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110TH CONGRESS
1ST SESSION

# H. R. 1645

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

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IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 2007

Mr. GUTIERREZ (for himself, Mr. FLAKE, Mr. BACA, Mr. LINCOLN DIAZ-BALART of Florida, Mr. EMANUEL, Mr. RADANOVICH, Ms. JACKSON-LEE of Texas, Mr. LAHOOD, Mr. CROWLEY, Mr. MARIO DIAZ-BALART of Florida, Ms. GIFFORDS, Ms. ROS-LEHTINEN, Ms. SCHAKOWSKY, Mr. FORTUÑO, Mr. BECERRA, Mr. CARDOZA, Mr. CUELLAR, Mr. GONZALEZ, Mr. GRIJALVA, Mr. HINOJOSA, Mrs. NAPOLITANO, Mr. ORTIZ, Mr. PASTOR, Mr. REYES, Mr. RODRIGUEZ, Ms. ROYBAL-ALLARD, Mr. SALAZAR, Mr. SERRANO, Mr. SIRES, and Ms. SOLIS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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# A BILL

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

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

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

(a) SHORT TITLE.—This Act may be cited as the "Security Through Regularized Immigration and a Vi-

1 brant Economy Act of 2007'' or as the ''STRIVE Act of
2 2007''.

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

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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

of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

**SEC. 3. DEFINITIONS.**

In this Act:

(1) DEPARTMENT.—Except as otherwise provided, the term ''Department'' means the Department of Homeland Security.

(2) SECRETARY.—Except as otherwise provided, the term ''Secretary'' means the Secretary of Homeland Security.

**SEC. 4. SEVERABILITY.**

If any provision of this Act, any amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be invalid for any reason, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any other person or circumstance shall not be affected by such holding.

**SEC. 5. CERTIFICATION REQUIREMENTS PRIOR TO IMPLEMENTATION OF THE NEW WORKER PROGRAM AND THE CONDITIONAL NONIMMIGRANT CLASSIFICATION.**

Notwithstanding any other provision of this Act, the Secretary may not implement the New Worker Program established in the amendments made by title IV or grant conditional nonimmigrant classification under the amendments made by title VI prior to the date that the Secretary submits to the President and Congress a certification that the following conditions have been met:

(1) SECURE BORDER.—The Secretary has submitted to Congress a report on the status of the implementation of the border surveillance technology improvements described in the Secure Border Initiative, including target dates for the completion of such improvements.

(2) SECURE DOCUMENTS.—That the systems and infrastructure necessary to carry out the improvements to immigration document security required by this Act and the amendments made by this Act, including documents that will be issued under the New Worker Program and to aliens granted conditional nonimmigrant classification, have been developed, tested for reliability and accuracy, and are ready for use, including systems and infra-

structure necessary to permit the Director of the Federal Bureau of Investigation to conduct required background checks.

(3) FIRST PHASE IMPLEMENTATION OF THE ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—The first phase of the Electronic Employment Verification System described in section 274A of the Immigration and Nationality Act, as amended by section 301 of this Act, for critical infrastructure employers described in subsection (c)(10)(i) of such section 274A has been implemented.

# TITLE I—BORDER ENFORCEMENT

## Subtitle A—Assets for Controlling United States Borders

**SEC. 101. ENFORCEMENT PERSONNEL.**

(a) PORT OF ENTRY INSPECTORS.—

(1) ADDITIONAL INSPECTORS.—In each of the fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations, increase by not less than 500 the number of positions for full-time active duty port of entry inspectors and provide appropriate training, equipment, and support to such additional inspectors.

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

(b) BORDER PATROL AGENTS.—Section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3734) is amended to read as follows:

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

''(a) ANNUAL INCREASES.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time active-duty Border Patrol agents within the Department of Homeland Security (above the number of such positions for which funds were appropriated for the preceding fiscal year), by—

''(1) 2,000 in fiscal year 2008;

''(2) 2,400 in fiscal year 2009;

''(3) 2,400 in fiscal year 2010;

''(4) 2,400 in fiscal year 2011; and

''(5) 2,400 in fiscal year 2012.

''(b) NORTHERN BORDER.—In each of the fiscal years 2008 through 2012, in addition to the Border Patrol

agents assigned along the northern border of the United States during the previous fiscal year, the Secretary shall assign a number of Border Patrol agents equal to not less than 20 percent of the net increase in Border Patrol agents during each such fiscal year.

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

(c) INVESTIGATIVE PERSONNEL.—

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

(2) ADDITIONAL PERSONNEL.—In addition to the positions authorized under section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended by paragraph (1), during each of the fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations, increase by not less than 200 the number of positions for personnel within the Department assigned to investigate alien smuggling.

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

(d) DEPUTY UNITED STATES MARSHALS.—

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

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

(e) RECRUITMENT OF FORMER MEMBERS OF THE ARMED FORCES AND MEMBERS OF RESERVE COMPONENTS OF THE ARMED FORCES.—

(1) REQUIREMENT FOR PROGRAM.—The Secretary, in conjunction with the Secretary of Defense, shall establish a program to actively recruit covered members or former members of the Armed Forces to

serve in United States Customs and Border Protection.

(2) REPORT ON RECRUITMENT INCENTIVES.—

(A) REQUIREMENT.—Not later than 60 days after the date of enactment of this Act, the Secretary and the Secretary of Defense shall jointly submit to the appropriate committees of Congress a report assessing the desirability and feasibility of offering an incentive to a covered member or former member of the Armed Forces for the purpose of encouraging such member to serve in United States Customs and Border Protection. The Secretary and the Secretary of Defense shall assume that the cost of any such incentive shall be borne by the Secretary.

(B) CONTENT.—The report required by subparagraph (A) shall include—

(i) an assessment of the desirability and feasibility of offering any incentive, including a monetary incentive, that the Secretary and the Secretary of Defense jointly consider appropriate, regardless of whether such incentive is authorized by law or reg-

ulations on the date of enactment of this Act;

(ii) a detailed assessment of the desirability and feasibility of such an incentive that would—

(I) encourage service in United States Customs and Border Protection by a covered member or a former member of the Armed Forces who provided border patrol or border security assistance to United States Customs and Border Protection as part of the member's duties as a member of the Armed Forces; and

(II) leverage military training and experience by accelerating training, or allowing credit to be applied to related areas of training, required for service with United States Customs and Border Protection;

(iii) a description of various monetary and non-monetary incentives considered for purposes of the report;

(iv) an assessment of the desirability and feasibility of utilizing any such incen-

tive for the purpose described in subparagraph (A); and

(v) any other matter that the Secretary and the Secretary of Defense jointly consider appropriate.

(3) DEFINITIONS.—In this subsection:

(A) APPROPRIATE COMMITTEES OF CONGRESS.—The term ''appropriate committees of Congress'' means—

(i) the Committee on Appropriations, the Committee on Armed Services, and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(ii) the Committee on Appropriations, the Committee on Armed Services, and the Committee on Homeland Security of the House of Representatives.

(B) COVERED MEMBER OR FORMER MEMBER OF THE ARMED FORCES.—The term ''covered member or former member of the Armed Forces'' means an individual—

(i) who is a member of a reserve component of the Armed Forces; or

(ii) who is a former member of the Armed Forces within 2 years of separation from service in the Armed Forces.

**SEC. 102. TECHNOLOGICAL ASSETS.**

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

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

(1) a description of the current use of Department of Defense equipment to assist the Secretary in carrying out surveillance of the international land borders of the United States and assessment of the risks to citizens of the United States and foreign

policy interests associated with the use of such equipment;

(2) the plan developed under subsection (b) to increase the use of Department of Defense equipment to assist such surveillance activities; and

(3) a description of the types of equipment and other support to be provided by the Secretary of Defense under such plan during the 1-year period beginning on the date of the submission of the report.

(c) UNMANNED AERIAL VEHICLE PILOT PROGRAM.—During the 1-year period beginning on the date on which the report is submitted under subsection (b), the Secretary shall conduct a pilot program to test unmanned aerial vehicles for border surveillance along the international border between Canada and the United States.

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

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

**SEC. 103. INFRASTRUCTURE.**

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

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

**SEC. 104. PORTS OF ENTRY.**

The Secretary is authorized to—

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

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

**SEC. 105. SECURE COMMUNICATION.**

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

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

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

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

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

**SEC. 106. UNMANNED AERIAL VEHICLES.**

(a) UNMANNED AERIAL VEHICLES AND ASSOCIATED INFRASTRUCTURE.—The Secretary shall acquire and maintain unmanned aerial vehicles and related equipment for use to patrol the international borders of the United States, including equipment such as—

(1) additional sensors;

(2) critical spares;

(3) satellite command and control; and

(4) other necessary equipment for operational support.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2008 and 2009 such sums as may be necessary to carry out subsection (a).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) are authorized to remain available until expended.

**SEC. 107. SURVEILLANCE TECHNOLOGIES PROGRAMS.**

(a) AERIAL SURVEILLANCE PROGRAM.—

(1) IN GENERAL.—In conjunction with the border surveillance plan developed under section 5201 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1701 note), the Secretary, not later than 90 days after the date of enactment of this Act, shall develop and implement a program to fully integrate and utilize aerial surveillance technologies, including unmanned aerial vehicles, to enhance the security of the international border between the United States and Canada and the international border between the United States and Mexico. The goal of the program shall be to ensure continuous monitoring of each mile of each such border.

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

(A) consider current and proposed aerial surveillance technologies;

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

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

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

(3) ADDITIONAL REQUIREMENTS.—

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

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

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

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

(4) CONTINUED USE OF AERIAL SURVEILLANCE TECHNOLOGIES.—The Secretary may continue the operation of aerial surveillance technologies while assessing the effectiveness of the utilization of such technologies.

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

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

(b) INTEGRATED AND AUTOMATED SURVEILLANCE PROGRAM.—

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

(2) PROGRAM COMPONENTS.—The Secretary shall ensure, to the maximum extent feasible, that—

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

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

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

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

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

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

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

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

(I) standards are developed under the Program to expand the shared use of existing private and governmental structures to install re-

mote surveillance technology infrastructure where possible; and

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

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

(4) EVALUATION OF CONTRACTORS.—

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

(B) REVIEW BY THE INSPECTOR GENERAL.—

(i) IN GENERAL.—The Inspector General of the Department shall review each

new contract related to the Program that has a value of more than $5,000,000 in a timely manner, to determine whether such contract fully complies with applicable cost requirements, performance objectives, program milestones, and schedules.

(ii) REPORTS.—The Inspector General shall report the findings of each review carried out under clause (i) to the Secretary in a timely manner. Not later than 30 days after the date the Secretary receives a report of findings from the Inspector General, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report of such findings and a description of any the steps that the Secretary has taken or plans to take in response to such findings.

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

# Subtitle B—Border Security Plans, Strategies, and Reports

**SEC. 111. SURVEILLANCE PLAN.**

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

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

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

(2) A description of the compatibility of new surveillance technologies with surveillance technologies in use by the Secretary on the date of enactment of this Act.

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

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

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

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

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

(8) A description of the program to fully integrate and utilize aerial surveillance technologies developed pursuant to section 107(a).

(9) A description of the Integrated and Automated Surveillance Program established pursuant to section 107(b).

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

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

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

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

(1) The implementation schedule for the comprehensive plan for systematic surveillance described in section 111.

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

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

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

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

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

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

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

(7) A description of the border security roles and missions of Federal, State, regional, local, and tribal authorities, and recommendations regarding actions the Secretary can carry out to improve coordination with such authorities to enable border security and enforcement activities to be carried out in a more efficient and effective manner.

(8) An assessment of existing efforts and technologies used for border security and the effect of the use of such efforts and technologies on civil rights, private property rights, privacy rights, and civil liberties, including an assessment of efforts to take into account asylum seekers, trafficking vic-

tims, unaccompanied minor aliens, and other vulnerable populations.

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

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

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

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

(13) A schedule for the implementation of the security measures described in such Strategy, including a prioritization of security measures, realistic deadlines for addressing the security and enforcement needs, an estimate of the resources needed to

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

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

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

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

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

(e) SUBMISSION TO CONGRESS.—

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

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

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

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

**SEC. 113. REPORTS ON IMPROVING THE EXCHANGE OF INFORMATION ON NORTH AMERICAN SECURITY.**

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

(b) CONTENTS.—Each report submitted under subsection (a) shall contain a description of the following:

(1) SECURITY CLEARANCES AND DOCUMENT INTEGRITY.—The progress made toward the development of common enrollment, security, technical, and biometric standards for the issuance, authentication,

validation, and repudiation of secure documents, including—

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

(i) passports;

(ii) visas; and

(iii) permanent resident cards;

(B) working with Canada and Mexico to encourage foreign governments to enact laws to combat alien smuggling and trafficking, and laws to forbid the use and manufacture of fraudulent travel documents and to promote information sharing;

(C) applying the necessary pressures and support to ensure that other countries meet proper travel document standards and are committed to travel document verification before the citizens of such countries travel internationally, including travel by such citizens to the United States; and

(D) providing technical assistance for the 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

advance automated reporting and risk targeting of international passengers;

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

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

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

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

(A) in developing and implementing bilateral agreements between Canada and the United States and between Mexico and the 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;

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

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

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

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

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

(7) LAW ENFORCEMENT COOPERATION.—The progress made in enhancing law enforcement cooperation among Canada, Mexico, and the United States through enhanced technical assistance for the development and maintenance of a national database built upon identified best practices for biometrics associated with known and suspected criminals or terrorists, including exploring the formation of law enforcement teams that include personnel from the

United States and Mexico, and appropriate procedures for such teams.

**SEC. 114. BORDER PATROL TRAINING CAPACITY REVIEW.**

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

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

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

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

(3) A comparison, based on the review and breakdown under paragraph (2), of the costs, effectiveness, scope, and quality, including geographic characteristics, with other similar training programs

provided by State and local agencies, nonprofit organizations, universities, and the private sector.

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

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

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

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

**SEC. 115. SECURE BORDER INITIATIVE FINANCIAL ACCOUNTABILITY.**

(a) IN GENERAL.—The Inspector General of the Department shall review each contract action relating to the Secure Border Initiative having a value of more than $20,000,000, to determine whether each such action fully complies with applicable cost requirements, performance objectives, program milestones, inclusion of small, minority, and women-owned business, and time lines. The Inspector General shall complete a review under this subsection with respect to each contract action—

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

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

(b) INSPECTOR GENERAL.—

(1) ACTION.—If the Inspector General becomes aware of any improper conduct or wrongdoing in the course of conducting a contract review under subsection (a), the Inspector General shall, as expeditiously as practicable, refer information relating to such improper conduct or wrongdoing to the Secretary, or to another appropriate official of the Department, who shall determine whether to temporarily suspend the contractor from further participation in the Secure Border Initiative.

(2) REPORT.—Upon the completion of each review described in subsection (a), the Inspector General shall submit to the Secretary a report containing the findings of the review, including findings regarding—

(A) cost overruns;

(B) significant delays in contract execution;

(C) lack of rigorous departmental contract management;

(D) insufficient departmental financial oversight;

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

(F) other high-risk business practices.

(c) REPORTS BY THE SECRETARY.—

(1) IN GENERAL.—Not later than 30 days after the receipt of each report required under subsection (b)(2), the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, that describes—

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

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

(2) CONTRACTS WITH FOREIGN COMPANIES.—Not later than 60 days after the initiation of each contract action with a company whose headquarters are not based in the United States, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, regarding the Secure Border Initiative.

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

(1) the proposed purchase;

(2) any security concerns related to the proposed purchase; and

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

(e) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts that are otherwise authorized to be appropriated to the Office of the Inspector General of the Department, there are authorized to be appropriated to the Office, to enable the Office to carry out this section—

(1) for fiscal year 2008, not less than 5 percent of the overall budget of the Office for such fiscal year;

(2) for fiscal year 2009, not less than 6 percent of the overall budget of the Office for such fiscal year; and

(3) for fiscal year 2010, not less than 7 percent of the overall budget of the Office for such fiscal year.

# Subtitle C—Southern Border Security

**SEC. 121. IMPROVING THE SECURITY OF MEXICO'S SOUTHERN BORDER.**

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

(1) to assess the specific needs of the countries of Central America in maintaining the security of the international borders of such countries;

(2) to use the assessment made under paragraph (1) to determine the financial and technical support needed by the countries of Central America from Canada, Mexico, and the United States to meet such needs;

(3) to provide technical assistance to the countries of Central America to promote issuance of secure passports and travel documents by such countries; and

(4) to encourage the countries of Central America—

(A) to control alien smuggling and trafficking;

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

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

(b) BORDER SECURITY FOR THE COUNTRIES OF CENTRAL AMERICA.—The Secretary, in consultation with the Secretary of State, shall work to cooperate—

(1) with the appropriate officials of the governments of the countries of Central America to provide law enforcement assistance to such countries to specifically address immigration issues to increase the ability of such governments to dismantle human smuggling organizations and gain additional control over the international borders between the countries of Central America; and

(2) with the appropriate officials of the governments of the countries of Central America to establish a program to provide needed equipment, technical assistance, and vehicles to manage, regulate, and patrol such international borders.

(c) TRACKING CENTRAL AMERICAN GANGS.—The Secretary of State, in coordination with the Secretary and the Director of the Federal Bureau of Investigation, shall work to cooperate with the appropriate officials of the governments of other countries of Central America—

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

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

(3) to develop a mechanism that is acceptable to the governments of the countries of Central America and of the United States to notify such a government if an individual suspected of gang activity will be deported to that country prior to the deportation and to provide support for the reintegration of such deportees into that country; and

(4) to develop an agreement to share all relevant information related to individuals connected with Central American gangs.

(d) LIMITATIONS ON ASSISTANCE.—Any funds made available to carry out this section shall be subject to the limitations contained in section 551 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Public Law 109–102; 119 Stat. 2218).

**SEC. 122. REPORT ON DEATHS AT THE UNITED STATES-MEXICO BORDER.**

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

(1) the causes of the deaths; and

(2) the total number of deaths.

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

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

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

**SEC. 123. COOPERATION WITH THE GOVERNMENT OF MEXICO.**

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

to improve coordination between the United States and Mexico regarding—

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

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

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

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

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

(6) the reduction of other violence and criminal activity.

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

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

(d) CONSULTATION REQUIREMENT.—Federal, State, and local representatives in the United States shall work to cooperate with their counterparts in Mexico concerning border security structures along the international border between the United States and Mexico, as authorized by this title, in order to—

(1) solicit the views of affected communities;

(2) lessen tensions; and

(3) foster greater understanding and stronger cooperation on this and other important security issues of mutual concern.

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

**SEC. 124. TEMPORARY NATIONAL GUARD SUPPORT FOR SECURING THE SOUTHERN LAND BORDER OF THE UNITED STATES.**

(a) AUTHORITY TO PROVIDE ASSISTANCE.—

(1) IN GENERAL.—With the approval of the Secretary of Defense, the Governor of a State may order any units or personnel of the National Guard of such State to perform annual training duty under section 502(a) of title 32, United States Code, to carry out in any State along the southern land border of the United States the activities authorized in subsection (b), for the purpose of securing such border. Such duty shall not exceed 21 days in any year.

(2) SUPPORT.—With the approval of the Secretary of Defense, the Governor of a State may order any units or personnel of the National Guard of such State to perform duty under section 502(f) of title 32, United States Code, to provide command, control, and continuity of support for units or personnel performing annual training duty under paragraph (1).

(b) AUTHORIZED ACTIVITIES.—The activities authorized by this subsection are any of the following:

(1) Ground reconnaissance activities.

(2) Airborne reconnaissance activities.

(3) Logistical support.

(4) Provision of translation services and training.

(5) Administrative support services.

(6) Technical training services.

(7) Emergency medical assistance and services.

(8) Communications services.

(9) Rescue of aliens in peril.

(10) Construction of roadways, patrol roads, fences, barriers, and other facilities to secure the southern land border of the United States.

(11) Ground and air transportation.

(c) COOPERATIVE AGREEMENTS.—Units and personnel of the National Guard of a State may perform activities in another State under subsection (a) only pursuant to the terms of an emergency management assistance compact or other cooperative arrangement entered into between Governors of such States for purposes of this section, and only with the approval of the Secretary of Defense.

(d) COORDINATION OF ASSISTANCE.—The Secretary of Homeland Security shall, in consultation with the Secretary of Defense and the Governors of the States concerned, coordinate the performance of activities under this section by units and personnel of the National Guard.

(e) ANNUAL TRAINING.—Annual training duty performed by members of the National Guard under subsection (a) shall be appropriate for the units and individual members concerned, taking into account the types of units and military occupational specialties of individual members performing such duty.

(f) DEFINITIONS.—In this section:

(1) The term ''Governor of a State'' means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

(2) The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(3) The term ''State along the southern border of the United States'' means each of the following:

(A) The State of Arizona.

(B) The State of California.

(C) The State of New Mexico.

(D) The State of Texas.

(g) DURATION OF AUTHORITY.—The authority of this section shall expire on January 1, 2009.

(h) PROHIBITION ON DIRECT PARTICIPATION IN LAW ENFORCEMENT.—Activities carried out under the authority of this section shall not include the direct participation

of a member of the National Guard in a search, seizure, arrest, or similar activity.

**SEC. 125. UNITED STATES-MEXICO BORDER ENFORCEMENT REVIEW COMMISSION.**

(a) ESTABLISHMENT OF COMMISSION.—

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

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

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

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

(3) MEMBERSHIP.—The Commission shall be composed of 16 voting members, who shall be appointed as follows:

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

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

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

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

(B) 2 nonvoting members, of whom—

(i) 1 shall be appointed by the Secretary; and

(ii) 1 shall be appointed by the Attorney General.

(4) QUALIFICATIONS.—

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

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

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

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

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

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

(6) TERM OF SERVICE.—The term of office for members shall be for the life of the Commission, or 3 years, whichever is sooner.

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

(8) MEETINGS.—

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

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

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

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

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

(1) the protection of human and civil rights of community residents and migrants along the international border between the United States and Mexico;

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

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

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

(A) environment;

(B) cross border traffic and commerce; and

(C) the quality of life of border communities;

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

(6) the adequacy of detention standards and conditions, and the extent to which the standards and conditions are enforced; and

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

(c) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

(1) INFORMATION FROM FEDERAL AGENCIES.—The Commission may seek directly from any department or agency of the United States such information, including suggestions, estimates, and statistics,

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

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

(d) COMPENSATION.—

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

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

(e) REPORT.—Not later than 2 years after the date of the first meeting called pursuant to (a)(8)(A), the Com-

mission shall submit a report to the President and Congress that contains—

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

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

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

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

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

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

# Subtitle D—Secure Entry Initiatives

**SEC. 131. BIOMETRIC DATA ENHANCEMENTS.**

Not later than December 31, 2008, the Secretary shall—

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

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

**SEC. 132. US–VISIT SYSTEM.**

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

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

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

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

**SEC. 133. DOCUMENT FRAUD DETECTION.**

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

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

(c) ASSESSMENT.—

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

(2) REPORT TO CONGRESS.—Not later than 6 months after the date of enactment of this Act, the

Inspector General shall submit to Congress the findings of the assessment required by paragraph (1).

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

**SEC. 134. IMPROVED DOCUMENT INTEGRITY.**

(a) IN GENERAL.—Section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1732) is amended—

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

(2) in the heading, by striking ''**ENTRY AND EXIT DOCUMENTS**'' and inserting ''**TRAVEL AND ENTRY DOCUMENTS AND EVIDENCE OF STATUS**'';

(3) in subsection (b)(1)—

(A) by striking ''Not later than October 26, 2004, the'' and inserting ''The''; and

(B) by striking ''visas and'' both places it appears and inserting ''visas, evidence of status, and'';

(4) by redesignating subsection (d) as subsection (e); and

(5) by inserting after subsection (c) the following:

"(d) OTHER DOCUMENTS.—Not later than December 31, 2008, every document, other than an interim document, issued by the Secretary of Homeland Security which may be used as evidence of an alien's authorization to travel shall be machine-readable and tamper-resistant, and shall incorporate a biometric identifier to allow the Secretary of Homeland Security to verify electronically the identity and status of the alien.".

**SEC. 135. BIOMETRIC ENTRY-EXIT SYSTEM.**

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

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

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

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

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

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

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

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

"(B) any lawful permanent resident who is entering the United States and who is not regarded as seeking admission pursuant to section 101(a)(13)(C).".

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

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

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

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

"(C) WITHHOLDERS OF BIOMETRIC DATA.—Any alien who knowingly fails to com-

ply with a lawful request for biometric data under section 215(c) or 235(d) is inadmissible.''; and

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

''(2) The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to an alien described in subparagraph (C) of subsection (a)(7) and may waive the application of such subparagraph for an individual alien or a class of aliens, at the discretion of the Secretary.''.

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

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

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

(2) in subsection (l)—

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

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

(B) by adding at the end the following:

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

**SEC. 136. EVASION OF INSPECTION OR VIOLATION OF ARRIVAL, REPORTING, ENTRY, OR CLEARANCE REQUIREMENTS.**

(a) IN GENERAL.—Chapter 27 of title 18, United States Code, is amended by adding at the end the following:

**''§ 556. Evasion of inspection or violation of arrival, reporting, entry, or clearance requirements**

''(a) PROHIBITION.—A person at a port of entry or customs or immigration checkpoint shall be punished as described in subsection (b) if such person attempts to elude or eludes customs, immigration, or agriculture inspection or fails to stop at the command of an officer or

employee of the United States charged with enforcing the immigration, customs, or other laws of the United States at a port of entry or customs or immigration checkpoint.

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

"(1) fined under this title;

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

"(B) imprisoned for not more than 10 years, or both, if in commission of this violation, such person attempts to inflict or inflicts bodily injury (as defined in section 1365(h) of this title); or

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

"(3) both fined and imprisoned under this subsection.

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

"(d) PRIMA FACIE EVIDENCE.—For the purposes of seizure and forfeiture under applicable law, in the case of use of a vehicle or other conveyance in the commission

of this offense, or in the case of disregarding or disobeying the lawful authority or command of any officer or employee of the United States under section 111(b) of this title, such conduct shall constitute prima facie evidence of smuggling aliens or merchandise.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 27 of title 18, United States Code, is amended by inserting at the end:

''556. Evasion of inspection or during violation of arrival, reporting, entry, or clearance requirements.''.

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

''(c) FAILURE TO OBEY LAWFUL ORDERS OF BORDER ENFORCEMENT OFFICERS.—Whoever willfully disregards or disobeys the lawful authority or command of any officer or employee of the United States charged with enforcing the immigration, customs, or other laws of the United States while engaged in, or on account of, the performance of official duties shall be fined under this title or imprisoned for not more than 5 years, or both.''.

(d) TECHNICAL AMENDMENTS.—

(1) IN GENERAL.—Chapter 27 of title 18, United States Code, is amended by redesignating the section 554 added by section 551(a) of the Department of Homeland Security Appropriations Act,

2007 (Public Law 109–295; 120 Stat. 1389) (relating to border tunnels and passages) as section 555.

(2) TABLE OF SECTIONS.—The table of sections for chapter 27 of title 18, United States Code, is amended—

(A) by striking the following:

"554. Border tunnels and passages."; and

(B) inserting the following:

"555. Border tunnels and passages.".

(3) CRIMINAL FORFEITURE.—Section 982(a)(6)(A) of title 18, United States Code, is amended by striking "554" and inserting "555".

(4) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Section 551(d) of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 120 Stat. 1390) is amended in paragraphs (1) and (2)(A) by striking "554" and inserting "555".

# Subtitle E—Law Enforcement Relief for States

**SEC. 141. BORDER RELIEF GRANT PROGRAM.**

(a) GRANTS AUTHORIZED.—

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

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

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

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

(3) COMPETITIVE BASIS.—The Secretary shall award grants under this subsection on a competitive basis, except that the Secretary shall give priority to applications from any eligible law enforcement agency serving a community with a population of less than 50,000.

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

(1) to obtain equipment;

(2) to hire additional personnel;

(3) to upgrade and maintain law enforcement technology;

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

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

(c) APPLICATION.—

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

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

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

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

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

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

(A) located in a county that is not more than 100 miles from a United States border with—

(i) Canada; or

(ii) Mexico; or

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

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

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

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

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

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated $50,000,000 for each of fiscal years 2008 through 2012 to carry out the provisions of this section.

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

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

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

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

(g) ENFORCEMENT OF FEDERAL IMMIGRATION LAW.—Nothing in this section shall be construed to authorize State or local law enforcement agencies or their officers to exercise Federal immigration law enforcement authority.

**SEC. 142. NORTHERN AND SOUTHERN BORDER PROSECUTION INITIATIVE.**

(a) REIMBURSEMENT TO STATE AND LOCAL PROSECUTORS FOR PROSECUTING FEDERALLY INITIATED DRUG CASES.—The Attorney General shall, subject to the availability of appropriations, reimburse State and county prosecutors located in States along the Northern or South-

ern border of the United States for prosecuting federally initiated and referred drug cases.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $50,000,000 for each of the fiscal years 2008 through 2013 to carry out subsection (a).

# Subtitle F—Rapid Response Measures

**SEC. 151. DEPLOYMENT OF BORDER PATROL AGENTS.**

(a) EMERGENCY DEPLOYMENT OF BORDER PATROL AGENTS.—

(1) IN GENERAL.—If the Governor of a State on an international border of the United States declares an international border security emergency and requests additional agents of the Border Patrol (referred to in this subtitle as ''agents'') from the Secretary, the Secretary, subject to paragraphs (2) and (3), may provide the State with not more than 1,000 additional agents for the purpose of patrolling and defending the international border, in order to prevent individuals from crossing the international border into the United States at any location other than an authorized port of entry.

(2) CONSULTATION.—Upon receiving a request for agents under paragraph (1), the Secretary, after

consultation with the President, shall grant such request to the extent that providing such agents will not significantly impair the Department's ability to provide border security for any other State.

(3) COLLECTIVE BARGAINING.—Emergency deployments under this subsection shall be made in accordance with all applicable collective bargaining agreements and obligations.

(b) ELIMINATION OF FIXED DEPLOYMENT OF BORDER PATROL AGENTS.—The Secretary shall ensure that agents are not precluded from performing patrol duties and apprehending violators of law, except in unusual circumstances if the temporary use of fixed deployment positions is necessary.

**SEC. 152. BORDER PATROL MAJOR ASSETS.**

(a) CONTROL OF BORDER PATROL ASSETS.—The Border Patrol shall have complete and exclusive administrative and operational control over all the assets utilized in carrying out its mission, including aircraft, watercraft, vehicles, detention space, transportation, and all of the personnel associated with such assets.

(b) HELICOPTERS AND POWER BOATS.—

(1) HELICOPTERS.—The Secretary shall increase, by not less than 100, the number of helicopters under the control of the Border Patrol. The

Secretary shall ensure that appropriate types of helicopters are procured for the various missions being performed.

(2) POWER BOATS.—The Secretary shall increase, by not less than 250, the number of power boats under the control of the Border Patrol. The Secretary shall ensure that the types of power boats that are procured are appropriate for both the waterways in which they are used and the mission requirements.

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

(A) establish an overall policy on how the helicopters and power boats procured under this subsection will be used; and

(B) implement training programs for the agents who use such assets, including safe operating procedures and rescue operations.

(c) MOTOR VEHICLES.—

(1) QUANTITY.—The Secretary shall establish a fleet of motor vehicles appropriate for use by the Border Patrol that will permit a ratio of not less than 1 police-type vehicle for every 3 agents. These police-type vehicles shall be replaced not less often than once every 3 years. The Secretary shall ensure that there are sufficient numbers and types of other

motor vehicles to support the mission of the Border Patrol.

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

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

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

**SEC. 153. ELECTRONIC EQUIPMENT.**

(a) PORTABLE COMPUTERS.—The Secretary shall ensure that each police-type motor vehicle in the fleet of the Border Patrol is equipped with a portable computer with access to all necessary law enforcement databases and otherwise suited to the unique operational requirements of the Border Patrol.

(b) RADIO EQUIPMENT.—The Secretary shall augment the existing radio communications system so that all law enforcement personnel working in each area where Border Patrol operations are conducted have clear and encrypted 2-way radio communication capabilities at all times. Each portable communications device shall be equipped with a panic button and a global positioning sys-

tem device that is activated solely in emergency situations to track the location of agents in distress.

(c) HANDHELD GLOBAL POSITIONING SYSTEM DEVICES.—The Secretary shall ensure that each Border Patrol agent is issued a state-of-the-art handheld global positioning system device for navigational purposes.

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

**SEC. 154. PERSONAL EQUIPMENT.**

(a) BORDER ARMOR.—The Secretary shall ensure that every agent is issued high-quality body armor that is appropriate for the climate and risks faced by the agent. Each agent shall be permitted to select from among a variety of approved brands and styles. Agents shall be strongly encouraged, but not required, to wear such body armor whenever practicable. All body armor shall be replaced not less often than once every 5 years.

(b) WEAPONS.—The Secretary shall ensure that agents are equipped with weapons that are reliable and effective to protect themselves, their fellow agents, and innocent third parties from the threats posed by armed

criminals. The Secretary shall ensure that the policies of the Department authorize all agents to carry weapons that are suited to the potential threats that they face.

(c) UNIFORMS.—The Secretary shall ensure that all agents are provided with all necessary uniform items, including outerwear suited to the climate, footwear, belts, holsters, and personal protective equipment, at no cost to such agents. Such items shall be replaced at no cost to such agents as such items become worn or unserviceable or no longer fit properly.

**SEC. 155. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out this subtitle.

# Subtitle G—Border Infrastructure and Technology Modernization

**SEC. 161. DEFINITIONS.**

In this subtitle:

(1) COMMISSIONER.—The term ''Commissioner'' means the Commissioner of United States Customs and Border Protection.

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

(3) SOUTHERN BORDER.—The term ''southern border'' means the international border between the United States and Mexico.

**SEC. 162. PORT OF ENTRY INFRASTRUCTURE ASSESSMENT STUDY.**

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

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

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

(1) identify port of entry infrastructure and technology improvement projects that would enhance

1 border security and facilitate the flow of legitimate
2 commerce if implemented;
3 (2) include the projects identified in the Na-
4 tional Land Border Security Plan required by sec-
5 tion 164; and
6 (3) prioritize the projects described in para-
7 graphs (1) and (2) based on the ability of a project
8 to—
9 (A) fulfill immediate security requirements;
10 and
11 (B) facilitate trade across the borders of
12 the United States.
13 (d) PROJECT IMPLEMENTATION.—The Commissioner
14 shall implement the infrastructure and technology im-
15 provement projects described in subsection (c) in the order
16 of priority assigned to each project under paragraph (3)
17 of such subsection.
18 (e) DIVERGENCE FROM PRIORITIES.—The Commis-
19 sioner may diverge from the priority order if the Commis-
20 sioner determines that significantly changed cir-
21 cumstances, such as immediate security needs or changes
22 in infrastructure in Mexico or Canada, compellingly alter
23 the need for a project in the United States.

**SEC. 163. NATIONAL LAND BORDER SECURITY PLAN.**

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

(b) VULNERABILITY ASSESSMENT.—

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

(2) PORT SECURITY COORDINATORS.—The Secretary may establish 1 or more port security coordinators at each port of entry located on the northern border or the southern border—

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

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

**SEC. 164. EXPANSION OF COMMERCE SECURITY PROGRAMS.**

(a) CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM.—

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

(A) The Business Anti-Smuggling Coalition.

(B) The Carrier Initiative Program.

(C) The Americas Counter Smuggling Initiative.

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

(E) The Free and Secure Trade Initiative.

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

(2) SOUTHERN BORDER DEMONSTRATION PROGRAM.—Not later than 180 days after the date of enactment of this Act, the Commissioner shall implement, on a demonstration basis, at least 1 Customs–

Trade Partnership Against Terrorism program, which has been successfully implemented along the northern border, along the southern border.

(b) DEMONSTRATION PROGRAM.—Not later than 180 days after the date of enactment of this Act, the Commissioner shall establish a demonstration program to develop a cooperative trade security system to improve supply chain security.

**SEC. 165. PORT OF ENTRY TECHNOLOGY DEMONSTRATION PROGRAM.**

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

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

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

(3) train personnel under realistic conditions.

(b) TECHNOLOGY AND FACILITIES.—

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

(A) inspections;

(B) communications;

(C) port tracking;

(D) identification of persons and cargo;

(E) sensory devices;

(F) personal detection;

(G) decision support; and

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

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

(A) cross-training among agencies;

(B) advanced law enforcement training; and

(C) equipment orientation.

(c) DEMONSTRATION SITES.—

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

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

traffic volume low enough to easily incorporate new technologies without interrupting normal processing activity, and is able to efficiently carry out demonstration and port of entry operations, at least 1 port of entry selected as a demonstration site shall—

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

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

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

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

(e) REPORT.—

(1) REQUIREMENT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a

report on the activities carried out at each demonstration site under the technology demonstration program established under this section.

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

**SEC. 166. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—In addition to any funds otherwise available, there are authorized to be appropriated such sums as may be necessary for the fiscal years 2008 through 2012 to carry out this subtitle.

(b) INTERNATIONAL AGREEMENTS.—Amounts appropriated pursuant to the authorization of appropriations in subsection (a) may be used for the implementation of projects described in the Declaration on Embracing Technology and Cooperation to Promote the Secure and Efficient Flow of People and Commerce across our Shared Border between the United States and Mexico, agreed to March 22, 2002, Monterrey, Mexico or the Smart Border Declaration between the United States and Canada, agreed to December 12, 2001, Ottawa, Canada that are consistent with the provisions of this subtitle.

# Subtitle H—Safe and Secure Detention

**SEC. 171. DEFINITIONS.**

In this subtitle:

(1) ASYLUM SEEKER.—The term ''asylum seeker'' means an applicant for asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) or for withholding of removal under section 241(b)(3) of that Act (8 U.S.C. 1231(b)(3)) or an alien who indicates an intention to apply for relief under either such section and does not include a person with respect to whom a final adjudication denying an application made under either such section has been entered.

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

(3) DETAINEE.—The term ''detainee'' means an alien in the Department's custody held in a detention facility.

(4) DETENTION FACILITY.—The term ''detention facility'' means any Federal facility in which an asylum seeker, an alien detained pending the out-

1 come of a removal proceeding, or an alien detained
2 pending the execution of a final order of removal, is
3 detained for more than 72 hours, or any other facil-
4 ity in which such detention services are provided to
5 the Federal Government by contract, and does not
6 include detention at any port of entry in the United
7 States.

8 (5) REASONABLE FEAR OF PERSECUTION OR
9 TORTURE.—The term ''reasonable fear of persecu-
10 tion or torture'' has the meaning described in sec-
11 tion 208.31 of title 8, Code of Federal Regulations.

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

14 (7) VULNERABLE POPULATIONS.—The term
15 ''vulnerable populations'' means classes of aliens
16 subject to the Immigration and Nationality Act (8
17 U.S.C. 1101 et seq.) who have special needs requir-
18 ing special consideration and treatment by virtue of
19 their vulnerable characteristics, including experi-
20 ences of, or risk of, abuse, mistreatment, or other
21 serious harms threatening their health or safety.
22 Vulnerable populations include the following:

23 (A) Asylum seekers.

24 (B) Refugees admitted under section 207
25 of the Immigration and Nationality Act (8

U.S.C. 1157) and individuals seeking such admission.

(C) Aliens whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act (as in effect immediately before the effective date of section 307 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–612)) or section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)).

(D) Aliens granted or seeking protection under article 3 of the Convention Against Torture and other Cruel, Inhumane, or Degrading Treatment or Punishment, done at New York, December 10, 1994.

(E) Applicants for relief and benefits under the Immigration and Nationality Act pursuant to the amendments made by the Trafficking Victims Protection Act of 2000 (division A of Public Law 106–386; 114 Stat. 1464), including applicants for nonimmigrant status under subparagraph (T) or (U) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

(F) Applicants for relief and benefits under the Immigration and Nationality Act pursuant to the amendments made by the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491).

(G) Unaccompanied alien children (as defined by 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)).

**SEC. 172. RECORDING SECONDARY INSPECTION INTERVIEWS.**

(a) IN GENERAL.—The Secretary shall establish quality assurance procedures to ensure the accuracy and verifiability of signed or sworn statements taken by employees of the Department exercising expedited removal authority under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)).

(b) FACTORS RELATING TO SWORN STATEMENTS.—Where practicable, as determined by the sole and unreviewable discretion of the Secretary, the quality assurance procedures established pursuant to this section shall include taped interviews to ensure the accuracy and verifiability of signed or sworn statements taken by employees of the Department.

(c) INTERPRETERS.—The Secretary shall ensure that a professional fluent interpreter is used when the inter-

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

**SEC. 173. PROCEDURES GOVERNING DETENTION DECISIONS.**

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

(1) in subsection (a)—

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

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

(ii) by striking ''(c)'' and inserting ''(d)''; and

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

(B) in paragraph (2)—

(i) in subparagraph (A)—

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

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

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

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

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

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

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (d), (e), (f), and (h), respectively;

(3) by inserting after subsection (a) the following new subsections:

"(b) CUSTODY DECISIONS.—

"(1) IN GENERAL.—In the case of a decision under subsection (a) or (d), the following shall apply:

"(A) The decision shall be made in writing and shall be served upon the alien. A decision to continue detention without bond or parole shall specify in writing the reasons for that decision.

"(B) The decision shall be served upon the alien within 72 hours of the alien's detention or, in the case of an alien subject to section 235 or 241(a)(5) who must establish a credible fear of persecution or a reasonable fear of persecution or torture in order to proceed in immigra-

tion court, within 72 hours of a positive credible fear of persecution or reasonable fear of persecution or torture determination.

"(2) CRITERIA TO BE CONSIDERED.—The criteria to be considered by the Secretary and the Attorney General in making a custody decision shall include—

"(A) whether the alien poses a risk to public safety or national security;

"(B) whether the alien is likely to appear for immigration proceedings; and

"(C) any other relevant factors.

"(3) CUSTODY REDETERMINATION.—An alien subject to this section may at any time after being served with the Secretary's decision under subsections (a) or (d) request a redetermination of that decision by an immigration judge. All decisions by the Secretary to detain without bond or parole shall be subject to redetermination by an immigration judge within 2 weeks from the time the alien was served with the decision, unless waived by the alien. The alien may request a further redetermination upon a showing of a material change in circumstances since the last redetermination hearing.

"(c) EXCEPTION FOR MANDATORY DETENTION.—Subsection (b) shall not apply to any alien who is subject to mandatory detention under section 235(b)(1)(B)(iii)(IV), 236(c), or 236A or who has a final order of removal and has no proceedings pending before the Executive Office for Immigration Review.";

(4) in subsection (d), as redesignated—

(A) by striking "Attorney General" and inserting "Secretary"; and

(B) by striking "or parole" and inserting ", parole, or decision to release;";

(5) in subsection (e), as redesignated—

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

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

(6) in subsection (f), as redesignated—

(A) in the matter preceding paragraph (1), by striking "Attorney General" and inserting "Secretary";

(B) in paragraph (1), in subparagraphs (A) and (B), by striking "Service" and inserting "Department of Homeland Security"; and

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

(7) by inserting after subsection (f), as redesignated, the following new subparagraph:

''(g) ADMINISTRATIVE REVIEW.—If an immigration judge's custody decision has been stayed by the action of an officer or employee of the Department of Homeland Security, the stay shall expire in 30 days, unless the Board of Immigration Appeals before that time, and upon motion, enters an order continuing the stay.''; and

(8) in subsection (h), as redesignated—

(A) by striking ''Attorney General's'' and inserting ''Secretary of Homeland Security's''; and

(B) by striking ''Attorney General'' and inserting ''Secretary''.

**SEC. 174. LEGAL ORIENTATION PROGRAM.**

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

(b) CONTENT OF PROGRAM.—The legal orientation program developed pursuant to this section shall be based on the Legal Orientation Program carried out by the Executive Office for Immigration Review on the date of the enactment of this Act.

(c) EXPANSION OF LEGAL ASSISTANCE.—The Secretary shall ensure the expansion through the United States Citizenship and Immigration Service of public-private partnerships that facilitate pro bono counseling and legal assistance for asylum seekers awaiting a credible fear of persecution interview. The pro bono counseling and legal assistance programs developed pursuant to this subsection shall be based on the pilot program developed in Arlington, Virginia by the United States Citizenship and Immigration Service.

**SEC. 175. CONDITIONS OF DETENTION.**

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

(b) PROCEDURES AND STANDARDS.—The Secretary shall promulgate new standards, or modify existing detention standards, to improve conditions in detention facilities. The improvements shall address at a minimum the following policies and procedures:

(1) FAIR AND HUMANE TREATMENT.—Procedures to ensure that detainees are not subject to degrading or inhumane treatment such as verbal or physical abuse or harassment, sexual abuse or harassment, or arbitrary punishment.

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

(3) INVESTIGATION OF GRIEVANCES.—Procedures for the prompt and effective investigation of grievances raised by detainees, including review of grievances by officials of the Department who do not work at the same detention facility where the detainee filing the grievance is detained.

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

(5) LOCATION OF FACILITIES.—Location of detention facilities, to the extent practicable, near

1 sources of free or low-cost legal representation with
2 expertise in asylum or immigration law.
3 (6) PROCEDURES GOVERNING TRANSFERS OF
4 DETAINEES.—Procedures governing the transfer of a
5 detainee that take into account—
6 (A) the detainee's access to legal rep-
7 resentatives; and
8 (B) the proximity of the facility to the
9 venue of the asylum or removal proceeding.
10 (7) QUALITY OF MEDICAL CARE.—Prompt and
11 adequate medical care provided at no cost to the de-
12 tainee, including dental care, eye care, mental health
13 care, individual and group counseling, medical die-
14 tary needs, and other medically necessary specialized
15 care. Medical facilities in all detention facilities used
16 by the Department shall maintain current accredita-
17 tion by the National Commission on Correctional
18 Health Care (NCCHC). Requirements that each
19 medical facility that is not accredited by the Joint
20 Commission on the Accreditation of Health Care Or-
21 ganizations (JCAHO) will seek to obtain such ac-
22 creditation. Maintenance of complete medical records
23 for every detainee which shall be made available
24 upon request to a detainee, his legal representative,
25 or other authorized individuals.

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

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

(c) SPECIAL STANDARDS FOR NONCRIMINAL DETAINEES.—The Secretary shall promulgate new standards, or modifications to existing standards, that—

(1) recognize the special characteristics of noncriminal, nonviolent detainees, and ensure that procedures and conditions of detention are appropriate for a noncriminal population; and

(2) ensure that noncriminal detainees are separated from inmates with criminal convictions, pretrial inmates facing criminal prosecution, and those inmates exhibiting violent behavior while in detention.

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

(1) recognize the unique needs of asylum seekers, victims of torture and trafficking, families with children, detainees who do not speak English, detainees with special religious, cultural or spiritual considerations, and other vulnerable populations; and

(2) ensure that procedures and conditions of detention are appropriate for the populations listed in this subsection.

(e) TRAINING OF PERSONNEL.—

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

(A) asylum seekers;

(B) victims of torture or other trauma; and

(C) other vulnerable populations.

(2) SPECIALIZED TRAINING.—The training required by this subsection shall be designed to better enable personnel to work with detainees from different countries, and detainees who cannot speak English. The training shall emphasize that many de-

tainees have no criminal records and are being held for civil violations.

**SEC. 176. OFFICE OF DETENTION OVERSIGHT.**

(a) ESTABLISHMENT OF THE OFFICE.—

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

(2) HEAD OF THE OFFICE.—There shall be at the head of the Office an Administrator who shall be appointed by, and shall report to, the Secretary.

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

(b) RESPONSIBILITIES OF THE OFFICE.—

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

(A) undertake frequent and unannounced inspections of all detention facilities;

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

(C) report to the Secretary and to the Assistant Secretary of Homeland Security for United States Immigration and Customs En-

1 forcement all findings of a detention facility's
2 noncompliance with detention standards.
3 (2) INVESTIGATIONS.—The Administrator of
4 the Office shall—
5 (A) initiate investigations, as appropriate,
6 into allegations of systemic problems at deten-
7 tion facilities or incidents that constitute seri-
8 ous violations of detention standards;
9 (B) report to the Secretary and the Assist-
10 ant Secretary of Homeland Security for United
11 States Immigration and Customs Enforcement
12 the results of all investigations; and
13 (C) refer matters, where appropriate, for
14 further action to—
15 (i) the Department of Justice;
16 (ii) the Office of the Inspector Gen-
17 eral of the Department;
18 (iii) the Office of Civil Rights and
19 Civil Liberties of the Department; or
20 (iv) any other relevant office of agen-
21 cy.
22 (3) REPORT TO CONGRESS.—
23 (A) IN GENERAL.—The Administrator of
24 the Office shall submit to the Secretary, the
25 Committee on the Judiciary and the Committee

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

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

(i) a description of the actions to remedy findings of noncompliance or other problems that are taken by the Secretary or the Assistant Secretary of Homeland Security for United States Immigration and Customs Enforcement, and each detention facility found to be in noncompliance; and

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

(4) REVIEW OF COMPLAINTS BY DETAINEES.—The Administrator of the Office shall establish procedures to receive and review complaints of violations of the detention standards promulgated by the Secretary. The procedures shall protect the anonym-

ity of the claimant, including detainees, employees, or others, from retaliation.

(c) COOPERATION WITH OTHER OFFICES AND AGENCIES.—Whenever appropriate, the Administrator of the Office shall cooperate and coordinate its activities with—

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

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

(3) the Privacy Officer of the Department;

(4) the Civil Rights Division of the Department of Justice; or

(5) any other relevant office or agency.

**SEC. 177. SECURE ALTERNATIVES PROGRAM.**

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

(b) PROGRAM REQUIREMENTS.—

(1) NATIONWIDE IMPLEMENTATION.—The Secretary shall facilitate the development of the secure alternatives program on a nationwide basis, as a

1 continuation of existing pilot programs such as the
2 Intensive Supervision Appearance Program (ISAP)
3 developed by the Department.

4 (2) UTILIZATION OF ALTERNATIVES.—The se-
5 cure alternatives program shall utilize a continuum
6 of alternatives based on the alien's need for super-
7 vision, including placement of the alien with an indi-
8 vidual or organizational sponsor, or in a supervised
9 group home.

10 (3) ALIENS ELIGIBLE FOR SECURE ALTER-
11 NATIVES PROGRAM.—

12 (A) IN GENERAL.—Aliens who would oth-
13 erwise be subject to detention based on a con-
14 sideration of the release criteria in section
15 236(b)(2), or who are released pursuant to sec-
16 tion 236(e)(2), shall be considered for the se-
17 cure alternatives program.

18 (B) DESIGN OF PROGRAMS.—Secure alter-
19 natives programs shall be designed to ensure
20 sufficient supervision of the population de-
21 scribed in subparagraph (A).

22 (4) CONTRACTS.—The Secretary shall enter
23 into contracts with qualified nongovernmental enti-
24 ties to implement the secure alternatives program.

(5) OTHER CONSIDERATIONS.—In designing such program, the Secretary shall—

(A) consult with relevant experts; and

(B) consider programs that have proven successful in the past, including the Appearance Assistance Program developed by the Vera Institute and the Intensive Supervision Appearance Program (ISAP) developed by the Department.

**SEC. 178. LESS RESTRICTIVE DETENTION FACILITIES.**

(a) CONSTRUCTION.—The Secretary shall facilitate the construction or use of secure but less restrictive detention facilities.

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

(1) consider the design, operation, and conditions of existing secure but less restrictive detention facilities, such as the Department's detention facilities in Broward County, Florida, and Berks County, Pennsylvania;

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

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

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

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

(D) detainees have ready access to meaningful programmatic and recreational activities;

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

(F) detainees have access to private toilet and shower facilities;

(G) prison-style uniforms or jumpsuits are not required; and

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

(c) FACILITIES FOR FAMILIES WITH CHILDREN.—For situations where release or secure alternatives programs are not an option, the Secretary shall ensure that special detention facilities are specifically designed to house parents with their minor children, including ensuring that—

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

(2) living and sleeping quarters for parents and minor children are not physically separated.

(d) PLACEMENT IN NONPUNITIVE FACILITIES.—Priority for placement in less restrictive facilities shall be given to asylum seekers, families with minor children, other vulnerable populations, and nonviolent criminal detainees.

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

**SEC. 179. AUTHORIZATION OF APPROPRIATIONS; EFFECTIVE DATE.**

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

(b) EFFECTIVE DATE.—This subtitle and the amendments made by this subtitle shall take effect on the date that is 6 months after the date of enactment of this Act.

# Subtitle I—Other Border Security Initiatives

**SEC. 181. COMBATING HUMAN SMUGGLING.**

(a) REQUIREMENT FOR PLAN.—The Secretary shall develop and implement a plan to improve coordination among United States Immigration and Customs Enforce-

1 ment and United States Customs and Border Protection
2 and any other Federal, State, local, or tribal authorities,
3 as determined appropriate by the Secretary, to improve
4 coordination efforts to combat human smuggling.

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

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

9 (2) adequate and effective personnel training;

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

12 (4) effective utilization of—

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

15 (B) investigatory techniques, equipment,
16 and procedures that prevent, detect, and pros-
17 ecute international money laundering and other
18 operations that are utilized in smuggling;

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

23 (6) other measures that the Secretary considers
24 appropriate to combat human smuggling.

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

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

**SEC. 182. SCREENING OF MUNICIPAL SOLID WASTE.**

(a) DEFINITIONS.—In this section:

(1) COMMERCIAL MOTOR VEHICLE.—The term ''commercial motor vehicle'' has the meaning given the term in section 31101 of title 49, United States Code.

(2) COMMISSIONER.—The term ''Commissioner'' means the Commissioner of United States Customs and Border Protection.

(3) MUNICIPAL SOLID WASTE.—The term ''municipal solid waste'' includes sludge (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)).

(b) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, the Commissioner shall submit to Congress a report that—

(1) indicates whether the methodologies and technologies used by United States Customs and Border Protection to screen for and detect the presence of chemical, nuclear, biological, and radiological weapons in municipal solid waste are as effective as the methodologies and technologies used by United States Customs and Border Protection to screen for such weapons in other items of commerce entering the United States through commercial motor vehicle transport; and

(2) if the report indicates that the methodologies and technologies used to screen municipal solid waste are less effective than the methodologies and technologies used to screen other items of commerce, identifies the actions that United States Customs and Border Protection will take to achieve the same level of effectiveness in the screening of municipal solid waste, including actions necessary to meet the need for additional screening technologies.

(c) IMPACT ON COMMERCIAL MOTOR VEHICLES.—If the Commissioner fails to fully implement an action identified under subsection (b)(2) before the earlier of the date that is 180 days after the date on which the report under subsection (b) is required to be submitted or the date that is 180 days after the date on which the report is sub-

1 mitted, the Secretary shall deny entry into the United
2 States of any commercial motor vehicle carrying municipal
3 solid waste until the Secretary certifies to Congress that
4 the methodologies and technologies used by United States
5 Customs and Border Protection to screen for and detect
6 the presence of chemical, nuclear, biological, and radio-
7 logical weapons in municipal solid waste are as effective
8 as the methodologies and technologies used by United
9 States Customs and Border Protection to screen for such
10 weapons in other items of commerce entering into the
11 United States through commercial motor vehicle trans-
12 port.

13 **SEC. 183. BORDER SECURITY ON CERTAIN FEDERAL LAND.**

14 (a) DEFINITIONS.—In this section:

15 (1) PROTECTED LAND.—The term ''protected
16 land'' means land under the jurisdiction of the Sec-
17 retary concerned.

18 (2) SECRETARY CONCERNED.—The term ''Sec-
19 retary concerned'' means—

20 (A) with respect to land under the jurisdic-
21 tion of the Secretary of Agriculture, the Sec-
22 retary of Agriculture; and

23 (B) with respect to land under the jurisdic-
24 tion of the Secretary of the Interior, the Sec-
25 retary of the Interior.

(b) SUPPORT FOR BORDER SECURITY NEEDS.—

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

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

(B) Federal land resource training for United States Customs and Border Protection agents dedicated to protected land; and

(C) unmanned aerial vehicles, aerial assets, remote video surveillance camera systems, and sensors on protected land that is directly adjacent to the international land border of the United States, with priority given to units of the National Park System.

(2) COORDINATION.—In providing training for United States Customs and Border Protection agents under paragraph (1)(B), the Secretary shall coordinate with the Secretary concerned to ensure that the training is appropriate to the mission of the

National Park Service, the United States Fish and Wildlife Service, the Forest Service, or the relevant agency of the Department of the Interior or the Department of Agriculture to minimize the adverse impact on natural and cultural resources from border protection activities.

(c) INVENTORY OF COSTS AND ACTIVITIES.—The Secretary concerned shall develop and submit to the Secretary an inventory of costs incurred by the Secretary concerned relating to illegal border activity, including the cost of equipment, training, recurring maintenance, construction of facilities, restoration of natural and cultural resources, recapitalization of facilities, and operations.

(d) RECOMMENDATIONS.—The Secretary shall—

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

(2) not later than March 31, 2008, submit to the Committee on the Judiciary and the Committee on Energy and Natural Resources of the Senate and the Committee on the Judiciary and the Committee on Natural Resources of the House of Representa-

tives the recommendations developed under paragraph (1).

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

(1) units of the National Park System;

(2) National Forest System land;

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

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

# TITLE II—INTERIOR ENFORCEMENT

## Subtitle A—Reducing the Number of Illegal Aliens in the United States

### SEC. 201. INCARCERATION OF CRIMINAL ALIENS.

(a) INSTITUTIONAL REMOVAL PROGRAM.—

(1) CONTINUATION.—The Secretary shall continue to operate the Institutional Removal Program (referred to in this section as the ''Program'') or shall develop and implement another program to—

(A) identify removable criminal aliens in Federal and State correctional facilities;

(B) ensure that such aliens are not released into the community; and

(C) remove such aliens from the United States after the completion of their sentences, in accordance with section 241 of the Immigration and Nationality Act (8 U.S.C. 1231), as amended by section 231 of this Act.

(2) EXPANSION.—The Secretary may extend the scope of the Program to all States.

(b) TECHNOLOGY USAGE.—Technology, such as videoconferencing, shall be used to the maximum extent practicable to make the Program available in remote locations. Mobile access to Federal databases of aliens, such as the Automated Biometric Fingerprint Identification System (IDENT), and live scan technology shall be used to the maximum extent practicable to make these resources available to State and local law enforcement agencies in remote locations.

(c) REPORT TO CONGRESS.—Not later than 6 months after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the participation of States in the Program and

in any other program carried out pursuant to subsection (a).

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

**SEC. 202. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.**

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

(1) in subsection (a)—

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

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

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

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

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

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

''(A) IN GENERAL.—

''(i) INSTEAD OF REMOVAL.—Subject to subparagraph (B), permission to voluntarily depart under paragraph (1)(A) shall not be valid for any period in excess of 120 days. The Secretary may require an alien permitted to voluntarily depart under paragraph (1)(A) to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.'';

''(ii) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to voluntarily depart under paragraph (1)(B) shall not be valid for any period longer than 60 days, and may be granted only after a finding that the alien has the means to depart the United States and intends to do so. An immigration judge may require an alien to voluntarily depart

under paragraph (1)(B) to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive the requirement to post a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will pose a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.''; and

(C) by striking paragraph (3);

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

''(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

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

''(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien's agreement to depart voluntarily under paragraph (1)(A), the Secretary of

1 Homeland Security may agree to a reduction in the
2 period of inadmissibility under subparagraph (A) or
3 (B)(i) of section 212(a)(9).

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

12 "(4) FAILURE TO COMPLY WITH AGREE-
13 MENT.—If an alien agrees to voluntary departure
14 under this section and fails to depart the United
15 States within the time allowed for voluntary depar-
16 ture or fails to comply with any other terms of the
17 agreement (including failure to timely post any re-
18 quired bond), the alien is—

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

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

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

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

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

"(d) PENALTIES FOR FAILURE TO DEPART.—If an alien is permitted to voluntarily depart under this section and fails to voluntarily depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the alien will be subject to the following penalties:

"(1) CIVIL PENALTY.—The alien shall be liable for a civil penalty of $3,000. The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record. If the Secretary thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Sec-

1 retary may collect the civil penalty at any time
2 thereafter and by whatever means provided by law.
3 An alien will be ineligible for any benefits under this
4 chapter until this civil penalty is paid.

5 ''(2) INELIGIBILITY FOR RELIEF.—The alien
6 shall be ineligible during the time the alien remains
7 in the United States and for a period of 10 years
8 after the alien's departure for any further relief
9 under this section and sections 240A, 245, 248, and
10 249. The order permitting the alien to depart volun-
11 tarily shall inform the alien of the penalties under
12 this subsection.''; and

13 (4) by amending subsection (e) to read as fol-
14 lows:

15 ''(e) ELIGIBILITY.—

16 ''(1) PRIOR GRANT OF VOLUNTARY DEPAR-
17 TURE.—An alien shall not be permitted to volun-
18 tarily depart under this section if the Secretary of
19 Homeland Security or the Attorney General pre-
20 viously permitted the alien to depart voluntarily
21 under this section on or after the date of the enact-
22 ment of the STRIVE Act of 2007.

23 ''(2) RULEMAKING.—The Secretary may pro-
24 mulgate regulations to limit eligibility or impose ad-

ditional conditions for voluntary departure under subsection (a)(1)(A) for any class of aliens.''.

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

**SEC. 203. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY.**

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

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

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

**SEC. 204. PROHIBITION OF THE SALE OF FIREARMS TO, OR THE POSSESSION OF FIREARMS BY CERTAIN ALIENS.**

Section 922 of title 18, United States Code, is amended—

(1) in subsection (d)(5)—

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

(B) in subparagraph (B), by striking ''(y)(2)'' and all that follows and inserting ''(y), is in a nonimmigrant classification; or''; and

(C) by adding at the end the following:

''(C) has been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5));'';

(2) in subsection (g)(5)—

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

(B) in subparagraph (B), by striking ''(y)(2)'' and all that follows and inserting ''(y), is in a nonimmigrant classification; or''; and

(C) by adding at the end the following:

''(C) has been paroled into the United States under section 212(d)(5) of the Immigra-

tion and Nationality Act (8 U.S.C. 1182(d)(5));''; and

(3) in subsection (y)—

(A) in the heading, by striking ''ADMITTED UNDER NONIMMIGRANT VISAS'' and inserting ''IN A NONIMMIGRANT CLASSIFICATION'';

(B) in paragraph (1), by amending subparagraph (B) to read as follows:

''(B) the term 'nonimmigrant classification' includes all classes of nonimmigrant aliens described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), or otherwise described in the immigration laws (as defined in section 101(a)(17) of such Act).'';

(C) in paragraph (2), by striking ''has been lawfully admitted to the United States under a nonimmigrant visa'' and inserting ''is in a nonimmigrant classification''; and

(D) in paragraph (3)(A), by striking ''Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5)'' and inserting ''Any alien in a non-

immigrant classification may receive a waiver from the requirements of subsection (g)(5)(B)''.

**SEC. 205. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, NATURALIZATION, AND PEONAGE OFFENSES.**

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

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

''No person shall be prosecuted, tried, or punished for a violation of any section of chapters 69 (relating to nationality and citizenship offenses), 75 (relating to passport, visa, and immigration offenses), or 77 (relating to peonage, slavery, and trafficking in persons), for an attempt or conspiracy to violate any such section, for a violation of any criminal provision under section 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and 1328), or for an attempt or conspiracy to violate any such section, unless the indictment is returned or the information filed not later than 10 years after the commission of the offense.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amend-

ed by striking the item relating to section 3291 and inserting the following:

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

**SEC. 206. EXPEDITED REMOVAL.**

(a) IN GENERAL.—Section 238 (8 U.S.C. 1228) is amended—

(1) by striking the section heading and inserting "**EXPEDITED REMOVAL OF CRIMINAL ALIENS**";

(2) in subsection (a), by striking the subsection heading and inserting: "EXPEDITED REMOVAL FROM CORRECTIONAL FACILITIES.—";

(3) in subsection (b), by striking the subsection heading and inserting: "REMOVAL OF CRIMINAL ALIENS.—";

(4) in subsection (b), by striking paragraphs (1) and (2) and inserting the following:

"(1) IN GENERAL.—The Secretary of Homeland Security may, in the case of an alien described in paragraph (2), determine the deportability of such alien and issue an order of removal pursuant to the procedures set forth in this subsection or section 240.

"(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

"(A) has not been lawfully admitted to the United States for permanent residence; and

"(B) was convicted of any criminal offense establishing deportability under subparagraph (A)(iii) or (D)(i) of section 237(a)(2)."; and

(5) by redesignating the subsection (c) that relates to judicial removal as subsection (d).

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to all aliens apprehended or convicted on or after such date.

**SEC. 207. FIELD AGENT ALLOCATION.**

(a) IN GENERAL.—Section 103(f) (8 U.S.C. 1103(f)) is amended to read as follows:

"(f) MINIMUM NUMBER OF AGENTS IN STATES.—

"(1) IN GENERAL.—The Secretary of Homeland Security shall allocate to each State—

"(A) not fewer than 40 full-time active duty agents of the Bureau of Immigration and Customs Enforcement to—

"(i) investigate immigration violations; and

"(ii) ensure the departure of all removable aliens; and

"(B) not fewer than 15 full-time active duty agents of United States Citizenship and Immigration Services to carry out immigration and naturalization adjudication functions.

"(2) WAIVER.—The Secretary may waive the application of paragraph (1) for any State with a population of less than 2,000,000, as most recently reported by the Bureau of the Census.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 90 days after the date of the enactment of this Act.

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

**SEC. 208. STREAMLINED PROCESSING OF BACKGROUND CHECKS CONDUCTED FOR IMMIGRATION BENEFIT APPLICATIONS AND PETITIONS.**

(a) INFORMATION SHARING; INTERAGENCY TASK FORCE.—Section 105 (8 U.S.C. 1105) is amended by adding at the end the following:

"(e) INTERAGENCY TASK FORCE.—

"(1) IN GENERAL.—The Secretary of Homeland Security shall establish an interagency task force to resolve cases in which an application or petition for an immigration benefit conferred under this Act has

been delayed due to an outstanding background check investigation for more than 2 years after the date on which such application or petition was initially filed.

"(2) MEMBERSHIP.—The interagency task force established under paragraph (1) shall include representatives from Federal agencies with immigration, law enforcement, or national security responsibilities under this Act.".

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director of the Federal Bureau of Investigation such sums as are necessary for each fiscal year, 2008 through 2012 for enhancements to existing systems for conducting background and security checks necessary to support immigration security and orderly processing of applications.

(c) REPORT ON BACKGROUND AND SECURITY CHECKS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the background and security checks conducted by the Fed-

eral Bureau of Investigation on behalf of United States Citizenship and Immigration Services.

(2) CONTENT.—The report required under paragraph (1) shall include—

(A) a description of the background and security check program;

(B) a statistical breakdown of the background and security check delays associated with different types of immigration applications;

(C) a statistical breakdown of the background and security check delays by applicant country of origin; and

(D) the steps that the Director of the Federal Bureau of Investigations is taking to expedite background and security checks that have been pending for more than 180 days.

(d) ENSURING ACCOUNTABILITY IN BACKGROUND CHECK DETERMINATIONS.—

(1) IN GENERAL.—Chapter 4 of title III (8 U.S.C. 1501 et seq.) is amended by adding at the end the following:

**"SEC. 362. CONSTRUCTION.**

"(a) IN GENERAL.—Nothing in this Act (other than section 241(b)(3)) or in any other provision of law (other than the Convention against Torture and Other Cruel, In-

1 human or Degrading Treatment or Punishment, done at
2 New York, December 10, 1994, subject to any reserva-
3 tions, understandings, declarations, and provisos con-
4 tained in the resolution of ratification of the Convention,
5 as implemented by section 2242 of the Foreign Affairs Re-
6 form and Restructuring Act of 1998 (Public Law 105–
7 277; 8 U.S.C. 1231 note)) may be construed to require
8 the Secretary of Homeland Security or the Attorney Gen-
9 eral to grant any application for asylum, adjustment of
10 status, or naturalization, or grant any relief from removal
11 under the immigration laws to—

12 "(1) any alien with respect to whom a national
13 security, criminal, or other investigation or case is
14 open or pending (including the issuance of an arrest
15 warrant, detainer, or indictment) that is material to
16 the alien's eligibility for the status or benefit sought;
17 or

18 "(2) any alien for whom all law enforcement
19 and other background checks have not been con-
20 ducted and resolved or the information related to
21 such background checks have not provided to or as-
22 sessed by the reviewing official.

23 "(b) TIMEFRAMES.—Notwithstanding subsection (a),
24 the Secretary of Homeland Security may not delay adju-
25 dication or document issuance beyond 180 days due to an

1 outstanding background or security check unless the Sec-
2 retary certifies that such background and security check
3 may establish that the alien poses a risk to national secu-
4 rity or public safety. The decision to delay shall be re-
5 viewed every 180 days, and such decision may not be dele-
6 gated below the level of Assistant Secretary. An alien has
7 no right to review or appeal the Secretary's decision to
8 delay adjudication or issuance of documentation under
9 this section, but remains entitled to interim work author-
10 ization.''.

11 (2) RULEMAKING.—The Secretary of Homeland
12 Security shall promulgate regulations that describe
13 the conditions under which interim work authoriza-
14 tion under paragraph (1) shall be issued.

15 (3) ANNUAL REPORT TO CONGRESS.—The Sec-
16 retary of Homeland Security, the Attorney General,
17 the Secretary of State, and the Secretary of Labor
18 shall submit an annual report to Congress that in-
19 cludes—

20 (A) the number of cases in which para-
21 graph (1) or (2) of subsection (a) is invoked
22 during the reporting period;

23 (B) the total number of pending cases in
24 each category at the end of the reporting pe-
25 riod;

(C) the resolution of cases finally decided during the reporting period; and

(D) statistics on interim employment authorizations issued under this section.

(e) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 361 the following:

"Sec. 362. Construction.".

(f) ENHANCED TRANSPARENCY OF CLEARANCE PROCESS.—

(1) ESTABLISHMENT.—The Secretary and the Attorney General shall each establish an Office of the Public Advocate for Immigration Clearances within the Department and the Department of Justice, respectively. Each Office shall be headed by a Public Advocate.

(2) DUTIES.—Each Public Advocate shall—

(A) serve as a public liaison for their respective Department for identifying and resolving delays in immigration processing caused by background check investigations; and

(B) serve on the Interagency Task Force established under subsection (e) of section 105 of the Immigration and Nationality Act (8 U.S.C. 1105), as added by subsection (a).

**SEC. 209. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 241(i)(5)(C) (8 U.S.C. 1231(i)(5)(C)) is amended by striking ''2011'' and inserting ''2012''.

(b) REIMBURSEMENT OF STATES FOR PRECONVICTION COSTS RELATING TO THE INCARCERATION OF ILLEGAL ALIENS.—Section 241(i)(3)(A) (8 U.S.C. 1231(i)(3)(A)) is amended by inserting ''charged with or'' before ''convicted''.

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

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

''(a) REIMBURSEMENT OF STATES.—Subject to the amounts provided in advance in appropriation Acts, the Secretary of Homeland Security shall reimburse a State for—

''(1) the costs incurred by the State for the imprisonment of any illegal alien or Cuban national who is convicted of a felony by such State; and

''(2) the indirect costs related to the imprisonment described in paragraph (1).''; and

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

1 "(c) MANNER OF ALLOTMENT OF REIMBURSE-
2 MENTS.—Reimbursements under this section shall be al-
3 lotted in a manner that gives special consideration for any
4 State that—
5 "(1) shares a border with Mexico or Canada; or
6 "(2) includes within the State an area in which
7 a large number of undocumented aliens reside rel-
8 ative to the general population of that area.
9 "(d) DEFINITIONS.—In this section:
10 "(1) INDIRECT COSTS.—The term 'indirect
11 costs' includes—
12 "(A) court costs, county attorney costs, de-
13 tention costs, and criminal proceedings expendi-
14 tures that do not involve going to trial;
15 "(B) indigent defense costs; and
16 "(C) unsupervised probation costs.
17 "(2) STATE.—The term 'State' has the mean-
18 ing given such term in section 101(a)(36) of the Im-
19 migration and Nationality Act (8 U.S.C.
20 1101(a)(36)).
21 "(e) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated $200,000,000 for each
23 of the fiscal years 2008 through 2012 to carry out sub-
24 section (a)(2).".

**SEC. 210. TRANSPORTATION AND PROCESSING OF ILLEGAL ALIENS APPREHENDED BY STATE AND LOCAL LAW ENFORCEMENT OFFICERS.**

(a) IN GENERAL.—The Secretary shall provide sufficient transportation and officers to take illegal aliens apprehended by State and local law enforcement officers into custody for processing at a detention facility operated by the Department.

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

**SEC. 211. REDUCING ILLEGAL IMMIGRATION AND ALIEN SMUGGLING ON TRIBAL LANDS.**

(a) GRANTS AUTHORIZED.—The Secretary may award grants to Indian tribes with lands adjacent to an international border of the United States that have been adversely affected by illegal immigration.

(b) USE OF FUNDS.—Grants awarded under subsection (a) may be used for—

(1) law enforcement activities;

(2) health care services;

(3) environmental restoration; and

(4) the preservation of cultural resources.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit

a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that—

(1) describes the level of access of Border Patrol agents on tribal lands;

(2) describes the extent to which enforcement of immigration laws may be improved by enhanced access to tribal lands;

(3) contains a strategy for improving such access through cooperation with tribal authorities; and

(4) identifies grants provided by the Department for Indian tribes, either directly or through State or local grants, relating to border security expenses.

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

**SEC. 212. MANDATORY ADDRESS REPORTING REQUIREMENTS.**

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

(1) in subsection (a)—

(A) by striking ''notify the Attorney General in writing'' and inserting ''submit written

or electronic notification to the Secretary of Homeland Security, in a manner approved by the Secretary,'';

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

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

(2) in subsection (b), by striking ''Attorney General'' each place such term appears and inserting ''Secretary of Homeland Security'';

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

(4) by adding at the end the following:

''(d) ADDRESS TO BE PROVIDED.—

''(1) IN GENERAL.—Except as otherwise provided by the Secretary under paragraph (2), an address provided by an alien under this section shall be the alien's current residential mailing address, and shall not be a post office box or other nonresi-

1 dential mailing address or the address of an attor-
2 ney, representative, labor organization, or employer.
3 "(2) SPECIFIC REQUIREMENTS.—The Secretary
4 may provide specific requirements with respect to—
5 "(A) designated classes of aliens and spe-
6 cial circumstances, including aliens who are em-
7 ployed at a remote location; and
8 "(B) the reporting of address information
9 by aliens who are incarcerated in a Federal,
10 State, or local correctional facility.
11 "(3) DETENTION.—An alien who is being de-
12 tained by the Secretary under this Act is not re-
13 quired to report the alien's current address under
14 this section during the time the alien remains in de-
15 tention, but shall be required to notify the Secretary
16 of the alien's address under this section at the time
17 of the alien's release from detention.
18 "(e) USE OF MOST RECENT ADDRESS PROVIDED BY
19 THE ALIEN.—
20 "(1) IN GENERAL.—Notwithstanding any other
21 provision of law, the Secretary may provide for the
22 appropriate coordination and cross referencing of
23 address information provided by an alien under this
24 section with other information relating to the alien's
25 address under other Federal programs, including—

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

"(B) any information available to the Attorney General with respect to an alien in a proceeding before an immigration judge or an administrative appeal or judicial review of such proceeding;

"(C) any information collected with respect to nonimmigrant foreign students or exchange program participants under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372); and

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

"(2) RELIANCE.—The Secretary may rely on the most recent address provided by the alien under this section or section 264 to send to the alien any notice, form, document, or other matter pertaining to Federal immigration laws, including service of a notice to appear. The Attorney General and the Secretary may rely on the most recent address provided

by the alien under section 239(a)(1)(F) to contact the alien about pending removal proceedings.

"(3) OBLIGATION.—The alien's provision of an address for any other purpose under the Federal immigration laws does not excuse the alien's obligation to submit timely notice of the alien's address to the Secretary under this section (or to the Attorney General under section 239(a)(1)(F) with respect to an alien in a proceeding before an immigration judge or an administrative appeal of such proceeding).

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

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

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

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

(3) in section 264—

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

(B) in subsection (f)—

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

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

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

(d) TECHNICAL AMENDMENTS.—Section 266 (8 U.S.C. 1306 ) is amended by striking ''Attorney General''

each place it appears and inserting ''Secretary of Homeland Security''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) EXCEPTIONS.—The amendments made by paragraphs (1)(A), (1)(B), (2), and (3) of subsection (a) shall take effect as if enacted on March 1, 2003.

**SEC. 213. STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS.**

(a) IN GENERAL.—Section 287(g) (8 U.S.C. 1357(g)) is amended—

(1) in paragraph (2), by adding at the end ''If such training is provided by a State or political subdivision of a State to an officer or employee of such State or political subdivision of a State, the cost of such training (including applicable overtime costs) shall be reimbursed by the Secretary of Homeland Security.''; and

(2) in paragraph (4), by adding at the end ''The cost of any equipment required to be purchased under such written agreement and necessary to perform the functions under this subsection shall

be reimbursed by the Secretary of Homeland Security.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section and the amendments made by this section.

**SEC. 214. INCREASED CRIMINAL PENALTIES RELATED TO DRUNK DRIVING.**

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

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

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

''(F) DRUNK DRIVERS.—Any alien who has been convicted of 3 offenses for driving under the influence and at least 1 of the offenses is a felony under Federal or State law, for which the alien was sentenced to more than 1 year imprisonment, is inadmissible.''.

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

''(F) DRUNK DRIVERS.—Unless the Secretary of Homeland Security or the Attorney

General waives the application of this subparagraph, any alien who has been convicted of 3 offenses for driving under the influence and at least 1 of the offenses is a felony under Federal or State law, for which the alien was sentenced to more than 1 year imprisonment, is deportable.''.

(c) JUDICIAL ADVISAL.—

(1) IN GENERAL.—A court shall not accept a guilty plea for driving under the influence unless the court has administered to the defendant, on the record, the following adivsal:

''If you are not a citizen of the United States, you are advised that conviction for driving under the influence, including conviction by entry of any plea, even if the conviction is later expunged, may result in deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.''.

(2) FAILURE TO ADVISE.—Upon request, the court shall allow the defendant a reasonable amount of additional time to consider the appropriateness of the plea in light of the advisement set out in paragraph (1). If the court fails to advise the defendant in accordance with paragraph (1) and the defendant

shows that conviction of the offense to which the defendant pleaded guilty may result in the defendant's deportation, exclusion from the United States, or denial of naturalization pursuant to the laws of the United States, the court, upon a motion by the defendant, shall vacate the judgment and permit the defendant to withdraw the plea and enter a plea of not guilty. If the record does not show that the court provided the required advisement, it shall be presumed that the defendant did not receive the advisement. The defendant shall not be required to disclose his or her immigration status at any time.

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

(1) in the subsection heading, by striking "SUBSECTION (a)(2)(A)(i)(I), (II), (B), (D),AND (E)" and inserting "CERTAIN PROVISIONS IN SUBSECTION (a)(2)"; and

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

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

**SEC. 215. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS AND TRANSFER TO FEDERAL CUSTODY.**

Title II (8 U.S.C. 1151 et seq.) is amended by adding after section 240C the following:

**"SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS AND TRANSFER OF ALIENS TO FEDERAL CUSTODY.**

"(a) AUTHORITY.—Notwithstanding any other provision of law, law enforcement personnel of a State, or a political subdivision of a State, have the inherent authority of a sovereign entity to investigate, apprehend, arrest, detain, or transfer to Federal custody (including the transportation across State lines to detention centers) an alien for the purpose of assisting in the enforcement of the criminal provisions of the immigration laws of the United States in the normal course of carrying out the law enforcement duties of such personnel. This State authority has never been displaced or preempted by a Federal law.

"(b) TRANSFER.—If the head of a law enforcement entity of a State (or a political subdivision of the State), exercising authority with respect to the detention of an alien convicted of a criminal offense, submits a request to the Secretary of Homeland Security, the Secretary shall—

1 "(1) determine the immigration status of the
2 offender; and
3 "(2) report to the requesting agency whether
4 the Department of Homeland Security intends to
5 take custody of the offender for violations of Federal
6 immigration laws, with an approximate timeframe
7 for the transfer of custody.
8 "(c) REIMBURSEMENT.—The Secretary of Homeland
9 Security is authorized to use funds appropriated pursuant
10 to the authorization of appropriations in section 241(i)(5)
11 to reimburse a State, or a political subdivision of a State
12 for activities described in subparagraph (a) or (b).
13 "(d) REQUIREMENT FOR APPROPRIATE SECURITY.—
14 The Secretary of Homeland Security shall ensure that—
15 "(1) aliens incarcerated in a Federal facility
16 pursuant to this section are held in facilities which
17 provide an appropriate level of security; and
18 "(2) if practicable, aliens detained solely for
19 civil violations of Federal immigration law are sepa-
20 rated within a facility or facilities.
21 "(e) REQUIREMENT FOR SCHEDULE.—In carrying
22 out this section, the Secretary of Homeland Security shall
23 establish a regular circuit and schedule for the prompt
24 transportation of apprehended aliens from the custody of
25 those States, and political subdivisions of States, which

1 routinely submit requests described in subsection (b), into
2 Federal custody.

3 "(f) AUTHORITY FOR CONTRACTS.—

4 "(1) IN GENERAL.—The Secretary of Homeland
5 Security may enter into contracts or cooperative
6 agreements with appropriate State and local law en-
7 forcement and detention agencies to implement this
8 section.

9 "(2) DETERMINATION BY SECRETARY.—Before
10 entering into a contract or cooperative agreement
11 with a State or political subdivision of a State under
12 paragraph (1), the Secretary shall determine wheth-
13 er the State, or if appropriate, the political subdivi-
14 sion in which the agencies are located, has in place
15 any formal or informal policy that violates section
16 642 of the Illegal Immigration Reform and Immi-
17 grant Responsibility Act of 1996 (8 U.S.C. 1373).
18 The Secretary shall not allocate any of the funds
19 made available under this section to any State or po-
20 litical subdivision that has in place a policy that vio-
21 lates such section.

22 "(g) CONSTRUCTION.—Nothing in this section shall
23 be construed to require law enforcement personnel of a
24 State or a political subdivision to assist in the enforcement
25 of the immigration laws of the United States.

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

**SEC. 216. LAUNDERING OF MONETARY INSTRUMENTS.**

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting "section 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor)," after "section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),"; and

(2) by inserting "section 274(a) of the Immigration and Nationality Act (8 U.S.C.1324(a)) (relating to bringing in and harboring certain aliens)," after "section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling),".

**SEC. 217. INCREASE OF FEDERAL DETENTION SPACE AND THE UTILIZATION OF FACILITIES IDENTIFIED FOR CLOSURES AS A RESULT OF THE DEFENSE BASE CLOSURE REALIGNMENT ACT OF 1990.**

(a) CONSTRUCTION OR ACQUISITION OF DETENTION FACILITIES.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall construct or ac-

quire, in addition to existing facilities for the detention of aliens, at least 20 detention facilities in the United States that have the capacity to detain a combined total of not less than 20,000 individuals at any time for aliens detained pending removal or a decision on removal of such aliens from the United States.

(2) REQUIREMENT TO CONSTRUCT OR ACQUIRE.—Subject to the availability of appropriations, the Secretary shall construct or acquire additional detention facilities in the United States to accommodate the detention beds required by section 5204(a) of the Intelligence Reform and Terrorism Protection Act of 2004 (Public Law 108–458; 118 Stat. 3734).

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

(4) USE OF INSTALLATIONS UNDER BASE CLOSURE LAWS.—In acquiring additional detention facilities under this subsection, the Secretary shall

consider the transfer of appropriate portions of military installations approved for closure or realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) for use in accordance with this subsection.

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

(b) ANNUAL REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, in consultation with the heads of other appropriate Federal agencies, the Secretary shall submit to Congress an assessment of the additional detention facilities and bed space needed to detain unlawful aliens apprehended at the United States ports of entry or along the international land borders of the United States.

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

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

**SEC. 218. DETERMINATION OF IMMIGRATION STATUS OF INDIVIDUALS CHARGED WITH FEDERAL OFFENSES.**

(a) RESPONSIBILITY OF UNITED STATES ATTORNEYS.—Beginning not later than 2 years after the date of enactment of this Act, the office of the United States Attorney that is prosecuting a criminal case in a Federal court—

(1) shall determine, not later than 30 days after filing the initial pleadings in the case, whether each defendant in the case is lawfully present in the United States (subject to subsequent legal proceedings to determine otherwise);

(2)(A) if the defendant is determined to be an alien lawfully present in the United States, shall notify the court in writing of the determination and the current status of the alien under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); and

(B) if the defendant is determined not to be lawfully present in the United States, shall notify the court in writing of the determination, the defendant's alien status, and, to the extent possible, the country of origin or legal residence of the defendant;

(3) ensure that the information described in paragraph (2) is included in the case file and the criminal records system of the office of the United States attorney; and

(4) provide notice to the alien and the counsel for the alien of any such determination and any such submission to the court.

(b) GUIDELINES.—A determination made under subsection (a)(1) shall be made in accordance with guidelines of the Executive Office for Immigration Review of the Department of Justice.

(c) RESPONSIBILITIES OF FEDERAL COURTS.—

(1) MODIFICATIONS OF RECORDS AND CASE MANAGEMENTS SYSTEMS.—Not later than 2 years after the date of enactment of this Act, all Federal courts that hear criminal cases, or appeals of criminal cases, shall modify their criminal records and case management systems, in accordance with guidelines which the Director of the Administrative Office

of the United States Courts shall establish, so as to enable accurate reporting of information described in subsection (a)(2).

(2) DATA ENTRIES.—Beginning not later than 2 years after the date of enactment of this Act, each Federal court described in paragraph (1) shall enter into its electronic records the information contained in each notification to the court under subsection (a)(2).

(d) CONSTRUCTION.—Nothing in this section may be construed to provide a basis for admitting evidence to a jury or releasing information to the public regarding an alien's immigration status.

(e) ANNUAL REPORT TO CONGRESS.—The Director of the Administrative Office of the United States Courts shall include, in the annual report filed with Congress under section 604 of title 28, United States Code—

(1) statistical information on criminal trials of aliens in the courts and criminal convictions of aliens in the lower courts and upheld on appeal, including the type of crime in each case and including information on the legal status of the aliens; and

(2) recommendations on whether additional court resources are needed to accommodate the vol-

ume of criminal cases brought against aliens in the Federal courts.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated for each of fiscal years 2008 through 2012, such sums as may be necessary to carry out this section.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to the authorization of appropriations in this subsection in any fiscal year shall remain available until expended.

**SEC. 219. EXPANSION OF THE JUSTICE PRISONER AND ALIEN TRANSFER SYSTEM.**

Not later than 60 days after the date of enactment of this Act, the Attorney General shall issue a directive to expand the Justice Prisoner and Alien Transfer System so that such System provides additional services with respect to aliens who are illegally present in the United States. Such expansion should include—

(1) increasing the daily operations of such System with buses and air hubs in 3 geographic regions;

(2) allocating a set number of seats for such aliens for each metropolitan area;

(3) allowing metropolitan areas to trade or give some of the seats allocated to the area under such

System for such aliens to other areas in their region based on the transportation needs of each area; and

(4) requiring an annual report that analyzes the number of seats that each metropolitan area is allocated under such System for such aliens and modifies such allocation if necessary.

**SEC. 220. CANCELLATION OF VISAS.**

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

(1) in paragraph (1)—

(A) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''; and

(B) by inserting ''and any other nonimmigrant visa issued by the United States that is in the possession of the alien'' after ''such visa''; and

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

# Subtitle B—Passport and Visa Security

**SEC. 221. REFORM OF PASSPORT FRAUD OFFENSES.**

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

**"§ 1541. Trafficking in passports**

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

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

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

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

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

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

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

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

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

"(a) IN GENERAL.—Whoever knowingly makes any false statement or representation in an application for a United States passport, or mails, prepares, presents, or signs an application for a United States passport knowing the application to contain any false statement or representation, shall be fined under this title, imprisoned not more than 15 years, or both.

"(b) VENUE.—

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

"(A) in which the false statement or representation was made or the application for a

United States passport was prepared or signed; or

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

"(2) ACTS OCCURRING OUTSIDE THE UNITED STATES.—An offense under subsection (a) involving an application for a United States passport prepared and adjudicated outside the United States may be prosecuted in the district in which the resultant passport was or would have been produced.

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

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

**"§ 1543. Forgery and unlawful production of a passport**

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

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

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

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

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

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

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

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

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

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

**"§ 1544. Misuse of a passport**

"Any person who knowingly—

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

"(2) uses any passport in violation of the conditions or restrictions therein contained, or in violation

of the laws, regulations, or rules governing the issuance and use of the passport;

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

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

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

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

**"§ 1545. Schemes to defraud aliens**

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

"(1) defraud any person; or

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

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

"(b) MISREPRESENTATION.—Any person who knowingly and falsely represents that such person is an attorney or an accredited representative (as that term is defined in section 1292.1 of title 8, Code of Federal Regulations (or any successor regulation to such section)) in any matter arising under Federal immigration laws shall be fined under this title, imprisoned not more than 15 years, or both.".

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

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

**"§ 1546. Immigration and visa fraud"**;

and

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

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

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

1 "(2) forges, counterfeits, alters, or falsely
2 makes any immigration document;
3 "(3) completes, mails, prepares, presents, signs,
4 or submits any immigration document knowing it to
5 contain any materially false statement or representa-
6 tion;
7 "(4) secures, possesses, uses, transfers, re-
8 ceives, buys, sells, or distributes any immigration
9 document knowing it to be forged, counterfeited, al-
10 tered, falsely made, stolen, procured by fraud, or
11 produced or issued without lawful authority;
12 "(5) adopts or uses a false or fictitioius name
13 to evade or to attempt to evade the immigration
14 laws; or
15 "(6) transfers or furnishes, without lawful au-
16 thority, an immigration document to another person
17 for use by a person other than the person for whom
18 the pasport was issued or disgned,
19 shall be fined under this title, imprisoned not more 15
20 years, or both.
21 "(c) TRAFFICKING.—Any person who, during any pe-
22 riod of 3 years or less, knowingly—
23 "(1) and without lawful authority produces,
24 issues, or transfers 10 or more immigration docu-
25 ments;

1 "(2) forges, counterfeits, alters, or falsely
2 makes 10 or more immigration documents;
3 "(3) secures, possesses, uses, buys, sells, or dis-
4 tributes 10 or more immigration documents, know-
5 ing the immigration documents to be forged, coun-
6 terfeited, altered, stolen, falsely made, procured by
7 fraud, or produced or issued without lawful author-
8 ity; or
9 "(4) completes, mails, prepares, presents, signs,
10 or submits 10 or more immigration documents
11 knowing the documents to contain any materially
12 false statement or representation,
13 shall be fined under this title, imprisoned not more than
14 20 years, or both.
15 "(d) IMMIGRATION DOCUMENT MATERIALS.—Any
16 person who knowingly and without lawful authority pro-
17 duces, buys, sells, possesses, or uses any official material
18 (or counterfeit of any official material) used to make im-
19 migration documents, including any distinctive paper, seal,
20 hologram, image, text, symbol, stamp, engraving, or plate,
21 shall be fined under this title, imprisoned not more than
22 20 years, or both.
23 "(e) EMPLOYMENT DOCUMENTS.—Any person who
24 uses—

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

"(2) an identification document knowing (or having reason to know) that the document is false; or

"(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)), shall be fined under this title, imprisoned not more than 5 years, or both.".

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

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

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

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

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

**"§ 1548. Attempts and conspiracies**

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

**"§ 1549. Additional jurisdiction**

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

''(b) EXTRATERRITORIAL JURISDICTION.—Any person who commits an offense under this chapter outside the United States shall be punished as provided under this chapter if—

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

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

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

''(4) the offense is committed to facilitate an act of international terrorism (as defined in section

2331) or a drug trafficking crime (as defined in section 929(a)(2)) that affects or would affect the national security of the United States;

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

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

**"§ 1550. Authorized law enforcement activities**

''Nothing in this chapter shall prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (Public Law 91–452; 84 Stat. 933).

**"§ 1551. Definitions**

''As used in this chapter:

''(1) The term 'application for a United States passport' includes any document, photograph, or other piece of evidence submitted in support of an application for a United States passport.

''(2) The term 'immigration document'—

"(A) means any application, petition, affidavit, declaration, attestation, form, visa, identification card, alien registration document, employment authorization document, border crossing card, certificate, permit, order, license, stamp, authorization, grant of authority, or other official document, arising under or authorized by the immigration laws of the United States; and

"(B) includes any document, photograph, or other piece of material evidence attached or submitted in support of an immigration document described in subparagraph (A).

"(3) The term 'immigration laws' includes—

"(A) the laws described in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17));

"(B) the laws relating to the issuance and use of passports; and

"(C) the regulations prescribed under the authority of any law described in subparagraph (A) or (B).

"(4) A person does not exercise 'lawful authority' if the person abuses or improperly exercises lawful authority the person otherwise holds.

"(5) The term 'passport' means—

"(A) a travel document attesting to the identity and nationality of the bearer that is issued under the authority of the Secretary of State, a foreign government, or an international organization; or

"(B) any instrument purporting to be a document described in subparagraph (A).

"(6) The term 'produce' means to make, prepare, assemble, issue, print, authenticate, or alter.

"(7) The term 'to present' means to offer or submit for official processing, examination, or adjudication. Any such presentation continues until the official processing, examination, or adjudication is complete.

"(8) The 'use' of a passport or an immigration document referred to in section 1541(a), 1543(b), 1544, 1546(a), and 1546(b) of this chapter includes—

"(A) any officially authorized use;

"(B) use to travel;

"(C) use to demonstrate identity, residence, nationality, citizenship, or immigration status;

"(D) use to seek or maintain employment; or

"(E) use in any matter within the jurisdiction of the Federal government or of a State government.".

(i) CLERICAL AMENDMENT.—The table of sections for chapter 75 of title 18, United States Code, is amended to read as follows:

"Sec.
"1541. Trafficking in passports.
"1542. False statement in an application for a passport.
"1543. Forgery and unlawful production of a passport.
"1544. Misuse of a passport.
"1545. Schemes to defraud aliens.
"1546. Immigration and visa fraud.
"1547. Alternative imprisonment maximum for certain offenses.
"1548. Attempts and conspiracies.
"1549. Additional jurisdiction.
"1550. Authorized law enforcement activities.
"1551. Definitions.".

**SEC. 222. OTHER IMMIGRATION REFORMS.**

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

(1) IN GENERAL.—Pursuant to the authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate or amend the sentencing guidelines, policy statements, and official commentaries related to passport fraud offenses, including the offenses described in chapter 75 of title 18, United States Code, as amended by section 221, to reflect the serious nature of such offenses.

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

(b) RELEASE AND DETENTION PRIOR TO DISPOSITION.—

(1) DETENTION.—Section 3142(e) of title 18, United States Code, is amended to read as follows:

''(e) DETENTION.—(1) If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

''(2) In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—

''(A) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this

section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

''(B) the offense described in subparagraph (A) of this paragraph was committed while the person was on release pending trial for a Federal, State, or local offense; and

''(C) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in subparagraph (A) of this paragraph, whichever is later.

''(3) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, an offense under section 924(c), 956(a), or 2332b of this title, or an offense listed in section 2332b(g)(5)(B) of this title for which a

1 maximum term of imprisonment of 10 years or more is
2 prescribed, or an offense involving a minor victim under
3 section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251,
4 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1),
5 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421,
6 2422, 2423, or 2425 of this title.''.

7 (c) PROTECTION FOR LEGITIMATE REFUGEES AND
8 ASYLUM SEEKERS.—

9 (1) PROTECTION FOR LEGITIMATE REFUGEES
10 AND ASYLUM SEEKERS.—The Attorney General, in
11 consultation with the Secretary of Homeland Secu-
12 rity, shall develop binding prosecution guidelines for
13 Federal prosecutors to ensure that any prosecution
14 of an alien seeking entry into the United States by
15 fraud is consistent with the United States treaty ob-
16 ligations under Article 31(1) of the Convention Re-
17 lating to the Status of Refugees, done at Geneva
18 July 28, 1951 (as made applicable by the Protocol
19 Relating to the Status of Refugees, done at New
20 York January 31, 1967 (19 UST 6223)).

21 (2) NO PRIVATE RIGHT OF ACTION.—The
22 guidelines developed pursuant to paragraph (1), and
23 any internal office procedures related to such guide-
24 lines, are intended solely for the guidance of attor-
25 neys of the United States. This subsection, such

guidelines, and the process for developing such guidelines are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

(3) WAIVER.—The Secretary may grant a waiver from prosecution under chapter 75 of title 18, United States Code, as amended by section 211 of this Act, to a person—

(A) seeking protection, classification, or status under section 208 or 241(b)(3) of the Immigration and Nationality Act, or relief under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1994, pursuant to title 8, Code of Federal Regulations;

(B) referred for a credible fear interview, a reasonable fear interview, or an asylum-only hearing under section 235 of the Immigration and Nationality Act or title 8, Code of Federal Regulations; or

(C) has filed an application for classification or status under paragraph (15)(T), (15)(U), (27)(J), or (51) of section 101(a) of

the Immigration and Nationality Act, section 216(c)(4)(C), 240A(b)(2), or section 244(a)(3) of such Act.

(d) DIPLOMATIC SECURITY SERVICE.—Section 37(a)(1) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709(a)(1)) is amended to read as follows:

"(1) conduct investigations concerning—

"(A) illegal passport or visa issuance or use;

"(B) identity theft or document fraud affecting or relating to the programs, functions, and authorities of the Department of State;

"(C) violations of chapter 77 of title 18, United States Code; and

"(D) Federal offenses committed within the special maritime and territorial jurisdiction defined in paragraph (9) of section 7 of title 18, United States Code;".

# Subtitle C—Detention and Removal of Aliens Who Illegally Enter or Remain in the United States

**SEC. 231. DETENTION AND REMOVAL OF ALIENS ORDERED REMOVED.**

(a) IN GENERAL.—Section 241(a) (8 U.S.C. 1231(a)) is amended—

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

(2) in paragraphs (3), (4), (5), (6), and (7), by striking ''Attorney General'' each place it appears and inserting ''Secretary'';

(3) in paragraph (1)—

(A) by amending subparagraph (C) to read as follows:

''(C) EXTENSION OF REMOVAL PERIOD.—

''(i) IN GENERAL.—The Secretary shall extend the removal period for more than a period of 90 days and the alien may remain in detention during such extended period if, during the removal period—

''(I) the alien—

''(aa) fails or refuses to make timely application in good

faith for travel or other documents necessary for the alien to depart the United States; or

"(bb) conspires or acts to prevent the removal of the alien subject to an order of removal; and

"(II) the Secretary makes a certification described in paragraph (8)(B) for such alien.

"(ii) STAY OF REMOVAL.—An alien seeking a stay of removal from an immigration judge, a Federal judge, or the Board of Immigration Appeals shall not be deemed under any provision of law to be conspiring or acting to prevent the removal of the alien.

"(iii) REVIEW.—The procedures described in paragraph (8)(E) shall apply to actions taken under this subparagraph."; and

(B) by adding at the end the following:

"(D) TOLLING OF PERIOD.—If, at the time described in clause (i), (ii), or (iii) of subparagraph (B), the alien is not in the custody

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

(4) by amending paragraph (2) to read as follows:

''(2) DETENTION.—During the removal period, the Secretary shall detain the alien. Under no circumstances during the removal period shall the Secretary release an alien who has been found inadmissible under section 212(a)(2) or 212(a)(3)(B) or deportable under section 237(a)(2) or 1227(a)(4)(B). If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of removal of an alien who is subject to an administratively final order of removal, the Secretary, in the exercise of discretion, may detain or supervise the alien during the pendency of such stay of removal, subject to the

limitations set forth in subparagraphs (3), (6), and (8).";

(5) in paragraph (3)—

(A) in the matter preceding subparagraph (A), by striking "If" and inserting "Subject to the requirements of paragraphs (6) and (8), if"; and

(B) by striking subparagraph (D) and inserting the following:

"(D) to obey reasonable restrictions on the alien's conduct or activities, or to perform affirmative acts prescribed by the Secretary—

"(i) to prevent the alien from absconding; or

"(ii) to protect the community;

"(E) if appropriate—

"(i) to utilize an electronic monitoring device;

"(ii) to complete parole and probation requirements for aliens with outstanding obligations under Federal or State law; and

"(F) to comply with any other conditions of such supervision that the Secretary determines is appropriate.";

(6) in paragraph (6), by inserting ", subject to the provisions of paragraph (8)" after "beyond the removal period";

(7) by redesignating paragraph (7) as paragraph (11);

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

"(7) PAROLE.—

"(A) IN GENERAL.—If an alien detained pursuant to paragraph (6) is an applicant for admission and is released from detention, such release shall be considered to be made as an exercise of the Secretary's parole authority under 212(d)(5). Notwithstanding section 212(d)(5), the Secretary may provide that the alien shall not be returned to custody unless—

"(i) the alien violates the conditions of the alien's parole under this section;

"(ii) the alien's removal becomes reasonably foreseeable; or

"(iii) the alien violates the conditions set out in paragraph (3).

"(B) NOT AN ADMISSION.—Under no circumstance shall an alien paroled under this sec-

1 tion be considered admitted to the United
2 States.
3 "(8) ADDITIONAL RULES FOR DETENTION OR
4 RELEASE OF ALIENS BEYOND REMOVAL PERIOD.—
5 "(A) DETENTION AFTER REMOVAL PE-
6 RIOD.—The Secretary is authorized to detain
7 an alien who has effected an entry into the
8 United States—
9 "(i) for not more than 90 days beyond
10 the removal period if the Secretary is seek-
11 ing to make a certification described in
12 subparagraph (B) for the alien; or
13 "(ii) for more than 90 days beyond
14 the removal period if the Secretary has
15 made a certification described in subpara-
16 graph (B) for the alien, subject to the con-
17 ditions set out in this paragraph.
18 "(B) CERTIFICATION.—A certification de-
19 scribed in this subparagraph is a written certifi-
20 cation made by the Secretary in which the Sec-
21 retary determines—
22 "(i) that the alien is significantly like-
23 ly to be removed in the reasonably foresee-
24 able future;

"(ii) that the alien has failed to make a timely application, in good faith, for travel documents or has otherwise conspired or acted to prevent the removal of the alien;

"(iii) that the alien would have been removed if the alien had not—

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

"(II) failed or refused to fully cooperate with the efforts of the Secretary to establish the alien's identity and carry out the removal order, including failing to submit a timely application, in good faith, for travel or other documents necessary for the alien's departure from the United States; or

"(III) conspired or acted to prevent such removal;

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

which case the alien may be quarantined in a civil medical facility;

"(v) on the basis of information available to the Secretary (including classified and national security information), regardless of the grounds upon which the alien was ordered removed and pursuant to a written certification under section 236A, that there is reason to believe that the release of the alien would threaten the national security of the United States; or

"(vi) that the release of the alien would threaten the safety of the community, notwithstanding conditions of release designed to ensure the safety of the community or any person and the alien—

"(I) has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(43)(A)), or of 1 or more attempts or conspiracies to commit any such aggravated felonies for which the alien served an aggregate term of imprisonment of at least 5 years and the alien is likely to engage in acts of violence in the future; or

"(II) because of a mental condition or personality disorder (certified under section 232(b)) and behavior associated with that condition or disorder, is likely to engage in acts of violence in the future, in which case the alien may be referred for review and evaluation for civil commitment pursuant to the civil commitment statute of the State in which the alien resides.

"(C) DELEGATION.—Notwithstanding any other provision of law, the Secretary may not delegate the authority to make a certification described in subparagraph (B) to any official lower than the Assistant Secretary for Immigration and Customs Enforcement.

"(D) ADMINISTRATIVE REVIEW.—

"(i) IN GENERAL.—The Secretary shall establish an administrative review process to permit an alien to appeal a decision by the Secretary to detain the alien after the removal period under subparagraph (A) or to extend the removal period for the alien under paragraph (1)(C).

1 "(ii) REVIEW.—An immigration judge
2 shall review a determination by the Sec-
3 retary to detain an alien under subpara-
4 graph (A) or paragraph (1)(C). An immi-
5 gration judge shall uphold such determina-
6 tion of the Secretary if the Secretary es-
7 tablishes at a hearing, by clear and con-
8 vincing evidence, that such detention is au-
9 thorized under subparagraph (A) or para-
10 graph (1)(C). In making this determina-
11 tion, the court shall disclose, if otherwise
12 discoverable, to the alien, the counsel of
13 the alien, or both, under procedures and
14 standards set forth in the Classified Infor-
15 mation Procedures Act (18 U.S.C. App.),
16 any evidence that the Secretary relied on
17 in making a determination under this sec-
18 tion unless the court finds that such disclo-
19 sure would not assist in determining any
20 legal or factual issue pertinent to the case.
21 The decision of the immigration judge
22 shall not be subject to appeal, but shall be
23 reviewable in a habeas corpus proceeding
24 under section 2241 of title 28, United
25 States Code.

"(E) RENEWAL OF EXTENDED DETENTION.—

"(i) RENEWAL OF DETENTION.—The Secretary may renew a certification under subparagraph (B) every 180 days after providing the alien with an opportunity to submit documents or other evidence in support of release. Unless the Secretary determines that continued detention under subparagraph (A) or paragraph (1)(C) is warranted, the Secretary shall release the alien subject to the conditions of supervision described in paragraph (3).

"(ii) REVIEW.—Any renewal of a certification under clause (i) shall be subject to review as described in subparagraph (E) and any such review shall be completed before the date that is 180 days after the date the alien's detention was continued under subparagraph (A) or paragraph (1)(C) or the date of the previous renewal of such detention under clause (i).

"(F) APPLICABILITY.—This paragraph and paragraphs (6) and (7) shall apply to any alien returned to custody under paragraph (9)

as if the removal period terminated on the day of the redetention.

"(9) REDETENTION.—The Secretary may not detain any alien subject to a final removal order who has previously been released from custody unless—

"(A) the alien fails to comply with the conditions of departure applicable to the alien;

"(B) the alien fails to continue to satisfy the conditions of supervision under paragraph (3); or

"(C) upon reconsideration, the Secretary makes a certification for the alien described in paragraph (8)(B).

"(10) JUDICIAL REVIEW.—Without regard to the place of confinement, judicial review of any action or decision made pursuant to paragraph (6), (7), or (8) shall be available exclusively in a habeas corpus proceeding brought in a United States district court in the judicial district in which the alien is detained or in which the alien's removal proceeding was initiated.".

(b) EFFECTIVE DATE.—The amendments made by this section—

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

(2) shall apply to—

(A) any alien subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of the enactment of this Act; and

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

**SEC. 232. INCREASED CRIMINAL PENALTIES FOR IMMIGRATION VIOLATIONS.**

(a) PENDING PROCEEDINGS.—Section 204(b) (8 U.S.C. 1154(b)) is amended by adding at the end ''A petition may not be approved under this section if the petitioner has been found removable from the United States.''.

(b) CONDITIONAL PERMANENT RESIDENT STATUS.—

(1) IN GENERAL.—Section 216(e) (8 U.S.C. 1186a(e)) is amended by inserting ''if the alien applied for the removal of condition not less than 90 days before applying for naturalization'' before the period at the end.

(2) CERTAIN ALIEN ENTREPRENEURS.—Section 216A(e) (8 U.S.C. 1186b(e)) is amended by inserting ''if the alien applied for the removal of condition

not less than 90 days before applying for naturalization'' before the period at the end.

(c) CONCURRENT NATURALIZATION AND REMOVAL PROCEEDINGS.—Section 318 (8 U.S.C. 1429) is amended to read as follows:

**"SEC. 318. PREREQUISITE TO NATURALIZATION; BURDEN OF PROOF.**

''(a) IN GENERAL.—Except as otherwise provided in this title, no person shall be naturalized unless the person has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. The burden of proof shall be upon such person to show that the person entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof the person shall be entitled to the production of the person's's immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Secretary of Homeland Security to be confidential, pertaining to such entry, in the custody of the Department of Homeland Security.

''(b) OTHER PROCEEDINGS.—Notwithstanding the provisions of section 405(b), and except as provided in sections 328 and 329, no person shall be naturalized against whom there is outstanding a final finding of deportability

1 pursuant to a warrant of arrest issued under the provi-
2 sions of this or any other Act and no application for natu-
3 ralization shall be considered by the Secretary of Home-
4 land Security or any court if there is pending against the
5 applicant any removal proceeding or other proceeding to
6 determine the applicant's inadmissibility or deportability,
7 or to determine whether the applicant's lawful permanent
8 resident status should be rescinded, if the removal pro-
9 ceeding or other proceeding was commenced before a final
10 agency decision on naturalization made pursuant to a
11 hearing requested under section 336(a). The findings of
12 the Secretary in terminating removal proceedings or can-
13 celing the removal of an alien under this Act shall not
14 be binding upon the Secretary in determining whether
15 such person has established eligibility for naturalization
16 under this title.''.

17 (d) DISTRICT COURT JURISDICTION.—Section
18 336(b) (8 U.S.C. 1447(b)) is amended to read as follows:

19 ''(b) REQUEST FOR HEARING BEFORE DISTRICT
20 COURT.—If a final administrative decision is not rendered
21 under section 335 before the end of the 180-day period
22 beginning on the date on which the examination is con-
23 ducted under such section, the applicant may apply to the
24 United States district court for the district in which the

applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may—

"(1) determine the matter; or

"(2) remand the matter, with appropriate instructions, to the Secretary of Homeland Security, to determine the matter.".

(e) EFFECTIVE DATE.—The amendments made by this section—

(1) shall apply to any act that occurred on or after the date of enactment of this Act; and

(2) shall apply to any application for naturalization or any case or matter under the immigration laws filed on or after such date of enactment.

**SEC. 233. AGGRAVATED FELONY.**

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

(1) in the matter preceding subparagraph (A), by striking "The term 'aggravated felony' means—" and inserting "Notwithstanding any other provision of law, the term 'aggravated felony' applies to an offense described in this paragraph, whether in violation of Federal or State law, and to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years, and regardless of whether

the conviction was entered before, on, or after September 30, 1996 and means—";

(2) in subparagraph (N), by striking "paragraph (1)(A) or (2) of" and inserting "paragraph (1)(A), (2), or (4) of"; and

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

(b) EFFECTIVE DATE AND APPLICATION.—

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

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

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

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

**SEC. 234. INCREASED CRIMINAL PENALTIES RELATED TO GANG VIOLENCE, REMOVAL, AND ALIEN SMUGGLING.**

(a) CRIMINAL STREET GANGS.—

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

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

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

"(F) MEMBERS OF CRIMINAL STREET GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who has been convicted of a crime under section 521 of title 18, United States Code, is inadmissible.".

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

"(F) MEMBERS OF CRIMINAL STREET GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who has been convicted of a crime under section 521 of title 18, United States Code, is deportable.".

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

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

(B) in subsection (c)(2)(B)—

(i) in clause (i), by striking '', or'' at the end;

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

(iii) by adding at the end the following:

''(iii) the alien has been convicted of a crime under section 521 of title 18, United States Code.''; and

(C) in subsection (d)—

(i) by striking paragraph (3); and

(ii) in paragraph (4), by adding at the end the following: ''The Secretary of Homeland Security shall detain an alien provided temporary protected status under this section if the alien is subject to detention under section 236(c)(1).''.

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

(1) in subsection (a)(1)—

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

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

(i) by striking ''or imprisoned not more than four years'' and inserting ''and imprisoned for not more than 5 years''; and

(ii) by striking '', or both''; and

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

(c) ALIEN SMUGGLING AND RELATED OFFENSES.—

(1) IN GENERAL.—Section 274 (8 U.S.C. 1324) is amended—

(A) by striking the section heading and all that follows through subsection (a)(1)(B)(iii);

(B) by striking subsection (a)(1)(C) and all that follows through the end;

(C) by redesignating subsection (a)(1)(B)(iv) as subparagraph (G) and indenting such subparagraph (G) four ems from the left margin;

(D) by amending subparagraph (G), as redesignated by subparagraph (C), by striking ''in the case of a violation of subparagraph (A) (i), (ii), (iii), (iv), or (v) resulting'' and inserting ''if the offense resulted'';

(E) by inserting before subparagraph (G), as redesignated by subparagraph (C), the following:

**''SEC. 274. ALIEN SMUGGLING AND RELATED OFFENSES.**

''(a) CRIMINAL OFFENSES AND PENALTIES.—

''(1) PROHIBITED ACTIVITIES.—Except as provided in paragraph (3), a person shall be punished as provided under paragraph (2), if the person—

''(A) encourages, directs, or induces a person to come to or enter the United States, or to cross the border to the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to come to, enter, or cross the border to the United States;

"(B) encourages, directs, or induces a person to come to or enter the United States, or to cross the border to the United States, at a place other than a designated port of entry or place other than as designated by the Secretary of Homeland Security, knowing or in reckless disregard of the fact that such person is an alien and regardless of whether such alien has official permission or lawful authority to be in the United States;

"(C) transports, moves, harbors, conceals, or shields from detection a person outside of the United States knowing or in reckless disregard of the fact that such person is an alien in unlawful transit from 1 country to another or on the high seas, under circumstances in which the alien is seeking to enter the United States without official permission or legal authority;

"(D) encourages or induces a person to reside in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in the United States;

"(E) transports or moves a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to enter or be in the United States, if the transportation or movement will further the alien's illegal entry into or illegal presence in the United States;

"(F) harbors, conceals, or shields from detection a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States; or

"(G) conspires or attempts to commit any of the acts described in subparagraphs (A) through (F).

"(2) CRIMINAL PENALTIES.—A person who violates any provision under paragraph (1)—

"(A) except as provided in subparagraphs (C) through (G), if the offense was not committed for commercial advantage, profit, or private financial gain, shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both;

"(B) except as provided in subparagraphs (C) through (G), if the offense was committed

for commercial advantage, profit, or private financial gain—

"(i) if the violation is the offender's first violation under this subparagraph, shall be fined under such title, imprisoned for not more than 15 years, or both; or

"(ii) if the violation is the offender's second or subsequent violation of this subparagraph, shall be fined under such title, imprisoned for not more than 20 years, or both;

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

"(D) shall be fined under such title, imprisoned not more than 20 years, or both, if the offense created a substantial and foreseeable risk of death, a substantial and foreseeable risk of serious bodily injury (as defined in section 2119(2) of title 18, United States Code), or inhumane conditions to another person, including—

"(i) transporting the person in an engine compartment, storage compartment, or other confined space;

"(ii) transporting the person at an excessive speed or in excess of the rated capacity of the means of transportation; or

"(iii) transporting the person in, harboring the person in, or otherwise subjecting the person to crowded or dangerous conditions;

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

"(F) shall be fined under such title and imprisoned for not more than 30 years if the offense involved an alien who the offender knew was—

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

"(ii) intending to engage in terrorist activity; and"

(F) by inserting after subparagraph (G), as redesignated by subparagraph (C), the following:

"(4) LIMITATION.—It is not a violation of subparagraph (D), (E), or (F) of paragraph (1)—

"(A) for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least 1 year; or

"(B) for an individual or organization acting without compensation or expectation of compensation and not previously convicted of a violation of this section, to—

"(i) provide, or attempt to provide, an alien who is present in the United States

with humanitarian assistance, including medical care, housing, counseling, victim services, and food; or

"(ii) transport the alien to a location where such assistance can be rendered.

"(5) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over the offenses described in this subsection."; and

(G) by striking subsections (b) through (e) and inserting the following:

"(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

"(1) CRIMINAL OFFENSE AND PENALTIES.—Any person who, during any 12-month period, knowingly employs 10 or more individuals with actual knowledge or in reckless disregard of the fact that the individuals are aliens described in paragraph (2), shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.

"(2) DEFINITION.—An alien described in this paragraph is an alien who—

"(A) is an unauthorized alien (as defined in section 274A);

"(B) is present in the United States without lawful authority; and

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

"(c) SEIZURE AND FORFEITURE.—

"(1) IN GENERAL.—Any conveyance used to commit or facilitate the commission of a violation of this section, the gross proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.

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

"(3) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—In determining whether a violation of subsection (a) has occurred, prima facie evidence that an alien involved in the alleged violation lacks lawful authority to come to, enter, or reside in the United States, or that such alien had come to, entered, or resided in the United States in violation of law shall include—

"(A) any order, finding, or determination concerning the alien's status or lack of status made by a Federal judge or administrative adjudicator (including an immigration judge or immigration officer) during any judicial or administrative proceeding authorized under Federal immigration law;

"(B) official records of the Department of Homeland Security, the Department of Justice, or the Department of State concerning the alien's status or lack of status; and

"(C) testimony by an immigration officer having personal knowledge of the facts concerning the alien's status or lack of status.

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

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

"(2) other officers responsible for the enforcement of Federal criminal laws.

"(e) ADMISSIBILITY OF VIDEOTAPED WITNESS TESTIMONY.—Notwithstanding any provision of the Federal Rules of Evidence, the videotaped or otherwise audio-

1 visually preserved deposition of a witness to a violation
2 of subsection (a) who has been deported or otherwise ex-
3 pelled from the United States, or is otherwise unavailable
4 to testify, may be admitted into evidence in an action
5 brought for that violation if—

6 "(1) the witness was available for cross exam-
7 ination at the deposition by the party, if any, oppos-
8 ing admission of the testimony; and

9 "(2) the deposition otherwise complies with the
10 Federal Rules of Evidence.

11 "(f) OUTREACH PROGRAM.—

12 "(1) IN GENERAL.—The Secretary of Homeland
13 Security, in consultation with the Attorney General
14 and the Secretary of State, as appropriate, shall—

15 "(A) develop and implement an outreach
16 program to educate people in and out of the
17 United States about the penalties for bringing
18 in and harboring aliens in violation of this sec-
19 tion; and

20 "(B) establish the American Local and In-
21 terior Enforcement Needs (ALIEN) Task Force
22 to identify and respond to the use of Federal,
23 State, and local transportation infrastructure to
24 further the trafficking of unlawful aliens within
25 the United States.

"(2) FIELD OFFICES.—The Secretary of Homeland Security, after consulting with State and local government officials, shall establish such field offices as may be necessary to carry out this subsection.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums are necessary for the fiscal years 2008 through 2012 to carry out this subsection.".

(2) CLERICAL AMENDMENT.—The table of contents is amended by striking the item relating to section 274 and inserting the following:

"Sec. 274. Alien smuggling and related offenses.".

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

(1) in paragraph (1)—

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

(B) in subparagraph (A), by inserting ", alien smuggling crime," after "such crime of violence";

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

(2) by adding at the end the following:

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

**SEC. 235. ILLEGAL ENTRY.**

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

**"SEC. 275. ILLEGAL ENTRY.**

"(a) IN GENERAL.—

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

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

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

"(C) knowingly enters or crosses the border to the United States by means of a willfully false or misleading representation or the know-

ing concealment of a material fact (including such representation or concealment in the context of arrival, reporting, entry, or clearance requirements of the customs laws, immigration laws, agriculture laws, or shipping laws).

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

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

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

"(C) if the violation occurred after the alien had been convicted of 3 or more misdemeanors or for a felony, shall be fined under such title, imprisoned not more than 5 years, or both;

"(D) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 10 years, or both; and

"(E) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 60 months, such alien shall be fined under such title, imprisoned not more than 15 years, or both.

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

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

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

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

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

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

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

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

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

"Sec. 275. Illegal entry.".

**SEC. 236. ILLEGAL REENTRY.**

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

**"SEC. 276. REENTRY OF REMOVED ALIENS.**

"(a) REENTRY AFTER REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed, or who has departed the United States while an order of exclusion, deportation, or removal is outstanding, and subsequently enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title

18, United States Code, imprisoned not more than 2 years, or both.

"(b) REENTRY OF CRIMINAL OFFENDERS.—Notwithstanding the penalty provided in subsection (a), if an alien described in that subsection—

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

"(2) was convicted for a felony before such removal or departure for which the alien was sentenced to a term of imprisonment of not less than 30 months, the alien shall be fined under such title, imprisoned not more than 15 years, or both;

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

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

"(5) was convicted, before such removal or departure, for murder, rape, kidnaping, or a felony of-

fense described in chapter 77 (relating to peonage and slavery) or 113B (relating to terrorism) of such title, the alien shall be fined under such title, imprisoned not more than 20 years, or both.

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

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

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

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

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

"(1) prior to the alleged violation, the alien had sought and received the express consent of the Sec-

retary of Homeland Security to reapply for admission into the United States;

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

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

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

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

"(4) the alien has been found eligible for protection from removal pursuant to section 208.

"(f) LIMITATION ON COLLATERAL ATTACK ON UNDERLYING REMOVAL ORDER.—In a criminal proceeding under this section, an alien may not challenge the validity of any prior removal order concerning the alien unless the alien demonstrates by clear and convincing evidence that—

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

1 "(2) the removal proceedings at which the order
2 was issued improperly deprived the alien of the op-
3 portunity for judicial review; and
4 "(3) the entry of the order was fundamentally
5 unfair.
6 "(g) REENTRY OF ALIEN REMOVED PRIOR TO COM-
7 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
8 moved pursuant to section 241(a)(4) who enters, attempts
9 to enter, crosses the border to, attempts to cross the bor-
10 der to, or is at any time found in, the United States shall
11 be incarcerated for the remainder of the sentence of im-
12 prisonment which was pending at the time of deportation
13 without any reduction for parole or supervised release un-
14 less the alien affirmatively demonstrates that the Sec-
15 retary of Homeland Security has expressly consented to
16 the alien's reentry. Such alien shall be subject to such
17 other penalties relating to the reentry of removed aliens
18 as may be available under this section or any other provi-
19 sion of law.
20 "(h) LIMITATION.—It is not aiding and abetting a
21 violation of this section for an individual, acting without
22 compensation or the expectation of compensation, to—
23 "(1) provide, or attempt to provide, an alien
24 with humanitarian assistance, including emergency
25 medical care, food; or

"(2) transport the alien to a location where such assistance can be rendered.".

# TITLE III—EMPLOYMENT VERIFICATION

**SEC. 301. EMPLOYMENT VERIFICATION.**

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

**"SEC. 274A. EMPLOYMENT VERIFICATION.**

"(a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

"(1) IN GENERAL.—It is unlawful for an employer—

"(A) to hire, recruit, or refer for a fee an alien for employment in the United States knowing or with reckless disregard that the alien is an unauthorized alien with respect to such employment; or

"(B) to hire in the United States an individual unless such employer meets the requirements of subsections (b) and (c).

"(2) CONTINUING EMPLOYMENT.—It is unlawful for an employer, after lawfully hiring an alien for employment, to continue to employ the alien in the United States knowing that the alien is (or has be-

1 come) an unauthorized alien with respect to such
2 employment.

3 "(3) USE OF LABOR THROUGH CONTRACT.—An
4 employer who uses a contract, subcontract, or ex-
5 change entered into, renegotiated, or extended after
6 the date of the enactment of the STRIVE Act of
7 2007, to obtain the labor of an alien in the United
8 States knowing or with reckless disregard that the
9 alien is an unauthorized alien with respect to per-
10 forming such labor, shall be considered to have hired
11 the alien for employment in the United States in vio-
12 lation of paragraph (1)(A).

13 "(4) ORDER OF INTERNAL REVIEW AND CER-
14 TIFICATION OF COMPLIANCE.—

15 "(A) AUTHORITY TO REQUIRE CERTIFI-
16 CATION.—If the Secretary has reasonable cause
17 to believe that an employer has failed to comply
18 with this section, the Secretary is authorized, at
19 any time, to require that the employer certify
20 that the employer is in compliance with this
21 section or has instituted a program to come
22 into compliance with the section.

23 "(B) CONTENT OF CERTIFICATION.—Not
24 later than 60 days after the date an employer
25 receives a request for a certification under sub-

paragraph (A) the employer shall certify under penalty of perjury that—

"(i) the employer is in compliance with the requirements of subsections (b) and (c); or

"(ii) that the employer has instituted a program to come into compliance with such requirements.

"(C) EXTENSION.—The 60-day period referred to in subparagraph (B), may be extended by the Secretary for good cause, at the request of the employer.

"(D) PUBLICATION.—The Secretary is authorized to publish in the Federal Register standards or methods for certification under subparagraph (A) and for specific recordkeeping practices with respect to such certification, and procedures for the audit of any records related to such certification.

"(5) DEFENSE.—

"(A) IN GENERAL.—Subject to subparagraph (B), an employer that establishes that the employer has complied in good faith, notwithstanding a technical or procedural failure, with the requirements of subsections (b) and (c)

with respect to the hiring of an individual has established an affirmative defense that the employer has not violated paragraph (1)(B) with respect to such hiring.

"(B) EXCEPTION.—Until the date that an employer is required to participate in the Electronic Employment Verification System under subsection (c), the employer may establish an affirmative defense under subparagraph (A) without a showing of compliance with subsection (c).

"(6) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this title may be construed to authorize, directly or indirectly, the issuance, use, or establishment of a national identification card or a national identification system.

"(b) DOCUMENT VERIFICATION REQUIREMENTS.—An employer hiring an individual for employment in the United States shall verify that the individual is eligible for such employment by meeting the following requirements:

"(1) ATTESTATION BY EMPLOYER.—

"(A) REQUIREMENTS.—

"(i) IN GENERAL.—The employer shall attest, under penalty of perjury and on a form prescribed by the Secretary, that

the employer has verified the identity and eligibility for employment of the individual by examining a document described in subparagraph (B).

"(ii) SIGNATURE REQUIREMENTS.—An attestation required by clause (i) may be manifested by a handwritten or electronic signature.

"(iii) STANDARDS FOR EXAMINATION.—An employer has complied with the requirement of this paragraph with respect to examination of a document if the document examined reasonably appears on its face to be genuine and relates to the individual whose identity and eligibility for employment in the United States is being verified. Nothing in this paragraph may be construed as requiring the employer to solicit the production of any other document or as requiring the individual to produce such other document.

"(B) EMPLOYMENT AND IDENTIFICATION DOCUMENTS.—A document described in this subparagraph is—

"(i) in the case of an individual who is a national of the United States—

"(I) a United States passport;

"(II) a biometric, machine readable, tamper-resistant Social Security card, as described in section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)); or

"(III) a driver's license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States that satisfies the requirements of Division B of Public Law 109–13 (119 Stat. 302);

"(ii) in the case of an alien who is lawfully admitted for permanent residence in the United States—

"(I) a permanent resident card, as specified by the Secretary; or

"(II) a biometric, machine readable, tamper-resistant Social Security card, as described in section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G));

"(iii) in the case of an alien who is not lawfully admitted for permanent residence and who is authorized under this Act or by the Secretary to be employed in the United States—

"(I) an employment authorization card, as specified by the Secretary, that—

"(aa) contains a photograph of the individual or other identifying information, including name, date of birth, gender, and address; and

"(bb) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use; or

"(II) a biometric, machine readable, tamper-resistant Social Security card, as described in section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G));

"(iv) in the case of an individual who is unable to obtain a document described

in clause (i), (ii), or (iii), a document designated by the Secretary that—

"(I) contains a photograph of the individual or other identifying information, including name, date of birth, gender, and address; and

"(II) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use; or

"(v) until the date that an employer is required to participate in the Electronic Employment Verification System under subsection (c) or is participating in such System on a voluntary basis, a document, or a combination of documents, of such type that, as of the date of the enactment of the STRIVE Act of 2007, the Secretary had established by regulation were sufficient for purposes of this section.

"(C) SPECIAL RULE FOR MINORS.—Notwithstanding subparagraph (B), a minor who is under the age of 18 and who is unable to produce an identity document described in

clause (i) through (v) of subparagraph (B) is exempt from producing such a document if—

"(i) a parent or legal guardian of the minor completes a form prescribed by the Secretary, and in the space for the minor's signature, the parent or legal guardian writes the words, 'minor under age 18';

"(ii) a parent or legal guardian of the minor completes a form prescribed by the Secretary, the 'Preparer/Translator certification'; and

"(iii) the employer of the minor writes in a form prescribed by the Secretary, in the space after the words 'Document Identification #' the words, 'minor under age 18'.

"(D) SPECIAL RULE FOR INDIVIDUALS WITH DISABILITIES.—Notwithstanding subparagraph (B), an individual with a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)) who is unable to produce an identity document described in clause (i) through (v) of subparagraph (B), and who is being placed into employment by a nonprofit organization or asso-

ciation or as part of a rehabilitation program, and an individual who demonstrates mental retardation whether or not the individual participates in an employment placement program through a nonprofit organization or association or as part of a rehabilitation program, is exempt from producing such a document if—

"(i) a parent or legal guardian of the individual, or a representative from the nonprofit organization, association, or rehabilitation program placing the individual into a position of employment completes a form prescribed by the Secretary, and in the space for the covered individual's signature, writes the words, 'special placement';

"(ii) a parent or legal guardian of the individual or the program representative, completes a form prescribed by the Secretary, the 'Preparer/Translator certification'; and

"(iii) the employer of the covered individual writes in a form prescribed by the Secretary, in the space after the words

'Document Identification #' the words, 'special placement'.

"(E) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—

"(i) AUTHORITY.—If the Secretary finds that a document or class of documents described in clause (i) through (v) of subparagraph (B) is not reliable to establish identity or eligibility for employment (as the case may be) or is being used fraudulently to an unacceptable degree, the Secretary is authorized to prohibit, or impose conditions on, the use of such document or class of documents for purposes of this subsection.

"(ii) REQUIREMENT FOR PUBLICATION.—The Secretary shall publish notice of any findings under clause (i) in the Federal Register.

"(2) ATTESTATION OF INDIVIDUAL.—

"(A) IN GENERAL.—The individual shall attest, under penalty of perjury on a form prescribed by the Secretary, that the individual is—

"(i) a national of the United States;

"(ii) an alien lawfully admitted for permanent residence; or

"(iii) an alien who is authorized under this Act or by the Secretary to be employed in the United States.

"(B) SIGNATURE FOR EXAMINATION.—An attestation required by subparagraph (A) may be manifested by a handwritten or electronic signature.

"(C) PENALTIES.—An individual who falsely represents that the individual is eligible for employment in the United States in an attestation required by subparagraph (A) shall, for each such violation, be subject to a fine of not more than $5,000, a term of imprisonment not to exceed 3 years, or both.

"(3) RETENTION OF ATTESTATION.—The employer shall retain an attestation described in paragraph (1) or (2) for an individual, either in electronic, paper, microfiche, or microfilm form, and make such attestations available for inspection by an officer of the Department of Homeland Security, any other person designated by the Secretary, the Special Counsel for Immigration-Related Unfair

Employment Practices of the Department of Justice, or the Secretary of Labor—

"(A) during a period beginning on the date of the hiring of the individual and ending on the date that is the later of—

"(i) 3 years after the date of such hiring; or

"(ii) 1 year after the date the individual's employment is terminated; or

"(B) during a shorter period determined by the Secretary, if the Secretary reduces the period described in subparagraph (A) for the employer or a class of employers that includes the employer.

"(4) DOCUMENT RETENTION AND RECORD-KEEPING REQUIREMENTS.—

"(A) RETENTION OF DOCUMENTS.—Notwithstanding any other provision of law, an employer shall retain, for the applicable period described in paragraph (3), the following documents:

"(i) IN GENERAL.—A paper, microfiche, microfilm, or electronic copy of each document described in paragraph (1)(B)

presented by an individual that is designated as a copied document.

"(ii) OTHER DOCUMENTS.—A record of any action taken, and copies of any correspondence written or received, with respect to the verification of an individual's identity or eligibility for employment in the United States, including records received through the Electronic Employment Verification System under subsection (c).

"(B) USE OF RETAINED DOCUMENTS.—An employer shall use copies retained under clause (i) or (ii) of subparagraph (A) only for the purposes of complying with the requirements of this subsection, except as otherwise permitted under law.

"(5) PENALTIES.—An employer that fails to comply with the requirement of this subsection shall be subject to the penalties described in subsection (d)(4)(B).

"(c) ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.—

"(1) REQUIREMENT FOR SYSTEM.—The Secretary, in cooperation with the Commissioner of Social Security, shall implement an Electronic Employ-

1 ment Verification System (referred to in this sub-
2 section as the 'System') as described in this sub-
3 section.

4 "(2) TECHNOLOGY STANDARD TO VERIFY EM-
5 PLOYMENT ELIGIBILITY.—

6 "(A) IN GENERAL.—The Secretary based
7 upon recommendations from the Director of the
8 National Institute of Standards and Tech-
9 nology, shall not later than 180 days after the
10 date of the enactment of the STRIVE Act of
11 2007 develop and certify a technology standard
12 as described in this subparagraph. The Sec-
13 retary shall have discretion to extend the 180-
14 day period if the Secretary determines that
15 such extension will result in substantial im-
16 provement of the System.

17 "(B) INTEGRATED.—Notwithstanding any
18 other provision of Federal law, the technology
19 standard developed shall be the technological
20 basis for a cross-agency, cross-platform elec-
21 tronic system that is a cost-effective, efficient,
22 fully integrated means to share immigration
23 and Social Security information necessary to
24 confirm the employment eligibility of all individ-
25 uals seeking employment.

"(C) REPORT.—Not later than 18 months after the date of the enactment of the STRIVE Act of 2007, the Secretary and the Director of the National Institute of Standards and Technology shall jointly submit to Congress a report describing the development, implementation, efficacy, and privacy implications of the technology standard and the System.

"(3) IDENTITY AND EMPLOYMENT ELIGIBILITY VERIFICATION.—An employer shall verify the identity and eligibility for employment of an individual hired by the employer through the System as follows:

"(A) INITIAL INQUIRY.—The employer shall submit an inquiry through the System to seek confirmation of the individual's identity and eligibility for employment in the United States not later than 5 working days after the date such employment actually commences.

"(B) INITIAL DETERMINATION.—The Secretary, through the System, shall respond to an inquiry described in subparagraph (A) not later than 1 working day after such inquiry is submitted. Such response shall be a determination that—

"(i) confirms the individual's identity and eligibility for employment in the United States; or

"(ii) the System is tentatively unable to confirm the individual's identity or eligibility for employment (referred to in this section as a 'tentative nonconfirmation').

"(C) MANUAL VERIFICATION.—

"(i) REQUIREMENT.—If the System provides a tentative nonconfirmation with respect to an individual, the Secretary shall—

"(I) provide the individual an opportunity to submit information to verify the individual's identity and eligibility for employment as described in subparagraph (D); and

"(II) conduct a manual verification to determine the individual's identity and eligibility for employment.

"(ii) DETERMINATION.—Not later than 30 days after the last day that an individual may submit information under subparagraph (D) the Secretary, through

the System, shall provide to the employer the results of the manual verification required by clause (i). Such results shall be a determination that—

"(I) confirms the individual's identity and eligibility for employment in the United States; or

"(II) the System is unable to confirm the individual's identity or eligibility for employment (referred to in this section as a 'final nonconfirmation').

"(D) SUBMISSION OF INFORMATION.—An individual who is the subject of a tentative nonconfirmation may submit to the Secretary, through the System, information to confirm such individual's identity or eligibility for employment or to otherwise contest such tentative nonconfirmation not later that 15 days after the individual receives notice of such tentative nonconfirmation.

"(E) EXTENSION.—The 15-day period referred to in subparagraph (D) may be extended by the Secretary for good cause at the request of the individual.

"(F) DEFAULT CONFIRMATION AND REVOCATION.—If the Secretary, through the System, fails to provide a determination described in clause (i) or (ii) of subparagraph (B) or subclause (I) or (II) of subparagraph (C)(ii) for an individual within the period described in such subparagraph, the Secretary shall, through the System, deem that the individual's identity and eligibility for employment are confirmed through the System and provide notice of such confirmation to the employer.

"(G) REVOCATION.—In the case of a default confirmation in subclause (F), the Secretary reserves the right to revoke such default confirmation if the Secretary later determines the individual is, in fact, not eligible to work. The Secretary shall provide notice of such revocation and final nonconfirmation to the employer. The individual shall have the right to administrative review under paragraph (19) and judicial review under paragraph (20) of such final nonconfirmation.

"(H) PROHIBITIION ON TERMINATION FOR TENTATIVE NONCONFIRMATION.—An employer

may not terminate the employment of an individual based on tentative nonconfirmation.

"(I) TERMINATION OF EMPLOYEE.—If an employer receives a final nonconfirmation with respect to an individual, the employer shall terminate the employment of such individual.

"(J) ADMINISTRATIVE AND JUDICIAL REVIEW.—If the Secretary, through the System, provides a final nonconfirmation with respect to an individual, the individual shall have the right to administrative review under paragraph (19) and judicial review under paragraph (20) of such final nonconfirmation.

"(K) RIGHT TO REVIEW AND CORRECT SYSTEM INFORMATION.—The Secretary, in consultation with the Commissioner of Social Security, shall establish procedures to permit an individual to verify the individual's eligibility for employment in the United States prior to obtaining or changing employment, to view the individual's own records in the System in order to ensure the accuracy of such records, and to correct or update the information used by the System regarding the individual.

"(L) REVERIFICATION.—

"(i) IN GENERAL.—It is an unfair immigration-related employment practice under section 274B for an employer to reverify an individual's identity and employment eligibility unless—

"(I) the individual's work authorization expires as described in section 274a.2(b)(1)(vii) of title 8, Code of Federal Regulation or a subsequent similar regulation, in which case—

"(aa) not later than 30 days prior to the expiration of the individual's work authorization, the Secretary shall notify the employer of such expiration and of the employer's need to reverify the individual's employment eligibility; and

"(bb) the individual may present, and the employer shall accept, a receipt for the application for a replacement document, extension of work authorization, or a document described in clause (i) through (v) of subpara-

graph (B) of subsection (b)(1) in lieu of the required document by the expiration date in order to comply with any requirement to examine documentation imposed by this section, and the individual shall present the required document within 90 days from the date the employment authorization expires. If the actual document or replacement document is to be issued by United States Citizenship and Immigration Services and the application is still under review 60 days after the employment authorization expiration date, United States Citizenship and Immigration Services shall by the 60th day after the expiration date of the employment authorization, issue a letter for the applicant to take to the employer which shall automatically grant the individual an additional 90 days to present the

1 document or replacement docu-
2 ment; and
3 ''(II) the employer has actual or
4 constructive knowledge that the indi-
5 vidual is not authorized to work in the
6 United States; or
7 ''(III) unless otherwise required
8 by law.
9 ''(ii) CONTINUING EMPLOYMENT.—An
10 employer may not verify an individual's
11 employment eligibility if the individual is
12 continuing in his or her employment as de-
13 scribed in section 274a.2(b)(1)(viii) of title
14 8, Code of Federal Regulation or any sub-
15 sequent similar regulation.
16 ''(iii) SPECIAL RULE FOR CRITICAL
17 INFRASTRUCTURE.—Upon the implementa-
18 tion of the System, the Secretary shall re-
19 quire all agencies and departments of the
20 United States (including the Armed
21 Forces), a State government (including a
22 State employment agency before making a
23 referral), or any other employer if it em-
24 ploys individuals working in a location that
25 is a Federal, State, or local government

building, a military base, a nuclear energy site, a weapon site, or an airport, to complete a one time reverification of all individuals current employed at these facilities.

"(4) DESIGN AND OPERATION OF SYSTEM.—The Secretary, in consultation with the Commissioner of Social Security, shall design and operate the System—

"(A) to maximize reliability and ease of use by employers in a manner that protects and maintains the privacy and security of the information maintained in the System;

"(B) to permit an employer to submit an inquiry to the System through the Internet or other electronic media or over a telephone line;

"(C) to respond to each inquiry made by an employer;

"(D) to maintain a record of each such inquiry and each such response;

"(E) to track and record any occurrence when the System is unable to receive such an inquiry;

"(F) to include appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information

during use, transmission, storage, or disposal of that information, including the use of encryption, carrying out periodic testing of the System to detect, prevent, and respond to vulnerabilities or other failures, and utilizing periodic security updates;

"(G) to allow for monitoring of the use of the System and provide an audit capability;

"(H) to have reasonable safeguards, developed in consultation with the Attorney General, to prevent employers from engaging in unlawful discriminatory practices;

"(I) to permit an employer to submit the attestations required by subsection (b); and

"(J) to permit an employer to utilize any technology that is consistent with this section and with any regulation or guidance from the Secretary to streamline the procedures to comply with the attestation and employment eligibility verification requirements contained in this section.

"(5) LIMITATION ON DATA ELEMENTS STORED.—The System and any databases created by the Commissioner of Social Security or the Secretary for use in the System shall store only the minimum

data about each individual for whom an inquiry was made through the System to facilitate the successful operation of the System, and in no case shall the data stored be other than—

"(A) the individual's full legal name;

"(B) the individual's date of birth;

"(C) the individual's social security account number or employment authorization status identification number;

"(D) the address of the employer making the inquiry and the dates of any prior inquiries concerning the identity and authorization of the individual by the employer or any other employer and the address of such employer;

"(E) a record of each prior determination regarding the individual's identity and employment eligibility issued through the System; and

"(F) in the case of the individual who successfully contested or appealed a tentative nonconfirmation or final nonconfirmation, explanatory information concerning the successful resolution of any erroneous data or confusion regarding the identity or eligibility for employment of the individual, including the source of that error.

"(6) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security shall establish a reliable, secure method to provide through the System, within the time periods required by subparagraphs (B) and (C) of paragraph (2)—

"(A) a determination of whether the name and social security account number provided, with respect to an individual, in an inquiry by an employer, match such information maintained by the Commissioner in order to confirm the validity of the information provided;

"(B) a determination of whether such social security account number was issued to the individual;

"(C) a determination of whether such social security account number is valid for employment in the United States; and

"(D) a determination described in subparagraph (B) or (C) of paragraph (2), in a manner that ensures that other information maintained by the Commissioner is not disclosed or released to employers through the System.

"(7) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall establish a reliable, secure meth-

od to provide, through the System, within the time periods required by subparagraphs (B) and (C) of paragraph (2)—

"(A) a determination of whether the name and alien identification or authorization number provided, with respect to an individual, in an inquiry by an employer match such information maintained by the Secretary in order to confirm the validity of the information provided;

"(B) a determination of whether such number was issued to the individual;

"(C) a determination of whether the individual is authorized to be employed in the United States; and

"(D) any other related information that the Secretary determines is appropriate.

"(8) PRIVACY IMPACT ASSESSMENT.—The Commissioner of Social Security and the Secretary shall each complete a privacy impact assessment as described in section 208 of the E-Government Act of 2002 (Public Law 107–347; 44 U.S.C. 3501 note) with regard to the System.

"(9) TRAINING.—The Commissioner of Social Security and the Secretary shall provide appropriate training materials to employers participating in the

1 System to ensure that such employers are able to
2 utilize the System in compliance with the require-
3 ments of this section.

4 "(10) HOTLINE.—The Secretary shall establish
5 a fully staffed 24-hour hotline that shall receive in-
6 quiries from individuals or employers concerning de-
7 terminations made by the System and shall identify
8 for an individual, at the time of inquiry, the par-
9 ticular data that resulted in a determination that the
10 System was unable to verify the individual's identity
11 or eligibility for employment.

12 "(11) PARTICIPATION.—

13 "(A) REQUIREMENTS FOR PARTICIPA-
14 TION.—Except as provided in subparagraphs
15 (D) and (E), the Secretary shall require em-
16 ployers to participate in the System as follows:

17 "(i) CRITICAL EMPLOYERS.—Not later
18 than 1 year after the date of enactment of
19 the STRIVE Act of 2007, the Secretary
20 shall require all agencies and departments
21 of the United States (including the Armed
22 Forces), a State government (including a
23 State employment agency before making a
24 referral), or any other employer if it em-
25 ploys individuals working in a location that

is a Federal, State, or local government building, a military base, a nuclear energy site, a weapon site, or an airport, but only to the extent of such individuals, to participate in the System, with respect to all individuals hired after the date the Secretary requires such participation.

''(ii) LARGE EMPLOYERS.—Not later than 2 years after the date of enactment of the STRIVE Act of 2007 the Secretary shall require an employer with 5,000 or more employees in the United States to participate in the System, with respect to all employees hired by the employer after the date the Secretary requires such participation.

''(iii) MID-SIZED EMPLOYERS.—Not later than 3 years after the date of enactment of the STRIVE Act of 2007 the Secretary shall require an employer with less than 5,000 employees and 1,000 or more employees in the United States to participate in the System, with respect to all employees hired by the employer after the

1 date the Secretary requires such participa-
2 tion.
3 "(iv) SMALL EMPLOYERS.—Not later
4 than 4 years after the date of the enact-
5 ment of the STRIVE Act of 2007, the Sec-
6 retary shall require all employers with less
7 than 1,000 employees in the United States
8 to participate in the System, with respect
9 to all employees hired by the employer
10 after the date the Secretary requires such
11 participation.
12 "(B) REQUIREMENT TO PUBLISH.—The
13 Secretary shall publish in the Federal Register
14 the requirements for participation in the Sys-
15 tem for employers described in clauses (i)
16 through (iv) of subparagraph (A) prior to the
17 effective date of such requirements.
18 "(C) OTHER PARTICIPATION IN SYSTEM.—
19 "(i) VOLUNTARY PARTICIPATION.—
20 Notwithstanding subparagraph (A), the
21 Secretary has the authority to permit any
22 employer that is not required to participate
23 in the System under subparagraph (A) to
24 participate in the System on a voluntary
25 basis.

"(ii) EMPLOYERS NOT REQUIRED TO PARTICIPATE.—Notwithstanding subparagraph (A) employers are not required to verify the identify or employment eligibility through the System for—

"(I) an individual performing casual employment for the employer and who provides domestic service in a private home that is sporadic, irregular, or intermittent;

"(II) a worker provided to the employer by a person providing contract services, such as a temporary agency; or

"(III) an independent contractor, performing services for the employer.

"(iii) RELATIONSHIP TO OTHER REQUIREMENTS.—Nothing in clause (ii) may be construed to effect the requirements for the contracting party who employs a worker referred to in subclause (II) of such clause or an employer of an independent contractor referred to in subclause (III) of such clause to participate in the System

with respect to such worker or independent contractor under this subsection.

"(D) WAIVER.—

"(i) AUTHORITY TO PROVIDE A WAIVER.—The Secretary is authorized to waive or delay the participation requirements of subparagraph (A) with respect to any employer or class of employers if the Secretary provides notice to Congress of such waiver prior to the date such waiver is granted.

"(ii) REQUIREMENT TO PROVIDE A WAIVER.—The Secretary shall waive or delay the participation requirements of subparagraph (A) with respect to any employer or class of employers until the date that the Comptroller General of the United States submits the initial certification described in paragraph (17)(E) and shall waive or delay such participation during a year if the Comptroller General fails to submit a certification of paragraph (17)(E) for such year.

"(E) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If an employer is required to par-

ticipate in the System and fails to comply with the requirements of the System with respect to an individual—

"(i) such failure shall be treated as a violation of subsection (a)(1)(B); and

"(ii) a rebuttable presumption is created that the employer has violated subsection (a)(1)(A), however, such presumption may not apply to a prosecution under subsection (e)(1).

"(12) EMPLOYER REQUIREMENTS.—

"(A) IN GENERAL.—An employer that participates in the System, with respect to the hiring of an individual for employment in the United States, shall—

"(i) notify the individual of the use of the System and that the System may be used for immigration enforcement purposes;

"(ii) obtain from the individual the documents required by subsection (b)(1) and record on the form designated by the Secretary—

"(I) the individual's social security account number; and

"(II) in the case of an individual who does not attest that the individual is a national of the United States under subsection (b)(2), such identification or authorization number that the Secretary shall require;

"(iii) retain such form in electronic, paper, microfilm, or microfiche form and make such form available for inspection for the periods and in the manner described in subsection (b)(3); and

"(iv) safeguard any information collected for purposes of the System and protect any means of access to such information to ensure that such information is not used for any purpose other than to determine the identity and employment eligibility of the individual and to protect the confidentiality of such information, including ensuring that such information is not provided to any person other than a person that carries out the employer's responsibilities under this subsection.

"(B) SCHEDULE.—

"(i) REPLACEMENT DOCUMENTS.—An employer shall accept a receipt for the application for a replacement document or a document described in subparagraph (B) of subsection (b)(1) in lieu of the required document in order to comply with any requirement to examine documentation imposed by this section, in the following circumstances:

"(I) The individual is unable to provide the required document within the time specified in this section because the document was lost, stolen, or damaged.

"(II) The individual presents a receipt for the application for the document within the time specified in this section.

"(III) The individual presents the document within 90 days of the hire. If the actual document or replacement document is to be issued by the United States Citizenship and Immigration Services and the application is still under review 60 days after re-

ceipt of the application, United States Citizenship and Immigration Services shall, not later than the 60th day after receipt of the application, issue a letter for the applicant to take to the employer which shall automatically grant the individual an additional 90 days from the original deadline in subsection (b)(6)(A)(i)(II) to present the document or replacement document; and

"(ii) PROHIBITION ON ACCEPTANCE OF A RECEIPT FOR SHORT-TERM EMPLOYMENT.—An employer may not accept a receipt in lieu of the required document if the individual is hired for a duration of less than 10 working days.

"(C) CONFIRMATION OR NONCONFIRMATION.—

"(i) RETENTION.—If an employer receives a determination through the System under paragraph (3) for an individual, the employer shall retain either an electronic, paper, or microfiche form record of such

1 confirmation for the period required by
2 subsection (b)(4)(A).
3 "(ii) NONCONFIRMATION AND
4 VERIFICATION.—
5 "(I) NONCONFIRMATION.—If an
6 employer receives a tentative noncon-
7 firmation with respect to an indi-
8 vidual, the employer shall retain either
9 an electronic or paper record of such
10 nonconfirmation for the period re-
11 quired by subsection (b)(4)(A) and in-
12 form such individual not later than 10
13 working days after the issuance of
14 such notice in the manner prescribed
15 by the Secretary that includes infor-
16 mation regarding the individual's
17 right to submit information to contest
18 the tentative nonconfirmation under
19 paragraph (2)(D) and the address and
20 telephone numbers established by the
21 Commissioner and the Secretary to
22 obtain information on how to submit
23 such information.
24 "(II) NO CONTEST.—If the indi-
25 vidual does not contest the tentative

nonconfirmation notice within 15 working days of receiving notice from the individual's employer, the notice shall become final and the employer shall retain either an electronic or paper record of such final nonconfirmation for the period required by subsection (b)(4)(A). An individual's failure to contest a tentative nonconfirmation may not be the basis for determining that the employer acted in a knowing (as defined in section 274a.1 of title 8, Code of Federal Regulations, or any corresponding similar regulation) manner.

"(III) CONTEST.—If the individual contests the tentative nonconfirmation notice under subclause (I), the individual shall submit appropriate information to contest such notice to the System within 15 working days of receiving notice from the individual's employer and shall utilize the verification process developed under paragraph (2)(C)(ii). Such individual

shall acknowledge receipt of such notice in writing.

"(IV) EFFECTIVE PERIOD OF TENTATIVE NONCONFIRMATION.—A tentative nonconfirmation notice shall remain in effect until such notice becomes final under clause (II) or a final confirmation notice or final nonconfirmation notice is issued by the System.

"(V) PROHIBITION.—An employer may not terminate the employment of an individual based on a tentative nonconfirmation notice until such notice becomes final under clause (II) or a final nonconfirmation notice is issued for the individual by the System. Nothing in this clause shall apply to termination of employment for any reason other than because of such a tentative nonconfirmation.

"(VI) RECORDING OF CONCLUSION ON FORM.—If a final confirmation or nonconfirmation is provided by the System regarding an individual,

the employer shall record on the form designated by the Secretary the appropriate code that is provided under the System to indicate a confirmation or nonconfirmation of the identity and employment eligibility of the individual.

"(D) CONSEQUENCES OF NONCONFIRMATION.—If an employer has received a final nonconfirmation with respect to an individual, the employer shall terminate the employment of the individual. If the employer continues to employ the individual after receiving final nonconfirmation, a rebuttable presumption is created that the employer has violated paragraphs (1)(A) and (2) of subsection (a). Such presumption may not apply to a prosecution under subsection (e)(1).

"(13) PROHIBITION OF UNLAWFUL ACCESSING AND OBTAINING OF INFORMATION.—

"(A) IN GENERAL.—It shall be unlawful for any individual other than an employee of the Social Security Administration or the Department of Homeland Security specifically

1 charged with maintaining the System to inten-
2 tionally and knowingly—
3 "(i) access the System or the data-
4 bases utilized to verify identity or employ-
5 ment eligibility for the System for any pur-
6 pose other than verifying identity or em-
7 ployment eligibility or modifying the Sys-
8 tem pursuant to law or regulation; or
9 "(ii) obtain the information con-
10 cerning an individual stored in the System
11 or the databases utilized to verify identity
12 or employment eligibility for the System
13 for any purpose other than verifying iden-
14 tity or employment authorization or modi-
15 fying the System pursuant to law or regu-
16 lation.
17 "(B) PENALTIES.—
18 "(i) UNLAWFUL ACCESS.—Any indi-
19 vidual who unlawfully accesses the System
20 or the databases as described in subpara-
21 graph (A)(i) shall be fined no more than
22 $1,000 per individual or sentenced to no
23 more than 6 months imprisonment or both
24 per individual whose file was compromised.

"(ii) UNLAWFUL USE.—Any individual who unlawfully obtains information stored in the System in the database utilized to verify identity or employment eligibility for the System and uses the information to commit identity theft for financial gain or to evade security or to assist another in gaining financially or evading security, shall be fined no more than $10,000 per individual or sentenced to no more than 1 year of imprisonment or both per individual whose information was obtained and misappropriated.

"(14) PROTECTION FROM LIABILITY.—No employer that participates in the System and complies in good faith with the attestation in subsection (b)(1) shall be liable under any law for any employment-related action taken with respect to an individual in good faith reliance on information provided by the System regarding that individual.

"(15) LIMITATION ON USE OF THE SYSTEM.—Notwithstanding any other provision of law, nothing in this subsection shall be construed to permit or allow any department, bureau, or other agency of the United States to utilize any information, data-

1 base, or other records used in the System for any
2 purpose other than as provided for under this sub-
3 section.

4 "(16) ACCESS TO DATABASE.—No officer or
5 employee of any agency or department of the United
6 States, other than such an officer or employee who
7 is responsible for the verification of employment eli-
8 gibility or for the evaluation of an employment eligi-
9 bility verification program at the Social Security Ad-
10 ministration, the Department of Homeland Security,
11 and the Department of Labor, may have access to
12 any information, database, or other records utilized
13 by the System.

14 "(17) MODIFICATION AUTHORITY.—The Sec-
15 retary, after notice is submitted to Congress and
16 provided to the public in the Federal Register, is au-
17 thorized to modify the requirements of this sub-
18 section, including requirements with respect to com-
19 pletion of forms, method of storage, attestations,
20 copying of documents, signatures, methods of trans-
21 mitting information, and other operational and tech-
22 nical aspects to improve the efficiency, accuracy, and
23 security of the System.

24 "(18) ANNUAL STUDY AND REPORT.—

"(A) REQUIREMENT FOR STUDY.—The Comptroller General of the United States shall conduct an annual study of the System as described in this paragraph.

"(B) PURPOSE OF THE STUDY.—The Comptroller General shall, for each year, undertake a study to determine whether the System meets the following requirements:

"(i) DEMONSTRATED ACCURACY OF THE DATABASES.—New information and information changes submitted by an individual to the System is updated in all of the relevant databases not later than 3 working days after submission in at least 99 percent of all cases.

"(ii) LOW ERROR RATES AND DELAYS IN VERIFICATION.—

"(I) INCORRECT TENTATIVE NONCONFIRMATION NOTICES.—That, during a year, not more than 1 percent of all tentative nonconfirmations provided through the System during such year are incorrect.

"(II) INCORRECT FINAL NONCONFIRMATION NOTICES.—That, during a

year, not more than 3 percent of all final nonconfirmations provided through the System during such year are incorrect.

"(III) RATES OF INCORRECT TENTATIVE NONCONFIRMATION NOTICES.—That, during a year, the number of incorrect tentative nonconfirmations provided through the System for individuals who are not nationals of the United States is not more than 300 percent more than the number of such incorrect notices provided for nationals of the United States.

"(IV) RATES OF INCORRECT FINAL NONCONFIRMATION NOTICES.—That, during a year, the number of incorrect final nonconfirmations provided through the System for individuals who are not nationals of the United States is not more than 300 percent more than the number of such incorrect notices provided for nation-

als of the United States during such year.

"(iii) MEASURABLE EMPLOYER COMPLIANCE WITH SYSTEM REQUIREMENTS.—

"(I) NO DISCRIMINATION BASED ON SYSTEM OPERATIONS.—The System has not and will not result in increased discrimination or cause reasonable employers to conclude that individuals of certain races or ethnicities are more likely to have difficulties when offered employment caused by the operation of the System.

"(II) REQUIREMENT FOR INDEPENDENT STUDY.—The determination described in subclause (I) shall be based on an independent study commissioned by the Comptroller General in each phase of expansion of the System.

"(iv) PROTECTION OF WORKERS' PRIVATE INFORMATION.—At least 97 percent of employers who participate in the System are in full compliance with the privacy requirements described in this subsection.

"(v) ADEQUATE AGENCY STAFFING AND FUNDING.—The Secretary and Commissioner of Social Security have sufficient funding to meet all of the deadlines and requirements of this subsection.

"(C) CONSULTATION.—In conducting a study under this paragraph, the Comptroller General shall consult with representatives of business, labor, immigrant communities, State governments, privacy advocates, and appropriate departments of the United States.

"(D) REQUIREMENT FOR REPORTS.—Not later than 21 months after the date of the enactment of the STRIVE Act of 2007, and annually thereafter, the Comptroller General shall submit to the Secretary and to Congress a report containing the findings of the study carried out under this paragraph.

"(E) CERTIFICATION.—If the Comptroller General determines that the System meets the requirements set out in clauses (i) through (v) of subparagraph (B) for a year, the Comptroller shall certify such determination and submit such certification to Congress with the report required by subparagraph (D).

1 "(19) ADMINISTRATIVE REVIEW.—

2 "(A) IN GENERAL.—An individual who is
3 terminated from employment as a result of a
4 final nonconfirmation may, not later than 60
5 days after the date of such termination, file an
6 appeal of such final nonconfirmation.

7 "(B) PROCEDURES.—The Secretary and
8 Commissioner of Social Security shall develop
9 procedures to review appeals filed under sub-
10 paragraph (A) and to make final determina-
11 tions on such appeals.

12 "(C) REVIEW FOR ERRORS.—If a final de-
13 termination on an appeal filed under subpara-
14 graph (A) results in a confirmation of an indi-
15 vidual's eligibility for employment in the United
16 States, the administrative review process shall
17 require the Secretary to determine if the final
18 nonconfirmation issued for the individual was
19 the result of—

20 "(i) an error or negligence on the part
21 of an employee or official operating or re-
22 sponsible for the System;

23 "(ii) the decision rules, processes, or
24 procedures utilized by the System; or

"(iii) erroneous system information that was not the result of acts or omissions of the individual.

"(D) COMPENSATION FOR ERROR.—

"(i) IN GENERAL.—If the Secretary makes a determination under subparagraph (C) that the final nonconfirmation issued for an individual was not caused by an act or omission of the individual, the Secretary shall compensate the individual for lost wages.

"(ii) CALCULATION OF LOST WAGES.—Lost wages shall be calculated based on the wage rate and work schedule that prevailed prior to termination. The individual shall be compensated for wages lost beginning on the first scheduled work day after employment was terminated and ending 180 days after completion of the administrative review process described in this paragraph or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first.

"(E) LIMITATION ON COMPENSATION.—For purposes of determining an individual's

compensation for the loss of employment, such compensation shall not include any period in which the individual was ineligible for employment in the United States.

"(F) SOURCE OF FUNDS.—Compensation or reimbursement provided under this paragraph shall not be provided from funds appropriated in annual appropriations Acts to the Secretary for the Department of Homeland Security.

"(20) JUDICIAL REVIEW.—

"(A) IN GENERAL.—After the Secretary makes a final determination on an appeal filed by an individual under paragraph (19), the individual may obtain judicial review of such determination in a civil action commenced not later than 90 days after notice of such decision, or such further time as the Secretary may allow.

"(B) REPORT.—Not later than 180 days after the date of enactment of the STRIVE Act of 2007, the Director of the Federal Judicial Center shall submit to Congress a report on judicial review of an administrative decision on a final nonconfirmation. The report shall contain

1 recommendations on jurisdiction and proce-
2 dures that shall be instituted to seek adequate
3 and timely review of such decision.
4 "(C) COMPENSATION FOR ERROR.—
5 "(i) IN GENERAL.—In cases in which
6 such judicial review reverses the final de-
7 termination of the Secretary made under
8 paragraph (19), the court shall compensate
9 the individual for lost wages.
10 "(ii) CALCULATION OF LOST
11 WAGES.—Lost wages shall be calculated
12 based on the wage rate and work schedule
13 that prevailed prior to termination. The in-
14 dividual shall be compensated for wages
15 lost beginning on the first scheduled work
16 day after employment was terminated and
17 ending 180 days after completion of the ju-
18 dicial review described in this paragraph or
19 the day after the individual is reinstated or
20 obtains employment elsewhere, whichever
21 occurs first.
22 "(21) ENFORCEMENT OF VIOLATIONS.—No pri-
23 vate right of action shall exist for any claim based
24 on a violation of this section. The Government of the
25 United States shall have exclusive enforcement au-

1 thority over violations of this section and shall use
2 only the powers, penalties, and mechanisms found in
3 this section. This paragraph shall apply to all cases
4 in which a final judgment has not been entered prior
5 to or on the date of enactment of the STRIVE Act
6 of 2007.

7 "(22) SAFE HARBOR FOR CONTRACTORS.—A
8 person shall not be liable for a violation of para-
9 graph (1)(A), (1)(B), or (2) of subsection (a) with
10 respect to the hiring or continuation of employment
11 of an unauthorized alien by a subcontractor of that
12 person unless the person knew that the subcon-
13 tractor hired or continued to employ such alien in
14 violation of such a paragraph.

15 "(23) STATUTORY CONSTRUCTION.—Nothing in
16 this subsection shall affect any existing rights and
17 obligations of employers or employees under other
18 Federal, State, or local laws.

19 "(d) COMPLIANCE.—

20 "(1) COMPLAINTS AND INVESTIGATIONS.—The
21 Secretary shall establish procedures—

22 "(A) for a person to file a complaint re-
23 garding a potential violation of paragraph
24 (1)(A), (1)(B), or (2) of subsection (a);

"(B) for the investigation of any such complaint that the Secretary determines is appropriate to investigate; and

"(C) for the investigation of such other violation of paragraph (1)(A), (1)(B), or (2) of subsection (a) that the Secretary determines is appropriate.

"(2) AUTHORITY IN INVESTIGATIONS.—

"(A) IN GENERAL.—In conducting investigations and hearings under this subsection, officers and employees of the Department of Homeland Security, if designated by the Secretary, may compel by subpoena the attendance of witnesses and the production of evidence at any designated place in an investigation or case under this subsection.

"(B) FAILURE TO COOPERATE.—In case of refusal to obey a subpoena lawfully issued under subparagraph (A), the Secretary may request that the Attorney General apply in an appropriate district court of the United States for an order requiring compliance with such subpoena, and any failure to obey such order may be punished by such court as contempt.

"(C) DEPARTMENT OF LABOR.—The Secretary of Labor shall have the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)) to ensure compliance with the provisions of this section, or any regulation or order issued under this section.

"(3) COMPLIANCE PROCEDURES.—

"(A) PREPENALTY NOTICE.—If the Secretary has reasonable cause to believe that there has been a violation of a requirement of this section and determines that further proceedings related to such violation are warranted, the Secretary shall issue to the employer concerned a written notice of the Secretary's intention to issue a claim for a fine or other penalty. Such notice shall—

"(i) describe the violation;

"(ii) specify the laws and regulations allegedly violated;

"(iii) disclose the material facts which establish the alleged violation; and

"(iv) inform such employer that the employer shall have a reasonable opportunity to make representations as to why a

claim for a monetary or other penalty should not be imposed.

"(B) REMISSION OR MITIGATION OF PENALTIES.—

"(i) PETITION BY EMPLOYER.—If an employer receives written notice of a fine or other penalty in accordance with subparagraph (A), the employer may file within 45 days from receipt of such notice, with the Secretary a petition for the remission or mitigation of such fine or penalty, or a petition for termination of the proceedings. The petition may include any relevant evidence or proffer of evidence the employer wishes to present, and shall be filed and considered in accordance with procedures to be established by the Secretary.

"(ii) REVIEW BY SECRETARY.—If the Secretary finds that such fine or other penalty was incurred erroneously, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine or penalty, the Secretary may remit or mitigate such fine or

other penalty on the terms and conditions as the Secretary determines are reasonable and just, or order termination of any proceedings related to the notice. Such mitigating circumstances may include good faith compliance and participation in, or agreement to participate in, the System, if not otherwise required.

"(iii) APPLICABILITY.—This subparagraph may not apply to an employer that has or is engaged in a pattern or practice of violations of paragraph (1)(A), (1)(B), or (2) of subsection (a) or of any other requirements of this section.

"(C) PENALTY CLAIM.—After considering evidence and representations offered by the employer pursuant to subparagraph (B), the Secretary shall determine whether there was a violation and promptly issue a written final determination setting forth the findings of fact and conclusions of law on which the determination is based and the appropriate penalty.

"(4) CIVIL PENALTIES.—

"(A) HIRING OR CONTINUING TO EMPLOY UNAUTHORIZED ALIENS.—Any employer that

violates paragraph (1)(A) or (2) of subsection (a) shall pay civil penalties as follows:

"(i) Pay a civil penalty of not less than $500 and not more than $4,000 for each unauthorized alien with respect to each such violation.

"(ii) If the employer has previously been fined 1 time within the preceding 12 months under this subparagraph, pay a civil penalty of not less than $4,000 and not more than $10,000 for each unauthorized alien with respect to each such violation.

"(iii) If the employer has previously been fined more than 1 time within the preceding 12 months under this subparagraph or has failed to comply with a previously issued and final order related to any such provision, pay a civil penalty of not less than $6,000 and not more than $20,000 for each unauthorized alien with respect to each such violation.

"(B) RECORD KEEPING OR VERIFICATION PRACTICES.—Any employer that violates or fails

to comply with paragraph (1)(B) of subsection (a) shall pay a civil penalty as follows:

"(i) Pay a civil penalty of not less than $200 and not more than $2,000 for each such violation or failure.

"(ii) If the employer has previously been fined 1 time within the preceding 12 months under this subparagraph, pay a civil penalty of not less than $400 and not more than $4,000 for each such violation of failure.

"(iii) If the employer has previously been fined more than 1 time within the preceding 12 months under this subparagraph or has failed to comply with a previously issued and final order related to such requirements, pay a civil penalty of $6,000 for each such violation or failure.

"(iv) SPECIAL RULE GOVERNING PAPERWORK VIOLATION.—In the case where an employer commits a violation of this section that is deemed to be purely a paperwork violation where the Secretary fails to establish any intent to hire an individual who is not unauthorized for employment in

the United States, the Secretary shall permit the employer to correct such paperwork error within 30 days of receiving notice from the Secretary of such violation.

"(C) OTHER PENALTIES.—Notwithstanding subparagraphs (A) and (B), the Secretary may impose additional penalties for violations, including cease and desist orders, specially designed compliance plans to prevent further violations, suspended fines to take effect in the event of a further violation, and in appropriate cases, the civil penalty described in subsection (f)(2).

"(D) REDUCTION OF PENALTIES.—Notwithstanding subparagraphs (A), (B), and (C), the Secretary is authorized to reduce or mitigate penalties imposed upon employers, based upon factors including the employer's hiring volume, compliance history, good-faith implementation of a compliance program, participation in a temporary worker program, and voluntary disclosure of violations of this subsection to the Secretary.

"(5) JUDICIAL REVIEW.—

"(A) IN GENERAL.—An employer adversely affected by a final determination may, within 45 days after the date the final determination is issued, obtain judicial review of such determination.

"(B) REPORT.—Not later than 180 days after the date of enactment of the STRIVE Act of 2007, the Director of the Federal Judicial Center shall submit to Congress a report on judicial review of a final determination. The report shall contain recommendations on jurisdiction and procedures that shall be instituted to seek adequate and timely review of such decision.

"(6) ENFORCEMENT OF ORDERS.—If an employer fails to comply with a final determination issued against that employer under this subsection, and the final determination is not subject to review as provided in paragraph (5), the Attorney General may file suit to enforce compliance with the final determination, not earlier than 46 days and not later than 90 days, after the date the final determination is issued, in any appropriate district court of the United States. The burden shall remain on the em-

1 ployer to show that the final determination was not
2 supported by a preponderance of the evidence.
3 "(7) RECOVERY OF COSTS AND ATTORNEYS'
4 FEES.—In any appeal brought under paragraph (5)
5 or suit brought under paragraph (6), the employer
6 shall be entitled to recover from the Secretary rea-
7 sonable costs and attorneys' fees if such employer
8 prevails on the merits of the case. The award of at-
9 torneys' fees shall not exceed $50,000. Such amount
10 shall be subject to annual inflation adjustments per
11 the United States Consumer Price Index - All Urban
12 Consumers (CPI-U) compiled by the Bureau of
13 Labor Statistics. Any costs and attorneys' fees as-
14 sessed against the Secretary shall be charged against
15 the operating expenses of the Department of Home-
16 land Security for the fiscal year in which the assess-
17 ment is made, and shall not be reimbursed from any
18 other source.
19 "(e) CRIMINAL PENALTIES AND INJUNCTIONS FOR
20 PATTERN OR PRACTICE VIOLATIONS.—
21 "(1) CRIMINAL PENALTY.—An employer that
22 engages in a pattern or practice of knowing viola-
23 tions of paragraph (1)(A) or (2) of subsection (a)
24 shall be fined not more than $20,000 for each unau-
25 thorized alien with respect to whom such a violation

1 occurs, imprisoned for not more than 3 years for the
2 entire pattern or practice, or both.
3 "(2) ENJOINING OF PATTERN OR PRACTICE
4 VIOLATIONS.—If the Secretary or the Attorney Gen-
5 eral has reasonable cause to believe that an employer
6 is engaged in a pattern or practice of employment in
7 violation of paragraph (1)(A) or (2) of subsection
8 (a), the Attorney General may bring a civil action in
9 the appropriate district court of the United States
10 requesting such relief, including a permanent or
11 temporary injunction, restraining order, or other
12 order against the employer, as the Secretary deems
13 necessary.
14 "(f) ADJUSTMENT FOR INFLATION.—All penalties
15 and limitations on the recovery of costs and attorney's fees
16 in this section shall be increased every 4 years beginning
17 January 2010 to reflect the percentage increase in the
18 consumer price index for all urban consumers (all items;
19 United States city average) for the 48 month period end-
20 ing with September of the year preceding the year such
21 adjustment is made. Any adjustment under this subpara-
22 graph shall be rounded to the nearest dollar.
23 "(g) PROHIBITION OF INDEMNITY BONDS.—
24 "(1) PROHIBITION.—It is unlawful for an em-
25 ployer, in the hiring of an individual, to require the

individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guaranty or indemnity, against any potential liability arising under this section relating to such hiring of the individual.

"(2) CIVIL PENALTY.—Any employer which is determined, after notice and opportunity for mitigation of the monetary penalty under subsection (d), to have violated paragraph (1) shall be subject to a civil penalty of $10,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the individual.

"(h) PROHIBITION ON AWARD OF GOVERNMENT CONTRACTS, GRANTS, AND AGREEMENTS.—

"(1) EMPLOYERS WITH NO CONTRACTS, GRANTS, OR AGREEMENTS.—

"(A) IN GENERAL.—If an employer who does not hold a Federal contract, grant, or cooperative agreement is determined by the Secretary to be a repeat violator of this section the employer shall be debarred from the receipt of a Federal contract, grant, or cooperative agreement for a period of 5 years. The Secretary or the Attorney General shall advise the Adminis-

trator of General Services of such a debarment, and the Administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for a period of 5 years.

"(B) WAIVER.—The Administrator of General Services, in consultation with the Secretary and the Attorney General, may waive operation of this subsection or may limit the duration or scope of the debarment.

"(2) EMPLOYERS WITH CONTRACTS, GRANTS, OR AGREEMENTS.—

"(A) IN GENERAL.—An employer who holds a Federal contract, grant, or cooperative agreement and is determined by the Secretary to be a repeat violator of this section or is convicted of a crime under this section, shall be debarred from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years.

"(B) NOTICE TO AGENCIES.—Prior to debarring the employer under subparagraph (A), the Secretary, in cooperation with the Administrator of General Services, shall advise any agency or department holding a contract, grant,

1 or cooperative agreement with the employer of
2 the Government's intention to debar the em-
3 ployer from the receipt of new Federal con-
4 tracts, grants, or cooperative agreements for a
5 period of 5 years.

6 "(C) WAIVER.—After consideration of the
7 views of any agency or department that holds
8 a contract, grant, or cooperative agreement
9 with the employer, the Secretary may, in lieu of
10 debarring the employer from the receipt of new
11 Federal contracts, grants, or cooperative agree-
12 ments for a period of 5 years, waive operation
13 of this subsection, limit the duration or scope of
14 the debarment, or may refer to an appropriate
15 lead agency the decision of whether to debar the
16 employer, for what duration, and under what
17 scope in accordance with the procedures and
18 standards prescribed by the Federal Acquisition
19 Regulation. However, any proposed debarment
20 predicated on an administrative determination
21 of liability for civil penalty by the Secretary or
22 the Attorney General shall not be reviewable in
23 any debarment proceeding.

24 "(D) REVIEW.—The decision of whether to
25 debar or take alternate action under this para-

graph shall be reviewable pursuant to section 9, Federal Acquisition Regulation.

"(3) SUSPENSION.—Indictments for violations of this section or adequate evidence of actions that could form the basis for debarment under this subsection shall be considered a cause for suspension under the procedures and standards for suspension prescribed by the Federal Acquisition Regulation.

"(4) REPEAT VIOLATOR DEFINED.—In this subsection, the term 'repeat violator' means, with respect to an employer, that the employer has violated paragraph (1)(A), (1)(B), or (2) of subsection (a) more than 1 time and that such violations were discovered as a result of more than 1 separate investigation of the employer. A violation of such paragraph (1)(B) that is inadvertent and unrelated to a violation of subsection (a)(1)(A) and (a)(2) may not be considered to be a violation of such paragraph (1)(B) for the purposes of this paragraph.

"(i) MISCELLANEOUS PROVISIONS.—

"(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) eligible to be employed in the United States, the Secretary shall provide that any limita-

1 tions with respect to the period or type of employ-
2 ment or employer shall be conspicuously stated on
3 the documentation or endorsement.

4 "(2) PREEMPTION.—The provisions of this sec-
5 tion preempt any State or local law from—

6 "(A) imposing civil or criminal sanctions
7 upon employers who employ or otherwise do
8 business with unauthorized aliens;

9 "(B) requiring, authorizing, or permitting
10 the use of a federally mandated employment
11 verification system for any other purpose other
12 than the one mandated in Federal law, includ-
13 ing verifying status of renters, determining eli-
14 gibility for receipt of benefits, enrollment in
15 school, obtaining or retaining a business license
16 or other license provided by the unit of govern-
17 ment, or conducting a background check; and

18 "(C) requiring employers to use an em-
19 ployment verification system, unless otherwise
20 mandated by Federal law, for purposes such
21 as—

22 "(i) as a condition of receiving a gov-
23 ernment contract;

24 "(ii) as a condition of receiving a
25 business license; or

"(iii) as a penalty.

"(j) DEFINITIONS.—In this section—

"(1) EMPLOYER.—The term 'employer' means any person or entity, including any entity of the Government of the United States, hiring an individual for employment in the United States.

"(2) INDEPENDENT CONTRACTOR.—The term 'independent contractor' includes a person who carries on independent business, contracts to do a piece of work according to the person's own means and methods, and are subject to control only as to results. Whether a person is an independent contractor, regardless of any self-designation, will be determined on a case-by-case basis. Factors to be considered in that determination include whether the person—

"(A) supplies the tools or materials;

"(B) makes services available to the general public;

"(C) works for a number of clients at the same time;

"(D) has an opportunity for profit or loss as a result of labor or services provided;

"(E) invests in facilities to carry out the work;

"(F) directs the order or sequence in which the work is to be done; and

"(G) determines the hours during which the work is to be done.

"(3) SECRETARY.—Except as otherwise provided, the term 'Secretary' means the Secretary of Homeland Security.

"(4) UNAUTHORIZED ALIEN.—The term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either—

"(A) an alien lawfully admitted for permanent residence; or

"(B) authorized to be so employed by this Act or by the Secretary.".

(b) ANTIFRAUD MEASURES FOR SOCIAL SECURITY CARDS.—

(1) IN GENERAL.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is amended—

(A) by inserting "(i)" after "(G)";

(B) by striking "banknote paper" and inserting "durable plastic or similar material"; and

(C) by adding at the end the following new clauses:

"(ii) Each social security card issued under this subparagraph shall include an encrypted machine-readable electronic identification strip which shall be unique to the individual to whom the card is issued. The Commissioner shall develop such electronic identification strip in consultation with the Secretary of Homeland Security, so as to enable employers to use such strip in accordance with section 274A(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)(B)) to obtain access to the Electronic Employment Verification System established by subsection (c) of this title.

"(iii) Each social security card issued under this subparagraph shall—

"(I) contain physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes;

"(II) be consistent with the biometric standards for documents described in section 737 of this Act; and

"(III) contain a disclaimer stating the following: `This card shall not be used for the purpose of identification.

"(iv) The Commissioner shall provide for the issuance (or reissuance) to each individual who—

"(I) has been assigned a Social Security account number under subparagraph (B),

"(II) has attained the minimum age applicable, in the jurisdiction in which such individual engages in employment, for legally engaging in such employment, and

"(III) files application for such card under this clause in such form and manner as shall be prescribed by the Commissioner, a Social Security card which meets the preceding requirements of this subparagraph and which includes a recent digitized pho-

1 tograph of the individual to whom the
2 card is issued.
3 ''(v) The Commissioner shall maintain
4 an ongoing effort to develop measures in
5 relation to the Social Security card and the
6 issuance thereof to preclude fraudulent use
7 thereof.''.
8 (2) SHARING OF INFORMATION WITH THE SEC-
9 RETARY OF HOMELAND SECURITY.—Section
10 205(c)(2) of such Act is amended by adding at the
11 end the following new subparagraph:
12 ''(I) Upon the issuance of a Social Security
13 account number under subparagraph (B) to any
14 individual or the issuance of a Social Security
15 card under subparagraph (G) to any individual,
16 the Commissioner of Social Security shall trans-
17 mit to the Secretary of Homeland Security such
18 information received by the Commissioner in
19 the individual's application for such number or
20 such card as such Secretary determines nec-
21 essary and appropriate for administration of
22 the STRIVE Act of 2007. Such information
23 shall be used solely for inclusion in the Elec-
24 tronic Employment Eligibility Verification Sys-

tem established pursuant to title III of such Act.''.

(3) EFFECTIVE DATES.—The amendment made by paragraph (1) shall apply with respect to Social Security cards issued 2 years after the date of the enactment of this Act. The amendment made by paragraph (2) shall apply with respect to the issuance of Social Security account numbers and Social Security cards after 2 years after the date of the enactment of this Act.

(c) CONFORMING AMENDMENTS.—

(1) AMENDMENTS.—

(A) REPEAL OF BASIC PILOT.—Sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note) are repealed.

(B) REPEAL OF REPORTING REQUIREMENTS.—

(i) REPORT ON EARNINGS OF ALIENS NOT AUTHORIZED TO WORK.—Subsection (c) of section 290 (8 U.S.C. 1360) is repealed.

(ii) REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT NUMBERS.—

Subsection (b) of section 414 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1360 note) is repealed.

(C) REPEAL OF DEFINITION.—Paragraph (1)(F) of section 1961 of title 18, United States Code, is repealed.

(2) CONSTRUCTION.—Nothing in this subsection or in subsection (c) of section 274A, as amended by subsection (a), may be construed to limit the authority of the Secretary to allow or continue to allow the participation of employers who participated in the basic pilot program under such sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note) in the Electronic Employment Verification System established pursuant to such subsection (d).

(d) TECHNICAL AMENDMENTS.—

(1) DEFINITION OF UNAUTHORIZED ALIEN.—Sections 218(i)(1) (8 U.S.C. 1188(i)(1)), 245(c)(8) (8 U.S.C. 1255(c)(8)), 274(a)(3)(B)(i) (8 U.S.C. 1324(a)(3)(B)(i)), and 274B(a)(1) (8 U.S.C.

1324b(a)(1)) are amended by striking "274A(h)(3)" and inserting "274A(h)".

(2) DOCUMENT REQUIREMENTS.—Section 274B (8 U.S.C. 1324b) is amended—

(A) in subsections (a)(6) and (g)(2)(B), by striking "274A(b)" and inserting "274A(d)"; and

(B) in subsection (g)(2)(B)(ii), by striking "274A(b)(5)" and inserting "274A(d)(9)".

(e) OFFICE OF ELECTRONIC VERIFICATION.—

(1) IN GENERAL.—The Secretary shall establish the Office of Electronic Verification within the Office of Screening Coordination of the Department.

(2) RESPONSIBILITIES.—The head of the Office of Electronic Verification shall work with the Commissioner of Social Security—

(A) to ensure the information maintained in the Electronic Employment Verification System established in subsection (c) of section 274A of the Immigration and Nationality Act, as amended by subsection (a), is updated in a manner that promotes maximum accuracy;

(B) to ensure a process is provided for correcting erroneous information continued in such System;

(C) to ensure that the data received from field offices of United States Customs and Border Protection or from other points of contact between aliens and the Department of Homeland Security is registered in all relevant databases;

(D) to ensure that the data received from field offices of the Social Security Administration and other points of contact between nationals of the United States and the Social Security Administration is registered within all relevant databases;

(E) to ensure that the Department has a sufficient number of personnel to conduct manual verifications described in paragraph (2)(ii) of such subsection (c);

(F) to establish and promote telephone help lines accessible to employers and individuals 24-hours a day that provide information regarding the functioning of such System or specific issues related to the issuance of a tentative nonconfirmations issued by the System;

(G) to establish an outreach and education program to ensure that all new employers are

fully informed of their responsibilities under such System;

(H) to conduct random audits of individual's files in the Government's database each year to determine accuracy rates and require corrections of errors in a timely manner; and

(I) to provide to the employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice.

(f) REQUIREMENT FOR REPORTS.—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Comptroller General of the United States shall submit to the Secretary and to Congress a report on the impact of the Electronic Employment Verification System described in section 274A(c) of the Immigration and Nationality Act, as amended by subsection (a), on employers and employees in the United States. Each such report shall include the following:

(1) An assessment of the impact of the System on the employment of aliens who are not eligible for employment in the United States, including whether the System has indirectly caused an increase in exploitation of unauthorized workers.

(2) An assessment of the accuracy of the databases utilized by the System and of the timeliness and accuracy of the responses provided through the System to employers.

(3) An assessment of the privacy and confidentiality of the System and of the overall security of the System with respect to cybertheft and theft or misuse of private data.

(4) An assessment of whether the System is being implemented in a nondiscriminatory and nonretaliatory manner.

(5) An assessment of the most common causes for the erroneous issuance of nonconfirmations by the System and recommendations to correct such causes.

(6) Recommendations regarding a funding scheme for the maintenance of the System which may include minimal costs to employers or individuals.

(7) The recommendations of the Comptroller General regarding whether or not the System should be modified prior to further expansion.

(g) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall take effect on the date

that is 180 days after the date of the enactment of this Act.

**SEC. 302. CLARIFICATION OF INELIGIBILITY FOR MISREPRESENTATION.**

Section 212(a)(6)(C)(ii)(I) (8 U.S.C. 1182(a)(6)(C)(ii)(I)), is amended by striking ''citizen'' and inserting ''national''.

**SEC. 303. ANTIDISCRIMINATION PROTECTIONS.**

(a) APPLICATION OF PROHIBITION OF DISCRIMINATION TO VERIFICATION SYSTEM.—Section 274B(a)(1) (8 U.S.C. 1324b(a)(1)) is amended by inserting '', the verification of the individual's eligibility for employment through the Electronic Employment Verification System described in section 274A(c),'' after ''the individual for employment''.

(b) CLASSES OF ALIENS AS PROTECTED INDIVIDUALS.—Section 274B(a)(3)(B) (8 U.S.C. 1324b(a)(3)(B)) is amended to read as follows—

''(B) is an alien who is—

''(i) lawfully admitted for permanent residence;

''(ii) granted the status of an alien lawfully admitted for temporary residence under section 210(a) or 245A(a);

"(iii) admitted as a refugee under section 207;

"(iv) granted asylum under section 208;

"(v) granted the nonimmigrant status under section 101(a)(15)(H)(ii)(c);

"(vi) granted temporary protected status under section 244; or

"(vii) granted parole under section 212(d)(5).".

(c) REQUIREMENTS FOR ELECTRONIC EMPLOYMENT VERIFICATION.—Section 274B(a) (8 U.S.C. 1324b(a)) is amended by adding at the end the following:

"(7) ANTIDISCRIMINATION REQUIREMENTS OF THE ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.—It is an unfair immigration-related employment practice for a person or other entity, in the course of the Electronic Employment Verification System described in section 274A(c)—

"(A) to terminate the employment of an individual due to a tentative nonconfirmation issued by such System, with respect to that individual;

"(B) to use the System for screening of an applicant for employment prior to making the individual an offer of employment;

"(C) to reverify the employment authorization of current employees beyond the time period set out in 274A(c)(2); or

"(D) to use the System selectively to exclude certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants.".

(d) INCREASE IN CIVIL MONEY PENALTIES.—Section 274B(g)(2) (8 U.S.C. 1324b(g)(2)) is amended—

(1) in subparagraph (B)(iv)—

(A) in subclause (I), by striking "$250 and not more than $1,000" and inserting "$2,000 and not more than $4,000";

(B) in subclause (II), by striking "$2,000 and not more than $5,000" and inserting "$4,000 and not more than $10,000";

(C) in subclause (III), by striking "$3,000 and not more than $10,000" and inserting "$6,000 and not more than $20,000";

(D) in subclause (IV), by striking "$100 and not more than $1,000" and inserting "$500 and not more than $5,000."

(e) INCREASED FUNDING OF INFORMATION CAMPAIGN.—Section 274B(l)(3) (8 U.S.C. 1324b(l)(3)) is amended by inserting "and an additional $40,000,000 for each of fiscal years 2008 through 2010" before the period at the end.

(f) EFFECTIVE DATE.—The amendments made by this title shall take effect on the date of the enactment of this Act and shall apply to violations occurring on or after such date.

**SEC. 304. ADDITIONAL PROTECTIONS.**

Section 274B (8 U.S.C. 1324b) is amended—

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

"(1) IN GENERAL.—It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien defined in section 274A(h)(3)) with respect to—

"(A) the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

"(i) because of such individual's national origin; or

"(ii) in the case of a protected individual, because of such individual's citizenship status; or

"(B) the compensation, terms, or conditions of the employment of the individual.";

(2) in subsection (a)(6), by striking "if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1)" and inserting "in violation of paragraph (1), subject to additional information and compliance assistance being provided to employers to assist them in complying with the law";

(3) in subsection (d)—

(A) in paragraph (1), by striking "and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge" and inserting "Any such investigation shall begin not later than 180 days after the alleged discriminatory act. Any such complaint filed with an administrative law judge shall be filed not later than 1 year after the commencement of the independent investigation."; and

(B) by striking paragraph (3); and

(4) in subsection (g)(2)(B)(iii), by inserting ", and to provide such other relief as the administrative law judge determines appropriate to make the individual whole" before the semicolon at the end.

**SEC. 305. ADDITIONAL WORKSITE ENFORCEMENT AND FRAUD DETECTION AGENTS.**

(a) INCREASE IN NUMBER OF PERSONNEL.—The Secretary shall, subject to the availability of appropriations for such purpose, annually increase, by not less than 2,200, the number of personnel of the Bureau of Immigration and Customs Enforcement during the 5-year period beginning on the date of the enactment of this Act.

(b) USE OF PERSONNEL.—The Secretary shall ensure that not less than 25 percent of all the hours expended by personnel of the Bureau of Immigration and Customs Enforcement shall be used to enforce compliance with sections 274A and 274C of the Immigration and Nationality Act (8 U.S.C. 1324a and 1324c).

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

**SEC. 306. AMENDMENTS TO THE SOCIAL SECURITY ACT AND THE INTERNAL REVENUE CODE.**

(a) SOCIAL SECURITY ACT.—Section 205(c)(2) of the Social Security Act (42 U.S.C. 405(c)(2)) is amended by adding at the end the following new subparagraphs:

"(I)(i) The Commissioner of Social Security shall, subject to the provisions of title III of the STRIVE Act of 2007, establish a reliable, secure method to provide through the Electronic Employment Verification System established pursuant to section 274A(c) of the Immigration and Nationality Act (referred to in this subparagraph as the 'System'), within the time periods required by such subsection—

"(I) a determination of whether the name, date of birth, employer identification number, and social security account number of an individual provided in an inquiry made to the System by an employer is consistent with such information maintained by the Commissioner in order to confirm the validity of the information provided;

"(II) a determination of the citizenship status associated with such name and social security account number, according

to the records maintained by the Commissioner;

"(III) a determination of whether the name and number belongs to an individual who is deceased, according to the records maintained by the Commissioner;

"(IV) a determination of whether the name and number is blocked in accordance with clause (ii); and

"(V) a confirmation or a nonconfirmation described in such subsection (c), in a manner that ensures that other information maintained by the Commissioner is not disclosed or released to employers through the System.

"(ii) The Commissioner of Social Security shall prevent the fraudulent or other misuse of a social security account number by establishing procedures under which an individual who has been assigned a social security account number may block the use of such number under the System and remove such block.

"(J) In assigning social security account numbers to aliens who are authorized to work in the United States under section 218A of the

Immigration and Nationality Act, the Commissioner of Social Security shall, to the maximum extent practicable, assign such numbers by employing the enumeration procedure administered jointly by the Commissioner, the Secretary of State, and the Secretary.''.

(b) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION.—

(1) IN GENERAL.—Section 6103(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(21) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO DEPARTMENT OF HOMELAND SECURITY.—

''(A) IN GENERAL.—From taxpayer identity information which has been disclosed to the Social Security Administration and upon written request by the Secretary of Homeland Security, the Commissioner of Social Security shall disclose directly to officers, employees, and contractors of the Department of Homeland Security the following information:

''(i) DISCLOSURE OF EMPLOYER NO-MATCH NOTICES.—Taxpayer identity infor-

mation of each person who has filed an information return required by reason of section 6051 during calendar year 2006, 2007, or 2008 which contains—

"(I) more than 100 names and taxpayer identifying numbers of employees (within the meaning of such section) that did not match the records maintained by the Commissioner of Social Security; or

"(II) more than 10 names of employees (within the meaning of such section) with the same taxpayer identifying number.

"(ii) DISCLOSURE OF INFORMATION REGARDING USE OF DUPLICATE EMPLOYEE TAXPAYER IDENTIFYING INFORMATION.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 which the Commissioner of Social Security has reason to believe, based on a comparison with information submitted by the Secretary of Homeland Security, contains evidence of identity fraud due to the multiple use of

the same taxpayer identifying number (assigned under section 6109) of an employee (within the meaning of section 6051).

"(iii) DISCLOSURE OF INFORMATION REGARDING NONPARTICIPATING EMPLOYERS.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 which the Commissioner of Social Security has reason to believe, based on a comparison with information submitted by the Secretary of Homeland Security, contains evidence of such person's failure to register and participate in the Electronic Employment Verification System authorized under section 274A(c) of the Immigration and Nationality Act (hereafter in this paragraph referred to as the 'System').

"(iv) DISCLOSURE OF INFORMATION REGARDING NEW EMPLOYEES OF NONPARTICIPATING EMPLOYERS.—Taxpayer identity information of all employees (within the meaning of section 6051) hired after the date a person identified in clause (iii) is required to participate in the System

under section 274A(c)(10) of the Immigration and Nationality Act.

"(v) DISCLOSURE OF INFORMATION REGARDING EMPLOYEES OF CERTAIN DESIGNATED EMPLOYERS.—Taxpayer identity information of all employees (within the meaning of section 6051) of each person who is required to participate in the System under such section 274A(c)(10) of the Immigration and Nationality Act.

"(vi) DISCLOSURE OF NEW HIRE TAXPAYER IDENTITY INFORMATION.—Taxpayer identity information of each person participating in the System and taxpayer identity information of all employees (within the meaning of section 6051) of such person hired during the period beginning with the later of—

"(I) the date such person begins to participate in the System; or

"(II) the date of the request immediately preceding the most recent request under this clause,

ending with the date of the most recent request under this clause.

"(B) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security shall disclose taxpayer identity information under subparagraph (A) only for purposes of, and to the extent necessary in—

"(i) establishing and enforcing employer participation in the System;

"(ii) carrying out, including through civil administrative and civil judicial proceedings, of sections 212, 217, 235, 237, 238, 274A, 274B, and 274C of the Immigration and Nationality Act; and

"(iii) the civil operation of the Alien Terrorist Removal Court.

"(C) REIMBURSEMENT.—The Commissioner of Social Security shall prescribe a reasonable fee schedule for furnishing taxpayer identity information under this paragraph and collect such fees in advance from the Secretary of Homeland Security.

"(D) TERMINATION.—This paragraph shall not apply to any request made after the date which is 3 years after the date of the enactment of this paragraph.".

(2) COMPLIANCE BY DHS CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.—

(A) IN GENERAL.—Section 6103(p) of such Code is amended by adding at the end the following new paragraph:

"(9) DISCLOSURE TO DHS CONTRACTORS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor of the Department of Homeland Security unless the Secretary of Homeland Security, to the satisfaction of the Secretary—

"(A) has requirements in effect which require each such contractor which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information;

"(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 1 year in duration) of each contractor to determine compliance with such requirements;

"(C) submits the findings of the most recent review conducted under subparagraph (B)

to the Secretary as part of the report required by paragraph (4)(E); and

"(D) certifies to the Secretary for the most recent annual period that such contractor is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor, a description of the contract or agreement with such contractor, and the duration of such contract or agreement.".

(3) CONFORMING AMENDMENTS.—

(A) Section 6103(a)(3) of such Code is amended by striking "or (20)" and inserting "(20), or (21)".

(B) Section 6103(p)(3)(A) of such Code is amended by adding at the end the following new sentence: "The Commissioner of Social Security shall provide to the Secretary such information as the Secretary may require in carrying out this paragraph with respect to return information inspected or disclosed under the authority of subsection (l)(21).".

(C) Section 6103(p)(4) of such Code is amended—

(i) by striking ''or (17)'' both places it appears and inserting ''(17), or (21)''; and

(ii) by striking ''or (20)'' each place it appears and inserting ''(20), or (21)''.

(D) Section 6103(p)(8)(B) of such Code is amended by inserting ''or paragraph (9)'' after ''subparagraph (A)''.

(E) Section 7213(a)(2) of such Code is amended by striking ''or (20)'' and inserting ''(20), or (21)''.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the amendments made by this section.

(2) LIMITATION ON VERIFICATION RESPONSIBILITIES OF COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security is authorized to perform activities with respect to carrying out the Commissioner's responsibilities in this title or the amendments made by this title, but only to the extent the Secretary has provided, in advance, funds to cover the Commissioner's full costs in carrying out such responsibilities. In no case shall funds from the Federal Old-Age and Survivors In-

surance Trust Fund or the Federal Disability Insurance Trust Fund be used to carry out such responsibilities.

(d) EFFECTIVE DATES.—

(1) SOCIAL SECURITY ACT.—The amendments made by subsection (a) shall take effect on the date that is 180 days after the date of the enactment of this Act.

(2) INTERNAL REVENUE CODE.—

(A) IN GENERAL.—The amendments made by subsection (b) shall apply to disclosures made after the date of the enactment of this Act.

(B) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (b)(2), shall be made with respect to calendar year 2007.

# TITLE IV—NEW WORKER PROGRAM

**SEC. 401. NONIMMIGRANT WORKER.**

Section 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is amended to read as follows:

"(H) an alien—

"(i)(b) subject to section 212(j)(2)—

"(aa) who is coming temporarily to the United States to perform services (other than services described in clause (ii)(a) or subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) or as a fashion model;

"(bb) who meets the requirements for the occupation specified in section 214(i)(2) or, in the case of a fashion model, is of distinguished merit and ability; and

"(cc) with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security that the intending employer has filed an application with the Secretary in accordance with section 212(n)(1);

"(b1)(aa) who is entitled to enter the United States under the provisions of an agreement listed in section 214(g)(8)(A);

"(bb) who is engaged in a specialty occupation described in section 214(i)(3); and

"(cc) with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed an attestation with the Secretary of Labor in accordance with section 212(t)(1); or

"(c)(aa) who is coming temporarily to the United States to perform services as a registered nurse;

"(bb) who meets the qualifications described in section 212(m)(1); and

"(cc) with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility (as defined in section 212(m)(6)) for which the alien will perform the services; or

"(ii)(a) who—

"(aa) has a residence in a foreign country which the alien has no intention of abandoning; and

"(bb) is coming temporarily to the United States to perform agricultural labor or services (as defined by the Secretary of Labor), including agricultural labor (as defined in section 3121(g) of the Internal Revenue Code of 1986), agriculture (as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f))), and the pressing of apples for cider on a farm, of a temporary or seasonal nature;

"(b) who—

"(aa) has a residence in a foreign country which the alien has no intention of abandoning;

"(bb) is coming temporarily to the United States to perform non-agricultural work or services of a temporary or seasonal nature (if unemployed persons capable of performing such work or services cannot be found in the United States), excluding medical school graduates coming to the United States to perform services as members of the medical profession; or

"(c) who—

"(aa) is coming temporarily to the United States to initially perform temporary labor or services other than the labor or services described in clause (i)(b), (i)(b1), (i)(c), (ii)(a), or (iii), subparagraph (D), (E), (I), (L), (O), (P), or (R), or section 214(e) (if United States workers who are able, willing, and qualified to perform such labor or services cannot be found in the United States); and

"(bb) meets the requirements of section 218A, including the filing of a petition under such section on behalf of the alien;

"(iii) who—

"(a) has a residence in a foreign country which the alien has no intention of abandoning; and

"(b) is coming temporarily to the United States as a trainee (other than to receive graduate medical education or training) in a training program

that is not designed primarily to provide productive employment; or

''(iv) who—

''(a) is the spouse or a minor child of an alien described in this subparagraph; and

''(b) is accompanying or following to join such alien.''.

**SEC. 402. ADMISSION OF NONIMMIGRANT WORKERS.**

(a) NEW WORKERS.—Chapter 2 of title II (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:

**''SEC. 218A. ADMISSION OF H–2C NONIMMIGRANTS.**

''(a) AUTHORIZATION.—The Secretary of State may grant a temporary visa to an H–2C nonimmigrant who demonstrates an intent to perform labor or services in the United States (other than the labor or services described in clause (i)(b), (i)(b1), (i)(c), (ii)(a), or (iii) of section 101(a)(15)(H), subparagraph (D), (E), (I), (L), (O), (P), or (R) of section 101(a)(15), or section 214(e) (if United States workers who are able, willing, and qualified to perform such labor or services cannot be found in the United States).

1 "(b) REQUIREMENTS FOR ADMISSION.—An alien
2 shall be eligible for H–2C nonimmigrant status if the alien
3 meets the following requirements:

4 "(1) ELIGIBILITY TO WORK.—The alien shall
5 establish that the alien is capable of performing the
6 labor or services required for an occupation de-
7 scribed in section 101(a)(15)(H)(ii)(c).

8 "(2) EVIDENCE OF EMPLOYMENT OFFER.—The
9 alien's evidence of employment shall be provided in
10 accordance with the requirements issued by the Sec-
11 retary of State, in consultation with the Secretary of
12 Labor. In carrying out this paragraph, the Secretary
13 may consider evidence from employers, employer as-
14 sociations, and labor representatives.

15 "(3) FEE.—The alien shall pay a $500 visa
16 issuance fee in addition to the cost of processing and
17 adjudicating such application. Nothing in this para-
18 graph shall be construed to affect consular proce-
19 dures for charging reciprocal fees.

20 "(4) MEDICAL EXAMINATION.—The alien shall
21 undergo a medical examination (including a deter-
22 mination of immunization status), at the alien's ex-
23 pense, that conforms to generally accepted standards
24 of medical practice.

25 "(5) APPLICATION CONTENT AND WAIVER.—

"(A) APPLICATION FORM.—The alien shall submit to the Secretary of State a completed application, which contains evidence that the requirements under paragraphs (1) and (2) have been met.

"(B) CONTENT.—In addition to any other information that the Secretary requires to determine an alien's eligibility for H–2C nonimmigrant status, the Secretary of State shall require an alien to provide information concerning the alien's—

"(i) physical and mental health;

"(ii) criminal history and gang membership;

"(iii) immigration history; and

"(iv) involvement with groups or individuals that have engaged in terrorism, genocide, persecution, or who seek the overthrow of the United States Government.

"(C) KNOWLEDGE.—The alien shall include with the application submitted under this paragraph a signed certification in which the alien certifies that—

"(i) the alien has read and understands all of the questions and statements on the application form;

"(ii) the alien certifies under penalty of perjury under the laws of the United States that the application, and any evidence submitted with it, are all true and correct; and

"(iii) the applicant authorizes the release of any information contained in the application and any attached evidence for law enforcement purposes.

"(c) GROUNDS OF INADMISSIBILITY.—

"(1) IN GENERAL.—In determining an alien's admissibility as an H–2C nonimmigrant—

"(A) paragraphs (5), (6) (except subparagraph (E)), (7), (9), and (10)(B) of section 212(a) may not apply with respect to conduct that occurred before the effective date of the STRIVE Act;

"(B) the Secretary of Homeland Security may not waive the application of—

"(i) subparagraph (A), (B), (C), (D)(ii), (E), (G), (H), or (I) of section 212(a)(2);

"(ii) section 212(a)(3); or

"(iii) subparagraph (A), (C) or (D) of section 212(a)(10);

"(C) the Secretary of State may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an individual alien—

"(i) for humanitarian purposes;

"(ii) to ensure family unity; or

"(iii) if such a waiver is otherwise in the public interest;

"(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this paragraph to waive the provisions of section 212(a).

"(2) RENEWAL OF AUTHORIZED ADMISSION AND SUBSEQUENT ADMISSIONS.—An alien seeking renewal of authorized admission or subsequent admission as an H–2C nonimmigrant shall establish that the alien is not inadmissible under section 212(a).

"(3) BACKGROUND CHECKS.—The Secretary of Homeland Security shall not admit, and the Secretary of State shall not issue a visa to, an alien

1 seeking H–2C nonimmigrant status unless all appro-
2 priate background checks have been completed.
3 "(d) PERIOD OF AUTHORIZED ADMISSION.—
4 "(1) AUTHORIZED PERIOD.—The initial period
5 of authorized admission as an H–2C nonimmigrant
6 shall be 3 years.
7 "(2) RENEWAL.—Before the expiration of the
8 initial period under paragraph (1), an H–2C non-
9 immigrant may submit an application to the Sec-
10 retary of Homeland Security to extend H–2C non-
11 immigrant status for 1 additional 3-year period. The
12 Secretary may not require an applicant under this
13 paragraph to depart the United States as a condi-
14 tion for granting such extension.
15 "(3) INTERNATIONAL COMMUTERS.—An alien
16 who maintains actual residence and place of abode
17 outside the United States and commutes into the
18 United States to work as an H–2C nonimmigrant,
19 is not subject to the time limitations under para-
20 graphs (1) and (2).
21 "(4) LOSS OF EMPLOYMENT.—
22 "(A) IN GENERAL.—
23 "(i) PERIOD OF UNEMPLOYMENT.—
24 Subject to clause (ii) and subsection (c),
25 the period of authorized admission of an

H–2C nonimmigrant shall terminate if the alien is unemployed for 60 or more consecutive days.

"(ii) EXCEPTION.—The period of authorized admission of an H–2C nonimmigrant shall not terminate if the alien is unemployed for 60 or more consecutive days if the alien submits documentation to the Secretary of Homeland Security that establishes that such unemployment was caused by—

"(I) a period of physical or mental disability of the alien or the spouse, son, daughter, or parent (as defined in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611)) of the alien;

"(II) a period of vacation, medical leave, maternity leave, or similar leave from employment authorized by employer policy, State law, or Federal law; or

"(III) any other period of temporary unemployment that is the direct result of a major disaster or

emergency (as defined under section 532 of the STRIVE Act.

"(B) RETURN TO FOREIGN RESIDENCE.—Any alien whose period of authorized admission terminates under subparagraph (A) shall be required to leave the United States.

"(C) PERIOD OF VISA VALIDITY.—Any alien, whose period of authorized admission terminates under subparagraph (A), who leaves the United States under subparagraph (B), may reenter the United States as an H–2C nonimmigrant to work for an employer, if the alien has complied with the requirements of subsection (b).

"(5) VISITS OUTSIDE THE UNITED STATES.—

"(A) IN GENERAL.—Under regulations established by the Secretary of Homeland Security, an H–2C nonimmigrant—

"(i) may travel outside of the United States; and

"(ii) may be readmitted without having to obtain a new visa if the period of authorized admission has not expired.

"(B) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United

States under subparagraph (A) shall not extend the period of authorized admission in the United States.

"(6) BARS TO EXTENSION OR ADMISSION.—An alien may not be granted H–2C nonimmigrant status, or an extension of such status, if—

"(A) the alien has violated any material term or condition of such status granted previously, including failure to comply with the change of address reporting requirements under section 265;

"(B) the alien is inadmissible as a nonimmigrant; or

"(C) the granting of such status or extension of such status would allow the alien to exceed 6 years as an H–2C nonimmigrant, unless the alien has resided and been physically present outside the United States for at least 1 year after the expiration of such H–2C nonimmigrant status.

"(e) EVIDENCE OF NONIMMIGRANT STATUS.—Each H–2C nonimmigrant shall be issued documentary evidence of nonimmigrant status, which—

"(1) shall be machine-readable, tamper-resistant, and allow for biometric authentication;

"(2) shall, during the alien's authorized period of admission under subsection (f), serve as a valid entry document for the purpose of applying for admission to the United States—

"(A) instead of a passport and visa if the alien—

"(i) is a national of a foreign territory contiguous to the United States; and

"(ii) is applying for admission at a land border port of entry; and

"(B) in conjunction with a valid passport, if the alien is applying for admission at an air or sea port of entry;

"(3) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B); and

"(4) shall be issued to the H–2C nonimmigrant by the Secretary of Homeland Security promptly after final adjudication of such status or, at the discretion of the Secretary of Homeland Security, may be issued by the Secretary of State at a consulate instead of a visa.

"(f) PENALTIES FOR FAILURE TO DEPART.—If an H–2C nonimmigrant fails to depart the United States by

the date that the alien's authorized admission as an H–2C nonimmigrant concludes, the visa of the alien shall be void under section 222(g)(1) and the alien shall be ineligible to be readmitted to the United States under section 222(g)(2). The alien may be removed if found to be within 1 or more of the classes of deportable aliens described in section 237.

"(g) PENALTY FOR ILLEGAL ENTRY OR OVERSTAY.—Any alien who unlawfully enters, attempts to enter, or crosses the border after the date of the enactment of this section, and is physically present in the United States after such date in violation of the immigration laws of the United States, may not receive, for a period of 10 years—

"(1) any relief under section 240A(a), 240A(b)(1), or 240B; or

"(2) nonimmigrant status under section 101(a)(15) (except subparagraphs (T) and (U)).

"(h) PORTABILITY.—A nonimmigrant alien described in this section, who was previously issued a visa or otherwise provided H–2C nonimmigrant status, may accept a new offer of employment with a subsequent employer, if—

"(1) the employer complies with section 218B; and

"(2) the alien, after lawful admission to the United States, did not work without authorization.

"(i) CHANGE OF ADDRESS.—An H–2C nonimmigrant shall comply with the change of address reporting requirements under section 265 through electronic or paper notification.

"(j) COLLECTION OF FEES.—All fees other than the application filing fee collected under this section shall be deposited in the Treasury in accordance with section 286(w).".

(b) CLERICAL AMENDMENT.—The table of contents Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218 the following:

"Sec. 218A. Admission of H–2C nonimmigrants.".

**SEC. 403. EMPLOYER OBLIGATIONS.**

(a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.) is amended by inserting after section 218A, as added by section 402, the following:

**"SEC. 218B. EMPLOYER OBLIGATIONS.**

"(a) GENERAL REQUIREMENTS.—Each employer who employs an H–2C nonimmigrant shall—

"(1) file a petition in accordance with subsection (b); and

"(2) be required to pay—

"(A) an application filing fee for each alien, based on the cost of carrying out the processing duties under this subsection; and

"(B) a secondary fee, to be deposited in the Treasury in accordance with section 286(w), of—

"(i) $250, in the case of an employer employing 25 employees or less;

"(ii) $500, in the case of an employer employing between 26 and 150 employees;

"(iii) $750, in the case of an employer employing between 151 and 500 employees; or

"(iv) $1,000, in the case of an employer employing more than 500 employees. pay the appropriate fee.

"(b) REQUIRED PROCEDURE.—Except where the Secretary of Labor has determined that there is a shortage of United States workers in the occupation and area of intended employment to which the H–2C nonimmigrant is sought, each employer of H–2C nonimmigrants shall comply with the following requirements:

"(1) EFFORTS TO RECRUIT UNITED STATES WORKERS.—During the period beginning not later than 90 days before the date on which a petition is

filed under subsection (a)(1), and ending on the date that is 14 days before to such filing date, the employer involved shall recruit United States workers for the position for which the H–2C nonimmigrant is sought under the petition, by—

"(A) submitting a copy of the job opportunity, including a description of the wages and other terms and conditions of employment and the minimum education, training, experience and other requirements of the job, to the State Employment Service Agency that serves the area of employment in the State in which the employer is located;

"(B) authorizing the employment service agency of the State to post the job opportunity on the Internet website established under section 405 of the STRIVE Act, with local job banks, and with unemployment agencies and other labor referral and recruitment sources pertinent to the job involved;

"(C) authorizing the employment service agency of the State to notify—

"(i) labor organizations in the State in which the job is located; and

"(ii) if applicable, the office of the local union which represents the employees in the same or substantially equivalent job classification of the job opportunity;

"(D) posting the availability of the job opportunity for which the employer is seeking a worker in conspicuous locations at the place of employment for all employees to see;

"(E) advertising the availability of the job opportunity for which the employer is seeking a worker in a publication with the highest circulation in the labor market that is likely to be patronized by a potential worker for not fewer than 10 consecutive days; and

"(F) based on recommendations by the local job service, advertising the availability of the job opportunity in professional, trade, or ethnic publications that are likely to be patronized by a potential worker.

"(2) EFFORTS TO EMPLOY UNITED STATES WORKERS.—An employer that seeks to employ an H–2C nonimmigrant shall first offer the job to any eligible United States worker who applies, is qualified for the job and is available at the time of need, notwithstanding any other valid employment criteria.

"(c) PETITION.—A petition to hire an H–2C nonimmigrant under this section shall be filed with the Secretary of Labor and shall include an attestation by the employer of the following:

"(1) PROTECTION OF UNITED STATES WORKERS.—The employment of an H–2C nonimmigrant—

"(A) will not adversely affect the wages and working conditions of workers in the United States similarly employed; and

"(B) did not and will not cause the separation from employment of a United States worker employed by the employer within the 180-day period beginning 90 days before the date on which the petition is filed.

"(2) WAGES.—

"(A) IN GENERAL.—The H–2C nonimmigrant will be paid not less than the greater of—

"(i) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

"(ii) the prevailing wage level for the occupational classification in the area of

employment, taking into account experience and skill levels of employees.

"(B) CALCULATION.—The wage levels under subparagraph (A) shall be calculated based on the best information available at the time of the filing of the application.

"(C) PREVAILING WAGE LEVEL.—For purposes of subparagraph (A)(ii), the prevailing wage level shall be determined in accordance as follows:

"(i) If the job opportunity is covered by a collective bargaining agreement between a union and the employer, the prevailing wage shall be the wage rate set forth in the collective bargaining agreement.

"(ii) If the job opportunity is not covered by such an agreement and it is on a project that is covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing wage level shall be the appropriate statutory wage.

"(iii)(I) If the job opportunity is not covered by such an agreement and it is not on a project that is covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing wage level shall be based on published wage data for the occupation from the Bureau of Labor Statistics, including the Occupational Employment Statistics survey, Current Employment Statistics data, National Compensation Survey, and Occupational Employment Projections program. If the Bureau of Labor Statistics does not have wage data applicable to such occupation, the employer may base the prevailing wage level on another wage survey approved by the Secretary of Labor.

"(II) The Secretary shall promulgate regulations applicable to approval of such other wage surveys that require, among other things, that the Bureau of Labor Statistics determine such surveys are statistically viable.

1 "(3) WORKING CONDITIONS.—All workers in
2 the occupation at the place of employment at which
3 the H–2C nonimmigrant will be employed will be
4 provided the working conditions and benefits that
5 are normal to workers similarly employed in the area
6 of intended employment.
7 "(4) LABOR DISPUTE.—There is not a strike,
8 lockout, or work stoppage in the course of a labor
9 dispute in the occupation at the place of employment
10 at which the H–2C nonimmigrant will be employed.
11 If such strike, lockout, or work stoppage occurs fol-
12 lowing submission of the petition, the employer will
13 provide notification in accordance with regulations
14 promulgated by the Secretary of Labor.
15 "(5) PROVISION OF INSURANCE.—If the posi-
16 tion for which the H–2C nonimmigrant is sought is
17 not covered by the State workers' compensation law,
18 the employer will provide, at no cost to the H–2C
19 nonimmigrant, insurance covering injury and disease
20 arising out of, and in the course of, the worker's em-
21 ployment, which will provide benefits at least equal
22 to those provided under the State workers' com-
23 pensation law for comparable employment.
24 "(6) NOTICE TO EMPLOYEES.—

"(A) IN GENERAL.—The employer has provided notice of the filing of the petition to the bargaining representative of the employer's employees in the occupational classification and area of employment for which the H–2C nonimmigrant is sought.

"(B) NO BARGAINING REPRESENTATIVE.—If there is no such bargaining representative, the employer has—

"(i) posted a notice of the filing of the petition in a conspicuous location at the place or places of employment for which the H–2C nonimmigrant is sought; or

"(ii) electronically disseminated such a notice to the employer's employees in the occupational classification for which the H–2C nonimmigrant is sought.

"(7) RECRUITMENT.—Except where the Secretary of Labor has determined that there is a shortage of United States workers in the occupation and area of intended employment for which the H–2C nonimmigrant is sought—

"(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to per-

form the labor or services involved in the petition; and

"(B) good faith efforts have been taken to recruit United States workers, in accordance with regulations promulgated by the Secretary of Labor, which efforts included—

"(i) the completion of recruitment during the period beginning on the date that is 90 days before the date on which the petition was filed with the Department of Homeland Security and ending on the date that is 14 days before such filing date; and

"(ii) the actual wage paid by the employer for the occupation in the areas of intended employment was used in conducting recruitment.

"(8) INELIGIBILITY.—The employer is not currently ineligible from using the H–2C nonimmigrant program described in this section.

"(9) BONAFIDE OFFER OF EMPLOYMENT.—The job for which the H–2C nonimmigrant is sought is a bona fide job—

"(A) for which the employer needs labor or services;

"(B) which has been and is clearly open to any United States worker; and

"(C) for which the employer will be able to place the H–2C nonimmigrant on the payroll.

"(10) PUBLIC AVAILABILITY AND RECORDS RETENTION.—A copy of each petition filed under this section and documentation supporting each attestation, in accordance with regulations promulgated by the Secretary of Labor, will—

"(A) be provided to every H–2C nonimmigrant employed under the petition;

"(B) be made available for public examination at the employer's place of business or work site;

"(C) be made available to the Secretary of Labor during any audit; and

"(D) remain available for examination for 5 years after the date on which the petition is filed.

"(11) NOTIFICATION UPON SEPARATION FROM OR TRANSFER OF EMPLOYMENT.—The employer will notify the Secretary of Labor and the Secretary of Homeland Security of an H–2C nonimmigrant's separation from employment or transfer to another employer not more than 3 business days after the date

of such separation or transfer, in accordance with regulations promulgated by the Secretary of Homeland Security.

"(12) ACTUAL NEED FOR LABOR OR SERVICES.—The petition was filed not more than 60 days before the date on which the employer needed labor or services for which the H–2C nonimmigrant is sought.

"(d) AUDIT OF ATTESTATIONS.—

"(1) REFERRALS BY SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall refer all approved petitions for H–2C nonimmigrants to the Secretary of Labor for potential audit.

"(2) AUDITS AUTHORIZED.—The Secretary of Labor may audit any approved petition referred pursuant to paragraph (1), in accordance with regulations promulgated by the Secretary of Labor.

"(e) INELIGIBLE EMPLOYERS.—

"(1) IN GENERAL.—The Secretary of Labor shall not approve an employer's petitions, applications, certifications, or attestations under any immigrant or nonimmigrant program if the Secretary of Labor determines, after notice and an opportunity

for a hearing, that the employer submitting such documents—

"(A) has, with respect to the attestations required under subsection (b)—

"(i) misrepresented a material fact;

"(ii) made a fraudulent statement; or

"(iii) failed to comply with the terms of such attestations; or

"(B) failed to cooperate in the audit process in accordance with regulations promulgated by the Secretary of Labor.

"(2) LENGTH OF INELIGIBILITY.—An employer described in paragraph (1) shall be ineligible to participate in the labor certification programs of the Secretary of Labor for not less than the time period determined by the Secretary, not to exceed 3 years.

"(3) EMPLOYERS IN HIGH UNEMPLOYMENT AREAS.—The Secretary of Labor may not approve any employer's petition under subsection (b) if the work to be performed by the H–2C nonimmigrant is not agriculture based and is located in a metropolitan or micropolitan statistical area (as defined by the Office of Management and Budget) in which the unemployment rate for workers who have not completed any education beyond a high school diploma

1 during the most recently completed 6-month period
2 averaged more than 9.0 percent.
3 "(f) REGULATION OF FOREIGN LABOR CONTRAC-
4 TORS.—
5 "(1) COVERAGE.—Notwithstanding any other
6 provision of law—
7 "(A) an H–2C nonimmigrant is prohibited
8 from being treated as an independent con-
9 tractor; and
10 "(B) no person may treat an H–2C non-
11 immigrant as an independent contractor.
12 "(2) APPLICABILITY OF LAWS.—An H–2C non-
13 immigrant shall not be denied any right or any rem-
14 edy under Federal, State, or local labor or employ-
15 ment law that would be applicable to a United
16 States worker employed in a similar position with
17 the employer because of the alien's status as a non-
18 immigrant worker.
19 "(3) TAX RESPONSIBILITIES.—With respect to
20 each employed H–2C nonimmigrant, an employer
21 shall comply with all applicable Federal, State, and
22 local tax and revenue laws.
23 "(g) WHISTLEBLOWER PROTECTION.—
24 "(1) PROHIBITED ACTIVITIES.—It shall be un-
25 lawful for an employer or a labor contractor of an

1 H–2C nonimmigrant to intimidate, threaten, re-
2 strain, coerce, retaliate, discharge, or in any other
3 manner, discriminate against an employee or former
4 employee because the employee or former em-
5 ployee—

6 "(A) discloses information to the employer
7 or any other person that the employee or
8 former employee reasonably believes dem-
9 onstrates a violation of this Act, the STRIVE
10 Act, or any other Federal labor or employment
11 law; or

12 "(B) cooperates or seeks to cooperate in an
13 investigation or other proceeding concerning
14 compliance with the requirements of this Act,
15 the STRIVE Act, or any other Federal labor or
16 employment law.

17 "(2) RULEMAKING.—The Secretary of Labor
18 and the Secretary of Homeland Security shall jointly
19 promulgate regulations that establish a process by
20 which a nonimmigrant alien described in section
21 101(a)(15)(H) who files a nonfrivolous complaint (as
22 defined by the Federal Rules of Civil Rules) regard-
23 ing a violation of this Act, the STRIVE Act, or any
24 other Federal labor or employment law, or any other
25 rule or regulation pertaining to such laws and is oth-

erwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States—

"(A) for a period not to exceed the maximum period of stay authorized for that nonimmigrant classification; or

"(B) until the conclusion of the proceedings governing the complaint.

"(h) LABOR RECRUITERS.—

"(1) IN GENERAL.—Each employer that engages in foreign labor contracting activity and each foreign labor contractor shall ascertain and disclose, to each such worker who is recruited for employment at the time of the worker's recruitment—

"(A) the place of employment;

"(B) the compensation for the employment;

"(C) a description of employment activities;

"(D) the period of employment;

"(E) any other employee benefit to be provided and any costs to be charged for each benefit;

"(F) any travel or transportation expenses to be assessed;

"(G) the existence of any labor organizing effort, strike, lockout, or other labor dispute at the place of employment;

"(H) the existence of any arrangement with any owner, employer, foreign contractor, or its agent where such person receives a commission from the provision of items or services to workers;

"(I) the extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including—

"(i) work related injuries and death during the period of employment;

"(ii) the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance;

"(iii) the name and the telephone number of each person who must be notified of an injury or death; and

"(iv) the time period within which such notice must be given;

"(J) any education or training to be provided or required, including—

"(i) the nature and cost of such training;

"(ii) the entity that will pay such costs; and

"(iii) whether the training is a condition of employment, continued employment, or future employment; and

"(K) a statement, in a form specified by the Secretary of Labor, describing the protections of this Act for workers recruited abroad.

"(2) FALSE OR MISLEADING INFORMATION.—No foreign labor contractor or employer who engages in foreign labor contracting activity shall knowingly provide materially false or misleading information to any worker concerning any matter required to be disclosed in paragraph (1).

"(3) LANGUAGES.—The information required to be disclosed under paragraph (1) shall be provided in writing in English or, as necessary and reasonable, in the language of the worker being recruited. The Secretary of Labor shall make forms available in English, Spanish, and other languages, as necessary, which may be used in providing workers with information required under this section.

1 "(4) FEES.—A person conducting a foreign
2 labor contracting activity shall not assess any fee to
3 a worker for such foreign labor contracting activity.
4 "(5) TERMS.—No employer or foreign labor
5 contractor shall, without justification, violate the
6 terms of any agreement made by that contractor or
7 employer regarding employment under this program.
8 "(6) TRAVEL COSTS.—If the foreign labor con-
9 tractor or employer charges the employee for trans-
10 portation such transportation costs shall be reason-
11 able.
12 "(7) OTHER WORKER PROTECTIONS.—
13 "(A) NOTIFICATION.—Not less frequently
14 than once every 2 years, each employer shall
15 notify the Secretary of Labor of the identity of
16 any foreign labor contractor engaged by the em-
17 ployer in any foreign labor contractor activity
18 for, or on behalf of, the employer.
19 "(B) REGISTRATION OF FOREIGN LABOR
20 CONTRACTORS.—
21 "(i) IN GENERAL.—No person shall
22 engage in foreign labor recruiting activity
23 unless such person has a certificate of reg-
24 istration from the Secretary of Labor
25 specifying the activities that such person is

authorized to perform. An employer who retains the services of a foreign labor contractor shall only use those foreign labor contractors who are registered under this subparagraph.

"(ii) ISSUANCE.—The Secretary shall promulgate regulations to establish an efficient electronic process for the investigation and approval of an application for a certificate of registration of foreign labor contractors not later than 14 days after such application is filed, including—

"(I) requirements under paragraphs (1), (4), and (5) of section 102 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1812);

"(II) an expeditious means to update registrations and renew certificates; and

"(III) any other requirements that the Secretary may prescribe.

"(iii) TERM.—Unless suspended or revoked, a certificate under this subparagraph shall be valid for 2 years.

"(iv) REFUSAL TO ISSUE; REVOCATION; SUSPENSION.—In accordance with regulations promulgated by the Secretary of Labor, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration under this subparagraph if—

"(I) the application or holder of the certification has knowingly made a material misrepresentation in the application for such certificate;

"(II) the applicant for, or holder of, the certification is not the real party in interest in the application or certificate of registration and the real party in interest—

"(aa) is a person who has been refused issuance or renewal of a certificate;

"(bb) has had a certificate suspended or revoked; or

"(cc) does not qualify for a certificate under this paragraph; or

"(III) the applicant for or holder of the certification has failed to comply with this Act.

"(C) REMEDY FOR VIOLATIONS.—An employer engaging in foreign labor contracting activity and a foreign labor contractor that violates the provisions of this subsection shall be subject to remedies for foreign labor contractor violations under subsections (k) and (l). If a foreign labor contractor acting as an agent of an employer violates any provision of this subsection, the employer shall be subject to remedies under subsections (k) and (l). An employer that violates a provision of this subsection relating to employer obligations shall be subject to remedies under subsections (k) and (l).

"(D) EMPLOYER NOTIFICATION.—An employer shall notify the Secretary of Labor if the employer becomes aware of a violation of this subsection by a foreign labor recruiter.

"(E) WRITTEN AGREEMENTS.—A foreign labor contractor may not violate the terms of any written agreements made with an employer

relating to any contracting activity or worker protection under this subsection.

"(F) BONDING REQUIREMENT.—The Secretary of Labor may require a foreign labor contractor to post a bond in an amount sufficient to ensure the protection of individuals recruited by the foreign labor contractor. The Secretary may consider the extent to which the foreign labor contractor has sufficient ties to the United States to adequately enforce this subsection.

"(i) WAIVER OF RIGHTS PROHIBITED.—An H–2C nonimmigrant may not be required to waive any rights or protections under this Act. Nothing under this subsection shall be construed to affect the interpretation of other laws.

"(j) NO THREATENING OF EMPLOYEES.—It shall be a violation of this section for an employer who has filed an attestation with the Department of Labor as part of the petition process under this section to threaten the alien beneficiary of such a petition with the withdrawal of such a petition in retaliation for the beneficiary's exercise of a right protected by this Act.

"(k) ENFORCEMENT.—

"(1) IN GENERAL.—The Secretary of Labor shall promulgate regulations for the receipt, investigation, and disposition of complaints by an aggrieved person respecting a violation of this section.

"(2) FILING DEADLINE.—No investigation or hearing shall be conducted on a complaint concerning a violation under this section unless the complaint was filed not later than 12 months after the date of such violation.

"(3) REASONABLE BASIS.—The Secretary of Labor shall conduct an investigation under this subsection if there is reasonable basis to believe that a violation of this section has occurred. The process established under this subsection shall provide that, not later than 30 days after a complaint is filed, the Secretary shall determine if there is reasonable cause to find such a violation.

"(4) NOTICE AND HEARING.—

"(A) IN GENERAL.—Not later than 60 days after the Secretary of Labor makes a determination of reasonable basis under paragraph (3), the Secretary shall issue a notice to the interested parties and offer an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

"(B) COMPLAINT.—If the Secretary of Labor, after receiving a complaint under this subsection, does not offer the aggrieved person or organization an opportunity for a hearing under subparagraph (A), the Secretary shall notify the aggrieved person or organization of such determination and the aggrieved person or organization may seek a hearing on the complaint under procedures established by the Secretary which comply with the requirements of section 556.

"(C) HEARING DEADLINE.—Not later than 60 days after the date of a hearing under this paragraph, the Secretary of Labor shall make a finding on the matter in accordance with paragraph (5).

"(5) ATTORNEYS' FEES.—A complainant who prevails with respect to a claim under this subsection shall be entitled to an award of reasonable attorneys' fees and costs.

"(6) POWER OF THE SECRETARY.—The Secretary may bring an action in any court of competent jurisdiction—

"(A) to seek remedial action, including injunctive relief;

"(B) to recover the damages described in subsection (i); or

"(C) to ensure compliance with terms and conditions described in subsection (g).

"(7) SOLICITOR OF LABOR.—Except as provided in section 518(a) of title 28, United States Code, the Solicitor of Labor may appear for and represent the Secretary of Labor in any civil litigation brought under this subsection. All such litigation shall be subject to the direction and control of the Attorney General.

"(8) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.—The rights and remedies provided to workers under this section are in addition to any other contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

"(l) PENALTIES.—

"(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary of Labor finds a violation of subsection (b), (e), (f), or (g), the Secretary may impose administrative remedies and penalties, including—

"(A) back wages;

"(B) benefits; and

"(C) civil monetary penalties.

"(2) CIVIL PENALTIES.—The Secretary of Labor may impose, as a civil penalty—

"(A) for a violation of any of subsections (b) through (g)—

"(i) a fine in an amount not to exceed $2,000 per violation per affected worker;

"(ii) if the violation was willful, a fine in an amount not to exceed $5,000 per violation per affected worker;

"(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not to exceed $25,000 per violation per affected worker; and

"(B) for a violation of subsection (h)—

"(i) a fine in an amount not less than $500 and not more than $4,000 per violation per affected worker;

"(ii) if the violation was willful, a fine in an amount not less than $2,000 and not more than $5,000 per violation per affected worker; and

"(iii) if the violation was willful and if in the course of such violation a United

States worker was harmed, a fine in an amount not less than $6,000 and not more than $35,000 per violation per affected worker.

"(3) USE OF CIVIL PENALTIES.—All penalties collected under this subsection shall be deposited in the Treasury in accordance with section 286(w).

"(4) CRIMINAL PENALTIES.—If a willful and knowing violation of subsection (g) causes extreme physical or financial harm to an individual, the person in violation of such subsection may be imprisoned for not more than 6 months, fined in an amount not more than $35,000, or both.

"(m) INCREASED PENALTIES.—Any employer of an H–2C nonimmigrant that is subject to a fine under section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) or the Occupational Safety and Health Act of 1970 (29 U.S.C. 666) for a violation affecting such alien, shall be required to pay a fine equal to twice the fine that would otherwise be assessed under such sections.

"(n) DEFINITIONS.—In this section and in sections 218A, 218C, and 218D:

"(1) AGGRIEVED PERSON.—term 'aggrieved person' means a person adversely affected by an alleged violation of this section, including—

"(A) a worker whose job, wages, or working conditions are adversely affected by the violation; and

"(B) a representative for workers whose jobs, wages, or working conditions are adversely affected by the violation who brings a complaint on behalf of such worker.

"(2) AREA OF EMPLOYMENT.—The terms 'area of employment' and 'area of intended employment' mean the area within normal commuting distance of the worksite or physical location at which the work of the H–2C worker is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

"(3) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A) with respect to that employment.

"(4) EMPLOY; EMPLOYEE; EMPLOYER.—The terms 'employ', 'employee', and 'employer' have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

"(5) FOREIGN LABOR CONTRACTOR.—The term 'foreign labor contractor' means any person who for any compensation or other valuable consideration paid or promised to be paid, performs any foreign labor contracting activity.

"(6) FOREIGN LABOR CONTRACTING ACTIVITY.—The term 'foreign labor contracting activity' means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a nonimmigrant alien described in section 101(a)(15)(H)(ii)(c).

"(7) H–2C NONIMMIGRANT.—The term 'H–2C nonimmigrant' means a nonimmigrant described in section 101(a)(15)(H)(ii)(c).

"(8) SEPARATION FROM EMPLOYMENT.—The term 'separation from employment' means the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract. The term does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or

higher compensation and benefits than the position from which the employee was discharged, regardless of whether the employee accepts the offer. Nothing in this paragraph shall limit an employee's rights under a collective bargaining agreement or other employment contract.

"(9) UNITED STATES WORKER.—The term 'United States worker' means an employee who is—

"(A) a citizen or national of the United States; or

"(B) an alien who is—

"(i) lawfully admitted for permanent residence;

"(ii) admitted as a refugee under section 207;

"(iii) granted asylum under section 208; or

"(iv) otherwise authorized, under this Act or by the Secretary of Homeland Security, to be employed in the United States.".

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 218A, as added by section 402, the following:

"Sec. 218B. Employer obligations.".

**SEC. 404. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

(a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.) is amended by inserting after section 218B, as added by section 403, the following:

**"SEC. 218C. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

"(a) ESTABLISHMENT.—The Secretary of Homeland Security, in consultation with the Secretary of Labor, the Secretary of State, and the Commissioner of Social Security, shall develop and implement a program (referred to in this section as the 'alien employment management system') to manage and track the employment of aliens described in sections 218A and 218D.

"(b) REQUIREMENTS.—The alien employment management system shall—

"(1) collect sufficient information from employers to enable the Secretary of Homeland Security to determine—

"(A) if the nonimmigrant is employed;

"(B) which employers have hired an H–2C nonimmigrant;

"(C) the number of H–2C nonimmigrants that an employer is authorized to hire and is currently employing;

"(D) the occupation, industry, and length of time that an H–2C nonimmigrant has been employed in the United States;

"(2) allow employers to request approval of multiple H–2C nonimmigrant workers; and

"(3) permit employers to submit applications under this section in an electronic form.".

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218B, as added by section 403, the following:

"Sec. 218C. Alien employment management system.".

**SEC. 405. RECRUITMENT OF UNITED STATES WORKERS.**

(a) ELECTRONIC JOB REGISTRY.—The Secretary of Labor shall establish a publicly accessible Web page on the Internet website of the Department of Labor that provides a single Internet link to each State workforce agency's statewide electronic registry of jobs available throughout the United States to United States workers.

(b) RECRUITMENT OF UNITED STATES WORKERS.—

(1) POSTING.—An employer shall attest that the employer has posted an employment opportunity at a prevailing wage level (as described in section 218B(b)(2)(C) of the Immigration and Nationality Act).

(2) RECORDS.—An employer shall maintain records for not less than 1 year after the date on which an H–2C nonimmigrant is hired that describe

the reasons for not hiring any of the United States workers who may have applied for such position.

(c) OVERSIGHT AND MAINTENANCE OF RECORDS.—The Secretary of Labor shall promulgate regulations regarding the maintenance of electronic job registry records for the purpose of audit or investigation.

(d) ACCESS TO ELECTRONIC JOB REGISTRY.—The Secretary of Labor shall ensure that job opportunities advertised on an electronic job registry established under this section are accessible—

(1) by the State workforce agencies, which may further disseminate job opportunity information to other interested parties; and

(2) through the Internet, for access by workers, employers, labor organizations, and other interested parties.

**SEC. 406. NUMERICAL LIMITATIONS.**

Section 214(g)(1) (8 U.S.C. 1184(g)) is amended—

(1) by striking ''(beginning with fiscal year 1992)'';

(2) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(C) under section 101(a)(15)(H)(ii)(c), may not exceed—

"(i) 400,000 for the first fiscal year in which the program is implemented;

"(ii) in any subsequent fiscal year, subject to clause (iii)—

"(I) if the total number of visas allocated for that fiscal year are allotted within the first quarter of that fiscal year, then an additional 20 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 20 percent of the original allocated amount in the prior fiscal year;

"(II) if the total number of visas allocated for that fiscal year are allotted within the second quarter of that fiscal year, then an additional 15 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 15 percent of the original allocated amount in the prior fiscal year;

1 "(III) if the total number of visas
2 allocated for that fiscal year are allot-
3 ted within the third quarter of that
4 fiscal year, then an additional 10 per-
5 cent of the allocated number shall be
6 made available immediately and the
7 allocated amount for the following fis-
8 cal year shall increase by 10 percent
9 of the original allocated amount in the
10 prior fiscal year;
11 "(IV) if the total number of visas
12 allocated for that fiscal year are allot-
13 ted within the last quarter of that fis-
14 cal year, the allocated amount for the
15 following fiscal year shall increase by
16 10 percent of the original allocated
17 amount in the prior fiscal year; and
18 "(V) with the exception of the
19 first subsequent fiscal year to the fis-
20 cal year in which the program is im-
21 plemented, if fewer visas were allotted
22 the previous fiscal year than the num-
23 ber of visas allocated for that year
24 and the reason was not due to proc-
25 essing delays or delays in promul-

gating regulations, then the allocated amount for the following fiscal year shall decrease by 10 percent of the allocated amount in the prior fiscal year; and

''(iii) 600,000 for any fiscal year.''.

**SEC. 407. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS.**

Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

''(n)(1) For purposes of adjustment of status under subsection (a), employment-based immigrant visas shall be made available to an alien having nonimmigrant status described in section 101(a)(15)(H)(ii)(c) upon the filing of a petition for such a visa—

''(A) by the alien's employer; or

''(B) by the alien, if the alien has been employed as an H–2C nonimmigrant in the United States for a cumulative total of 5 years.

''(2) An alien applying for adjustment of status under paragraph (1)(B) shall—

''(A) pay an application fee of $500 which shall be credited to the State Impact Assistance Account established under section 286(x), in addition to the

fee established by the Secretary of Homeland Security to process an application for adjustment of status;

"(B) be physically present in the United States;

"(C) establish evidence of employment; and

"(D)(i) meet the requirements under section 312; or

"(ii) be satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of the history and government of the United States.

"(3)(A) Notwithstanding any other provision of this section, an alien described in paragraph (1)(B) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis for a period not to exceed two years subject to the provisions of this subsection.

"(B) In order for the conditional basis established under this subsection for an alien to be removed, the alien shall submit to the Secretary, during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, a petition which requests the removal of such conditional basis

and states, under penalty of perjury, the facts and information described in subparagraph (G).

"(C) In the case of an alien with permanent resident status on a conditional basis under this subsection, if no petition is filed with respect to the alien in accordance with the provisions of this paragraph, status shall be terminated.

"(D) In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (B), the burden of proof shall be on the alien to establish compliance with the conditions of this subsection.

"(E) If the Secretary determines that such facts and information are true, the Secretary shall so notify the parties involved and shall remove the conditional basis of the party effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence

"(F) If the Secretary determines that such facts and information are not true, the Secretary shall so notify the parties involved and, shall terminate the permanent resident status of an alien as of the date of the determination.

"(G) Each petition under this paragraph for removal of conditional status shall contain the following facts and information:

1 "(i) Evidence of continued employment.
2 "(ii) Evidence of employment in an area that is
3 not a high unemployment area described in section
4 218B.
5 "(iii) Evidence of compliance with—
6 "(I) section 602(g) of the STRIVE Act of
7 2007, regarding payment of income taxes
8 "(II) section 602(h) of such Act, regarding
9 basic citizenship skills
10 "(III) section 602(i) of such Act, regarding
11 security and law enforcement background
12 checks;
13 "(IV) section 602(j) of such Act, regarding
14 military selective service; and
15 "(V) section 602(k) of such Act, regarding
16 treatment of conditional nonimmigrant depend-
17 ents.
18 "(4) An alien shall demonstrate evidence of employ-
19 ment in accordance with section 602(a)(3) of the STRIVE
20 Act. It is the sense of the Congress that the requirement
21 under this paragraph should be interpreted and imple-
22 mented in a manner that recognizes and takes into ac-
23 count the difficulties encountered by aliens in obtaining
24 evidence of employment. Such alien shall prove, by a pre-
25 ponderance of the evidence, that the alien has satisfied

1 the requirements of this subsection. An alien may meet
2 such burden of proof by producing sufficient evidence to
3 demonstrate such employment as a matter of reasonable
4 inference.

5 ''(5) An alien who demonstrates that the alien meets
6 the requirements of section 312 may be considered to have
7 satisfied the requirements of that section for purposes of
8 becoming naturalized as a citizen of the United States
9 under title III.

10 ''(6) Filing a petition under paragraph (1) on behalf
11 of an alien or otherwise seeking permanent residence in
12 the United States for such alien shall not constitute evi-
13 dence of the alien's ineligibility for nonimmigrant status
14 under section 101(a)(15)(H)(ii)(c).

15 ''(7) The limitation regarding the period of author-
16 ized stay under section 218D(9)(d) shall not apply to an
17 H–2C nonimmigrant if—

18 ''(A) a labor certification petition filed under
19 section 203(b) on behalf of such alien is pending;

20 ''(B) an immigrant visa petition filed under sec-
21 tion 204(b) on behalf of such alien is pending; or

22 ''(C) an application for adjustment of status
23 under paragraph (1)(B) is pending.

24 ''(8) The Secretary of Homeland Security shall ex-
25 tend the stay of an alien who qualifies for an exemption

under paragraph (6) in 1-year increments until a final decision is made on the alien's lawful permanent residence.

"(9) Nothing in this subsection shall be construed to prevent an alien having nonimmigrant status described in section 101(a)(15)(H)(ii)(c) from filing an application for adjustment of status under this section in accordance with any other provision of law.".

**SEC. 408. REQUIREMENTS FOR PARTICIPATING COUNTRIES.**

(a) IN GENERAL.—The Secretary of State, in cooperation with the Secretary and the Attorney General, shall negotiate with each home country of aliens described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act, as added by section 401, to enter into a bilateral agreement with the United States that conforms to the requirements under subsection (b).

(b) REQUIREMENTS OF BILATERAL AGREEMENTS.—Each agreement negotiated under subsection (a) shall require the participating home country to—

(1) accept the return of nationals who are ordered removed from the United States within 3 days of such removal;

(2) cooperate with the United States Government to—

(A) identify, track, and reduce gang membership, violence, and human trafficking and smuggling; and

(B) control illegal immigration;

(3) provide the United States Government with—

(A) passport information and criminal records of aliens who are seeking admission to, or are present in, the United States; and

(B) admission and entry data to facilitate United States entry-exit data systems;

(4) educate nationals of the home country regarding United States temporary worker programs to ensure that such nationals are not exploited; and

(5) evaluate means to provide housing incentives in the alien's home country for returning workers.

**SEC. 409. COMPLIANCE INVESTIGATORS.**

The Secretary of Labor, subject to the availability of appropriations for such purpose, shall annually increase, by not less than 2,000, the number of positions for compliance investigators dedicated to enforcing compliance with this title, and the amendments made by this title.

**SEC. 410. STANDING COMMISSION ON IMMIGRATION AND LABOR MARKETS.**

(a) ESTABLISHMENT OF COMMISSION.—

(1) IN GENERAL.—There is established an independent Federal agency within the Executive Branch to be known as the Standing Commission on Immigration and Labor Markets (referred to in this section as the ''Commission'').

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

(A) to study the new worker program established under this title to admit H–2C nonimmigrants (referred to in this section as the ''Program'');

(B) to make recommendations to the President and Congress with respect to the Program.

(3) MEMBERSHIP.—The Commission shall be composed of—

(A) 6 voting members—

(i) who shall be appointed by the President, with the advice and consent of the Senate, not later than 6 months after the establishment of the Program;

(ii) who shall serve for 3-year staggered terms, which can be extended for 1 additional 3-year term;

(iii) who shall select a Chair from among the voting members to serve a 2-year term, which can be extended for 1 additional 2-year term;

(iv) who shall have expertise in economics, demography, labor, business, or immigration or other pertinent qualifications or experience;

(v) who may not be an employee of the Federal Government or of any State or local government; and

(vi) not more than 3 of whom may be members of the same political party.

(B) 7 ex-officio members, including—

(i) the Secretary;

(ii) the Secretary of State;

(iii) the Attorney General;

(iv) the Secretary of Labor;

(v) the Secretary of Commerce;

(vi) the Secretary of Health and Human Services; and

(vii) the Secretary of Agriculture.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) MEETINGS.—

(A) INITIAL MEETING.—The Commission shall meet and begin carrying out the duties described in subsection (b) as soon as practicable.

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

(C) QUORUM.—Four voting members of the Commission shall constitute a quorum.

(b) DUTIES OF THE COMMISSION.—The Commission shall—

(1) examine and analyze—

(A) the development and implementation of the Program;

(B) the criteria for the admission of temporary workers under the Program;

(C) the formula for determining the annual numerical limitations of the Program;

(D) the impact of the Program on immigration;

(E) the impact of the Program on the economy, unemployment rate, wages, workforce, and businesses of the United States; and

(F) any other matters regarding the Program that the Commission considers appropriate;

(2) not later than February 1, 2009, and every 2 years thereafter, submit a report to the President and Congress that—

(A) contains the findings of the analysis conducted under paragraph (1);

(B) makes recommendations regarding the necessary adjustments to the numerical limits of the Program in section 214(g)(1)(C) of the Immigration and Nationality Act, as added by section 406, to meet the labor market needs of the United States; and

(C) makes other recommendations regarding the Program, including legislative or administrative action, that the Commission determines to be in the national interest.

(3) upon receiving a request from Congress, examine, analyze, and report findings or recommendations regarding any other employment-based immigration and visa program.

(c) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

(1) INFORMATION.—The head of any Federal department or agency that receives a request from the Commission for information, including suggestions, estimates, and statistics, as the Commission considers necessary to carry out the provisions of this section, shall furnish such information to the Commission, to the extent allowed by law.

(2) ASSISTANCE.—

(A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall, on a reimbursable basis, provide the Commission with administrative support and other services for the performance of the Commission's functions.

(B) OTHER FEDERAL AGENCIES.—The departments and agencies of the United States may provide the Commission with such services, funds, facilities, staff, and other support services as the heads of such departments and agencies determine advisable and authorized by law.

(d) PERSONNEL MATTERS.—

(1) STAFF.—

(A) APPOINTMENT AND COMPENSATION.—The Chair, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions.

(B) FEDERAL EMPLOYEES.—

(i) IN GENERAL.—Except as provided under clause (ii), the executive director and any personnel of the Commission who are employees shall be considered to be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89,and 90 of such title.

(ii) COMMISSION MEMBERS .—Clause (i) shall not apply to members of the Commission.

(2) DETAILEES.—Any employee of the Federal Government may be detailed to the Commission without reimbursement from the Commission. Such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) CONSULTANT SERVICES.—The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title 5.

(e) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—Each voting member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(f) DETERMINATION OF NEW LEVELS OF PROGRAM VISAS.—The numeric levels for visas under the Program shall be set automatically for the first fiscal year beginning after the report is submitted under subsection (b)(2) based on the numeric levels determined in the most recent fiscal year, as adjusted by section 214(g)(1)(C) of the Immigration and Nationality Act, unless Congress enacts legislation before September 30, 2009, that—

(1) establishes the baseline numeric levels of Program visas for such fiscal year; and

(2) makes amendments, as necessary, to such section 214(g)(1)(C).

(g) FUNDING.—Fees and fines deposited into the New Worker and Conditional Nonimmigrants Fee Account under section 286(w)(3)(B) of the Immigration and Nationality Act may be used by the Commission to carry out its duties under this section.

**SEC. 411. ADMISSION OF NONIMMIGRANTS.**

(a) PRESUMPTION OF NONIMMIGRANT STATUS.—Section 214(b) (8 U.S.C. 1184(b)) is amended by striking ''and other than'' and inserting ''a nonimmigrant described in section 101(a)(15)(H)(ii)(c)), and''.

(b) EVIDENCE TO ABANDON FOREIGN RESIDENCE.—Section 214(h) (8 U.S.C. 1184(h)) is amended

by striking "H(i)(b) or (c)," and inserting "(H)(i)(b), H(i)(c), (H)(ii)(c),".

**SEC. 412. AGENCY REPRESENTATION AND COORDINATION.**

Section 274A(e) (8 U.S.C. 1324a(e)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A), by striking the comma at the end and inserting a semicolon;

(B) in subparagraph (B), by striking ", and" and inserting a semicolon;

(C) in subparagraph (C), by striking "paragraph (2)." And inserting "paragraph (1); and"; and

(D) by inserting after subparagraph (C) the following:

"(D) United States Immigration and Customs Enforcement officials may not misrepresent to employees or employers that they are a member of any agency or organization that provides domestic violence services, enforces health and safety law or other labor laws, provides health care services, or any other services intended to protect life and safety."; and

(2) by adding at the end the following:

"(10) COORDINATION.—An investigation under paragraph (1)(C) shall be coordinated with the ap-

propriate regional office of the National Labor Relations Board, the Department of Labor, and all relevant State and local agencies that are charged with enforcing workplace standards. Evidence gathered from such agencies shall be considered in determining whether the entity under investigation has violated subsection (a).''.

**SEC. 413. SENSE OF CONGRESS REGARDING PERSONAL PROTECTIVE EQUIPMENT.**

(a) IN GENERAL.—It is the sense of the Congress that the Secretary of Labor, not later than 90 days after the date of the enactment of this Act, should amend section 1910.132(a) of title 29, Code of Federal Regulations, to require employers to provide personal protective equipment to employees at no cost. Any future regulation promulgated under such section should require such equipment be provided to employees at no cost.

(b) DEFINED TERM.—In this section, the term ''personal protective equipment'' has the meaning given the term in section 1910.132(a) of title 29, Code of Federal Regulations (or any corresponding similar regulation or ruling).

**SEC. 414. RULEMAKING; EFFECTIVE DATE.**

(a) RULEMAKING.—Not later than 6 months after the date of enactment of the STRIVE Act, the Secretary

of Labor shall promulgate regulations, in accordance with the notice and comment provisions of section 553 of title 5, United States Code, to carry out the provisions of sections 218A and 218B of the Immigration and Nationality Act, as added by this title.

(b) EFFECTIVE DATE.—The amendments made by sections 402, 403, and 404 shall take effect on the date that is 1 year after the date of the enactment of this Act with regard to aliens, who, on such effective date, are in the foreign country where they maintain residence.

**SEC. 415. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out this title.

# TITLE V—VISA REFORMS

## Subtitle A—Backlog Reduction

**SEC. 501. ELIMINATION OF EXISTING BACKLOGS.**

(a) FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) (8 U.S.C. 1151(c)) is amended to read as follows:

"(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to the sum of—

"(1) 480,000;

"(2) the difference between the maximum number of visas authorized to be issued under this sub-

section during the previous fiscal year and the number of visas issued during the previous fiscal year;

"(3) the difference between—

"(A) the maximum number of visas authorized to be issued under this subsection during fiscal years 2001 through 2005 minus the number of visas issued under this subsection during those fiscal years; and

"(B) the number of visas calculated under subparagraph (A) that were issued after fiscal year 2005.".

(b) EMPLOYMENT-BASED IMMIGRANTS.—Section 201(d) (8 U.S.C. 1151(d)) is amended to read as follows:

"(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—

"(1) IN GENERAL.—The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of—

"(A) 290,000;

"(B) the difference between the maximum number of visas authorized to be issued under this subsection during the previous fiscal year and the number of visas issued during the previous fiscal year; and

"(C) the difference between—

"(i) the maximum number of visas authorized to be issued under this subsection during fiscal years 2001 through 2005 and the number of visa numbers issued under this subsection during those fiscal years; and

"(ii) the number of visas calculated under clause (i) that were issued after fiscal year 2005.

"(2) VISAS FOR SPOUSES AND CHILDREN.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), immigrant visas issued on or after October 1, 2004, to spouses and children of employment-based immigrants shall not be counted against the numerical limitation set forth in paragraph (1).

"(B) NUMERICAL LIMITATION.—The total number of visas issued under paragraph (A) may not exceed 800,000 during any fiscal year.".

(c) EXCEPTION TO NONDISCRIMINATION.—Section 202(a)(1)(A) (8 U.S.C. 1152(a)(1)(A)) is amended by striking "201(b)(2)(A)(i)" and inserting "201(b), 201(d)(2)(A)".

**SEC. 502. INCREASING COUNTRY LIMITS AND EXEMPTING FAMILY-SPONSORED AND EMPLOYMENT-BASED IMMIGRANTS.**

Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is amended by striking ''may not exceed 7 percent'' and all that follows and inserting '', except for aliens described in subsections (b) and (d)(2)(A) of section 201, may not exceed 10 percent (in the case of a single foreign state) or 5 percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year.''.

**SEC. 503. ALLOCATION OF IMMIGRANT VISAS.**

(a) PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.—Section 203(a) (8 U.S.C. 1153(a)) is amended to read as follows:

''(a) PREFERENCE ALLOCATIONS FOR FAMILY-SPONSORED IMMIGRANTS.—Aliens subject to the worldwide level set forth in section 201(c) for family-sponsored immigrants shall be allocated visas as follows:

''(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a quantity not to exceed the sum of—

''(A) 10 percent of such worldwide level; and

"(B) any visas not required for the class specified in paragraph (4).

"(2) SPOUSES AND UNMARRIED SONS AND DAUGHTERS OF PERMANENT RESIDENT ALIENS.—

"(A) IN GENERAL.—Visas in a quantity not to exceed 50 percent of such worldwide level plus any visas not required for the class specified in paragraph (1) shall be allocated to qualified immigrants who are—

"(i) the spouses or children of an alien lawfully admitted for permanent residence; or

"(ii) the unmarried sons or daughters of an alien lawfully admitted for permanent residence.

"(B) MINIMUM PERCENTAGE.—Visas allocated to individuals described in subparagraph (A)(i) shall constitute not less than 77 percent of the visas allocated under this paragraph.

"(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons and daughters of citizens of the United States shall be allocated visas in a quantity not to exceed the sum of—

"(A) 10 percent of such worldwide level; and

"(B) any visas not required for the classes specified in paragraphs (1) and (2).

"(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of a citizen of the United States who is at least 21 years of age shall be allocated visas in a quantity not to exceed 30 percent of the worldwide level.".

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 203(b) (8 U.S.C. 1153(b)) is amended—

(1) in paragraph (1), by striking "28.6 percent" and inserting "15 percent";

(2) in paragraph (2)(A), by striking "28.6 percent" and inserting "15 percent";

(3) in paragraph (3)(A)—

(A) by striking "28.6 percent" and inserting "35 percent"; and

(B) by striking clause (iii);

(4) by striking paragraph (4);

(5) by redesignating paragraph (5) as paragraph (4);

(6) in paragraph (4)(A), as redesignated, by striking "7.1 percent" and inserting "5 percent";

(7) by inserting after paragraph (4), as redesignated, the following:

"(5) OTHER WORKERS.—

"(A) IN GENERAL.—Visas shall be made available, in a number not to exceed 30 percent of such worldwide level, plus any visa numbers not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor that is not of a temporary or seasonal nature, for which qualified workers are determined to be unavailable in the United States.

"(B) PRIORITY IN ALLOCATING VISAS.—In allocating visas under subparagraph (A) for each of the fiscal years 2007 through 2017, the Secretary shall reserve 30 percent of such visas for qualified immigrants who were physically present in the United States before January 7, 2004."; and

(8) by striking paragraph (6).

(c) SPECIAL IMMIGRANTS NOT SUBJECT TO NUMERICAL LIMITATIONS.—Section 201(b)(1)(A) (8 U.S.C.

1151(b)(1)(A)) is amended by striking ''subparagraph (A) or (B) of''.

(d) TEMPORARY INCREASE IN NUMBER OF IRAQI AND AFGHAN TRANSLATORS WHO MAY BE PROVIDED STATUS AS SPECIAL IMMIGRANTS.—Section 1059(c)(1) of the National Defense Authorization Act for Fiscal Year 2006 (8 U.S.C. 1101 note) is amended by striking ''during any fiscal year shall not exceed 50.'' and inserting the following: ''may not exceed—

''(A) 300 during each of the fiscal years 2007, 2008, and 2009; and

''(B) 50 during any subsequent fiscal year.''.

(e) CONFORMING AMENDMENTS.—

(1) DEFINITION OF SPECIAL IMMIGRANT.—Section 101(a)(27)(M) (8 U.S.C. 1101(a)(27)(M)) is amended by striking ''subject to the numerical limitations of section 203(b)(4),''.

(2) REPEAL OF TEMPORARY REDUCTION IN WORKERS' VISAS.—Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act (Public Law 105–100; 8 U.S.C. 1153 note) is repealed.

**SEC. 504. NURSING SHORTAGE.**

(a) EXCEPTION TO DIRECT NUMERICAL LIMITATIONS.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

"(F)(i) During the period beginning on the date of the enactment the STRIVE Act and ending on September 30, 2017, an alien—

"(I) who is otherwise described in section 203(b); and

"(II) who is seeking admission to the United States to perform labor in shortage occupations designated by the Secretary of Labor for blanket certification under section 212(a)(5)(A) due to the lack of sufficient United States workers able, willing, qualified, and available for such occupations and for which the employment of aliens will not adversely affect the terms and conditions of similarly employed United States workers.

"(ii) During the period described in clause (i), the spouse or dependents of an alien described in clause (i), if accompanying or following to join such alien.".

(b) EXCEPTION TO NONDISCRIMINATION REQUIREMENTS.—Section 202(a)(1)(A) (8 U.S.C. 1152(a)(1)(A))

is amended by striking "201(b)(2)(A)(i)" and inserting "201(b)".

(c) EXCEPTION TO PER COUNTRY LEVELS FOR FAMILY-SPONSORED AND EMPLOYMENT-BASED IMMIGRANTS.—Section 202(a)(2) (8 U.S.C. 1152(a)(2)), as amended by section 502, is further amended by inserting ", except for aliens described in section 201(b)," after "any fiscal year".

(d) INCREASING THE DOMESTIC SUPPLY OF NURSES AND PHYSICAL THERAPISTS.—Not later than January 1, 2007, the Secretary of Health and Human Services shall—

(1) submit to Congress a report on the source of newly licensed nurses and physical therapists in each State, which report shall—

(A) include the past 3 years for which data are available;

(B) provide separate data for each occupation and for each State;

(C) separately identify those receiving their initial license and those licensed by endorsement from another State;

(D) within those receiving their initial license in each year, identify the number who received their professional education in the

1 United States and those who received such edu-
2 cation outside the United States; and
3 (E) to the extent possible, identify, by
4 State of residence and country of education, the
5 number of nurses and physical therapists who
6 were educated in any of the 5 countries (other
7 than the United States) from which the most
8 nurses and physical therapists arrived;
9 (F) identify the barriers to increasing the
10 supply of nursing faculty, domestically trained
11 nurses, and domestically trained physical thera-
12 pists;
13 (G) recommend strategies to be followed by
14 Federal and State governments that would be
15 effective in removing such barriers, including
16 strategies that address barriers to advancement
17 to become registered nurses for other health
18 care workers, such as home health aides and
19 nurses assistants;
20 (H) recommend amendments to Federal
21 legislation that would increase the supply of
22 nursing faculty, domestically trained nurses,
23 and domestically trained physical therapists;
24 (I) recommend Federal grants, loans, and
25 other incentives that would provide increases in

nurse educators, nurse training facilities, and other steps to increase the domestic education of new nurses and physical therapists;

(J) identify the effects of nurse emigration on the health care systems in their countries of origin; and

(K) recommend amendments to Federal law that would minimize the effects of health care shortages in the countries of origin from which immigrant nurses arrived;

(2) enter into a contract with the National Academy of Sciences Institute of Medicine to determine the level of Federal investment under titles VII and VIII of the Public Health Service Act necessary to eliminate the domestic nursing and physical therapist shortage not later than 7 years from the date on which the report is published; and

(3) collaborate with other agencies, as appropriate, in working with ministers of health or other appropriate officials of the 5 countries from which the most nurses and physical therapists arrived, to—

(A) address health worker shortages caused by emigration;

(B) ensure that there is sufficient human resource planning or other technical assistance needed to reduce further health worker shortages in such countries.

(e) AUTHORITY OF CONSULAR OFFICER TO GRANT PREFERENCE STATUS.—Section 204(b) of the Immigration and Nationality Act (8 U.S.C. 1154(b)) is amended—

(1) by striking ''(b)'' and inserting ''(b)(1)''; and

(2) by adding at the end the following:

''(2) Notwithstanding paragraph (1), for individual beneficiaries outside of the United States seeking classification under section 203(b) who will perform labor in shortage occupations designated by the Secretary of Labor for blanket certification under section 212(a)(5)(A) as lacking sufficient United States workers able, willing, qualified, and available for such occupations and for which the employment of aliens will not adversely affect the terms and conditions of similarly employed United States workers, a consular officer, upon petition of the importing employer, shall have authority to determine eligibility if the officer determines that the facts stated in the petition are true and the alien is eligi-

ble for the preference. The consular officer shall also have authority to grant the preference status.''.

**SEC. 505. EXPEDITED ADJUDICATION OF EMPLOYER PETITIONS FOR ALIENS OF EXTRAORDINARY ARTISTIC ABILITY.**

Section 214(c) (8 U.S.C. 1184(c)) is amended—

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

(2) in paragraph (6)(D)—

(A) by striking ''Any person'' and inserting ''(i) Except as provided in clause (ii), any person''; and

(B) adding at the end the following:

''(ii) The Secretary of Homeland Security shall adjudicate each petition for an alien with extraordinary ability in the arts (as described in section 101(a)(15)(O)(i)), an alien accompanying such an alien (as described in clauses (ii) and (iii) of section 101(a)(15)(O)), or an alien described in section 101(a)(15)(P) not later than 30 days after—

''(I) the date on which the petitioner submits the petition with a written advisory opinion, letter of no objection, or request for a waiver; or

"(II) the date on which the 15-day period described in clause (i) has expired, if the petitioner has had an opportunity, as appropriate, to supply rebuttal evidence.

"(iii) If a petition described in clause (ii) is not adjudicated before the end of the 30-day period described in clause (ii) and the petitioner is a qualified nonprofit organization or an individual or entity petitioning primarily on behalf of a qualified nonprofit organization, the Secretary of Homeland Security shall provide the petitioner with the premium-processing services referred to in section 286(u), without a fee.".

**SEC. 506. POWERLINE WORKERS AND BOILERMAKERS.**

Section 214(e) (8 U.S.C. 1184(e)) is amended by adding at the end the following:

"(7) A citizen of Canada shall be admitted in the same manner and under the same authority as a citizen of Canada described in paragraph (2) if the citizen—

"(A) is a powerline worker or boilermaker;

"(B) has received significant training; and

"(C) seeks admission to the United States to perform powerline repair and maintenance services or boilermaker repair or maintenance services.".

**SEC. 507. H–1B VISAS.**

(a) IN GENERAL.—Section 214(g)(5) (8 U.S.C. 1184(g)(5)) is amended—

(1) in subparagraph (B)—

(A) by striking ''nonprofit research'' and inserting ''nonprofit'';

(B) by inserting ''Federal, State, or local'' before ''governmental''; and

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

(2) in subparagraph (C)—

(A) by striking ''until the number of aliens who are exempted from such numerical limitation during such fiscal year exceeds 20,000.'' and inserting ''or has been awarded a medical specialty certification based on post-doctoral training and experience in the United States.''; and

(B) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(D) has earned a master's or higher degree in science, technology, engineering, or mathematics from an institution of higher education outside of the United States.''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to any petition or visa application

pending on the date of enactment of this Act and any petition or visa application filed on or after such date.

(c) MARKET-BASED VISA LIMITS.—Section 214(g) (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking ''(beginning with fiscal year 1992)''; and

(B) by amending subparagraph (A) to read as follows:

''(A) under section 101(a)(15)(H)(i)(b), may not exceed—

''(i) 115,000 in fiscal year 2007; and

''(ii) the sum of 115,000 and the number calculated under paragraph (9) in fiscal year 2008 and each subsequent fiscal year;''.

(2) in paragraph (8)—

(A) in subparagraph (B), by striking clause (iv); and

(B) by striking subparagraph (D);

(3) by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively; and

(4) by inserting after paragraph (8) the following:

"(9) If the numerical limitation in paragraph (1)(A)—

"(A) is reached during a given fiscal year, the numerical limitation under paragraph (1)(A) for the subsequent fiscal year shall be equal to 120 percent of the numerical limitation of the given fiscal year, not to exceed 180,000; or

"(B) is not reached during a given fiscal year, the numerical limitation under paragraph (1)(A) for the subsequent fiscal year shall be equal to the numerical limitation of the given fiscal year.".

**SEC. 508. UNITED STATES EDUCATED IMMIGRANTS.**

(a) EXEMPTION FROM NUMERICAL LIMITATIONS.—

(1) IN GENERAL.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by section 504(a), is further amended by adding at the end the following:

"(G) Aliens who have earned a master's or higher degree from an accredited university in the United States.

"(H) Aliens who have been awarded medical specialty certification based on post-doctoral training

and experience in the United States preceding their application for an immigrant visa under section 203(b).

"(I) Aliens who will perform labor in shortage occupations designated by the Secretary of Labor for blanket certification under section 212(a)(5)(A) as lacking sufficient United States workers able, willing, qualified, and available for such occupations and for which the employment of aliens will not adversely affect the terms and conditions of similarly employed United States workers.

"(J) Aliens who have earned a master's degree or higher in science, technology, engineering, or math and have been working in a related field in the United States in a nonimmigrant status during the 3-year period preceding their application for an immigrant visa under section 203(b).

"(K) Aliens described in subparagraph (A) or (B) of section 203(b)(1) or who have received a national interest waiver under section 203(b)(2)(B).

"(L) The spouse and minor children of an alien described in subparagraph (G), (H), (I), (J), or (K).".

(2) APPLICABILITY.—The amendment made by paragraph (1) shall apply to any visa application—

(A) pending on the date of the enactment of this Act; or

(B) filed on or after such date of enactment.

(b) LABOR CERTIFICATIONS.—Section 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amended—

(1) in subclause (I), by striking ", or" and inserting a semicolon;

(2) in subclause (II), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(III) is a member of the professions and has a master's degree or higher from an accredited university in the United States or has been awarded medical specialty certification based on post-doctoral training and experience in the United States.".

(c) ATTESTATION BY HEALTHCARE WORKERS.—

(1) REQUIREMENT FOR ATTESTATION.—Section 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended by adding at the end the following:

"(E) HEALTHCARE WORKERS WITH OTHER OBLIGATIONS.—

1 "(i) IN GENERAL.—An alien who
2 seeks to enter the United States for the
3 purpose of performing labor as a physician
4 or other healthcare worker is inadmissible
5 unless the alien submits to the Secretary of
6 Homeland Security or the Secretary of
7 State, as appropriate, an attestation that
8 the alien is not seeking to enter the United
9 States for such purpose during any period
10 in which the alien has an outstanding obli-
11 gation to the government of the alien's
12 country of origin or the alien's country of
13 residence.
14 "(ii) OBLIGATION DEFINED.—In this
15 subparagraph, the term 'obligation' means
16 an obligation incurred as part of a valid,
17 voluntary individual agreement in which
18 the alien received financial assistance to
19 defray the costs of education or training to
20 qualify as a physician or other healthcare
21 worker in consideration for a commitment
22 to work as a physician or other healthcare
23 worker in the alien's country of origin or
24 the alien's country of residence.

"(iii) WAIVER.—The Secretary of Homeland Security may waive a finding of inadmissibility under clause (i) if the Secretary determines that—

"(I) the obligation was incurred by coercion or other improper means;

"(II) the alien and the government of the country to which the alien has an outstanding obligation have reached a valid, voluntary agreement, pursuant to which the alien's obligation has been deemed satisfied, or the alien has shown to the satisfaction of the Secretary that the alien has been unable to reach such an agreement because of coercion or other improper means; or

"(III) the obligation should not be enforced due to other extraordinary circumstances, including undue hardship that would be suffered by the alien in the absence of a waiver.".

(2) EFFECTIVE DATE AND APPLICATION.—

(A) EFFECTIVE DATE.—The amendment made by paragraph (1) shall become effective

180 days after the date of the enactment of this Act.

(B) APPLICATION BY THE SECRETARY.—The Secretary shall begin to carry out section 212(a)(5)(E) of the Immigration and Nationality Act, as added by paragraph (1), not later than the effective date described in subparagraph (A), including the requirement for the attestation and the granting of a waiver described in such section, regardless of whether regulations to implement such section have been promulgated.

**SEC. 509. STUDENT VISA REFORM.**

(a) IN GENERAL.—

(1) NONIMMIGRANT CLASSIFICATION.—Section 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)) is amended to read as follows:

''(F) an alien—

''(i) who—

''(I) is a bona fide student qualified to pursue a full course of study in mathematics, engineering, technology, or the sciences leading to a bachelors or graduate degree and who seeks to enter the United States for the purpose of pursuing such a

course of study consistent with section 214(m) at an institution of higher education (as defined by section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Secretary the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn; or

''(II) is engaged in temporary employment for optional practical training related to such alien's area of study following completion of the course of study described in subclause (I) for a period or periods of not more than 24 months;

''(ii) who—

''(I) has a residence in a foreign country which the alien has no intention of abandoning, who is a bona fide student

qualified to pursue a full course of study, and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(m) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Secretary the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn; or

"(II) is engaged in temporary employment for optional practical training related to such alien's area of study following completion of the course of study described in subclause (I) for a period or periods of not more than 24 months;

"(iii) who is the spouse or minor child of an alien described in clause (i) or (ii) if accompanying or following to join such an alien;

"(iv) who—

"(I) is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) or (ii) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico; or

"(II) is engaged in temporary employment for optional practical training related to such the student's area of study following completion of the course of study described in subclause (I) for a period or periods of not more than 24 months; or

"(v) who—

"(I) maintains actual residence and place of abode in the alien's country of nationality; and

"(II) is described in clause (i), except that the alien's actual course of study may

involve a distance learning program, for which the alien is temporarily visiting the United States for a period of up to 30 days.''.

(2) ADMISSION.—Section 214(b) (8 U.S.C. 1184(b)) is amended by inserting ''(F)(i),'' before ''(L) or (V)''.

(3) CONFORMING AMENDMENT.—Section 214(m)(1) (8 U.S.C. 1184(m)(1)) is amended, in the matter preceding subparagraph (A), by striking ''(i) or (iii)'' and inserting ''(i), (ii), (iv), or (v)''.

(b) OFF-CAMPUS WORK AUTHORIZATION FOR FOREIGN STUDENTS.—

(1) IN GENERAL.—Aliens admitted as nonimmigrant students described in section 101(a)(15)(F), as amended by subsection (a), (8 U.S.C. 1101(a)(15)(F)) may be employed in an off-campus position unrelated to the alien's field of study if—

(A) the alien has enrolled full-time at the educational institution and is maintaining good academic standing;

(B) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer—

(i) has spent at least 21 days recruiting United States citizens to fill the position; and

(ii) will pay the alien and other similarly situated workers at a rate equal to not less than the greater of—

(I) the actual wage level for the occupation at the place of employment; or

(II) the prevailing wage level for the occupation in the area of employment; and

(C) the alien will not be employed more than—

(i) 20 hours per week during the academic term; or

(ii) 40 hours per week during vacation periods and between academic terms.

(2) DISQUALIFICATION.—If the Secretary of Labor determines that an employer has provided an attestation under paragraph (1)(B) that is materially false or has failed to pay wages in accordance with the attestation, the employer, after notice and opportunity for a hearing, shall be disqualified from employing an alien student under paragraph (1).

**SEC. 510. L–1 VISA HOLDERS SUBJECT TO VISA BACKLOG.**

Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

''(G) The limitations contained in subparagraph (D) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(L) on whose behalf a petition under section 204(b) to accord the alien immigrant status under section 203(b), or an application for labor certification (if such certification is required for the alien to obtain status under such section 203(b)) has been filed, if 365 days or more have elapsed since such filing. The Secretary of Homeland Security shall extend the stay of an alien who qualifies for an exemption under this subparagraph until such time as a final decision is made on the alien's lawful permanent residence.''.

**SEC. 511. RETAINING WORKERS SUBJECT TO GREEN CARD BACKLOG.**

(a) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—Section 245 (8 U.S.C. 1255) is amended by adding at the end the following:

''(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-BASED IMMIGRANTS.—

''(1) ELIGIBILITY.—The Secretary of Homeland Security shall promulgate regulations to provide for

the filing of an application for adjustment of status by an alien (and any eligible dependents of such alien), regardless of whether an immigrant visa is immediately available at the time the application is filed, if the alien—

"(A) has an approved petition under subparagraph (E) or (F) of section 204(a)(1); or

"(B) at the discretion of the Secretary, has a pending petition under subparagraph (E) or (F) of section 204(a)(1).

"(2) VISA AVAILABILITY.—An application filed pursuant to paragraph (1) may not be approved until an immigrant visa becomes available.

"(3) FEES.—If an application is filed pursuant to paragraph (1), the beneficiary of such application shall pay a supplemental fee of $500. Such fee may not be charged to any dependent accompanying or following to join such beneficiary.

"(4) EXTENSION OF EMPLOYMENT AUTHORIZATION AND ADVANCED PAROLE DOCUMENT.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall provide employment authorization and advanced parole documents, in 3-year increments, to beneficiaries of an application for adjustment of status based on a

petition that is filed or, at the discretion of the Secretary, pending, under subparagraph (E) or (F) of section 204(a)(1).

"(B) FEE ADJUSTMENTS.—Application fees under this subsection may be adjusted in accordance with the 3-year period of validity assigned to the employment authorization or advanced parole documents under subparagraph (A).".

(b) USE OF FEES.—Section 286 (8 U.S.C. 1356) is amended—

(1) in subsection (m)—

(A) by striking "Notwithstanding any other provisions of law," and inserting the following:

"(c) IMMIGRATION EXAMINATIONS FEE ACCOUNT.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, all fees collected under section 245(n)(3) and";

(B) by striking ": *Provided, however*, That all" and inserting the following:

"(2) VIRGIN ISLANDS; GUAM.—All"; and

(C) by striking ": Provided further, That fees" and inserting the following:

"(3) COST RECOVERY.—Fees".

(2) in subsection (n)—

(A) by striking ''(n) All deposits'' and inserting the following:

''(4) USE OF FUNDS.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), all deposits''; and

(B) adding at the end the following:

''(C) SUPPLEMENTAL FEE FOR ADJUSTMENT OF STATUS OF EMPLOYMENT-BASED IMMIGRANTS.—Any amounts deposited into the Immigration Examinations Fee Account that were collected under section 245(n)(3) shall remain available until expended by the Secretary of Homeland Security for backlog reduction and clearing security background check delays.'';

(3) in subsection (o), by striking ''(o) The Attorney General'' and inserting the following:

''(5) ANNUAL FINANCIAL REPORT TO CONGRESS.—The Attorney General''; and

(4) in subsection (p), by striking ''(p) The provisions set forth in subsections (m), (n), and (o) of this section'' and inserting the following:

''(6) APPLICABILITY.—The provisions set forth in this subsection shall''.

**SEC. 512. STREAMLINING THE ADJUDICATION PROCESS FOR ESTABLISHED EMPLOYERS.**

Section 214(c) (8. U.S.C. 1184) is amended by adding at the end the following:

''(15) Not later than 180 days after the date of the enactment of the STRIVE Act, the Secretary of Homeland Security shall establish a pre-certification procedure for employers who file multiple petitions described in this subsection or section 203(b). Such precertification procedure shall enable an employer to avoid repeatedly submitting documentation that is common to multiple petitions and establish through a single filing criteria relating to the employer and the offered employment opportunity.''.

**SEC. 513. PROVIDING PREMIUM PROCESSING OF EMPLOYMENT-BASED VISA PETITIONS.**

(a) IN GENERAL.—Pursuant to section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)), the Secretary of Homeland Security shall establish and collect a fee for premium processing of employment-based immigrant petitions.

(b) APPEALS.—Pursuant to such section 286(u), the Secretary of Homeland Security shall establish and collect a fee for premium processing of an administrative appeal of any decision on a permanent employment-based immigrant petition.

**SEC. 514. ELIMINATING PROCEDURAL DELAYS IN LABOR CERTIFICATION PROCESS.**

(a) PREVAILING WAGE RATE.—

(1) REQUIREMENT TO PROVIDE.—The Secretary of Labor shall provide prevailing wage determinations to employers seeking a labor certification for aliens pursuant to part 656 of title 20, Code of Federal Regulations (or any successor regulation). The Secretary of Labor may not delegate this function to any agency of a State.

(2) SCHEDULE FOR DETERMINATION.—Except as provided in paragraph (3), the Secretary of Labor shall provide a response to an employer's request for a prevailing wage determination not later than 20 calendar days after the date the Secretary of Labor receives such a request. If the Secretary of Labor fails to reply during such 20-day period, the wage proposed by the employer shall be the valid prevailing wage rate.

(3) USE OF SURVEYS.—The Secretary of Labor shall accept an alternative wage survey provided by the employer unless the Secretary of Labor determines that the wage component of the Occupational Employment Statistics Survey is more accurate for the occupation in the labor market area.

(b) PLACEMENT OF JOB ORDER.—The Secretary of Labor shall maintain a website with links to the official website of each workforce agency of a State, and such official website shall contain instructions on the filing of a job order in order to satisfy the job order requirements of section 656.17(e)(1) of title 20, Code of Federal Regulations (or any successor regulation).

(c) TECHNICAL CORRECTIONS.—The Secretary of Labor shall establish a process by which employers seeking certification under section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)), as amended by section 508(b), may make technical corrections to applications in order to avoid requiring employers to conduct additional recruitment to correct an initial technical error. A technical error shall include any error that would not have a material effect on the validity of the employer's recruitment of able, willing, and qualified United States workers.

(d) ADMINISTRATIVE APPEALS.—Motions to reconsider, and administrative appeals of, a denial of a permanent labor certification application, shall be decided by the Secretary of Labor not later than 60 days after the date of the filing of such motion or such appeal.

(e) APPLICATIONS UNDER PREVIOUS SYSTEM.—Not later than 180 days after the date of the enactment of

this Act, the Secretary of Labor shall process and issue decisions on all applications for permanent alien labor certification that were filed before March 28, 2005.

(f) EFFECTIVE DATE.—This section shall take effect 90 days after the date of the enactment of this Act, whether or not the Secretary of Labor has amended the regulations under part 656 of title 20, Code of Federal Regulations, to implement such changes.

**SEC. 515. VISA REVALIDATION.**

(a) IN GENERAL.—Section 222 (8 U.S.C. 1202) is amended by adding at the end the following:

''(i) The Secretary of State shall permit an alien granted a nonimmigrant visa under subparagraph (E), (H), (I), (L), (O), or (P) of section 101(a)(15) to apply for a renewal of such visa within the United States if—

''(1) such visa is valid or did not expire more than 12 months before the date of such application;

''(2) the alien is seeking a nonimmigrant visa under the same subparagraph under which the alien had previously received a visa; and

''(3) the alien has complied with the immigration laws and regulations of the United States.''.

(b) CONFORMING AMENDMENT.—Section 222(h) of such Act is amended, in the matter preceding subpara-

graph (1), by inserting ''and except as provided under subsection (i),'' after ''Act''.

**SEC. 516. RELIEF FOR MINOR CHILDREN AND WIDOWS.**

(a) IN GENERAL.—Section 201(b)(2) (8 U.S.C. 1151(b)(2)) is amended to read as follows:

''(2)(A)(i) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa under section 203(a) to their accompanying parent who is an immediate relative.

''(ii) In this subparagraph, the term 'immediate relative' means a child, spouse, or parent of a citizen of the United States (and each child of such child, spouse, or parent who is accompanying or following to join the child, spouse, or parent), except that, in the case of parents, such citizens shall be at least 21 years of age.

''(iii) An alien who was the spouse of a citizen of the United States for not less than 2 years at the time of the citizen's death or, if married for less than 2 years at the time of the citizen's death, proves by a preponderance of the evidence that the marriage was entered into in good faith and not solely for the purpose of obtaining an immigration benefit and was not legally separated from the citizen at the time of the citizen's death, and each child

of such alien, shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death if the spouse files a petition under section 204(a)(1)(A)(ii) before the earlier of—

"(I) 2 years after such date; or

"(II) the date on which the spouse remarries.

"(iv) In this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) remains an immediate relative if the United States citizen spouse or parent loses United States citizenship on account of the abuse.

"(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.".

(b) PETITION.—Section 204(a)(1)(A)(ii) (8 U.S.C. 1154(a)(1)(A)(ii)) is amended by striking "in the second sentence of section 201(b)(2)(A)(i) also" and inserting "in section 201(b)(2)(A)(iii) or an alien child or alien parent described in the 201(b)(2)(A)(iv)".

(c) RETENTION OF IMMEDIATE RELATIVE STATUS.—

(1) IN GENERAL.—In applying clause (iii) of section 201(b)(2)(A) of the Immigration and Na-

tionality Act, as added by subsection (a), to an alien whose citizen relative died before the date of the enactment of this Act, the alien relative, notwithstanding the deadlines specified in such clause, may file the classification petition under section 204(a)(1)(A)(ii) of such Act not later than 2 years after the date of the enactment of this Act.

(2) ELIGIBILITY FOR PAROLE.—If an alien was excluded, deported, removed or departed voluntarily before the date of the enactment of this Act based solely upon the alien's lack of classification as an immediate relative (as defined by 201(b)(2)(A)(ii) of the Immigration and Nationality Act) due to the citizen's death—

(A) such alien shall be eligible for parole into the United States pursuant to the Attorney General's discretionary authority under section 212(d)(5) of such Act; and

(B) such alien's application for adjustment of status shall be considered notwithstanding section 212(a)(9) of such Act.

(d) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—Section 245 (8 U.S.C. 1255), as amended by sections 407 and 511, is further amended by adding at the end the following:

"(o) APPLICATION FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES, PARENTS, AND CHILDREN.—

"(1) IN GENERAL.—Any alien described in paragraph (2) who applies for adjustment of status before the death of the qualifying relative, may have such application adjudicated as if such death had not occurred.

"(2) ALIEN DESCRIBED.—An alien described in this paragraph is an alien who—

"(A) is an immediate relative (as described in section 201(b)(2)(A));

"(B) is a family-sponsored immigrant (as described in subsection (a) or (d) of section 203);

"(C) is a derivative beneficiary of an employment-based immigrant under section 203(b) (as described in section 203(d)); or

"(D) is a derivative beneficiary of a diversity immigrant (as described in section 203(c)).".

(2) TRANSITION PERIOD.—

(A) IN GENERAL.—Notwithstanding a denial of an application for adjustment of status for an alien whose qualifying relative died before the date of the enactment of this Act, such

application may be renewed by the alien through a motion to reopen, without fee, if such motion is filed not later than 2 years after such date of enactment.

(B) ELIGIBILITY FOR PAROLE.—If an alien was excluded, deported, removed or departed voluntarily before the date of the enactment of this Act—

(i) such alien shall be eligible for parole into the United States pursuant to the Attorney General's discretionary authority under section 212(d)(5) of the Immigration and Nationality Act; and

(ii) such alien's application for adjustment of status shall be considered notwithstanding section 212(a)(9) of such Act.

(e) PROCESSING OF IMMIGRANT VISAS.—

(1) IN GENERAL.—Section 204(b) (8 U.S.C. 1154), as amended by section 204(b) of this Act, is further amended—

(A) by striking ''After an investigation'' and inserting the following:

''(1) IN GENERAL.—After an investigation''; and

(B) by adding at the end the following:

"(2) DEATH OF QUALIFYING RELATIVE.—

"(A) IN GENERAL.—Any alien described in paragraph (2) whose qualifying relative died before the completion of immigrant visa processing may have an immigrant visa application adjudicated as if such death had not occurred. An immigrant visa issued before the death of the qualifying relative shall remain valid after such death.

"(B) ALIEN DESCRIBED.—An alien described in this paragraph is an alien who—

"(i) is an immediate relative (as described in section 201(b)(2)(A));

"(ii) is a family-sponsored immigrant (as described in subsection (a) or (d) of section 203);

"(iii) is a derivative beneficiary of an employment-based immigrant under section 203(b) (as described in section 203(d)); or

"(iv) is a derivative beneficiary of a diversity immigrant (as described in section 203(c)).".

(2) TRANSITION PERIOD.—

(A) IN GENERAL.—Notwithstanding a denial or revocation of an application for an immi-

grant visa for an alien whose qualifying relative died before the date of the enactment of this Act, such application may be renewed by the alien through a motion to reopen, without fee, if such motion is filed not later than 2 years after such date of enactment.

(B) INAPPLICABILITY OF BARS.—Notwithstanding section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)), the Secretary shall consider the application for an immigrant visa submitted by an alien who was excluded, deported, removed, or departed voluntarily before the date of the enactment of this Act.

(f) NATURALIZATION.—Section 319(a) (8 U.S.C. 1429(a)) is amended by inserting ''(or, if the spouse is deceased, the spouse was a citizen of the United States)'' after ''citizen of the United States''.

**SEC. 517. RELIEF FOR WIDOWS AND ORPHANS.**

(a) NEW SPECIAL IMMIGRANT CATEGORY.—

(1) CERTAIN CHILDREN AND WOMEN AT RISK OF HARM.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended—

(A) in subparagraph (L), by adding a semicolon at the end;

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

(C) by adding at the end the following:

"(N) subject to subsection (j), an immigrant who is not present in the United States—

"(i) who is—

"(I) referred to a consular, immigration, or other designated official by a United States Government agency, an international organization, or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

"(II) determined by such official to be a minor under 18 years of age (as determined under subsection (j)(5))—

"(aa) for whom no parent or legal guardian is able to provide adequate care;

"(bb) who faces a credible fear of harm related to his or her age;

"(cc) who lacks adequate protection from such harm; and

"(dd) for whom it has been determined to be in his or her best interests to be admitted to the United States; or

"(ii) who is—

"(I) referred to a consular or immigration official by a United States Government agency, an international organization or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

"(II) determined by such official to be a female who has—

"(aa) a credible fear of harm related to her sex; and

"(bb) a lack of adequate protection from such harm.".

(2) STATUTORY CONSTRUCTION.—Section 101 (8 U.S.C. 1101) is amended by adding at the end the following:

"(j)(1) No natural parent or prior adoptive parent of any alien provided special immigrant status under subsection (a)(27)(N)(i) shall thereafter, by virtue of such

parentage, be accorded any right, privilege, or status under this Act.

"(2)(A) No alien who qualifies for a special immigrant visa under subsection (a)(27)(N)(ii) may apply for derivative status or petition for any spouse who is represented by the alien as missing, deceased, or the source of harm at the time of the alien's application and admission. The Secretary of Homeland Security may waive this requirement for an alien who demonstrates that the alien's representations regarding the spouse were bona fide.

"(B) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) may apply for derivative status or petition for any sibling under the age of 18 years or children under the age of 18 years of any such alien, if accompanying or following to join the alien. For purposes of this subparagraph, a determination of age shall be made using the age of the alien on the date the petition is filed with the Department of Homeland Security.

"(3) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) shall be treated in the same manner as a refugee solely for purposes of section 412.

"(4) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any alien seeking admission to the United States under sub-

1 section (a)(27)(N), and the Secretary of Homeland Secu-
2 rity may waive any other provision of such section (other
3 than paragraph 2(C) or subparagraph (A), (B), (C), or
4 (E) of paragraph (3)) with respect to such an alien for
5 humanitarian purposes, to assure family unity, or when
6 it is otherwise in the public interest. Any such waiver by
7 the Secretary shall be in writing and shall be granted only
8 on an individual basis following an investigation. The Sec-
9 retary shall submit an annual report to Congress on the
10 number of waivers granted under this paragraph during
11 the previous fiscal year and a summary of the reasons for
12 granting such waivers.

13 ''(5) For purposes of subsection (a)(27)(N)(i)(II), a
14 determination of age shall be made using the age of the
15 alien on the date on which the alien was referred to the
16 consular, immigration, or other designated official.

17 ''(6) The Secretary of Homeland Security shall waive
18 any application fee for a special immigrant visa for an
19 alien described in section 101(a)(27)(N).''.

20 (3) EXPEDITED PROCESS.—Not later than 45
21 days after the date of referral to a consular, immi-
22 gration, or other designated official (as described in
23 section 101(a)(27)(N) of the Immigration and Na-
24 tionality Act, as added by paragraph (1))—

(A) special immigrant status shall be adjudicated; and

(B) if special immigrant status is granted, the alien shall be paroled into the United States pursuant to section 212(d)(5) of that Act (8 U.S.C. 1182(d)(5)) and allowed to apply for adjustment of status to permanent residence under section 245 of that Act (8 U.S.C. 1255) not later than 1 year after the alien's arrival in the United States.

(4) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that includes—

(A) data related to the implementation of this section and the amendments made by this section;

(B) data regarding the number of placements of females and children who faces a credible fear of harm as referred to in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by paragraph (1); and

(C) any other information that the Secretary considers appropriate.

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

(b) REQUIREMENTS FOR ALIENS.—

(1) REQUIREMENT BEFORE ENTRY INTO THE UNITED STATES.—

(A) DATABASE SEARCH.—An alien may not be admitted to the United States unless the Secretary has ensured that a search of each database maintained by an agency or department of the United States has been conducted to determine whether such alien is ineligible to be admitted to the United States on criminal, security, or related grounds.

(B) COOPERATION AND SCHEDULE.—The Secretary and the head of each appropriate agency or department of the United States shall cooperate to ensure that each database search required under subparagraph (A) is completed not later than 45 days after the date on which an alien files a petition seeking a special immigration visa under section 101(a)(27)(N) of the

Immigration and Nationality Act, as added by subsection (a)(1).

(2) REQUIREMENT AFTER ENTRY INTO THE UNITED STATES.—

(A) REQUIREMENT TO SUBMIT FINGERPRINTS.—

(i) IN GENERAL.—Not later than 30 days after the date that an alien enters the United States, the alien shall be fingerprinted and submit to the Secretary such fingerprints and any other personal biometric data required by the Secretary.

(ii) OTHER REQUIREMENTS.—The Secretary may prescribe regulations that permit fingerprints submitted by an alien under section 262 of the Immigration and Nationality Act (8 U.S.C. 1302) or any other provision of law to satisfy the requirement to submit fingerprints of clause (i).

(B) DATABASE SEARCH.—The Secretary shall ensure that a search of each database that contains fingerprints that is maintained by an agency or department of the United States be conducted to determine whether such alien is

ineligible for an adjustment of status under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on criminal, security, or related grounds.

(C) COOPERATION AND SCHEDULE.—The Secretary and the head of each appropriate agency or department of the United States shall work cooperatively to ensure that each database search required by subparagraph (B) is completed not later than 180 days after the date on which the alien enters the United States.

(D) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(i) IN GENERAL.—There may be no review of a determination by the Secretary, after a search required by subparagraph (B), that an alien is ineligible for an adjustment of status, under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on criminal, security, or related grounds except as provided in this subparagraph.

(ii) ADMINISTRATIVE REVIEW.—An alien may appeal a determination described in clause (i) through the Administrative

Appeals Office of the Bureau of Citizenship and Immigration Services. The Secretary shall ensure that a determination on such appeal is made not later than 60 days after the date that the appeal is filed.

(iii) JUDICIAL REVIEW.—There may be no judicial review of a determination described in clause (i).

**SEC. 518. SONS AND DAUGHTERS OF FILIPINO WORLD WAR II VETERANS.**

Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by sections 504 and 508, is further amended by adding at the end the following:

"(M) Aliens who are eligible for a visa under paragraph (1) or (3) of section 203(a) and are the son or daughter of a citizen of the United States who was naturalized pursuant to section 405 of the Immigration Act of 1990 (8 U.S.C. 1440 note).".

**SEC. 519. DETERMINATIONS UNDER THE HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998.**

(a) IN GENERAL.—Section 902(d) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note) is amended by adding at the end the following:

"(3) DETERMINATIONS WITH RESPECT TO CHILDREN.—

"(A) USE OF APPLICATION FILING DATE.—Determinations made under this subsection as to whether an individual is a child of a parent shall be made using the age and status of the individual on October 21, 1998.

"(B) APPLICATION SUBMISSION BY PARENT.—Notwithstanding paragraph (1)(C), an application under this subsection filed based on status as a child may be filed for the benefit of such child by a parent or guardian of the child, if the child is physically present in the United States on such filing date.".

(b) NEW APPLICATIONS AND MOTIONS TO REOPEN.—

(1) NEW APPLICATIONS.—Notwithstanding section 902(a)(1)(A) of the Haitian Refugee Immigration Fairness Act of 1998, an alien who is eligible for adjustment of status under such Act may submit an application for adjustment of status under such Act not later than the later of—

(A) 2 years after the date of the enactment of this Act; or

(B) 1 year after the date on which final regulations are promulgated to implement this

section and the amendment made by subsection (a).

(2) MOTIONS TO REOPEN.—The Secretary shall establish procedures for the reopening and reconsideration of applications for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998 that are affected by the amendment made by subsection (a).

(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—Section 902(a)(3) of the Haitian Refugee Immigration Fairness Act of 1998 shall apply to an alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily, and who files an application under paragraph (1) or a motion under paragraph (2), in the same manner as such section 902(a)(3) applied to aliens filing applications for adjustment of status under such Act prior to April 1, 2000.

(c) INADMISSIBILITY DETERMINATION.—Section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note) is amended in subsections (a)(1)(B) and (d)(1)(D) by inserting "(6)(C)(i)," after "(6)(A),".

**SEC. 520. S VISAS.**

(a) EXPANSION OF S VISA CLASSIFICATION.—Section 101(a)(15)(S) (8 U.S.C. 1101(a)(15)(S)) is amended—

(1) in clause (i)—

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

(B) in subclause (I), by inserting before the semicolon, '', including a criminal enterprise undertaken by a foreign government, its agents, representatives, or officials'';

(C) in subclause (III), by inserting ''if the information concerns a criminal enterprise undertaken by an individual or organization that is not a foreign government, its agents, representatives, or officials,'' before ''whose''; and

(D) by striking ''or'' at the end; and

(2) in clause (ii)—

(A) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''; and

(B) by striking ''1956,'' and all that follows through ''the alien;'' and inserting the following: ''1956; or

''(iii) the Secretary of Homeland Security and the Secretary of State, in consultation with

the Director of Central Intelligence, jointly determine—

"(I) is in possession of critical reliable information concerning the activities of governments or organizations, or their agents, representatives, or officials, with respect to weapons of mass destruction and related delivery systems, if such governments or organizations are at risk of developing, selling, or transferring such weapons or related delivery systems; and

"(II) is willing to supply or has supplied, fully and in good faith, information described in subclause (I) to appropriate persons within the United States Government; and

if the Secretary of Homeland Security (or with respect to clause (ii), the Secretary of State and the Secretary of Homeland Security jointly) considers it to be appropriate, the spouse, children, married and unmarried sons and daughters, and parents of an alien described in clause (i), (ii), or (iii) if accompanying, or following to join, the alien;".

(b) NUMERICAL LIMITATION.—Section 214(k)(1) (8 U.S.C. 1184(k)(1)) is amended to read as follows:

"(1) The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S) in any fiscal year may not exceed 1,000.".

(c) REPORTS.—

(1) CONTENT.—Section 214(k)(4) (8 U.S.C. 1184(k)(4)) is amended—

(A) in the matter preceding subparagraph (A)—

(i) by striking "Attorney General" and inserting "Secretary of Homeland Security"; and

(ii) by striking "concerning" and inserting "that includes";

(B) in subparagraph (D), by striking "and" at the end;

(C) in subparagraph (E), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following:

"(F) if the total number of such nonimmigrants admitted is fewer than 25 percent of the total number provided for under paragraph (1)—

"(i) the reasons for the reduced number of such nonimmigrants;

"(ii) the efforts made by the Secretary of Homeland Security to admit such nonimmigrants; and

"(iii) any extenuating circumstances that contributed to the reduced number of such nonimmigrants.".

(2) FORM OF REPORT.—Section 214(k) (8 U.S.C. 1184(k)) is amended by adding at the end the following:

"(5) To the extent required by law and if it is in the interests of national security or the security of such nonimmigrants that are admitted, as determined by the Secretary of Homeland Security—

"(A) the information contained in a report described in paragraph (4) may be classified; and

"(B) the Secretary of Homeland Security shall, to the extent feasible, submit a non-classified version of the report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.".

**SEC. 521. L VISA LIMITATIONS.**

Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended—

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

(2) in subparagraph (E), by striking ''In the case of an alien spouse admitted under section 101(a)(15)(L), who'' and inserting ''Except as provided in subparagraph (H), if an alien spouse admitted under section 101(a)(15)(L)''; and

(3) by adding at the end the following:

''(G)(i) If the beneficiary of a petition under this subsection is coming to the United States to open, or be employed in, a new facility, the petition may be approved for a period not to exceed 12 months only if the employer operating the new facility has—

''(I) a business plan;

''(II) sufficient physical premises to carry out the proposed business activities; and

''(III) the financial ability to commence doing business immediately upon the approval of the petition.

''(ii) An extension of the approval period under clause (i) may not be granted until the importing employer submits to the Secretary of Homeland Security—

"(I) evidence that the importing employer meets the requirements of this subsection;

"(II) evidence that the beneficiary meets the requirements of section 101(a)(15)(L);

"(III) a statement summarizing the original petition;

"(IV) evidence that the importing employer has fully complied with the business plan submitted under clause (i);

"(V) evidence of the truthfulness of any representations made in connection with the filing of the original petition;

"(VI) evidence that the importing employer, during the previous 12 months, has been doing business at the new facility through regular, systematic, and continuous provision of goods or services, or has otherwise been taking commercially reasonable steps to establish the new facility as a commercial enterprise;

"(VII) a statement of the duties the beneficiary has performed at the new facility during the preceding 12-month period and the duties the beneficiary will perform at the new facility during the extension period approved under this clause;

1 "(VIII) a statement describing the staffing
2 at the new facility, including the number of em-
3 ployees and the types of positions held by such
4 employees;
5 "(IX) evidence of wages paid to employees
6 if the beneficiary will be employed in a manage-
7 rial or executive capacity;
8 "(X) evidence of the financial status of the
9 new facility; and
10 "(XI) any other evidence or data pre-
11 scribed by the Secretary.
12 "(iii) Notwithstanding subclauses (I) through
13 (VI) of clause (ii) and subject to the maximum pe-
14 riod of authorized admission set forth in subpara-
15 graph (D), the Secretary of Homeland Security may
16 approve a subsequently filed petition on behalf of the
17 beneficiary to continue employment at the facility
18 described in this subsection for a period beyond the
19 initially granted 12-month period if the importing
20 employer demonstrates that the failure to satisfy any
21 of the requirements described in those subclauses
22 was directly caused by extraordinary circumstances
23 beyond the control of the importing employer.
24 "(H)(i) The Secretary of Homeland Security
25 may not authorize the spouse of an alien described

under section 101(a)(15)(L), who is a dependent of a beneficiary under subparagraph (G), to engage in employment in the United States during the initial 12-month period described in subparagraph (G)(i).

"(ii) A spouse described in clause (i) may be provided employment authorization upon the approval of an extension under subparagraph (G)(ii).

"(I) For purposes of determining the eligibility of an alien for classification under section 101(a)(15)(L), the Secretary of Homeland Security shall establish a program to work cooperatively with the Secretary of State to verify a company or facility's existence in the United States and abroad.".

**SEC. 522. ESTABLISHMENT OF NEW FASHION MODEL NONIMMIGRANT CLASSIFICATION.**

(a) IN GENERAL.—

(1) NEW CLASSIFICATION.—Section 101(a)(15)(O) (8 U.S.C. 1101(a)(15)(O)) is amended—

(A) in clause (i), by striking "or" at the end;

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

(C) by redesignating clause (iii) as clause (iv);

(D) in clause (iv), as redesignated, by striking ''clause (i) or (ii)'' and inserting ''clause (i), (ii), or (iii)''; and

(E) by inserting after clause (ii) the following:

''(iii) is a fashion model who is of distinguished merit and ability and who is seeking to enter the United States temporarily to perform fashion modeling services that involve events or productions which have a distinguished reputation or that are performed for an organization or establishment that has a distinguished reputation for, or a record of, utilizing prominent modeling talent; or''.

(2) NUMERICAL LIMITATION.—Section 214(a)(2)(A) (8 U.S.C. 1184(a)(2)(A)) is amended by adding at the end the following: ''The number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(O)(iii) in any fiscal year may not exceed 1,000.''.

(b) ELIMINATION OF H–1B CLASSIFICATION FOR FASHION MODELS.—Section 101(a)(15)(H)(i)(b) (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended—

(1) in item (aa), by striking ''or as a fashion model''; and

(2) in item (bb), by striking ''or, in the case of a fashion model, is of distinguished merit and ability''.

(c) EFFECTIVE DATES.—

(1) IMPLEMENTATION OF NEW FASHION MODEL NONIMMIGRANT CLASSIFICATION.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to carry out the amendments made by subsection (a). Nothing in this section shall be construed as preventing an alien who is a fashion model from obtaining nonimmigrant status under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(O)(i)) if such alien is otherwise qualified for such status.

(2) ELIMINATION OF H-1B CLASSIFICATION FOR FASHION MODELS.—The amendments made by subsection (b)—

(A) shall apply on the effective date of the regulations promulgated under paragraph (1); and

(B) shall not apply to the classification of an alien under section 101(a)(15)(H)(i)(b) of

the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) as a fashion model pursuant to a petition for such classification that was filed before such effective date.

**SEC. 523. EB–5 REGIONAL CENTER PROGRAM.**

(a) CONCURRENT PROCESSING FOR EMPLOYEMENT CREATION IMMIGRANTS.—Section 245 (8 U.S.C. 1255), as amended by section 511, is further amended by adding at the end the following:

''(o) CONCURRENT PROCESSING FOR EMPLOYEMENT CREATION IMMIGRANTS.—If, at the time an alien fils a petition for classification under section 203(b)(5), approval of the petition would make a visa immediately available to the alien beneficiary, the alien beneficiary's application for adjustment of status under this section shall be considered properly filed whether submitted concurrently with, or subsequent to, such petition.''.

(b) REGIONAL CENTER DESIGNATION FEES.—Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended—

(1) in subsection (b), by striking ''for 15 years''; and

(2) by adding at the end the following:

"(e) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a $2,500 fee to apply for designation as a regional center under this section. Fees collected under this subsection shall be deposited in the Treasury in accordance with section 286(w) of the Immigration and Nationality Act (8 U.S.C. 1356(w)).".

(c) IMMIGRANT ENTREPRENEUR REGIONAL CENTER ACCOUNT.—

(1) ESTABLISHMENT.—Section 286 (8 U.S.C. 1356) is amended by adding at the end the following:

"(y) IMMIGRANT ENTREPRENEUR REGIONAL CENTER ACCOUNT.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Immigrant Entrepreneur Regional Center Account'. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 610(e) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note).

"(2) USE OF FEES.—Fees deposited in the account established under paragraph (1) may only be used to carry out the EB–5 immigrant investor program.".

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

(A) shall take effect on the date on which regulations are published to carry out this section and the amendments made by this section; and

(B) shall apply to regional center applications filed on or after such date.

**SEC. 524. RETURN OF TALENT PROGRAM.**

(a) SHORT TITLE.—This section may be cited as the "Return of Talent Act".

(b) ESTABLISHMENT.—

(1) IN GENERAL.—Title III (8 U.S.C. 1401 et seq.) is amended by inserting after section 317 the following:

**"SEC. 317A. TEMPORARY ABSENCE OF PERSONS PARTICIPATING IN THE RETURN OF TALENT PROGRAM.**

"(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall establish the Return of Talent Program to permit eligible

aliens to temporarily return to the alien's country of citizenship in order to make a material contribution to that country if the country is engaged in post-conflict or natural disaster reconstruction activities, for a period not longer than 2 years, unless an exception is granted under subsection (d).

"(b) ELIGIBLE ALIEN.—An alien is eligible to participate in the Return of Talent Program established under subsection (a) if the alien meets the special immigrant description under section 101(a)(27)(N).

"(c) FAMILY MEMBERS.—The spouse, parents, siblings, and any minor children of an alien who participates in the Return of Talent Program established under subsection (a) may return to such alien's country of citizenship with the alien and reenter the United States with the alien.

"(d) EXTENSION OF TIME.—The Secretary of Homeland Security may extend the 2-year period referred to in subsection (a) upon a showing that circumstances warrant that an extension is necessary for post-conflict or natural disaster reconstruction efforts.

"(e) RESIDENCY REQUIREMENTS.—An immigrant described in section 101(a)(27)(N) who participates in the Return of Talent Program established under subsection (a), and the spouse, parents, siblings, and any minor chil-

dren who accompany such immigrant to that immigrant's country of citizenship, shall be considered, during such period of participation in the program—

"(1) for purposes of section 316(a), physically present and residing in the United States for purposes of naturalization within the meaning of that section; and

"(2) for purposes of section 316(b), to meet the continuous residency requirements in that section.

"(f) OVERSIGHT AND ENFORCEMENT.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall oversee and enforce the requirements of this section.".

(2) TABLE OF CONTENTS.—The table of contents (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 317 the following:

"317A. Temporary absence of persons participating in the Return of Talent Program.".

(c) ELIGIBLE IMMIGRANTS.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended—

(1) in subparagraph (L), by inserting a semicolon after "Improvement Act of 1998";

(2) in subparagraph (M), by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(N) an immigrant who—

"(i) has been lawfully admitted to the United States for permanent residence;

"(ii) demonstrates an ability and willingness to make a material contribution to the post-conflict or natural disaster reconstruction in the alien's country of citizenship; and

"(iii) as determined by the Secretary of State in consultation with the Secretary of Homeland Security—

"(I) is a citizen of a country in which Armed Forces of the United States are engaged, or have engaged in the 10 years preceding such determination, in combat or peacekeeping operations;

"(II) is a citizen of a country where authorization for United Nations peacekeeping operations was initiated by the United Nations Security Council during the 10 years preceding such determination; or

"(III) is a citizen of a country which received, during the preceding 2 years, funding from the Office of Foreign Disaster Assistance of the United States

Agency for International Development in response to a declared disaster in such country by the United States Ambassador, the Chief of the U.S. Mission, or the appropriate Assistant Secretary of State, that is beyond the ability of such country's response capacity and warrants a response by the United States Government.''.

(d) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of State, shall submit a report to Congress that describes—

(1) the countries of citizenship of the participants in the Return of Talent Program established under section 317A of the Immigration and Nationality Act, as added by subsection (b);

(2) the post-conflict or natural disaster reconstruction efforts that benefitted, or were made possible, through participation in the program; and

(3) any other information that the Secretary determines to be appropriate.

(e) REGULATIONS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall promulgate regulations to carry out this section and the amendments made by this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to United States Citizenship and Immigration Services, such sums as may be necessary to carry out this section and the amendments made by this section.

# Subtitle B—Preservation of Immigration Benefits for Victims of a Major Disaster or Emergency

**SEC. 531. SHORT TITLE.**

This subtitle may be cited as the ''Major Disaster and Emergency Victims Immigration Benefits Preservation Act''.

**SEC. 532. DEFINITIONS.**

In this subtitle:

(1) APPLICATION OF DEFINITIONS FROM THE IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this subtitle, the definitions in the Immigration and Nationality Act shall apply in the administration of this subtitle.

(2) DIRECT RESULT OF A MAJOR DISASTER OR EMERGENCY.—The term ''direct result of a major disaster or emergency''—

(A) means physical damage, disruption of communications or transportation, forced or voluntary evacuation, business closures, or

other circumstances directly caused by a major disaster or emergency; and

(B) does not include collateral or consequential economic effects in or on the United States or global economies.

(3) EMERGENCY.—The term ''emergency'' has the meaning given the term in section 102(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1)).

(4) LAST BUSINESS DAY.—The term ''last business day'' means the last business day preceding a major disaster or emergency. For purposes of Hurricane Katrina and Hurricane Rita, the last business day is August 26, 2005.

(5) MAJOR DISASTER.—The term ''major disaster'' has the meaning given the term in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) and includes Hurricane Katrina and Hurricane Rita.

**SEC. 533. SPECIAL IMMIGRANT STATUS.**

(a) PROVISION OF STATUS.—

(1) IN GENERAL.—For purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Secretary may provide an alien described in subsection (b) with the status of a special immigrant

under section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)) if the alien—

(A) files a petition with the Secretary under section 204 of such Act (8 U.S.C. 1154) for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4));

(B) is otherwise eligible to receive an immigrant visa; and

(C) is otherwise admissible to the United States for permanent residence.

(2) INAPPLICABLE PROVISION.—In determining admissibility under paragraph (1)(C), the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)) shall not apply.

(b) ALIENS DESCRIBED.—

(1) PRINCIPAL ALIENS.—An alien is described in this subsection if—

(A) the alien was the beneficiary of—

(i) a petition that was filed with the Secretary on or before the last business day—

(I) under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) to classify the alien as a family-sponsored immigrant under

1 section 203(a) of such Act (8 U.S.C.
2 1153(a)) or as an employment-based
3 immigrant under section 203(b) of
4 such Act (8 U.S.C. 1153(b)); or
5 (II) under section 214(d) of such
6 Act (8 U.S.C. 1184(d)) to authorize
7 the issuance of a nonimmigrant visa
8 to the alien under section
9 101(a)(15)(K) of such Act (8 U.S.C.
10 1101(a)(15)(K)); or
11 (ii) an application for labor certifi-
12 cation under section 212(a)(5)(A) of such
13 Act (8 U.S.C. 1182(a)(5)(A)) that was
14 filed under regulations of the Secretary of
15 Labor on or before the last business day;
16 and
17 (B) such petition or application was re-
18 voked or terminated before or after its ap-
19 proval, solely due to—
20 (i) the death or disability of the peti-
21 tioner, applicant, or alien beneficiary as a
22 direct result of a major disaster or emer-
23 gency; or
24 (ii) loss of employment as a direct re-
25 sult of a major disaster or emergency.

(2) SPOUSES AND CHILDREN.—

(A) IN GENERAL.—An alien is described in this subsection if—

(i) the alien, as of the last business day, was the spouse or child of a principal alien described in paragraph (1); and

(ii) the alien—

(I) is accompanying such principal alien; or

(II) is following to join such principal alien within a reasonable period after a major disaster or emergency, as determined by the Attorney General.

(B) CONSTRUCTION.—

(i) DEATH DISREGARDED.—In construing the terms ''accompanying'' and ''following to join'' in subparagraph (A)(ii), the death of a principal alien described in paragraph (1)(B)(i) shall be disregarded.

(ii) REASONABLE PERIOD.—The reasonable period described in subparagraph (A)(ii)(II), as applied to Hurricane Katrina and Hurricane Rita, shall end 90

days after the date of the enactment of this Act.

(3) GRANDPARENTS OR LEGAL GUARDIANS OF ORPHANS.—An alien is described in this subsection if the alien is a grandparent or legal guardian of a child whose parents died as a direct result of a major disaster or emergency, if either of the deceased parents was, as of the last business day, a citizen or national of the United States or an alien lawfully admitted for permanent residence in the United States.

(c) PRIORITY DATE.—Immigrant visas made available under this section shall be issued to aliens in the order in which a petition on behalf of each such alien is filed with the Secretary under subsection (a)(1), except that if an alien was assigned a priority date with respect to a petition described in subsection (b)(1)(A)(i), the alien may maintain that priority date.

(d) NUMERICAL LIMITATIONS.—In applying sections 201 through 203 of the Immigration and Nationality Act (8 U.S.C. 1151–1153) in any fiscal year, aliens eligible to be provided status under this section shall be treated as special immigrants who are not described in subparagraph (A), (B), (C), or (K) of section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)).

**SEC. 534. EXTENSION OF FILING OR REENTRY DEADLINES.**

(a) AUTOMATIC EXTENSION OF NONIMMIGRANT STATUS.—

(1) IN GENERAL.—Notwithstanding section 214 of the Immigration and Nationality Act (8 U.S.C. 1184), an alien described in paragraph (2) who was lawfully present in the United States as a nonimmigrant on the last business day, may, unless otherwise determined by the Secretary in the Secretary's discretion, lawfully remain in the United States in the same nonimmigrant status until the latest of—

(A) the date on which such lawful nonimmigrant status would have otherwise terminated absent the enactment of this subsection;

(B) 1 year after the death or onset of disability described in paragraph (2); or

(C) 3 months after the date of the enactment of this Act, for victims of Hurricane Katrina or Hurricane Rita.

(2) ALIENS DESCRIBED.—

(A) PRINCIPAL ALIENS.—An alien is described in this paragraph if the alien was disabled as a direct result of a major disaster or emergency.

(B) SPOUSES AND CHILDREN.—An alien is described in this paragraph if the alien, as of the last business day, was the spouse or child of—

(i) a principal alien described in subparagraph (A); or

(ii) an alien who died as a direct result of a major disaster or emergency.

(3) AUTHORIZED EMPLOYMENT.—During the period in which a principal alien or alien spouse is in lawful nonimmigrant status under paragraph (1), the alien may be provided an ''employment authorized'' endorsement or other appropriate document signifying authorization of employment.

(b) NEW DEADLINES FOR EXTENSION OR CHANGE OF NONIMMIGRANT STATUS.—

(1) FILING DELAYS.—

(A) IN GENERAL.—If an alien, who was lawfully present in the United States as a nonimmigrant on the last business day, was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a major disaster or emergency, the alien's application may be considered timely filed if it is filed within a reasonable pe-

riod, as determined by the Secretary, after the application would have otherwise been due. For victims of Hurricane Katrina or Hurricane Rita, this period shall end 3 months after the date of the enactment of this Act.

(B) CIRCUMSTANCES PREVENTING TIMELY ACTION.—For purposes of subparagraph (A), circumstances preventing an alien from timely acting are—

(i) office closures;

(ii) mail or courier service cessations or delays;

(iii) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements;

(iv) mandatory evacuation and relocation; or

(v) other circumstances, including medical problems or financial hardship.

(2) DEPARTURE DELAYS.—

(A) IN GENERAL.—If an alien, who was lawfully present in the United States as a nonimmigrant on the last business day, is unable to timely depart the United States as a direct result of a major disaster or emergency, the alien

shall not be considered to have been unlawfully present in the United States during the period beginning on the last business day, and ending on the date of the alien's departure, if such departure occurred within a reasonable period, as determined by the Secretary. If a victim of Hurricane Katrina or Hurricane Rita departs the United States not later than 3 months after the date of the enactment of this Act, such departure shall be considered to have been within a reasonable period under this subparagraph.

(B) CIRCUMSTANCES PREVENTING TIMELY ACTION.—For purposes of subparagraph (A), circumstances preventing an alien from timely acting are—

(i) office closures;

(ii) transportation cessations or delays;

(iii) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements;

(iv) mandatory evacuation and relocation; or

(v) other circumstances, including medical problems or financial hardship.

(c) DIVERSITY IMMIGRANTS.—Section 204(a)(1)(I)(ii)(II) (8 U.S.C. 1154(a)(1)(I)(ii)(II)), is amended to read as follows:

"(II) An immigrant visa made available under subsection 203(c) for fiscal year 1998, or for a subsequent fiscal year, may be issued, or adjustment of status under section 245(a) based upon the availability of such visa may be granted, to an eligible qualified alien who has properly applied for such visa or adjustment in the fiscal year for which the alien was selected notwithstanding the end of such fiscal year. Such visa or adjustment of status shall be counted against the worldwide level set forth in subsection 201(e) for the fiscal year for which the alien was selected.".

(d) EXTENSION OF FILING PERIOD.—If an alien is unable to timely file an application to register or reregister for temporary protected status under section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a) as a direct result of a major disaster or emergency, the alien's application may be considered timely filed if it is filed not later than 90 days after it otherwise would have been due.

(e) VOLUNTARY DEPARTURE.—

(1) IN GENERAL.—Notwithstanding section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c), if a period for voluntary departure

under such section expired during the period beginning on the last business day and ending within a reasonable period, as determined by the Attorney General, and the alien was unable to voluntarily depart before the expiration date as a direct result of a major disaster or emergency, such voluntary departure period is deemed to have been extended for an additional 60 days. For purposes of Hurricane Katrina and Hurricane Rita, the reasonable period shall be deemed to have ended on December 31, 2005.

(2) CIRCUMSTANCES PREVENTING DEPARTURE.—For purposes of this subsection, circumstances preventing an alien from voluntarily departing the United States are—

(A) office closures;

(B) transportation cessations or delays;

(C) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements;

(D) mandatory evacuation and removal; and

(E) other circumstances, including medical problems or financial hardship.

(f) CURRENT NONIMMIGRANT VISA HOLDERS.—

(1) IN GENERAL.—An alien, who was lawfully present in the United States on the last business day, as a nonimmigrant under section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) and lost employment as a direct result of a major disaster or emergency may accept new employment upon the filing by a prospective employer of a new petition on behalf of such nonimmigrant not later than 1 year after such major disaster or emergency. For victims of Hurricane Katrina or Hurricane Rita, this period shall be extended until August 29, 2007.

(2) CONTINUATION OF EMPLOYMENT AUTHORIZATION.—Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such employment shall cease.

(3) SAVINGS PROVISION.—Nothing in this subsection shall be construed to limit eligibility for portability under section 214(n) of the Immigration and Nationality Act (8 U.S.C. 1184(n)).

**SEC. 535. HUMANITARIAN RELIEF FOR CERTAIN SURVIVING SPOUSES AND CHILDREN.**

(a) TREATMENT AS IMMEDIATE RELATIVES.—

(1) SPOUSES.—Notwithstanding the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), if an alien was the spouse of a citizen of the United States at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, and the citizen died as a direct result of a major disaster or emergency, the alien (and each child of the alien) may be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen's death if the alien files a petition under section 204(a)(1)(A)(ii) of such Act not later than 2 years after such date and only until the date on which the alien remarries. For purposes of such section 204(a)(1)(A)(ii), an alien granted relief under this paragraph shall be considered an alien spouse described in the second sentence of section 201(b)(2)(A)(i) of such Act.

(2) CHILDREN.—

(A) IN GENERAL.—In the case of an alien who was the child of a citizen of the United States at the time of the citizen's death, if the citizen died as a direct result of a major disaster or emergency, the alien may be consid-

ered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen's death (regardless of subsequent changes in age or marital status), but only if the alien files a petition under subparagraph (B) not later than 2 years after such date.

(B) PETITIONS.—An alien described in subparagraph (A) may file a petition with the Secretary for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), which shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

(b) SPOUSES, CHILDREN, UNMARRIED SONS AND DAUGHTERS OF LAWFUL PERMANENT RESIDENT ALIENS.—

(1) IN GENERAL.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)), which was filed by such alien

before the last business day, may be considered (if the spouse, child, son, or daughter has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for preference status under such section with the same priority date as that assigned before the death described in paragraph (3)(A). No new petition shall be required to be filed. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(2) SELF-PETITIONS.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is not a beneficiary of a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act may file a petition for such classification with the Secretary, if the spouse, child, son, or daughter was present in the United States on the last business day. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(3) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a major disaster or emergency; and

(B) on the day of such death, was lawfully admitted for permanent residence in the United States.

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES AND CHILDREN OF EMPLOYMENT-BASED IMMIGRANTS.—

(1) IN GENERAL.—Any alien who was, on the last business day, the spouse or child of an alien described in paragraph (2), and who applied for adjustment of status before the death described in paragraph (2)(A), may have such application adjudicated as if such death had not occurred.

(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a major disaster or emergency; and

(B) on the day before such death, was—

(i) an alien lawfully admitted for permanent residence in the United States by reason of having been allotted a visa under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)); or

(ii) an applicant for adjustment of status to that of an alien described in

clause (i), and admissible to the United States for permanent residence.

(d) APPLICATIONS BY SURVIVING SPOUSES AND CHILDREN OF REFUGEES AND ASYLEES.—

(1) IN GENERAL.—Any alien who, on the last business day, was the spouse or child of an alien described in paragraph (2), may have his or her eligibility to be admitted under section 207(c)(2)(A) or 208(b)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1157(c)(2)(A), 1158(b)(3)(A)) considered as if the alien's death had not occurred.

(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a major disaster or emergency; and

(B) on the day before such death, was—

(i) an alien admitted as a refugee under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157); or

(ii) granted asylum under section 208 of such Act (8 U.S.C. 1158).

(e) WAIVER OF PUBLIC CHARGE GROUNDS.—In determining the admissibility of any alien accorded an immigration benefit under this section, the grounds for inadmissibility specified in section 212(a)(4) of the Immigra-

tion and Nationality Act (8 U.S.C. 1182(a)(4)) shall not apply.

**SEC. 536. RECIPIENT OF PUBLIC BENEFITS.**

An alien shall not be inadmissible under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) or deportable under section 237(a)(5) of such Act (8 U.S.C. 1227(a)(5)) on the basis that the alien received any public benefit as a direct result of a major disaster or emergency.

**SEC. 537. AGE-OUT PROTECTION.**

In administering the immigration laws, the Secretary and the Attorney General may grant any application or benefit notwithstanding the applicant or beneficiary (including a derivative beneficiary of the applicant or beneficiary) reaching an age that would render the alien ineligible for the benefit sought, if the alien's failure to meet the age requirement occurred as a direct result of a major disaster or emergency.

**SEC. 538. EMPLOYMENT ELIGIBILITY VERIFICATION.**

(a) IN GENERAL.—The Secretary may suspend or modify any requirement under section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) or subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), either generally or with respect to particular

persons, class of persons, geographic areas, or economic sectors, to the extent to which the Secretary determines necessary or appropriate to respond to major disasters or emergencies.

(b) NOTIFICATION.—If the Secretary suspends or modifies any requirement under section 274A(b) of the Immigration and Nationality Act pursuant to subsection (a), the Secretary shall send notice of such decision, including the reasons for the suspension or modification, to—

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

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

(c) SUNSET DATE.—The authority under subsection (a) shall expire on August 26, 2008.

**SEC. 539. NATURALIZATION.**

The Secretary may, with respect to applicants for naturalization in any district of the United States Citizenship and Immigration Services affected by a major disaster or emergency, administer the provisions of Title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) notwithstanding any provision of such title relating to the jurisdiction of an eligible court to administer the oath of allegiance, or requiring residence to be main-

tained or any action to be taken in any specific district or State within the United States.

**SEC. 540. DISCRETIONARY AUTHORITY.**

The Secretary or the Attorney General may waive violations of the immigration laws committed by an alien—

(1) who was in lawful status on the last business day; and

(2) whose failure to comply with the immigration laws—

(A) was a direct result of a major disaster or emergency;

(B) occurred within a period to be determined by the Attorney General; and

(C) for the victims of Hurricane Katrina or Hurricane Rita, occurred on or before March 1, 2006.

**SEC. 541. EVIDENTIARY STANDARDS AND REGULATIONS.**

The Secretary shall establish appropriate evidentiary standards for demonstrating, for purposes of this subtitle, that a major disaster or emergency directly resulted in—

(1) death;

(2) disability; or

(3) loss of employment due to physical damage to, or destruction of, a business.

**SEC. 542. IDENTIFICATION DOCUMENTS.**

(a) TEMPORARY IDENTIFICATION.—The Secretary shall have the authority to instruct any Federal agency to issue temporary identification documents to individuals affected by a major disaster or emergency. Such documents shall be acceptable for identification purposes under any Federal law until 1 year after the relevant major disaster or emergency. For victims of Hurricane Katrina or Hurricane Rita, such documents shall be valid until August 29, 2007.

(b) ISSUANCE.—An agency may not issue identity documents under this section after January 1, 2006.

(c) NO COMPULSION TO ACCEPT OR CARRY IDENTIFICATION DOCUMENTS.—Nationals of the United States shall not be compelled to accept or carry documents issued under this section.

(d) NO PROOF OF CITIZENSHIP.—Identity documents issued under this section shall not constitute proof of citizenship or immigration status.

**SEC. 543. WAIVER OF REGULATIONS.**

The Secretary shall carry out the provisions of this subtitle as expeditiously as possible. The Secretary is not required to promulgate regulations before implementing this subtitle. The requirements of chapter 5 of title 5, United States Code (commonly referred to as the ''Administrative Procedure Act'') or any other law relating to rule

making, information collection, or publication in the Federal Register, shall not apply to any action to implement this subtitle to the extent the Secretary, the Secretary of Labor, or the Secretary of State determine that compliance with such requirement would impede the expeditious implementation of such Act.

**SEC. 544. NOTICES OF CHANGE OF ADDRESS.**

(a) IN GENERAL.—If a notice of change of address otherwise required to be submitted to the Secretary by an alien described in subsection (b) relates to a change of address occurring during the period beginning on the last business day, and ending on a date to be determined by the Secretary, the alien may submit such notice. For victims of Hurricane Katrina or Hurricane Rita, such period shall end on the date of the enactment of this Act.

(b) ALIENS DESCRIBED.—An alien is described in this subsection if the alien—

(1) resided, on the last business day, within a district of the United States that was declared by the President to be affected by a major disaster or emergency; and

(2) is required, under section 265 of the Immigration and Nationality Act (8 U.S.C. 1305) or any other provision of law, to notify the Secretary in writing of a change of address.

**SEC. 545. FOREIGN STUDENTS AND EXCHANGE PROGRAM PARTICIPANTS.**

(a) IN GENERAL.—The nonimmigrant status of an alien described in subsection (b) shall be deemed to have been maintained during the period beginning on the last business day, and ending on a date to be determined by the Attorney General, if on such later date, the alien is enrolled in a course of study, or participating in a designated exchange visitor program, sufficient to satisfy the terms and conditions of the alien's nonimmigrant status on the last business day. For victims of Hurricane Katrina or Hurricane Rita, the relevant period shall be deemed to have ended on September 15, 2006.

(b) ALIENS DESCRIBED.—An alien is described in this subsection if the alien—

(1) was, on the last business day, lawfully present in the United States in the status of a nonimmigrant described in subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)); and

(2) fails to satisfy a term or condition of such status as a direct result of a major disaster or emergency.

# TITLE VI—LEGALIZATION OF UNDOCUMENTED INDIVIDUALS

## Subtitle A—Conditional Nonimmigrants

**SEC. 601. CONDITIONAL NONIMMIGRANTS.**

(a) IN GENERAL.—Notwithstanding any other provision of law, including section 244(h) of the Immigration and Nationality Act (8 U.S.C. 1254a(h)), the Secretary may classify an alien as a conditional nonimmigrant or conditional nonimmigrant dependent if the alien—

(1) submits an application for such classification; and

(2) meets the requirements of this section.

(b) PRESENCE IN THE UNITED STATES.—

(1) IN GENERAL.—The alien shall establish that the alien—

(A) was present in the United States before June 1, 2006;

(B) has been continuously present in the United States since the date described in subparagraph (A); and

(C) was not legally present in the United States on that date under any classification described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C.

1101(a)(15)) or any other nonimmigrant status made available under a treaty or other multinational agreement that has been ratified by the Senate.

(2) CONTINUOUS PRESENCE.—For purposes of this subsection, an absence from the United States without authorization for a continuous period of more than 180 days between June 1, 2006, and the beginning of the application period for classification as a conditional nonimmigrant shall constitute a break in continuous physical presence.

(c) CONDITIONAL NONIMMIGRANT DEPENDENTS.—Notwithstanding any other provision of law, the Secretary shall classify the spouse or child of a conditional nonimmigrant as a conditional nonimmigrant dependent, or provide the spouse or child with a conditional nonimmigrant dependent visa if—

(1) the spouse or child meets the applicable eligibility requirements under this section; or

(2) the alien was, before the date on which this Act was introduced in Congress, the spouse or child of an alien who was subsequently classified as a conditional nonimmigrant under this section, or is eligible for such classification, if—

(A) the termination of the relationship with such spouse or parent was connected to domestic violence; and

(B) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent who is a conditional nonimmigrant.

(d) OTHER CRITERIA.—

(1) IN GENERAL.—An alien may be classified as a conditional nonimmigrant or conditional nonimmigrant dependent if the Secretary determines that the alien—

(A) is not inadmissible to the United States under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), except as provided in paragraph (2);

(B) has not ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(C) is not an alien—

(i) who has been convicted by final judgment of a particularly serious crime and constitutes a danger to the community of the United States;

(ii) for whom there are reasonable grounds for believing that the alien has committed a particularly serious crime outside the United States before arriving in the United States; or

(iii) for whom there are reasonable grounds for regarding the alien as a danger to the security of the United States; and

(D) has been convicted of a felony or 3 or more misdemeanors under Federal or State law.

(2) GROUNDS OF INADMISSIBILITY.—In determining an alien's admissibility under paragraph (1)(A)—

(A) paragraphs (5), (6) (excluding subparagraph (E)), (7), (9), and (10)(B) of section 212(a) of such Act shall not apply;

(B) the Secretary may not waive—

(i) subparagraph (A), (B), (C), (D)(ii), (E), (G), (H), or (I) of section 212(a)(2) of such Act (relating to criminals);

(ii) section 212(a)(3) of such Act (relating to security and related grounds); or

(iii) subparagraph (A), (C), or (D) of section 212(a)(10) of such Act (relating to polygamists and child abductors);

(C) the Secretary may waive the application of any provision of section 212(a) of such Act not listed in subparagraph (B) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest; and

(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this paragraph to waive the provisions of section 212(a) of such Act.

(3) APPLICABILITY OF OTHER PROVISIONS.—Sections 240B(d) and 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1229c(d) and 1231(a)(5)) shall not apply to an alien who is applying for classification under this section for conduct that occurred before the date on which this Act was introduced in Congress.

(e) ATTESTATION OF EMPLOYMENT.—The Secretary may not classify an alien as a conditional nonimmigrant unless the alien—

(1) attests, under penalty of perjury, that the alien—

(A) was employed full time, part time, or seasonally in the United States or was self-employed before June 1, 2006, and has been employed in the United States since that date; or

(B) was otherwise physically present before June 1, 2006, under the limitations described in subsections (b) and (c) of section 602; and

(2) submits evidence that the Secretary determines to be necessary to establish prima facie evidence of employment or physical presence in the United States.

(f) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—

(1) SUBMISSION OF FINGERPRINTS.—The Secretary may not classify an alien as a conditional nonimmigrant or a conditional nonimmigrant dependent unless the alien submits fingerprints in accordance with procedures established by the Secretary.

(2) BACKGROUND CHECKS.—The Secretary shall utilize fingerprints and other biometric data provided by the alien to conduct a background check of such alien to search for criminal, national security, or other law enforcement actions that would

render the alien ineligible for classification under this section.

(3) EXPEDITIOUS PROCESSING.—The background checks required under paragraph (2) shall be conducted as expeditiously as possible.

(g) PERIOD OF AUTHORIZED STAY; APPLICATION FEE AND FINE.—

(1) PERIOD OF AUTHORIZED STAY.—

(A) IN GENERAL.—Except as provided under subparagraph (C), the period of authorized stay for a conditional nonimmigrant or a conditional nonimmigrant dependent shall be 6 years from the date on which such status is conferred.

(B) LIMITATION.—The Secretary may not adjust or change the status of a conditional nonimmigrant or a conditional nonimmigrant dependent to any other immigrant or nonimmigrant classification until the termination of the 6-year period described in subparagraph (A).

(C) EXTENSION.—The Secretary may only extend the period described in subparagraph (A) to accommodate the processing of an appli-

1 cation for adjustment of status under section
2 602.
3 (2) APPLICATION FEE AND FINES.—
4 (A) APPLICATION FEE.—The Secretary
5 shall impose a fee for filing an application
6 under this section. Such fee shall be sufficient
7 to cover the administrative and other expenses
8 incurred in connection with the review of such
9 applications.
10 (B) FINES.—
11 (i) IN GENERAL.—Except as provided
12 under clause (ii), an alien filing an applica-
13 tion under this section shall submit to the
14 Secretary, in addition to the fee required
15 under subparagraph (A), a fine of $500.
16 (ii) EXCEPTION.—An alien who is
17 younger than 21 years of age shall not be
18 required to pay a fine under this para-
19 graph.
20 (C) DISPOSITION OF FEES AND FINES.—
21 (i) FEES.—Fees collected under this
22 paragraph shall be deposited into the Im-
23 migration Examination Fee Account and
24 remain available as provided under sub-
25 sections (m) and (n) of section 286.

(ii) FINES.—Fines collected under this paragraph shall be deposited into the New Worker Program and Conditional Nonimmigrant Fee Account established under section 286(w).

(h) TREATMENT OF APPLICANTS.—

(1) IN GENERAL.—An alien who files an application under this section to become a conditional nonimmigrant or a conditional nonimmigrant dependent—

(A) shall be granted employment authorization pending final adjudication of the alien's application;

(B) shall be granted permission to travel abroad;

(C) may not be detained for immigration purposes, determined inadmissible or deportable, or removed pending final adjudication of the alien's application, unless the alien, due to conduct or criminal conviction, becomes ineligible for conditional nonimmigrant classification; and

(D) may not be considered an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C.

1324a(h)(3))) until employment authorization under subparagraph (A) is denied.

(2) DOCUMENT OF AUTHORIZATION.—The Secretary shall provide each alien described in paragraph (1) with a counterfeit-resistant document of authorization that—

(A) meets all current requirements established by the Secretary for travel documents, including the requirements under section 403 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note); and

(B) reflects the benefits and status set forth in paragraph (1).

(3) BEFORE APPLICATION PERIOD.—If an alien is apprehended between the date of the enactment of this Act and the date on which regulations are promulgated to implement this section, and the alien can establish prima facie eligibility as a conditional nonimmigrant or a conditional nonimmigrant dependent, the Secretary shall provide the alien with a reasonable opportunity to file an application under this section after such regulations are promulgated.

(4) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of the Immigration and Na-

tionality Act, if an immigration judge determines that an alien who is in removal proceedings has made a prima facie case of eligibility for classification as a conditional nonimmigrant or a conditional nonimmigrant dependent, the judge shall administratively close such proceedings and permit the alien a reasonable opportunity to apply for such classification.

(5) RELATIONSHIPS OF APPLICATION TO CERTAIN ORDERS.—

(A) IN GENERAL.—An alien who is present in the United States and has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act—

(i) notwithstanding such order, may apply for classification as a conditional nonimmigrant or conditional nonimmigrant dependent under this subtitle; and

(ii) shall not be required to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal, or voluntary departure order.

(B) APPLICATION GRANTED.—If the Secretary grants the application described in subparagraph (A)(i), the Secretary shall cancel the order described in subparagraph (A).

(C) APPLICATION DENIED.—If the Secretary renders a final administrative decision to deny the application described in subparagraph (A)(i), the order described in subparagraph (A) shall be effective and enforceable to the same extent as if the application had not been made.

(i) CLASSIFICATION.—If the Secretary determines that an alien is eligible for classification as a conditional nonimmigrant or conditional nonimmigrant dependent, the alien shall be entitled to all benefits described in subsection (h)(1). The Secretary may authorize the use of a document described in subsection (h)(2) as evidence of such classification or may issue additional documentation as evidence of classification as a conditional nonimmigrant or conditional nonimmigrant dependent.

(j) TERMINATION OF BENEFITS.—

(1) IN GENERAL.—Any benefit provided to an alien seeking classification as a conditional nonimmigrant or conditional nonimmigrant dependent, or who is classified as such, under this section shall terminate if—

(A) the Secretary determines that the alien is ineligible for such classification and all review procedures under section 603 have been exhausted or waived by the alien;

(B) the alien is found removable from the United States under section 237 of the Immigration and Nationality Act (8 U.S.C. 1227);

(C) the alien has used documentation issued under this section for unlawful or fraudulent purposes; or

(D) in the case of the spouse or child of an alien applying for classification as a conditional nonimmigrant or classified as a conditional nonimmigrant under this section, the benefits for the principal alien are terminated.

(k) DISSEMINATION OF INFORMATION ON CONDITIONAL NONIMMIGRANT PROGRAM.—During the 12-month period immediately after the issuance of regulations implementing this section, the Secretary, in cooperation with entities approved by the Secretary, shall broadly disseminate information respecting conditional nonimmigrant or conditional nonimmigrant dependent classification under this section and the requirements to be satisfied to obtain such classification. The Secretary shall disseminate information to employers and labor unions to ad-

vise them of the rights and protections available to them and to workers who file applications under this section. Such information shall be broadly disseminated, in the principal languages, as determined by the Secretary, spoken by aliens who would qualify for classification under this section, including to television, radio, and print media to which such aliens would have access.

**SEC. 602. ADJUSTMENT OF STATUS FOR CONDITIONAL NONIMMIGRANTS.**

(a) REQUIREMENTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, including section 244(h) of the Immigration and Nationality Act (8 U.S.C. 1254a(h)), the Secretary may adjust the status of a conditional nonimmigrant or a conditional nonimmigrant dependent to that of an alien lawfully admitted for permanent residence if the conditional nonimmigrant or conditional nonimmigrant dependent satisfies the applicable requirements under this subsection.

(2) COMPLETION OF EMPLOYMENT OR EDUCATION REQUIREMENT.—A conditional nonimmigrant applying for adjustment of status under this section shall establish that during the 6-year period immediately preceding the application for adjustment of status, he or she—

(A) has been employed full-time, part-time, or seasonally in the United States;

(B) has been self-employed in the United States; or

(C) has met the education requirements under subsection (c).

(3) EVIDENCE OF EMPLOYMENT.—

(A) CONCLUSIVE DOCUMENTS.—An alien may conclusively establish employment status in compliance with paragraph (2) by submitting records to the Secretary that demonstrate such employment, and have been maintained by the Social Security Administration, the Internal Revenue Service, or any other Federal, State, or local government agency.

(B) OTHER DOCUMENTS.—An alien who is unable to submit a document described in subparagraph (A) may satisfy the requirement under paragraph (1) by submitting to the Secretary at least 2 other types of reliable documents that provide evidence of employment, including—

(i) bank records;

(ii) business records;

(iii) employer records;

(iv) records of a labor union, day labor center, or organization that assists workers in employment;

(v) sworn affidavits from nonrelatives who have direct knowledge of the alien's work, that contain—

(I) the name, address, and telephone number of the affiant;

(II) the nature and duration of the relationship between the affiant and the alien; and

(III) other verification or information; and

(vi) remittance records.

(C) ADDITIONAL DOCUMENTS AND RESTRICTIONS.—The Secretary may—

(i) designate additional documents to evidence employment in the United States; and

(ii) set such terms and conditions on the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent fraudulent submissions.

(4) SENSE OF CONGRESS.—It is the sense of the Congress that the requirement under this subsection should be interpreted and implemented in a manner that recognizes and takes into account the difficulties encountered by aliens in obtaining evidence of employment due to the undocumented status of the alien.

(5) BURDEN OF PROOF.—An alien described in paragraph (1) who is applying for adjustment of status under this section shall prove, by a preponderance of the evidence, that the alien has satisfied the requirements of this subsection. An alien may meet such burden of proof by producing sufficient evidence to demonstrate such employment as a matter of reasonable inference.

(6) PORTABILITY.—An alien shall not be required to complete the employment requirements under this section with a single employer.

(b) EXCEPTIONS AND SPECIAL RULES.—

(1) EXCEPTIONS BASED ON AGE.—The employment requirements under this section shall not apply—

(A) to any alien who is classified as a conditional nonimmigrant dependent who was

younger than 21 years of age on the date of the enactment of this Act; or

(B) to any alien who is 65 years of age or older on the date of the enactment of this Act.

(2) DISABILITIES; PREGNANCY.—The employment requirements under this section shall be reduced for an alien who cannot demonstrate employment based on a physical or mental disability (as defined under section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)) or as a result of pregnancy if such condition is evidenced by the submission of documentation prescribed by the Secretary.

(c) APPLICATION PROCEDURE AND FEE.—

(1) IN GENERAL.—The Secretary shall promulgate regulations establishing procedures for submitting an application for adjustment of status under this section. The Secretary shall impose a fee for filing an application for adjustment of status under this section which shall be sufficient to cover the administrative and other expenses incurred in connection with the review of such applications.

(2) FINES.—

(A) IN GENERAL.—Except as provided under subparagraph (B), an alien filing an ap-

plication for adjustment of status under this section shall pay a $1500 fine to the Secretary, in addition to the fee required under paragraph (1).

(B) EXCEPTION.—An alien who is classified as a conditional nonimmigrant dependent who was under 21 years of age on the date of enactment of this Act shall not be required to pay a fine under this paragraph.

(3) STATE IMPACT ASSISTANCE FEE.—

(A) IN GENERAL.—In addition to any other amounts required to be paid under this subsection, a conditional nonimmigrant shall submit a State impact assistance fee equal to $500 with the application for adjustment filed under this section.

(B) USE OF FEE.—Fees collected under subparagraph (A) shall be deposited in the State Impact Assistance Account and shall remain available under 286(x) of the Immigration and Nationality Act.

(4) DEPOSIT OF FEES.—Fees collected under this paragraph shall be deposited into the Immigration Examination Fee Account and shall remain available as provided under subsections (m) and (n)

of section 286 of the Immigration and Nationality Act (8 U.S.C. 1356).

(5) DEPOSIT OF FINES.—Fines collected under this paragraph shall be deposited into the New Worker Program and Conditional Nonimmigrant Fee Account and shall remain available as provided under section 286(w) of the Immigration and Nationality Act.

(d) ADMISSIBLE UNDER IMMIGRATION LAWS.—A conditional nonimmigrant or conditional nonimmigrant dependent applying for adjustment of status under this section shall establish that he or she is not inadmissible under section 212(a), except for any provision under that section that is not applicable or waived under paragraph (2) or (3) of section 601(d). For purposes of an application filed under this section, any prior waiver of inadmissibility granted to an alien under section 601(d)(2(C) shall remain in effect with respect to the specific conduct considered by the Secretary at the time of classification under section 601.

(e) LEGAL REENTRY.—

(1) IN GENERAL.—A conditional nonimmigrant applying for adjustment of status under this section shall physically depart the United States and after such departure, be admitted to the United States as

a conditional nonimmigrant or applicant for conditional nonimmigrant status, as evidenced by documentation issued by the Secretary. A record of such admission shall be created by the Secretary through the US–VISIT exit and entry system, or any other system maintained by the Secretary to create a record of a lawful entry.

(2) DEPARTURE AND REENTRY.—A conditional nonimmigrant seeking to establish lawful admission under paragraph (1)(B) may seek admission to the United States at any port of entry at which the US–VISIT exit and entry system, or any other system maintained by the Secretary to record lawful admission, is in operation. Departure and subsequent lawful admission to the United States shall occur not later than 90 days before the conditional nonimmigrant files an application for adjustment to lawful permanent resident status under this section.

(3) EXEMPTIONS.—Paragraph (2) shall not apply to an alien who, on the date on which the application for adjustment of status is filed under this section—

(A) has served in the Armed Forces of the United States;

(B) has a son or daughter who has served or is serving in the Armed Forces of the United States;

(C) has a pending or approved application under section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a), the Nicaraguan Adjustment and Central American Relief Act (Public Law 105–100), or the Haitian Refugee Immigration Fairness Act of 1998 (Public Law 105–277);

(D) is at least 65 years of age;

(E) is younger than 21 years of age;

(F) suffers from an ongoing physical or mental disability (as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102));

(G) is a single parent head of household; or

(H) cannot comply with such paragraph due to extreme hardship to the alien or an immediate family member, as determined by the Secretary.

(4) FAILURE TO ESTABLISH LAWFUL ADMISSION TO THE UNITED STATES.—Unless exempted under paragraph (3), a conditional nonimmigrant

who fails to depart and reenter the United States in accordance with paragraph (1) may not become a lawful permanent resident under this section.

(f) MEDICAL EXAMINATION.—A conditional nonimmigrant or a conditional nonimmigrant dependent shall undergo an appropriate medical examination (including a determination of immunization status) that conforms to generally accepted professional standards of medical practice.

(g) PAYMENT OF INCOME TAXES.—

(1) IN GENERAL.—Not later than the date on which status is adjusted under this section, a conditional nonimmigrant or conditional nonimmigrant dependent shall satisfy any applicable Federal tax liability by establishing that—

(A) no such tax liability exists;

(B) all outstanding liabilities have been paid; or

(C) the conditional nonimmigrant has entered into, and is in compliance with, an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(2) APPLICABLE FEDERAL TAX LIABILITY.—For purposes of paragraph (1), the term ''applicable Federal tax liability'' means liability for Federal

taxes, including penalties and interest, owed for any year during the period of employment required under subsection (a)(2) for which the statutory period for assessment of any deficiency for such taxes has not expired.

(3) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to—

(A) a conditional nonimmigrant or conditional nonimmigrant dependent, upon request, to establish the payment of all taxes required under this subsection; or

(B) the Secretary, upon request, regarding the payment of Federal taxes by an alien applying for a benefit under this section.

(4) COMPLIANCE.—The alien may satisfy proof of compliance with this subsection by submitting documentation that establishes that—

(A) no such tax liability exists;

(B) all outstanding liabilities have been met; or

(C) the alien has entered into, and is in compliance with, an agreement for payment of

all outstanding liabilities with the Internal Revenue Service.

(h) BASIC CITIZENSHIP SKILLS.—

(1) IN GENERAL.—Except as provided under paragraph (2), a conditional nonimmigrant or conditional nonimmigrant dependent shall establish that he or she—

(A) meets the requirements under section 312 of the Immigration and Nationality Act (8 U.S.C. 1423); or

(B) is satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of the history and Government of the United States.

(2) RELATION TO NATURALIZATION EXAMINATION.—A conditional nonimmigrant or conditional nonimmigrant dependent who demonstrates that he or she meets the requirements under such section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.).

(3) EXCEPTIONS.—

(A) MANDATORY.—Paragraph (1) shall not apply to any person who is unable to comply with those requirements because of a physical or developmental disability or mental impairment as described in section 312(b)(1) of the Immigration and Nationality Act.

(B) DISCRETIONARY.—The Secretary may waive all or part of paragraph (1) for a conditional nonimmigrant who is at least 65 years of age on the date on which an application is filed for adjustment of status under this section.

(i) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—The Secretary shall conduct a security and law enforcement background check in accordance with procedures described in section 601(f).

(j) MILITARY SELECTIVE SERVICE.—If a conditional nonimmigrant or conditional nonimmigrant dependent is within the age period required under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), the conditional nonimmigrant shall establish proof of registration under that Act.

(k) TREATMENT OF CONDITIONAL NONIMMIGRANT DEPENDENTS.—

(1) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, the Secretary may—

(A) adjust the status of a conditional nonimmigrant dependent to that of a person admitted for lawful permanent residence if the principal conditional nonimmigrant spouse or parent has been found eligible for adjustment of status under this section;

(B) adjust the status of a conditional nonimmigrant dependent who was the spouse or child of an alien who was classified as a conditional nonimmigrant or was eligible for such classification under section 601, to that of a person admitted for permanent residence if—

(i) the termination of the relationship with such spouse or parent was connected to domestic violence; and

(ii) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent.

(2) APPLICATION OF OTHER LAW.—In processing applications under this subsection on behalf of aliens who have been battered or subjected to extreme cruelty, the Secretary shall apply—

(A) the provisions under section 204(a)(1)(J) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(J)); and

(B) the protections, prohibitions, and penalties under section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

(l) BACK OF THE LINE.—An alien may not adjust status to that of a lawful permanent resident status under the Development, Relief, and Education for Alien Minors Act of 2007 until that earlier of—

(1) 30 days after an immigrant visa becomes available for petitions filed under sections 201, 202, and 203 that were filed before the date of enactment of the STRIVE Act of 2007; or

(2) 8 years after the enactment of the Development, Relief, and Education for Alien Minors Act of 2007.

(m) INELIGIBILITY FOR PUBLIC BENEFITS.—For purposes of section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613), an alien whose status has been adjusted under this section shall not be eligible for any Federal means-tested public benefit unless the alien meets the alien eligibility

criteria for such benefit under title IV of such Act (8 U.S.C. 1601 et seq.).

**SEC. 603. ADMINISTRATIVE AND JUDICIAL REVIEW.**

(a) ADMINISTRATIVE REVIEW.—

(1) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall establish an appellate review process within United States Citizenship and Immigration Services to provide for a single level of administrative appellate review of a final determination respecting an application for classification or adjustment of status under this subtitle.

(2) STANDARD FOR REVIEW.—Administrative appellate review under paragraph (1) shall be based solely upon the administrative record established at the time of the determination on the application and upon the presentation of additional or newly discovered evidence during the time of the pending appeal.

(b) JUDICIAL REVIEW.—

(1) IN GENERAL.—The circuit courts of appeal of the United States shall have jurisdiction to review the denial of an application for classification or adjustment of status under this subtitle. Notwithstanding any other provision of law, the standard for review of such a denial shall be governed by paragraph (2).

(2) STANDARD FOR JUDICIAL REVIEW.—Judicial review of a denial of an application under this subtitle shall be based solely upon the administrative record established at the time of the review. The findings of fact and other determinations contained in the record shall be conclusive unless the applicant can establish abuse of discretion or findings that are directly contrary to clear and convincing facts contained in the record, considered as a whole.

(3) JURISDICTION OF COURTS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any cause or claim arising from a pattern or practice of the Secretary in the operation or implementation of this subtitle that is arbitrary, capricious, or otherwise contrary to law, and may order any appropriate relief.

(B) REMEDIES.—A district court may order any appropriate relief under subparagraph (A) if the court determines that—

(i) resolution of such cause or claim will serve judicial and administrative efficiency; or

(ii) a remedy would otherwise not be reasonably available or practicable.

(c) STAY OF REMOVAL.—An alien seeking administrative or judicial review under this section may not be removed from the United States until a final decision is rendered establishing that the alien is ineligible for classification or adjustment of status under this subtitle unless such removal is based on criminal or national security grounds.

**SEC. 604. MANDATORY DISCLOSURE OF INFORMATION.**

(a) MANDATORY DISCLOSURE.—The Secretary and the Secretary of State shall provide a duly recognized law enforcement entity that submits a written request with the information furnished pursuant to an application filed under this subtitle, and any other information derived from such furnished information, in connection with a criminal investigation or prosecution or a national security investigation or prosecution, of an individual suspect or group of suspects.

(b) LIMITATIONS.—Except as otherwise provided under this section, no Federal agency, or any officer, employee, or agent of such agency, may—

(1) use the information furnished by the applicant pursuant to an application for benefits under

this subtitle for any purpose other than to make a determination on the application;

(2) make any publication through which the information furnished by any particular applicant can be identified; or

(3) permit anyone other than the sworn officers and employees of such agency to examine individual applications.

(c) CRIMINAL PENALTY.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

**SEC. 605. PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.**

(a) CRIMINAL PENALTY.—

(1) VIOLATION.—It shall be unlawful for any person—

(A) to file, or assist in filing, an application for benefits under this subtitle; and

(i) to knowingly and willfully falsify, misrepresent, conceal, or cover up a material fact;

(ii) to make any false, fictitious, or fraudulent statements or representations; or

(iii) to make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

(B) to create or supply a false writing or document for use in making such an application.

(2) PENALTY.—Any person who violates paragraph (1) shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

(b) INADMISSIBILITY.—An alien who is convicted of violating subsection (a) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(c) EXCEPTION.—Notwithstanding subsections (a) and (b), any alien or other entity (including an employer or union) that submits an employment record that contains incorrect data used by the alien to obtain such employment, shall not, on that ground, be determined to have violated this section.

**SEC. 606. ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.**

Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by title V, is further amended—

(1) in subparagraph (A), by striking ''subparagraph (A) or (B) of''; and

(2) by adding at the end the following:

''(N) Aliens whose status is adjusted from that of a conditional nonimmigrant or conditional nonimmigrant dependent.''.

**SEC. 607. EMPLOYER PROTECTIONS.**

(a) IMMIGRATION STATUS OF ALIEN.—Employers of aliens applying for conditional nonimmigrant or conditional nonimmigrant dependent classification or adjustment of status under section 601 or 602 shall not be subject to civil and criminal tax liability relating directly to the employment of such alien before receiving employment authorization under this subtitle.

(b) PROVISION OF EMPLOYMENT RECORDS.—Employers that provide unauthorized aliens with copies of employment records or other evidence of employment pursuant to an application for conditional nonimmigrant or conditional nonimmigrant dependent classification or adjustment of status under section 601 or 602 or any other application or petition pursuant to any other immigration law, shall not be subject to civil and criminal liability

under section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) for employing such unauthorized aliens.

(c) APPLICABILITY OF OTHER LAW.—Nothing in this section may be used to shield an employer from liability under section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b) or any other labor or employment law.

**SEC. 608. LIMITATIONS ON ELIGIBILITY.**

(a) IN GENERAL.—An alien is not ineligible for any immigration benefit under any provision of this title, or any amendment made by this title, solely on the basis that the alien violated section 1543, 1544, or 1546 of title 18, United States Code, or any amendments made by this Act, during the period beginning on the date of the enactment of this Act and ending on the date on which the alien applies for any benefits under this title.

(b) PROSECUTION.—An alien who commits a violation of section 1543, 1544, or 1546 of such title or any amendments made by this Act, during the period beginning on the date of the enactment of this Act and ending on the date that the alien applies for eligibility for such benefit may be prosecuted for the violation if the alien's application for such benefit is denied.

**SEC. 609. RULEMAKING.**

The Secretary shall promulgate regulations regarding the timely filing and processing of applications for benefits under this subtitle.

**SEC. 610. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this subtitle and the amendments made by this subtitle.

(b) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to subsection (a) shall remain available until expended.

(c) SENSE OF CONGRESS.—It is the sense of the Congress that funds authorized to be appropriated under subsection (a) should be directly appropriated so as to facilitate the orderly and timely commencement of the processing of applications filed under sections 601 and 602.

# Subtitle B—DREAM Act of 2007

**SEC. 621. SHORT TITLE.**

This subtitle may be cited as the ''Development, Relief, and Education for Alien Minors Act of 2007'' or the ''DREAM Act of 2007''.

**SEC. 622. DEFINITIONS.**

In this subtitle:

(1) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the

meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(2) UNIFORMED SERVICES.—The term ''uniformed services'' has the meaning given that term in section 101(a) of title 10, United States Code.

**SEC. 623. RESTORATION OF STATE OPTION TO DETERMINE RESIDENCY FOR PURPOSES OF HIGHER EDUCATION BENEFITS.**

(a) IN GENERAL.—Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) is repealed.

(b) EFFECTIVE DATE.—The repeal under subsection (a) shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–546).

**SEC. 624. CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS OF CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.**

(a) SPECIAL RULE FOR CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law and except as otherwise provided in

this subtitle, the Secretary may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, subject to the conditional basis described in section 625, an alien who is inadmissible or deportable from the United States, if the alien demonstrates that—

(A) the alien has been physically present in the United States for a continuous period of not less than 5 years immediately preceding the date of enactment of this Act, and had not yet reached the age of 16 years at the time of initial entry;

(B) the alien has been a person of good moral character since the time of application;

(C) the alien—

(i) is not inadmissible under paragraph (2), (3), (6)(E), or (10)(C) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)); and

(ii) is not deportable under paragraph (1)(E), (2), or (4) of section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a));

(D) the alien, at the time of application, has been admitted to an institution of higher

education in the United States, or has earned a high school diploma or obtained a general education development certificate in the United States; and

(E) the alien has never been under a final administrative or judicial order of exclusion, deportation, or removal, unless the alien—

(i) has remained in the United States under color of law after such order was issued; or

(ii) received the order before attaining the age of 16 years.

(2) WAIVER.—Notwithstanding paragraph (1), the Secretary may waive the ground of ineligibility under section 212(a)(6)(E) of the Immigration and Nationality Act and the ground of deportability under paragraph (1)(E) of section 237(a) of that Act for humanitarian purposes or family unity or when it is otherwise in the public interest.

(3) PROCEDURES.—The Secretary shall provide a procedure by regulation allowing eligible individuals to apply affirmatively for the relief available under this subsection without being placed in removal proceedings.

(b) TERMINATION OF CONTINUOUS PERIOD.—For purposes of this section, any period of continuous residence or continuous physical presence in the United States of an alien who applies for cancellation of removal under this section shall not terminate when the alien is served a notice to appear under section 239(a) of the Immigration and Nationality Act (8 U.S.C. 1229(a)).

(c) TREATMENT OF CERTAIN BREAKS IN PRESENCE.—

(1) IN GENERAL.—An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsection (a) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

(2) EXTENSIONS FOR EXCEPTIONAL CIRCUMSTANCES.—The Secretary may extend the time periods described in paragraph (1) if the alien demonstrates that the failure to timely return to the United States was due to exceptional circumstances. The exceptional circumstances determined sufficient to justify an extension should be no less compelling than serious illness of the alien, or death or serious illness of a parent, grandparent, sibling, or child.

(d) EXEMPTION FROM NUMERICAL LIMITATIONS.—Nothing in this section may be construed to apply a numerical limitation on the number of aliens who may be eligible for cancellation of removal or adjustment of status under this section.

(e) RULEMAKING.—

(1) PROPOSED REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall publish regulations implementing this section. Such regulations shall be effective immediately on an interim basis, but are subject to change and revision after public notice and opportunity for a period for public comment.

(2) INTERIM, FINAL REGULATIONS.—Within a reasonable time after publication of the interim regulations in accordance with paragraph (1), the Secretary shall publish final regulations implementing this section.

(f) REMOVAL OF ALIEN.—The Secretary may not remove any alien who has a pending application for conditional status under this subtitle.

**SEC. 625. CONDITIONAL PERMANENT RESIDENT STATUS.**

(a) IN GENERAL.—

(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of law, and except

as provided in section 626, an alien whose status has been adjusted under section 624 to that of an alien lawfully admitted for permanent residence shall be considered to have obtained such status on a conditional basis subject to the provisions of this section. Such conditional permanent resident status shall be valid for a period of 6 years, subject to termination under subsection (b).

(2) NOTICE OF REQUIREMENTS.—

(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien obtains permanent resident status on a conditional basis under paragraph (1), the Secretary shall provide for notice to the alien regarding the provisions of this section and the requirements of subsection (c) to have the conditional basis of such status removed.

(B) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Secretary to provide a notice under this paragraph—

(i) shall not affect the enforcement of the provisions of this Act with respect to the alien; and

(ii) shall not give rise to any private right of action by the alien.

(b) TERMINATION OF STATUS.—

(1) IN GENERAL.—The Secretary shall terminate the conditional permanent resident status of any alien who obtained such status under this subtitle, if the Secretary determines that the alien—

(A) ceases to meet the requirements of subparagraph (B) or (C) of section 624(a)(1);

(B) has become a public charge; or

(C) has received a dishonorable or other than honorable discharge from the uniformed services.

(2) RETURN TO PREVIOUS IMMIGRATION STATUS.—Any alien whose conditional permanent resident status is terminated under paragraph (1) shall return to the immigration status the alien had immediately prior to receiving conditional permanent resident status under this subtitle.

(c) REQUIREMENTS OF TIMELY PETITION FOR REMOVAL OF CONDITION.—

(1) IN GENERAL.—In order for the conditional basis of permanent resident status obtained by an alien under subsection (a) to be removed, the alien shall file with the Secretary, in accordance with paragraph (3), a petition which—

(A) requests the removal of such conditional basis; and

(B) provides, under penalty of perjury, the facts and information needed by the Secretary to make the determination described in paragraph (2)(A).

(2) ADJUDICATION OF PETITION TO REMOVE CONDITION.—

(A) IN GENERAL.—If a petition is filed in accordance with paragraph (1) for an alien, the Secretary shall make a determination as to whether the alien meets the requirements set forth in subparagraphs (A) through (E) of subsection (d)(1).

(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Secretary determines that the alien meets such requirements, the Secretary shall notify the alien of such determination and immediately remove the conditional basis of the status of the alien.

(C) TERMINATION IF ADVERSE DETERMINATION.—If the Secretary determines that the alien does not meet such requirements, the Secretary shall notify the alien of such determination and terminate the conditional perma-

nent resident status of the alien as of the date of the determination.

(3) TIME TO FILE PETITION.—

(A) IN GENERAL.—An alien may petition to remove the conditional basis to lawful resident status during the period beginning 180 days before and ending 2 years after the date that is 6 years after—

(i) the date of the granting of conditional permanent resident status; or

(ii) any other expiration date of the conditional permanent resident status as extended by the Secretary in accordance with this subtitle.

(B) STATUS.—The alien shall be deemed in conditional permanent resident status in the United States during the period in which a petition under subparagraph (A) is pending.

(d) DETAILS OF PETITION.—

(1) CONTENTS OF PETITION.—Each petition for an alien under subsection (c)(1) shall contain information to permit the Secretary to determine whether each of the following requirements is met:

(A) The alien has demonstrated good moral character during the entire period the

alien has been a conditional permanent resident.

(B) The alien is in compliance with section 624(a)(1)(C).

(C) The alien has not abandoned the alien's residence in the United States. The Secretary shall presume that the alien has abandoned such residence if the alien is absent from the United States for more than 365 days, in the aggregate, during the period of conditional residence, unless the alien demonstrates that the alien has not abandoned the alien's residence. An alien who is absent from the United States due to active service in the uniformed services has not abandoned the alien's residence in the United States during the period of such service.

(D) The alien has completed at least 1 of the following:

(i) The alien has acquired a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the United States.

(ii) The alien has served in the uniformed services for at least 2 years and, if discharged, has received an honorable discharge.

(E) The alien has provided a list of each secondary school (as that term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) that the alien attended in the United States.

(2) HARDSHIP EXCEPTION.—

(A) IN GENERAL.—The Secretary may remove the conditional status of an alien if the alien—

(i) satisfies the requirements of subparagraphs (A), (B), and (C) of paragraph (1);

(ii) demonstrates compelling circumstances for the inability to complete the requirements described in paragraph (1)(D); and

(iii) demonstrates that the alien's removal from the United States would result in exceptional and extremely unusual hardship to the alien or the alien's spouse, par-

ent, or child who is a citizen or a lawful permanent resident of the United States.

(B) EXTENSION.—Upon a showing of good cause, the Secretary may extend the period of conditional resident status for the purpose of completing the requirements described in paragraph (1)(D).

(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.), an alien who is in the United States as a lawful permanent resident on a conditional basis under this section shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence. The alien may not apply for naturalization until the conditional basis is removed.

**SEC. 626. RETROACTIVE BENEFITS UNDER THIS ACT.**

If, on the date of the enactment of this Act, an alien has satisfied all the requirements of subparagraphs (A) through (E) of section 624(a)(1) and section 625(d)(1)(D), the Secretary may adjust the status of the alien to that of a conditional resident in accordance with section 624. The alien may petition for removal of such condition at the end of the conditional residence period

in accordance with section 625(c) if the alien has met the requirements of subparagraphs (A), (B), and (C) of section 625(d)(1) during the entire period of conditional residence.

**SEC. 627. EXCLUSIVE JURISDICTION.**

(a) IN GENERAL.—The Secretary shall have exclusive jurisdiction to determine eligibility for relief under this subtitle, except if the alien has been placed into deportation, exclusion, or removal proceedings either prior to or after filing an application for relief under this Act, in which case the Attorney General shall have exclusive jurisdiction and shall assume all the powers and duties of the Secretary until proceedings are terminated, or if a final order of deportation, exclusion, or removal is entered the Secretary shall resume all powers and duties delegated to the Secretary under this subtitle.

(b) STAY OF REMOVAL OF CERTAIN ALIENS ENROLLED IN PRIMARY OR SECONDARY SCHOOL.—The Attorney General shall stay the removal proceedings of any alien who—

(1) meets all the requirements of subparagraphs (A), (B), (C), and (E) of section 624(a)(1);

(2) is at least 12 years of age; and

(3) is enrolled full time in a primary or secondary school.

(c) EMPLOYMENT.—An alien whose removal is stayed pursuant to subsection (b) may be engaged in employment in the United States consistent with the Fair Labor Standards Act (29 U.S.C. 201 et seq.) and State and local laws governing minimum age for employment.

(d) LIFT OF STAY.—The Attorney General shall lift the stay granted pursuant to subsection (b) if the alien—

(1) is no longer enrolled in a primary or secondary school; or

(2) ceases to meet the requirements of subsection (b)(1).

**SEC. 628. PENALTIES FOR FALSE STATEMENTS IN APPLICATION.**

Any person who files an application for relief under this subtitle and willfully and knowingly falsifies, misrepresents, or conceals a material fact or makes any false or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

**SEC. 629. CONFIDENTIALITY OF INFORMATION.**

(a) PROHIBITION.—Except as provided in subsection (b), no officer or employee of the United States may—

(1) use the information furnished by the applicant pursuant to an application filed under this Act to initiate removal proceedings against any persons identified in the application;

(2) make any publication whereby the information furnished by any particular individual pursuant to an application under this Act can be identified; or

(3) permit anyone other than an officer or employee of the United States Government or, in the case of applications filed under this Act with a designated entity, that designated entity, to examine applications filed under this Act.

(b) REQUIRED DISCLOSURE.—The Secretary or the Attorney General shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or

not such individual is deceased as a result of a crime).

(c) PENALTY.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

**SEC. 630. EXPEDITED PROCESSING OF APPLICATIONS; PROHIBITION ON FEES.**

Regulations promulgated under this subtitle shall provide that applications under this subtitle will be considered on an expedited basis and without a requirement for the payment by the applicant of any additional fee for such expedited processing.

**SEC. 631. HIGHER EDUCATION ASSISTANCE.**

Notwithstanding any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), with respect to assistance provided under title IV of such Act (20 U.S.C. 1070 et seq.), an alien who adjusts status to that of a lawful permanent resident under this subtitle shall only be eligible for the following assistance under such title:

(1) Student loans under parts B, D, and E of such title IV (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.), subject to the requirements of such parts.

(2) Federal work-study programs under part C of such title IV (42 U.S.C. 2751 et seq.), subject to the requirements of such part.

(3) Services under such title IV (20 U.S.C. 1070 et seq.), subject to the requirements for such services.

**SEC. 632. GAO REPORT.**

Not later than 7 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that sets forth—

(1) the number of aliens who were eligible for cancellation of removal and adjustment of status under section 624(a);

(2) the number of aliens who applied for adjustment of status under section 624(a);

(3) the number of aliens who were granted adjustment of status under section 624(a); and

(4) the number of aliens whose conditional permanent resident status was removed under section 625.

# Subtitle C—AgJOBS Act of 2007

**SEC. 641. SHORT TITLE.**

This subtitle may be cited as the ''Agricultural Job Opportunities, Benefits, and Security Act of 2007'' or the ''AgJOBS Act of 2007''.

**SEC. 642. DEFINITIONS.**

In this subtitle:

(1) AGRICULTURAL EMPLOYMENT.—The term ''agricultural employment'' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(2) BLUE CARD STATUS.—The term ''blue card status'' means the status of an alien who has been lawfully admitted into the United States for temporary residence under section 101(a).

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

(4) EMPLOYER.—The term ''employer'' means any person or entity, including any farm labor con-

tractor and any agricultural association, that employs workers in agricultural employment.

(5) SECRETARY.—Except as otherwise provided, the term ''Secretary'' means the Secretary of Homeland Security.

(6) TEMPORARY.—A worker is employed on a ''temporary'' basis when the employment is intended not to exceed 10 months.

(7) WORK DAY.—The term ''work day'' means any day in which the individual is employed 5.75 or more hours in agricultural employment.

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

### Subchapter A—Blue Card Status

**SEC. 643. REQUIREMENTS FOR BLUE CARD STATUS.**

(a) REQUIREMENT TO GRANT BLUE CARD STATUS.—Notwithstanding any other provision of law, the Secretary shall, pursuant to the requirements of this section, grant blue card status to an alien who qualifies under this section if the Secretary determines that the alien—

(1) has performed agricultural employment in the United States for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2006;

(2) applied for such status during the 18-month application period beginning on the first day of the seventh month that begins after the date of enactment of this Act;

(3) is otherwise admissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as otherwise provided under section 647(b); and

(4) has not been convicted of any felony or a misdemeanor, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500.

(b) AUTHORIZED TRAVEL.—An alien who is granted blue card status is authorized to travel outside the United States (including commuting to the United States from a residence in a foreign country) in the same manner as an alien lawfully admitted for permanent residence.

(c) AUTHORIZED EMPLOYMENT.—The Secretary shall provide an alien who is granted blue card status an employment authorized endorsement or other appropriate work permit, in the same manner as an alien lawfully admitted for permanent residence.

(d) TERMINATION OF BLUE CARD STATUS.—

(1) IN GENERAL.—The Secretary may terminate blue card status granted to an alien under this

1 section only if the Secretary determines that the
2 alien is deportable.
3 (2) GROUNDS FOR TERMINATION OF BLUE
4 CARD STATUS.—Before any alien becomes eligible
5 for adjustment of status under section 645, the Sec-
6 retary may deny adjustment to permanent resident
7 status and provide for termination of the blue card
8 status granted such alien under paragraph (1) if—
9 (A) the Secretary finds, by a preponder-
10 ance of the evidence, that the adjustment to
11 blue card status was the result of fraud or will-
12 ful misrepresentation (as described in section
13 212(a)(6)(C)(i) of the Immigration and Nation-
14 ality Act (8 U.S.C. 1182(a)(6)(C)(i)); or
15 (B) the alien—
16 (i) commits an act that makes the
17 alien inadmissible to the United States as
18 an immigrant, except as provided under
19 section 647(b);
20 (ii) is convicted of a felony or 3 or
21 more misdemeanors committed in the
22 United States;
23 (iii) is convicted of an offense, an ele-
24 ment of which involves bodily injury, threat

of serious bodily injury, or harm to property in excess of $500; or

(iv) fails to perform the agricultural employment required under section 645(a)(1)(A) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in section 645(a)(3).

(e) RECORD OF EMPLOYMENT.—

(1) IN GENERAL.—Each employer of an alien granted blue card status under this section shall annually—

(A) provide a written record of employment to the alien; and

(B) provide a copy of such record to the Secretary.

(2) SUNSET.—The obligation under paragraph (1) shall terminate on the date that is 6 years after the date of the enactment of this Act.

(f) REQUIRED FEATURES OF IDENTITY CARD.—The Secretary shall provide each alien granted blue card status, and the spouse and any child of each such alien residing in the United States, with a card that contains—

(1) an encrypted, machine-readable, electronic identification strip that is unique to the alien to whom the card is issued;

(2) biometric identifiers, including fingerprints and a digital photograph; and

(3) physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes.

(g) FINE.—An alien granted blue card status shall pay a fine of $100 to the Secretary.

(h) MAXIMUM NUMBER.—The Secretary may not issue more than 1,500,000 blue cards during the 5-year period beginning on the date of the enactment of this Act.

**SEC. 644. TREATMENT OF ALIENS GRANTED BLUE CARD STATUS.**

(a) IN GENERAL.—Except as otherwise provided under this section, an alien granted blue card status shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(b) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An alien granted blue card status shall not be eligible, by reason of such status, for any form of assistance or benefit described in section 403(a) of the

1 Personal Responsibility and Work Opportunity Reconcili-
2 ation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after
3 the date on which the alien is granted an adjustment of
4 status under section 645.

5 (c) TERMS OF EMPLOYMENT.—

6 (1) PROHIBITION.—No alien granted blue card
7 status may be terminated from employment by any
8 employer during the period of blue card status ex-
9 cept for just cause.

10 (2) TREATMENT OF COMPLAINTS.—

11 (A) ESTABLISHMENT OF PROCESS.—The
12 Secretary shall establish a process for the re-
13 ceipt, initial review, and disposition of com-
14 plaints by aliens granted blue card status who
15 allege that they have been terminated without
16 just cause. No proceeding shall be conducted
17 under this paragraph with respect to a termi-
18 nation unless the Secretary determines that the
19 complaint was filed not later than 6 months
20 after the date of the termination.

21 (B) INITIATION OF ARBITRATION.—If the
22 Secretary finds that an alien has filed a com-
23 plaint in accordance with subparagraph (A) and
24 there is reasonable cause to believe that the
25 alien was terminated from employment without

just cause, the Secretary shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint a mutually agreeable arbitrator from the roster of arbitrators maintained by such Service for the geographical area in which the employer is located. The procedures and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Secretary shall pay the fee and expenses of the arbitrator, subject to the availability of appropriations for such purpose.

(C) ARBITRATION PROCEEDINGS.—The arbitrator shall conduct the proceeding under this paragraph in accordance with the policies and procedures promulgated by the American Arbitration Association applicable to private arbitration of employment disputes. The arbitrator shall make findings respecting whether the termination was for just cause. The arbitrator may not find that the termination was for just cause unless the employer so demonstrates by a preponderance of the evidence. If the arbitrator finds that the termination was not for just cause, the arbitrator shall make a specific find-

ing of the number of days or hours of work lost by the employee as a result of the termination. The arbitrator shall have no authority to order any other remedy, including reinstatement, back pay, or front pay to the affected employee. Not later than 30 days after the date of the conclusion of the arbitration proceeding, the arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Secretary. Such findings shall be final and conclusive, and no official or court of the United States shall have the power or jurisdiction to review any such findings.

(D) EFFECT OF ARBITRATION FINDINGS.—If the Secretary receives a finding of an arbitrator that an employer has terminated the employment of an alien who is granted blue card status without just cause, the Secretary shall credit the alien for the number of days or hours of work not performed during such period of termination for the purpose of determining if the alien meets the qualifying employment requirement of section 645(a).

(E) TREATMENT OF ATTORNEY'S FEES.—Each party to an arbitration under this para-

graph shall bear the cost of their own attorney's fees for the arbitration.

(F) NONEXCLUSIVE REMEDY.—The complaint process provided for in this paragraph is in addition to any other rights an employee may have in accordance with applicable law.

(G) EFFECT ON OTHER ACTIONS OR PROCEEDINGS.—Any finding of fact or law, judgment, conclusion, or final order made by an arbitrator in the proceeding before the Secretary shall not be conclusive or binding in any separate or subsequent action or proceeding between the employee and the employee's current or prior employer brought before an arbitrator, administrative agency, court, or judge of any State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts, except that the arbitrator's specific finding of the number of days or hours of work lost by the employee as a result of the employment termination may be referred to the Secretary pursuant to subparagraph (D).

(3) CIVIL PENALTIES.—

(A) IN GENERAL.—If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted blue card status has failed to provide the record of employment required under section 643(e) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil money penalty in an amount not to exceed $1,000 per violation.

(B) LIMITATION.—The penalty applicable under subparagraph (A) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this section.

**SEC. 645. ADJUSTMENT TO PERMANENT RESIDENCE.**

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary shall adjust the status of an alien granted blue card status to that of an alien lawfully admitted for permanent residence if the Secretary determines that the following requirements are satisfied:

(1) QUALIFYING EMPLOYMENT.—

(A) IN GENERAL.—Subject to subparagraph (B), the alien has performed at least—

(i) 5 years of agricultural employment in the United States for at least 100 work

days per year, during the 5-year period beginning on the date of the enactment of this Act; or

(ii) 3 years of agricultural employment in the United States for at least 150 work days per year, during the 3-year period beginning on the date of the enactment of this Act.

(B) 4-YEAR PERIOD OF EMPLOYMENT.—An alien shall be considered to meet the requirements of subparagraph (A) if the alien has performed 4 years of agricultural employment in the United States for at least 150 work days during 3 years of those 4 years and at least 100 work days during the remaining year, during the 4-year period beginning on the date of the enactment of this Act.

(2) PROOF.—An alien may demonstrate compliance with the requirement under paragraph (1) by submitting—

(A) the record of employment described in section 643(e); or

(B) such documentation as may be submitted under section 646(c).

(3) EXTRAORDINARY CIRCUMSTANCES.—In determining whether an alien has met the requirement of paragraph (1)(A), the Secretary may credit the alien with not more than 12 additional months to meet the requirement of that subparagraph if the alien was unable to work in agricultural employment due to—

(A) pregnancy, injury, or disease, if the alien can establish such pregnancy, disabling injury, or disease through medical records;

(B) illness, disease, or other special needs of a minor child, if the alien can establish such illness, disease, or special needs through medical records; or

(C) severe weather conditions that prevented the alien from engaging in agricultural employment for a significant period of time.

(4) APPLICATION PERIOD.—The alien applies for adjustment of status not later than 7 years after the date of the enactment of this Act.

(5) FINE.—The alien pays a fine of $400 to the Secretary.

(b) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary may deny an alien granted blue card

status an adjustment of status under this section and provide for termination of such blue card status if—

(1) the Secretary finds by a preponderance of the evidence that the adjustment to blue card status was the result of fraud or willful misrepresentation, as described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(2) the alien—

(A) commits an act that makes the alien inadmissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as provided under section 647(b);

(B) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(C) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500.

(c) GROUNDS FOR REMOVAL.—Any alien granted blue card status who does not apply for adjustment of status under this section before the expiration of the application period described in subsection (a)(4) or who fails to

meet the other requirements of subsection (a) by the end of the application period, is deportable and may be removed under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(d) PAYMENT OF TAXES.—

(1) IN GENERAL.—Not later than the date on which an alien's status is adjusted under this section, the alien shall establish that the alien does not owe any applicable Federal tax liability by establishing that—

(A) no such tax liability exists;

(B) all such outstanding tax liabilities have been paid; or

(C) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(2) APPLICABLE FEDERAL TAX LIABILITY.—In paragraph (1) the term ''applicable Federal tax liability'' means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required under subsection (a)(1) for which the statutory period for assessment of any deficiency for such taxes has not expired.

(3) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under

which the Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all taxes required by this subsection.

(e) SPOUSES AND MINOR CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall confer the status of lawful permanent resident on the spouse and minor child of an alien granted any adjustment of status under subsection (a), including any individual who was a minor child on the date such alien was granted blue card status, if the spouse or minor child applies for such status, or if the principal alien includes the spouse or minor child in an application for adjustment of status to that of a lawful permanent resident.

(2) TREATMENT OF SPOUSES AND MINOR CHILDREN.—

(A) GRANTING OF STATUS AND REMOVAL.—The Secretary may grant derivative status to the alien spouse and any minor child residing in the United States of an alien granted blue card status and shall not remove such derivative spouse or child during the period that the alien granted blue card status maintains

such status, except as provided in paragraph (3). A grant of derivative status to such a spouse or child under this subparagraph shall not decrease the number of aliens who may receive blue card status under subsection (h) of section 643.

(B) TRAVEL.—The derivative spouse and any minor child of an alien granted blue card status may travel outside the United States in the same manner as an alien lawfully admitted for permanent residence.

(C) EMPLOYMENT.—The derivative spouse of an alien granted blue card status may apply to the Secretary for a work permit to authorize such spouse to engage in any lawful employment in the United States while such alien maintains blue card status.

(3) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS AND REMOVAL.—The Secretary may deny an alien spouse or child adjustment of status under paragraph (1) and may remove such spouse or child under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) if the spouse or child—

(A) commits an act that makes the alien spouse or child inadmissible to the United

States under section 212 of such Act (8 U.S.C. 1182), except as provided under section 647(b);

(B) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(C) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500.

**SEC. 646. APPLICATIONS.**

(a) SUBMISSION.—The Secretary shall provide that—

(1) applications for blue card status under section 643 may be submitted—

(A) to the Secretary if the applicant is represented by an attorney or a nonprofit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations; or

(B) to a qualified designated entity if the applicant consents to the forwarding of the application to the Secretary; and

(2) applications for adjustment of status under section 645 shall be filed directly with the Secretary.

(b) QUALIFIED DESIGNATED ENTITY DEFINED.—In this section, the term ''qualified designated entity'' means—

(1) a qualified farm labor organization or an association of employers designated by the Secretary; or

(2) any such other person designated by the Secretary if that Secretary determines such person is qualified and has substantial experience, demonstrated competence, and has a history of long-term involvement in the preparation and submission of applications for adjustment of status under section 209, 210, or 245 of the Immigration and Nationality Act (8 U.S.C. 1159, 1160, and 1255), the Act entitled ''An Act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes'', approved November 2, 1966 (Public Law 89–732; 8 U.S.C. 1255 note), Public Law 95–145 (8 U.S.C. 1255 note), or the Immigration Reform and Control Act of 1986 (Public Law 99–603; 100 Stat. 3359) or any amendment made by that Act.

(c) PROOF OF ELIGIBILITY.—

(1) IN GENERAL.—An alien may establish that the alien meets the requirement of section 643(a)(1)

or 645(a)(1) through government employment records or records supplied by employers or collective bargaining organizations, and other reliable documentation as the alien may provide. The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(2) DOCUMENTATION OF WORK HISTORY.—

(A) BURDEN OF PROOF.—An alien applying for status under section 643(a) or 645(a) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of hours or days required under section 643(a)(1) or 645(a)(1), as applicable.

(B) TIMELY PRODUCTION OF RECORDS.—If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under subparagraph (A) may be met by securing timely production of those records under regulations to be promulgated by the Secretary.

(C) SUFFICIENT EVIDENCE.—An alien may meet the burden of proof under subpara-

graph (A) to establish that the alien has performed the days or hours of work required by section 643(a)(1) or 645(a)(1) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

(d) APPLICATIONS SUBMITTED TO QUALIFIED DESIGNATED ENTITIES.—

(1) REQUIREMENTS.—Each qualified designated entity shall agree—

(A) to forward to the Secretary an application submitted to that entity pursuant to subsection (a)(1)(B) if the applicant has consented to such forwarding;

(B) not to forward to the Secretary any such application if the applicant has not consented to such forwarding; and

(C) to assist an alien in obtaining documentation of the alien's work history, if the alien requests such assistance.

(2) NO AUTHORITY TO MAKE DETERMINATIONS.—No qualified designated entity may make a determination required by this subtitle to be made by the Secretary.

(e) LIMITATION ON ACCESS TO INFORMATION.—Files and records collected or compiled by a qualified designated entity for the purposes of this section are confidential and the Secretary shall not have access to such a file or record relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to subsection (f).

(f) CONFIDENTIALITY OF INFORMATION.—

(1) IN GENERAL.—Except as otherwise provided in this section, the Secretary or any other official or employee of the Department or a bureau or agency of the Department is prohibited from—

(A) using information furnished by the applicant pursuant to an application filed under this subtitle, the information provided by an applicant to a qualified designated entity, or any information provided by an employer or former employer for any purpose other than to make a determination on the application or for imposing the penalties described in subsection (g);

(B) making any publication in which the information furnished by any particular individual can be identified; or

(C) permitting a person other than a sworn officer or employee of the Department or

a bureau or agency of the Department or, with respect to applications filed with a qualified designated entity, that qualified designated entity, to examine individual applications.

(2) REQUIRED DISCLOSURES.—The Secretary shall provide the information furnished under this subtitle or any other information derived from such furnished information to—

(A) a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, if such information is requested in writing by such entity; or

(B) an official coroner, for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

(3) CONSTRUCTION.—

(A) IN GENERAL.—Nothing in this subsection shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes, of information contained in files or records of the Department pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any

other information derived from the application, that is not available from any other source.

(B) CRIMINAL CONVICTIONS.—Notwithstanding any other provision of this subsection, information concerning whether the alien applying for blue card status under section 643 or an adjustment of status under section 645 has been convicted of a crime at any time may be used or released for immigration enforcement or law enforcement purposes.

(4) CRIME.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be subject to a fine in an amount not to exceed $10,000.

(g) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(1) CRIMINAL PENALTY.—Any person who—

(A) files an application for blue card status under section 643 or an adjustment of status under section 645 and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the

same to contain any false, fictitious, or fraudulent statement or entry; or

(B) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(h) ELIGIBILITY FOR LEGAL SERVICES.—Section 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for blue card status under section 643 or an adjustment of status under section 645.

(i) APPLICATION FEES.—

(1) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees that—

(A) shall be charged for the filing of an application for blue card status under section 643 or for an adjustment of status under section 645; and

(B) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(2) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under paragraph (1)(B) for services provided to applicants.

(3) DISPOSITION OF FEES.—

(A) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the ''Agricultural Worker Immigration Status Adjustment Account''. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under paragraph (1)(A).

(B) USE OF FEES FOR APPLICATION PROCESSING.—Amounts deposited in the ''Agricultural Worker Immigration Status Adjustment Account'' shall remain available to the Sec-

retary until expended for processing applications for blue card status under section 643 or an adjustment of status under section 645.

**SEC. 647. WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.**

(a) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151 and 1152) shall not apply to the adjustment of aliens to lawful permanent resident status under section 645.

(b) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien's eligibility for status under section 101(a) or an alien's eligibility for adjustment of status under section 645(b)(2)(A) the following rules shall apply:

(1) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7), and (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(2) WAIVER OF OTHER GROUNDS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may waive any other provision of such section 212(a) in the case of individual aliens for humanitarian pur-

poses, to ensure family unity, or if otherwise in the public interest.

(B) GROUNDS THAT MAY NOT BE WAIVED.—Paragraphs (2)(A), (2)(B), (2)(C), (3), and (4) of such section 212(a) may not be waived by the Secretary under subparagraph (A).

(C) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

(3) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for blue card status under section 643 or an adjustment of status under section 645 by reason of a ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(c) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—Effective on the date of enactment of this Act, the Secretary

shall provide that, in the case of an alien who is apprehended before the beginning of the application period described in section 643(a)(2) and who can establish a nonfrivolous case of eligibility for blue card status (but for the fact that the alien may not apply for such status until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for blue card status, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

(2) DURING APPLICATION PERIOD.—The Secretary shall provide that, in the case of an alien who presents a nonfrivolous application for blue card status during the application period described in section 643(a)(2), including an alien who files such an application within 30 days of the alien's apprehension, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

**SEC. 648. ADMINISTRATIVE AND JUDICIAL REVIEW.**

(a) IN GENERAL.—There shall be no administrative or judicial review of a determination respecting an application for blue card status under section 643 or adjustment of status under section 645 except in accordance with this section.

(b) ADMINISTRATIVE REVIEW.—

(1) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(2) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(c) JUDICIAL REVIEW.—

(1) LIMITATION TO REVIEW OF REMOVAL.—There shall be judicial review of such a determination only in the judicial review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(2) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

**SEC. 649. USE OF INFORMATION.**

Beginning not later than the first day of the application period described in section 643(a)(2), the Secretary, in cooperation with qualified designated entities (as that term is defined in section 646(b)), shall broadly disseminate information respecting the benefits that aliens may receive under this subtitle and the requirements that an alien is required to meet to receive such benefits.

**SEC. 650. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION OF APPROPRIATIONS.**

(a) REGULATIONS.—The Secretary shall issue regulations to implement this subtitle not later than the first day of the seventh month that begins after the date of enactment of this Act.

(b) EFFECTIVE DATE.—This subtitle shall take effect on the date that regulations required by subsection (a) are issued, regardless of whether such regulations are issued on an interim basis or on any other basis.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to implement this subtitle, including any sums needed for costs associated with the initiation of such implementation, for fiscal years 2007 and 2008.

## Subchapter B—Correction of Social Security Records

**SEC. 651. CORRECTION OF SOCIAL SECURITY RECORDS.**

(a) IN GENERAL.—Section 208(e)(1) of the Social Security Act (42 U.S.C. 408(e)(1)) is amended—

(1) in subparagraph (B)(ii), by striking ''or'' at the end;

(2) in subparagraph (C), by inserting ''or'' at the end;

(3) by inserting after subparagraph (C) the following:

"(D) who is granted blue card status under the Agricultural Job Opportunity, Benefits, and Security Act of 2007,"; and

(4) by striking "1990." and inserting "1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted blue card status.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of the enactment of this Act.

## CHAPTER 2—REFORM OF H–2A WORKER PROGRAM

### SEC. 652. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended by striking section 218 and inserting the following:

### "SEC. 218. H–2A EMPLOYER APPLICATIONS.

"(a) APPLICATIONS TO THE SECRETARY OF LABOR.—

"(1) IN GENERAL.—No alien may be admitted to the United States as an H–2A worker, or otherwise provided status as an H–2A worker, unless the employer has filed with the Secretary of Labor an application containing—

"(A) the assurances described in subsection (b);

"(B) a description of the nature and location of the work to be performed;

"(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and

"(D) the number of job opportunities in which the employer seeks to employ the workers.

"(2) ACCOMPANIED BY JOB OFFER.—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question.

"(b) ASSURANCES FOR INCLUSION IN APPLICATIONS.—The assurances referred to in subsection (a)(1) are the following:

"(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is covered under a collective bargaining agreement:

"(A) UNION CONTRACT DESCRIBED.—The job opportunity is covered by a union contract which was negotiated at arm's length between a bona fide union and the employer.

"(B) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

"(C) NOTIFICATION OF BARGAINING REPRESENTATIVES.—The employer, at the time of filing the application, has provided notice of the filing under this paragraph to the bargaining representative of the employer's employees in the occupational classification at the place or places of employment for which aliens are sought.

"(D) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

"(E) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or the nonimmigrants are, sought and who will be available at the time and place of need.

"(F) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

"(2) JOB OPPORTUNITIES NOT COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is not covered under a collective bargaining agreement:

"(A) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer has applied for an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

"(B) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

"(C) BENEFIT, WAGE, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by section 218A to all workers employed in the job opportunities for which the employer has applied for an H–2A worker under subsection (a) and to all other workers in the same occupation at the place of employment.

"(D) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment and for a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer has applied for an H–2A worker.

"(E) REQUIREMENTS FOR PLACEMENT OF THE NONIMMIGRANT WITH OTHER EMPLOYERS.—The employer will not place the nonimmigrant with another employer unless—

"(i) the nonimmigrant performs duties in whole or in part at 1 or more worksites owned, operated, or controlled by such other employer;

"(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer; and

"(iii) the employer has inquired of the other employer as to whether, and has no actual knowledge or notice that, during the period of employment and for a period of 30 days preceding the period of employment, the other employer has displaced or intends to displace a United States worker employed by the other employer in the occupation at the place of employment for which the employer seeks approval to employ H–2A workers.

"(F) STATEMENT OF LIABILITY.—The application form shall include a clear statement explaining the liability under subparagraph (E) of an employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph.

"(G) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

"(H) EMPLOYMENT OF UNITED STATES WORKERS.—

"(i) RECRUITMENT.—The employer has taken or will take the following steps to recruit United States workers for the job opportunities for which the H–2A nonimmigrant is, or H–2A nonimmigrants are, sought:

"(I) CONTACTING FORMER WORKERS.—The employer shall make reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact any United States worker the employer employed during the previous season in the occupation at the place

of intended employment for which the employer is applying for workers and has made the availability of the employer's job opportunities in the occupation at the place of intended employment known to such previous workers, unless the worker was terminated from employment by the employer for a lawful job-related reason or abandoned the job before the worker completed the period of employment of the job opportunity for which the worker was hired.

"(II) FILING A JOB OFFER WITH THE LOCAL OFFICE OF THE STATE EMPLOYMENT SECURITY AGENCY.—Not later than 28 days before the date on which the employer desires to employ an H–2A worker in a temporary or seasonal agricultural job opportunity, the employer shall submit a copy of the job offer described in subsection (a)(2) to the local office of the State employment security agency which serves the area of intended em-

ployment and authorize the posting of the job opportunity on 'America's Job Bank' or other electronic job registry, except that nothing in this subclause shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations.

"(III) ADVERTISING OF JOB OPPORTUNITIES.—Not later than 14 days before the date on which the employer desires to employ an H–2A worker in a temporary or seasonal agricultural job opportunity, the employer shall advertise the availability of the job opportunities for which the employer is seeking workers in a publication in the local labor market that is likely to be patronized by potential farm workers.

"(IV) EMERGENCY PROCEDURES.—The Secretary of Labor shall, by regulation, provide a procedure for acceptance and approval of applications in which the employer

has not complied with the provisions of this subparagraph because the employer's need for H–2A workers could not reasonably have been foreseen.

"(ii) JOB OFFERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or nonimmigrants are, sought and who will be available at the time and place of need.

"(iii) PERIOD OF EMPLOYMENT.—The employer will provide employment to any qualified United States worker who applies to the employer during the period beginning on the date on which the H–2A worker departs for the employer's place of employment and ending on the date on which 50 percent of the period of employment for which the H–2A worker who is in the job was hired has elapsed, subject to the following requirements:

"(I) PROHIBITION.—No person or entity shall willfully and knowingly withhold United States workers before

the arrival of H–2A workers in order to force the hiring of United States workers under this clause.

"(II) COMPLAINTS.—Upon receipt of a complaint by an employer that a violation of subclause (I) has occurred, the Secretary of Labor shall immediately investigate. The Secretary of Labor shall, within 36 hours of the receipt of the complaint, issue findings concerning the alleged violation. If the Secretary of Labor finds that a violation has occurred, the Secretary of Labor shall immediately suspend the application of this clause with respect to that certification for that date of need.

"(III) PLACEMENT OF UNITED STATES WORKERS.—Before referring a United States worker to an employer during the period described in the matter preceding subclause (I), the Secretary of Labor shall make all reasonable efforts to place the United States worker in an open job accept-

able to the worker, if there are other job offers pending with the job service that offer similar job opportunities in the area of intended employment.

"(iv) STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall be construed to prohibit an employer from using such legitimate selection criteria relevant to the type of job that are normal or customary to the type of job involved so long as such criteria are not applied in a discriminatory manner.

"(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS.—

"(1) IN GENERAL.—An agricultural association may file an application under subsection (a) on behalf of 1 or more of its employer members that the association certifies in its application has or have agreed in writing to comply with the requirements of this section and sections 218A, 218B, and 218C.

"(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association filing an application under paragraph (1) is a joint or sole employer of the temporary or seasonal agricultural workers requested on the application, the certifications granted

1 under subsection (e)(2)(B) to the association may be
2 used for the certified job opportunities of any of its
3 producer members named on the application, and
4 such workers may be transferred among such pro-
5 ducer members to perform the agricultural services
6 of a temporary or seasonal nature for which the cer-
7 tifications were granted.
8 ''(d) WITHDRAWAL OF APPLICATIONS.—
9 ''(1) IN GENERAL.—An employer may withdraw
10 an application filed pursuant to subsection (a), ex-
11 cept that if the employer is an agricultural associa-
12 tion, the association may withdraw an application
13 filed pursuant to subsection (a) with respect to 1 or
14 more of its members. To withdraw an application,
15 the employer or association shall notify the Sec-
16 retary of Labor in writing, and the Secretary of
17 Labor shall acknowledge in writing the receipt of
18 such withdrawal notice. An employer who withdraws
19 an application under subsection (a), or on whose be-
20 half an application is withdrawn, is relieved of the
21 obligations undertaken in the application.
22 ''(2) LIMITATION.—An application may not be
23 withdrawn while any alien provided status under sec-
24 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
25 tion is employed by the employer.

"(3) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred by an employer under any other law or regulation as a result of the recruitment of United States workers or H–2A workers under an offer of terms and conditions of employment required as a result of making an application under subsection (a) is unaffected by withdrawal of such application.

"(e) REVIEW AND APPROVAL OF APPLICATIONS.—

"(1) RESPONSIBILITY OF EMPLOYERS.—The employer shall make available for public examination, within 1 working day after the date on which an application under subsection (a) is filed, at the employer's principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary).

"(2) RESPONSIBILITY OF THE SECRETARY OF LABOR.—

"(A) COMPILATION OF LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under subsection (a). Such list shall include the wage rate, number of workers sought, period of intended employment, and date of need. The Sec-

retary of Labor shall make such list available for examination in the District of Columbia.

"(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall certify that the intending employer has filed with the Secretary of Labor an application as described in subsection (a). Such certification shall be provided within 7 days of the filing of the application."

**"SEC. 218A. H–2A EMPLOYMENT REQUIREMENTS.**

"(a) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States workers shall offer the United States workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H–2A workers.

"(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—Except in cases where higher benefits,

wages, or working conditions are required by the provisions of subsection (a), in order to protect similarly employed United States workers from adverse effects with respect to benefits, wages, and working conditions, every job offer which shall accompany an application under section 218(b)(2) shall include each of the following benefit, wage, and working condition provisions:

"(1) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.—

"(A) IN GENERAL.—An employer applying under section 218(a) for H–2A workers shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

"(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer's election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation, or in the

absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

"(C) FAMILY HOUSING.—If it is the prevailing practice in the occupation and area of intended employment to provide family housing, family housing shall be provided to workers with families who request it.

"(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

"(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

"(F) CHARGES FOR HOUSING.—

"(i) CHARGES FOR PUBLIC HOUSING.—If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers, such charges shall be paid by the employer directly to the appropriate individual or entity affiliated with the housing's management.

"(ii) DEPOSIT CHARGES.—Charges in the form of deposits for bedding or other similar incidentals related to housing shall not be levied upon workers by employers who provide housing for their workers. An employer may require a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitation to reimburse the employer for the reasonable cost of repair of such damage.

"(G) HOUSING ALLOWANCE AS ALTERNATIVE.—

"(i) IN GENERAL.—If the requirement set out in clause (ii) is satisfied, the employer may provide a reasonable housing allowance instead of offering housing under subparagraph (A). Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance. No housing allowance may be used for housing which is owned or controlled by the employer.

"(ii) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing

available in the area of intended employment for migrant farm workers and H–2A workers who are seeking temporary housing while employed in agricultural work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

"(iii) AMOUNT OF ALLOWANCE.—

"(I) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

"(II) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this paragraph is in a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

"(2) REIMBURSEMENT OF TRANSPORTATION.—

"(A) TO PLACE OF EMPLOYMENT.—A worker who completes 50 percent of the period of employment of the job opportunity for which the worker was hired shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place from which the worker came to work for the employer (or place of last employment, if the

worker traveled from such place) to the place of employment.

"(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker's transportation and subsistence to such subsequent employer's place of employment.

"(C) LIMITATION.—

"(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed the lesser of—

"(I) the actual cost to the worker or alien of the transportation and subsistence involved; or

"(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

"(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

"(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (4)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

"(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORKSITE.—The employer shall provide transportation between the work-

1 er's living quarters and the employer's worksite
2 without cost to the worker, and such transpor-
3 tation will be in accordance with applicable laws
4 and regulations.
5 "(3) REQUIRED WAGES.—
6 "(A) IN GENERAL.—An employer applying
7 for workers under section 218(a) shall offer to
8 pay, and shall pay, all workers in the occupa-
9 tion for which the employer has applied for
10 workers, not less (and is not required to pay
11 more) than the greater of the prevailing wage
12 in the occupation in the area of intended em-
13 ployment or the adverse effect wage rate. No
14 worker shall be paid less than the greater of the
15 hourly wage prescribed under section 6(a)(1) of
16 the Fair Labor Standards Act of 1938 (29
17 U.S.C. 206(a)(1)) or the applicable State min-
18 imum wage.
19 "(B) LIMITATION.—Effective on the date
20 of the enactment of the Agricultural Job Op-
21 portunities, Benefits, and Security Act of 2007
22 and continuing for 3 years thereafter, no ad-
23 verse effect wage rate for a State may be more
24 than the adverse effect wage rate for that State
25 in effect on January 1, 2003, as established by

section 655.107 of title 20, Code of Federal Regulations.

"(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

"(i) FIRST ADJUSTMENT.—If Congress does not set a new wage standard applicable to this section before the first March 1 that is not less than 3 years after the date of enactment of this section, the adverse effect wage rate for each State beginning on such March 1 shall be the wage rate that would have resulted if the adverse effect wage rate in effect on January 1, 2003, had been annually adjusted, beginning on March 1, 2006, by the lesser of—

"(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

"(II) 4 percent.

"(ii) SUBSEQUENT ANNUAL ADJUSTMENTS.—Beginning on the first March 1

that is not less than 4 years after the date of enactment of this section, and each March 1 thereafter, the adverse effect wage rate then in effect for each State shall be adjusted by the lesser of—

"(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

"(II) 4 percent.

"(D) DEDUCTIONS.—The employer shall make only those deductions from the worker's wages that are authorized by law or are reasonable and customary in the occupation and area of employment. The job offer shall specify all deductions not required by law which the employer will make from the worker's wages.

"(E) FREQUENCY OF PAY.—The employer shall pay the worker not less frequently than twice monthly, or in accordance with the prevailing practice in the area of employment, whichever is more frequent.

"(F) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to the worker, on or before each payday, in 1 or more written statements—

"(i) the worker's total earnings for the pay period;

"(ii) the worker's hourly rate of pay, piece rate of pay, or both;

"(iii) the hours of employment which have been offered to the worker (broken out by hours offered in accordance with and over and above the ¾ guarantee described in paragraph (4);

"(iv) the hours actually worked by the worker;

"(v) an itemization of the deductions made from the worker's wages; and

"(vi) if piece rates of pay are used, the units produced daily.

"(G) REPORT ON WAGE PROTECTIONS.—Not later than December 31, 2009, the Comptroller General of the United States shall prepare and transmit to the Secretary of Labor, the Committee on the Judiciary of the Senate,

and Committee on the Judiciary of the House of Representatives, a report that addresses—

"(i) whether the employment of H–2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

"(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

"(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage level that would have prevailed in the absence of H–2A employment;

"(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage; and

"(v) recommendations for future wage protection under this section.

"(H) COMMISSION ON WAGE STANDARDS.—

"(i) ESTABLISHMENT.—There is established the Commission on Agricultural Wage Standards under the H–2A program (in this subparagraph referred to as the 'Commission').

"(ii) COMPOSITION.—The Commission shall consist of 10 members as follows:

"(I) Four representatives of agricultural employers and 1 representative of the Department of Agriculture, each appointed by the Secretary of Agriculture.

"(II) Four representatives of agricultural workers and 1 representative of the Department of Labor, each appointed by the Secretary of Labor.

1 "(iii) FUNCTIONS.—The Commission
2 shall conduct a study that shall address—
3 "(I) whether the employment of
4 H–2A or unauthorized aliens in the
5 United States agricultural workforce
6 has depressed United States farm
7 worker wages below the levels that
8 would otherwise have prevailed if alien
9 farm workers had not been employed
10 in the United States;
11 "(II) whether an adverse effect
12 wage rate is necessary to prevent
13 wages of United States farm workers
14 in occupations in which H–2A work-
15 ers are employed from falling below
16 the wage levels that would have pre-
17 vailed in the absence of the employ-
18 ment of H–2A workers in those occu-
19 pations;
20 "(III) whether alternative wage
21 standards, such as a prevailing wage
22 standard, would be sufficient to pre-
23 vent wages in occupations in which
24 H–2A workers are employed from fall-
25 ing below the wage level that would

have prevailed in the absence of H–2A employment;

"(IV) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

"(V) recommendations for future wage protection under this section.

"(iv) FINAL REPORT.—Not later than December 31, 2009, the Commission shall submit a report to the Congress setting forth the findings of the study conducted under clause (iii).

"(v) TERMINATION DATE.—The Commission shall terminate upon submitting its final report.

"(4) GUARANTEE OF EMPLOYMENT.—

"(A) OFFER TO WORKER.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least ¾ of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in

the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker's Sabbath and Federal holidays. If the employer affords the United States or H–2A worker less employment than that required under this paragraph, the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

"(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

"(C) ABANDONMENT OF EMPLOYMENT, TERMINATION FOR CAUSE.—If the worker vol-

untarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the '¾ guarantee' described in subparagraph (A).

"(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster, including a flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought, before the guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will make efforts to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall

provide the return transportation required in paragraph (2)(D).

"(5) MOTOR VEHICLE SAFETY.—

"(A) MODE OF TRANSPORTATION SUBJECT TO COVERAGE.—

"(i) IN GENERAL.—Except as provided in clauses (iii) and (iv), this subsection applies to any H–2A employer that uses or causes to be used any vehicle to transport an H–2A worker within the United States.

"(ii) DEFINED TERM.—In this paragraph, the term 'uses or causes to be used'—

"(I) applies only to transportation provided by an H–2A employer to an H–2A worker, or by a farm labor contractor to an H–2A worker at the request or direction of an H–2A employer; and

"(II) does not apply to—

"(aa) transportation provided, or transportation arrangements made, by an H–2A worker, unless the employer specifi-

cally requested or arranged such transportation; or

"(bb) car pooling arrangements made by H–2A workers themselves, using 1 of the workers' own vehicles, unless specifically requested by the employer directly or through a farm labor contractor.

"(iii) CLARIFICATION.—Providing a job offer to an H–2A worker that causes the worker to travel to or from the place of employment, or the payment or reimbursement of the transportation costs of an H–2A worker by an H–2A employer, shall not constitute an arrangement of, or participation in, such transportation.

"(iv) AGRICULTURAL MACHINERY AND EQUIPMENT EXCLUDED.—This subsection does not apply to the transportation of an H–2A worker on a tractor, combine, harvester, picker, or other similar machinery or equipment while such worker is actually engaged in the planting, cultivating, or harvesting of agricultural commodities or

the care of livestock or poultry or engaged in transportation incidental thereto.

"(v) COMMON CARRIERS EXCLUDED.—This subsection does not apply to common carrier motor vehicle transportation in which the provider holds itself out to the general public as engaging in the transportation of passengers for hire and holds a valid certification of authorization for such purposes from an appropriate Federal, State, or local agency.

"(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE REQUIREMENTS.—

"(i) IN GENERAL.—When using, or causing to be used, any vehicle for the purpose of providing transportation to which this subparagraph applies, each employer shall—

"(I) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b))

and other applicable Federal and State safety standards;

"(II) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle; and

"(III) have an insurance policy or a liability bond that is in effect which insures the employer against liability for damage to persons or property arising from the ownership, operation, or causing to be operated, of any vehicle used to transport any H–2A worker.

"(ii) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of Labor pursuant to regulations to be issued under this subsection.

"(iii) EFFECT OF WORKERS' COMPENSATION COVERAGE.—If the employer of any H–2A worker provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by State law, the following adjust-

ments in the requirements of subparagraph (B)(i)(III) relating to having an insurance policy or liability bond apply:

"(I) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

"(II) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

"(c) COMPLIANCE WITH LABOR LAWS.—An employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, except that a violation of this assurance shall not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

"(d) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer's application and job offer described in section 218(a), or, if the employer will require the worker to enter into a separate employment contract covering the employment in question, such separate employment contract.

"(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing in this section, section 218, or section 218B shall preclude the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

**"SEC. 218B. PROCEDURE FOR ADMISSION AND EXTENSION OF STAY OF H–2A WORKERS.**

"(a) PETITIONING FOR ADMISSION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H–2A worker may file a petition with the Secretary. The petition shall be accompanied by an accepted and currently valid certification provided by the Secretary of Labor under section 218(e)(2)(B) covering the petitioner.

"(b) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary shall establish a procedure for

1 expedited adjudication of petitions filed under subsection
2 (a) and within 7 working days shall, by fax, cable, or other
3 means assuring expedited delivery, transmit a copy of no-
4 tice of action on the petition to the petitioner and, in the
5 case of approved petitions, to the appropriate immigration
6 officer at the port of entry or United States consulate (as
7 the case may be) where the petitioner has indicated that
8 the alien beneficiary (or beneficiaries) will apply for a visa
9 or admission to the United States.

10 ''(c) CRITERIA FOR ADMISSIBILITY.—

11 ''(1) IN GENERAL.—An H–2A worker shall be
12 considered admissible to the United States if the
13 alien is otherwise admissible under this section, sec-
14 tion 218, and section 218A, and the alien is not in-
15 eligible under paragraph (2).

16 ''(2) DISQUALIFICATION.—An alien shall be
17 considered inadmissible to the United States and in-
18 eligible for nonimmigrant status under section
19 101(a)(15)(H)(ii)(a) if the alien has, at any time
20 during the past 5 years—

21 ''(A) violated a material provision of this
22 section, including the requirement to promptly
23 depart the United States when the alien's au-
24 thorized period of admission under this section
25 has expired; or

"(B) otherwise violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

"(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—

"(A) IN GENERAL.—An alien who has not previously been admitted into the United States pursuant to this section, and who is otherwise eligible for admission in accordance with paragraphs (1) and (2), shall not be deemed inadmissible by virtue of section 212(a)(9)(B). If an alien described in the preceding sentence is present in the United States, the alien may apply from abroad for H–2A status, but may not be granted that status in the United States.

"(B) MAINTENANCE OF WAIVER.—An alien provided an initial waiver of ineligibility pursuant to subparagraph (A) shall remain eligible for such waiver unless the alien violates the terms of this section or again becomes ineligible under section 212(a)(9)(B) by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

"(d) PERIOD OF ADMISSION.—

"(1) IN GENERAL.—The alien shall be admitted for the period of employment in the application certified by the Secretary of Labor pursuant to section 218(e)(2)(B), not to exceed 10 months, supplemented by a period of not more than 1 week before the beginning of the period of employment for the purpose of travel to the worksite and a period of 14 days following the period of employment for the purpose of departure or extension based on a subsequent offer of employment, except that—

"(A) the alien is not authorized to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

"(B) the total period of employment, including such 14-day period, may not exceed 10 months.

"(2) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Secretary to extend the stay of the alien under any other provision of this Act.

"(e) ABANDONMENT OF EMPLOYMENT.—

"(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who

abandons the employment which was the basis for such admission or status shall be considered to have failed to maintain nonimmigrant status as an H–2A worker and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

"(2) REPORT BY EMPLOYER.—The employer, or association acting as agent for the employer, shall notify the Secretary not later than 7 days after an H–2A worker prematurely abandons employment.

"(3) REMOVAL BY THE SECRETARY.—The Secretary shall promptly remove from the United States any H–2A worker who violates any term or condition of the worker's nonimmigrant status.

"(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

"(f) REPLACEMENT OF ALIEN.—

"(1) IN GENERAL.—Upon presentation of the notice to the Secretary required by subsection (e)(2), the Secretary of State shall promptly issue a visa to, and the Secretary shall admit into the United States, an eligible alien designated by the employer to replace an H–2A worker—

"(A) who abandons or prematurely terminates employment; or

"(B) whose employment is terminated after a United States worker is employed pursuant to section 218(b)(2)(H)(iii), if the United States worker voluntarily departs before the end of the period of intended employment or if the employment termination is for a lawful job-related reason.

"(2) CONSTRUCTION.—Nothing in this subsection is intended to limit any preference required to be accorded United States workers under any other provision of this Act.

"(g) IDENTIFICATION DOCUMENT.—

"(1) IN GENERAL.—Each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) shall be provided an identification and employment eligibility document to verify eligibility for employment in the United States and verify the alien's identity.

"(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

"(A) The document shall be capable of reliably determining whether—

"(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

"(ii) the individual whose eligibility is being verified is claiming the identity of another person; and

"(iii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H–2A worker.

"(B) The document shall be in a form that is resistant to counterfeiting and to tampering.

"(C) The document shall—

"(i) be compatible with other databases of the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

"(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

"(h) EXTENSION OF STAY OF H–2A ALIENS IN THE UNITED STATES.—

"(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H–2A alien who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (a), shall request an extension of the alien's stay and a change in the alien's employment.

"(2) LIMITATION ON FILING A PETITION FOR EXTENSION OF STAY.—A petition may not be filed for an extension of an alien's stay—

"(A) for a period of more than 10 months; or

"(B) to a date that is more than 3 years after the date of the alien's last admission to the United States under this section.

"(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF STAY.—

"(A) IN GENERAL.—An alien who is lawfully present in the United States may commence the employment described in a petition under paragraph (1) on the date on which the petition is filed.

"(B) DEFINITION.—For purposes of subparagraph (A), the term 'file' means sending the petition by certified mail via the United States Postal Service, return receipt requested,

or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition.

"(C) HANDLING OF PETITION.—The employer shall provide a copy of the employer's petition to the alien, who shall keep the petition with the alien's identification and employment eligibility document as evidence that the petition has been filed and that the alien is authorized to work in the United States.

"(D) APPROVAL OF PETITION.—Upon approval of a petition for an extension of stay or change in the alien's authorized employment, the Secretary shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

"(4) LIMITATION ON EMPLOYMENT AUTHORIZATION OF ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An expired identification and employment eligibility document, together with a copy of a petition for extension of stay or change in the alien's authorized em-

ployment that complies with the requirements of paragraph (1), shall constitute a valid work authorization document for a period of not more than 60 days beginning on the date on which such petition is filed, after which time only a currently valid identification and employment eligibility document shall be acceptable.

"(5) LIMITATION ON AN INDIVIDUAL'S STAY IN STATUS.—

"(A) MAXIMUM PERIOD.—The maximum continuous period of authorized status as an H–2A worker (including any extensions) is 3 years.

"(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—

"(i) IN GENERAL.—Subject to clause (ii), in the case of an alien outside the United States whose period of authorized status as an H–2A worker (including any extensions) has expired, the alien may not again apply for admission to the United States as an H–2A worker unless the alien has remained outside the United States for a continuous period equal to at least 1/5 the duration of the alien's previous period

of authorized status as an H–2A worker (including any extensions).

"(ii) EXCEPTION.—Clause (i) shall not apply in the case of an alien if the alien's period of authorized status as an H–2A worker (including any extensions) was for a period of not more than 10 months and such alien has been outside the United States for at least 2 months during the 12 months preceding the date the alien again is applying for admission to the United States as an H–2A worker.

"(i) SPECIAL RULES FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORKERS.—Notwithstanding any provision of the Agricultural Job Opportunities, Benefits, and Security Act of 2007, an alien admitted under section 101(a)(15)(H)(ii)(a) for employment as a sheepherder, goat herder, or dairy worker—

"(1) may be admitted for an initial period of 12 months;

"(2) subject to subsection (j)(5), may have such initial period of admission extended for a period of up to 3 years; and

"(3) shall not be subject to the requirements of subsection (h)(5) (relating to periods of absence from the United States).

"(j) ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

"(1) ELIGIBLE ALIEN.—For purposes of this subsection, the term 'eligible alien' means an alien—

"(A) having nonimmigrant status under section 101(a)(15)(H)(ii)(a) based on employment as a sheepherder, goat herder, or dairy worker;

"(B) who has maintained such nonimmigrant status in the United States for a cumulative total of 36 months (excluding any period of absence from the United States); and

"(C) who is seeking to receive an immigrant visa under section 203(b)(3)(A)(iii).

"(2) CLASSIFICATION PETITION.—In the case of an eligible alien, the petition under section 204 for classification under section 203(b)(3)(A)(iii) may be filed by—

"(A) the alien's employer on behalf of the eligible alien; or

"(B) the eligible alien.

"(3) NO LABOR CERTIFICATION REQUIRED.—Notwithstanding section 203(b)(3)(C), no determination under section 212(a)(5)(A) is required with respect to an immigrant visa described in paragraph (1)(C) for an eligible alien.

"(4) EFFECT OF PETITION.—The filing of a petition described in paragraph (2) or an application for adjustment of status based on the approval of such a petition shall not constitute evidence of an alien's ineligibility for nonimmigrant status under section 101(a)(15)(H)(ii)(a).

"(5) EXTENSION OF STAY.—The Secretary shall extend the stay of an eligible alien having a pending or approved classification petition described in paragraph (2) in 1-year increments until a final determination is made on the alien's eligibility for adjustment of status to that of an alien lawfully admitted for permanent residence.

"(6) CONSTRUCTION.—Nothing in this subsection shall be construed to prevent an eligible alien from seeking adjustment of status in accordance with any other provision of law.

**"SEC. 218C. WORKER PROTECTIONS AND LABOR STANDARDS ENFORCEMENT.**

"(a) ENFORCEMENT AUTHORITY.—

"(1) INVESTIGATION OF COMPLAINTS.—

"(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINTS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in section 218(b), or an employer's misrepresentation of material facts in an application under section 218(a). Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure, or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

"(B) DETERMINATION ON COMPLAINT.—Under such process, the Secretary of Labor shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to

make a finding described in subparagraph (C), (D), (E), or (G). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

"(C) FAILURES TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(A), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218(b), a substantial failure to meet a condition of paragraph (1)(C), (1)(E), (2)(C), (2)(D), (2)(E), or (2)(H) of section 218(b), or a mate-

rial misrepresentation of fact in an application under section 218(a)—

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

"(ii) the Secretary may disqualify the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(a) for a period of 1 year.

"(D) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b), a willful misrepresentation of a material fact in an application under section 218(a), or a violation of subsection (d)(1)—

"(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000

per violation) as the Secretary of Labor determines to be appropriate;

"(ii) the Secretary of Labor may seek appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and

"(iii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 2 years.

"(E) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b) or a willful misrepresentation of a material fact in an application under section 218(a), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer's application under section 218(a) or during the period of 30 days preceding such period of employment—

"(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money pen-

alties in an amount not to exceed $15,000 per violation) as the Secretary of Labor determines to be appropriate; and

"(ii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 3 years.

"(F) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose total civil money penalties with respect to an application under section 218(a) in excess of $90,000.

"(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment, required under section 218A(b), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H–2A worker employed by the employer in the specific employment in question. The back wages or other required benefits under section 218A(b) shall be equal to the difference between the

amount that should have been paid and the amount that actually was paid to such worker.

"(2) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority of the Secretary of Labor to conduct any compliance investigation under any other labor law, including any law affecting migrant and seasonal agricultural workers, or, in the absence of a complaint under this section, under section 218 or 218A.

"(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF ACTION.—H–2A workers may enforce the following rights through the private right of action provided in subsection (c), and no other right of action shall exist under Federal or State law to enforce such rights:

"(1) The providing of housing or a housing allowance as required under section 218A(b)(1).

"(2) The reimbursement of transportation as required under section 218A(b)(2).

"(3) The payment of wages required under section 218A(b)(3) when due.

"(4) The benefits and material terms and conditions of employment expressly provided in the job offer described in section 218(a)(2), not including the assurance to comply with other Federal, State, and local labor laws described in section 218A(c),

compliance with which shall be governed by the provisions of such laws.

"(5) The guarantee of employment required under section 218A(b)(4).

"(6) The motor vehicle safety requirements under section 218A(b)(5).

"(7) The prohibition of discrimination under subsection (d)(2).

"(c) PRIVATE RIGHT OF ACTION.—

"(1) MEDIATION.—Upon the filing of a complaint by an H–2A worker aggrieved by a violation of rights enforceable under subsection (b), and within 60 days of the filing of proof of service of the complaint, a party to the action may file a request with the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute. Upon a filing of such request and giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (B).

"(A) MEDIATION SERVICES.—The Federal Mediation and Conciliation Service shall be available to assist in resolving disputes arising under subsection (b) between H–2A workers

and agricultural employers without charge to the parties.

"(B) 90-DAY LIMIT.—The Federal Mediation and Conciliation Service may conduct mediation or other nonbinding dispute resolution activities for a period not to exceed 90 days beginning on the date on which the Federal Mediation and Conciliation Service receives the request for assistance unless the parties agree to an extension of this period of time.

"(C) AUTHORIZATION.—

"(i) IN GENERAL.—Subject to clause (ii), there are authorized to be appropriated to the Federal Mediation and Conciliation Service $500,000 for each fiscal year to carry out this section.

"(ii) MEDIATION.—Notwithstanding any other provision of law, the Director of the Federal Mediation and Conciliation Service is authorized to conduct the mediation or other dispute resolution activities from any other appropriated funds available to the Director and to reimburse such appropriated funds when the funds are appropriated pursuant to this authorization,

such reimbursement to be credited to appropriations currently available at the time of receipt.

"(2) MAINTENANCE OF CIVIL ACTION IN DISTRICT COURT BY AGGRIEVED PERSON.—An H–2A worker aggrieved by a violation of rights enforceable under subsection (b) by an agricultural employer or other person may file suit in any district court of the United States having jurisdiction over the parties, without regard to the amount in controversy, without regard to the citizenship of the parties, and without regard to the exhaustion of any alternative administrative remedies under this Act, not later than 3 years after the date the violation occurs.

"(3) ELECTION.—An H–2A worker who has filed an administrative complaint with the Secretary of Labor may not maintain a civil action under paragraph (2) unless a complaint based on the same violation filed with the Secretary of Labor under subsection (a)(1) is withdrawn before the filing of such action, in which case the rights and remedies available under this subsection shall be exclusive.

"(4) PREEMPTION OF STATE CONTRACT RIGHTS.—Nothing in this Act shall be construed to diminish the rights and remedies of an H–2A worker

under any other Federal or State law or regulation or under any collective bargaining agreement, except that no court or administrative action shall be available under any State contract law to enforce the rights created by this Act.

"(5) WAIVER OF RIGHTS PROHIBITED.—Agreements by employees purporting to waive or modify their rights under this Act shall be void as contrary to public policy, except that a waiver or modification of the rights or obligations in favor of the Secretary of Labor shall be valid for purposes of the enforcement of this Act. The preceding sentence may not be construed to prohibit agreements to settle private disputes or litigation.

"(6) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF.—

"(A) If the court finds that the respondent has intentionally violated any of the rights enforceable under subsection (b), it shall award actual damages, if any, or equitable relief.

"(B) Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

"(7) WORKERS' COMPENSATION BENEFITS; EXCLUSIVE REMEDY.—

"(A) Notwithstanding any other provision of this section, where a State's workers' compensation law is applicable and coverage is provided for an H–2A worker, the workers' compensation benefits shall be the exclusive remedy for the loss of such worker under this section in the case of bodily injury or death in accordance with such State's workers' compensation law.

"(B) The exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for loss from an injury or death but does not preclude other equitable relief, except that such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect—

"(i) a recovery under a State workers' compensation law; or

"(ii) rights conferred under a State workers' compensation law.

"(8) TOLLING OF STATUTE OF LIMITATIONS.—If it is determined under a State workers' compensation law that the workers' compensation law is not applicable to a claim for bodily injury or death of an

H–2A worker, the statute of limitations for bringing an action for actual damages for such injury or death under subsection (c) shall be tolled for the period during which the claim for such injury or death under such State workers' compensation law was pending. The statute of limitations for an action for actual damages or other equitable relief arising out of the same transaction or occurrence as the injury or death of the H–2A worker shall be tolled for the period during which the claim for such injury or death was pending under the State workers' compensation law.

"(9) PRECLUSIVE EFFECT.—Any settlement by an H–2A worker and an H–2A employer or any person reached through the mediation process required under subsection (c)(1) shall preclude any right of action arising out of the same facts between the parties in any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

"(10) SETTLEMENTS.—Any settlement by the Secretary of Labor with an H–2A employer on behalf of an H–2A worker of a complaint filed with the Secretary of Labor under this section or any finding by the Secretary of Labor under subsection

(a)(1)(B) shall preclude any right of action arising out of the same facts between the parties under any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

"(d) DISCRIMINATION PROHIBITED.—

"(1) IN GENERAL.—It is a violation of this subsection for any person who has filed an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this subsection, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of section 218 or 218A or any rule or regulation pertaining to section 218 or 218A, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of section 218 or 218A or any rule or regulation pertaining to either of such sections.

"(2) DISCRIMINATION AGAINST H–2A WORKERS.—It is a violation of this subsection for any per-

son who has filed an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against an H–2A employee because such worker has, with just cause, filed a complaint with the Secretary of Labor regarding a denial of the rights enumerated and enforceable under subsection (b) or instituted, or caused to be instituted, a private right of action under subsection (c) regarding the denial of the rights enumerated under subsection (b), or has testified or is about to testify in any court proceeding brought under subsection (c).

"(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE EMPLOYMENT.—The Secretary of Labor and the Secretary shall establish a process under which an H–2A worker who files a complaint regarding a violation of subsection (d) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

"(f) ROLE OF ASSOCIATIONS.—

"(1) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An employer on whose behalf an application is filed by an association acting as its agent is fully

1 responsible for such application, and for complying
2 with the terms and conditions of sections 218 and
3 218A, as though the employer had filed the applica-
4 tion itself. If such an employer is determined, under
5 this section, to have committed a violation, the pen-
6 alty for such violation shall apply only to that mem-
7 ber of the association unless the Secretary of Labor
8 determines that the association or other member
9 participated in, had knowledge, or reason to know,
10 of the violation, in which case the penalty shall be
11 invoked against the association or other association
12 member as well.

13 ''(2) VIOLATIONS BY AN ASSOCIATION ACTING
14 AS AN EMPLOYER.—If an association filing an appli-
15 cation as a sole or joint employer is determined to
16 have committed a violation under this section, the
17 penalty for such violation shall apply only to the as-
18 sociation unless the Secretary of Labor determines
19 that an association member or members participated
20 in or had knowledge, or reason to know of the viola-
21 tion, in which case the penalty shall be invoked
22 against the association member or members as well.

23 **''SEC. 218D. DEFINITIONS.**

24 ''For purposes of this section and section 218, 218A,
25 218B, and 218C:

"(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(a).

"(2) BONA FIDE UNION.—The term 'bona fide union' means any organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of work for agricultural employees. Such term does not include an organization formed, created, administered, supported, dominated, financed, or controlled by an employer or employer association or its agents or representatives.

"(3) DISPLACE.—The term 'displace', in the case of an application with respect to 1 or more H–2A workers by an employer, means laying off a United States worker from a job for which the H–2A worker or workers is or are sought.

"(4) ELIGIBLE.—The term 'eligible', when used with respect to an individual, means an individual

who is not an unauthorized alien (as defined in section 274A).

"(5) EMPLOYER.—The term 'employer' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

"(6) H–2A EMPLOYER.—The term 'H–2A employer' means an employer who seeks to hire 1 or more nonimmigrant aliens described in section 101(a)(15)(H)(ii)(a).

"(7) H–2A WORKER.—The term 'H–2A worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

"(8) JOB OPPORTUNITY.—The term 'job opportunity' means a job opening for temporary or seasonal full-time employment at a place in the United States to which United States workers can be referred.

"(9) LAYING OFF.—

"(A) IN GENERAL.—The term 'laying off', with respect to a worker—

"(i) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary

departure, voluntary retirement, contract impossibility (as described in section 218A(b)(4)(D)), or temporary suspension of employment due to weather, markets, or other temporary conditions; but

"(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under section 218(b)(2)(E), with either employer described in such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

"(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

"(10) REGULATORY DROUGHT.—The term 'regulatory drought' means a decision subsequent to the filing of the application under section 218 by an entity not under the control of the employer making

such filing which restricts the employer's access to water for irrigation purposes and reduces or limits the employer's ability to produce an agricultural commodity, thereby reducing the need for labor.

"(11) SEASONAL.—Labor is performed on a 'seasonal' basis if—

"(A) ordinarily, it pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

"(B) from its nature, it may not be continuous or carried on throughout the year.

"(12) SECRETARY.—Except as otherwise provided, the term 'Secretary' means the Secretary of Homeland Security.

"(13) TEMPORARY.—A worker is employed on a 'temporary' basis where the employment is intended not to exceed 10 months.

"(14) UNITED STATES WORKER.—The term 'United States worker' means any worker, whether a national of the United States, an alien lawfully admitted for permanent residence, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a).".

(b) TABLE OF CONTENTS.—The table of contents of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking the item relating to section 218 and inserting the following:

"Sec. 218. H–2A employer applications.
"Sec. 218A. H–2A employment requirements.
"Sec. 218B. Procedure for admission and extension of stay of H–2A workers.
"Sec. 218C. Worker protections and labor standards enforcement.
"Sec. 218D. Definitions.".

## CHAPTER 3—MISCELLANEOUS PROVISIONS

**SEC. 653. DETERMINATION AND USE OF USER FEES.**

(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust a schedule of fees for the employment of aliens pursuant to the amendment made by section 652(a) of this Act and a collection process for such fees from employers. Such fees shall be the only fees chargeable to employers for services provided under such amendment.

(b) DETERMINATION OF SCHEDULE.—

(1) IN GENERAL.—The schedule under subsection (a) shall reflect a fee rate based on the number of job opportunities indicated in the employer's application under section 218 of the Immigration and Nationality Act, as amended by section 652 of this Act, and sufficient to provide for the direct costs of providing services related to an employer's authorization to employ aliens pursuant to the

amendment made by section 652(a) of this Act, to include the certification of eligible employers, the issuance of documentation, and the admission of eligible aliens.

(2) PROCEDURE.—

(A) IN GENERAL.—In establishing and adjusting such a schedule, the Secretary shall comply with Federal cost accounting and fee setting standards.

(B) PUBLICATION AND COMMENT.—The Secretary shall publish in the Federal Register an initial fee schedule and associated collection process and the cost data or estimates upon which such fee schedule is based, and any subsequent amendments thereto, pursuant to which public comment shall be sought and a final rule issued.

(c) USE OF PROCEEDS.—Notwithstanding any other provision of law, all proceeds resulting from the payment of the fees pursuant to the amendment made by section 652(a) of this Act shall be available without further appropriation and shall remain available without fiscal year limitation to reimburse the Secretary, the Secretary of State, and the Secretary of Labor for the costs of carrying out sections 218 and 218B of the Immigration and Nation-

1 ality Act, as amended and added, respectively, by section
2 652 of this Act, and the provisions of this Act.

3 **SEC. 654. REGULATIONS.**

4 (a) REQUIREMENT FOR THE SECRETARY TO CON-
5 SULT.—The Secretary shall consult with the Secretary of
6 Labor and the Secretary of Agriculture during the promul-
7 gation of all regulations to implement the duties of the
8 Secretary under this Act and the amendments made by
9 this Act.

10 (b) REQUIREMENT FOR THE SECRETARY OF STATE
11 TO CONSULT.—The Secretary of State shall consult with
12 the Secretary, the Secretary of Labor, and the Secretary
13 of Agriculture on all regulations to implement the duties
14 of the Secretary of State under this Act and the amend-
15 ments made by this Act.

16 (c) REQUIREMENT FOR THE SECRETARY OF LABOR
17 TO CONSULT.—The Secretary of Labor shall consult with
18 the Secretary of Agriculture and the Secretary on all regu-
19 lations to implement the duties of the Secretary of Labor
20 under this Act and the amendments made by this Act.

21 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—
22 All regulations to implement the duties of the Secretary,
23 the Secretary of State, and the Secretary of Labor created
24 under sections 218, 218A, 218B, 218C, and 218D of the
25 Immigration and Nationality Act, as amended or added

by section 652 of this Act, shall take effect on the effective date of section 652 and shall be issued not later than 1 year after the date of enactment of this Act.

**SEC. 655. REPORTS TO CONGRESS.**

(a) ANNUAL REPORT.—Not later than September 30 of each year, the Secretary shall submit a report to Congress that identifies, for the previous year—

(1) the number of job opportunities approved for employment of aliens admitted under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the number of workers actually admitted, disaggregated by State and by occupation;

(2) the number of such aliens reported to have abandoned employment pursuant to subsection 218B(e)(2) of such Act;

(3) the number of such aliens who departed the United States within the period specified in subsection 218B(d) of such Act;

(4) the number of aliens who applied for adjustment of status pursuant to section 643(a);

(5) the number of such aliens whose status was adjusted under section 643(a);

(6) the number of aliens who applied for permanent residence pursuant to section 643(c); and

(7) the number of such aliens who were approved for permanent residence pursuant section 645(c).

(b) IMPLEMENTATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall prepare and submit to Congress a report that describes the measures being taken and the progress made in implementing this Act.

**SEC. 656. EFFECTIVE DATE.**

Except as otherwise provided, sections 652 and 653 shall take effect 1 year after the date of the enactment of this Act.

# Subtitle D—Programs to Assist Nonimmigrant Workers

**SEC. 661. GRANTS TO SUPPORT PUBLIC EDUCATION AND COMMUNITY TRAINING.**

(a) GRANTS AUTHORIZED.—The Assistant Attorney General, Office of Justice Programs, may award grants to qualified non-profit community organizations to educate, train, and support non-profit agencies, immigrant communities, and other interested entities regarding the provisions of this Act and the amendments made by this Act.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Grants awarded under this section shall be used—

(A) for public education, training, technical assistance, government liaison, and all related costs (including personnel and equipment) incurred by the grantee in providing services related to this Act; and

(B) to educate, train, and support nonprofit organizations, immigrant communities, and other interested parties regarding this Act and the amendments made by this Act and on matters related to its implementation.

(2) EDUCATION.—In addition to the purposes described in paragraph (1), grants awarded under this section shall be used to—

(A) educate immigrant communities and other interested entities regarding—

(i) the individuals and organizations that can provide authorized legal representation in immigration matters under regulations prescribed by the Secretary; and

(ii) the dangers of securing legal advice and assistance from those who are not authorized to provide legal representation in immigration matters;

(B) educate interested entities regarding the requirements for obtaining nonprofit recognition and accreditation to represent immigrants under regulations prescribed by the Secretary;

(C) provide nonprofit agencies with training and technical assistance on the recognition and accreditation process; and

(D) educate nonprofit community organizations, immigrant communities, and other interested entities regarding—

(i) the process for obtaining benefits under this Act or under an amendment made by this Act; and

(ii) the availability of authorized legal representation for low-income persons who may qualify for benefits under this Act or under an amendment made by this Act.

(c) DIVERSITY.—The Assistant Attorney General shall ensure, to the extent possible, that the nonprofit community organizations receiving grants under this section serve geographically diverse locations and ethnically diverse populations who may qualify for benefits under the Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office of Justice Programs of the Department of Justice such sums as may be necessary for each of the fiscal years 2008 through 2010 to carry out this section.

**SEC. 662. GRANT PROGRAM TO ASSIST APPLICANTS FOR NATURALIZATION.**

(a) PURPOSE.—The purpose of this section is to establish a grant program within United States Citizenship and Immigration Services that provides funding to community-based organizations, including community-based legal service organizations, as appropriate, to develop and implement programs to assist eligible applicants for naturalization.

(b) DEFINITIONS.—In this section:

(1) COMMUNITY-BASED ORGANIZATION.—The term ''community-based organization'' means a nonprofit, tax-exempt organization, including a faith-based organization, whose staff has experience and expertise in meeting the legal, social, educational, cultural educational, or cultural needs of immigrants, refugees, persons granted asylum, or persons applying for such statuses.

(2) IEACA GRANT.—The term ''IEACA grant'' means an Initial Entry, Adjustment, and Citizenship Assistance Grant authorized under subsection (c).

(c) ESTABLISHMENT OF INITIAL ENTRY, ADJUSTMENT, AND CITIZENSHIP ASSISTANCE GRANT PROGRAM.—

(1) GRANTS AUTHORIZED.—The Secretary, working through the Director of United States Citizenship and Immigration Services, may award IEACA grants to community-based organizations.

(2) USE OF FUNDS.—Grants awarded under this section may be used for the design and implementation of programs to provide the following services:

(A) INITIAL APPLICATION.—Assistance and instruction, including legal assistance, to aliens making initial application for conditional nonimmigrant or conditional nonimmigrant depedent classification under section 601. Such assistance may include assisting applicants in—

(i) screening to assess prospective applicants' potential eligibility for participating in such program;

(ii) filling out applications for such program;

(iii) gathering proof of identification, employment, residence, and tax payment;

(iv) gathering proof of relationships of eligible family members;

(v) applying for any waivers for which applicants and qualifying family members may be eligible; and

(vi) any other assistance that the Secretary or grantee considers useful to aliens who are interested in filing applications for treatment under section 601.

(B) ADJUSTMENT OF STATUS.—Assistance and instruction, including legal assistance, to aliens seeking to adjust their status in accordance with section 602 of this Act or section 245 of the Immigration and Nationality Act (8 U.S.C. 1255).

(C) CITIZENSHIP.—Assistance and instruction to applicants on—

(i) the rights and responsibilities of United States citizenship;

(ii) English as a second language;

(iii) civics; or

(iv) applying for United States citizenship.

(3) DURATION AND RENEWAL.—

(A) DURATION.—Subject to subparagraph (B), each grant awarded under this section shall be awarded for a period of not more than 3 years.

(B) RENEWAL.—The Secretary may renew any grant awarded under this section in 1-year increments.

(4) APPLICATION FOR GRANTS.—Each entity desiring an IEACA grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(5) ELIGIBLE ORGANIZATIONS.—A community-based organization applying for a grant under this section to provide services described in subparagraph (A), (B), or (C)(iv) of paragraph (2) may not receive such a grant unless the organization is—

(A) recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations; or

(B) otherwise directed by an attorney.

(6) SELECTION OF GRANTEES.—Grants awarded under this section shall be awarded on a competitive basis.

(7) GEOGRAPHIC DISTRIBUTION OF GRANTS.—The Secretary shall approve applications under this section in a manner that ensures, to the greatest extent practicable, that—

(A) not less than 50 percent of the funding for grants under this section are awarded to programs located in the 10 States with the highest percentage of residents who were born in foreign countries; and

(B) not less than 20 percent of the funding for grants under this section are awarded to programs located in States that are not described in subparagraph (A).

(8) ETHNIC DIVERSITY.—The Secretary shall ensure that community-based organizations receiving grants under this section provide services to an ethnically diverse population, to the greatest extent possible.

(d) LIAISON BETWEEN USCIS AND GRANTEES.—The Secretary shall establish a liaison between United States Citizenship and Immigration Services and the community of providers of services under this section to assure quality control, efficiency, and greater client willingness to come forward.

(e) REPORTS TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, and July 1 of each subsequent year, the Secretary shall submit a report to Congress that includes information regarding—

(1) the status of the implementation of this section;

(2) the grants issued pursuant to this section; and

(3) the activities carried out with such grants.

(f) SOURCE OF GRANT FUNDS.—

(1) APPLICATION FEES.—The Secretary may use funds made available under section 601(g)(2)(A) of this Act and section 218A(b)(3) of the Immigration and Nationality Act, as added by this Act, to carry out this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—

(A) AMOUNTS AUTHORIZED.—In addition to the amounts made available under paragraph (1), there are authorized to be appropriated such additional sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section.

(B) AVAILABILITY.—Any amounts appropriated pursuant to the authorization of appro-

priations in subparagraph (A) shall remain available until expended.

(g) DISTRIBUTION OF FEES AND FINES.—

(1) H–2C VISA FEES.—Notwithstanding section 218A(j) of the Immigration and Nationality Act, as added by section 402, 2 percent of the fees collected under section 218A of such Act shall be made available for grants under the Initial Entry, Adjustment, and Citizenship Assistance Grant Program established under this section.

(2) CONDITIONAL NONIMMIGRANT VISA FEES AND FINES.—Notwithstanding section 601(g)(2), 2 percent of the fees and fines collected under section 601 shall be made available for grants under the Initial Entry, Adjustment, and Citizenship Assistance Grant Program established under this section.

**SEC. 663. STRENGTHENING AMERICAN CITIZENSHIP.**

(a) SHORT TITLE.—This section may be cited as the ''Strengthening American Citizenship Act of 2007''.

(b) DEFINITIONS.—In this section:

(1) LEGAL RESIDENT.—The term ''legal resident'' means a lawful permanent resident or a lawfully admitted alien who, in order to adjust status to that of a lawful permanent resident, demonstrates a knowledge of the English language or satisfactory

pursuit of a course of study to acquire such knowledge of the English language.

(2) OATH OF ALLEGIANCE.—The term ''Oath of Allegiance'' means the binding oath (or affirmation) of allegiance required to be naturalized as a citizen of the United States.

(c) ENGLISH FLUENCY.—

(1) EDUCATION GRANTS.—

(A) ESTABLISHMENT.—The Chief of the Office of Citizenship of the Department (referred to in this paragraph as the ''Chief'') shall establish a grant program to provide grants, in an amount not to exceed $500, to assist legal residents of the United States who declare an intent to apply for citizenship in the United States to meet the requirements under section 312 of the Immigration and Nationality Act (8 U.S.C. 1423).

(B) USE OF FUNDS.—Grant funds awarded under this paragraph shall be paid directly to an accredited institution of higher education or other qualified educational institution (as determined by the Chief) for tuition, fees, books, and other educational resources required by a

course on the English language in which the legal resident is enrolled.

(C) APPLICATION.—A legal resident desiring a grant under this paragraph shall submit an application to the Chief at such time, in such manner, and accompanied by such information as the Chief may reasonably require.

(D) PRIORITY.—If insufficient funds are available to award grants to all qualified applicants, the Chief shall give priority based on the financial need of the applicants.

(E) NOTICE.—The Secretary, upon relevant registration of a legal resident with the Department, shall notify such legal resident of the availability of grants under this paragraph for legal residents who declare an intent to apply for United States citizenship.

(2) FASTER CITIZENSHIP FOR ENGLISH FLUENCY.—Section 316 (8 U.S.C. 1427) is amended by adding at the end the following:

"(g) A lawful permanent resident of the United States who demonstrates English fluency, in accordance with regulations prescribed by the Secretary of Homeland Security, in consultation with the Secretary of State, will satisfy the residency requirement under subsection (a)

upon the completion of 4 years of continuous legal residency in the United States.''.

(3) SAVINGS PROVISION.—Nothing in this subsection shall be construed to—

(A) modify the English language requirements for naturalization under section 312(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1423(a)(1)); or

(B) influence the naturalization test redesign process of the Office of Citizenship (except for the requirement under subsection (h)(2)).

(d) AMERICAN CITIZENSHIP GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a competitive grant program to provide financial assistance for—

(A) efforts by entities (including veterans and patriotic organizations) certified by the Office of Citizenship to promote the patriotic integration of prospective citizens into the American way of life by providing civics, history, and English as a second language courses, with a specific emphasis on attachment to principles of the Constitution of the United States, the heroes of American history (including military he-

roes), and the meaning of the Oath of Allegiance; and

(B) other activities approved by the Secretary to promote the patriotic integration of prospective citizens and the implementation of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), including grants—

(i) to promote an understanding of the form of government and history of the United States; and

(ii) to promote an attachment to the principles of the Constitution of the United States and the well being and happiness of the people of the United States.

(2) ACCEPTANCE OF GIFTS.—The Secretary may accept and use gifts from the United States Citizenship Foundation, if the foundation is established under subsection (e), for grants under this subsection.

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

(e) FUNDING FOR THE OFFICE OF CITIZENSHIP.—

(1) AUTHORIZATION.—The Secretary, acting through the Director of the Bureau of Citizenship

and Immigration Services, may establish the United States Citizenship Foundation (referred to in this subsection as the ''Foundation''), an organization duly incorporated in the District of Columbia, exclusively for charitable and educational purposes to support the functions of the Office of Citizenship.

(2) DEDICATED FUNDING.—

(A) IN GENERAL.—Not less than 1.5 percent of the funds made available to the Bureau of Citizenship and Immigration Services from fees shall be dedicated to the functions of the Office of Citizenship, which shall include the patriotic integration of prospective citizens into—

(i) American common values and traditions, including an understanding of American history and the principles of the Constitution of the United States; and

(ii) civic traditions of the United States, including the Pledge of Allegiance, respect for the flag of the United States, and voting in public elections.

(B) SENSE OF CONGRESS.—It is the sense of the Congress that dedicating increased funds to the Office of Citizenship should not result in

an increase in fees charged by the Bureau of Citizenship and Immigration Services.

(3) GIFTS.—

(A) TO FOUNDATION.—The Foundation may solicit, accept, and make gifts of money and other property in accordance with section 501(c)(3) of the Internal Revenue Code of 1986.

(B) FROM FOUNDATION.—The Office of Citizenship may accept gifts from the Foundation to support the functions of the Office.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the mission of the Office of Citizenship, including the functions described in paragraph (2)(A).

(f) RESTRICTION ON USE OF FUNDS.—No funds appropriated to carry out a program under subsection (d) or (e) may be used to organize individuals for the purpose of political activism or advocacy.

(g) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Chief of the Office of Citizenship shall submit an annual report to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on the Judiciary

of the Senate, the Committee on Education and Labor of the House of Representatives, and the Committee on the Judiciary of the House of Representatives.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) a list of the entities that have received funds from the Office of Citizenship during the reporting period under this section and the amount of funding received by each such entity;

(B) an evaluation of the extent to which grants received under this section successfully promoted an understanding of—

(i) the English language; and

(ii) American history and government, including the heroes of American history, the meaning of the Oath of Allegiance, and an attachment to the principles of the Constitution of the United States; and

(C) information about the number of legal residents who were able to achieve the knowledge described under paragraph (2) as a result of the grants provided under this section.

(h) ESTABLISHMENT OF NEW CITIZENS AWARD PROGRAM.—

(1) ESTABLISHMENT.—There is established a new citizens award program to recognize citizens who—

(A) have made an outstanding contribution to the United States; and

(B) were naturalized during the 10-year period ending on the date of such recognition.

(2) PRESENTATION AUTHORIZED.—

(A) IN GENERAL.—The President is authorized to present a medal, in recognition of outstanding contributions to the United States, to citizens described in paragraph (1).

(B) MAXIMUM NUMBER OF AWARDS.—Not more than 10 citizens may receive a medal under this subsection in any calendar year.

(3) DESIGN AND STRIKING.—The Secretary of the Treasury shall strike a medal with suitable emblems, devices, and inscriptions, to be determined by the President.

(4) NATIONAL MEDALS.—The medals struck pursuant to this subsection are national medals for purposes of chapter 51 of title 31, United States Code.

(i) NATURALIZATION CEREMONIES.—

(1) IN GENERAL.—The Secretary, in consultation with the Director of the National Park Service, the Archivist of the United States, and other appropriate Federal officials, shall develop and implement a strategy to enhance the public awareness of naturalization ceremonies.

(2) VENUES.—In developing the strategy under this subsection, the Secretary shall consider the use of outstanding and historic locations as venues for select naturalization ceremonies.

(3) REPORTING REQUIREMENT.—The Secretary shall submit an annual report to Congress that includes—

(A) the content of the strategy developed under this subsection; and

(B) the progress made towards the implementation of such strategy.

**SEC. 664. ADDRESSING POVERTY IN MEXICO.**

(a) FINDINGS.—Congress finds the following:

(1) There is a strong correlation between economic freedom and economic prosperity.

(2) Trade policy, fiscal burden of government, government intervention in the economy, monetary policy, capital flows and foreign investment, banking and finance, wages and prices, property rights, regu-

lation, and informal market activity are key factors in economic freedom.

(3) Poverty in Mexico, including rural poverty, can be mitigated through strengthened economic freedom within Mexico.

(4) Strengthened economic freedom in Mexico can be a major influence in mitigating illegal immigration.

(5) Advancing economic freedom within Mexico is an important part of any comprehensive plan to understanding the sources of poverty and the path to economic prosperity.

(b) GRANT AUTHORIZED.—The Secretary of State may award a grant to a land grant university in the United States to establish a national program for a broad, university-based, Mexican rural poverty mitigation program.

(c) FUNCTIONS OF MEXICAN RURAL POVERTY MITIGATION PROGRAM.—The program established pursuant to subsection (b) shall—

(1) match a land grant university in the United States with the lead Mexican public university in each of Mexico's 31 states to provide state-level coordination of rural poverty programs in Mexico;

(2) establish relationships and coordinate programmatic ties between universities in the United States and universities in Mexico to address the issue of rural poverty in Mexico;

(3) establish and coordinate relationships with key leaders in the United States and Mexico to explore the effect of rural poverty on illegal immigration of Mexicans into the United States; and

(4) address immigration and border security concerns through a university-based, binational approach for long-term institutional change.

(d) USE OF FUNDS.—

(1) AUTHORIZED USES.—Grant funds awarded under this section may be used—

(A) for education, training, technical assistance, and any related expenses (including personnel and equipment) incurred by the grantee in implementing a program described in subsection (a); and

(B) to establish an administrative structure for such program in the United States.

(2) LIMITATIONS.—Grant funds awarded under this section may not be used for activities, responsibilities, or related costs incurred by entities in Mexico.

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

# TITLE VII—MISCELLANEOUS

## Subtitle A—Increasing Court Personnel

**SEC. 701. ADDITIONAL IMMIGRATION PERSONNEL.**

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

(b) DEPARTMENT OF JUSTICE.—

(1) LITIGATION ATTORNEYS.—In each of fiscal years 2008 through 2012, the Attorney General shall, subject to the availability of appropriations for such purpose, increase by not less than 50 the number of positions for attorneys in the Office of Immigration Litigation of the Department of Justice.

(2) UNITED STATES ATTORNEYS.—In each of fiscal years 2008 through 2012, the Attorney General shall, subject to the availability of appropriations for such purpose, increase by not less than 50

1 the number of positions for attorneys in the United
2 States Attorneys' office to litigate immigration cases
3 in the Federal courts.

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

8 (A) increase by not less than 20 the num-
9 ber of positions for full-time immigration
10 judges; and

11 (B) increase by not less than 80 the num-
12 ber of positions for personnel to support the im-
13 migration judges described in subparagraph
14 (A).

15 (4) STAFF ATTORNEYS.—In each of fiscal years
16 2008 through 2012, the Attorney General shall, sub-
17 ject to the availability of appropriations for such
18 purpose—

19 (A) increase by not less than 10 the num-
20 ber of positions for full-time staff attorneys in
21 the Board of Immigration Appeals; and

22 (B) increase by not less than 10 the num-
23 ber of positions for personnel to support the
24 staff attorneys described in subparagraph (A).

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

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

**SEC. 702. SENIOR JUDGE PARTICIPATION IN THE SELECTION OF MAGISTRATES.**

Section 631(a) of title 28, United States Code, is amended by striking ''Northern Mariana Islands'' the first place it appears and inserting ''Northern Mariana Islands, including any judge in regular active service and any judge who has retired from regular active service under section 371(b) of this title,''.

**SEC. 703. STUDY ON THE APPELLATE PROCESS FOR IMMIGRATION APPEALS.**

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director of the Federal

1 Judicial Center shall conduct a study on the appellate
2 process for immigration appeals.

3 (b) REQUIREMENTS.—In conducting the study under
4 subsection (a), the Director shall consider the possibility
5 of consolidating all appeals from the Board of Immigra-
6 tion Appeals and habeas corpus petitions in immigration
7 cases into 1 United States Court of Appeals.

8 (c) FACTORS TO CONSIDER.—In conducting the
9 study under subsection (a), the Director, in consultation
10 with the Attorney General, the Secretary, and the Judicial
11 Conference of the United States, shall consider—

12 (1) the resources needed for each alternative,
13 including judges, attorneys, and other support staff,
14 case management techniques, including technological
15 requirements, physical infrastructure, and other pro-
16 cedural and logistical issues as appropriate;

17 (2) the impact of each alternative on various
18 circuits, including the caseload of each circuit and
19 the caseload per panel in each circuit;

20 (3) the possibility of utilizing case management
21 techniques to reduce the impact of any consolidation
22 option, such as requiring certificates of reviewability,
23 similar to procedures employed in habeas corpus
24 proceedings and existing summary dismissal proce-
25 dures in local rules of the Courts of Appeals;

(4) the effect of the reforms made by this subtitle on the ability of the circuit courts to adjudicate such appeals;

(5) potential impact, if any, on litigants; and

(6) other reforms to improve adjudication of immigration matters, including appellate review of motions to reopen and reconsider, and attorney fee awards with respect to review of final orders of removal.

**SEC. 704. SENSE OF CONGRESS REGARDING THE ESTABLISHMENT OF AN IMMIGRATION COURT SYSTEM.**

(a) FINDING.—The Congress finds that the United States tradition as a nation of laws and a nation of immigrants is best served by an effective, fair, and well-staffed immigration court system that upholds the rule of law and ensures that individuals and families receive fair treatment.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that an effective and fair immigration court system should be established.

# Subtitle B—Citizenship Assistance for Members of the Armed Services

**SEC. 711. WAIVER OF REQUIREMENT FOR FINGERPRINTS FOR MEMBERS OF THE ARMED FORCES.**

Notwithstanding any other provision of law or any regulation, the Secretary shall use the fingerprints provided by an individual at the time the individual enlists in the Armed Forces to satisfy any requirement for fingerprints as part of an application to become a naturalized citizen of the United States, if the individual—

(1) may be naturalized pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 and 1440);

(2) was fingerprinted in accordance with the requirements of the Secretary of Defense at the time the individual enlisted in the Armed Forces; and

(3) submits the application to become a naturalized citizen of the United States not later than 12 months after the date the individual enlisted in the Armed Forces.

**SEC. 712. NONCITIZEN MEMBERSHIP IN THE ARMED FORCES.**

Section 329 (8 U.S.C. 1440) is amended—

(1) in subsection (b), by striking ''subsection (a)'' and inserting ''subsection (a), (d), or (e)''; and

(2) by adding at the end the following:

''(d)(1) Notwithstanding any other provision of law, except for provisions relating to revocation of citizenship under subsection (c), an individual who is not a citizen of the United States shall not be denied the opportunity to apply for membership in the United States Armed Forces. Such an individual who becomes an active duty member of the United States Armed Forces shall, consistent with this section and with the approval of the individual's commanding officer, be granted United States citizenship after performing at least 2 years of honorable and satisfactory service on active duty. Not later than 90 days after such requirements are met with respect to an individual, such individual shall be granted United States citizenship.

''(2) An individual described in paragraph (1) shall be naturalized without regard to the requirements of this title, if the individual—

''(A) filed an application for naturalization in accordance with such procedures to carry out this subsection as may be established by regulation by the Secretary of Homeland Security or the Secretary of Defense;

''(B) demonstrates to the individual's commanding officer proficiency in the English language,

good moral character, and knowledge of the Federal Government and United States history, consistent with the requirements of this Act; and

"(C) takes the oath required under section 337 and participates in an oath administration ceremony in accordance with this Act.

"(e) Notwithstanding any other provision of law, except for provisions relating to revocation of citizenship under subsection (c), an individual who is not a citizen of the United States who serves under orders on active duty as an enlisted member or warrant officer of the Armed Forces of the United States in a combat zone (as that term is defined in section 112(c) of the Internal Revenue Code of 1986) shall be granted United States citizenship effective as of the commencement of such service in the combat zone without regard to the requirements of this title if the individual files an application for naturalization in accordance with such procedures to carry out this subsection as may be established by regulation by the Secretary of Homeland Security and Secretary of Defense.".

**SEC. 713. PROVISION OF INFORMATION ON NATURALIZATION TO MEMBERS OF THE ARMED FORCES.**

The Secretary shall—

(1) provide information to members of the Armed Forces and the families of such members through a dedicated toll-free telephone service related to naturalization pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 and 1440), including the status of an application for such naturalization;

(2) ensure that the telephone service required by paragraph (1) is operated by employees of the Department who—

(A) have received specialized training on the naturalization process for members of the Armed Forces and the families of such members; and

(B) are physically located in the same unit as the military processing unit that adjudicates applications for naturalization pursuant to such section 328 or 329; and

(3) implement a quality control program to monitor, on a regular basis, the accuracy and quality of information provided by the employees who operate the telephone service required by paragraph (1), including the breadth of the knowledge related to the naturalization process of such employees.

**SEC. 714. PROVISION OF INFORMATION ON NATURALIZATION TO THE PUBLIC.**

Not later than 30 days after the date that a modification to any law or regulation related to the naturalization process becomes effective, the Secretary shall update the appropriate application form for naturalization, the instructions and guidebook for obtaining naturalization, and the Internet website maintained by the Secretary to reflect such modification.

**SEC. 715. REPORTS.**

(a) ADJUDICATION PROCESS.—Not later than 120 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to the appropriate congressional committees a report on the entire process for the adjudication of an application for naturalization filed pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 and 1440), including the process that begins at the time the application is mailed to, or received by the Secretary, regardless of whether the Secretary determines that such application is complete, through the final disposition of such application. Such report shall include a description of—

(1) the methods of the Secretary to process and adjudicate such applications;

(2) the effectiveness of the chain of authority, supervision, and training of employees of the Gov-

ernment or of other entities, including contract employees, who have any role in such process or adjudication; and

(3) the ability of the Secretary to use technology to facilitate or accomplish any aspect of such process or adjudication.

(b) IMPLEMENTATION.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on the implementation of this subtitle by the Secretary, including studying any technology that may be used to improve the efficiency of the naturalization process for members of the Armed Forces.

(2) REPORT.—Not later than 180 days after the date that the Comptroller General submits the report required by subsection (a), the Comptroller General shall submit to the appropriate congressional committees a report on the study required by paragraph (1). The report shall include any recommendations of the Comptroller General for improving the implementation of this subtitle by the Secretary.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ''appropriate congressional committees'' means—

(1) the Committee on Armed Services and the Committee on the Judiciary of the Senate; and

(2) the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives.

# Subtitle C—Family Humanitarian Relief

## SEC. 721. ADJUSTMENT OF STATUS FOR CERTAIN NONIMMIGRANT VICTIMS OF TERRORISM.

(a) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—The status of any alien described in subsection (b) shall be adjusted by the Secretary to that of an alien lawfully admitted for permanent residence, if the alien—

(A) applies for such adjustment not later than 2 years after the date on which the Secretary promulgates final regulations to implement this section; and

(B) is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(2) RULES IN APPLYING CERTAIN PROVISIONS.—In the case of an alien described in subsection (b) who is applying for adjustment of status under this section—

(A) the provisions of section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)) shall not apply; and

(B) the Secretary may grant the alien a waiver on the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act (8 U.S.C. 1182(a)(9)).

(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—

(A) APPLICATION PERMITTED.—An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) may, notwithstanding such order, apply for adjustment of status under paragraph (1).

(B) MOTION NOT REQUIRED.—An alien described in subparagraph (A) may not be required, as a condition of submitting or granting

such application, to file a separate motion to reopen, reconsider, or vacate such order.

(C) EFFECT OF DECISION.—If the Secretary adjusts the status of an alien described in subparagraph (A) under paragraph (1), the Secretary shall cancel the order referred to in subparagraph (A) with respect to such alien. If the Secretary renders a final administrative decision to deny such alien's application for an adjustment of status under paragraph (1), the order referred to in subparagraph (A) with respect to such alien shall be effective and enforceable to the same extent as if the application had not been made.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—A alien described in this subsection is an alien who—

(1) was lawfully present in the United States as a nonimmigrant alien described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) on September 10, 2001;

(2) was, on such date, the spouse, child, dependent son, or dependent daughter of an alien who—

(A) was lawfully present in the United States as a nonimmigrant alien described in such section 101(a)(15) on such date; and

(B) died as a direct result of a specified terrorist activity; and

(3) was deemed to be a beneficiary under the September 11th Victim Compensation Fund of 2001 (49 U.S.C. 40101 note; title IV of Public Law 107–42).

(c) STAY OF REMOVAL AND WORK AUTHORIZATION.—

(1) IN GENERAL.—The Secretary shall establish, by regulation, a process by which an alien subject to a final order of removal may seek a stay of such order based on the filing of an application under subsection (a).

(2) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Secretary shall not order any alien to be removed from the United States, if the alien is in removal proceedings under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Secretary has rendered a final administrative determination to deny the application.

(3) WORK AUTHORIZATION.—The Secretary shall authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application.

(d) AVAILABILITY OF ADMINISTRATIVE REVIEW.—The Secretary shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255); or

(2) aliens subject to removal proceedings under section 240 of such Act (8 U.S.C. 1229a).

**SEC. 722. CANCELLATION OF REMOVAL FOR CERTAIN IMMIGRANT VICTIMS OF TERRORISM.**

(a) IN GENERAL.—Subject to the provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), other than subsections (b)(1), (d)(1), and (e) of section 240A of such Act (8 U.S.C. 1229b), the Secretary shall, under such section 240A, cancel the removal of, and adjust to the status of an alien to that of an alien lawfully admitted for permanent residence, an alien described in subsection (b), if the alien applies for such relief.

(b) ALIENS ELIGIBLE FOR CANCELLATION OF REMOVAL.—An alien described in subsection (a) is an alien who—

(1) was, on September 10, 2001, the spouse, child, dependent son, or dependent daughter of an alien who died as a direct result of a specified terrorist activity; and

(2) was deemed to be a beneficiary under the September 11th Victim Compensation Fund of 2001 (49 U.S.C. 40101 note; title IV of Public Law 107–42).

(c) STAY OF REMOVAL; WORK AUTHORIZATION.—

(1) IN GENERAL.—The Secretary shall provide by regulation for an alien subject to a final order of removal to seek a stay of such order based on the filing of an application under subsection (a).

(2) WORK AUTHORIZATION.—The Secretary shall authorize an alien who has applied for cancellation of removal under subsection (a) to engage in employment in the United States during the pendency of such application.

(d) MOTIONS TO REOPEN REMOVAL PROCEEDINGS.—

(1) IN GENERAL.—Notwithstanding any limitation imposed by law on motions to reopen removal

proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43))), any alien who has become eligible for cancellation of removal as a result of enactment of this section may file 1 motion to reopen removal proceedings to apply for such relief.

(2) FILING PERIOD.—The Secretary shall designate a specific time period in which all such motions to reopen are required to be filed. The period shall begin not later than 60 days after the date of enactment of this Act and shall extend for a period not to exceed 240 days.

**SEC. 723. EXCEPTIONS.**

Notwithstanding any other provision of this subtitle, an alien may not be provided relief under this subtitle if the alien is—

(1) inadmissible under paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), or deportable under paragraph (2) or (4) of section 237(a) of such Act (8 U.S.C. 1227(a)), including any individual culpable for a specified terrorist activity; or

(2) a family member of an alien described in paragraph (1).

**SEC. 724. EVIDENCE OF DEATH.**

For purposes of this subtitle, the Secretary shall use the standards established under section 426 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (115 Stat. 362) to determine whether the death of an individual occurred as a direct result of a specified terrorist activity.

**SEC. 725. DEFINITIONS.**

(a) APPLICATION OF IMMIGRATION AND NATIONALITY ACT DEFINITIONS.—Except as otherwise specifically provided in this subtitle, the definitions used in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), other than the definitions applicable exclusively to title III of such Act, shall apply in the administration of this subtitle.

(b) SPECIFIED TERRORIST ACTIVITY DEFINED.—In this subtitle, the term ''specified terrorist activity'' means any terrorist activity conducted against the Government or the people of the United States on September 11, 2001.

# Subtitle D—Other Matters

**SEC. 731. OFFICE OF INTERNAL CORRUPTION INVESTIGATION.**

(a) INTERNAL CORRUPTION AND BENEFITS FRAUD.—Section 453 of the Homeland Security Act of 2002 (6 U.S.C. 273) is amended—

(1) by striking ''the Bureau of'' each place it appears and inserting ''United States'';

(2) in subsection (a)—

(A) by striking paragraph (1) and inserting the following:

''(1) establishing the Office of Internal Corruption Investigation, which shall—

''(A) receive, process, administer, and investigate criminal and noncriminal allegations of misconduct, corruption, and fraud involving any employee or contract worker of United States Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;

''(B) ensure that all complaints alleging any violation described in subparagraph (A) are handled and stored in a manner appropriate to their sensitivity;

"(C) have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to United States Citizenship and Immigration Services, which relate to programs and operations for which the Director is responsible under this Act;

"(D) request such information or assistance from any Federal, State, or local government agency as may be necessary for carrying out the duties and responsibilities under this section;

"(E) require the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to carry out the functions under this section—

"(i) by subpoena, which shall be enforceable, in the case of contumacy or refusal to obey, by order of any appropriate United States district court; or

"(ii) through procedures other than subpoenas if obtaining documents or information from Federal agencies;

"(F) administer to, or take from, any person an oath, affirmation, or affidavit, as necessary to carry out the functions under this section, which oath, affirmation, or affidavit, if administered or taken by or before an agent of the Office of Internal Corruption Investigation shall have the same force and effect as if administered or taken by or before an officer having a seal;

"(G) investigate criminal allegations and noncriminal misconduct;

"(H) acquire adequate office space, equipment, and supplies as necessary to carry out the functions and responsibilities under this section; and

"(I) be under the direct supervision of the Director.";

(B) in paragraph (2), by striking "and" at the end;

(C) in paragraph (3), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following:

"(4) establishing the Office of Immigration Benefits Fraud Investigation, which shall—

"(A) conduct administrative investigations, including site visits, to address immigration benefit fraud;

"(B) assist United States Citizenship and Immigration Services provide the right benefit to the right person at the right time;

"(C) track, measure, assess, conduct pattern analysis, and report fraud-related data to the Director; and

"(D) work with counterparts in other Federal agencies on matters of mutual interest or information-sharing relating to immigration benefit fraud."; and

(3) by adding at the end the following:

"(c) ANNUAL REPORT.—The Director, in consultation with the Office of Internal Corruption Investigations, shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes—

"(1) the activities of the Office, including the number of investigations began, completed, pending, turned over to the Inspector General for criminal investigations, and turned over to a United States Attorney for prosecution; and

"(2) the types of allegations investigated by the Office during the 12-month period immediately preceding the submission of the report that relate to the misconduct, corruption, and fraud described in subsection (a)(1).".

(b) USE OF IMMIGRATION FEES TO COMBAT FRAUD.—Section 286(v)(2)(B) (8 U.S.C. 1356(v)(2)(B)) is amended by adding at the end the following: "Not less than 20 percent of the funds made available under this subparagraph shall be used for activities and functions described in paragraphs (1) and (4) of section 453(a) of the Homeland Security Act of 2002 (6 U.S.C. 273(a)).".

**SEC. 732. ADJUSTMENT OF STATUS FOR CERTAIN PERSECUTED RELIGIOUS MINORITIES.**

(a) IN GENERAL.—The Secretary shall adjust the status of an alien to that of an alien lawfully admitted for permanent residence if the alien—

(1) is a persecuted religious minority;

(2) is admissible to the United States as an immigrant, except as provided in subsection (b);

(3) had an application for asylum pending on May 1, 2003;

(4) applies for such adjustment of status;

(5) was physically present in the United States on the date the application for such adjustment is filed; and

(6) pays a fee, in an amount determined by the Secretary, for the processing of such application.

(b) WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.—

(1) INAPPLICABLE PROVISION.—Section 212(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)) shall not apply to any adjustment of status under this section.

(2) WAIVER.—The Secretary may waive any other provision of section 212(a) of such Act (except for paragraphs (2) and (3)) if extraordinary and compelling circumstances warrant such an adjustment for humanitarian purposes, to ensure family unity, or if it is otherwise in the public interest.

**SEC. 733. ELIGIBILITY OF AGRICULTURAL AND FORESTRY WORKERS FOR CERTAIN LEGAL ASSISTANCE.**

Section 305 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 note; Public Law 99–603) is amended—

(1) by striking ''section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a))'' and inserting ''item (a) or

(b) of section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii))''; and

(2) by inserting ''or forestry'' after ''agricultural''.

**SEC. 734. STATE COURT INTERPRETER GRANTS.**

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Administrator of the Office of Justice Programs of the Department of Justice (referred to in this section as the ''Administrator'') shall make grants, in accordance with such regulations as the Attorney General may prescribe, to State courts to develop and implement programs to assist individuals with limited English proficiency to access and understand State court proceedings in which they are a party.

(2) TECHNICAL ASSISTANCE.—The Administrator shall allocate, for each fiscal year, $500,000 of the amount appropriated pursuant to the authorization of appropriation in subsection (f) to be used to establish a court interpreter technical assistance program to assist State courts receiving grants under this section.

(b) USE OF GRANTS.—Grants awarded pursuant to subsection (a) may be used by State courts to—

(1) assess regional language demands;

(2) develop a court interpreter program for the State courts;

(3) develop, institute, and administer language certification examinations;

(4) recruit, train, and certify qualified court interpreters;

(5) pay for salaries, transportation, and technology necessary to implement the court interpreter program developed under paragraph (2); and

(6) engage in other related activities, as prescribed by the Attorney General.

(c) APPLICATION.—

(1) IN GENERAL.—The highest State court of each State desiring a grant under this section shall submit an application to the Administrator at such time, in such manner, and accompanied by such information as the Administrator may reasonably require.

(2) STATE COURTS.—The highest State court of each State submitting an application under paragraph (1) shall include in the application—

(A) an identification of each State court in that State which would receive funds from the grant;

(B) the amount of funds each State court identified under subparagraph (A) would receive from the grant; and

(C) the procedures the highest State court would use to directly distribute grant funds to State courts identified under subparagraph (A).

(d) STATE COURT ALLOTMENTS.—

(1) BASE ALLOTMENT.—From amounts appropriated for each fiscal year pursuant to the authorization of appropriations in subsection (f), the Administrator shall allocate $100,000 to each of the highest State court of each State, which has an application approved under subsection (c).

(2) DISCRETIONARY ALLOTMENT.—From amounts appropriated for each fiscal year pursuant to the authorization of appropriations in subsection (f), the Administrator shall allocate a total of $5,000,000 to the highest State court of States that have extraordinary needs that must be addressed in order to develop, implement, or expand a State court interpreter program.

(3) ADDITIONAL ALLOTMENT.—In addition to the allocations made under paragraphs (1) and (2), the Administrator shall allocate to each of the highest State court of each State, which has an applica-

tion approved under subsection (c), an amount equal to the product reached by multiplying—

(A) the unallocated balance of the amount appropriated for each fiscal year pursuant to the authorization of appropriations in subsection (f); and

(B) the ratio between the number of people over 5 years of age who speak a language other than English at home in the State and the number of people over 5 years of age who speak a language other than English at home in all the States that receive an allocation under paragraph (1), as those numbers are determined by the Bureau of the Census.

(e) TREATMENT OF THE DISTRICT OF COLUMBIA.—For purposes of this section—

(1) the District of Columbia shall be treated as a State; and

(2) the District of Columbia Court of Appeals shall be the highest State court of the District of Columbia.

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

**SEC. 735. ADEQUATE NOTICE FOR ALTERNATE COUNTRY OF REMOVAL.**

Section 241(b)(2) (8 U.S.C. 1231(b)(2)) is amended by adding at the end the following new subparagraph:

"(G) NOTICE OF COUNTRY OF REMOVAL.—If the Secretary of Homeland Security determines that an alien will be removed to a country that was not designated by the alien under subparagraph (A)(i) of section 241 as amended at the time of the removal hearing, the Secretary shall provide notice of such determination to the alien and provide the alien an opportunity for a hearing before an immigration judge to request protection from removal to that country on the basis that the alien would face persecution or torture in that country.".

**SEC. 736. STANDARDS FOR BIOMETRIC DOCUMENTS.**

Any visa issued by the Secretary of State and any immigration-related document issued by the Secretary of State or the Secretary shall—

(1) comply with authentication and biometric standards recognized by domestic and international standards organizations;

(2) be machine-readable and tamper-resistant;

(3) use biometric identifiers that are consistent with the requirements of section 303 of the En-

hanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1732), and represent the benefits and status set forth in such section;

(4) comply with the biometric and document identifying standards established by the International Civil Aviation Organization; and

(5) meet other requirements determined to be necessary by the Secretary of State and the Secretary.

**SEC. 737. STATE IMPACT ASSISTANCE ACCOUNT.**

Section 286 (8 U.S.C. 1356), as amended by this Act, is further amended by adding at the end the following new subsection:

''(x) STATE IMPACT ASSISTANCE ACCOUNT.—

''(1) ESTABLISHMENT.—There is established in the general fund of the Treasury an account, which shall be known as the 'State Impact Assistance Account'.

''(2) SOURCE OF FUNDS.—Notwithstanding any other provision under this Act, there shall be deposited as offsetting receipts into the State Impact Assistance Account all State impact assistance fees collected under sections 407 and 602 of this Act.

''(3) USE OF FUNDS.—Amounts deposited into the State Impact Assistance Account may only be

used to carry out the State Impact Assistance Grant Program established under paragraph (4).

"(4) STATE IMPACT ASSISTANCE GRANT PROGRAM.—

"(A) ESTABLISHMENT.—The Secretary of Health and Human Services, in consultation with the Secretary of Education, shall establish the State Impact Assistance Grant Program (referred to in this section as the 'Program'), under which the Secretary of Health and Human may award grants to States to provide health and education services to noncitizens in accordance with this paragraph.

"(B) STATE ALLOCATIONS.—The Secretary of Health and Human Services shall annually allocate the amounts available in the State Impact Assistance Account among the States as follows:

"(i) NONCITIZEN POPULATIONS.—Eighty percent of such amounts shall be allocated so that each State receives the greater of—

"(I) $5,000,000; or

"(II) after adjusting for allocations under subclause (I), the percent-

1 age of the amount to be distributed
2 under this clause that is equal to the
3 noncitizen resident population of the
4 State divided by the noncitizen resi-
5 dent population of all States, based on
6 the most recent data available from
7 the Bureau of the Census.
8 ''(ii) HIGH GROWTH RATES.—Twenty
9 percent of such amounts shall be allocated
10 among the 20 States with the largest
11 growth rates in noncitizen resident popu-
12 lation, as determined by the Secretary of
13 Health and Human Services, so that each
14 such State receives the percentage of the
15 amount distributed under this clause that
16 is equal to—
17 ''(I) the growth rate in the non-
18 citizen resident population of the
19 State during the most recent 3-year
20 period for which data is available from
21 the Bureau of the Census; divided by
22 ''(II) the average growth rate in
23 noncitizen resident population for the
24 20 States during such 3-year period.

"(iii) LEGISLATIVE APPROPRIATIONS.—The use of grant funds allocated to States under this paragraph shall be subject to appropriation by the legislature of each State in accordance with the terms and conditions under this paragraph.

"(C) FUNDING FOR LOCAL GOVERNMENT.—

"(i) DISTRIBUTION CRITERIA.—Grant funds received by States under this paragraph shall be distributed to units of local government based on need and function.

"(ii) MINIMUM DISTRIBUTION.—Except as provided in clause (iii), a State shall distribute not less than 30 percent of the grant funds received under this paragraph to units of local government not later than 180 days after receiving such funds.

"(iii) EXCEPTION.—If an eligible unit of local government that is available to carry out the activities described in subparagraph (D) cannot be found in a State, the State does not need to comply with clause (ii).

1 "(iv) UNEXPENDED FUNDS.—Any
2 grant funds distributed by a State to a
3 unit of local government that remain unex-
4 pended as of the end of the grant period
5 shall revert to the State for redistribution
6 to another unit of local government.
7 "(D) USE OF FUNDS.—States and units of
8 local government shall use grant funds received
9 under this paragraph to provide health services,
10 educational services, and related services to
11 noncitizens within their jurisdiction directly, or
12 through contracts with eligible services pro-
13 viders, including—
14 "(i) health care providers;
15 "(ii) local educational agencies; and
16 "(iii) charitable and religious organi-
17 zations.
18 "(E) STATE DEFINED.—In this paragraph,
19 the term 'State' means each of the several
20 States of the United States, the District of Co-
21 lumbia, the Commonwealth of Puerto Rico, the
22 Virgin Islands, Guam, American Samoa, and
23 the Commonwealth of the Northern Mariana Is-
24 lands.

"(F) CERTIFICATION.—In order to receive a payment under this section, the State shall provide the Secretary of Health and Human Services with a certification that the State's proposed uses of the fund are consistent with (D).

"(G) ANNUAL NOTICE TO STATES.—The Secretary of Health and Human Services shall inform the States annually of the amount of funds available to each State under the Program.".

**SEC. 738. NEW WORKER PROGRAM AND CONDITIONAL NONIMMIGRANT FEE ACCOUNT.**

Section 286 (8 U.S.C. 1356), as amended by this Act, is further amended by adding at the end the following new subsection:

"(y) NEW WORKER PROGRAM AND CONDITIONAL NONIMMIGRANT FEE ACCOUNT.—

"(1) ESTABLISHMENT.—There is established in the general fund of the Treasury an account, which shall be known as the 'New Worker Program and Conditional Nonimmigrant Fee Account'.

"(2) DEPOSITS.—Notwithstanding any other provision of this Act, there shall be deposited as off-

setting receipts into the New Worker Program and Conditional Nonimmigrant Fee Account—

"(A) all fees collected under section 218A; and

"(B) all fines collected under section 601(g)(2)(B).

"(3) USE OF FUNDS.—Of the fees and fines deposited into the New Worker Program and Conditional Nonimmigrant Fee Account—

"(A) 53 percent shall remain available to the Secretary of Homeland Security for efforts related to the adjudication and implementation of the New Worker program and the program for conditional nonimmigrants and any other efforts necessary to carry out the provisions of the STRIVE Act of 2007 and the amendments made by such Act, of which the Secretary shall allocate—

"(i) 10 percent for the border security efforts described in title I of the STRIVE Act of 2007;

"(ii) not more than 1 percent for promotion of public awareness of the program for conditional nonimmigrants;

"(iii) not more than 1 percent for the Office of Citizenship to promote civics integration activities described in section 663 of the STRIVE Act of 2007; and

"(iv) 2 percent for the American Citizenship Grant Program under section 663 of the STRIVE Act of 2007;

"(B) 15 percent shall remain available to the Secretary of Labor for the enforcement of labor standards in the geographic and occupational areas in which H–2C visa holders are likely to be employed and for other enforcement efforts under the STRIVE Act of 2007, or any amendment made by that Act, including targeted audits of employers that participate in the H–2C program;

"(C) 15 percent shall remain available to the Commissioner of Social Security and the Secretary of Homeland Security for the creation and maintenance of the Employment Eligibility Verification System described in section 274A(c);

"(D) 15 percent shall remain available to the Secretary of State to carry out any nec-

1 essary provisions of the STRIVE Act of 2007,
2 or any amendments made by that Act; and
3 ''(E) 2 percent shall remain available to
4 the Secretary of Health and Human Services
5 for the reimbursement of hospitals serving H–
6 2C workers and conditional nonimmigrants es-
7 tablished in the STRIVE Act of 2007 and the
8 amendments made by such Act.''.

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