) shall include a vulnerability assessment
3 of each port of entry located on the northern border
4 or the southern border.

5 (2) PORT SECURITY COORDINATORS.—The Sec-
6 retary may establish 1 or more port security coordi-
7 nators at each port of entry located on the northern
8 border or the southern border—

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

11 (B) to provide other assistance with the
12 preparation of the plan required in subsection

13 (a).

14 **SEC. 735. EXPANSION OF COMMERCE SECURITY PRO-**
15 **GRAMS.**

16 (a) CUSTOMS-TRADE PARTNERSHIP AGAINST TER-
17 RORISM.—

18 (1) IN GENERAL.—Not later than 180 days
19 after the date of enactment of this Act, the Commis-
20 sioner, in consultation with the Secretary, shall de-
21 velop a plan to expand the size and scope, including
22 personnel, of the Customs–Trade Partnership
23 Against Terrorism programs along the northern bor-
24 der and southern border, including—

1 (A) the Business Anti-Smuggling Coali-
2 tion;

3 (B) the Carrier Initiative Program;

4 (C) the Americas Counter Smuggling Ini-
5 tiative;

6 (D) the Container Security Initiative;

7 (E) the Free and Secure Trade Initiative;

8 and

9 (F) other Industry Partnership Programs
10 administered by the Commissioner.

11 (2) SOUTHERN BORDER DEMONSTRATION PRO-
12 GRAM.—Not later than 180 days after the date of
13 enactment of this Act, the Commissioner shall imple-
14 ment, on a demonstration basis, at least 1 Customs–
15 Trade Partnership Against Terrorism program,
16 which has been successfully implemented along the
17 northern border, along the southern border.

18 (b) MAQUILADORA DEMONSTRATION PROGRAM.—
19 Not later than 180 days after the date of enactment of
20 this Act, the Commissioner shall establish a demonstration
21 program to develop a cooperative trade security system to
22 improve supply chain security.

1 **SEC. 736. PORT OF ENTRY TECHNOLOGY DEMONSTRATION**
2 **PROGRAM.**

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

5 (1) test and evaluate new port of entry tech-
6 nologies;

7 (2) refine port of entry technologies and oper-
8 ational concepts; and

9 (3) train personnel under realistic conditions.

10 (b) TECHNOLOGY AND FACILITIES.—

11 (1) TECHNOLOGY TESTING.—Under the tech-
12 nology demonstration program, the Secretary shall
13 test technologies that enhance port of entry oper-
14 ations, including operations related to—

15 (A) inspections;

16 (B) communications;

17 (C) port tracking;

18 (D) identification of persons and cargo;

19 (E) sensory devices;

20 (F) personal detection;

21 (G) decision support; and

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

24 (2) DEVELOPMENT OF FACILITIES.—At a dem-
25 onstration site selected pursuant to subsection
26 (c)(2), the Secretary shall develop facilities to pro-

1 vide appropriate training to law enforcement per-
2 sonnel who have responsibility for border security,
3 including—

4 (A) cross-training among agencies;

5 (B) advanced law enforcement training;

6 and

7 (C) equipment orientation.

8 (c) DEMONSTRATION SITES.—

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

12 (2) SELECTION CRITERIA.—To ensure that at
13 least 1 of the facilities selected as a port of entry
14 demonstration site for the demonstration program
15 has the most up-to-date design, contains sufficient
16 space to conduct the demonstration program, has a
17 traffic volume low enough to easily incorporate new
18 technologies without interrupting normal processing
19 activity, and can efficiently carry out demonstration
20 and port of entry operations, at least 1 port of entry
21 selected as a demonstration site shall—

22 (A) have been established not more than

23 15 years before the date of the enactment of
24 this Act;

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

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

8 (d) RELATIONSHIP WITH OTHER AGENCIES.—The
9 Secretary shall permit personnel from an appropriate Fed-
10 eral or State agency to utilize a demonstration site de-
11 scribed in subsection (c) to test technologies that enhance
12 port of entry operations, including technologies described
13 in subparagraphs (A) through (H) of subsection (b)(1).

14 (e) REPORT.—

15 (1) REQUIREMENT.—Not later than 1 year
16 after the date of the enactment of this Act, and an-
17 nually thereafter, the Secretary shall submit to Con-
18 gress a report on the activities carried out at each
19 demonstration site under the technology demonstra-
20 tion program established under this section.

21 (2) CONTENT.—The report submitted under
22 paragraph (1) shall include an assessment by the
23 Secretary of the feasibility of incorporating any dem-
24 onstrated technology for use throughout the Bureau
25 of Customs and Border Protection.

1 **SEC. 737. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—In addition to any funds other-
3 wise available, there are authorized to be appropriated—

4 (1) such sums as may be necessary for the fis-
5 cal years 2007 through 2011 to carry out the provi-
6 sions of section 733(a);

7 (2) to carry out section 733(d)—

8 (A) \$100,000,000 for each of the fiscal
9 years 2007 through 2011; and

10 (B) such sums as may be necessary in any
11 succeeding fiscal year;

12 (3) to carry out section 735(a)—

13 (A) \$30,000,000 for fiscal year 2007, of
14 which \$5,000,000 shall be made available to
15 fund the demonstration project established in
16 section 736(a)(2); and

17 (B) such sums as may be necessary for the
18 fiscal years 2008 through 2011; and

19 (4) to carry out section 735(b)—

20 (A) \$5,000,000 for fiscal year 2007; and

21 (B) such sums as may be necessary for the
22 fiscal years 2008 through 2011; and

23 (5) to carry out section 736, provided that not
24 more than \$10,000,000 may be expended for tech-
25 nology demonstration program activities at any 1
26 port of entry demonstration site in any fiscal year—

1 (A) \$50,000,000 for fiscal year 2007; and
2 (B) such sums as may be necessary for
3 each of the fiscal years 2008 through 2011.

4 (b) INTERNATIONAL AGREEMENTS.—Amounts au-
5 thorized to be appropriated under this subtitle may be
6 used for the implementation of projects described in the
7 Declaration on Embracing Technology and Cooperation to
8 Promote the Secure and Efficient Flow of People and
9 Commerce across our Shared Border between the United
10 States and Mexico, agreed to March 22, 2002, Monterrey,
11 Mexico (commonly known as the Border Partnership Ac-
12 tion Plan) or the Smart Border Declaration between the
13 United States and Canada, agreed to December 12, 2001,
14 Ottawa, Canada that are consistent with the provisions of
15 this subtitle.

16 **Subtitle E—Family Humanitarian** 17 **Relief**

18 **SEC. 741. SHORT TITLE.**

19 This subtitle may be cited as the “September 11
20 Family Humanitarian Relief and Patriotism Act”.

21 **SEC. 742. ADJUSTMENT OF STATUS FOR CERTAIN NON-** 22 **IMMIGRANT VICTIMS OF TERRORISM.**

23 (a) ADJUSTMENT OF STATUS.—

24 (1) IN GENERAL.—The status of any alien de-
25 scribed in subsection (b) shall be adjusted by the

1 Secretary to that of an alien lawfully admitted for
2 permanent residence, if the alien—

3 (A) applies for such adjustment not later
4 than 2 years after the date on which the Sec-
5 retary promulgates final regulations to imple-
6 ment this section; and

7 (B) is otherwise admissible to the United
8 States for permanent residence, except in deter-
9 mining such admissibility the grounds for inad-
10 missibility specified in paragraphs (4), (5),
11 (6)(A), (7)(A), and (9)(B) of section 212(a) of
12 the Immigration and Nationality Act (8 U.S.C.
13 1182(a)) shall not apply.

14 (2) RULES IN APPLYING CERTAIN PROVI-
15 SIONS.—

16 (A) IN GENERAL.—In the case of an alien
17 described in subsection (b) who is applying for
18 adjustment of status under this section—

19 (i) the provisions of section 241(a)(5)
20 of the Immigration and Nationality Act (8
21 U.S.C. 1231(a)(5)) shall not apply; and

22 (ii) the Secretary may grant the alien
23 a waiver on the grounds of inadmissibility
24 under subparagraphs (A) and (C) of sec-

1 tion 212(a)(9) of such Act (8 U.S.C.
2 1182(a)(9)).

3 (B) STANDARDS.—In granting waivers
4 under subparagraph (A)(ii), the Secretary shall
5 use standards used in granting consent under
6 subparagraphs (A)(iii) and (C)(ii) of such sec-
7 tion 212(a)(9).

8 (3) RELATIONSHIP OF APPLICATION TO CER-
9 TAIN ORDERS.—

10 (A) APPLICATION PERMITTED.—An alien
11 present in the United States who has been or-
12 dered excluded, deported, removed, or ordered
13 to depart voluntarily from the United States
14 under any provision of the Immigration and
15 Nationality Act (8 U.S.C. 1101 et seq.) may,
16 notwithstanding such order, apply for adjust-
17 ment of status under paragraph (1).

18 (B) MOTION NOT REQUIRED.—An alien
19 described in subparagraph (A) may not be re-
20 quired, as a condition of submitting or granting
21 such application, to file a separate motion to re-
22 open, reconsider, or vacate such order.

23 (C) EFFECT OF DECISION.—If the Sec-
24 retary grants a request under subparagraph
25 (A), the Secretary shall cancel the order. If the

1 Secretary renders a final administrative deci-
2 sion to deny the request, the order shall be ef-
3 fective and enforceable to the same extent as if
4 the application had not been made.

5 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
6 TUS.—The benefits provided by subsection (a) shall apply
7 to any alien who—

8 (1) was lawfully present in the United States as
9 a nonimmigrant alien described in section
10 101(a)(15) of the Immigration and Nationality Act
11 (8 U.S.C. 1101(a)(15)) on September 10, 2001;

12 (2) was, on such date, the spouse, child, de-
13 pendent son, or dependent daughter of an alien
14 who—

15 (A) was lawfully present in the United
16 States as a nonimmigrant alien described in
17 section 101(a)(15) of the Immigration and Na-
18 tionality Act (8 U.S.C. 1101(a)(15)) on such
19 date; and

20 (B) died as a direct result of a specified
21 terrorist activity; and

22 (3) was deemed to be a beneficiary of, and by,
23 the September 11th Victim Compensation Fund of
24 2001 (49 U.S.C. 40101 note).

25 (c) STAY OF REMOVAL; WORK AUTHORIZATION.—

1 (1) IN GENERAL.—The Secretary shall estab-
2 lish, by regulation, a process by which an alien sub-
3 ject to a final order of removal may seek a stay of
4 such order based on the filing of an application
5 under subsection (a).

6 (2) DURING CERTAIN PROCEEDINGS.—Notwith-
7 standing any provision of the Immigration and Na-
8 tionality Act (8 U.S.C. 1101 et seq.), the Secretary
9 shall not order any alien to be removed from the
10 United States, if the alien is in removal proceedings
11 under any provision of such Act and has applied for
12 adjustment of status under subsection (a), except
13 where the Secretary has rendered a final administra-
14 tive determination to deny the application.

15 (3) WORK AUTHORIZATION.—The Secretary
16 shall authorize an alien who has applied for adjust-
17 ment of status under subsection (a) to engage in
18 employment in the United States during the pend-
19 ency of such application.

20 (d) AVAILABILITY OF ADMINISTRATIVE REVIEW.—
21 The Secretary shall provide to applicants for adjustment
22 of status under subsection (a) the same right to, and pro-
23 cedures for, administrative review as are provided to—

1 (1) applicants for adjustment of status under
2 section 245 of the Immigration and Nationality Act
3 (8 U.S.C. 1255); or

4 (2) aliens subject to removal proceedings under
5 section 240 of such Act (8 U.S.C. 1229a).

6 **SEC. 743. CANCELLATION OF REMOVAL FOR CERTAIN IMMI-**
7 **GRANT VICTIMS OF TERRORISM.**

8 (a) **IN GENERAL.**—Subject to the provisions of the
9 Immigration and Nationality Act (8 U.S.C. 1101 et seq.),
10 other than subsections (b)(1), (d)(1), and (e) of section
11 240A of such Act (8 U.S.C. 1229b), the Secretary shall,
12 under such section 240A, cancel the removal of, and ad-
13 just to the status of an alien lawfully admitted for perma-
14 nent residence, an alien described in subsection (b), if the
15 alien applies for such relief.

16 (b) **ALIENS ELIGIBLE FOR CANCELLATION OF RE-**
17 **MOVAL.**—The benefits provided by subsection (a) shall
18 apply to any alien who—

19 (1) was, on September 10, 2001, the spouse,
20 child, dependent son, or dependent daughter of an
21 alien who died as a direct result of a specified ter-
22 rorist activity; and

23 (2) was deemed to be a beneficiary of, and by,
24 the September 11th Victim Compensation Fund of
25 2001 (49 U.S.C. 40101 note).

1 (c) STAY OF REMOVAL; WORK AUTHORIZATION.—

2 (1) IN GENERAL.—The Secretary shall provide
3 by regulation for an alien subject to a final order of
4 removal to seek a stay of such order based on the
5 filing of an application under subsection (a).

6 (2) WORK AUTHORIZATION.—The Secretary
7 shall authorize an alien who has applied for cancella-
8 tion of removal under subsection (a) to engage in
9 employment in the United States during the pend-
10 ency of such application.

11 (d) MOTIONS TO REOPEN REMOVAL PRO-
12 CEEDINGS.—

13 (1) IN GENERAL.—Notwithstanding any limita-
14 tion imposed by law on motions to reopen removal
15 proceedings (except limitations premised on an
16 alien's conviction of an aggravated felony (as defined
17 in section 101(a)(43) of the Immigration and Na-
18 tionality Act (8 U.S.C. 1101(a)(43))), any alien who
19 has become eligible for cancellation of removal as a
20 result of the enactment of this section may file 1
21 motion to reopen removal proceedings to apply for
22 such relief.

23 (2) FILING PERIOD.—The Secretary shall des-
24 ignate a specific time period in which all such mo-
25 tions to reopen are required to be filed. The period

1 shall begin not later than 60 days after the date of
2 enactment of this Act and shall extend for a period
3 not to exceed 240 days.

4 **SEC. 744. EXCEPTIONS.**

5 Notwithstanding any other provision of this subtitle,
6 an alien may not be provided relief under this subtitle if
7 the alien is—

8 (1) inadmissible under paragraph (2) or (3) of
9 section 212(a) of the Immigration and Nationality
10 Act (8 U.S.C. 1182(a)), or deportable under para-
11 graph (2) or (4) of section 237(a) of such Act (8
12 U.S.C. 1227(a)), including any individual culpable
13 for a specified terrorist activity; or

14 (2) a family member of an alien described in
15 paragraph (1).

16 **SEC. 745. EVIDENCE OF DEATH.**

17 For purposes of this subtitle, the Secretary shall use
18 the standards established under section 426 of the Uniting
19 and Strengthening America by Providing Appropriate
20 Tools Required to Intercept and Obstruct Terrorism (USA
21 PATRIOT ACT) Act of 2001 (115 Stat. 362) in deter-
22 mining whether death occurred as a direct result of a spec-
23 ified terrorist activity.

1 **SEC. 746. DEFINITIONS.**

2 (a) APPLICATION OF IMMIGRATION AND NATION-
 3 ALITY ACT PROVISIONS.—Except as otherwise specifically
 4 provided in this subtitle, the definitions used in the Immi-
 5 gration and Nationality Act (8 U.S.C. 1101 et seq.), other
 6 than the definitions applicable exclusively to title III of
 7 such Act, shall apply in the administration of this subtitle.

8 (b) SPECIFIED TERRORIST ACTIVITY.—For purposes
 9 of this subtitle, the term “specified terrorist activity”
 10 means any terrorist activity conducted against the Govern-
 11 ment or the people of the United States on September 11,
 12 2001.

13 **Subtitle F—Other Matters**

14 **SEC. 751. NONCITIZEN MEMBERSHIP IN THE ARMED**
 15 **FORCES.**

16 Section 329 of the Immigration and Nationality Act
 17 (8 U.S.C. 1440) is amended—

18 (1) in subsection (b), by striking “subsection
 19 (a)” and inserting “subsection (a) and (d)”; and

20 (2) by adding at the end the following:

21 “(d) Notwithstanding any other provision of law, ex-
 22 cept for provisions relating to revocation of citizenship
 23 under subsection (c), individuals who are not United
 24 States citizens shall not be denied the opportunity to apply
 25 for membership in the United States Armed Forces. Such
 26 individuals who become active duty members of the United

1 States Armed Forces shall, consistent with subsections (a)
2 through (e) and with the approval of their chain of com-
3 mand, be granted United States citizenship after per-
4 forming at least 2 years of honorable and satisfactory
5 service on active duty. Not later than 90 days after such
6 requirements are met with respect to an individual, such
7 individual shall be granted United States citizenship.

8 “(e) An alien described in subsection (d) shall be nat-
9 uralized without regard to the requirements of title III of
10 the Immigration and Nationality Act (8 U.S.C. 1401 et
11 seq.) and any other requirements, processes, or procedures
12 of the Immigration and Naturalization Service, if the
13 alien—

14 “(1) filed an application for naturalization in
15 accordance with such procedures to carry out this
16 section as may be established by regulation by the
17 Secretary of Homeland Security or the Secretary of
18 Defense;

19 “(2) demonstrates to his or her military chain
20 of command, proficiency in the English language,
21 good moral character, and knowledge of the Federal
22 Government and United States history, consistent
23 with the requirements contained in the Immigration
24 and Nationality Act; and

1 “(3) takes the oath required under section 337
2 of such Act (8 U.S.C. 1448 et seq.) and participates
3 in an oath administration ceremony in accordance
4 with such Act.”.

5 **SEC. 752. NONIMMIGRANT ALIEN STATUS FOR CERTAIN**
6 **ATHLETES.**

7 (a) IN GENERAL.—Section 214(c)(4)(A) (8 U.S.C.
8 1184(c)(4)(A)) is amended by striking clauses (i) and (ii)
9 and inserting the following:

10 “(i)(I) performs as an athlete, individually or as
11 part of a group or team, at an internationally recog-
12 nized level of performance,

13 “(II) is a professional athlete, as defined in sec-
14 tion 204(i)(2),

15 “(III) performs as an athlete, or as a coach, as
16 part of a team or franchise that is located in the
17 United States and a member of a foreign league or
18 association of 15 or more amateur sports teams, if—

19 “(aa) the foreign league or association is
20 the highest level of amateur performance of
21 that sport in the relevant foreign country,

22 “(bb) participation in such league or asso-
23 ciation renders players ineligible, whether on a
24 temporary or permanent basis, to earn a schol-
25 arship in, or participate in, that sport at a col-

1 lege or university in the United States under
2 the rules of the National Collegiate Athletic As-
3 sociation (NCAA), and

4 “(cc) a significant number of the individ-
5 uals who play in such league or association are
6 drafted by a major sports league or a minor
7 league affiliate of such a sports league, or

8 “(IV) is a professional athlete or amateur ath-
9 lete who performs individually or as part of a group
10 in a theatrical ice skating production, and

11 “(ii) seeks to enter the United States tempo-
12 rarily and solely for the purpose of performing—

13 “(I) as such an athlete with respect to a
14 specific athletic competition, or

15 “(II) in the case of an individual described
16 in clause (i)(IV), in a specific theatrical ice
17 skating production or tour.”.

18 (b) ADVISORY OPINIONS.—Section 214(c) (8 U.S.C.
19 1184(c)) is amended—

20 (1) in paragraph (4)(D), by inserting “(other
21 than with respect to aliens seeking entry under sub-
22 clause (II), (III), or (IV) of subparagraph (A)(i) of
23 this paragraph),” after “101(a)(15)(P)”; and

24 (2) in paragraph (6)(A)(iii), by inserting
25 “(other than with respect to aliens seeking entry

1 under subclause (II), (III), or (IV) of paragraph
2 (4)(A)(i))” after “101(a)(15)(P)(i)”.

3 (c) PETITIONS FOR MULTIPLE ALIENS.—Section
4 214(c)(4) (8 U.S.C. 1184(c)(4)) is amended by adding at
5 the end the following new paragraph:

6 “(F) The Secretary of Homeland Security shall per-
7 mit a petition under this subsection to seek classification
8 of more than one alien as a nonimmigrant under section
9 101(a)(15)(P)(i)(a). The fee charged for such a petition
10 may not be more than the fee charged for a petition seek-
11 ing classification of one such alien.”.

12 (d) RELATIONSHIP TO OTHER PROVISIONS OF THE
13 IMMIGRATION AND NATIONALITY ACT.—Section
14 214(c)(4) (8 U.S.C. 1184(c)(4)), as amended by sub-
15 section (c), is further amended by adding at the end the
16 following new paragraph:

17 “(G) Notwithstanding any other provision of this
18 title, the Secretary of Homeland Security shall permit an
19 athlete, or the employer of an athlete, to seek admission
20 to the United States for such athlete under a provision
21 of this Act other than section 101(a)(15)(P)(i).”.

22 **SEC. 753. EXTENSION OF RETURNING WORKER EXEMPTION.**

23 Section 402(b)(1) of the Save Our Small and Sea-
24 sonal Businesses Act of 2005 (title IV of division B of

1 Public Law 109–13; 8 U.S.C. 1184 note) is amended by
2 striking “2006” and inserting “2009”.

3 **SEC. 754. SURVEILLANCE TECHNOLOGIES PROGRAMS.**

4 (a) AERIAL SURVEILLANCE PROGRAM.—

5 (1) IN GENERAL.—In conjunction with the bor-
6 der surveillance plan developed under section 5201
7 of the Intelligence Reform and Terrorism Prevention
8 Act of 2004 (Public Law 108–458; 8 U.S.C. 1701
9 note), the Secretary, not later than 90 days after the
10 date of enactment of this Act, shall develop and im-
11 plement a program to fully integrate and utilize aer-
12 ial surveillance technologies, including unmanned
13 aerial vehicles, to enhance the security of the inter-
14 national border between the United States and Can-
15 ada and the international border between the United
16 States and Mexico. The goal of the program shall be
17 to ensure continuous monitoring of each mile of each
18 such border.

19 (2) ASSESSMENT AND CONSULTATION REQUIRE-
20 MENTS.—In developing the program under this sub-
21 section, the Secretary shall—

22 (A) consider current and proposed aerial
23 surveillance technologies;

24 (B) assess the feasibility and advisability
25 of utilizing such technologies to address border

1 threats, including an assessment of the tech-
2 nologies considered best suited to address re-
3 spective threats;

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

8 (D) consult with the Administrator of the
9 Federal Aviation Administration regarding safe-
10 ty, airspace coordination and regulation, and
11 any other issues necessary for implementation
12 of the program.

13 (3) ADDITIONAL REQUIREMENTS.—

14 (A) IN GENERAL.—The program developed
15 under this subsection shall include the use of a
16 variety of aerial surveillance technologies in a
17 variety of topographies and areas, including
18 populated and unpopulated areas located on or
19 near an international border of the United
20 States, in order to evaluate, for a range of cir-
21 cumstances—

22 (i) the significance of previous experi-
23 ences with such technologies in border se-
24 curity or critical infrastructure protection;

1 (ii) the cost and effectiveness of var-
2 ious technologies for border security, in-
3 cluding varying levels of technical com-
4 plexity; and

5 (iii) liability, safety, and privacy con-
6 cerns relating to the utilization of such
7 technologies for border security.

8 (4) CONTINUED USE OF AERIAL SURVEILLANCE
9 TECHNOLOGIES.—The Secretary may continue the
10 operation of aerial surveillance technologies while as-
11 sessing the effectiveness of the utilization of such
12 technologies.

13 (5) REPORT TO CONGRESS.—Not later than
14 180 days after implementing the program under this
15 subsection, the Secretary shall submit a report to
16 Congress regarding the program developed under
17 this subsection. The Secretary shall include in the
18 report a description of the program together with
19 such recommendations as the Secretary finds appro-
20 priate for enhancing the program.

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

24 (b) INTEGRATED AND AUTOMATED SURVEILLANCE
25 PROGRAM.—

1 (1) REQUIREMENT FOR PROGRAM.—Subject to
2 the availability of appropriations, the Secretary shall
3 establish a program to procure additional unmanned
4 aerial vehicles, cameras, poles, sensors, satellites,
5 radar coverage, and other technologies necessary to
6 achieve operational control of the international bor-
7 ders of the United States and to establish a security
8 perimeter known as a “virtual fence” along such
9 international borders to provide a barrier to illegal
10 immigration. Such program shall be known as the
11 Integrated and Automated Surveillance Program.

12 (2) PROGRAM COMPONENTS.—The Secretary
13 shall ensure, to the maximum extent feasible, the In-
14 tegrated and Automated Surveillance Program is
15 carried out in a manner that—

16 (A) the technologies utilized in the Pro-
17 gram are integrated and function cohesively in
18 an automated fashion, including the integration
19 of motion sensor alerts and cameras, whereby a
20 sensor alert automatically activates a cor-
21 responding camera to pan and tilt in the direc-
22 tion of the triggered sensor;

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

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

3 (D) surveillance video taken by such cam-
4 eras can be viewed at multiple designated com-
5 munications centers;

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

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

12 (G) performance measures are developed
13 and applied that can evaluate whether the Pro-
14 gram is providing desired results and increasing
15 response effectiveness in monitoring and detect-
16 ing illegal intrusions along the international
17 borders of the United States;

18 (H) plans are developed under the Pro-
19 gram to streamline site selection, site valida-
20 tion, and environmental assessment processes to
21 minimize delays of installing surveillance tech-
22 nology infrastructure;

23 (I) standards are developed under the Pro-
24 gram to expand the shared use of existing pri-
25 vate and governmental structures to install re-

1 mote surveillance technology infrastructure
2 where possible; and

3 (J) standards are developed under the Pro-
4 gram to identify and deploy the use of non-
5 permanent or mobile surveillance platforms that
6 will increase the Secretary's mobility and ability
7 to identify illegal border intrusions.

8 (3) REPORT TO CONGRESS.—Not later than 1
9 year after the initial implementation of the Inte-
10 grated and Automated Surveillance Program, the
11 Secretary shall submit to Congress a report regard-
12 ing the Program. The Secretary shall include in the
13 report a description of the Program together with
14 any recommendation that the Secretary finds appro-
15 priate for enhancing the program.

16 (4) EVALUATION OF CONTRACTORS.—

17 (A) REQUIREMENT FOR STANDARDS.—The
18 Secretary shall develop appropriate standards
19 to evaluate the performance of any contractor
20 providing goods or services to carry out the In-
21 tegrated and Automated Surveillance Program.

22 (B) REVIEW BY THE INSPECTOR GEN-
23 ERAL.—The Inspector General of the Depart-
24 ment shall timely review each new contract re-
25 lated to the Program that has a value of more

1 than \$5,000,000, to determine whether such
2 contract fully complies with applicable cost re-
3 quirements, performance objectives, program
4 milestones, and schedules. The Inspector Gen-
5 eral shall report the findings of such review to
6 the Secretary in a timely manner. Not later
7 than 30 days after the date the Secretary re-
8 ceives a report of findings from the Inspector
9 General, the Secretary shall submit to the Com-
10 mittee on Homeland Security and Govern-
11 mental Affairs of the Senate and the Committee
12 on Homeland Security of the House of Rep-
13 resentatives a report of such findings and a de-
14 scription of any the steps that the Secretary
15 has taken or plans to take in response to such
16 findings.

17 (5) AUTHORIZATION OF APPROPRIATIONS.—

18 There are authorized to be appropriated such sums
19 as may be necessary to carry out this subsection.

20 **SEC. 755. COMPREHENSIVE IMMIGRATION EFFICIENCY RE-**
21 **VIEW.**

22 (a) REVIEW.—The Secretary, in consultation with the
23 Secretary of State, shall conduct a comprehensive review
24 of the immigration procedures in existence as of the date
25 of the enactment of this Act.

1 (b) REPORT.—Not later than 90 days after the date
2 of the enactment of this Act, the Secretary shall submit
3 to Congress a report, in classified form, if necessary,
4 that—

5 (1) identifies inefficient immigration proce-
6 dures; and

7 (2) outlines a plan to improve the efficiency and
8 responsiveness of the immigration process.

9 **SEC. 756. NORTHERN BORDER PROSECUTION INITIATIVE.**

10 (a) INITIATIVE REQUIRED.—

11 (1) IN GENERAL.—From amounts made avail-
12 able to carry out this section, the Attorney General,
13 acting through the Director of the Bureau of Justice
14 Assistance of the Office of Justice Programs, shall
15 establish and carry out a program, to be known as
16 the Northern Border Prosecution Initiative, to pro-
17 vide funds to reimburse eligible northern border en-
18 tities for costs incurred by those entities for han-
19 dling case dispositions of criminal cases that are fed-
20 erally initiated but federally declined-referred.

21 (2) RELATION WITH SOUTHWESTERN BORDER
22 PROSECUTION INITIATIVE.—The program estab-
23 lished in paragraph (1) shall—

24 (A) be modeled after the Southwestern
25 Border Prosecution Initiative; and

1 (B) serve as a partner program to that ini-
2 tiative to reimburse local jurisdictions for proc-
3 essing Federal cases.

4 (b) PROVISION AND ALLOCATION OF FUNDS.—
5 Funds provided under the program established in sub-
6 section (a) shall be—

7 (1) provided in the form of direct reimburse-
8 ments; and

9 (2) allocated in a manner consistent with the
10 manner under which funds are allocated under the
11 Southwestern Border Prosecution Initiative.

12 (c) USE OF FUNDS.—Funds provided to an eligible
13 northern border entity under this section may be used by
14 the entity for any lawful purpose, including:

15 (1) Prosecution and related costs.

16 (2) Court costs.

17 (3) Costs of courtroom technology.

18 (4) Costs of constructing holding spaces.

19 (5) Costs of administrative staff.

20 (6) Costs of defense counsel for indigent de-
21 fendants.

22 (7) Detention costs, including pre-trial and
23 post-trial detention.

24 (d) DEFINITIONS.—In this section:

1 (1) CASE DISPOSITION.—The term “case dis-
2 position”—

3 (A) for purposes of the Northern Border
4 Prosecution Initiative, refers to the time be-
5 tween the arrest of a suspect and the resolution
6 of the criminal charges through a county or
7 State judicial or prosecutorial process; and

8 (B) does not include incarceration time for
9 sentenced offenders, or time spent by prosecu-
10 tors on judicial appeals.

11 (2) ELIGIBLE NORTHERN BORDER ENTITY.—
12 The term “eligible northern border entity” means—

13 (A) the States of Alaska, Idaho, Maine,
14 Michigan, Minnesota, Montana, New Hamp-
15 shire, New York, North Dakota, Ohio, Pennsyl-
16 vania, Vermont, Washington, and Wisconsin; or

17 (B) any unit of local government within a
18 State referred to in subparagraph (A).

19 (3) FEDERALLY DECLINED-REFERRED.—The
20 term “federally declined-referred”—

21 (A) means, with respect to a criminal case,
22 that a decision has been made in that case by
23 a United States Attorney or a Federal law en-
24 forcement agency during a Federal investiga-
25 tion to no longer pursue Federal criminal

1 charges against a defendant and to refer such
2 investigation to a State or local jurisdiction for
3 possible prosecution; and

4 (B) includes a decision made on an individ-
5 ualized case-by-case basis as well as a decision
6 made pursuant to a general policy or practice
7 or pursuant to prosecutorial discretion.

8 (4) **FEDERALLY INITIATED.**—The term “feder-
9 ally initiated” means, with respect to a criminal
10 case, that the case results from a criminal investiga-
11 tion or an arrest involving Federal law enforcement
12 authorities for a potential violation of Federal crimi-
13 nal law, including investigations resulting from
14 multi-jurisdictional task forces.

15 (e) **AUTHORIZATION OF APPROPRIATIONS.**—There
16 are authorized to be appropriated to carry out this section
17 \$28,000,000 for fiscal year 2006 and such sums as may
18 be necessary for fiscal years thereafter.

19 **SEC. 757. SOUTHWEST BORDER PROSECUTION INITIATIVE.**

20 (a) **REIMBURSEMENT TO STATE AND LOCAL PROS-**
21 **ECUTORS FOR PROSECUTING FEDERALLY INITIATED**
22 **DRUG CASES.**—The Attorney General shall, subject to the
23 availability of appropriations, reimburse Southern Border
24 State and county prosecutors for prosecuting federally ini-
25 tiated and referred drug cases.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated \$50,000,000 for each
3 of the fiscal years 2007 through 2012 to carry out sub-
4 section (a).

5 **SEC. 758. GRANT PROGRAM TO ASSIST ELIGIBLE APPLI-**
6 **CANTS.**

7 (a) SHORT TITLE.—This section may be cited as the
8 “Initial Entry, Adjustment, and Citizenship Assistance
9 Grant Act of 2006”.

10 (b) PURPOSE.—The purpose of this section is to es-
11 tablish a grant program within the Bureau of Citizenship
12 and Immigration Services that provides funding to com-
13 munity-based organizations, including community-based
14 legal service organizations, as appropriate, to develop and
15 implement programs to assist eligible applicants for the
16 conditional nonimmigrant worker program established
17 under this Act by providing them with the services de-
18 scribed in subsection (d)(2).

19 (c) DEFINITIONS.—In this section:

20 (1) COMMUNITY-BASED ORGANIZATION.—The
21 term “community-based organization” means a non-
22 profit, tax-exempt organization, including a faith-
23 based organization, whose staff has experience and
24 expertise in meeting the legal, social, educational,
25 cultural educational, or cultural needs of immi-

1 grants, refugees, persons granted asylum, or persons
2 applying for such statuses.

3 (2) IEACA GRANT.—The term “IEACA grant”
4 means an Initial Entry, Adjustment, and Citizenship
5 Assistance Grant authorized under subsection (d).

6 (d) ESTABLISHMENT OF INITIAL ENTRY, ADJUST-
7 MENT, AND CITIZENSHIP ASSISTANCE GRANT PRO-
8 GRAM.—

9 (1) GRANTS AUTHORIZED.—The Secretary,
10 working through the Director of the Bureau of Citi-
11 zenship and Immigration Services, may award
12 IEACA grants to community-based organizations.

13 (2) USE OF FUNDS.—Grants awarded under
14 this section may be used for the design and imple-
15 mentation of programs to provide the following serv-
16 ices:

17 (A) INITIAL APPLICATION.—Assistance
18 and instruction, including legal assistance, to
19 aliens making initial application for treatment
20 under the program established by section 218D
21 of the Immigration and Nationality Act, as
22 added by section 601. Such assistance may in-
23 clude assisting applicants in—

1 (i) screening to assess prospective ap-
2 plicants' potential eligibility or lack of eli-
3 gibility;

4 (ii) filling out applications;

5 (iii) gathering proof of identification,
6 employment, residence, and tax payment;

7 (iv) gathering proof of relationships of
8 eligible family members;

9 (v) applying for any waivers for which
10 applicants and qualifying family members
11 may be eligible; and

12 (vi) any other assistance that the Sec-
13 retary or grantee considers useful to aliens
14 who are interested in filing applications for
15 treatment under such section 218D.

16 (B) ADJUSTMENT OF STATUS.—Assistance
17 and instruction, including legal assistance, to
18 aliens seeking to adjust their status in accord-
19 ance with section 245 or 245B of the Immigra-
20 tion and Nationality Act.

21 (C) CITIZENSHIP.—Assistance and instruc-
22 tion to applicants on—

23 (i) the rights and responsibilities of
24 United States Citizenship;

25 (ii) English as a second language;

1 (iii) civics; or

2 (iv) applying for United States citi-
3 zenship.

4 (3) DURATION AND RENEWAL.—

5 (A) DURATION.—Each grant awarded
6 under this section shall be awarded for a period
7 of not more than 3 years.

8 (B) RENEWAL.—The Secretary may renew
9 any grant awarded under this section in 1-year
10 increments.

11 (4) APPLICATION FOR GRANTS.—Each entity
12 desiring an IEACA grant under this section shall
13 submit an application to the Secretary at such time,
14 in such manner, and accompanied by such informa-
15 tion as the Secretary may require.

16 (5) ELIGIBLE ORGANIZATIONS.—A community-
17 based organization applying for a grant under this
18 section to provide services described in subparagraph
19 (A), (B), or (C)(iv) of paragraph (2) may not receive
20 such a grant unless the organization is—

21 (A) recognized by the Board of Immigra-
22 tion Appeals under section 292.2 of title 8,
23 Code of Federal Regulations; or

24 (B) otherwise directed by an attorney.

1 (6) SELECTION OF GRANTEES.—Grants award-
2 ed under this section shall be awarded on a competi-
3 tive basis.

4 (7) GEOGRAPHIC DISTRIBUTION OF GRANTS.—
5 The Secretary shall approve applications under this
6 section in a manner that ensures, to greatest extent
7 practicable, that—

8 (A) not less than 50 percent of the funding
9 for grants under this section are awarded to
10 programs located in the 10 States with the
11 highest percentage of foreign-born residents;
12 and

13 (B) not less than 20 percent of the funding
14 for grants under this section are awarded to
15 programs located in States that are not de-
16 scribed in subparagraph (A).

17 (8) ETHNIC DIVERSITY.—The Secretary shall
18 ensure that community-based organizations receiving
19 grants under this section provide services to an eth-
20 nically diverse population, to the greatest extent pos-
21 sible.

22 (e) LIAISON BETWEEN USCIS AND GRANTEES.—
23 The Secretary shall establish a liaison between the Bureau
24 of Citizenship and Immigration Services and the commu-
25 nity of providers of services under this section to assure

1 quality control, efficiency, and greater client willingness
2 to come forward.

3 (f) REPORTS TO CONGRESS.—Not later than 180
4 days after the date of the enactment of this Act, and each
5 subsequent July 1, the Secretary shall submit a report to
6 Congress that includes information regarding—

7 (1) the status of the implementation of this sec-
8 tion;

9 (2) the grants issued pursuant to this section;
10 and

11 (3) the results of those grants.

12 (g) SOURCE OF GRANT FUNDS.—

13 (1) APPLICATION FEES.—The Secretary may
14 use funds made available under sections 218A(1)(2)
15 and 218D(f)(4)(B) of the Immigration and Nation-
16 ality Act, as added by this Act, to carry out this sec-
17 tion.

18 (2) AUTHORIZATION OF APPROPRIATIONS.—

19 (A) AMOUNTS AUTHORIZED.—In addition
20 to the amounts made available under paragraph
21 (1), there are authorized to be appropriated
22 such additional sums as may be necessary for
23 each of the fiscal years 2007 through 2011 to
24 carry out this section.

1 (B) AVAILABILITY.—Any amounts appro-
2 priated pursuant to subparagraph (A) shall re-
3 main available until expended.

4 (h) DISTRIBUTION OF FEES AND FINES.—

5 (1) H-2C VISA FEES.—Notwithstanding section
6 218A(1) of the Immigration and Nationality Act, as
7 added by section 403, 2 percent of the fees collected
8 under section 218A of such Act shall be made avail-
9 able for grants under the Initial Entry, Adjustment,
10 and Citizenship Assistance Grant Program estab-
11 lished under this section.

12 (2) CONDITIONAL NONIMMIGRANT VISA FEES
13 AND FINES.—Notwithstanding section 218D(f)(4) of
14 the Immigration and Nationality Act, as added by
15 section 601, 2 percent of the fees and fines collected
16 under section 218D of such Act shall be made avail-
17 able for grants under the Initial Entry, Adjustment,
18 and Citizenship Assistance Grant Program estab-
19 lished under this section.

20 **SEC. 759. SCREENING OF MUNICIPAL SOLID WASTE.**

21 (a) DEFINITIONS.—In this section:

22 (1) BUREAU.—The term “Bureau” means the
23 Bureau of Customs and Border Protection.

24 (2) COMMERCIAL MOTOR VEHICLE.—The term
25 “commercial motor vehicle” has the meaning given

1 the term in section 31101 of title 49, United States
2 Code.

3 (3) COMMISSIONER.—The term “Commis-
4 sioner” means the Commissioner of the Bureau.

5 (4) MUNICIPAL SOLID WASTE.—The term “mu-
6 nicipal solid waste” includes sludge (as defined in
7 section 1004 of the Solid Waste Disposal Act (42
8 U.S.C. 6903)).

9 (b) REPORTS TO CONGRESS.—Not later than 90 days
10 after the date of enactment of this Act, the Commissioner
11 shall submit to Congress a report that—

12 (1) indicates whether the methodologies and
13 technologies used by the Bureau to screen for and
14 detect the presence of chemical, nuclear, biological,
15 and radiological weapons in municipal solid waste
16 are as effective as the methodologies and tech-
17 nologies used by the Bureau to screen for those ma-
18 terials in other items of commerce entering the
19 United States through commercial motor vehicle
20 transport; and

21 (2) if the report indicates that the methodolo-
22 gies and technologies used to screen municipal solid
23 waste are less effective than those used to screen
24 other items of commerce, identifies the actions that
25 the Bureau will take to achieve the same level of ef-

1 fectiveness in the screening of municipal solid waste,
2 including actions necessary to meet the need for ad-
3 ditional screening technologies.

4 (c) **IMPACT ON COMMERCIAL MOTOR VEHICLES.**—If
5 the Commissioner fails to fully implement an action identi-
6 fied under subsection (b)(2) before the earlier of the date
7 that is 180 days after the date on which the report under
8 subsection (b) is required to be submitted or the date that
9 is 180 days after the date on which the report is sub-
10 mitted, the Secretary shall deny entry into the United
11 States of any commercial motor vehicle carrying municipal
12 solid waste until the Secretary certifies to Congress that
13 the methodologies and technologies used by the Bureau
14 to screen for and detect the presence of chemical, nuclear,
15 biological, and radiological weapons in municipal solid
16 waste are as effective as the methodologies and tech-
17 nologies used by the Bureau to screen for those materials
18 in other items of commerce entering into the United
19 States through commercial motor vehicle transport.

20 **SEC. 760. ACCESS TO IMMIGRATION SERVICES IN AREAS**
21 **THAT ARE NOT ACCESSIBLE BY ROAD.**

22 Notwithstanding any other provision of law, the Sec-
23 retary shall permit an employee of Customs and Border
24 Protection or Immigration and Customs Enforcement who
25 carries out the functions of Customs and Border Protec-

1 tion or Immigration and Customs Enforcement in a geo-
2 graphic area that is not accessible by road to carry out
3 any function that was performed by an employee of the
4 Immigration and Naturalization Service in such area prior
5 to the date of the enactment of the Homeland Security
6 Act of 2002 (6 U.S.C. 101 et seq.).

7 **SEC. 761. BORDER SECURITY ON CERTAIN FEDERAL LAND.**

8 (a) SUPPORT FOR BORDER SECURITY NEEDS.—

9 (1) IN GENERAL.—To gain operational control
10 over the international land borders of the United
11 States and to prevent the entry of terrorists, unlaw-
12 ful aliens, narcotics, and other contraband into the
13 United States, the Secretary, in cooperation with the
14 Secretary of the Interior, shall provide—

15 (A) increased Customs and Border Protec-
16 tion personnel to secure Federal land and units
17 of the National Park System along the inter-
18 national land borders of the United States;

19 (B) Federal land resource training for
20 Customs and Border Protection agents dedi-
21 cated to Federal land; and

22 (C) Unmanned Aerial Vehicles, aerial as-
23 sets, Remote Video Surveillance camera sys-
24 tems, and sensors on land under the jurisdic-
25 tion of the Department of the Interior that is

1 directly adjacent to the international land bor-
2 der of the United States, with priority given to
3 units of the National Park System.

4 (2) COORDINATION.—In providing training for
5 Customs and Border Protection agents under para-
6 graph (1)(B), the Secretary shall coordinate with the
7 Secretary of the Interior to ensure that the training
8 is appropriate to the mission of the National Park
9 Service or the relevant agency of the Department of
10 the Interior to minimize the adverse impact on nat-
11 ural and cultural resources from border protection
12 activities.

13 (b) INVENTORY OF COSTS AND ACTIVITIES.—The
14 Secretary of the Interior shall develop and submit to the
15 Secretary an inventory of costs incurred by the National
16 Park Service relating to illegal border activity, including
17 the cost of equipment, training, recurring maintenance,
18 construction of facilities, restoration of natural and cul-
19 tural resources, recapitalization of facilities, and oper-
20 ations.

21 (c) RECOMMENDATIONS.—The Secretary shall—

22 (1) develop joint recommendations with the Na-
23 tional Park Service for an appropriate cost recovery
24 mechanism relating to items identified in subsection

25 (b); and

1 (2) not later than March 31, 2007, submit to
2 the appropriate congressional committees (as defined
3 in section 2 of the Homeland Security Act of 2002
4 (6 U.S. C. 101)), including the Subcommittee on
5 National Parks of the Senate and the Subcommittee
6 on National Parks, Recreation and Public Lands of
7 the House of Representatives, the recommendations
8 developed under paragraph (1).

9 (d) **BORDER PROTECTION STRATEGY.**—The Sec-
10 retary and the Secretary of the Interior shall jointly de-
11 velop a border protection strategy that supports the border
12 security needs of the United States in the manner that
13 best protects—

14 (1) units of the National Park System;

15 (2) land under the jurisdiction of the United
16 States Fish and Wildlife Service; and

17 (3) other relevant land under the jurisdiction of
18 the Department of the Interior.

19 **SEC. 762. UNMANNED AERIAL VEHICLES.**

20 (a) **UNMANNED AERIAL VEHICLES AND ASSOCIATED**
21 **INFRASTRUCTURE.**—The Secretary shall acquire and
22 maintain MQ–9 unmanned aerial vehicles for use on the
23 border, including related equipment such as—

24 (1) additional sensors;

25 (2) critical spares;

1 (3) satellite command and control; and

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

4 (b) AUTHORIZATION OF APPROPRIATIONS.—

5 (1) IN GENERAL.—There are authorized to be
6 appropriated to the Secretary to carry out sub-
7 section (a)—

8 (A) \$178,400,000 for fiscal year 2007; and

9 (B) \$276,000,000 for fiscal year 2008.

10 (2) AVAILABILITY OF FUNDS.—Amounts appro-
11 priated pursuant to paragraph (1) shall remain
12 available until expended.

13 **SEC. 763. RELIEF FOR WIDOWS AND ORPHANS.**

14 (a) IN GENERAL.—

15 (1) IN GENERAL.—In applying clause (iii) of
16 section 201(b)(2)(A) of the Immigration and Na-
17 tionality Act, as added by section 504(a), to an alien
18 whose citizen relative died before the date of the en-
19 actment of this Act, the alien relative may (notwith-
20 standing the deadlines specified in such clause) file
21 the classification petition under section
22 204(a)(1)(A)(ii) of such Act not later than 2 years
23 after the date of the enactment of this Act.

24 (2) ELIGIBILITY FOR PAROLE.—If an alien was
25 excluded, deported, removed or departed voluntarily

1 before the date of the enactment of this Act based
2 solely upon the alien’s lack of classification as an
3 immediate relative (as defined by 201(b)(2)(A)(ii) of
4 the Immigration and Nationality Act) due to the
5 citizen’s death—

6 (A) such alien shall be eligible for parole
7 into the United States pursuant to the Attorney
8 General’s discretionary authority under section
9 212(d)(5) of such Act; and

10 (B) such alien’s application for adjustment
11 of status shall be considered notwithstanding
12 section 212(a)(9) of such Act.

13 (b) ADJUSTMENT OF STATUS.—Section 245 (8
14 U.S.C. 1255), as amended by section 408(h) of this Act,
15 is further amended by adding at the end the following:

16 “(o) APPLICATION FOR ADJUSTMENT OF STATUS BY
17 SURVIVING SPOUSES, PARENTS, AND CHILDREN.—

18 “(1) IN GENERAL.—Any alien described in
19 paragraph (2) who applies for adjustment of status
20 before the death of the qualifying relative, may have
21 such application adjudicated as if such death had
22 not occurred.

23 “(2) ALIEN DESCRIBED.—An alien is described
24 in this paragraph is an alien who—

1 “(A) is an immediate relative (as described
2 in section 201(b)(2)(A));

3 “(B) is a family-sponsored immigrant (as
4 described in subsection (a) or (d) of section
5 203);

6 “(C) is a derivative beneficiary of an em-
7 ployment-based immigrant under section 203(b)
8 (as described in section 203(d)); or

9 “(D) is a derivative beneficiary of a diver-
10 sity immigrant (as described in section
11 203(c)).”.

12 (c) TRANSITION PERIOD.—

13 (1) IN GENERAL.—Notwithstanding a denial of
14 an application for adjustment of status for an alien
15 whose qualifying relative died before the date of the
16 enactment of this Act, such application may be re-
17 newed by the alien through a motion to reopen,
18 without fee, if such motion is filed not later than 2
19 years after such date of enactment.

20 (2) ELIGIBILITY FOR PAROLE.—If an alien was
21 excluded, deported, removed or departed voluntarily
22 before the date of the enactment of this Act—

23 (A) such alien shall be eligible for parole
24 into the United States pursuant to the Attorney
25 General’s discretionary authority under section

1 212(d)(5) of the Immigration and Nationality
2 Act; and

3 (B) such alien’s application for adjustment
4 of status shall be considered notwithstanding
5 section 212(a)(9) of such Act.

6 (d) PROCESSING OF IMMIGRANT VISAS.—Section
7 204(b) (8 U.S.C. 1154), as amended by section 204(b)
8 of this Act, is further amended—

9 (1) by striking “After an investigation” and in-
10 serting the following:

11 “(1) IN GENERAL.—After an investigation”;
12 and

13 (2) by adding at the end the following:

14 “(2) DEATH OF QUALIFYING RELATIVE.—

15 “(A) IN GENERAL.—Any alien described in
16 paragraph (2) whose qualifying relative died be-
17 fore the completion of immigrant visa proc-
18 essing may have an immigrant visa application
19 adjudicated as if such death had not occurred.
20 An immigrant visa issued before the death of
21 the qualifying relative shall remain valid after
22 such death.

23 “(B) ALIEN DESCRIBED.—An alien is de-
24 scribed in this paragraph is an alien who—

1 “(i) is an immediate relative (as de-
2 scribed in section 201(b)(2)(A));

3 “(ii) is a family-sponsored immigrant
4 (as described in subsection (a) or (d) of
5 section 203);

6 “(iii) is a derivative beneficiary of an
7 employment-based immigrant under section
8 203(b) (as described in section 203(d)); or

9 “(iv) is a derivative beneficiary of a
10 diversity immigrant (as described in sec-
11 tion 203(c)).”.

12 (e) NATURALIZATION.—Section 319(a) (8 U.S.C.
13 1429(a)) is amended by inserting “(or, if the spouse is
14 deceased, the spouse was a citizen of the United States)”
15 after “citizen of the United States”.

16 **SEC. 764. TERRORIST ACTIVITIES.**

17 Section 212(a)(3)(B)(i) (8 U.S.C. 1182(a)(3)(B)(i))
18 is amended—

19 (1) in subclause (III), by striking “, under cir-
20 cumstances indicating an intention to cause death or
21 serious bodily harm, incited” and inserting “incited
22 or advocated”; and

23 (2) in subclause (VII), by striking “or espouses
24 terrorist activity or persuades others to endorse or
25 espouse” and inserting “espouses, or advocates ter-

1 rorist activity or persuades others to endorse,
2 espouse, or advocate”.

3 **SEC. 765. FAMILY UNITY.**

4 Section 212(a)(9) (8 U.S.C. 1182(a)(9)), as amended
5 by section 212(a) of this Act, is further amended—

6 (1) in subparagraph (C)(ii), by striking “be-
7 tween—” and all that follows and inserting the fol-
8 lowing: “between—

9 “(I) the alien having been bat-
10 tered or subjected to extreme cruelty;
11 and

12 “(II) the alien’s removal, depar-
13 ture from the United States, reentry
14 or reentries into the United States, or
15 attempted reentry into the United
16 States.”; and

17 (2) by adding at the end the following:

18 “(D) WAIVER.—

19 “(i) IN GENERAL.—The Secretary
20 may waive the application of subpara-
21 graphs (B) and (C) for an alien who is a
22 beneficiary of a petition filed under section
23 201 or 203 if such petition was filed not
24 later than the date of the enactment of the

1 Comprehensive Immigration Reform Act of
2 2006.

3 “(ii) FINE.—An alien who is granted
4 a waiver under clause (i) shall pay a
5 \$2,000 fine.”.

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