

Calendar No. 208

110TH CONGRESS
1ST SESSION**S. 1639**

To provide for comprehensive immigration reform and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 18, 2007

Mr. KENNEDY (for himself and Mr. SPECTER) introduced the following bill;
which was read the first time

JUNE 19, 2007

Read the second time and placed on the calendar

A BILL

To provide for comprehensive immigration reform and for
other purposes.

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

3 **SECTION 1. EFFECTIVE DATE TRIGGERS.**

4 (a) IN GENERAL.—With the exception of the proba-
5 tionary benefits conferred by section 601(h) of this Act,
6 the provisions of subtitle C of title IV, and the admission
7 of aliens under section 101(a)(15)(H)(ii) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)),

1 as amended by title IV, the programs established by title
2 IV, and the programs established by title VI that grant
3 legal status to any individual or that adjust the current
4 status of any individual who is unlawfully present in the
5 United States to that of an alien lawfully admitted for
6 permanent residence, shall become effective on the date
7 that the Secretary submits a written certification to the
8 President and the Congress, based on analysis by and in
9 consultation with the Comptroller General, that each of
10 the following border security and other measures are es-
11 tablished, funded, and operational:

12 (1) OPERATIONAL CONTROL OF THE INTER-
13 NATIONAL BORDER WITH MEXICO.—The Secretary
14 of Homeland Security has established and dem-
15 onstrated operational control of 100 percent of the
16 international land border between the United States
17 and Mexico, including the ability to monitor such
18 border through available methods and technology.

19 (2) STAFF ENHANCEMENTS FOR BORDER PA-
20 TROL.—The United States Customs and Border
21 Protection Border Patrol has hired, trained, and re-
22 porting for duty 20,000 full-time agents as of the
23 date of the certification under this subsection.

24 (3) STRONG BORDER BARRIERS.—There has
25 been—

1 (A) installed along the international land
2 border between the United States and Mexico
3 as of the date of the certification under this
4 subsection, at least—

5 (i) 300 miles of vehicle barriers;

6 (ii) 370 miles of fencing; and

7 (iii) 105 ground-based radar and cam-
8 era towers; and

9 (B) deployed for use along the inter-
10 national land border between the United States
11 and Mexico, as of the date of the certification
12 under this subsection, 4 unmanned aerial vehi-
13 cles, and the supporting systems for such vehi-
14 cles.

15 (4) CATCH AND RETURN.—The Secretary of
16 Homeland Security is detaining all removable aliens
17 apprehended crossing the international land border
18 between the United States and Mexico in violation of
19 Federal or State law, except as specifically man-
20 dated by Federal or State law or humanitarian cir-
21 cumstances, and United States Immigration and
22 Customs Enforcement has the resources to maintain
23 this practice, including the resources necessary to
24 detain up to 31,500 aliens per day on an annual
25 basis.

1 (5) WORKPLACE ENFORCEMENT TOOLS.—In
2 compliance with the requirements of title III of this
3 Act, the Secretary of Homeland Security has estab-
4 lished, and is using, secure and effective identifica-
5 tion tools to prevent unauthorized workers from ob-
6 taining employment in the United States. Such iden-
7 tification tools shall include establishing—

8 (A) strict standards for identification docu-
9 ments that are required to be presented by the
10 alien to an employer in the hiring process, in-
11 cluding the use of secure documentation that—

12 (i) contains—

13 (I) a photograph of the alien; and

14 (II) biometric data identifying

15 the alien; or

16 (ii) complies with the requirements for

17 such documentation under the REAL ID

18 Act (Public Law 109–13; 119 Stat. 231);

19 and

20 (B) an electronic employment eligibility

21 verification system that is capable of querying

22 Federal and State databases in order to restrict

23 fraud, identity theft, and use of false social se-

24 curity numbers in the hiring of aliens by an em-

25 ployer by electronically providing a digitized

1 version of the photograph on the alien's original
2 Federal or State issued document or documents
3 for verification of that alien's identity and work
4 eligibility.

5 (6) PROCESSING APPLICATIONS OF ALIENS.—

6 The Secretary of Homeland Security has received,
7 and is processing and adjudicating in a timely man-
8 ner, applications for Z nonimmigrant status under
9 title VI of this Act, including conducting all nec-
10 essary background and security checks required
11 under that title.

12 (b) SENSE OF CONGRESS.—It is the sense of Con-
13 gress that the border security and other measures de-
14 scribed in subsection (a) shall be completed as soon as
15 practicable, subject to the necessary appropriations.

16 (c) PRESIDENTIAL PROGRESS REPORT.—

17 (1) IN GENERAL.—Not later than 90 days after
18 the date of enactment of this Act, and every 90 days
19 thereafter until the requirements under subsection
20 (a) are met, the President shall submit a report to
21 Congress detailing the progress made in funding,
22 meeting, or otherwise satisfying each of the require-
23 ments described under paragraphs (1) through (6)
24 of subsection (a), including detailing any contractual
25 agreements reached to carry out such measures.

1 (2) PROGRESS NOT SUFFICIENT.—If the Presi-
2 dent determines that sufficient progress is not being
3 made, the President shall include in the report re-
4 quired under paragraph (1) specific funding rec-
5 ommendations, authorization needed, or other ac-
6 tions that are or should be undertaken by the Sec-
7 retary of Homeland Security.

8 (d) GAO REPORT.—Not later than 30 days after the
9 certification is submitted under subsection (a), the Comp-
10 troller General shall submit a report to Congress on the
11 accuracy of such certification.

12 **SEC. 2. IMMIGRATION SECURITY ACCOUNT.**

13 Section 286 of the Immigration and Nationality Act,
14 as amended by section 623, is further amended by adding
15 at the end the following:

16 “(z) IMMIGRATION SECURITY ACCOUNT.—

17 (1) IN GENERAL.—There is established in the
18 general fund of the Treasury a separate account,
19 which shall be known as the “Immigration Security
20 Account”.

21 (2) SOURCE OF FUNDS.—Immediately upon en-
22 actment, \$4,400,000,000 shall be transferred from
23 the general fund of the Treasury to the Immigration
24 Security Account.

25 (3) APPROPRIATIONS.—

1 (A) There are hereby appropriated such
2 sums that are provided under subsection 2 to
3 remain available until five years after enact-
4 ment.

5 (B) These sums shall be available for the
6 Secretary of Homeland Security to meet the
7 trigger requirements set forth in title I, section
8 1, of this Act.

9 (C) To the extent funds are not exhausted
10 pursuant to (b), they shall be available to the
11 Secretary of Homeland Security for one or
12 more of the following activities:

13 (i) Fencing and Infrastructure;

14 (ii) Towers;

15 (iii) Detention beds;

16 (iv) Employment Eligibility
17 Verification System, including funds for
18 expenditures under section 306 of this Act,
19 relating to the State Records Improvement
20 Grant Program;

21 (v) Implementation of programs au-
22 thorized in titles IV and VI; and

23 (vi) Other Federal border and interior
24 enforcement requirements to ensure the in-

1 integrity of programs authorized in titles IV
2 and VI.

3 (4) TRANSFERS.—The Secretary of Homeland
4 Security shall have the authority to transfer
5 amounts out of the Immigration Security Account as
6 appropriate to carry out subsections (3)(b) and (3)(
7 c) of this section.

8 (5) REPORTING.—The Secretary of Homeland
9 Security shall submit to the Committees on the Ju-
10 diciary and Appropriations of the Senate a plan for
11 expenditure of the funds under subsection 2 within
12 60 days of enactment of this Act, and update the
13 plan annually, that—

14 (A) identifies one-time and on-going costs;

15 (B) identifies the level of funding for each
16 program, project, and activity, and if that fund-
17 ing will supplement an appropriated program,
18 project, or activity;

19 (C) identifies the amount of funding to be
20 obligated in each fiscal year, by program,
21 project, and activity;

22 (D) includes milestones for completion of
23 each identified program, project, or activity;
24 and

1 (E) demonstrates how activities will fur-
2 ther the goals and objectives of this Act.

3 (6) NOTIFICATIONS.—The Secretary of Home-
4 land Security shall notify the Committees on Judici-
5 ary and Appropriations of the Senate 15 days prior
6 to reprogramming funds from the original allocation
7 or transferring funds out of the Immigration Secu-
8 rity Account.

9 **TITLE I—BORDER**
10 **ENFORCEMENT**
11 **Subtitle A—Assets for Controlling**
12 **United States Borders**

13 **SEC. 101. ENFORCEMENT PERSONNEL.**

14 (a) ADDITIONAL PERSONNEL.—

15 (1) U.S. CUSTOMS AND BORDER PROTECTION
16 OFFICERS.— In each of the fiscal years 2008
17 through 2012, the Secretary shall, subject to the
18 availability of appropriations, increase by not less
19 than 500 the number of positions for full-time active
20 duty CBP officers and provide appropriate training,
21 equipment, and support to such additional CBP offi-
22 cers.

23 (2) INVESTIGATIVE PERSONNEL.—

24 (A) IMMIGRATION AND CUSTOMS EN-
25 FORCEMENT INVESTIGATORS.—Section 5203 of

1 the Intelligence Reform and Terrorism Preven-
2 tion Act of 2004 (Public Law 108–458; 118
3 Stat. 3734) is amended by striking “800” and
4 inserting “1000”.

5 (B) ADDITIONAL PERSONNEL.—In addi-
6 tion to the positions authorized under section
7 5203 of the Intelligence Reform and Terrorism
8 Prevention Act of 2004, as amended by sub-
9 paragraph (A), during each of the fiscal years
10 2008 through 2012, the Secretary shall, subject
11 to the availability of appropriations, increase by
12 not less than 200 the number of positions for
13 personnel within the Department assigned to
14 investigate alien smuggling.

15 (3) DEPUTY UNITED STATES MARSHALS.—In
16 each of the fiscal years 2008 through 2012, the At-
17 torney General shall, subject to the availability of
18 appropriations, increase by not less than 50 the
19 number of positions for full-time active duty Deputy
20 United States Marshals that assist in matters re-
21 lated to immigration.

22 (4) RECRUITMENT OF FORMER MILITARY PER-
23 SONNEL.—

24 (A) IN GENERAL.—The Commissioner of
25 United States Customs and Border Protection,

1 in conjunction with the Secretary of Defense or
2 a designee of the Secretary of Defense, shall es-
3 tablish a program to actively recruit members
4 of the Army, Navy, Air Force, Marine Corps,
5 and Coast Guard who have elected to separate
6 from active duty.

7 (B) REPORT.—Not later than 180 days
8 after the date of the enactment of this Act, the
9 Commissioner shall submit a report on the im-
10 plementation of the recruitment program estab-
11 lished pursuant to subparagraph (A) to the
12 Committee on the Judiciary of the Senate and
13 the Committee on the Judiciary of the House of
14 Representatives.

15 (b) AUTHORIZATION OF APPROPRIATIONS.—

16 (1) U.S. CUSTOMS AND BORDER PROTECTION
17 OFFICERS.—There are authorized to be appropriated
18 to the Secretary such sums as may be necessary for
19 each of the fiscal years 2008 through 2012 to carry
20 out paragraph (1) of subsection (a).

21 (2) DEPUTY UNITED STATES MARSHALS.—
22 There are authorized to be appropriated to the At-
23 torney General such sums as may be necessary for
24 each of the fiscal years 2008 through 2012 to carry
25 out subsection (a)(3).

1 than 20 percent of the net increase in border patrol agents
2 during each such fiscal year.

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

7 (c) SHADOW WOLVES APPREHENSION AND TRACK-
8 ING.—

9 (1) PURPOSE.—The purpose of this subsection
10 is to authorize the Secretary, acting through the As-
11 sistant Secretary of Immigration and Customs En-
12 forcement (referred to in this subsection as the
13 “Secretary”), to establish new units of Customs Pa-
14 trol Officers (commonly known as “Shadow
15 Wolves”) during the 5-year period beginning on the
16 date of enactment of this Act.

17 (2) ESTABLISHMENT OF NEW UNITS.—

18 (A) IN GENERAL.—During the 5-year pe-
19 riod beginning on the date of enactment of this
20 Act, the Secretary is authorized to establish
21 within United States Immigration and Customs
22 Enforcement up to 5 additional units of Cus-
23 toms Patrol Officers in accordance with this
24 subsection, as appropriate.

1 (B) MEMBERSHIP.—Each new unit estab-
2 lished pursuant to subparagraph (A) shall con-
3 sist of up to 15 Customs Patrol Officers.

4 (3) DUTIES.—The additional Immigration and
5 Customs Enforcement units established pursuant to
6 paragraph (2)(A) shall operate on Indian reserva-
7 tions (as defined in section 3 of the Indian Financ-
8 ing Act of 1974 (25 U.S.C. 1452)) located on or
9 near (as determined by the Secretary) an inter-
10 national border with Canada or Mexico, and such
11 other Federal land as the Secretary determines to be
12 appropriate, by—

13 (A) investigating and preventing the entry
14 of terrorists, other unlawful aliens, instruments
15 of terrorism, narcotics, and other contraband
16 into the United States; and

17 (B) carrying out such other duties as the
18 Secretary determines to be necessary.

19 (4) AUTHORIZATION OF APPROPRIATIONS.—
20 There are authorized to be appropriated to carry out
21 this subsection such sums as are necessary for each
22 of fiscal years 2008 through 2013.

23 **SEC. 102. TECHNOLOGICAL ASSETS.**

24 (a) ACQUISITION.—Subject to the availability of ap-
25 propriations for such purpose, the Secretary shall procure

1 additional unmanned aerial vehicles, cameras, poles, sen-
2 sors, and other technologies necessary to achieve oper-
3 ational control of the borders of the United States.

4 (b) INCREASED AVAILABILITY OF EQUIPMENT.—The
5 Secretary and the Secretary of Defense shall develop and
6 implement a plan to use authorities provided to the Sec-
7 retary of Defense under chapter 18 of title 10, United
8 States Code, to increase the availability and use of Depart-
9 ment of Defense equipment, including unmanned aerial
10 vehicles, tethered aerostat radars, and other surveillance
11 equipment, to assist the Secretary in carrying out surveil-
12 lance activities conducted at or near the international land
13 borders of the United States to prevent illegal immigra-
14 tion.

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

19 **SEC. 103. INFRASTRUCTURE.**

20 Section 102 of the Illegal Immigration Reform and
21 Immigrant Responsibility Act of 1996 (8 U.S.C. 1103
22 note) is amended—

23 (1) in subsection (a), by striking “Attorney
24 General, in consultation with the Commissioner of

1 Immigration and Naturalization,” and inserting
2 “Secretary of Homeland Security”; and

3 (2) in subsection (b)—

4 (A) by redesignating paragraphs (1), (2),
5 (3), and (4) as paragraphs (2), (3), (4), and
6 (5), respectively;

7 (B) by inserting before paragraph (2), as
8 redesignated, the following:

9 “(1) FENCING NEAR SAN DIEGO, CALI-
10 FORNIA.—In carrying out subsection (a), the Sec-
11 retary shall provide for the construction along the
12 14 miles of the international land border of the
13 United States, starting at the Pacific Ocean and ex-
14 tending eastward, of second and third fences, in ad-
15 dition to the existing reinforced fence, and for roads
16 between the fences.”.

17 (C) in paragraph (2), as redesignated—

18 (i) in the header, by striking “SECU-
19 RITY FEATURES” and inserting—“ADDI-
20 TIONAL FENCING ALONG SOUTHWEST BOR-
21 DER”; and

22 (ii) by striking subparagraphs (A)
23 through (C) and inserting the following:

24 “(A) REINFORCED FENCING.—In carrying
25 out subsection (a), the Secretary of Homeland

1 Security shall construct reinforced fencing
2 along not less than 700 miles of the southwest
3 border where fencing would be most practical
4 and effective and provide for the installation of
5 additional physical barriers, roads, lighting,
6 cameras, and sensors to gain operational con-
7 trol of the southwest border.

8 “(B) PRIORITY AREAS.—In carrying out
9 this section, the Secretary of Homeland Secu-
10 rity shall—

11 “(i) identify the 370 miles along the
12 southwest border where fencing would be
13 most practical and effective in deterring
14 smugglers and aliens attempting to gain il-
15 legal entry into the United States; and

16 “(ii) not later than December 31,
17 2008, complete construction of reinforced
18 fencing along the 370 miles identified
19 under clause (i).

20 “(C) CONSULTATION.—

21 “(i) IN GENERAL.—In carrying out
22 this section, the Secretary of Homeland
23 Security shall consult with the Secretary of
24 Interior, the Secretary of Agriculture,
25 States, local governments, Indian tribes,

1 and property owners in the United States
2 to minimize the impact on the environ-
3 ment, culture, commerce, and quality of
4 life for the communities and residents lo-
5 cated near the sites at which such fencing
6 is to be constructed.

7 “(ii) SAVINGS PROVISION.—Nothing
8 in this subparagraph may be construed
9 to—

10 “(I) create any right of action for
11 a State, local government, or other
12 person or entity affected by this sub-
13 section; or

14 “(II) affect the eminent domain
15 laws of the United States or of any
16 State.

17 “(D) LIMITATION ON REQUIREMENTS.—

18 Notwithstanding subparagraph (A), nothing in
19 this paragraph shall require the Secretary of
20 Homeland Security to install fencing, physical
21 barriers, roads, lighting, cameras, and sensors
22 in a particular location along an international
23 border of the United States, if the Secretary de-
24 termines that the use or placement of such re-
25 sources is not the most appropriate means to

1 achieve and maintain operational control over
2 the international border at such location.”; and

3 (D) in paragraph (5), as redesignated, by
4 striking “to carry out this subsection not to ex-
5 ceed \$12,000,000” and inserting “such sums as
6 may be necessary to carry out this subsection”.

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

8 Section 102 of the Illegal Immigration Reform and
9 Immigrant Responsibility Act of 1996, Division C of
10 Public Law 104–208, is amended by the addition, at the
11 end of that section, of the following new subsection:

12 “(e) CONSTRUCTION AND IMPROVEMENTS.—The
13 Secretary is authorized to—

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

17 “(2) make necessary improvements to the ports
18 of entry.”.

19 **Subtitle B—Other Border Security**
20 **Initiatives**

21 **SEC. 111. BIOMETRIC ENTRY-EXIT SYSTEM.**

22 (a) COLLECTION OF BIOMETRIC DATA FROM ALIENS
23 ENTERING AND DEPARTING THE UNITED STATES.—Sec-
24 tion 215 (8 U.S.C. 1185) is amended—

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

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

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

7 “(c) The Secretary is authorized to require aliens en-
8 tering and departing the United States to provide biomet-
9 ric data and other information relating to their immigra-
10 tion status.”.

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

14 “(5) AUTHORITY TO COLLECT BIOMETRIC
15 DATA.—In conducting inspections under subsections
16 (a) and (b), immigration officers are authorized to
17 collect biometric data from—

18 “(A) any applicant for admission or any
19 alien who is paroled under section 212(d)(5),
20 seeking to or permitted to land temporarily as
21 an alien crewman, or seeking to or permitted
22 transit through the United States; or

23 “(B) any lawful permanent resident who is
24 entering the United States and who is not re-

1 garded as seeking admission pursuant to sec-
2 tion 101(a)(13)(C).”.

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

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

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

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

13 “(C) WITHHOLDERS OF BIOMETRIC
14 DATA.—Any alien who fails or has failed to
15 comply with a lawful request for biometric data
16 under section 215(c), 235(d), or 252(d) is inad-
17 missible.”; and

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

20 “(2) The Secretary may waive the application
21 of subsection (a)(7)(C) for an individual alien or
22 class of aliens.”.

23 (e) IMPLEMENTATION.—Section 7208 of the 9/11
24 Commission Implementation Act of 2004 (8 U.S.C.
25 1365b) is amended—

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

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

11 (2) in subsection (l)—

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

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

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

16 “(2) IMPLEMENTATION AT ALL LAND BORDER
17 PORTS OF ENTRY.—There are authorized to be ap-
18 propriated such sums as may be necessary for each
19 of fiscal years 2008 and 2009 to implement the
20 automated biometric entry and exit data system at
21 all land border ports of entry.”.

22 **SEC. 112. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUS-**
23 **TOMS CONTROLS.**

24 (a) IN GENERAL.—Section 758 of Title 18, United
25 States Code, is amended to read as follows:

1 **§ 758. Unlawful flight from immigration or customs**
2 **controls**

3 “(a) EVADING A CHECKPOINT.—Any person who,
4 while operating a motor vehicle or vessel, knowingly flees
5 or evades a checkpoint operated by the Department of
6 Homeland Security or any other Federal law enforcement
7 agency, and then knowingly or recklessly disregards or dis-
8 obeys the lawful command of any law enforcement agent,
9 shall be fined under this title, imprisoned not more than
10 five years, or both.

11 “(b) FAILURE TO STOP.—Any person who, while op-
12 erating a motor vehicle, aircraft, or vessel, knowingly or
13 recklessly disregards or disobeys the lawful command of
14 an officer of the Department of Homeland Security en-
15 gaged in the enforcement of the immigration, customs, or
16 maritime laws, or the lawful command of any law enforce-
17 ment agent assisting such officer, shall be fined under this
18 title, imprisoned not more than two years, or both.

19 “(c) ALTERNATIVE PENALTIES.—Notwithstanding
20 the penalties provided in subsection (a) or (b), any person
21 who violates such subsection shall—

22 “(1) be fined under this title, imprisoned not
23 more than 10 years, or both, if the violation involved
24 the operation of a motor vehicle, aircraft, or vessel—

25 “(A) in excess of the applicable or posted
26 speed limit,

1 “(B) in excess of the rated capacity of the
2 motor vehicle, aircraft, or vessel, or

3 “(C) in an otherwise dangerous or reckless
4 manner;

5 “(2) be fined under this title, imprisoned not
6 more than 20 years, or both, if the violation created
7 a substantial and foreseeable risk of serious bodily
8 injury or death to any person;

9 “(3) be fined under this title, imprisoned not
10 more than 30 years, or both, if the violation caused
11 serious bodily injury to any person; or

12 “(4) be fined under this title, imprisoned for
13 any term of years or life, or both, if the violation re-
14 sulted in the death of any person.

15 “(d) ATTEMPT AND CONSPIRACY.—Any person
16 who attempts or conspires to commit any offense
17 under this section shall be punished in the same
18 manner as a person who completes the offense.

19 “(e) FORFEITURE.—Any property, real or personal,
20 constituting or traceable to the gross proceeds of the of-
21 fense and any property, real or personal, used or intended
22 to be used to commit or facilitate the commission of the
23 offense shall be subject to forfeiture.

24 “(f) FORFEITURE PROCEDURES.—Seizures and for-
25 feitures under this section shall be governed by the provi-

1 sions of chapter 46 of this title, relating to civil forfeitures,
2 including section 981(d) of such title, except that such du-
3 ties as are imposed upon the Secretary of the Treasury
4 under the customs laws described in that section shall be
5 performed by such officers, agents, and other persons as
6 may be designated for that purpose by the Secretary of
7 Homeland Security or the Attorney General. Nothing in
8 this section shall limit the authority of the Secretary to
9 seize and forfeit motor vehicles, aircraft, or vessels under
10 the Customs laws or any other laws of the United States.

11 “(g) DEFINITIONS.—For purposes of this section—

12 “(1) The term ‘checkpoint’ includes, but is not
13 limited to, any customs or immigration inspection at
14 a port of entry.

15 “(2) The term ‘lawful command’ includes, but
16 is not limited to, a command to stop, decrease speed,
17 alter course, or land, whether communicated orally,
18 visually, by means of lights or sirens, or by radio,
19 telephone, or other wire communication.

20 “(3) The term ‘law enforcement agent’ means
21 any Federal, State, local or tribal official authorized
22 to enforce criminal law, and, when conveying a com-
23 mand covered under subsection (b) of this section,
24 an air traffic controller.

1 “(4) The term ‘motor vehicle’ means any mo-
2 torized or self-propelled means of terrestrial trans-
3 portation.

4 “(5) The term ‘serious bodily injury’ has the
5 meaning given in section 2119(2) of this title.”.

6 **SEC. 113. RELEASE OF ALIENS FROM NONCONTIGUOUS**
7 **COUNTRIES.**

8 Section 236(a)(2) (8 U.S.C. 1226(a)(2)) is amend-
9 ed—

10 (1) by striking “on”;

11 (2) in subparagraph (A)—

12 (A) by inserting “except as provided under
13 subparagraph (B), upon the giving of a” before
14 “bond”; and

15 (B) by striking “or” at the end;

16 (3) by redesignating subparagraph (B) as sub-
17 paragraph (C); and

18 (4) by inserting after subparagraph (A) the fol-
19 lowing:

20 “(B) upon the giving of a bond of not less
21 than \$5,000 with security approved by, and
22 containing conditions prescribed by, the Sec-
23 retary or the Attorney General, if the alien—

24 “(i) is a national of a noncontiguous
25 country;

1 “(ii) has not been admitted or paroled
2 into the United States; and

3 “(iii) was apprehended within 100
4 miles of the international border of the
5 United States or presents a flight risk, as
6 determined by the Secretary of Homeland
7 Security; or”.

8 **SEC. 114. SEIZURE OF CONVEYANCE WITH CONCEALED**
9 **COMPARTMENT: EXPANDING THE DEFINI-**
10 **TION OF CONVEYANCES WITH HIDDEN COM-**
11 **PARTMENTS SUBJECT TO FORFEITURE.**

12 (a) IN GENERAL.—Section 1703 of title 19, United
13 States Code is amended:

14 (1) by amending the title of such section to
15 read as follows:

16 **“§ 1703. Seizure and forfeiture of vessels, vehicles,**
17 **other conveyances and instruments of**
18 **international traffic”;**

19 (2) by amending the title of subsection (a) to
20 read as follows:

21 “(a) Vessels, vehicles, other conveyances and in-
22 struments of international traffic subject to seizure
23 and forfeiture”;

24 (3) by amending the title of subsection (b) to
25 read as follows:

1 “(b) Vessels, vehicles, other conveyances and instru-
2 ments of international traffic defined”;

3 (4) by inserting “, vehicle, other conveyance or
4 instrument of international traffic” after the word
5 “vessel” everywhere it appears in the text of sub-
6 sections (a) and (b); and

7 (5) by amending subsection (c) to read as fol-
8 lows:

9 “(c) Acts constituting prima facie evidence of vessel,
10 vehicle, or other conveyance or instrument of international
11 traffic engaged in smuggling ‘For the purposes of this sec-
12 tion, prima facie evidence that a conveyance is being, or
13 has been, or is attempted to be employed in smuggling
14 or to defraud the revenue of the United States shall be—

15 ‘(1) in the case of a vessel, the fact that a ves-
16 sel has become subject to pursuit as provided in sec-
17 tion 1581 of this title, or is a hovering vessel, or
18 that a vessel fails, at any place within the customs
19 waters of the United States or within a customs-en-
20 forcement area, to display light as required by law.

21 ‘(2) in the case of a vehicle, other conveyance
22 or instrument of international traffic, the fact that
23 a vehicle, other conveyance or instrument of inter-
24 national traffic has any compartment or equipment
25 that is built or fitted out for smuggling.’”

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 for Chapter 5 in title 19, United States Code, is amended
 3 by striking the items relating to section 1703 and insert-
 4 ing in lieu thereof the following:

“1703. Seizure and forfeiture of vessels, vehicles, other conveyances or instru-
 ments of international traffic.

5 “(a) Vessels, vehicles, other conveyances or instru-
 6 ments of international traffic subject to seizure and for-
 7 feiture.

8 “(b) Vessels, vehicles, other conveyances or instru-
 9 ments of international traffic defined.

10 “(c) Acts constituting prima facie evidence of vessel,
 11 vehicle, other conveyance or instrument of international
 12 traffic engaged in smuggling.”.

13 **Subtitle C—Other Measures**

14 **SEC. 121. DEATHS AT UNITED STATES-MEXICO BORDER.**

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

19 (1) the causes of the deaths; and

20 (2) the total number of deaths.

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

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

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

6 **SEC. 122. BORDER SECURITY ON CERTAIN FEDERAL LAND.**

7 (a) DEFINITIONS.—In this section:

8 (1) PROTECTED LAND.—The term “protected
9 land” means land under the jurisdiction of the Sec-
10 retary concerned.

11 (2) SECRETARY CONCERNED.—The term “Sec-
12 retary concerned” means—

13 (A) with respect to land under the jurisdic-
14 tion of the Secretary of Agriculture, the Sec-
15 retary of Agriculture; and

16 (B) with respect to land under the jurisdic-
17 tion of the Secretary of the Interior, the Sec-
18 retary of the Interior.

19 (b) SUPPORT FOR BORDER SECURITY NEEDS.—

20 (1) IN GENERAL.—To gain operational control
21 over the international land borders of the United
22 States and to prevent the entry of terrorists, unlaw-
23 ful aliens, narcotics, and other contraband into the
24 United States, the Secretary, in cooperation with the
25 Secretary concerned, shall provide—

1 (A) increased U.S. Customs and Border
2 Protection personnel to secure protected land
3 along the international land borders of the
4 United States;

5 (B) Federal land resource training for
6 U.S. Customs and Border Protection agents
7 dedicated to protected land; and

8 (C) Unmanned Aerial Vehicles, aerial as-
9 sets, Remote Video Surveillance camera sys-
10 tems, and sensors on protected land that is di-
11 rectly adjacent to the international land border
12 of the United States.

13 (2) COORDINATION.—In providing training for
14 Customs and Border Protection agents under para-
15 graph (1)(B), the Secretary shall coordinate with the
16 Secretary concerned to ensure that the training is
17 appropriate to the mission of the National Park
18 Service, the United States Fish and Wildlife Service,
19 the Forest Service, or the relevant agency of the De-
20 partment of the Interior or the Department of Agri-
21 culture to minimize the adverse impact on natural
22 and cultural resources from border protection activi-
23 ties.

24 (c) ANALYSIS OF DAMAGE TO PROTECTED LANDS.—
25 The Secretary and Secretaries concerned shall develop an

1 analysis of damage to protected lands relating to illegal
2 border activity, including the cost of equipment, training,
3 recurring maintenance, construction of facilities, restora-
4 tion of natural and cultural resources, recapitalization of
5 facilities, and operations.

6 (d) RECOMMENDATIONS.—The Secretary shall—

7 (1) develop joint recommendations with the Na-
8 tional Park Service, the United States Fish and
9 Wildlife Service, and the Forest Service for an ap-
10 propriate cost recovery mechanism relating to items
11 identified in subsection (c); and

12 (2) not later than one year from the date of en-
13 actment, submit to the appropriate congressional
14 committees (as defined in section 2 of the Homeland
15 Security Act of 2002 (6 U.S.C. 101)), including the
16 Subcommittee on National Parks of the Senate and
17 the Subcommittee on National Parks, Recreation
18 and Public Lands of the House of Representatives,
19 the recommendations developed under paragraph
20 (1).

21 (e) BORDER PROTECTION STRATEGY.—The Sec-
22 retary, the Secretary of the Interior, and the Secretary
23 of Agriculture shall jointly develop a border protection
24 strategy that supports the border security needs of the

1 United States in the manner that best protects the home-
2 land, including—

- 3 (1) units of the National Park System;
- 4 (2) National Forest System land;
- 5 (3) land under the jurisdiction of the United
6 States Fish and Wildlife Service; and
- 7 (4) other relevant land under the jurisdiction of
8 the Department of the Interior or the Department
9 of Agriculture.

10 **SEC. 123. SECURE COMMUNICATION.**

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

- 15 (1) among all Border Patrol agents conducting
16 operations between ports of entry;
- 17 (2) between Border Patrol agents and their re-
18 spective Border Patrol stations; and
- 19 (3) between all appropriate border security
20 agencies of the Department and State, local, and
21 tribal law enforcement agencies.

22 **SEC. 124. UNMANNED AIRCRAFT SYSTEMS**

23 (a) UNMANNED AIRCRAFT AND ASSOCIATED INFRA-
24 STRUCTURE.—The Secretary shall acquire and maintain

1 unmanned aircraft systems for use on the border, includ-
2 ing related equipment such as—

- 3 (1) additional sensors;
- 4 (2) critical spares;
- 5 (3) satellite command and control; and
- 6 (4) other necessary equipment for operational
7 support.

8 (b) AUTHORIZATION OF APPROPRIATIONS.—

9 (1) IN GENERAL.—There are authorized to be
10 appropriated to the Secretary to carry out sub-
11 section (a)—

12 (A) \$178,400,000 for fiscal year 2008; and

13 (B) \$276,000,000 for fiscal year 2009.

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

17 **SEC. 125. SURVEILLANCE TECHNOLOGIES PROGRAMS.**

18 (a) AERIAL SURVEILLANCE PROGRAM.—

19 (1) IN GENERAL.—In conjunction with the bor-
20 der surveillance plan developed under section 5201
21 of the Intelligence Reform and Terrorism Prevention
22 Act of 2004 (Public Law 108–458; 8 U.S.C. 1701
23 note), the Secretary, not later than 90 days after the
24 date of enactment of this Act, shall develop and im-
25 plement a program to fully integrate and utilize aer-

1 ial surveillance technologies, including unmanned
2 aerial vehicles, to enhance the security of the inter-
3 national border between the United States and Can-
4 ada and the international border between the United
5 States and Mexico. The goal of the program shall be
6 to ensure continuous monitoring of each mile of each
7 such border.

8 (2) ASSESSMENT AND CONSULTATION REQUIRE-
9 MENTS.—In developing the program under this sub-
10 section, the Secretary shall—

11 (A) consider current and proposed aerial
12 surveillance technologies;

13 (B) assess the feasibility and advisability
14 of utilizing such technologies to address border
15 threats, including an assessment of the tech-
16 nologies considered best suited to address re-
17 spective threats;

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

22 (D) consult with the Administrator of the
23 Federal Aviation Administration regarding safe-
24 ty, airspace coordination and regulation, and

1 any other issues necessary for implementation
2 of the program.

3 (3) ADDITIONAL REQUIREMENTS.—

4 (A) IN GENERAL.—The program developed
5 under this subsection shall include the use of a
6 variety of aerial surveillance technologies in a
7 variety of topographies and areas, including
8 populated and unpopulated areas located on or
9 near an international border of the United
10 States, in order to evaluate, for a range of cir-
11 cumstances—

12 (i) the significance of previous experi-
13 ences with such technologies in border se-
14 curity or critical infrastructure protection;

15 (ii) the cost and effectiveness of var-
16 ious technologies for border security, in-
17 cluding varying levels of technical com-
18 plexity; and

19 (iii) liability, safety, and privacy con-
20 cerns relating to the utilization of such
21 technologies for border security.

22 (4) CONTINUED USE OF AERIAL SURVEILLANCE
23 TECHNOLOGIES.—The Secretary may continue the
24 operation of aerial surveillance technologies while as-

1 sessing the effectiveness of the utilization of such
2 technologies.

3 (5) REPORT TO CONGRESS.—Not later than
4 180 days after implementing the program under this
5 subsection, the Secretary shall submit a report to
6 Congress regarding the program developed under
7 this subsection. The Secretary shall include in the
8 report a description of the program together with
9 such recommendations as the Secretary finds appro-
10 priate for enhancing the program.

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

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

16 (1) REQUIREMENT FOR PROGRAM.—Subject to
17 the availability of appropriations, the Secretary shall
18 establish a program to procure additional unmanned
19 aerial vehicles, cameras, poles, sensors, satellites,
20 radar coverage, and other technologies necessary to
21 achieve operational control of the international bor-
22 ders of the United States and to establish a security
23 perimeter known as a “virtual fence” along such
24 international borders to provide a barrier to illegal

1 immigration. Such program shall be known as the
2 Integrated and Automated Surveillance Program.

3 (2) PROGRAM COMPONENTS.—The Secretary
4 shall ensure, to the maximum extent feasible, the In-
5 tegrated and Automated Surveillance Program is
6 carried out in a manner that—

7 (A) the technologies utilized in the Pro-
8 gram are integrated and function cohesively in
9 an automated fashion, including the integration
10 of motion sensor alerts and cameras, whereby a
11 sensor alert automatically activates a cor-
12 responding camera to pan and tilt in the direc-
13 tion of the triggered sensor;

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

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

18 (D) surveillance video taken by such cam-
19 eras can be viewed at multiple designated com-
20 munications centers;

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

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

4 (G) performance measures are developed
5 and applied that can evaluate whether the Pro-
6 gram is providing desired results and increasing
7 response effectiveness in monitoring and detect-
8 ing illegal intrusions along the international
9 borders of the United States;

10 (H) plans are developed under the Pro-
11 gram to streamline site selection, site valida-
12 tion, and environmental assessment processes to
13 minimize delays of installing surveillance tech-
14 nology infrastructure;

15 (I) standards are developed under the Pro-
16 gram to expand the shared use of existing pri-
17 vate and governmental structures to install re-
18 mote surveillance technology infrastructure
19 where possible; and

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

1 (3) REPORT TO CONGRESS.—Not later than 1
2 year after the initial implementation of the Inte-
3 grated and Automated Surveillance Program, the
4 Secretary shall submit to Congress a report regard-
5 ing the Program. The Secretary shall include in the
6 report a description of the Program together with
7 any recommendation that the Secretary finds appro-
8 priate for enhancing the program.

9 (4) EVALUATION OF CONTRACTORS.—

10 (A) REQUIREMENT FOR STANDARDS.—The
11 Secretary shall develop appropriate standards
12 to evaluate the performance of any contractor
13 providing goods or services to carry out the In-
14 tegrated and Automated Surveillance Program.

15 (B) REVIEW BY THE INSPECTOR GEN-
16 ERAL.—The Inspector General of the Depart-
17 ment shall timely review each new contract re-
18 lated to the Program that has a value of more
19 than \$5,000,000, to determine whether such
20 contract fully complies with applicable cost re-
21 quirements, performance objectives, program
22 milestones, and schedules. The Inspector Gen-
23 eral shall report the findings of such review to
24 the Secretary in a timely manner. Not later
25 than 30 days after the date the Secretary re-

1 ceives a report of findings from the Inspector
2 General, the Secretary shall submit to the Com-
3 mittee on Homeland Security and Govern-
4 mental Affairs of the Senate and the Committee
5 on Homeland Security of the House of Rep-
6 resentatives a report of such findings and a de-
7 scription of any the steps that the Secretary
8 has taken or plans to take in response to such
9 findings.

10 (5) AUTHORIZATION OF APPROPRIATIONS.—

11 There are authorized to be appropriated such sums
12 as may be necessary to carry out this subsection.

13 **SEC. 126. SURVEILLANCE PLAN.**

14 (a) REQUIREMENT FOR PLAN.—The Secretary shall
15 develop a comprehensive plan for the systematic surveil-
16 lance of the international land and maritime borders of
17 the United States.

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

20 (1) An assessment of existing technologies em-
21 ployed on the international land and maritime bor-
22 ders of the United States.

23 (2) A description of the compatibility of new
24 surveillance technologies with surveillance tech-

1 nologies in use by the Secretary on the date of the
2 enactment of this Act.

3 (3) A description of how the Commissioner of
4 the United States Customs and Border Protection of
5 the Department is working, or is expected to work,
6 with the Under Secretary for Science and Tech-
7 nology of the Department to identify and test sur-
8 veillance technology.

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

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

13 (6) A detailed estimate of all costs associated
14 with such deployment and with continued mainte-
15 nance of such technologies.

16 (7) A description of how the Secretary is work-
17 ing with the Administrator of the Federal Aviation
18 Administration on safety and airspace control issues
19 associated with the use of unmanned aerial vehicles.

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

1 **SEC. 127. NATIONAL STRATEGY FOR BORDER SECURITY.**

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

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

11 (1) The implementation schedule for the com-
12 prehensive plan for systematic surveillance described
13 in section 136.

14 (2) An assessment of the threat posed by ter-
15 rorists and terrorist groups that may try to infiltrate
16 the United States at locations along the inter-
17 national land and maritime borders of the United
18 States.

19 (3) A risk assessment for all United States
20 ports of entry and all portions of the international
21 land and maritime borders of the United States that
22 includes a description of activities being under-
23 taken—

24 (A) to prevent the entry of terrorists, other
25 unlawful aliens, instruments of terrorism, nar-

1 cotics, and other contraband into the United
2 States; and

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

5 (4) An assessment of the legal requirements
6 that prevent achieving and maintaining operational
7 control over the entire international land and mari-
8 time borders of the United States.

9 (5) An assessment of the most appropriate,
10 practical, and cost-effective means of defending the
11 international land and maritime borders of the
12 United States against threats to security and illegal
13 transit, including intelligence capacities, technology,
14 equipment, personnel, and training needed to ad-
15 dress security vulnerabilities.

16 (6) An assessment of staffing needs for all bor-
17 der security functions, taking into account threat
18 and vulnerability information pertaining to the bor-
19 ders and the impact of new security programs, poli-
20 cies, and technologies.

21 (7) A description of the border security roles
22 and missions of Federal, State, regional, local, and
23 tribal authorities, and recommendations regarding
24 actions the Secretary can carry out to improve co-
25 ordination with such authorities to enable border se-

1 security and enforcement activities to be carried out in
2 a more efficient and effective manner.

3 (8) An assessment of existing efforts and tech-
4 nologies used for border security and the effect of
5 the use of such efforts and technologies on civil
6 rights, personal property rights, privacy rights, and
7 civil liberties, including an assessment of efforts to
8 take into account asylum seekers, trafficking vic-
9 tims, unaccompanied minor aliens, and other vulner-
10 able populations.

11 (9) A prioritized list of research and develop-
12 ment objectives to enhance the security of the inter-
13 national land and maritime borders of the United
14 States.

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

20 (11) An assessment of additional detention fa-
21 cilities and beds that are needed to detain unlawful
22 aliens apprehended at United States ports of entry
23 or along the international land borders of the United
24 States.

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

4 (13) A schedule for the implementation of the
5 security measures described in such Strategy, includ-
6 ing a prioritization of security measures, realistic
7 deadlines for addressing the security and enforce-
8 ment needs, an estimate of the resources needed to
9 carry out such measures, and a description of how
10 such resources should be allocated.

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

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

17 (2) appropriate private sector entities, non-
18 governmental organizations, and affected commu-
19 nities that have expertise in areas related to border
20 security.

21 (d) COORDINATION.—The National Strategy for Bor-
22 der Security shall be consistent with the National Strategy
23 for Maritime Security developed pursuant to Homeland
24 Security Presidential Directive 13, dated December 21,
25 2004.

1 (e) SUBMISSION TO CONGRESS.—

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

6 (2) UPDATES.—The Secretary shall submit to
7 Congress any update of such Strategy that the Sec-
8 retary determines is necessary, not later than 30
9 days after such update is developed.

10 (f) IMMEDIATE ACTION.—Nothing in this section or
11 section 111 may be construed to relieve the Secretary of
12 the responsibility to take all actions necessary and appro-
13 priate to achieve and maintain operational control over the
14 entire international land and maritime borders of the
15 United States.

16 **SEC. 128. BORDER PATROL TRAINING CAPACITY REVIEW.**

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

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

24 (1) An evaluation of the length and content of
25 the basic training curriculum provided to new Bor-

1 der Patrol agents by the Federal Law Enforcement
2 Training Center, including a description of how such
3 curriculum has changed since September 11, 2001,
4 and an evaluation of language and cultural diversity
5 training programs provided within such curriculum.

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

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

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

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

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

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

4 **SEC. 129. BIOMETRIC DATA ENHANCEMENTS.**

5 Not later than October 1, 2008, the Secretary shall—

6 (1) in consultation with the Attorney General,
7 enhance connectivity between the Automated Bio-
8 metric Fingerprint Identification System (IDENT)
9 of the Department and the Integrated Automated
10 Fingerprint Identification System (IAFIS) of the
11 Federal Bureau of Investigation to ensure more ex-
12 peditious data searches; and

13 (2) in consultation with the Secretary of State,
14 collect all fingerprints from each alien required to
15 provide fingerprints during the alien's initial enroll-
16 ment in the integrated entry and exit data system
17 described in section 110 of the Illegal Immigration
18 Reform and Immigrant Responsibility Act of 1996
19 (8 U.S.C. 1365a).

20 **SEC. 130. US-VISIT SYSTEM.**

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

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

7 (2) developing and deploying at such ports of
8 entry the exit component of the US-VISIT system;
9 and

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

12 **SEC. 131. DOCUMENT FRAUD DETECTION.**

13 (a) TRAINING.—Subject to the availability of appro-
14 priations, the Secretary shall provide all U.S. Customs and
15 Border Protection officers with training in identifying and
16 detecting fraudulent travel documents. Such training shall
17 be developed in consultation with the head of the Forensic
18 Document Laboratory of the U.S. Immigration and Customs
19 Enforcement.

20 (b) FORENSIC DOCUMENT LABORATORY.—The Sec-
21 retary shall provide all U.S. Customs and Border Protec-
22 tion officers with access to the Forensic Document Lab-
23 oratory.

24 (c) ASSESSMENT.—

1 (1) REQUIREMENT FOR ASSESSMENT.—The In-
2 specter General of the Department shall conduct an
3 independent assessment of the accuracy and reli-
4 ability of the Forensic Document Laboratory.

5 (2) REPORT TO CONGRESS.—Not later than 6
6 months after the date of the enactment of this Act,
7 the Inspector General shall submit to Congress the
8 findings of the assessment required by paragraph
9 (1).

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

14 **SEC. 132. BORDER RELIEF GRANT PROGRAM.**

15 (a) GRANTS AUTHORIZED.—

16 (1) IN GENERAL.—The Secretary is authorized
17 to award grants, subject to the availability of appro-
18 priations, to an eligible law enforcement agency to
19 provide assistance to such agency to address—

20 (A) criminal activity that occurs in the ju-
21 risdiction of such agency by virtue of such
22 agency's proximity to the United States border;
23 and

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

1 (2) DURATION.—Grants may be awarded under
2 this subsection during fiscal years 2008 through
3 2012.

4 (3) COMPETITIVE BASIS.—The Secretary shall
5 award grants under this subsection on a competitive
6 basis, except that the Secretary shall give priority to
7 applications from any eligible law enforcement agen-
8 cy serving a community—

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

10 and

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

13 (i) Canada; or

14 (ii) Mexico.

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

20 (1) to obtain equipment;

21 (2) to hire additional personnel;

22 (3) to upgrade and maintain law enforcement
23 technology;

24 (4) to cover operational costs, including over-
25 time and transportation costs; and

1 (5) such other resources as are available to as-
2 sist that agency.

3 (c) APPLICATION.—

4 (1) IN GENERAL.—Each eligible law enforce-
5 ment agency seeking a grant under this section shall
6 submit an application to the Secretary at such time,
7 in such manner, and accompanied by such informa-
8 tion as the Secretary may reasonably require.

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

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

13 (B) provide such additional assurances as
14 the Secretary determines to be essential to en-
15 sure compliance with the requirements of this
16 section.

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

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

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

23 (i) Canada; or

24 (ii) Mexico; or

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

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

8 (A) whether local law enforcement agencies
9 in that county have the resources to protect the
10 lives, property, safety, or welfare of the resi-
11 dents of that county;

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

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

19 (e) AUTHORIZATION OF APPROPRIATIONS.—

20 (1) IN GENERAL.—There are authorized to be
21 appropriated \$100,000,000 for each of fiscal years
22 2008 through 2012 to carry out the provisions of
23 this section.

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

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

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

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

12 **SEC. 133. PORT OF ENTRY INFRASTRUCTURE ASSESSMENT**
13 **STUDY.**

14 (a) REQUIREMENT TO UPDATE.—Not later than
15 January 31 of each year, the Administrator of General
16 Services, in consultation with U.S. Customs and Border
17 Protection, shall update the Port of Entry Infrastructure
18 Assessment Study prepared by U.S. Customs and Border
19 Protection in accordance with the matter relating to the
20 ports of entry infrastructure assessment that is set out
21 in the joint explanatory statement in the conference report
22 accompanying H.R. 2490 of the 106th Congress, 1st ses-
23 sion (House of Representatives Rep. No. 106–319, on
24 page 67) and submit such updated study to Congress.

1 (b) CONSULTATION.—In preparing the updated stud-
2 ies required in subsection (a), the Administrator of Gen-
3 eral Services shall consult with the Director of the Office
4 of Management and Budget, the Secretary, and the Com-
5 missioner.

6 (c) CONTENT.—Each updated study required in sub-
7 section (a) shall—

8 (1) identify port of entry infrastructure and
9 technology improvement projects that would enhance
10 border security and facilitate the flow of legitimate
11 commerce if implemented;

12 (2) include the projects identified in the Na-
13 tional Land Border Security Plan required by sec-
14 tion; and

15 (3) prioritize the projects described in para-
16 graphs (1) and (2) based on the ability of a project
17 to—

18 (A) fulfill immediate security requirements;

19 and

20 (B) facilitate trade across the borders of
21 the United States.

22 (d) PROJECT IMPLEMENTATION.—The Commissioner
23 shall implement the infrastructure and technology im-
24 provement projects described in subsection (c) in the order

1 of priority assigned to each project under subsection
2 (c)(3).

3 (e) DIVERGENCE FROM PRIORITIES.—The Commis-
4 sioner may diverge from the priority order if the Commis-
5 sioner determines that significantly changed cir-
6 cumstances, such as immediate security needs or changes
7 in infrastructure in Mexico or Canada, compellingly alter
8 the need for a project in the United States.

9 **SEC. 134. NATIONAL LAND BORDER SECURITY PLAN.**

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

18 (b) VULNERABILITY ASSESSMENT.—

19 (1) IN GENERAL.—The plan required in sub-
20 section (a) shall include a vulnerability assessment
21 of each port of entry located on the northern border
22 or the southern border.

23 (2) PORT SECURITY COORDINATORS.—The Sec-
24 retary may establish 1 or more port security coordi-

1 nators at each port of entry located on the northern
2 border or the southern border—

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

5 (B) to provide other assistance with the
6 preparation of the plan required in subsection

7 (a).

8 **SEC. 135. PORT OF ENTRY TECHNOLOGY DEMONSTRATION**
9 **PROGRAM.**

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

12 (1) test and evaluate new port of entry tech-
13 nologies;

14 (2) refine port of entry technologies and oper-
15 ational concepts; and

16 (3) train personnel under realistic conditions.

17 (b) **TECHNOLOGY AND FACILITIES.**—

18 (1) **TECHNOLOGY TESTING.**—Under the tech-
19 nology demonstration program, the Secretary shall
20 test technologies that enhance port of entry oper-
21 ations, including operations related to—

22 (A) inspections;

23 (B) communications;

24 (C) port tracking;

25 (D) identification of persons and cargo;

- 1 (E) sensory devices;
- 2 (F) personal detection;
- 3 (G) decision support; and
- 4 (H) the detection and identification of
- 5 weapons of mass destruction.

6 (2) DEVELOPMENT OF FACILITIES.—At a dem-
7 onstration site selected pursuant to subsection
8 (c)(2), the Secretary shall develop facilities to pro-
9 vide appropriate training to law enforcement per-
10 sonnel who have responsibility for border security,
11 including—

- 12 (A) cross-training among agencies;
- 13 (B) advanced law enforcement training;
- 14 and
- 15 (C) equipment orientation.

16 (c) DEMONSTRATION SITES.—

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

20 (2) SELECTION CRITERIA.—To ensure that at
21 least 1 of the facilities selected as a port of entry
22 demonstration site for the demonstration program
23 has the most up-to-date design, contains sufficient
24 space to conduct the demonstration program, has a
25 traffic volume low enough to easily incorporate new

1 technologies without interrupting normal processing
2 activity, and can efficiently carry out demonstration
3 and port of entry operations, at least 1 port of entry
4 selected as a demonstration site shall—

5 (A) have been established not more than
6 15 years before the date of the enactment of
7 this Act;

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

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

15 (d) RELATIONSHIP WITH OTHER AGENCIES.—The
16 Secretary shall permit personnel from an appropriate Fed-
17 eral or State agency to utilize a demonstration site de-
18 scribed in subsection (c) to test technologies that enhance
19 port of entry operations, including technologies described
20 in subparagraphs (A) through (H) of subsection (b)(1).

21 (e) REPORT.—

22 (1) REQUIREMENT.—Not later than 1 year
23 after the date of the enactment of this Act, and an-
24 nually thereafter, the Secretary shall submit to Con-
25 gress a report on the activities carried out at each

1 demonstration site under the technology demonstra-
2 tion program established under this section.

3 (2) CONTENT.—The report submitted under
4 paragraph (1) shall include an assessment by the
5 Secretary of the feasibility of incorporating any dem-
6 onstrated technology for use throughout the U.S.
7 Customs and Border Protection.

8 **SEC. 136. COMBATING HUMAN SMUGGLING.**

9 (a) REQUIREMENT FOR PLAN.—The Secretary shall
10 develop and implement a plan to improve coordination be-
11 tween the U.S. Immigration and Customs Enforcement
12 and the U.S. Customs and Border Protection of the De-
13 partment and any other Federal, State, local, or tribal au-
14 thorities, as determined appropriate by the Secretary, to
15 improve coordination efforts to combat human smuggling.

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

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

20 (2) adequate and effective personnel training;

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

23 (4) effective utilization of—

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

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

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

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

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

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

19 **SEC. 137. INCREASE OF FEDERAL DETENTION SPACE AND**
20 **THE UTILIZATION OF FACILITIES IDENTIFIED**
21 **FOR CLOSURES AS A RESULT OF THE DE-**
22 **FENSE BASE CLOSURE REALIGNMENT ACT**
23 **OF 1990.**

24 (a) CONSTRUCTION OR ACQUISITION OF DETENTION
25 FACILITIES.—

1 (1) IN GENERAL.—The Secretary shall con-
2 struct or acquire, in addition to existing facilities for
3 the detention of aliens, at least 20 detention facili-
4 ties in the United States that have the capacity to
5 detain a combined total of not less than 20,000 indi-
6 viduals at any time for aliens detained pending re-
7 moval or a decision on removal of such aliens from
8 the United States subject to available appropria-
9 tions.

10 (b) CONSTRUCTION OF OR ACQUISITION OF DETEN-
11 TION FACILITIES.—

12 (1) REQUIREMENT TO CONSTRUCT OR AC-
13 QUIRE.—The Secretary shall construct or acquire
14 additional detention facilities in the United States to
15 accommodate the detention beds required by section
16 5204(a) of the Intelligence Reform and Terrorism
17 Protection Act of 2004, as amended by subsection
18 (a), subject to available appropriations.

19 (2) USE OF ALTERNATE DETENTION FACILI-
20 TIES.—Subject to the availability of appropriations,
21 the Secretary shall fully utilize all possible options to
22 cost effectively increase available detention capaci-
23 ties, and shall utilize detention facilities that are
24 owned and operated by the Federal Government if
25 the use of such facilities is cost effective.

1 (3) USE OF INSTALLATIONS UNDER BASE CLO-
2 SURE LAWS.—In acquiring additional detention fa-
3 cilities under this subsection, the Secretary shall
4 consider the transfer of appropriate portions of mili-
5 tary installations approved for closure or realign-
6 ment under the Defense Base Closure and Realign-
7 ment Act of 1990 (part A of title XXIX of Public
8 Law 101–510; 10 U.S.C. 2687 note) for use in ac-
9 cordance with subsection (a).

10 (4) DETERMINATION OF LOCATION.—The loca-
11 tion of any detention facility constructed or acquired
12 in accordance with this subsection shall be deter-
13 mined, with the concurrence of the Secretary, by the
14 senior officer responsible for Detention and Removal
15 Operations in the Department. The detention facili-
16 ties shall be located so as to enable the officers and
17 employees of the Department to increase to the max-
18 imum extent practicable the annual rate and level of
19 removals of illegal aliens from the United States.

20 (c) ANNUAL REPORT TO CONGRESS.—Not later than
21 1 year after the date of the enactment of this Act, and
22 annually thereafter, in consultation with the heads of
23 other appropriate Federal agencies, the Secretary shall
24 submit to Congress an assessment of the additional deten-
25 tion facilities and bed space needed to detain unlawful

1 aliens apprehended at the United States ports of entry or
2 along the international land borders of the United States.

3 (d) TECHNICAL AND CONFORMING AMENDMENT.—
4 Section 241(g)(1) (8 U.S.C. 1231(g)(1)) is amended by
5 striking “may expend” and inserting “shall expend”.

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

9 **SEC. 138. UNITED STATES-MEXICO BORDER ENFORCEMENT**
10 **REVIEW COMMISSION.**

11 (a) ESTABLISHMENT OF COMMISSION.—

12 (1) IN GENERAL.—There is established an inde-
13 pendent commission to be known as the United
14 States-Mexico Border Enforcement Review Commis-
15 sion (referred to in this section as the “Commis-
16 sion”).

17 (2) PURPOSES.—The purposes of the Commis-
18 sion are—

19 (A) to study the overall enforcement strat-
20 egies, programs and policies of Federal agencies
21 along the United States-Mexico border; and

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

1 (3) MEMBERSHIP.—The Commission shall be
2 composed of 17 voting members, who shall be ap-
3 pointed as follows:

4 (A) The Governors of the States of Cali-
5 fornia, New Mexico, Arizona, and Texas shall
6 each appoint 4 voting members of whom—

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

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

11 (iii) 2 shall be from the State’s com-
12 munities of academia, religious leaders,
13 civic leaders or community leaders.

14 (B) 2 nonvoting members, of whom—

15 (i) 1 shall be appointed by the Sec-
16 retary;

17 (ii) 1 shall be appointed by the Attor-
18 ney General; and

19 (iii) 1 shall be appointed by the Sec-
20 retary of State.

21 (4) QUALIFICATIONS.—

22 (A) IN GENERAL.—Members of the Com-
23 mission shall be—

24 (i) individuals with expertise in migra-
25 tion, border enforcement and protection,

1 civil and human rights, community rela-
2 tions, crossborder trade and commerce or
3 other pertinent qualifications or experience;
4 and

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

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

13 (C) NONGOVERNMENTAL APPOINTEES.—
14 An individual appointed as a voting member to
15 the Commission may not be an officer or em-
16 ployee of the Federal Government.

17 (5) DEADLINE FOR APPOINTMENT.—All mem-
18 bers of the Commission shall be appointed not later
19 than 6 months after the enactment of this Act. If
20 any member of the Commission described in para-
21 graph (3)(A) is not appointed by such date, the
22 Commission shall carry out its duties under this sec-
23 tion without the participation of such member.

24 (6) TERM OF SERVICE.—The term of office for
25 members shall be for life of the Commission.

1 (7) VACANCIES.—Any vacancy in the Commis-
2 sion shall not affect its powers, but shall be filled in
3 the same manner in which the original appointment
4 was made.

5 (8) MEETINGS.—

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

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

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

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

19 (b) DUTIES.—The Commission shall review, examine,
20 and make recommendations regarding border enforcement
21 policies, strategies, and programs, including recommenda-
22 tions regarding—

23 (1) the protection of human and civil rights of
24 community residents and migrants along the inter-

1 national border between the United States and Mex-
2 ico;

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

6 (3) the adequacy of the complaint process with-
7 in the agencies and programs of the Department
8 that are employed when an individual files a griev-
9 ance;

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

13 (A) environment;

14 (B) cross border traffic and commerce; and

15 (C) the quality of life of border commu-
16 nities;

17 (5) local law enforcement involvement in the en-
18 forcement of Federal immigration law; and

19 (6) any other matters regarding border enforce-
20 ment policies, strategies, and programs the Commis-
21 sion determines appropriate.

22 (c) INFORMATION AND ASSISTANCE FROM FEDERAL
23 AGENCIES.—

24 (1) INFORMATION FROM FEDERAL AGENCIES.—

25 The Commission may seek directly from any depart-

1 ment or agency of the United States such informa-
2 tion, including suggestions, estimates, and statistics,
3 as allowed by law and as the Commission considers
4 necessary to carry out the provisions of this section.
5 Upon request of the Commission, the head of such
6 department or agency shall furnish such information
7 to the Commission.

8 (2) ASSISTANCE FROM FEDERAL AGENCIES.—

9 The Administrator of General Services shall, on a
10 reimbursable basis, provide the Commission with ad-
11 ministrative support and other services for the per-
12 formance of the Commission's functions. The depart-
13 ments and agencies of the United States may pro-
14 vide the Commission with such services, funds, facili-
15 ties, staff, and other support services as they deter-
16 mine advisable and as authorized by law.

17 (d) COMPENSATION.—

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

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

1 (e) REPORT.—Not later than 2 years after the date
2 of the first meeting called pursuant to (a)(8)(A), the Com-
3 mission shall submit a report to the President and Con-
4 gress that contains—

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

7 (2) recommendations regarding border enforce-
8 ment policies, strategies, and programs;

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

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

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

19 (g) SUNSET.—Unless the Commission is reauthorized
20 by Congress, the Commission shall terminate on the date
21 that is 90 days after the date the Commission submits
22 the report described in subsection (e).

1 **SEC. 139. NORTHERN BORDER PROSECUTION REIMBURSE-**
2 **MENT.**

3 (a) **SHORT TITLE.**—This section may be cited as the
4 “Northern Border Prosecution Initiative Reimbursement
5 Act”.

6 (b) **NORTHERN BORDER PROSECUTION INITIA-**
7 **TIVE.**—

8 (1) **INITIATIVE REQUIRED.**—From amounts
9 made available to carry out this section, the Attor-
10 ney General, acting through the Director of the Bu-
11ureau of Justice Assistance of the Office of Justice
12 Programs, shall carry out a program, to be known
13 as the Northern Border Prosecution Initiative, to
14 provide funds to reimburse eligible northern border
15 entities for costs incurred by those entities for han-
16 dling case dispositions of criminal cases that are fed-
17 erally initiated but federally declined-referred. This
18 program shall be modeled after the Southwestern
19 Border Prosecution Initiative and shall serve as a
20 partner program to that initiative to reimburse local
21 jurisdictions for processing Federal cases.

22 (2) **PROVISION AND ALLOCATION OF FUNDS.**—
23 Funds provided under the program shall be provided
24 in the form of direct reimbursements and shall be al-
25 located in a manner consistent with the manner

1 under which funds are allocated under the South-
2 western Border Prosecution Initiative.

3 (3) USE OF FUNDS.—Funds provided to an eli-
4 gible northern border entity may be used by the en-
5 tity for any lawful purpose, including the following
6 purposes:

7 (A) Prosecution and related costs.

8 (B) Court costs.

9 (C) Costs of courtroom technology.

10 (D) Costs of constructing holding spaces.

11 (E) Costs of administrative staff.

12 (F) Costs of defense counsel for indigent
13 defendants.

14 (G) Detention costs, including pre-trial and
15 post-trial detention.

16 (4) DEFINITIONS.—In this section:

17 (A) The term “eligible northern border en-
18 tity” means—

19 (i) any of the following States: Alaska,
20 Idaho, Maine, Michigan, Minnesota, Mon-
21 tana, New Hampshire, New York, North
22 Dakota, Ohio, Pennsylvania, Vermont,
23 Washington, and Wisconsin; or

24 (ii) any unit of local government with-
25 in a State referred to in clause (i).

1 (B) The term “federally initiated” means,
2 with respect to a criminal case, that the case
3 results from a criminal investigation or an ar-
4 rest involving Federal law enforcement authori-
5 ties for a potential violation of Federal criminal
6 law, including investigations resulting from
7 multi-jurisdictional task forces.

8 (C) The term “federally declined-referred”
9 means, with respect to a criminal case, that a
10 decision has been made in that case by a
11 United States Attorney or a Federal law en-
12 forcement agency during a Federal investiga-
13 tion to no longer pursue Federal criminal
14 charges against a defendant and to refer the in-
15 vestigation to a State or local jurisdiction for
16 possible prosecution. The term includes a deci-
17 sion made on an individualized case-by-case
18 basis as well as a decision made pursuant to a
19 general policy or practice or pursuant to pros-
20 ecutorial discretion.

21 (D) The term “case disposition”, for pur-
22 poses of the Northern Border Prosecution Ini-
23 tiative, refers to the time between a suspect’s
24 arrest and the resolution of the criminal
25 charges through a county or State judicial or

1 prosecutorial process. Disposition does not in-
2 clude incarceration time for sentenced offend-
3 ers, or time spent by prosecutors on judicial ap-
4 peals.

5 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
6 authorized to be appropriated to carry out this section
7 \$28,000,000 for fiscal year 2008 and such sums as may
8 be necessary for each succeeding fiscal year.

9 **Subtitle D—Asylum and Detention**
10 **Safeguards**

11 **SEC. 140. SHORT TITLE.**

12 This subtitle may be cited as the “Secure and Safe
13 Detention and Asylum Act”.

14 **SEC. 141. DEFINITIONS.**

15 In this subtitle:

16 (1) CREDIBLE FEAR OF PERSECUTION.—The
17 term “credible fear of persecution” has the meaning
18 given that term in section 235(b)(1)(B)(v) of the
19 Immigration and Nationality Act (8 U.S.C.
20 1225(b)(1)(B)(v)).

21 (2) DETAINEE.—The term “detainee” means
22 an alien in the custody of the Department of Home-
23 land Security who is held in a detention facility.

24 (3) DETENTION FACILITY.—The term “deten-
25 tion facility” means any Federal facility in which an

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

8 (4) REASONABLE FEAR OF PERSECUTION OR
9 TORTURE.—The term “reasonable fear of persecu-
10 tion or torture” has the meaning given that term in
11 section 208.31 of title 8, Code of Federal Regula-
12 tions.

13 (5) STANDARD.—The term “standard” means
14 any policy, procedure, or other requirement.

15 **SEC. 142. RECORDING EXPEDITED REMOVAL INTERVIEWS.**

16 (a) IN GENERAL.—The Secretary shall establish
17 quality assurance procedures and take steps to effectively
18 ensure that questions by employees of the Department ex-
19 ercising expedited removal authority under section 235(b)
20 of the Immigration and Nationality Act (8 U.S.C.
21 1225(b)) are asked in a standard manner, and that both
22 these questions and the answers provided in response to
23 them are recorded in a uniform fashion.

24 (b) FACTORS RELATING TO SWORN STATEMENTS.—
25 Where practicable, as determined by the Secretary in his

1 discretion, any sworn or signed written statement taken
2 of an alien as part of the record of a proceeding under
3 section 235(b)(1)(A) of the Immigration and Nationality
4 Act (8 U.S.C. 1225(b)(1)(A)) shall be accompanied by a
5 recording of the interview which served as the basis for
6 that sworn statement.

7 (c) EXEMPTION AUTHORITY.—

8 (1) IN GENERAL.—Subsection (b) shall not
9 apply to interviews that occur at facilities, locations,
10 or areas exempted by the Secretary pursuant to this
11 subsection.

12 (2) EXEMPTION.—The Secretary or the Sec-
13 retary's designee may exempt any facility, location,
14 or area from the requirements of this section based
15 on a determination by the Secretary or the Sec-
16 retary's designee that compliance with subsection (b)
17 at that facility would impair operations or impose
18 undue burdens or costs.

19 (3) REPORT.—The Secretary or the Secretary's
20 designee shall report annually to Congress on the fa-
21 cilities that have been exempted pursuant to this
22 subsection.

23 (d) INTERPRETERS.—The Secretary shall ensure that
24 a competent interpreter, not affiliated with the govern-
25 ment of the country from which the alien may claim asy-

1 lum, is used when the interviewing officer does not speak
2 a language understood by the alien and there is no other
3 Federal, State, or local government employee available
4 who is able to interpret effectively, accurately, and impar-
5 tially.

6 (e) RECORDINGS IN IMMIGRATION PROCEEDINGS.—
7 Recordings of interviews of aliens subject to expedited re-
8 moval shall be included in the record of proceeding and
9 may be considered as evidence in any further proceedings
10 involving the alien.

11 (f) NO PRIVATE RIGHT OF ACTION.—Nothing in this
12 section shall be construed to create any right, benefit,
13 trust, or responsibility, whether substantive or procedural,
14 enforceable in law or equity by a party against the United
15 States, its departments, agencies, instrumentalities, enti-
16 ties, officers, employees, or agents, or any person, nor does
17 this section create any right of review in any administra-
18 tive, judicial, or other proceeding.

19 **SEC. 143. OPTIONS REGARDING DETENTION DECISIONS.**

20 Section 236 of the Immigration and Nationality Act
21 (8 U.S.C. 1226) is amended—

22 (1) in subsection (a)—

23 (A) in the matter preceding paragraph

24 (1)—

1 (i) in the first sentence by striking
2 “Attorney General” and inserting “Sec-
3 retary of Homeland Security”; and

4 (ii) in the second sentence by striking
5 “Attorney General” and inserting “Sec-
6 retary”;

7 (B) in paragraph (2)—

8 (i) in subparagraph (A)—

9 (I) by striking “Attorney Gen-
10 eral” and inserting “Secretary”; and

11 (II) by striking “or” at the end;

12 (ii) in subparagraph (B), by striking
13 “but” at the end; and

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

16 “(C) the alien’s own recognizance; or

17 “(D) a secure alternatives program as pro-
18 vided for in this section; but”;

19 (2) in subsection (b), by striking “Attorney
20 General” and inserting “Secretary”;

21 (3) in subsection (c)—

22 (A) by striking “Attorney General” and in-
23 serting “Secretary” each place it appears; and

1 (B) in paragraph (2), by inserting “or for
2 humanitarian reasons,” after “such an inves-
3 tigation,”; and

4 (4) in subsection (d)—

5 (A) in paragraph (1), by striking “Attor-
6 ney General” and inserting “Secretary”;

7 (B) in paragraph (1), in subparagraphs
8 (A) and (B), by striking “Service” each place it
9 appears and inserting “Department of Home-
10 land Security”; and

11 (C) in paragraph (3), by striking “Service”
12 and inserting “Secretary of Homeland Secu-
13 rity”.

14 **SEC. 144. REPORT TO CONGRESS ON PAROLE PROCEDURES**
15 **AND STANDARDIZATION OF PAROLE PROCE-**
16 **DURES.**

17 (a) IN GENERAL.—The Attorney General and the
18 Secretary of Homeland Security shall jointly conduct a re-
19 view and report to the appropriate Committees of the Sen-
20 ate and the House of Representatives within 180 days of
21 the date of enactment of this Act regarding the effective-
22 ness of parole and custody determination procedures ap-
23 plicable to aliens who have established a credible fear of
24 persecution and are awaiting a final determination regard-

1 ing their asylum claim by the immigration courts. The re-
2 port shall include the following:

3 (1) An analysis of the rate at which release
4 from detention (including release on parole) is grant-
5 ed to aliens who have established a credible fear of
6 persecution and are awaiting a final determination
7 regarding their asylum claim by the immigration
8 courts throughout the United States, and any dis-
9 parity that exists between locations or geographical
10 areas, including explanation of the reasons for this
11 disparity and what actions are being taken to have
12 consistent and uniform application of the standards
13 for granting parole.

14 (2) An analysis of the effect of the procedures
15 and policies applied with respect to parole and cus-
16 tody determinations both by the Attorney General
17 and the Secretary on the alien's pursuit of their asy-
18 lum claim before an immigration court.

19 (3) An analysis of the effect of the procedures
20 and policies applied with respect to parole and cus-
21 tody determinations both by the Attorney General
22 and the Secretary on the alien's physical and psy-
23 chological well-being.

24 (4) An analysis of the effectiveness of the pro-
25 cedures and policies applied with respect to parole

1 and custody determinations both by the Attorney
2 General and the Secretary in securing the alien's
3 presence at the immigration court proceedings.

4 (b) RECOMMENDATIONS.—The report shall include
5 recommendations with respect to whether the existing pa-
6 role and custody determination procedures applicable to
7 aliens who have established a credible fear of persecution
8 and are awaiting a final determination regarding their
9 asylum claim by the immigration courts should be modi-
10 fied in order to ensure a more consistent application of
11 these procedures in a way that both respects the interests
12 of aliens pursuing valid claims of asylum and ensures the
13 presence of the aliens at the immigration court pro-
14 ceedings.

15 **SEC. 145. LEGAL ORIENTATION PROGRAM.**

16 (a) IN GENERAL.—The Attorney General, in con-
17 sultation with the Secretary of Homeland Security, shall
18 ensure that all detained aliens in immigration and asylum
19 proceedings receive legal orientation through a program
20 administered and implemented by the Executive Office for
21 Immigration Review of the Department of Justice.

22 (b) CONTENT OF PROGRAM.—The legal orientation
23 program developed pursuant to this section shall be based
24 on the Legal Orientation Program carried out by the Ex-

1 ecutive Office for Immigration Review on the date of the
2 enactment of this Act.

3 (c) EXPANSION OF LEGAL ASSISTANCE.—The Sec-
4 retary shall ensure the expansion through the United
5 States Citizenship and Immigration Service of public-pri-
6 vate partnerships that facilitate pro bono counseling and
7 legal assistance for aliens awaiting a credible fear of perse-
8 cution interview or an interview related to a reasonable
9 fear of persecution or torture determination under section
10 241(b)(3).

11 **SEC. 146. CONDITIONS OF DETENTION.**

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

16 (b) PROCEDURES AND STANDARDS.—The Secretary
17 shall promulgate new standards, or modify existing deten-
18 tion standards, to comply with the following policies and
19 procedures:

20 (1) FAIR AND HUMANE TREATMENT.—Proce-
21 dures to prevent detainees from being subject to de-
22 grading or inhumane treatment such as physical
23 abuse, sexual abuse or harassment, or arbitrary pun-
24 ishment.

1 (2) LIMITATIONS ON SOLITARY CONFINEMENT.—Procedures limiting the use of solitary confinement, shackling, and strip searches of detainees
2 to situations where the use of such techniques is necessitated by security interests, the safety of officers
3 and other detainees, or other extraordinary circumstances.
4 to situations where the use of such techniques is necessitated by security interests, the safety of officers
5 and other detainees, or other extraordinary circumstances.
6 to situations where the use of such techniques is necessitated by security interests, the safety of officers
7 and other detainees, or other extraordinary circumstances.

8 (3) INVESTIGATION OF GRIEVANCES.—Procedures for the prompt and effective investigation of
9 grievances raised by detainees.
10 grievances raised by detainees.

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

18 (5) LOCATION OF FACILITIES.—Location of detention facilities, to the extent practicable, near
19 sources of free or low-cost legal representation with expertise in asylum or immigration law.
20 sources of free or low-cost legal representation with expertise in asylum or immigration law.

21 (6) PROCEDURES GOVERNING TRANSFERS OF
22 DETAINEES.—Procedures governing the transfer of a
23 detainee that take into account—

24 (A) the detainee's access to legal representatives; and
25 representatives; and

1 (B) the proximity of the facility to the
2 venue of the asylum or removal proceeding.

3 (7) QUALITY OF MEDICAL CARE.—

4 (A) IN GENERAL.—Essential medical care
5 provided promptly at no cost to the detainee,
6 including dental care, eye care, mental health
7 care, and where appropriate, individual and
8 group counseling, medical dietary needs, and
9 other medically necessary specialized care. Med-
10 ical facilities in all detention facilities used by
11 the Department maintain current accreditation
12 by the National Commission on Correctional
13 Health Care (NCCHC). Requirements that each
14 medical facility that is not accredited by the
15 Joint Commission on the Accreditation of
16 Health Care Organizations (JCAHO) will seek
17 to obtain such accreditation. Maintenance of
18 complete medical records for every detainee
19 which shall be made available upon request to
20 a detainee, his legal representative, or other au-
21 thorized individuals.

22 (B) EXCEPTION.—A detention facility that
23 is not operated by the Department of Homeland
24 Security or by a private contractor on behalf of
25 the Department of Homeland Security shall not

1 be required to maintain current accreditation by
2 the NCCHC or to seek accreditation by the
3 JCAHO.

4 (8) TRANSLATION CAPABILITIES.—The employ-
5 ment of detention facility staff that, to the extent
6 practicable, are qualified in the languages rep-
7 resented in the population of detainees at a deten-
8 tion facility, and the provision of alternative trans-
9 lation services when necessary.

10 (9) RECREATIONAL PROGRAMS AND ACTIVI-
11 TIES.—Frequent access to indoor and outdoor rec-
12 reational programs and activities.

13 (c) Special Standards for Noncriminal Detainees.—
14 The Secretary shall promulgate new standards, or modi-
15 fications to existing standards, that—

16 (1) recognize the distinctions between persons
17 with criminal convictions or a history of violent be-
18 havior and all other detainees; and

19 (2) ensure that procedures and conditions of
20 detention are appropriate for a noncriminal, non-
21 violent population.

22 (d) SPECIAL STANDARDS FOR SPECIFIC POPU-
23 LATIONS.—The Secretary shall promulgate new stand-
24 ards, or modifications to existing standards, that—

25 (1) recognize the unique needs of—

1 (A) victims of persecution, torture, traf-
2 ficking, and domestic violence;

3 (B) families with children;

4 (C) detainees who do not speak English;
5 and

6 (D) detainees with special religious, cul-
7 tural, or spiritual considerations; and

8 (2) ensure that procedures and conditions of
9 detention are appropriate for the populations de-
10 scribed in paragraph (1).

11 (e) TRAINING OF PERSONNEL.—

12 (1) IN GENERAL.—The Secretary shall ensure
13 that personnel in detention facilities are given spe-
14 cialized training to better understand and work with
15 the population of detainees held at the facilities
16 where such personnel work. The training should ad-
17 dress the unique needs of—

18 (A) aliens who have established credible
19 fear of persecution;

20 (B) victims of torture or other trauma and
21 victims of persecution, trafficking, and domestic
22 violence; and

23 (C) families with children, detainees who
24 do not speak English, and detainees with spe-

1 cial religious, cultural, or spiritual consider-
2 ations.

3 (2) SPECIALIZED TRAINING.—The training re-
4 quired by this subsection shall be designed to better
5 enable personnel to work with detainees from dif-
6 ferent countries, and detainees who cannot speak
7 English. The training shall emphasize that many de-
8 tainees have no criminal records and are being held
9 for civil violations.

10 (f) NO PRIVATE RIGHT OF ACTION.—Nothing in this
11 section shall be construed to create any right, benefit,
12 trust, or responsibility, whether substantive or procedural,
13 enforceable in law or equity by a party against the United
14 States, its departments, agencies, instrumentalities, enti-
15 ties, officers, employees, or agents, or any person, nor does
16 this section create any right of review in any administra-
17 tive, judicial, or other proceeding.

18 **SEC. 147. OFFICE OF DETENTION OVERSIGHT.**

19 (a) ESTABLISHMENT OF THE OFFICE.—

20 (1) IN GENERAL.—There shall be established
21 within the Department an Office of Detention Over-
22 sight (in this section referred to as the “Office”).

23 (2) HEAD OF THE OFFICE.—There shall be at
24 the head of the Office an Administrator. At the dis-
25 cretion of the Secretary, the Administrator of the

1 Office shall be appointed by, and shall report to, ei-
2 ther the Secretary or the Assistant Secretary of
3 Homeland Security for United States Immigration
4 and Customs Enforcement. The Office shall be inde-
5 pendent of the Office of Detention and Removal Op-
6 erations, but shall be subject to the supervision and
7 direction of the Secretary or Assistant Secretary.

8 (3) SCHEDULE.—The Office shall be estab-
9 lished and the Administrator of the Office appointed
10 not later than 6 months after the date of the enact-
11 ment of this Act.

12 (b) RESPONSIBILITIES OF THE OFFICE.—

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

15 (A) undertake regular and, where appro-
16 priate, unannounced inspections of all detention
17 facilities;

18 (B) develop a procedure for any detainee
19 or the detainee’s representative to file a con-
20 fidential written complaint directly with the Of-
21 fice; and

22 (C) report to the Secretary and to the As-
23 sistant Secretary all findings of a detention fa-
24 cility’s noncompliance with detention standards.

1 (2) INVESTIGATIONS.—The Administrator of
2 the Office shall—

3 (A) initiate investigations, as appropriate,
4 into allegations of systemic problems at deten-
5 tion facilities or incidents that constitute seri-
6 ous violations of detention standards;

7 (B) conduct any review or audit relating to
8 detention as directed by the Secretary or the
9 Assistant Secretary;

10 (C) report to the Secretary and the Assist-
11 ant Secretary the results of all investigations,
12 reviews, or audits; and

13 (D) 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 or agen-
21 cy.

22 (3) REPORT TO CONGRESS.—

23 (A) IN GENERAL.—The Administrator of
24 the Office shall submit to the Secretary, the As-
25 sistant Secretary, the Committee on the Judici-

1 ary and the Committee on Homeland Security
2 and Governmental Affairs of the Senate, and
3 the Committee on the Judiciary and the Com-
4 mittee on Homeland Security of the House of
5 Representatives an annual report on the Ad-
6 ministrator's findings on detention conditions
7 and the results of the completed investigations
8 carried out by the Administrator.

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

11 (i) a description of—

12 (I) each detention facility found
13 to be in noncompliance with the
14 standards for detention required by
15 this subtitle; and

16 (II) the actions taken by the De-
17 partment to remedy any findings of
18 noncompliance or other identified
19 problems; and

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

23 (c) COOPERATION WITH OTHER OFFICES AND
24 AGENCIES.—Whenever appropriate, the Administrator of

1 the Office shall cooperate and coordinate its activities
2 with—

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

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

7 (3) the Privacy Officer of the Department;

8 (4) the Department of Justice; or

9 (5) any other relevant office or agency.

10 **SEC. 148. SECURE ALTERNATIVES PROGRAM.**

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

17 (b) PROGRAM REQUIREMENTS.—

18 (1) NATIONWIDE IMPLEMENTATION.—The Sec-
19 retary shall facilitate the development of the secure
20 alternatives program on a nationwide basis, as a
21 continuation of existing pilot programs such as the
22 Intensive Supervision Appearance Program devel-
23 oped by the Department.

24 (2) UTILIZATION OF ALTERNATIVES.—In facili-
25 tating the development of the secure alternatives

1 program, the Secretary shall have discretion to uti-
2 lize a continuum of alternatives to a supervision of
3 the alien, including placement of the alien with an
4 individual or organizational sponsor, or in a super-
5 vised group home.

6 (3) ALIENS ELIGIBLE FOR SECURE ALTER-
7 NATIVES PROGRAM.—

8 (A) IN GENERAL.—Aliens who would oth-
9 erwise be subject to detention based on a con-
10 sideration of the release criteria in section
11 236(b)(2), or who are released pursuant to sec-
12 tion 236(c)(2), shall be considered for the se-
13 cure alternatives program.

14 (B) DESIGN OF PROGRAMS.—In developing
15 the secure alternatives program, the Secretary
16 shall take into account the extent to which the
17 program includes only those alternatives to de-
18 tention that reasonably and reliably ensure—

19 (i) the alien's continued presence at
20 all future immigration proceedings;

21 (ii) the alien's compliance with any fu-
22 ture order or removal; and

23 (iii) the public safety or national secu-
24 rity.

1 (C) CONTINUED EVALUATION.—The Sec-
2 retary shall evaluate regularly the effectiveness
3 of the program, including the effectiveness of
4 the particular alternatives to detention used
5 under the program, and make such modifica-
6 tions as the Secretary deems necessary to im-
7 prove the program’s effectiveness or to deter
8 abuse.

9 (4) CONTRACTS AND OTHER CONSIDER-
10 ATIONS.—The Secretary may enter into contracts
11 with qualified nongovernmental entities to implement
12 the secure alternatives program and, in designing
13 such program, shall consult with relevant experts
14 and consider programs that have proven successful
15 in the past.

16 **SEC. 149. LESS RESTRICTIVE DETENTION FACILITIES.**

17 (a) CONSTRUCTION.—To the extent practicable, the
18 Secretary shall facilitate the construction or use of secure
19 but less restrictive detention facilities for the purpose of
20 long-term detention where detainees are held longer than
21 72 hours.

22 (b) CRITERIA.—In pursuing the development of de-
23 tention facilities pursuant to this section, the Secretary
24 shall—

1 (1) consider the design, operation, and condi-
2 tions of existing secure but less restrictive detention
3 facilities; and

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

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

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

11 (C) detainees with special needs, including
12 those who have experienced trauma or torture,
13 have ready access to services and treatment ad-
14 dressing their needs;

15 (D) detainees have frequent access to pro-
16 grams and recreation;

17 (E) detainees are permitted contact visits
18 with legal representatives and family members;
19 and

20 (F) special facilities are provided to fami-
21 lies with children.

22 (c) FACILITIES FOR FAMILIES WITH CHILDREN.—

23 In any case in which release or secure alternatives pro-
24 grams are not a practicable option, the Secretary shall,
25 to the extent practicable, ensure that special detention fa-

1 cilities for the purposes of long-term detention where de-
2 tainees are held longer than 72 hours are specifically de-
3 signed to house parents with their minor children, includ-
4 ing ensuring that—

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

7 (2) living and sleeping quarters for children
8 under 14 years of age are not physically separated
9 from at least 1 of the child’s parents.

10 (d) PLACEMENT IN NONPUNITIVE FACILITIES.—

11 Among the factors to be considered with respect to placing
12 a detainee in a less restrictive facility is whether the de-
13 tainee is—

14 (1) part of a family with minor children;

15 (2) a victim of persecution, torture, trafficking,
16 or domestic violence; or

17 (3) a nonviolent, noncriminal detainee.

18 (e) PROCEDURES AND STANDARDS.—Where nec-
19 essary, the Secretary shall promulgate new standards, or
20 modify existing detention standards, to promote the devel-
21 opment of less restrictive detention facilities.

22 (f) NO PRIVATE RIGHT OF ACTION.—Nothing in this
23 section shall be construed to create any right, benefit,
24 trust, or responsibility, whether substantive or procedural,
25 enforceable in law or equity by a party against the United

1 States, its departments, agencies, instrumentalities, enti-
2 ties, officers, employees, or agents, or any person, nor does
3 this section create any right of review in any administra-
4 tive, judicial, or other proceeding.

5 **SEC. 150. AUTHORIZATION OF APPROPRIATIONS; EFFEC-**
6 **TIVE DATE.**

7 (a) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated such sums as are nec-
9 essary to carry out this subtitle.

10 (b) EFFECTIVE DATE.—This subtitle and the amend-
11 ments made by this subtitle shall take effect on the date
12 that is 180 days after the date of the enactment of this
13 Act.

14 **TITLE II—INTERIOR**
15 **ENFORCEMENT**

16 **SEC. 201. ADDITIONAL IMMIGRATION PERSONNEL.**

17 (a) DEPARTMENT OF HOMELAND SECURITY.—

18 (1) TRIAL ATTORNEYS.—In each of the fiscal
19 years 2008 through 2012, the Secretary, subject to
20 the availability of appropriations for such purpose,
21 shall increase the number of positions for attorneys
22 in the Office of General Counsel of the Department
23 who represent the Department in immigration mat-
24 ters by not less than 100 compared to the number

1 of such positions for which funds were made avail-
2 able during the preceding fiscal year.

3 (2) USCIS ADJUDICATORS.—In each of the fis-
4 cal years 2008 through 2012, the Secretary, subject
5 to the availability of appropriations for such pur-
6 pose, shall increase the number of positions for adju-
7 dicators in the United States Citizenship and Immi-
8 gration Service by not less than 100 compared to
9 the number of such positions for which funds were
10 made available during the preceding fiscal year.

11 (3) AUTHORIZATION OF APPROPRIATIONS.—
12 There are authorized to be appropriated to the Sec-
13 retary for each of the fiscal years 2008 through
14 2012 such sums as may be necessary to carry out
15 paragraphs (1) and (2).

16 (b) DEPARTMENT OF JUSTICE.—

17 (1) JUDICIAL CLERKS.—The Attorney General
18 shall, subject to the availability of appropriations for
19 such purpose, appoint necessary law clerks for immi-
20 gration judges and Board of Immigration Appeals
21 members of no less than one per judge and member.
22 A law clerk appointed under this section shall be ex-
23 empt from the provisions of subchapter I of chapter
24 63 of title 5 [5 USCS §§ 6301 et seq.].

1 (2) LITIGATION ATTORNEYS.—In each of the
2 fiscal years 2008 through 2012, the Attorney Gen-
3 eral, subject to the availability of appropriations for
4 such purpose, shall increase the number of positions
5 for attorneys in the Office of Immigration Litigation
6 by not less than 50 compared to the number of such
7 positions for which funds were made available during
8 the preceding fiscal year.

9 (3) UNITED STATES ATTORNEYS.—In each of
10 the fiscal years 2008 through 2012, the Attorney
11 General, subject to the availability of appropriations
12 for such purpose, shall increase the number of attor-
13 neys in the United States Attorneys' office to litigate
14 immigration cases in the Federal courts by not less
15 than 50 compared to the number of such positions
16 for which funds were made available during the pre-
17 ceding fiscal year.

18 (4) IMMIGRATION JUDGES.—In each of the fis-
19 cal years 2008 through 2012, the Attorney General,
20 subject to the availability of appropriations for such
21 purpose, shall—

22 (A) increase by not less than 20 the num-
23 ber of full-time immigration judges compared to
24 the number of such positions for which funds

1 were made available during the preceding fiscal
2 year; and

3 (B) increase by not less than 80 the num-
4 ber of positions for personnel to support the im-
5 migration judges described in subparagraph (A)
6 compared to the number of such positions for
7 which funds were made available during the
8 preceding fiscal year.

9 (5) BOARD OF IMMIGRATION APPEALS MEM-
10 BERS.—The Attorney General shall, subject to the
11 availability of appropriations, increase by 10 the
12 number members of the Board of Immigration Ap-
13 peals over the number of members serving on the
14 date of enactment of this Act.

15 (6) STAFF ATTORNEYS.—In each of the fiscal
16 years 2008 through 2012, the Attorney General
17 shall, subject to the availability of appropriations for
18 such purpose—

19 (A) increase the number of positions for
20 full-time staff attorneys in the Board of Immi-
21 gration Appeals by not less than 20 compared
22 to the number of such positions for which funds
23 were made available during the preceding fiscal
24 year; and

1 (B) increase the number of positions for
2 personnel to support the staff attorneys de-
3 scribed in subparagraph (A) by not less than 10
4 compared to the number of such positions for
5 which funds were made available during the
6 preceding fiscal year.

7 (7) AUTHORIZATION OF APPROPRIATIONS.—
8 There are authorized to be appropriated to the At-
9 torney General for each of the fiscal years 2008
10 through 2012 such sums as may be necessary to
11 carry out this subsection, including the hiring of
12 necessary support staff.

13 (c) ADMINISTRATIVE OFFICE OF THE UNITED
14 STATES COURTS.—In each of the fiscal years 2008
15 through 2012, the Director of the Administrative Office
16 of the United States Courts, subject to the availability of
17 appropriations, shall increase the number of attorneys in
18 the Federal Defenders Program who litigate criminal im-
19 migration cases in the Federal courts by not less than 50
20 compared to the number of such positions for which funds
21 were made available during the preceding fiscal year.

22 (d) LEGAL ORIENTATION PROGRAM.—

23 (1) CONTINUED OPERATION.—The Director of
24 the Executive Office for Immigration Review shall
25 continue to operate a legal orientation program to

1 provide basic information about immigration court
2 procedures for immigration detainees and shall ex-
3 pand the legal orientation program to provide such
4 information on a nationwide basis.

5 (2) AUTHORIZATION OF APPROPRIATIONS.—

6 There are authorized to be appropriated such sums
7 as may be necessary to carry out such legal orienta-
8 tion program.

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

10 **REMOVED.**

11 (a) IN GENERAL.—

12 (1) AMENDMENTS.—Section 241(a) (8 U.S.C.
13 1231(a)) is amended—

14 (A) by striking “Attorney General” the
15 first place it appears, except for the first ref-
16 erence in clause (a)(4)(B)(i), and inserting
17 “Secretary of Homeland Security”;

18 (B) by striking “Attorney General” any
19 other place it appears and inserting “Sec-
20 retary”;

21 (C) in paragraph (1)—

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

24 “(ii) If a court, the Board of Immi-
25 gration Appeals, or an immigration judge

1 orders a stay of the removal of the alien,
2 the expiration date of the stay of re-
3 moval.”;

4 (ii) by amending subparagraph (C) to
5 read as follows:

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

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

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

21 (iii) by adding at the end the fol-
22 lowing:

23 “(D) TOLLING OF PERIOD.—If, at the
24 time described in subparagraph (B), the alien is
25 not in the custody of the Secretary under the

1 authority of this Act, the removal period shall
2 not begin until the alien is taken into such cus-
3 tody. If the Secretary lawfully transfers custody
4 of the alien during the removal period to an-
5 other Federal agency or to a State or local gov-
6 ernment agency in connection with the official
7 duties of such agency, the removal period shall
8 be tolled, and shall recommence on the date on
9 which the alien is returned to the custody of the
10 Secretary.”;

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

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

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

1 “(i) to prevent the alien from ab-
2 sconding;

3 “(ii) for the protection of the commu-
4 nity; or

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

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

13 (G) by redesignating paragraph (7) as
14 paragraph (10); and

15 (H) by inserting after paragraph (6) the
16 following:

17 “(7) PAROLE.—If an alien detained pursuant to
18 paragraph (6) is an applicant for admission, the
19 Secretary of Homeland Security, in the Secretary’s
20 discretion, may parole the alien under section
21 212(d)(5) and may provide, notwithstanding section
22 212(d)(5), that the alien shall not be returned to
23 custody unless either the alien violates the conditions
24 of the alien’s parole or the alien’s removal becomes

1 reasonably foreseeable, provided that in no cir-
2 cumstance shall such alien be considered admitted.

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

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

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

16 “(i) has effected an entry into the
17 United States;

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

20 “(iii) has cooperated fully with the
21 Secretary’s efforts to establish the alien’s
22 identity and to carry out the removal
23 order, including making timely application
24 in good faith for travel or other documents
25 necessary for the alien’s departure; and

1 “(iv) has not conspired or acted to
2 prevent removal.

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

5 “(i) shall consider any evidence sub-
6 mitted by the alien;

7 “(ii) may consider any other evidence,
8 including—

9 “(I) any information or assist-
10 ance provided by the Department of
11 State or other Federal agency; and

12 “(II) any other information avail-
13 able to the Secretary pertaining to the
14 ability to remove the alien.

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

23 “(E) AUTHORITY TO DETAIN FOR ADDI-
24 TIONAL PERIOD.—The Secretary, in the exer-
25 cise of the Secretary’s discretion and without

1 any limitations other than those specified in
2 this section, may detain an alien beyond the 90-
3 day period authorized under subparagraph (D)
4 until the alien is removed, if the Secretary—

5 “(i) determines that there is a signifi-
6 cant likelihood that the alien will be re-
7 moved in the reasonably foreseeable future;
8 or

9 “(ii) certifies in writing—

10 “(I) in consultation with the Sec-
11 retary of Health and Human Services,
12 that the alien has a highly contagious
13 disease that poses a threat to public
14 safety;

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

21 “(III) based on information avail-
22 able to the Secretary (including classi-
23 fied, sensitive, or national security in-
24 formation, and regardless of the
25 grounds upon which the alien was or-

1 dered removed), that there is reason
2 to believe that the release of the alien
3 would threaten the national security
4 of the United States;

5 “(IV) that—

6 “(aa) the release of the alien
7 would threaten the safety of the
8 community or any person, and
9 conditions of release cannot rea-
10 sonably be expected to ensure the
11 safety of the community or any
12 person; and

13 “(bb) the alien—

14 “(AA) has been con-
15 victed of 1 or more aggra-
16 vated felonies (as defined in
17 section 101(a)(43)(A)), or of
18 1 or more attempts or con-
19 spiracies to commit any such
20 aggravated felonies for an
21 aggregate term of imprison-
22 ment of at least 5 years; or
23 (BB) has committed a
24 crime of violence (as defined
25 in section 16 of title 18,

1 United States Code, but not
2 including a purely political
3 offense) and, because of a
4 mental condition or person-
5 ality disorder and behavior
6 associated with that condi-
7 tion or disorder, is likely to
8 engage in acts of violence in
9 the future; or

10 “(V) that—

11 “(aa) the release of the alien
12 would threaten the safety of the
13 community or any person,
14 notwithstanding conditions of re-
15 lease designed to ensure the safe-
16 ty of the community or any per-
17 son; and

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

1 “(F) ATTORNEY GENERAL REVIEW.—If
2 the Secretary authorizes an extension of deten-
3 tion under subparagraph (E), the alien may
4 seek review of that determination before the At-
5 torney General. If the Attorney General con-
6 cludes that the alien should be released, then
7 the Secretary shall release the alien pursuant to
8 subparagraph (I). The Attorney General, in
9 consultation with the Secretary, shall promul-
10 gate regulations governing review under this
11 paragraph.

12 “(G) ADMINISTRATIVE REVIEW PROC-
13 ESS.—The Secretary, without any limitations
14 other than those specified in this section, may
15 detain an alien pending a determination under
16 subparagraph (E)(ii), if the Secretary has initi-
17 ated the administrative review process identified
18 in subparagraph (A) not later than 30 days
19 after the expiration of the removal period (in-
20 cluding any extension of the removal period
21 under paragraph (1)(C)).

22 “(H) RENEWAL AND DELEGATION OF CER-
23 TIFICATION.—

24 “(i) RENEWAL.—The Secretary may
25 renew a certification under subparagraph

1 (E)(ii) every 6 months, without limitation,
2 after providing the alien with an oppor-
3 tunity to request reconsideration of the
4 certification and to submit documents or
5 other evidence in support of that request.
6 If the Secretary does not renew such cer-
7 tification, the Secretary shall release the
8 alien, pursuant to subparagraph (I). If the
9 Secretary authorizes an extension of deten-
10 tion under paragraph (E), the alien may
11 seek review of that determination before
12 the Attorney General. If the Attorney Gen-
13 eral concludes that the alien should be re-
14 leased, then the Secretary shall release the
15 alien pursuant to subparagraph (I).

16 “(ii) DELEGATION.—Notwithstanding
17 any other provision of law, the Secretary
18 may not delegate the authority to make or
19 renew a certification described in subclause
20 (II), (III), or (V) of subparagraph (E)(ii)
21 below the level of the Assistant Secretary
22 for Immigration and Customs Enforce-
23 ment.

24 “(iii) HEARING.—The Secretary may
25 request that the Attorney General, or a

1 designee of the Attorney General, provide
2 for a hearing to make the determination
3 described in subparagraph
4 (E)(ii)(IV)(bb)(BB).

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

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

16 “(i) the alien fails to comply with the
17 conditions of release;

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

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

24 “(K) APPLICABILITY.—This paragraph
25 and paragraphs (6) and (7) shall apply to any

1 alien returned to custody under subparagraph
2 (I) as if the removal period terminated on the
3 day of the redetention.

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

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

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

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

21 “(bb) failed or refused to fully
22 cooperate with the Secretary’s efforts
23 to establish the alien’s identity and
24 carry out the removal order, including
25 the failure to make timely application

1 in good faith for travel or other docu-
2 ments necessary to the alien's depar-
3 ture; or

4 “(cc) conspired or acted to pre-
5 vent removal; or

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

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

19 “(9) JUDICIAL REVIEW.—Judicial review of any
20 action or decision made pursuant to paragraph (6),
21 (7), or (8) shall be available exclusively in a habeas
22 corpus proceeding brought in a United States dis-
23 trict court and only if the alien has exhausted all ad-
24 ministrative remedies (statutory and nonstatutory)
25 available to the alien as of right.”.

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

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

5 (B) shall apply to—

6 (i) any alien subject to a final admin-
7 istrative removal, deportation, or exclusion
8 order that was issued before, on, or after
9 the date of the enactment of this Act, un-
10 less (a) that order was issued and the alien
11 was subsequently released or paroled be-
12 fore the enactment of this Act and (b) the
13 alien has complied with and remains in
14 compliance with the terms and conditions
15 of that release or parole; and

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

19 **SEC. 203. AGGRAVATED FELONY.**

20 (a) DEFINITION OF AGGRAVATED FELONY.—Section
21 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

22 (1) by striking “The term ‘aggravated felony’
23 means—” and inserting “Notwithstanding any other
24 provision of law, the term ‘aggravated felony’ applies
25 to an offense described in this paragraph, whether in

1 violation of Federal or State law, and to such an of-
2 fense in violation of the law of a foreign country for
3 which the term of imprisonment was completed with-
4 in the previous 15 years, and regardless of whether
5 the conviction was entered before, on, or after Sep-
6 tember 30, 1996, and means—”;

7 (2) in subparagraph (A), by striking “murder,
8 rape, or sexual abuse of a minor;” and inserting
9 “murder, rape, or sexual abuse of a minor, whether
10 or not the minority of the victim is established by
11 evidence contained in the record of conviction or by
12 evidence extrinsic to the record of conviction;”;

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

15 (4) by striking the undesignated matter fol-
16 lowing subparagraph (U).

17 (b) EFFECTIVE DATE AND APPLICATION.—

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

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

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

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

9 **SEC. 204. INADMISSIBILITY AND DEPORTABILITY OF GANG**
10 **MEMBERS.**

11 (a) DEFINITION OF CRIMINAL GANG.—Section
12 101(a) (8 U.S.C. 1101(a)) is amended by inserting after
13 paragraph (51) the following:

14 “(52)(A) The term ‘criminal gang’ means an
15 ongoing group, club, organization, or association of
16 5 or more persons—

17 “(i) that has, as 1 of its primary purposes,
18 the commission of 1 or more of the criminal of-
19 fenses described in subparagraph (B); and

20 “(ii) the members of which engage, or have
21 engaged within the past 5 years, in a con-
22 tinuing series of offenses described in subpara-
23 graph (B).

24 “(B) Offenses described in this subparagraph,
25 whether in violation of Federal or State law or in

1 violation of the law of a foreign country, regardless
2 of whether charged, and regardless of whether the
3 conduct occurred before, on, or after the date of the
4 enactment of this paragraph, are—

5 “(i) a felony drug offense (as defined in
6 section 102 of the Controlled Substances Act
7 (21 U.S.C. 802));

8 “(ii) a felony offense involving firearms or
9 explosives, including a violation of section
10 924(c), 924(h), or 931 of title 18 (relating to
11 purchase, ownership, or possession of body
12 armor by violent felons);

13 “(iii) an offense under section 274 (relat-
14 ing to bringing in and harboring certain aliens),
15 section 277 (relating to aiding or assisting cer-
16 tain aliens to enter the United States), or sec-
17 tion 278 (relating to the importation of an alien
18 for immoral purpose);

19 “(iv) a felony crime of violence as defined
20 in section 16 of title 18, United States Code,
21 which is punishable by a sentence of imprison-
22 ment of 5 years or more, including first degree
23 murder, arson, possession, brandishment, or
24 discharge of firearm in connection with crime of
25 violence or drug trafficking offense, use of a

1 short-barreled or semi-automatic weapons, use
2 of a machine gun, murder of individuals in-
3 volved in aiding a Federal investigation, kidnap-
4 ping, bank robbery if death results or a hostage
5 is kidnapped, sexual exploitation and other
6 abuse of children, selling or buying of children,
7 activities relating to material involving the sex-
8 ual exploitation of a minor, activities relating to
9 material constituting or containing child por-
10 nography, or illegal transportation of a minor;

11 “(v) a crime involving obstruction of jus-
12 tice; tampering with or retaliating against a
13 witness, victim, or informant; or burglary;

14 “(vi) any conduct punishable under sec-
15 tions 1028 and 1029 of title 18, United States
16 Code (relating to fraud and related activity in
17 connection with identification documents or ac-
18 cess devices), sections 1581 through 1594 of
19 such title (relating to peonage, slavery and traf-
20 ficking in persons), section 1952 of such title
21 (relating to interstate and foreign travel or
22 transportation in aid of racketeering enter-
23 prises), section 1956 of such title (relating to
24 the laundering of monetary instruments), sec-
25 tion 1957 of such title (relating to engaging in

1 monetary transactions in property derived from
2 specified unlawful activity), or sections 2312
3 through 2315 of such title (relating to inter-
4 state transportation of stolen motor vehicles or
5 stolen property); and

6 “(vii) a conspiracy to commit an offense
7 described in clause (i) through (vi).”.

8 (b) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C.
9 1182(a)(2)) is amended—

10 (1) by redesignating subparagraph (F) as sub-
11 paragraph (L); and

12 (2) by inserting after subparagraph (E) the fol-
13 lowing:

14 “(F) ALIENS ASSOCIATED WITH CRIMINAL
15 GANGS.—Unless the Secretary of Homeland Se-
16 curity or the Attorney General waives the appli-
17 cation of this subparagraph, any alien who a
18 consular officer, the Attorney General, or the
19 Secretary of Homeland Security knows or has
20 reason to believe participated in a criminal
21 gang, knowing or having reason to know that
22 such participation promoted, furthered, aided,
23 or supported the illegal activity of the gang, is
24 inadmissible.”.

1 (c) DEPORTABILITY.—Section 237(a)(2) (8 U.S.C.
2 1227(a)(2)) is amended by adding at the end the fol-
3 lowing:

4 “(F) ALIENS ASSOCIATED WITH CRIMINAL
5 GANGS.—Any alien, in or admitted to the
6 United States, who at any time has participated
7 in a criminal gang, knowing or having reason to
8 know that such participation promoted,
9 furthered, aided, or supported the illegal activ-
10 ity of the gang is deportable. The Secretary of
11 Homeland Security or the Attorney General
12 may waive the application of this subpara-
13 graph.”.

14 (d) TEMPORARY PROTECTED STATUS.—Section 244
15 (8 U.S.C. 1254a) is amended—

16 (1) by striking “, Attorney General” each place
17 it appears and inserting “Secretary of Homeland Se-
18 curity”;

19 (2) in subparagraph (c)(2)(B)—

20 (A) in clause (i), by striking “or” and in-
21 serting a semicolon;

22 (B) in clause (ii), by striking the period at
23 the end and inserting “or”; and

24 (C) by adding at the end the following:

1 “(iii) the alien participates in, or at
2 any time after admission has participated
3 in, knowing or having reason to know that
4 such participation promoted, furthered,
5 aided, or supported the illegal activity of
6 the gang, the activities of a criminal
7 gang.”; and

8 (3) in subsection (d)—

9 (A) in paragraph (2)—

10 (i) by striking “Subject to paragraph
11 (3), such” and inserting “Such”; and

12 (ii) by striking “(under paragraph
13 (3))”;

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

15 (C) by redesignating paragraph (4) as
16 paragraph (3); and

17 (D) in paragraph (3), as redesignated, by
18 adding at the end the following: “The Secretary
19 of Homeland Security may detain an alien pro-
20 vided temporary protected status under this
21 section whenever appropriate under any other
22 provision.”.

23 (e) INCREASED PENALTIES BARRING THE ADMIS-
24 SION OF CONVICTED SEX OFFENDERS FAILING TO REG-

1 ISTER AND REQUIRING DEPORTATION OF SEX OFFEND-
2 ERS FAILING TO REGISTER.—

3 (1) INADMISSIBILITY.—Section 212(a)(2)(A)(i)
4 (8 U.S.C. 1182(a)(2)(A)(i)), as amended by section
5 209(a)(3), is further amended—

6 (A) in subclause (II), by striking “or” at
7 the end;

8 (B) in subclause (III), by striking the
9 comma at the end and inserting a semicolon;
10 and

11 (C) by inserting after subclause (III) the
12 following:

13 “(IV) a violation of section 2250
14 of title 18, United States Code (relat-
15 ing to failure to register as a sex of-
16 fender); or”.

17 (2) DEPORTABILITY.—Section 237(a)(2)(A)(i)
18 (8 U.S.C. 1227(a)(2)(A)(i)) is amended—

19 (A) in subclause (I), by striking “, and”
20 and inserting a semicolon;

21 (B) in subclause (II), by striking the
22 comma at the end and inserting “; or”; and

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

24 “(III) a violation of section 2250
25 of title 18, United States Code (relat-

1 ing to failure to register as a sex of-
2 fender).”.

3 (f) PRECLUDING ADMISSIBILITY OF ALIENS CON-
4 VICTED OF SERIOUS CRIMINAL OFFENSES AND DOMESTIC
5 VIOLENCE, STALKING, CHILD ABUSE AND VIOLATION OF
6 PROTECTION ORDERS.—

7 (1) INADMISSIBILITY ON CRIMINAL AND RE-
8 LATED GROUNDS; WAIVERS.—Section 212 (8 U.S.C.
9 1182) is amended—

10 (A) in subsection (a)(2), by adding at the
11 end the following:

12 “(J) CRIMES OF DOMESTIC VIOLENCE,
13 STALKING, OR VIOLATION OF PROTECTIVE OR-
14 DERS; CRIMES AGAINST CHILDREN.—

15 “(i) DOMESTIC VIOLENCE, STALKING,
16 AND CHILD ABUSE.—Any alien who has
17 been convicted of a crime of domestic vio-
18 lence, a crime of stalking, or a crime of
19 child abuse, child neglect, or child aban-
20 donment, provided the alien served at least
21 1 year’s imprisonment for the crime or
22 provided the alien was convicted of or ad-
23 mitted to acts constituting more than 1
24 such crime, not arising out of a single
25 scheme of criminal misconduct, is inadmis-

1 sible. In this clause, the term ‘crime of do-
2 mestic violence’ means any crime of vio-
3 lence (as defined in section 16 of title 18,
4 United States Code) against a person com-
5 mitted by a current or former spouse of
6 the person, by an individual with whom the
7 person shares a child in common, by an in-
8 dividual who is cohabiting with or has
9 cohabited with the person as a spouse, by
10 an individual similarly situated to a spouse
11 of the person under the domestic or family
12 violence laws of the jurisdiction where the
13 offense occurs, or by any other individual
14 against a person who is protected from
15 that individual’s acts under the domestic
16 or family violence laws of the United
17 States or any State, Indian tribal govern-
18 ment, or unit of local or foreign govern-
19 ment.

20 “(ii) VIOLATORS OF PROTECTION OR-
21 DERS.—Any alien who at any time is en-
22 joined under a protection order issued by
23 a court and whom the court determines
24 has engaged in conduct that constitutes
25 criminal contempt of the portion of a pro-

1 tection order that involves protection
2 against credible threats of violence, re-
3 peated harassment, or bodily injury to the
4 person or persons for whom the protection
5 order was issued, is inadmissible. In this
6 clause, the term ‘protection order’ means
7 any injunction issued for the purpose of
8 preventing violent or threatening acts of
9 domestic violence, including temporary or
10 final orders issued by civil or criminal
11 courts (other than support or child custody
12 orders or provisions) whether obtained by
13 filing an independent action or as an inde-
14 pendent order in another proceeding.

15 “(iii) APPLICABILITY.—This subpara-
16 graph shall not apply to an alien who has
17 been battered or subjected to extreme cru-
18 elty and who is not and was not the pri-
19 mary perpetrator of violence in the rela-
20 tionship, upon a determination by the At-
21 torney General or the Secretary of Home-
22 land Security that—

23 “(I) the alien was acting in self-
24 defense;

1 “(II) the alien was found to have
2 violated a protection order intended to
3 protect the alien; or

4 “(III) the alien committed, was
5 arrested for, was convicted of, or pled
6 guilty to committing a crime that did
7 not result in serious bodily injury.”;
8 and

9 (B) in subsection (h)—

10 (i) by striking “The Attorney General
11 may, in his discretion, waive the applica-
12 tion of subparagraphs (A)(i)(I), (B), (D),
13 and (E) of subsection (a)(2)” and inserting
14 “‘The Attorney General or the Secretary of
15 Homeland Security may waive the applica-
16 tion of subparagraphs (A)(i)(I), (B), (D),
17 (E), (F), (J), and (K) of subsection
18 (a)(2)’”; and

19 (ii) by inserting “or Secretary of
20 Homeland Security” after “the Attorney
21 General” each place it appears.

22 (2) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to any acts that oc-
24 curred on or after the date of the enactment of this
25 Act.

1 **SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO**
2 **DRUNK DRIVING, ILLEGAL ENTRY, PERJURY,**
3 **AND FIREARMS OFFENSES.**

4 (a) DRUNK DRIVING.—

5 (1) INADMISSIBILITY.—Section 212(a)(2) (8
6 U.S.C. 1182(a)(2)) is amended by inserting after
7 subparagraph (J), as added by section 204(f) the
8 following:

9 “(K) DRUNK DRIVERS.—Any alien who
10 has been convicted of 1 felony for driving under
11 the influence under Federal or State law, for
12 which the alien was sentenced to more than 1
13 year imprisonment, is inadmissible.” .

14 (2) DEPORTABILITY.—Section 237(a)(2) (8
15 U.S.C. 1227(a)(2)) is amended by adding at the end
16 the following:

17 “(F) DRUNK DRIVERS.—Unless the Sec-
18 retary of Homeland Security or the Attorney
19 General waives the application of this subpara-
20 graph, any alien who has been convicted of 1
21 felony for driving under the influence under
22 Federal or State law, for which the alien was
23 sentenced to more than 1 year imprisonment, is
24 deportable.”.

25 (3) CONFORMING AMENDMENT.—Section
26 212(h) (8 U.S.C. 1182(h)) is amended—

1 (A) in the subsection heading, by striking
2 “Subsection (a)(2)(A)(i)(I), (II), (B), (D), and
3 (E)” and inserting “Certain Provisions in Sub-
4 section (a)(2)”; and

5 (B) in the matter preceding paragraph (1),
6 by striking “and (E)” and inserting “(E), and
7 (F)”.

8 (4) EFFECTIVE DATE.—The amendments made
9 by this subsection shall take effect on the date of the
10 enactment of this Act and shall apply to convictions
11 entered on or after such date.

12 (b) ILLEGAL ENTRY.—

13 (1) IN GENERAL.—Section 275 (8 U.S.C. 1325)
14 is amended to read as follows:

15 **“SEC. 275. ILLEGAL ENTRY.**

16 **“(a) IN GENERAL.—**

17 **“(1) CRIMINAL OFFENSES.—**An alien shall be
18 subject to the penalties set forth in paragraph (2) if
19 the alien—

20 **“(A) knowingly enters or crosses the bor-**
21 **der into the United States at any time or place**
22 **other than as designated by the Secretary of**
23 **Homeland Security;**

24 **“(B) knowingly eludes examination or in-**
25 **spection by an immigration officer (including**

1 failing to stop at the command of such officer),
2 or a customs or agriculture inspection at a port
3 of entry; or

4 “(C) knowingly enters or crosses the bor-
5 der to the United States by means of a know-
6 ingly false or misleading representation or the
7 knowing concealment of a material fact (includ-
8 ing such representation or concealment in the
9 context of arrival, reporting, entry, or clearance
10 requirements of the customs laws, immigration
11 laws, agriculture laws, or shipping laws).

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

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

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

21 “(C) if the violation occurred after the
22 alien had been convicted of 3 or more mis-
23 demeanors or for a felony, shall be fined under
24 such title, imprisoned not more than 10 years,
25 or both;

1 “(D) if the violation occurred after the
2 alien had been convicted of a felony for which
3 the alien received a term of imprisonment of
4 not less than 30 months, shall be fined under
5 such title, imprisoned not more than 15 years,
6 or both; and

7 “(E) if the violation occurred after the
8 alien had been convicted of a felony for which
9 the alien received a term of imprisonment of
10 not less than 60 months, such alien shall be
11 fined under such title, imprisoned not more
12 than 20 years, or both.

13 “(3) PRIOR CONVICTIONS.—The prior convic-
14 tions described in subparagraphs (C) through (E) of
15 paragraph (2) are elements of the offenses described
16 in that paragraph and the penalties in such subpara-
17 graphs shall apply only in cases in which the convic-
18 tion or convictions that form the basis for the addi-
19 tional penalty are—

20 “(A) alleged in the indictment or informa-
21 tion; and

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

24 “(4) DURATION OF OFFENSE.—An offense
25 under this subsection continues until the alien is dis-

1 covered within the United States by an immigration
2 officer.

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

7 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
8 ALTIES.—Any alien who is apprehended while entering, at-
9 tempting to enter, or knowingly crossing or attempting to
10 cross, the border to the United States at a time or place
11 other than as designated by immigration officers shall be
12 subject to a civil penalty, in addition to any criminal or
13 other civil penalties that may be imposed under any other
14 provision of law, in an amount equal to—

15 “(1) not less than \$50 and not more than \$250
16 for each such entry, crossing, attempted entry, or at-
17 tempted crossing; or

18 “(2) twice the amount specified in paragraph
19 (1) if the alien had previously been subject to a civil
20 penalty under this subsection.”.

21 (2) CLERICAL AMENDMENT.—The table of con-
22 tents is amended by striking the item relating to sec-
23 tion 275 and inserting the following:

“Sec. 275. Illegal entry.”.

24 (3) EFFECTIVE DATE.—Section 275(a)(4) of
25 the Immigration and Nationality Act, as added by

1 this Act, shall apply only to violations of section
2 275(a)(1) committed on or after the date of the en-
3 actment of this Act.

4 (c) PERJURY AND FALSE STATEMENTS.—Any person
5 who willfully submits any materially false, fictitious, or
6 fraudulent statement or representation (including any doc-
7 ument, attestation, or sworn affidavit for that person or
8 any person) relating to an application for any benefit
9 under the immigration laws (including for Z non-immi-
10 grant status) will be subject to prosecution for perjury
11 under section 1621 of title 18, United States Code, or for
12 making such a statement or representation under section
13 1001 of that title.

14 (d) INCREASED PENALTIES RELATING TO FIREARMS
15 OFFENSES.—

16 (1) PENALTIES RELATED TO REMOVAL.—Sec-
17 tion 243 (8 U.S.C. 1253) is amended—

18 (A) in subsection (a)(1)—

19 (i) in the matter preceding subpara-
20 graph (A), by inserting “212(a)” or after
21 “section”; and

22 (ii) in the matter following subpara-
23 graph (D)—

24 (I) by striking “or imprisoned
25 not more than four years” and insert-

1 ing “and imprisoned for not more
2 than 5 years”; and

3 (II) by striking “, or both”;

4 (B) in subsection (b), by striking “not
5 more than \$1000 or imprisoned for not more
6 than one year, or both” and inserting “under
7 title 18, United States Code, and imprisoned
8 for not more than 5 years (or for not more than
9 10 years if the alien is a member of any of the
10 classes described in paragraphs (1)(E), (2), (3),
11 and (4) of section 237(a).”;

12 (2) PROHIBITING CARRYING OR USING A FIRE-
13 ARM DURING AND IN RELATION TO AN ALIEN SMUG-
14 GLING CRIME.—Section 924(c) of title 18, United
15 States Code, is amended—

16 (A) in paragraph (1)—

17 (i) in subparagraph (A), by inserting
18 “, alien smuggling crime,” after “any
19 crime of violence”;

20 (ii) in subparagraph (A), by inserting
21 “, alien smuggling crime,” after “such
22 crime of violence”; and

23 (iii) in subparagraph (D)(ii), by in-
24 serting “, alien smuggling crime,” after
25 “crime of violence”; and

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

2 “(6) For purposes of this subsection, the term
3 ‘alien smuggling crime’ means any felony punishable
4 under section 274(a), 277, or 278 of the Immigra-
5 tion and Nationality Act (8 U.S.C. 1324(a), 1327,
6 and 1328).”.

7 (3) INADMISSIBILITY FOR FIREARMS OF-
8 FENSES.—Section 212(a)(2)(A) (8 U.S.C.
9 1182(a)(2)(A)), as amended by sections 204(e) and
10 209(a)(3), is amended—

11 (A) in clause (i), by inserting after sub-
12 clause (IV) the following:

13 “(V) a crime involving the purchasing, sell-
14 ing, offering for sale, exchanging, using, own-
15 ing, possessing, or carrying, or of attempting or
16 conspiring to purchase, sell, offer for sale, ex-
17 change, use, own, possess, or carry, any weap-
18 on, part, or accessory which is a firearm or de-
19 structive device (as defined in section 921(a) of
20 title 18, United States Code), provided the alien
21 was sentenced to at least 1 year for the of-
22 fense,”; and

23 (B) in clause (ii), by striking “Clause
24 (i)(I)” and inserting “Subclauses (I), (IV), and
25 (V) of clause (i)”.

1 **SEC. 206. ILLEGAL ENTRY.**

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

4 **“SEC. 275. ILLEGAL ENTRY.**

5 “(a) IN GENERAL.—

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

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

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

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

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

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

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

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

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

21 “(E) if the violation occurred after the
22 alien had been convicted of a felony for which
23 the alien received a term of imprisonment of
24 not less than 60 months, such alien shall be

1 fined under such title, imprisoned not more
2 than 20 years, or both.

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

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

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

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

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

22 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
23 ALTIES.—Any alien who is apprehended while entering, at-
24 tempting to enter, or knowingly crossing or attempting to
25 cross the border to the United States at a time or place

1 other than as designated by immigration officers shall be
2 subject to a civil penalty, in addition to any criminal or
3 other civil penalties that may be imposed under any other
4 provision of law, in an amount equal to—

5 “(1) not less than \$50 or more than \$250 for
6 each such entry, crossing, attempted entry, or at-
7 tempted crossing; or

8 “(2) twice the amount specified in paragraph
9 (1) if the alien had previously been subject to a civil
10 penalty under this subsection.”.

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

“Sec. 275. Illegal Entry.”.

14 (c) EFFECTIVE DATE.—Subsection (a)(4) of section
15 275 of the Immigration and Nationality Act, as created
16 by this Act, shall apply only to violations of subsection
17 (a)(1) of section 275 committed on or after the date of
18 enactment of this Act.

19 **SEC. 207. ILLEGAL REENTRY.**

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

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

23 Strike subsections (a) through (c) of section 276 of
24 the Immigration and Nationality Act, and insert the fol-
25 lowing:

1 “(a) REENTRY AFTER REMOVAL.—Any alien who
2 has been denied admission, excluded, deported, or re-
3 moved, or who has departed the United States while an
4 order of exclusion, deportation, or removal is outstanding,
5 and subsequently enters, attempts to enter, crosses the
6 border to, attempts to cross the border to, or is at any
7 time found in the United States, shall be fined under title
8 18, United States Code, and imprisoned not less than 60
9 days and not more than 2 years.

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

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

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

24 “(3) was convicted for a felony before such re-
25 moval or departure for which the alien was sen-

1 tenced to a term of imprisonment of not less than
2 60 months, the alien shall be fined under such title,
3 and imprisoned not less than 4 years and not more
4 than 20 years, or both;

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

9 “(5) was convicted, before such removal or de-
10 parture, for murder, rape, kidnapping, or a felony
11 offense described in chapter 77 (relating to peonage
12 and slavery) or 113B (relating to terrorism) of such
13 title, the alien shall be fined under such title, and
14 imprisoned not less than 5 years and not more than
15 20 years, or both.

16 “(c) REENTRY AFTER REPEATED REMOVAL.—Any
17 alien who has been denied admission, excluded, deported,
18 or removed 3 or more times and thereafter enters, at-
19 tempts to enter, crosses the border to, attempts to cross
20 the border to, or is at any time found in the United States,
21 shall be fined under title 18, United States Code, and im-
22 prisoned not less than 2 years and not more than 10 years,
23 or both.”.

24 “(d) PROOF OF PRIOR CONVICTIONS.—The prior
25 convictions described in subsection (b) are elements of the

1 crimes described in that subsection, and the penalties in
2 that subsection shall apply only in cases in which the con-
3 viction or convictions that form the basis for the additional
4 penalty are—

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

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

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

11 “(1) prior to the alleged violation, the alien had
12 sought and received the express consent of the Sec-
13 retary of Homeland Security to reapply for admis-
14 sion into the United States;

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

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

20 “(B) had complied with all other laws and
21 regulations governing the alien’s admission into
22 the United States; or

23 “(3) at the time of the prior exclusion, deporta-
24 tion, removal, or denial of admission alleged in the
25 violation, the alien—

1 “(A) was under the age of eighteen, and

2 “(B) had not been convicted of a crime or
3 adjudicated a delinquent minor by a court of
4 the United States, or a court of a state or terri-
5 tory, for conduct that would constitute a felony
6 if committed by an adult.

7 “(f) LIMITATION ON COLLATERAL ATTACK ON UN-
8 DERLYING REMOVAL ORDER.—In a criminal proceeding
9 under this section, an alien may not challenge the validity
10 of any prior removal order concerning the alien unless the
11 alien demonstrates by clear and convincing evidence
12 that—

13 “(1) the alien exhausted all administrative rem-
14 edies that may have been available to seek relief
15 against the order;

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

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

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

1 be incarcerated for the remainder of the sentence of im-
2 prisonment which was pending at the time of deportation
3 without any reduction for parole or supervised release un-
4 less the alien affirmatively demonstrates that the Sec-
5 retary of Homeland Security has expressly consented to
6 the alien's reentry. Such alien shall be subject to such
7 other penalties relating to the reentry of removed aliens
8 as may be available under this section or any other provi-
9 sion of law.

10 “(h) LIMITATION.—It is not aiding and abetting a
11 violation of this section for an individual to provide an
12 alien with emergency humanitarian assistance, including
13 emergency medical care and food, or to transport the alien
14 to a location where such assistance can be rendered with-
15 out compensation or the expectation of compensation.

16 “(i) DEFINITIONS.—In this section:

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

21 “(2) MISDEMEANOR.—The term ‘misdemeanor’
22 means any criminal offense punishable by a term of
23 imprisonment of not more than 1 year under the ap-
24 plicable laws of the United States, any State, or a
25 foreign government.

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

5 “(4) STATE.—The term ‘State’ means a State
6 of the United States, the District of Columbia, and
7 any commonwealth, territory, or possession of the
8 United States.”.

9 **SEC. 208. REFORM OF PASSPORT, VISA, AND IMMIGRATION**

10 **FRAUD OFFENSES.**

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

12 (1) IN GENERAL.—Chapter 75 of title 18,
13 United States Code, is amended to read as follows:

 “CHAPTER 75—PASSPORT, VISA, AND IMMIGRATION FRAUD

 “Sec.

 “1541. Trafficking in passports.

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

 “1543. Forgery and unlawful production of a passport.

 “1544. Misuse of a passport.

 “1545. Schemes to defraud aliens.

 “1546. Immigration and visa fraud.

 “1547. Marriage fraud.

 “1548. Attempts and conspiracies.

 “1549. Alternative penalties for certain offenses.

 “1550. Seizure and forfeiture.

 “1551. Additional jurisdiction.

 “1552. Definitions.

 “1553. Authorized law enforcement activities.”.

14 **“SEC. 1541. TRAFFICKING IN PASSPORTS.**

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

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

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

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

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

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

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

1 **“SEC. 1542. FALSE STATEMENT IN AN APPLICATION FOR A**
2 **PASSPORT.**

3 “(a) IN GENERAL.—Any person who knowingly
4 makes any false statement or representation in an applica-
5 tion for a United States passport, or mails, prepares, pre-
6 sents, or signs an application for a United States passport
7 knowing the application to contain any false statement or
8 representation, shall be fined under this title, imprisoned
9 not more than 15 years, or both.

10 “(b) VENUE.—

11 “(1) An offense under subsection (a) may be
12 prosecuted in any district,

13 “(A) in which the false statement or rep-
14 resentation was made or the application for a
15 United States passport was prepared or signed,
16 or

17 “(B) in which or to which the application
18 was mailed or presented.

19 “(2) An offense under subsection (a) involving
20 an application prepared and adjudicated outside the
21 United States may be prosecuted in the district in
22 which the resultant passport was or would have been
23 produced.

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

1 **“SEC. 1543. FORGERY AND UNLAWFUL PRODUCTION OF A**
2 **PASSPORT.**

3 “(a) FORGERY.—Any person who—

4 “(1) knowingly forges, counterfeits, alters, or
5 falsely makes any passport; or

6 “(2) knowingly transfers any passport knowing
7 it to be forged, counterfeited, altered, falsely made,
8 stolen, or to have been produced or issued without
9 lawful authority,

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

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

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

17 “(2) produces, issues, authorizes, or verifies a
18 United States passport for or to any person, know-
19 ing or in reckless disregard of the fact that such
20 person is not entitled to receive a passport; or

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

24 shall be fined under this title, imprisoned not more than
25 15 years, or both.

1 **“SEC. 1544. MISUSE OF A PASSPORT.**

2 “Any person who knowingly—

3 “(1) uses any passport issued or designed for
4 the use of another;

5 “(2) uses any passport in violation of the condi-
6 tions or restrictions therein contained, or in violation
7 of the laws, regulations, or rules governing the
8 issuance and use of the passport;

9 “(3) secures, possesses, uses, receives, buys,
10 sells, or distributes any passport knowing it to be
11 forged, counterfeited, altered, falsely made, procured
12 by fraud, or produced or issued without lawful au-
13 thority; or

14 “(4) violates the terms and conditions of any
15 safe conduct duly obtained and issued under the au-
16 thority of the United States,

17 shall be fined under this title, imprisoned not more than
18 15 years, or both.

19 **“SEC. 1545. SCHEMES TO DEFRAUD ALIENS.**

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

26 “(1) defraud any person, or

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

6 “(b) MISREPRESENTATION.—Any person who know-
7 ingly and falsely represents that such person is an attor-
8 ney or accredited representative (as that term is defined
9 in section 1292.1 of title 8, Code of Federal Regulations
10 (or any successor regulation to such section)) in any mat-
11 ter arising under Federal immigration laws shall be fined
12 under this title, imprisoned not more than 15 years, or
13 both.

14 **“SEC. 1546. IMMIGRATION AND VISA FRAUD.**

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

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

18 “(2) forges, counterfeits, alters, or falsely
19 makes any immigration document;

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

24 “(4) secures, possesses, uses, transfers, re-
25 ceives, buys, sells, or distributes any immigration

1 document knowing it to be forged, counterfeited, al-
2 tered, falsely made, stolen, procured by fraud, or
3 produced or issued without lawful authority;

4 “(5) adopts or uses a false or fictitious name to
5 evade or to attempt to evade the immigration laws;
6 or

7 “(6) transfers or furnishes, without lawful au-
8 thority, an immigration document to another person
9 for use by a person other than the person for whom
10 the immigration document was issued or designed,
11 shall be fined under this title, imprisoned not more than
12 15 years, or both.

13 “(b) Any person who, during any period of 3 years
14 or less, knowingly—

15 “(1) and without lawful authority produces,
16 issues, or transfers 10 or more immigration docu-
17 ments;

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

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

1 “(4) completes, mails, prepares, presents, signs,
2 or submits 10 or more immigration documents
3 knowing the documents to contain any materially
4 false statement or representation,
5 shall be fined under this title, imprisoned not more than
6 20 years, or both.

7 “(c) IMMIGRATION DOCUMENT MATERIALS.—Any
8 person who knowingly and without lawful authority pro-
9 duces, buys, sells, or possesses any official material (or
10 counterfeit of any official material) used to make an immi-
11 gration document, including any distinctive paper, seal,
12 hologram, image, text, symbol, stamp, engraving, or plate,
13 shall be fined under this title, imprisoned not more than
14 20 years, or both.

15 “(d) EMPLOYMENT DOCUMENTS.—Whoever uses—
16 “(1) an identification document, knowing (or
17 having reason to know) that the document was not
18 issued lawfully for the use of the possessor;

19 “(2) an identification document knowing (or
20 having reason to know) that the document is false;
21 or

22 “(3) a false attestation,
23 for the purpose of satisfying a requirement of section
24 274A(b) of the Immigration and Nationality Act (8 U.S.C.

1 1324a(b)), shall be fined under this title, imprisoned not
2 more than 5 years, or both.”.

3 **“SEC. 1547. MARRIAGE FRAUD.**

4 “(a) EVASION OR MISREPRESENTATION.—Any per-
5 son who—

6 “(1) knowingly enters into a marriage for the
7 purpose of evading any provision of the immigration
8 laws; or

9 “(2) knowingly misrepresents the existence or
10 circumstances of a marriage—

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

13 “(B) during any immigration proceeding
14 conducted by an administrative adjudicator (in-
15 cluding an immigration officer or examiner, a
16 consular officer, an immigration judge, or a
17 member of the Board of Immigration Appeals),

18 shall be fined under this title, imprisoned not more than
19 10 years, or both.

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

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

23 “(2) knowingly arranges, supports, or facilitates
24 2 or more marriages designed or intended to evade
25 any immigration law,

1 shall be fined under this title, imprisoned not more than
2 20 years, or both.

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

8 “(d) DURATION OF OFFENSE.—

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

13 “(2) COMMERCIAL ENTERPRISE.—An offense
14 under subsection (c) continues until the fraudulent
15 nature of the commercial enterprise is discovered by
16 an immigration officer or other law enforcement offi-
17 cer.

18 **“SEC. 1548. ATTEMPTS AND CONSPIRACIES.**

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

1 **“SEC. 1549. ALTERNATIVE PENALTIES FOR CERTAIN OF-**
2 **FENSES.**

3 Notwithstanding any other provision of this title, the
4 maximum term of imprisonment that may be imposed for
5 an offense under this chapter—

6 (1) if committed to facilitate a drug trafficking
7 crime (as defined in 929(a)) is 20 years; and

8 (2) if committed to facilitate an act of inter-
9 national terrorism (as defined in section 2331) is 25
10 years.

11 **“SEC. 1550. SEIZURE AND FORFEITURE.**

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

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

1 **“SEC. 1551. ADDITIONAL JURISDICTION.**

2 “(a) IN GENERAL.—Any person who commits an of-
3 fense under this chapter within the special maritime and
4 territorial jurisdiction of the United States shall be pun-
5 ished as provided under this chapter.

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

10 “(1) the offense involves a United States pass-
11 port or immigration document (or any document
12 purporting to be such a document) or any matter,
13 right, or benefit arising under or authorized by Fed-
14 eral immigration laws;

15 “(2) the offense is in or affects foreign com-
16 merce;

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

21 “(4) the offense is committed to facilitate an
22 act of international terrorism (as defined in section
23 2331) or a drug trafficking crime (as defined in sec-
24 tion 929(a)(2)) that affects or would affect the na-
25 tional security of the United States;

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

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

8 **“SEC. 1552. DEFINITIONS.**

9 “As used in this chapter:

10 “(1) The term ‘falsely make’ means to prepare
11 or complete an immigration document with knowl-
12 edge or in reckless disregard of the fact that the
13 document—

14 “(A) contains a statement or representa-
15 tion that is false, fictitious, or fraudulent;

16 “(B) has no basis in fact or law; or

17 “(C) otherwise fails to state a fact which
18 is material to the purpose for which the docu-
19 ment was created, designed, or submitted.

20 “(2) The term ‘application for a United States
21 passport’ includes any document, photograph, or
22 other piece of evidence attached to or submitted in
23 support of the application.

24 “(3) The term ‘false statement or representa-
25 tion’ includes a personation or an omission.

1 “(4) The term ‘immigration document’—

2 “(A) means any application, petition, affi-
3 davit, declaration, attestation, form, visa, iden-
4 tification card, alien registration document, em-
5 ployment authorization document, border cross-
6 ing card, certificate, permit, order, license,
7 stamp, authorization, grant of authority, or
8 other official document, arising under or au-
9 thorized by the immigration laws of the United
10 States; and

11 “(B) includes any document, photograph,
12 or other piece of evidence attached to or sub-
13 mitted in support of an immigration document.

14 “(5) The term ‘immigration laws’ includes—

15 “(A) the laws described in section
16 101(a)(17) of the Immigration and Nationality
17 Act (8 U.S.C. 1101(a)(17));

18 “(B) the laws relating to the issuance and
19 use of passports; and

20 “(C) the regulations prescribed under the
21 authority of any law described in paragraphs
22 (A) and (B).

23 “(6) The term ‘immigration proceeding’ in-
24 cludes an adjudication, interview, hearing, or review.

1 “(7) A person does not exercise ‘lawful author-
2 ity’ if the person abuses or improperly exercises law-
3 ful authority the person otherwise holds.

4 “(8) The term ‘passport’ means—

5 “(A) a travel document attesting to the
6 identity and nationality of the bearer that is
7 issued under the authority of the Secretary of
8 State, a foreign government, or an international
9 organization; or

10 “(B) any instrument purporting to be a
11 document described in subparagraph (A).

12 “(9) The term ‘to present’ means to offer or
13 submit for official processing, examination, or adju-
14 dication. Any such presentation continues until the
15 official processing, examination, or adjudication is
16 complete.

17 “(10) The term ‘proceeds’ includes any prop-
18 erty or interest in property obtained or retained as
19 a consequence of an act or omission in violation of
20 this section.

21 “(11) The term ‘produce’ means to make, pre-
22 pare, assemble, issue, print, authenticate, or alter.

23 “(12) The term ‘State’ means a State of the
24 United States, the District of Columbia, or any com-

1 monwealth, territory, or possession of the United
2 States.

3 “(13) The ‘use’ of a passport or an immigration
4 document referred to in section 1541(a), section
5 1543(b), section 1544, section 1546(a), and section
6 1546(b) of this chapter includes any officially au-
7 thORIZED use; use to travel; use to demonstrate iden-
8 tity, residence, nationality, citizenship, or immigra-
9 tion status; use to seek or maintain employment; or
10 use in any matter within the jurisdiction of the Fed-
11 eral government or of a State government.’

12 **“SEC. 1553. AUTHORIZED LAW ENFORCEMENT ACTIVITIES.**

13 “Nothing in this chapter shall prohibit any lawfully
14 authorized investigative, protective, or intelligence activity
15 of a law enforcement agency of the United States, a State,
16 or a political subdivision of a State, or an intelligence
17 agency of the United States, or any activity authorized
18 under title V of the Organized Crime Control Act of 1970
19 (84 Stat. 933).

20 (b) Protection for Legitimate Refugees and Asylum
21 Seekers—

22 (1) PROSECUTION GUIDELINES.—The Attorney
23 General, in consultation with the Secretary of Home-
24 land Security, shall develop binding prosecution
25 guidelines for federal prosecutors to ensure that any

1 prosecution of an alien seeking entry into the United
2 States by fraud is consistent with the obligations of
3 the United States under Article 31(1) of the Con-
4 vention Relating to the Status of Refugees, done at
5 Geneva July 28, 1951 (as made applicable by the
6 Protocol Relating to the Status of Refugees, done at
7 New York January 31, 1967 (19 UST 6223)).

8 (2) NO PRIVATE RIGHT OF ACTION.—The
9 guidelines required by subparagraph (1), and any in-
10 ternal office procedures adopted pursuant thereto,
11 are intended solely for the guidance of attorneys for
12 the United States. This section, the guidelines re-
13 quired by subsection (a), and the process for deter-
14 mining such guidelines are not intended to, do not,
15 and may not be relied upon to create any right or
16 benefit, substantive or procedural, enforceable at law
17 by any party in any administrative, civil, or criminal
18 matter.

19 **SEC. 209. INADMISSIBILITY AND REMOVAL FOR PASSPORT**
20 **AND IMMIGRATION FRAUD OFFENSES.**

21 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8
22 U.S.C. 1182(a)(2)(A)(i)) is amended—

23 (1) in subclause (I), by striking ‘, or’ at the end
24 and inserting a semicolon;

1 (2) in subclause (II), by striking the comma at
2 the end and inserting ‘; or’; and

3 (3) by inserting after subclause (II) the fol-
4 lowing:

5 “(III) a violation of (or a con-
6 spiracy or attempt to violate) section
7 1541, 1545, subsection (b) of section
8 1546, or subsection (b) of section
9 1547 of title 18, United States Code.’.

10 (b) REMOVAL.—Section 237(a)(3)(B)(iii) (8 U.S.C.
11 1227(a)(3)(B)(iii)) is amended to read as follows:

12 “(iii) a violation of (or a conspiracy or
13 attempt to violate) section 1541, 1545,
14 1546, or subsection (b) of section 1547 of
15 title 18, United States Code,”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 subsections (a) and (b) shall apply to proceedings pending
18 on or after the date of the enactment of this Act, with
19 respect to conduct occurring on or after that date.

20 **SEC. 210. INCARCERATION OF CRIMINAL ALIENS.**

21 (a) INSTITUTIONAL REMOVAL PROGRAM.—

22 (1) CONTINUATION.—The Secretary shall con-
23 tinue to operate the Institutional Removal Program
24 (referred to in this section as the ‘Program’) or shall
25 develop and implement another program to—

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

3 (B) ensure that such aliens are not re-
4 leased into the community; and

5 (C) remove such aliens from the United
6 States after the completion of their sentences.

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

9 (b) TECHNOLOGY USAGE.—Technology, such as
10 videoconferencing, shall be used to the maximum extent
11 practicable to make the Program available in remote loca-
12 tions. Mobile access to Federal databases of aliens, such
13 as IDENT, and live scan technology shall be used to the
14 maximum extent practicable to make these resources
15 available to State and local law enforcement agencies in
16 remote locations.

17 (c) REPORT TO CONGRESS.—Not later than 6
18 months after the date of the enactment of this Act, and
19 annually thereafter, the Secretary shall submit a report
20 to Congress on the participation of States in the Program
21 and in any other program authorized under subsection (a).

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

1 **SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUN-**
2 **TARILY.**

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

5 (1) in subsection (a)—

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

8 “(1) INSTEAD OF REMOVAL PROCEEDINGS.—If
9 an alien is not described in paragraph (2)(A)(iii) or
10 (4) of section 237(a), the Secretary of Homeland Se-
11 curity may permit the alien to voluntarily depart the
12 United States at the alien’s own expense under this
13 subsection instead of being subject to proceedings
14 under section 240.’;

15 (B) by striking paragraph (3);

16 (C) by redesignating paragraph (2) as
17 paragraph (3);

18 (D) by adding after paragraph (1) the fol-
19 lowing:

20 “(2) BEFORE THE CONCLUSION OF REMOVAL
21 PROCEEDINGS.—If an alien is not described in para-
22 graph (2)(A)(iii) or (4) of section 237(a), the Attor-
23 ney General may permit the alien to voluntarily de-
24 part the United States at the alien’s own expense
25 under this subsection after the initiation of removal
26 proceedings under section 240 and before the con-

1 elusion of such proceedings before an immigration
2 judge.”;

3 (E) in paragraph (3), as redesignated—

4 (i) by amending subparagraph (A) to
5 read as follows:

6 “(A) INSTEAD OF REMOVAL.—Subject to
7 subparagraph (C), permission to voluntarily de-
8 part under paragraph (1) shall not be valid for
9 any period in excess of 120 days. The Secretary
10 may require an alien permitted to voluntarily
11 depart under paragraph (1) to post a voluntary
12 departure bond, to be surrendered upon proof
13 that the alien has departed the United States
14 within the time specified.”;

15 (ii) by redesignating subparagraphs
16 (B), (C), and (D) as paragraphs (C), (D),
17 and (E), respectively;

18 (iii) by adding after subparagraph (A)
19 the following:

20 “(B) BEFORE THE CONCLUSION OF RE-
21 MOVAL PROCEEDINGS.—Permission to volun-
22 tarily depart under paragraph (2) shall not be
23 valid for any period in excess of 60 days, and
24 may be granted only after a finding that the
25 alien has the means to depart the United States

1 and intends to do so. An alien permitted to vol-
2 untarily depart under paragraph (2) shall post
3 a voluntary departure bond, in an amount nec-
4 essary to ensure that the alien will depart, to be
5 surrendered upon proof that the alien has de-
6 parted the United States within the time speci-
7 fied. An immigration judge may waive the re-
8 quirement to post a voluntary departure bond in
9 individual cases upon a finding that the alien has
10 presented compelling evidence that the posting
11 of a bond will pose a serious financial hardship
12 and the alien has presented credible evidence
13 that such a bond is unnecessary to guarantee
14 timely departure.”;

15 (iv) in subparagraph (C), as redesign-
16 nated, by striking “subparagraphs (C)
17 and(D)(ii)” and inserting “subparagraphs
18 (D) and (E)(ii)”;

19 (v) in subparagraph (D), as redesign-
20 nated, by striking “subparagraph (B)”
21 each place that term appears and inserting
22 “subparagraph (C)”;

23 (vi) in subparagraph (E), as redesign-
24 nated, by striking “subparagraph (B)”

1 each place that term appears and inserting
2 “subparagraph (C)”; and

3 (F) in paragraph (4), by striking “para-
4 graph (1)” and inserting “paragraphs (1) and
5 (2)”;

6 (2) in subsection (b)(2), by striking “a period
7 exceeding 60 days” and inserting “any period in ex-
8 cess of 45 days”;

9 (3) by amending subsection (c) to read as fol-
10 lows:

11 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

12 “(1) VOLUNTARY DEPARTURE AGREEMENT.—
13 Voluntary departure may only be granted as part of
14 an affirmative agreement by the alien.

15 “(2) CONCESSIONS BY THE SECRETARY.—In
16 connection with the alien’s agreement to depart vol-
17 untarily under paragraph (1), the Secretary of
18 Homeland Security may agree to a reduction in the
19 period of inadmissibility under subparagraph (A) or
20 (B)(i) of section 212(a)(9).

21 “(3) ADVISALS.—Agreements relating to vol-
22 untary departure granted during removal pro-
23 ceedings under section 240, or at the conclusion of
24 such proceedings, shall be presented on the record
25 before the immigration judge. The immigration

1 judge shall advise the alien of the consequences of
2 a voluntary departure agreement before accepting
3 such agreement.

4 “(4) FAILURE TO COMPLY WITH AGREE-
5 MENT.—If an alien agrees to voluntary departure
6 under this section and fails to depart the United
7 States within the time allowed for voluntary depart-
8 ure or fails to comply with any other terms of the
9 agreement (including failure to timely post any re-
10 quired bond), the alien is—

11 “(A) ineligible for the benefits of the
12 agreement;

13 “(B) subject to the penalties described in
14 subsection (d); and

15 “(C) subject to an alternate order of re-
16 moval if voluntary departure was granted under
17 subsection (a)(2) or (b)”;

18 (4) by amending subsection (d) to read as fol-
19 lows:

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

1 “(1) CIVIL PENALTY.—The alien shall be liable
2 for a civil penalty of \$3,000. The order allowing vol-
3 untary departure shall specify the amount of the
4 penalty, which shall be acknowledged by the alien on
5 the record. If the Secretary thereafter establishes
6 that the alien failed to depart voluntarily within the
7 time allowed, no further procedure will be necessary
8 to establish the amount of the penalty, and the Sec-
9 retary may collect the civil penalty at any time
10 thereafter and by whatever means provided by law.
11 An alien will be ineligible for any benefits under this
12 chapter until this civil penalty is paid.

13 “(2) INELIGIBILITY FOR RELIEF.—The alien
14 shall be ineligible during the time the alien remains
15 in the United States and for a period of 10 years
16 after the alien’s departure for any further relief
17 under this section and sections 240A, 245, 248, and
18 249. The order permitting the alien to depart volun-
19 tarily shall inform the alien of the penalties under
20 this subsection.

21 “(3) REOPENING.—The alien shall be ineligible
22 to reopen the final order of removal that took effect
23 upon the alien’s failure to depart, or upon the alien’s
24 other violations of the conditions for voluntary de-
25 parture, during the period described in paragraph

1 (2). This paragraph does not preclude a motion to
2 reopen to seek withholding of removal under section
3 241(b)(3) or protection against torture, if the mo-
4 tion—

5 “(A) presents material evidence of changed
6 country conditions arising after the date of the
7 order granting voluntary departure in the coun-
8 try to which the alien would be removed; and

9 “(B) makes a sufficient showing to the sat-
10 isfaction of the Attorney General that the alien
11 is otherwise eligible for such protection.”; and

12 (5) by amending subsection (e) to read as fol-
13 lows:

14 “(e) ELIGIBILITY.—

15 “(1) PRIOR GRANT OF VOLUNTARY DEPART-
16 TURE.—An alien shall not be permitted to volun-
17 tarily depart under this section if the Secretary of
18 Homeland Security or the Attorney General pre-
19 viously permitted the alien to depart voluntarily.

20 “(2) RULEMAKING.—The Secretary may pro-
21 mulgate regulations to limit eligibility or impose ad-
22 ditional conditions for voluntary departure under
23 subsection (a)(1) for any class of aliens. The Sec-
24 retary or Attorney General may by regulation limit
25 eligibility or impose additional conditions for vol-

1 untary departure under subsections (a)(2) or (b) of
2 this section for any class or classes of aliens.”; and

3 (6) in subsection (f), by adding at the end the
4 following: “Notwithstanding section 242(a)(2)(D) of
5 this Act, sections 1361, 1651, and 2241 of title 28,
6 United States Code, any other habeas corpus provi-
7 sion, and any other provision of law (statutory or
8 nonstatutory), no court shall have jurisdiction to af-
9 fect, reinstate, enjoin, delay, stay, or toll the period
10 allowed for voluntary departure under this section.”.

11 (b) RULEMAKING.—The Secretary shall promulgate
12 regulations to provide for the imposition and collection of
13 penalties for failure to depart under section 240B(d) of
14 the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

15 (c) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendments made by this section
18 shall apply with respect to all orders granting vol-
19 untary departure under section 240B of the Immi-
20 gration and Nationality Act (8 U.S.C. 1229c) made
21 on or after the date that is 180 days after the enact-
22 ment of this Act.

23 (2) EXCEPTION.—The amendment made by
24 subsection (a)(6) shall take effect on the date of the
25 enactment of this Act and shall apply with respect

1 to any petition for review which is filed on or after
2 such date.

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

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

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

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

20 (b) BAR ON DISCRETIONARY RELIEF.—Section 274D
21 (8 U.S.C. 1324d) is amended—

22 (1) in subsection (a), by striking “Commis-
23 sioner” and inserting “Secretary of Homeland Secu-
24 rity”; and

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

1 “(c) INELIGIBILITY FOR RELIEF.—

2 “(1) IN GENERAL.—Unless a timely motion to
3 reconsider under section 240(c)(6) or a timely mo-
4 tion to reopen under section 240(c)(7) is granted, an
5 alien described in subsection (a) shall be ineligible
6 for any discretionary relief from removal (including
7 cancellation of removal and adjustment of status)
8 during the time the alien remains in the United
9 States and for a period of 10 years after the alien’s
10 departure from the United States.

11 “(2) SAVINGS PROVISION.—Nothing in para-
12 graph (1) shall preclude a motion to reopen to seek
13 withholding of removal under section 241(b)(3) or
14 protection against torture, if the motion—

15 “(A) presents material evidence of changed
16 country conditions arising after the date of the
17 final order of removal in the country to which
18 the alien would be removed; and

19 “(B) makes a sufficient showing to the sat-
20 isfaction of the Attorney General that the alien
21 is otherwise eligible for such protection.”.

22 (c) EFFECTIVE DATES.—The amendments made by
23 this section shall take effect on the date of the enactment
24 of this Act with respect to aliens who are subject to a final
25 order of removal entered on or after such date.

1 **SEC. 213. PROHIBITION OF THE SALE OF FIREARMS TO, OR**
2 **THE POSSESSION OF FIREARMS BY CERTAIN**
3 **ALIENS.**

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

6 (1) in subsection (d)(5)—in subparagraph (B),
7 by striking “(y)(2)” and all that follows and insert-
8 ing “(y), is in the United States not as an alien law-
9 fully admitted for permanent residence”;

10 (2) in subsection (g)(5)—in subparagraph (B),
11 by striking “(y)(2)” and all that follows and insert-
12 ing “(y), is in the United States not as an alien law-
13 fully admitted for permanent residence”; and

14 (3) in subsection (y)—

15 (A) in the header, by striking “Admitted
16 Under Nonimmigrant Visas” and inserting “not
17 Lawfully Admitted for Permanent Residence”;

18 (B) in paragraph (1), by amending sub-
19 paragraph (B) to read as follows:

20 “(B) the term “lawfully admitted for per-
21 manent residence” has the same meaning as in
22 section 101(a)(20) of the Immigration and Na-
23 tionality Act (8 U.S.C. 1101(a)(20)).”;

24 (C) in paragraph (2), by striking “under a
25 nonimmigrant visa” and inserting “but not law-
26 fully admitted for permanent residence”; and

1 (D) in paragraph (3)(A), by striking “ad-
2 mitted to the United States under a non-
3 immigrant visa” and inserting “lawfully admit-
4 ted to the United States but not as an alien
5 lawfully admitted for permanent residence”.

6 **SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CER-**
7 **TAIN IMMIGRATION, PASSPORT, AND NATU-**
8 **RALIZATION OFFENSES.**

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

11 **“SEC. 3291. IMMIGRATION, PASSPORT, AND NATURALIZA-**
12 **TION OFFENSES.**

13 “No person shall be prosecuted, tried, or punished
14 for a violation of any section of chapters 69 (relating to
15 nationality and citizenship offenses), 75 (relating to pass-
16 port, visa, and immigration offenses), or for a violation
17 of any criminal provision under section 243, 266, 274,
18 275, 276, 277, or 278 of the Immigration and Nationality
19 Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and
20 1328), or for an attempt or conspiracy to violate any such
21 section, unless the indictment is returned or the informa-
22 tion filed not later than 10 years after the commission
23 of the offense.”.

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

1 ed by striking the item relating to section 3291 and insert-
2 ing the following:

“3291. Immigration, passport, and naturalization offenses.”.

3 **SEC. 215. DIPLOMATIC SECURITY SERVICE.**

4 (a) Section 2709(a)(1) of title 22, United States
5 Code, is amended to read as follows:

6 “(1) conduct investigations concerning—

7 “(A) illegal passport or visa issuance or
8 use;

9 “(B) identity theft or document fraud af-
10 fecting or relating to the programs, functions,
11 and authorities of the Department of State;

12 “(C) violations of chapter 77 of title 18,
13 United States Code; and

14 “(D) Federal offenses committed within
15 the special maritime and territorial jurisdiction
16 defined in paragraph (9) of section 7 of title
17 18, United States Code, except as that jurisdic-
18 tion relates to the premises of United States
19 military missions and related residences;”.

20 (b) CONSTRUCTION.—Nothing in this section shall be
21 construed to limit the investigative authority of any other
22 Federal department or agency.

1 **SEC. 216. STREAMLINED PROCESSING OF BACKGROUND**
2 **CHECKS CONDUCTED FOR IMMIGRATION**
3 **BENEFITS.**

4 (a) INFORMATION SHARING; INTERAGENCY TASK
5 FORCE.—Section 105 (8 U.S.C. 1105) is amended by add-
6 ing at the end the following:

7 “(e) INTERAGENCY TASK FORCE.—

8 “(1) IN GENERAL.—The Secretary of Homeland
9 Security and the Attorney General shall establish an
10 interagency task force to resolve cases in which an
11 application or petition for an immigration benefit
12 conferred under this Act has been delayed due to an
13 outstanding background check investigation for more
14 than 2 years after the date on which such applica-
15 tion or petition was initially filed.

16 “(2) MEMBERSHIP.—The interagency task
17 force established under paragraph (1) shall include
18 representatives from Federal agencies with immigra-
19 tion, law enforcement, or national security respon-
20 sibilities under this Act.”.

21 (b) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated to the Director of the
23 Federal Bureau of Investigation such sums as are nec-
24 essary for each fiscal year, 2008 through 2012 for en-
25 hancements to existing systems for conducting background

1 and security checks necessary to support immigration se-
2 curity and orderly processing of applications.

3 (c) REPORT ON BACKGROUND AND SECURITY
4 CHECKS.—

5 (1) IN GENERAL.—Not later than 180 days
6 after the date of the enactment of this Act, the Di-
7 rector of the Federal Bureau of Investigation shall
8 submit to the Committee on the Judiciary of the
9 Senate and the Committee on the Judiciary of the
10 House of Representatives a report on the back-
11 ground and security checks conducted by the Fed-
12 eral Bureau of Investigation on behalf of United
13 States Citizenship and Immigration Services.

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

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

18 (B) a statistical breakdown of the back-
19 ground and security check delays associated
20 with different types of immigration applications;

21 (C) a statistical breakdown of the back-
22 ground and security check delays by applicant
23 country of origin; and

24 (D) the steps that the Director of the Fed-
25 eral Bureau of Investigation is taking to expe-

1 dite background and security checks that have
2 been pending for more than 180 days.

3 **SEC. 217. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

4 (a) REIMBURSEMENT FOR COSTS ASSOCIATED WITH
5 PROCESSING CRIMINAL ILLEGAL ALIENS.—The Secretary
6 may reimburse States and units of local government for
7 costs associated with processing undocumented criminal
8 aliens through the criminal justice system, including—

- 9 (1) indigent defense;
10 (2) criminal prosecution;
11 (3) autopsies;
12 (4) translators and interpreters; and
13 (5) courts costs.

14 (b) AUTHORIZATION OF APPROPRIATIONS.—

15 (1) PROCESSING CRIMINAL ILLEGAL ALIENS.—
16 There are authorized to be appropriated
17 \$400,000,000 for each of the fiscal years 2008
18 through 2013 to carry out subsection (a).

19 (2) COMPENSATION UPON REQUEST.—Section
20 241(i)(5) (8 U.S.C. 1231(i)) is amended to read as
21 follows:

22 “(5) There are authorized to be appropriated to
23 carry this subsection—

24 “(A) such sums as may be necessary for
25 fiscal year 2008;

1 “(B) \$750,000,000 for fiscal year 2009;
2 “(C) \$850,000,000 for fiscal year 2010;
3 and
4 “(D) \$950,000,000 for each of the fiscal
5 years 2011 through 2013.”.

6 (c) TECHNICAL AMENDMENT.—Section 501 of the
7 Immigration Reform and Control Act of 1986 (8 U.S.C.
8 1365) is amended by striking “Attorney General” each
9 place it appears and inserting “Secretary of Homeland Se-
10 curity”.

11 **SEC. 218. TRANSPORTATION AND PROCESSING OF ILLEGAL**
12 **ALIENS APPREHENDED BY STATE AND LOCAL**
13 **LAW ENFORCEMENT OFFICERS.**

14 (a) IN GENERAL.—The Secretary may provide suffi-
15 cient transportation and officers to take illegal aliens ap-
16 prehended by State and local law enforcement officers into
17 custody for processing at a detention facility operated by
18 the Department.

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

1 **SEC. 219. REDUCING ILLEGAL IMMIGRATION AND ALIEN**
2 **SMUGGLING ON TRIBAL LANDS.**

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

7 (b) USE OF FUNDS.—Grants awarded under sub-
8 section (a) may be used for—

- 9 (1) law enforcement activities;
- 10 (2) health care services;
- 11 (3) environmental restoration; and
- 12 (4) the preservation of cultural resources.

13 (c) REPORT.—Not later than 180 days after the date
14 of the enactment of this Act, the Secretary shall submit
15 a report to the Committee on the Judiciary of the Senate
16 and the Committee on the Judiciary of the House of Rep-
17 resentatives that—

- 18 (1) describes the level of access of Border Pa-
19 trol agents on tribal lands;
- 20 (2) describes the extent to which enforcement of
21 immigration laws may be improved by enhanced ac-
22 cess to tribal lands;
- 23 (3) contains a strategy for improving such ac-
24 cess through cooperation with tribal authorities; and
- 25 (4) identifies grants provided by the Depart-
26 ment for Indian tribes, either directly or through

1 State or local grants, relating to border security ex-
2 penses.

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

7 **SEC. 220. ALTERNATIVES TO DETENTION.**

8 The Secretary shall conduct a study of—

9 (1) the effectiveness of alternatives to detention,
10 including electronic monitoring devices and intensive
11 supervision programs, in ensuring alien appearance
12 at court and compliance with removal orders;

13 (2) the effectiveness of the Intensive Super-
14 vision Appearance Program and the costs and bene-
15 fits of expanding that program to all States; and

16 (3) other alternatives to detention, including—

17 (A) release on an order of recognizance;

18 (B) appearance bonds; and

19 (C) electronic monitoring devices.

20 **SEC. 221. STATE AND LOCAL ENFORCEMENT OF FEDERAL**
21 **IMMIGRATION LAWS.**

22 (a) IN GENERAL.—Section 287(g) (8 U.S.C.
23 1357(g)) is amended—

24 (1) in paragraph (2), by adding at the end the
25 following: “If such training is provided by a State or

1 political subdivision of a State to an officer or em-
2 ployee of such State or political subdivision of a
3 State, the cost of such training (including applicable
4 overtime costs) shall be reimbursed by the Secretary
5 of Homeland Security.”; and

6 (2) in paragraph (4), by adding at the end the
7 following: “The cost of any equipment required to be
8 purchased under such written agreement and nec-
9 essary to perform the functions under this sub-
10 section shall be reimbursed by the Secretary of
11 Homeland Security.”.

12 (b) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to the Secretary such
14 sums as may be necessary to carry out this section and
15 the amendments made by this section.

16 **SEC. 222. PROTECTING IMMIGRANTS FROM CONVICTED**
17 **SEX OFFENDERS.**

18 (a) IMMIGRANTS.—Section 204(a)(1) (8 U.S.C.
19 1154(a)(1)), is amended—

20 (1) in subparagraph (A), by amending clause
21 (viii) to read as follows:

22 “(viii) Clause (i) shall not apply to a
23 citizen of the United States who has been
24 convicted of an offense described in sub-
25 paragraph (A), (I), or (K) of section

1 101(a)(43), unless the Secretary of Home-
2 land Security, in the Secretary’s sole and
3 unreviewable discretion, determines that
4 the citizen poses no risk to the alien with
5 respect to whom a petition described in
6 clause (i) is filed.”; and

7 (2) in subparagraph (B)(i), by amending sub-
8 clause (II) to read as follows:

9 “(II) Subclause (I) shall not
10 apply in the case of an alien admitted
11 for permanent residence who has been
12 convicted of an offense described in
13 subparagraph (A), (I), or (K) of sec-
14 tion 101(a)(43), unless the Secretary
15 of Homeland Security, in the Sec-
16 retary’s sole and unreviewable discre-
17 tion, determines that the alien law-
18 fully admitted for permanent resi-
19 dence poses no risk to the alien with
20 respect to whom a petition described in
21 subclause (I) is filed.”.

22 (b) NONIMMIGRANTS.—Section 101(a)(15)(K) (8
23 U.S.C. 1101(a)(15)(K)), is amended by inserting “(other
24 than a citizen described in section 204(a)(1)(A)(viii))”

1 after “citizen of the United States” each place that phrase
2 appears.

3 **SEC. 223. LAW ENFORCEMENT AUTHORITY OF STATES AND**
4 **POLITICAL SUBDIVISIONS AND TRANSFER TO**
5 **FEDERAL CUSTODY.**

6 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et. seq.)
7 is amended by adding after section 240C the following new
8 section:

9 **“SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES**
10 **AND POLITICAL SUBDIVISIONS AND TRANS-**
11 **FER OF ALIENS TO FEDERAL CUSTODY.**

12 “(a) TRANSFER.—If the head of a law enforcement
13 entity of a State (or, if appropriate, a political subdivision
14 of the State) exercising authority with respect to the ap-
15 prehension or arrest of an alien submits a request to the
16 Secretary of Homeland Security that the alien be taken
17 into Federal custody, the Secretary of Homeland Secu-
18 rity—

19 “(1) shall—

20 “(A) deem the request to include the in-
21 quiry to verify immigration status described in
22 section 642(c) of the Illegal Immigration Re-
23 form and Immigrant Responsibility Act of 1996
24 (8 U.S.C. 1373(c)), and expeditiously inform
25 the requesting entity whether such individual is

1 an alien lawfully admitted to the United States
2 or is otherwise lawfully present in the United
3 States; and

4 “(B) if the individual is an alien who is not
5 lawfully admitted to the United States or other-
6 wise is not lawfully present in the United
7 States—

8 “(i) take the illegal alien into the cus-
9 tody of the Federal Government not later
10 than 72 hours after—

11 “(I) the conclusion of the State
12 charging process or dismissal process;
13 or

14 “(II) the illegal alien is appre-
15 hended, if no State charging or dis-
16 missal process is required; or

17 “(ii) request that the relevant State or
18 local law enforcement agency temporarily
19 detain or transport the alien to a location
20 for transfer to Federal custody; and

21 “(2) shall designate at least 1 Federal, State,
22 or local prison or jail or a private contracted prison
23 or detention facility within each State as the central
24 facility for that State to transfer custody of aliens
25 to the Department of Homeland Security.

1 “(b) REIMBURSEMENT.—

2 “(1) IN GENERAL.—The Secretary of Homeland
3 Security shall reimburse a State, or a political sub-
4 division of a State, for expenses, as verified by the
5 Secretary, incurred by the State or political subdivi-
6 sion in the detention and transportation of an alien
7 as described in subparagraphs (A) and (B) of sub-
8 section (c)(1).

9 “(2) COST COMPUTATION.—Compensation pro-
10 vided for costs incurred under subparagraphs (A)
11 and (B) of subsection (c)(1) shall be—

12 “(A) the product of—

13 “(i) the average daily cost of incarcer-
14 ation of a prisoner in the relevant State, as
15 determined by the chief executive officer of
16 a State (or, as appropriate, a political sub-
17 division of the State); multiplied by

18 “(ii) the number of days that the alien
19 was in the custody of the State or political
20 subdivision; plus

21 “(B) the cost of transporting the alien
22 from the point of apprehension or arrest to the
23 location of detention, and if the location of de-
24 tention and of custody transfer are different, to
25 the custody transfer point; plus

1 “(C) the cost of uncompensated emergency
2 medical care provided to a detained alien during
3 the period between the time of transmittal of
4 the request described in subsection (c) and the
5 time of transfer into Federal custody.

6 “(c) REQUIREMENT FOR APPROPRIATE SECURITY.—

7 The Secretary of Homeland Security shall ensure that—

8 “(1) aliens incarcerated in a Federal facility
9 pursuant to this section are held in facilities which
10 provide an appropriate level of security; and

11 “(2) if practicable, aliens detained solely for
12 civil violations of Federal immigration law are sepa-
13 rated within a facility or facilities.

14 “(d) REQUIREMENT FOR SCHEDULE.—In carrying
15 out this section, the Secretary of Homeland Security shall
16 establish a regular circuit and schedule for the prompt
17 transportation of apprehended aliens from the custody of
18 those States, and political subdivisions of States, which
19 routinely submit requests described in subsection (c), into
20 Federal custody.

21 “(e) AUTHORITY FOR CONTRACTS.—

22 “(1) IN GENERAL.—The Secretary of Homeland
23 Security may enter into contracts or cooperative
24 agreements with appropriate State and local law en-

1 enforcement and detention agencies to implement this
2 section.

3 “(2) DETERMINATION BY SECRETARY.—Prior
4 to entering into a contract or cooperative agreement
5 with a State or political subdivision of a State under
6 paragraph (1), the Secretary shall determine wheth-
7 er the State, or if appropriate, the political subdivi-
8 sion in which the agencies are located, has in place
9 any formal or informal policy that violates section
10 642 of the Illegal Immigration Reform and Immig-
11 rant Responsibility Act of 1996 (8 U.S.C. 1373).
12 The Secretary shall not allocate any of the funds
13 made available under this section to any State or po-
14 litical subdivision that has in place a policy that vio-
15 lates such section.”.

16 (b) AUTHORIZATION OF APPROPRIATIONS FOR THE
17 DETENTION AND TRANSPORTATION TO FEDERAL CUS-
18 TODY OF ALIENS NOT LAWFULLY PRESENT.—There are
19 authorized to be appropriated \$850,000,000 for fiscal year
20 2008 and each subsequent fiscal year for the detention
21 and removal of aliens not lawfully present in the United
22 States under the Immigration and Nationality Act (8
23 U.S.C. 1101 et seq.).

1 **SEC. 224. LAUNDERING OF MONETARY INSTRUMENTS.**

2 Section 1956(c)(7)(D) of title 18, United States
3 Code, is amended—

4 (1) by inserting “section 1590 (relating to traf-
5 ficking with respect to peonage, slavery, involuntary
6 servitude, or forced labor),” after “section 1363 (re-
7 lating to destruction of property within the special
8 maritime and territorial jurisdiction),”; and

9 (2) by inserting “section 274(a) of the Immi-
10 gration and Nationality Act (8 U.S.C.1324(a)) (re-
11 lating to bringing in and harboring certain aliens),”
12 after “section 590 of the Tariff Act of 1930 (19
13 U.S.C. 1590) (relating to aviation smuggling),”.

14 **SEC. 225. COOPERATIVE ENFORCEMENT PROGRAMS.**

15 Not later than 2 years after the date of the enact-
16 ment of this Act, the Secretary shall negotiate and exe-
17 cute, where practicable, a cooperative enforcement agree-
18 ment described in section 287(g) of the Immigration and
19 Nationality Act (8 U.S.C. 1357(g)) with at least 1 law
20 enforcement agency in each State, to train law enforce-
21 ment officers in the detection and apprehension of individ-
22 uals engaged in transporting, harboring, sheltering, or en-
23 couraging aliens in violation of section 274 of such Act
24 (8 U.S.C. 1324).

1 **SEC. 226. EXPANSION OF THE JUSTICE PRISONER AND**
2 **ALIEN TRANSFER SYSTEM.**

3 Not later than 60 days after the date of enactment
4 of this Act, the Attorney General shall issue a directive
5 to expand the Justice Prisoner and Alien Transfer System
6 (JPATS) so that such System provides additional services
7 with respect to aliens who are illegally present in the
8 United States. Such expansion should include—

9 (1) increasing the daily operations of such Sys-
10 tem with buses and air hubs in 3 geographic regions;

11 (2) allocating a set number of seats for such
12 aliens for each metropolitan area;

13 (3) allowing metropolitan areas to trade or give
14 some of seats allocated to them under the System
15 for such aliens to other areas in their region based
16 on the transportation needs of each area; and

17 (4) requiring an annual report that analyzes of
18 the number of seats that each metropolitan area is
19 allocated under this System for such aliens and
20 modifies such allocation if necessary.

21 **SEC. 227. DIRECTIVE TO THE UNITED STATES SENTENCING**
22 **COMMISSION.**

23 (a) IN GENERAL.—Pursuant to the authority under
24 section 994 of title 28, United States Code, the United
25 States Sentencing Commission shall promulgate or amend
26 the sentencing guidelines, policy statements, and official

1 commentaries related to passport fraud offenses, including
2 the offenses described in chapter 75 of title 18, United
3 States Code, as amended by section 208 of this Act, to
4 reflect the serious nature of such offenses.

5 (b) REPORT.—Not later than one year after the date
6 of the enactment of this Act, the United States Sentencing
7 Commission shall submit to the Committee on the Judici-
8 ary of the Senate and the Committee on the Judiciary of
9 the House of Representatives a report on the implementa-
10 tion of this section.

11 **SEC. 228. CANCELLATION OF VISAS.**

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

13 (1) in paragraph (1)—

14 (A) by striking “Attorney General” and in-
15 serting “Secretary”;

16 (B) by inserting “or otherwise violated any
17 of the terms of the nonimmigrant classification
18 in which the alien was admitted,” before “such
19 visa”; and

20 (C) by inserting “and any other non-
21 immigrant visa issued by the United States that
22 is in the possession of the alien” after “such
23 visa”; and

24 (2) in paragraph (2)(A), by striking “(other
25 than the visa described in paragraph (1)) issued in

1 a consular office located in the country of the alien’s
2 nationality” and inserting “(other than a visa de-
3 scribed in paragraph (1)) issued in a consular office
4 located in the country of the alien’s nationality or
5 foreign residence”.

6 **SEC. 229. JUDICIAL REVIEW OF VISA REVOCATION.**

7 (a) IN GENERAL.—Section 221(i) of the Immigration
8 and Nationality Act (8 U.S.C. 1201(i)) is amended by
9 striking “There shall be no means of judicial review” and
10 all that follows and inserting the following: “Notwith-
11 standing any other provision of law, including section
12 2241 of title 28, United States Code, any other habeas
13 corpus provision, and sections 1361 and 1651 of such title,
14 a revocation under this subsection may not be reviewed
15 by any court, and no court shall have jurisdiction to hear
16 any claim arising from, or any challenge to, such a revoca-
17 tion, provided that the revocation is executed by the Sec-
18 retary.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall—

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

23 (2) apply to all revocations made on or after
24 such date.

TITLE III—WORKSITE ENFORCEMENT

Sec. 301. Purposes.

Sec. 302. Unlawful employment of aliens.

Sec. 303. Effective date.

Sec. 304. Disclosure of certain taxpayer information to assist in immigration enforcement.

Sec. 305. Increasing security and integrity of Social Security cards.

Sec. 306. Increasing security and integrity of identity documents.

Sec. 307. Voluntary advanced verification program to combat identity theft.

Sec. 308. Responsibilities of the Social Security Administration.

Sec. 309. Immigration enforcement support by the Internal Revenue Service and the Social Security Administration.

Sec. 310. Authorization of appropriations.

1 **TITLE III—WORKSITE** 2 **ENFORCEMENT**

3 **SEC. 301. PURPOSES.**

4 (a) To continue to prohibit the hiring, recruitment,
5 or referral of unauthorized aliens.

6 (b) To require that each employer take reasonable
7 steps to verify the identity and work authorization status
8 of all its employees, without regard to national origin and
9 citizenship status.

10 (c) To authorize the Secretary of Homeland Security
11 to access records of other federal agencies for the purposes
12 of confirming identity, authenticating lawful presence and
13 preventing identity theft and fraud related to unlawful em-
14 ployment.

15 (d) To ensure that the Commissioner of Social Secu-
16 rity has the necessary authority to provide information to
17 the Secretary of Homeland Security that would assist in
18 the enforcement of the immigration laws.

19 (e) To authorize the Secretary of Homeland Security
20 to confirm issuance of state identity documents, including

1 driver's licenses, and to obtain and transmit individual
2 photographic images held by states for identity authen-
3 tication purposes.

4 (f) To collect information on employee hires.

5 (g) To electronically secure a social security number
6 in the Employment Eligibility Verification System
7 (EEVS) at the request of an individual who has been con-
8 firmed to be the holder of that number, and to prevent
9 fraudulent use of the number by others.

10 (h) To provide for record retention of EEVS inquir-
11 ies, to prevent identity fraud and employment authoriza-
12 tion fraud.

13 (i) To employ fast track regulatory and procurement
14 procedures to expedite implementation of this Title and
15 pertinent sections of the INA for a period of two years
16 from enactment.

17 (j) To establish the following:

18 (1) a document verification process requiring
19 employers to inspect, copy, and retain identity and
20 work authorization documents;

21 (2) an EEVS requiring employers to obtain
22 confirmation of an individual's identity and work au-
23 thorization;

1 (3) procedures for employers to register for the
2 EEVS and to confirm work eligibility through the
3 EEVS;

4 (4) a streamlined enforcement procedure to en-
5 sure efficient adjudication of violations of this Title;

6 (5) a system for the imposition of civil penalties
7 and their enforcement, remission or mitigation;

8 (6) an enhancement of criminal and civil pen-
9 alties;

10 (7) increased coordination of information and
11 enforcement between the Internal Revenue Service
12 and the Department of Homeland Security regard-
13 ing employers who have violations related to the em-
14 ployment of unauthorized aliens;

15 (8) increased penalties under the Internal Rev-
16 enue Code for employers who have violations relating
17 to the employment of unauthorized aliens.

18 **SEC. 302. UNLAWFUL EMPLOYMENT OF ALIENS.**

19 (a) Section 274A of the Immigration and Nationality
20 Act (8 U.S.C. 1324a) is amended to read as follows:

21 “(a) MAKING EMPLOYMENT OF UNAUTHORIZED
22 ALIENS UNLAWFUL.—

23 “(1) IN GENERAL.—It is unlawful for an em-
24 ployer—

1 “(A) to hire, or to recruit or refer for a
2 fee, an alien for employment in the United
3 States knowing or with reckless disregard that
4 the alien is an unauthorized alien (as defined in
5 subsection (b)(1)) with respect to such employ-
6 ment; or

7 “(B) to hire, or to recruit or refer for a
8 fee, for employment in the United States an in-
9 dividual without complying with the require-
10 ments of subsections (c) and (d).

11 “(2) CONTINUING EMPLOYMENT.—It is unlaw-
12 ful for an employer, after hiring an alien for employ-
13 ment, to continue to employ the alien in the United
14 States knowing or with reckless disregard that the
15 alien is (or has become) an unauthorized alien with
16 respect to such employment.

17 “(3) USE OF LABOR THROUGH CONTRACT.—
18 For purposes of this section, an employer who uses
19 a contract, subcontract, or exchange to obtain the
20 labor of an alien in the United States knowing that
21 the alien is an unauthorized alien (as defined in sub-
22 section (b)(1)) with respect to performing such
23 labor, shall be considered to have hired the alien for
24 employment in the United States in violation of
25 paragraph (1)(A).

1 “(A) By regulation, the Secretary may re-
2 quire, for purposes of ensuring compliance with
3 the immigration laws, that an employer include
4 in a written contract, subcontract, or exchange
5 an effective and enforceable requirement that
6 the contractor or subcontractor adhere to the
7 immigration laws of the United States, includ-
8 ing use of EEVS.

9 “(B) The Secretary may establish proce-
10 dures by which an employer may obtain con-
11 firmation from the Secretary that the con-
12 tractor or subcontractor has registered with the
13 EEVS and is utilizing the EEVS to verify its
14 employees.

15 “(C) The Secretary may establish such
16 other requirements for employers using contrac-
17 tors or subcontractors as the Secretary deems
18 necessary to prevent knowing violations of this
19 paragraph.

20 “(4) APPLICATION TO FEDERAL GOVERN-
21 MENT.—For purposes of this section, the term ‘em-
22 ployer’ includes entities in any branch of the Federal
23 Government.

24 “(5) DEFENSE.—An employer that establishes
25 that it has complied in good faith with the require-

1 ments of subsections (c)(1) through (c)(4), per-
2 taining to document verification requirements, and
3 subsection (d) has established an affirmative defense
4 that the employer has not violated paragraph (1)(A)
5 with respect to such hiring, recruiting, or referral,
6 however:

7 “(A) until such time as the Secretary has
8 required an employer to participate in the
9 EEVS or such participation is permitted on a
10 voluntary basis pursuant to subsection (d), a
11 defense is established without a showing of
12 compliance with subsection (d); and

13 “(B) to establish a defense, the employer
14 must also be in compliance with any additional
15 requirements that the Secretary may promul-
16 gate by regulation pursuant to subsections (c),
17 (d), and (k).

18 “(6) An employer is presumed to have acted
19 with knowledge or reckless disregard if the employer
20 fails to comply with written standards, procedures or
21 instructions issued by the Secretary. Such stand-
22 ards, procedures or instructions shall be objective
23 and verifiable.

24 “(b) DEFINITIONS.—

1 “(1) DEFINITION OF UNAUTHORIZED ALIEN.—
2 As used in this section, the term ‘unauthorized alien’
3 means, with respect to the employment of an alien
4 at a particular time, that the alien is not at that
5 time either—

6 “(A) an alien lawfully admitted for perma-
7 nent residence; or

8 “(B) authorized to be so employed by this
9 Act or by the Secretary.

10 “(2) DEFINITION OF EMPLOYER.—For pur-
11 poses of this section, the term ‘employer’ means any
12 person or entity hiring, recruiting, or referring an
13 individual for employment in the United States.

14 “(c) DOCUMENT VERIFICATION REQUIREMENTS.—
15 Any employer hiring, recruiting, or referring an individual
16 for employment in the United States shall take all reason-
17 able steps to verify that the individual is authorized to
18 work in the United States, including the requirements of
19 subsection (d) and the following paragraphs:

20 “(1) Attestation after examination of docu-
21 mentation.

22 “(A) IN GENERAL.—The employer must
23 attest, under penalty of perjury and on a form
24 prescribed by the Secretary, that it has verified

1 the identity and work authorization status of
2 the individual by examining—

3 “(i) a document described in subpara-
4 graph (B); or

5 “(ii) a document described in sub-
6 paragraph (C) and a document described
7 in subparagraph (D).

8 Such attestation may be manifested by a hand-
9 written or electronic signature. An employer has
10 complied with the requirement of this para-
11 graph with respect to examination of docu-
12 mentation if the employer has followed applica-
13 ble regulations and any written procedures or
14 instructions provided by the Secretary and if a
15 reasonable person would conclude that the doc-
16 umentation is genuine and establishes the em-
17 ployee’s identity and authorization to work, tak-
18 ing into account any information provided to
19 the employer by the Secretary, including photo-
20 graphs.

21 “(B) DOCUMENTS ESTABLISHING BOTH
22 EMPLOYMENT AUTHORIZATION AND IDEN-
23 TITY.—A document described in this subpara-
24 graph is an individual’s—

1 “(i) United States passport, or pass-
2 port card issued pursuant to the Secretary
3 of State’s authority under 22 U.S.C. 211a;

4 “(ii) permanent resident card or other
5 document issued by the Secretary or Sec-
6 retary of State to aliens authorized to work
7 in the United States, if the document—

8 “(I) contains a photograph of the
9 individual, biometric data, such as fin-
10 gerprints, or such other personal iden-
11 tifying information relating to the in-
12 dividual as the Secretary finds, by
13 regulation, sufficient for the purposes
14 of this subsection;

15 “(II) is evidence of authorization
16 for employment in the United States;
17 and

18 “(III) contains security features
19 to make it resistant to tampering,
20 counterfeiting, and fraudulent use; or

21 “(iii) a temporary interim benefits
22 card valid under section 218C(c) of the
23 Immigration and Nationality Act, as
24 amended by section 602 of the Comprehen-
25 sive Immigration Reform Act of 2007,

1 bearing a photograph and an expiration
2 date, and issued by the Secretary to aliens
3 applying for temporary worker status
4 under the Z-visa.

5 “(C) DOCUMENTS ESTABLISHING IDEN-
6 TITY OF INDIVIDUAL.—A document described in
7 this subparagraph includes—

8 “(i) an individual’s driver’s license or
9 identity card issued by a State, the Com-
10 monwealth of the Northern Mariana Is-
11 lands, or an outlying possession of the
12 United States, provided that the issuing
13 State or entity has certified to the Sec-
14 retary of Homeland Security that it is in
15 compliance with the minimum standards
16 required under section 202 of the REAL
17 ID Act of 2005 (division B of Public Law
18 109–13) (49 U.S.C. 30301 note) and im-
19 plementing regulations issued by the Sec-
20 retary of Homeland Security once those re-
21 quirements become effective;

22 “(ii) an individual’s driver’s license or
23 identity card issued by a State, the Com-
24 monwealth of the Northern Mariana Is-
25 lands, or an outlying possession of the

1 United States which is not compliant with
2 section 202 of the REAL ID Act of 2005
3 if—

4 “(I) the driver’s license or iden-
5 tity card contains the individual’s pho-
6 tograph as well as the individual’s
7 name, date of birth, gender, height,
8 eye color and address,

9 “(II) the card has been approved
10 for this purpose in accordance with
11 timetables and procedures established
12 by the Secretary pursuant to sub-
13 section (c)(1)(F) of this section, and

14 “(III) the card is presented by
15 the individual and examined by the
16 employer in combination with a U.S.
17 birth certificate, or a Certificate of
18 Naturalization, or a Certificate of
19 Citizenship, or such other documents
20 as may be prescribed by the Sec-
21 retary,

22 “(iii) for individuals under 16 years of
23 age who are unable to present a document
24 listed in clause (i) or (ii), documentation of
25 personal identity of such other type as the

1 Secretary finds provides a reliable means
2 of identification, provided it contains secu-
3 rity features to make it resistant to tam-
4 pering, counterfeiting, and fraudulent use;
5 or

6 “(iv) other documentation evidencing
7 identity as identified by the Secretary in
8 his discretion, with notice to the public
9 provided in the Federal Register, to be ac-
10 ceptable for purposes of this section, pro-
11 vided that the document, including any
12 electronic security measures linked to the
13 document, contains security features that
14 make the document as resistant to tam-
15 pering, counterfeiting, and fraudulent use
16 as the documents listed in (B)(i), B(ii), or
17 (C)(i).

18 “(D) DOCUMENTS EVIDENCING EMPLOY-
19 MENT AUTHORIZATION.—The following docu-
20 ments may be accepted as evidence of employ-
21 ment authorization—

22 “(i) a social security account number
23 card issued by the Commissioner of Social
24 Security (other than a card which specifies
25 on its face that the card is not valid for

1 employment in the United States). The
2 Secretary, in consultation with the Com-
3 missioner of Social Security, may require
4 by publication of a notice in the Federal
5 Register that only a social security account
6 number card described in Section 305 of
7 this Title be accepted for this purpose; or

8 “(ii) any other documentation evidenc-
9 ing authorization of employment in the
10 United States which the Secretary de-
11 clares, by publication in the Federal Reg-
12 ister, to be acceptable for purposes of this
13 section, provided that the document, in-
14 cluding any electronic security measures
15 linked to the document contains security
16 features to make it resistant to tampering,
17 counterfeiting, and fraudulent use.

18 “(E) AUTHORITY TO PROHIBIT USE OF
19 CERTAIN DOCUMENTS.—If the Secretary finds
20 that any document or class of documents de-
21 scribed in subparagraph (B), (C), or (D) as es-
22 tablishing employment authorization or identity
23 does not reliably establish such authorization or
24 identity or is being used fraudulently to an un-
25 acceptable degree, the Secretary shall, with no-

1 tice to the public provided in the Federal Reg-
2 ister, prohibit or restrict the use of that docu-
3 ment or class of documents for purposes of this
4 subsection.

5 “(F) After June 1, 2013, no driver’s li-
6 cense or state identity card may be accepted if
7 it does not comply with the REAL ID Act of
8 2005. This paragraph (c)(1)(F) shall have no
9 effect on paragraphs (c)(1)(B), (c)(1)(C)(iii),
10 (c)(1)(C)(iv), or (c)(1)(D).

11 “(2) INDIVIDUAL ATTESTATION OF EMPLOY-
12 MENT AUTHORIZATION.—The individual must attest,
13 under penalty of perjury on the form prescribed by
14 the Secretary, that the individual is a citizen or na-
15 tional of the United States, an alien lawfully admit-
16 ted for permanent residence, or an alien who is au-
17 thorized under this Act or by the Secretary to be
18 hired, recruited, or referred for such employment.
19 Such attestation may be manifested by either a
20 hand-written or electronic signature.

21 “(3) RETENTION OF VERIFICATION FORM.—
22 After completion of such form in accordance with
23 paragraphs (1) and (2), the employer must retain a
24 paper, microfiche, microfilm, or electronic version of
25 the form and make it available for inspection by offi-

1 cers of the Department of Homeland Security (or
2 persons designated by the Secretary), the Special
3 Counsel for Immigration-Related Unfair Employ-
4 ment Practices, or the Department of Labor during
5 a period beginning on the date of the hiring, recruit-
6 ing, or referral of the individual and ending—

7 “(A) in the case of the recruiting or refer-
8 ral for a fee (without hiring) of an individual,
9 seven years after the date of the recruiting or
10 referral; and

11 “(B) in the case of the hiring of an indi-
12 vidual—

13 “(i) seven years after the date of such
14 hiring; or

15 “(ii) two years after the date the indi-
16 vidual’s employment is terminated, which-
17 ever is earlier.

18 “(4) Copying of documentation and recordkeeping
19 required.

20 “(A) Notwithstanding any other provision
21 of law, the employer shall copy all documents
22 presented by an individual pursuant to this sub-
23 section and shall retain a paper, microfiche,
24 microfilm, or electronic copy as prescribed in
25 paragraph (3), but only (except as otherwise

1 permitted under law) for the purposes of com-
2 plying with the requirements of this subsection.
3 Such copies shall reflect the signatures of the
4 employer and the employee, as well as the date
5 of receipt.

6 “(B) The employer shall also maintain
7 records of Social Security Administration cor-
8 respondence regarding name and number
9 mismatches or no-matches and the steps taken
10 to resolve such issues.

11 “(C) The employer shall maintain records
12 of all actions and copies of any correspondence
13 or action taken by the employer to clarify or re-
14 solve any issue that raises reasonable doubt as
15 to the validity of the alien’s identity or work au-
16 thorization.

17 “(D) The employer shall maintain such
18 records as prescribed in this subsection. The
19 Secretary may prescribe the manner of record-
20 keeping and may require that additional records
21 be kept or that additional documents be copied
22 and maintained. The Secretary may require
23 that these documents be transmitted electroni-
24 cally, and may develop automated capabilities to
25 request such documents.

1 “(5) PENALTIES.— An employer that fails to
2 comply with any requirement of this subsection shall
3 be penalized under subsection (e)(4)(B).

4 “(6) NO AUTHORIZATION OF NATIONAL IDENTIFI-
5 CATION CARDS.— Nothing in this section shall be
6 construed to authorize, directly or indirectly, the
7 issuance or use of national identification cards or
8 the establishment of a national identification card.

9 “(7) The employer shall use the procedures for
10 document verification set forth in this paragraph for
11 all employees without regard to national origin or
12 citizenship status.

13 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
14 TEM.—

15 “(1) IN GENERAL.—The Secretary, in cooperation
16 and consultation with the Secretary of State, the
17 Commissioner of Social Security, and the states,
18 shall implement and specify the procedures for
19 EEVS. The participating employers shall timely reg-
20 ister with EEVS and shall use EEVS as described
21 in subsection (d)(5).

22 “(2) IMPLEMENTATION SCHEDULE.—

23 “(A) As of the date of enactment of this
24 section, the Secretary in his discretion, with no-
25 tice to the public provided in the Federal Reg-

1 ister, is authorized to require any employer or
2 industry which the Secretary determines to be
3 part of the critical infrastructure, a federal con-
4 tractor, or directly related to the national secu-
5 rity or homeland security of the United States
6 to participate in the EEVS. This requirement
7 may be applied to both newly hired and current
8 employees. The Secretary shall notify employers
9 subject to this subparagraph 30 days prior to
10 EEVS.

11 “(B) No later than 6 months after the
12 date of enactment of this section, the Secretary
13 shall require additional employers or industries
14 to participate in the EEVS. This requirement
15 shall be applied to new employees hired, and
16 current employees subject to reverification be-
17 cause of expiring work authorization docu-
18 mentation or expiration of immigration status,
19 on or after the date on which the requirement
20 takes effect. The Secretary, by notice in the
21 Federal Register, shall designate these employ-
22 ers or industries, in his discretion, based upon
23 risks to critical infrastructure, national security,
24 immigration enforcement, or homeland security
25 needs.

1 “(C) No later than 18 months after the
2 date of enactment of this section, the Secretary
3 shall require all employers to participate in the
4 EEVS with respect to newly hired employees
5 and current employees subject to reverification
6 because of expiring work authorization docu-
7 mentation or expiration of immigration status.

8 “(D) No later than three years after the
9 date of enactment of this section, all employers
10 shall participate in the EEVS with respect to
11 new employees, all employees whose identity
12 and employment authorization have not been
13 previously verified through EEVS, and all em-
14 ployees in Z status who have not previously pre-
15 sented a secure document evidencing their Z
16 status. The Secretary may specify earlier dates
17 for participation in the EEVS in his discretion
18 for some or all classes of employer or employee.

19 “(E) The Secretary shall create the nec-
20 essary systems and processes to monitor the
21 functioning of the EEVS, including the volume
22 of the workflow, the speed of processing of que-
23 ries, and the speed and accuracy of responses.
24 These systems and processes shall be audited
25 by the Government Accountability Office 9

1 months after the date of enactment of this sec-
2 tion and 24 months after the date of enactment
3 of this section. The Government Accountability
4 Office shall report the results of the audits to
5 Congress.

6 “(3) PARTICIPATION IN EEVS.—The Secretary
7 has the following discretionary authority to require
8 or to permit participation in the EEVS—

9 “(A) To permit any employer that is not
10 required to participate in the EEVS to do so on
11 a voluntary basis;

12 “(B) To require any employer that is re-
13 quired to participate in the EEVS with respect
14 to its newly hired employees also to do so with
15 respect to its current workforce if the Secretary
16 has reasonable cause to believe that the em-
17 ployer has engaged in any violation of the immi-
18 gration laws.

19 “(4) CONSEQUENCE OF FAILURE TO PARTICI-
20 PATE.—If an employer is required under this sub-
21 section to participate in the EEVS and fails to com-
22 ply with the requirements of such program with re-
23 spect to an individual—

1 “(A) such failure shall be treated as a vio-
2 lation of subsection (a)(1)(B) of this section
3 with respect to that individual, and

4 “(B) a rebuttable presumption is created
5 that the employer has violated subsection
6 (a)(1)(A) or (a)(2) of this section.

7 “Subparagraph (B) shall not apply in any pros-
8 ecution under subsection 274A(f)(1).

9 “(5) PROCEDURES FOR PARTICIPANTS IN THE
10 EEVS.—

11 “(A) IN GENERAL.—An employer partici-
12 pating in the EEVS must register in the EEVS
13 and conform to the following procedures in the
14 event of hiring, recruiting, or referring any in-
15 dividual for employment in the United States:

16 “(i) REGISTRATION OF EMPLOYERS.—

17 The Secretary, through notice in the Fed-
18 eral Register, shall prescribe procedures
19 that employers must follow to register in
20 the EEVS. In prescribing these proce-
21 dures, the Secretary shall have authority to
22 require employers to provide:

23 “(I) employer’s name;

24 “(II) employer’s Employment
25 Identification Number (EIN);

1 “(III) company address;

2 “(IV) name, position and social
3 security number of the employer’s em-
4 ployees accessing the EEVS; and

5 “(V) such other information as
6 the Secretary deems necessary to en-
7 sure proper use and security of the
8 EEVS.

9 The Secretary shall require employers to
10 undergo such training as the Secretary
11 deems necessary to ensure proper use and
12 security of the EEVS. To the extent prac-
13 ticable, such training shall be made avail-
14 able electronically.

15 “(ii) PROVISION OF ADDITIONAL IN-
16 FORMATION.—The employer shall obtain
17 from the individual (and the individual
18 shall provide) and shall record in such
19 manner as the Secretary may specify—

20 “(I) an individual’s social secu-
21 rity account number,

22 “(II) if the individual does not
23 attest to United States nationality
24 under subsection (c)(2) of this section,
25 such identification or authorization

1 number established by the Depart-
2 ment of Homeland Security as the
3 Secretary of Homeland Security shall
4 specify, and

5 “(III) such other information as
6 the Secretary may require to deter-
7 mine the identity and work authoriza-
8 tion of an employee.

9 “(iii) PRESENTATION OF DOCUMENTA-
10 TION.—The employer, and the individual
11 whose identity and employment eligibility
12 are being confirmed, shall fulfill the re-
13 quirements of subsection (c) of this sec-
14 tion.

15 “(iv) PRESENTATION OF BIO-
16 METRICS.—Employers who are enrolled in
17 the Voluntary Advanced Verification Pro-
18 gram to Combat Identity Theft under sec-
19 tion 307 of this Title shall, in addition to
20 documentary evidence of identity and work
21 eligibility, electronically provide the finger-
22 prints of the individual to the Department
23 of Homeland Security.”

24 “(B) SEEKING CONFIRMATION.—

1 “(i) The employer shall use the EEVS
2 to provide to the Secretary all required in-
3 formation in order to obtain confirmation
4 of the identity and employment eligibility
5 of any individual no earlier than the date
6 of hire and no later than on the first day
7 of employment (or recruitment or referral,
8 as the case may be). An employer may not,
9 however, make the starting date of an indi-
10 vidual’s employment contingent on the re-
11 ceipt of a confirmation of the identity and
12 employment eligibility.

13 “(ii) For reverification of an employee
14 with a limited period of work authorization
15 (including Z card holder), all required
16 verification procedures must be complete
17 on the date the employee’s work authoriza-
18 tion expires.

19 “(iii) For initial verification of an em-
20 ployee hired before the employer is subject
21 to the employment eligibility verification
22 system, all required procedures must be
23 complete on such date as the Secretary
24 shall specify in accordance with subpara-
25 graph (d)(2)(D).

1 “(iv) The Secretary shall provide, and
2 the employer shall utilize, as part of
3 EEVS, a method of communicating notices
4 and requests for information or action on
5 the part of the employer with respect to
6 expiring work authorization or status and
7 other matters. Additionally, the Secretary
8 shall provide a method of notifying employ-
9 ers of a confirmation, nonconfirmation or a
10 notice that further action is required (“fur-
11 ther action notice”). The employer shall
12 communicate to the individual that is the
13 subject of the verification all information
14 provided to the employer by the EEVS for
15 communication to the individual.

16 “(C) CONFIRMATION OR NONCONFIRMA-
17 TION.—

18 “(i) INITIAL RESPONSE.—The
19 verification system shall provide a con-
20 firmation, a nonconfirmation, or a further
21 action notice of an individual’s identity and
22 employment eligibility at the time of the
23 inquiry, unless for technological reasons or
24 due to unforeseen circumstances, the
25 EEVS is unable to provide such confirma-

1 tion or further action notice. In such situa-
2 tions, the system shall provide confirma-
3 tion or further action notice within 3 busi-
4 ness days of the initial inquiry. If pro-
5 viding confirmation or further action no-
6 tice, the EEVS shall provide an appro-
7 priate code indicating such confirmation or
8 such further action notice.

9 “(ii) CONFIRMATION UPON INITIAL
10 INQUIRY.—When the employer receives an
11 appropriate confirmation of an individual’s
12 identity and work eligibility under the
13 EEVS, the employer shall record the con-
14 firmation in such manner as the Secretary
15 may specify.

16 “(iii) FURTHER ACTION NOTICE UPON
17 INITIAL INQUIRY AND SECONDARY
18 VERIFICATION.—

19 “(I) FURTHER ACTION NO-
20 TICE.—If the employer receives a fur-
21 ther action notice of an individual’s
22 identity or work eligibility under the
23 EEVS, the employer shall inform the
24 individual without delay for whom the
25 confirmation is sought of the further

1 action notice and any procedures spec-
2 ified by the Secretary for addressing
3 the further action notice. The em-
4 ployee must acknowledge in writing
5 the receipt of the further action notice
6 from the employer.

7 “(II) CONTEST.—Within ten
8 business days from the date of notifi-
9 cation to the employee, the employee
10 must contact the appropriate agency
11 to contest the further action notice
12 and, if the Secretary so requires, ap-
13 pear in person at the appropriate
14 Federal or state agency for purposes
15 of verifying the individual’s identity
16 and employment authorization. The
17 Secretary, in consultation with the
18 Commissioner of Social Security and
19 other appropriate Federal and State
20 agencies, shall specify an available
21 secondary verification procedure to
22 confirm the validity of information
23 provided and to provide a final con-
24 firmation or nonconfirmation. An indi-
25 vidual contesting a further action no-

1 tice must attest under penalty of per-
2 jury to his identity and employment
3 authorization.

4 “(III) NO CONTEST.—If the indi-
5 vidual does not contest the further ac-
6 tion notice within the period specified
7 in subparagraph (5)(C)(iii)(II), a final
8 nonconfirmation shall issue. The em-
9 ployer shall then record the noncon-
10 firmation in such manner as the Sec-
11 retary may specify.

12 “(IV) FINALITY.—The EEVS
13 shall provide a final confirmation or
14 nonconfirmation within 10 business
15 days from the date of the employee’s
16 contesting of the further action notice.
17 As long as the employee is taking the
18 steps required by the Secretary and
19 the agency that the employee has con-
20 tacted to resolve a further action no-
21 tice, the Secretary shall extend the pe-
22 riod of investigation until the sec-
23 ondary verification procedure allows
24 the Secretary to provide a final con-
25 firmation or nonconfirmation. If the

1 employee fails to take the steps re-
2 quired by the Secretary and the ap-
3 propriate agency, a final nonconfirma-
4 tion may be issued to that employee.

5 “(V) RE-EXAMINATION.—Noth-
6 ing in this section shall prevent the
7 Secretary from reexamining a case
8 where a final confirmation has been
9 provided if subsequently received in-
10 formation indicates that the individual
11 may not be work authorized.

12 In no case shall an employer terminate em-
13 ployment of an individual solely because of
14 a failure of the individual to have identity
15 and work eligibility confirmed under this
16 section until a nonconfirmation becomes
17 final and the period to timely file an ad-
18 ministrative appeal has passed, and in the
19 case where an administrative appeal has
20 been denied, the period to timely file a pe-
21 tition for judicial review has passed. When
22 final confirmation or nonconfirmation is
23 provided, the confirmation system shall
24 provide an appropriate code indicating
25 such confirmation or nonconfirmation. An

1 individual's failure to contest a further ac-
2 tion notice shall not be considered an ad-
3 mission of guilt with respect to any viola-
4 tion of this section or any provision of law.

5 “(D) CONSEQUENCES OF NONCONFIRMA-
6 TION.—

7 “(i) TERMINATION OF CONTINUED
8 EMPLOYMENT.—If the employer has re-
9 ceived a final nonconfirmation regarding
10 an individual, the employer shall terminate
11 employment (or recruitment or referral) of
12 the individual, unless the individual files
13 an administrative appeal of a final noncon-
14 firmation notice under paragraph (7) with-
15 in the time period prescribed in that para-
16 graph and the Secretary or the Commis-
17 sioner stays the final nonconfirmation no-
18 tice pending the resolution of the adminis-
19 trative appeal.

20 “(ii) CONTINUED EMPLOYMENT
21 AFTER FINAL NONCONFIRMATION.—If the
22 employer continues to employ (or to recruit
23 or refer) an individual after receiving final
24 nonconfirmation (unless the individual filed
25 an administrative appeal of a final noncon-

1 firmation notice under paragraph (7) with-
2 in the time period prescribed in that para-
3 graph and the Secretary of the Commis-
4 sioner stayed the final nonconfirmation no-
5 tice pending the resolution of the adminis-
6 trative appeal), a rebuttable presumption is
7 created that the employer has violated sub-
8 sections (a)(1)(A) and (a)(2) of this sec-
9 tion. The previous sentence shall not apply
10 in any prosecution under subsection (f)(1)
11 of this section.

12 “(E) OBLIGATION TO RESPOND TO QUE-
13 RIES AND ADDITIONAL INFORMATION.—

14 “(i) Employers are required to comply
15 with requests from the Secretary through
16 EEVS for information, including queries
17 concerning current and former employees
18 that relate to the functioning of the EEVS,
19 the accuracy of the responses provided by
20 the EEVS, and any suspected fraud or
21 identity theft in the use of the EEVS.
22 Failure to comply with such a request is a
23 violation of section (a)(1)(B).

24 “(ii) Individuals being verified
25 through EEVS may be required to take

1 further action to address irregularities
2 identified in the documents relied upon for
3 purposes of employment verification. The
4 employer shall communicate to the indi-
5 vidual any such requirement for further ac-
6 tions and shall record the date and manner
7 of such communication. The individual
8 must acknowledge in writing the receipt of
9 this communication from the employer.
10 Failure to communicate such a require-
11 ment is a violation of section (a)(1)(B).

12 “(iii) The Secretary is authorized,
13 with notice to the public provided in the
14 Federal Register, to implement, clarify,
15 and supplement the requirements of this
16 paragraph in order to facilitate the func-
17 tioning of the EEVS or to prevent fraud or
18 identity theft in the use of the EEVS.

19 “(F) IMPERMISSIBLE USE OF THE
20 EEVS.—

21 “(i) An employer may not use the
22 EEVS to verify an individual prior to ex-
23 tending to the individual an offer of em-
24 ployment.

1 “(ii) An employer may not require an
2 individual to verify the individual’s own
3 employment eligibility through the EEVS
4 as a condition of extending to that indi-
5 vidual an offer of employment. Nothing in
6 this paragraph shall be construed to pre-
7 vent an employer from encouraging an em-
8 ployee or a prospective employee from
9 verifying the employee’s or a prospective
10 employee’s own employment eligibility prior
11 to obtaining employment pursuant to para-
12 graph (5)(H).

13 “(iii) An employer may not terminate
14 an individual’s employment solely because
15 that individual has been issued a further
16 action notice.

17 “(iv) An employer may not take the
18 following actions solely because an indi-
19 vidual has been issued a further action no-
20 tice:

21 “(I) reduce salary, bonuses or
22 other compensation due to the em-
23 ployee;

24 “(II) suspend the employee with-
25 out pay;

1 “(III) reduce the hours that the
2 employee is required to work if such
3 reduction is accompanied by a reduc-
4 tion in salary, bonuses or other com-
5 pensation due to the employee, except
6 that, with the agreement of the em-
7 ployee, an employer may provide an
8 employee with reasonable time off
9 without pay in order to contest and
10 resolve the further action notice re-
11 ceived by the employee;

12 “(IV) deny the employee the
13 training necessary to perform the em-
14 ployment duties for which the em-
15 ployee has been hired.

16 “(v) An employer may not, in the
17 course of utilizing the procedures for docu-
18 ment verification set forth in subsection
19 (c), require that a prospective employee
20 present additional documents or different
21 documents than those prescribed under
22 that subsection.

23 “(vi) The Secretary of Homeland Se-
24 curity shall develop the necessary policies
25 and procedures to monitor employers’ use

1 of the EEVS and their compliance with the
2 requirements set forth in this section. Em-
3 ployers are required to comply with re-
4 quests from the Secretary for information
5 related to any monitoring, audit or inves-
6 tigation undertaken pursuant to this sub-
7 paragraph.

8 “(vii) The Secretary of Homeland Se-
9 curity, in consultation with the Secretary
10 of Labor, shall establish and maintain a
11 process by which any employee (or any
12 prospective employee who would otherwise
13 have been hired) who has reason to believe
14 that an employer has violated subpara-
15 graphs (i)–(v) may file a complaint against
16 the employer.

17 “(viii) Any employer found to have
18 violated subparagraphs (i)–(v) shall pay a
19 civil penalty of up to \$10,000 for each vio-
20 lation.

21 “(ix) This paragraph is not intended
22 to, and does not, create any right, benefit,
23 trust, or responsibility, whether substantive
24 or procedural, enforceable at law or equity
25 by a party against the United States, its

1 departments, agencies, instrumentalities,
2 entities, officers, employees, or agents, or
3 any person, nor does it create any right of
4 review in a judicial proceeding.

5 “(x) No later than 3 months after the
6 date of enactment of this section, the Sec-
7 retary of Homeland Security, in coopera-
8 tion with the Secretary of Labor and the
9 Administrator of the Small Business Ad-
10 ministration, shall conduct a campaign to
11 disseminate information respecting the
12 rights and remedies prescribed under this
13 section. Such campaign shall be aimed at
14 increasing the knowledge of employers, em-
15 ployees, and the general public concerning
16 employer and employee rights, responsibil-
17 ities and remedies under this section.

18 “(I) In order to carry out the
19 campaign under this paragraph, the
20 Secretary of Homeland Security may,
21 to the extent deemed appropriate and
22 subject to the availability of appro-
23 priations, contract with public and
24 private organizations for outreach ac-
25 tivities under the campaign.

1 “(II) There are authorized to be
2 appropriated to carry out this para-
3 graph \$40,000,000 for each fiscal
4 year 2007 through 2009.

5 “(G) Based on a regular review of the
6 EEVS and the document verification proce-
7 dures to identify fraudulent use and to assess
8 the security of the documents being used to es-
9 tablish identity or employment authorization,
10 the Secretary in consultation with the Commis-
11 sioner of Social Security may modify by Notice
12 published in the Federal Register the docu-
13 ments that must be presented to the employer,
14 the information that must be provided to EEVS
15 by the employer, and the procedures that must
16 be followed by employers with respect to any as-
17 pect of the EEVS if the Secretary in his discre-
18 tion concludes that the modification is nec-
19 essary to ensure that EEVS accurately and reli-
20 ably determines the work authorization of em-
21 ployees while providing protection against fraud
22 and identity theft.

23 “(H) Subject to appropriate safeguards to
24 prevent misuse of the system, the Secretary in
25 consultation with the Commissioner of Social

1 Security, shall establish secure procedures to
2 permit an individual who seeks to verify the in-
3 dividual's own employment eligibility prior to
4 obtaining or changing employment, to contact
5 the appropriate agency and, in a timely man-
6 ner, correct or update the information used by
7 the EEVS.

8 “(6) Protection from liability for actions taken
9 on the basis of information provided by the con-
10 firmation system.—No employer participating in the
11 EEVS shall be liable under any law for any employ-
12 ment-related action taken with respect to the em-
13 ployee in good faith reliance on information provided
14 through the confirmation system.

15 “(7) ADMINISTRATIVE REVIEW.—

16 “(A) IN GENERAL.—An individual who re-
17 ceives a final nonconfirmation notice may, not
18 later than 15 days after the date that such no-
19 tice is received, file an administrative appeal of
20 such final notice. An individual who did not
21 timely contest a further action notice may not
22 avail himself of this paragraph. Unless the Sec-
23 retary of Homeland Security, in consultation
24 with the Commissioner of Social Security, speci-

1 files otherwise, all administrative appeals shall
2 be filed as follows:

3 “(i) NATIONALS OF THE UNITED
4 STATES.—An individual claiming to be a
5 national of the United States shall file the
6 administrative appeal with the Commis-
7 sioner.

8 “(ii) ALIENS.—An individual claiming
9 to be an alien authorized to work in the
10 United States shall file the administrative
11 appeal with the Secretary.

12 “(B) REVIEW FOR ERROR.—The Secretary
13 and the Commissioner shall each develop proce-
14 dures for resolving administrative appeals re-
15 garding final nonconfirmations based upon the
16 information that the individual has provided, in-
17 cluding any additional evidence that was not
18 previously considered. Appeals shall be resolved
19 within 30 days after the individual has sub-
20 mitted all evidence relevant to the appeal. The
21 Secretary and the Commissioner may, on a case
22 by case basis for good cause, extend this period
23 in order to ensure accurate resolution of an ap-
24 peal before him. Administrative review under
25 this paragraph (7) shall be limited to whether

1 the final nonconfirmation notice is supported by
2 the weight of the evidence.

3 “(C) ADMINISTRATIVE RELIEF.—The relief
4 available under this paragraph (7) is limited to
5 an administrative order upholding, reversing,
6 modifying, amending, or setting aside the final
7 nonconfirmation notice. The Secretary or the
8 Commissioner shall stay the final nonconfirma-
9 tion notice pending the resolution of the admin-
10 istrative appeal unless the Secretary or the
11 Commissioner determines that the administra-
12 tive appeal is frivolous, unlikely to succeed on
13 the merits, or filed for purposes of delay and
14 terminates the stay.

15 “(D) DAMAGES, FEES AND COSTS.—No
16 money damages, fees or costs may be awarded
17 in the administrative review process, and no
18 court shall have jurisdiction to award any dam-
19 ages, fees or costs relating to such administra-
20 tive review under the Equal Access to Justice
21 Act or any other law.

22 “(8) JUDICIAL REVIEW.—

23 “(A) EXCLUSIVE PROCEDURE.—Notwith-
24 standing any other provision of law (statutory
25 or nonstatutory) including sections 1361 and

1 1651 of title 28, no court shall have jurisdiction
2 to consider any claim against the United States,
3 or any of its agencies, officers, or employees,
4 challenging or otherwise relating to a final non-
5 confirmation notice or to the EEVS, except as
6 specifically provided by this paragraph. Judicial
7 review of a final nonconfirmation notice is gov-
8 erned only by chapter 158 of title 28, except as
9 provided below.

10 “(B) REQUIREMENTS FOR REVIEW OF A
11 FINAL NONCONFIRMATION NOTICE.—With re-
12 spect to review of a final nonconfirmation notice
13 under subsection (a), the following requirements
14 apply:

15 “(i) DEADLINE.—The petition for re-
16 view must be filed no later than 30 days
17 after the date of the completion of the ad-
18 ministrative appeal.

19 “(ii) VENUE AND FORMS.—The peti-
20 tion for review shall be filed with the
21 United States Court of Appeals for the ju-
22 dicial circuit wherein the petitioner resided
23 when the final nonconfirmation notice was
24 issued. The record and briefs do not have
25 to be printed. The court of appeals shall

1 review the proceeding on a typewritten
2 record and on typewritten briefs.

3 “(iii) SERVICE.—The respondent is ei-
4 ther the Secretary of Homeland Security
5 or the Commissioner of Social Security,
6 but not both, depending upon who issued
7 (or affirmed) the final nonconfirmation no-
8 tice. In addition to serving the respondent,
9 the petitioner must also serve the Attorney
10 General.

11 “(iv) PETITIONER’S BRIEF.—The pe-
12 titioner shall serve and file a brief in con-
13 nection with a petition for judicial review
14 not later than 40 days after the date on
15 which the administrative record is avail-
16 able, and may serve and file a reply brief
17 not later than 14 days after service of the
18 brief of the respondent, and the court may
19 not extend these deadlines, except for good
20 cause shown. If a petitioner fails to file a
21 brief within the time provided in this para-
22 graph, the court shall dismiss the appeal
23 unless a manifest injustice would result.
24 The court of appeals may set an expedited
25 briefing schedule.

1 “(v) SCOPE AND STANDARD FOR RE-
2 VIEW.—The court of appeals shall decide
3 the petition only on the administrative
4 record on which the final nonconfirmation
5 order is based. The burden shall be on the
6 petitioner to show that the final noncon-
7 firmation decision was arbitrary, capri-
8 cious, not supported by substantial evi-
9 dence, or otherwise not in accordance with
10 law. Administrative findings of fact are
11 conclusive unless any reasonable adjudi-
12 cator would be compelled to conclude to
13 the contrary.

14 “(vi) STAY.—The court of appeals
15 shall stay the final nonconfirmation notice
16 pending its decision on the petition for re-
17 view unless the court determines that the
18 petition for review is frivolous, unlikely to
19 succeed on the merits, or filed for purposes
20 of delay.

21 “(C) EXHAUSTION OF ADMINISTRATIVE
22 REMEDIES.—A court may review a final non-
23 confirmation order only if—

1 “(1) the petitioner has exhausted all
2 administrative remedies available to the
3 alien as of right, and

4 “(2) another court has not decided
5 the validity of the order, unless the review-
6 ing court finds that the petition presents
7 grounds that could not have been pre-
8 sented in the prior judicial proceeding or
9 that the remedy provided by the prior pro-
10 ceeding was inadequate or ineffective to
11 test the validity of the order.

12 “(D) LIMIT ON INJUNCTIVE RELIEF.—Re-
13 gardless of the nature of the action or claim or
14 of the identity of the party or parties bringing
15 the action, no court (other than the Supreme
16 Court) shall have jurisdiction or authority to
17 enjoin or restrain the operation of the provi-
18 sions in this section, other than with respect to
19 the application of such provisions to an indi-
20 vidual petitioner.

21 “(9) MANAGEMENT OF EMPLOYMENT ELIGI-
22 BILITY VERIFICATION SYSTEM.—

23 “(A) IN GENERAL.—The Secretary is au-
24 thorized to establish, manage and modify an
25 EEVS that shall—

1 “(i) respond to inquiries made by par-
2 ticipating employers at any time through
3 the internet concerning an individual’s
4 identity and whether the individual is au-
5 thorized to be employed;

6 “(ii) maintain records of the inquiries
7 that were made, of confirmations provided
8 (or not provided), and of the codes pro-
9 vided to employers as evidence of their
10 compliance with their obligations under the
11 EEVS; and

12 “(iii) provide information to, and re-
13 quest action by, employers and individuals
14 using the system, including notifying em-
15 ployers of the expiration or other relevant
16 change in an employee’s employment au-
17 thorization, and directing an employer to
18 convey to the employee a request to con-
19 tact the appropriate Federal or State agen-
20 cy.

21 “(B) DESIGN AND OPERATION OF SYS-
22 TEM.—The EEVS shall be designed and oper-
23 ated—

24 “(i) to maximize its reliability and
25 ease of use by employers consistent with

1 insulating and protecting the privacy and
2 security of the underlying information;

3 “(ii) to respond accurately to all in-
4 quires made by employers on whether in-
5 dividuals are authorized to be employed
6 and to register any times when the system
7 is unable to receive inquiries;

8 “(iii) to maintain appropriate admin-
9 istrative, technical, and physical safeguards
10 to prevent unauthorized disclosure of per-
11 sonal information;

12 “(iv) to allow for auditing use of the
13 system to detect fraud and identify theft,
14 and to preserve the security of the infor-
15 mation in all of the system, including but
16 not limited to the following:

17 “(I) to develop and use algo-
18 rithms to detect potential identity
19 theft, such as multiple uses of the
20 same identifying information or docu-
21 ments;

22 “(II) to develop and use algo-
23 rithms to detect misuse of the system
24 by employers and employees;

1 “(III) to develop capabilities to
2 detect anomalies in the use of the sys-
3 tem that may indicate potential fraud
4 or misuse of the system;

5 “(IV) to audit documents and in-
6 formation submitted by potential em-
7 ployees to employers, including au-
8 thority to conduct interviews with em-
9 ployers and employees;

10 “(v) to confirm identity and work au-
11 thorization through verification of records
12 maintained by the Secretary, other Federal
13 departments, states, the Commonwealth of
14 the Northern Mariana Islands, or an out-
15 lying possession of the United States, as
16 determined necessary by the Secretary, in-
17 cluding:

18 “(I) records maintained by the
19 Social Security Administration as
20 specified in (D);

21 “(II) Birth and death records
22 maintained by vital statistics agencies
23 of any state or other United States
24 jurisdiction;

1 “(III) Passport and visa records
2 (including photographs) maintained
3 by the United States Department of
4 State;

5 “(IV) State driver’s license or
6 identity card information (including
7 photographs) maintained by State de-
8 partment of motor vehicles.

9 “(vi) to confirm electronically the
10 issuance of the employment authorization
11 or identity document and to display the
12 digital photograph that the issuer placed
13 on the document so that the employer can
14 compare the photograph displayed to the
15 photograph on the document presented by
16 the employee. If in exceptional cases a pho-
17 tograph is not available from the issuer,
18 the Secretary shall specify a temporary al-
19 ternative procedure for confirming the au-
20 thenticity of the document.

21 “(C) The Secretary is authorized, with no-
22 tice to the public provided in the Federal Reg-
23 ister, to issue regulations concerning oper-
24 ational and technical aspects of the EEVS and

1 the efficiency, accuracy, and security of the
2 EEVS.

3 “(D) ACCESS TO INFORMATION.—

4 “(i) Notwithstanding any other provi-
5 sion of law, the Secretary of Homeland Se-
6 curity shall have access to relevant records
7 described at paragraph (9)(B)(v), for the
8 purposes of preventing identity theft and
9 fraud in the use of the EEVS and enforce-
10 ing the provisions of this section governing
11 employment verification. A State or other
12 non-Federal jurisdiction that does not pro-
13 vide such access shall not be eligible for
14 any grant or other program of financial as-
15 sistance administered by the Secretary.

16 “(ii) The Secretary, in consultation
17 with the Commissioner of Social Security
18 and other appropriate Federal and State
19 agencies, shall develop policies and proce-
20 dures to ensure protection of the privacy
21 and security of personally identifiable in-
22 formation and identifiers contained in the
23 records accessed pursuant to this para-
24 graph and subparagraph (d)(5)(E)(i). The
25 Secretary, in consultation with the Com-

1 missioner and other appropriate Federal
2 and State agencies, shall develop and de-
3 ploy appropriate privacy and security
4 training for the Federal and State employ-
5 ees accessing the records pursuant to this
6 paragraph and subparagraph (d)(5)(E)(i).

7 “(iii) The Chief Privacy Officer of the
8 Department of Homeland Security shall
9 conduct regular privacy audits of the poli-
10 cies and procedures established under sub-
11 paragraph (9)(D)(ii), including any collec-
12 tion, use, dissemination, and maintenance
13 of personally identifiable information and
14 any associated information technology sys-
15 tems, as well as scope of requests for this
16 information. The Chief Privacy Officer
17 shall review the results of the audits and
18 recommend to the Secretary and the Pri-
19 vacy and Civil Liberties Oversight Board
20 any changes necessary to improve the pri-
21 vacy protections of the program.

22 “(E) RESPONSIBILITIES OF THE SEC-
23 RETARY OF HOMELAND SECURITY.—

24 “(i) As part of the EEVS, the Sec-
25 retary shall establish a reliable, secure

1 method, which, operating through the
2 EEVS and within the time periods speci-
3 fied, compares the name, alien identifica-
4 tion or authorization number, or other rel-
5 evant information provided in an inquiry
6 against such information maintained or
7 accessed by the Secretary in order to con-
8 firm (or not confirm) the validity of the in-
9 formation provided, the correspondence of
10 the name and number, whether the alien is
11 authorized to be employed in the United
12 States (or, to the extent that the Secretary
13 determines to be feasible and appropriate,
14 whether the Secretary's records verify
15 United States citizenship), and such other
16 information as the Secretary may pre-
17 scribe.

18 “(ii) As part of the EEVS, the Sec-
19 retary shall establish a reliable, secure
20 method, which, operating through the
21 EEVS, displays the digital photograph de-
22 scribed in paragraph (d)(9)(B)(vi).

23 “(iii) The Secretary shall have author-
24 ity to prescribe when a confirmation, non-

1 confirmation or further action notice shall
2 be issued.

3 “(iv) The Secretary shall perform reg-
4 ular audits under the EEVS, as described
5 in paragraph (d)(9)(B)(iv) of this section
6 and shall utilize the information obtained
7 from such audits, as well as any informa-
8 tion obtained from the Commissioner of
9 Social Security pursuant to section 304 of
10 the Comprehensive Immigration Act of
11 2007, for the purposes of this Title and of
12 immigration enforcement in general.

13 “(v) The Secretary shall make appro-
14 priate arrangements to allow employers
15 who are otherwise unable to access the
16 EEVS to use Federal Government facilities
17 or public facilities in order to utilize the
18 EEVS.

19 “(F) RESPONSIBILITIES OF THE SEC-
20 RETARY OF STATE.—As part of the EEVS, the
21 Secretary of State shall provide to the Sec-
22 retary access to passport and visa information
23 as needed to confirm that a passport or pass-
24 port card presented under section (c)(1)(B) be-
25 longs to the subject of the EEVS check, or that

1 a passport or visa photograph matches an indi-
2 vidual;

3 “(G) UPDATING INFORMATION.—The
4 Commissioner of Social Security and the Secre-
5 taries of Homeland Security and State shall up-
6 date their information in a manner that pro-
7 motes maximum accuracy and shall provide a
8 process for the prompt correction of erroneous
9 information.

10 “(10) LIMITATION ON USE OF THE EMPLOY-
11 MENT ELIGIBILITY VERIFICATION SYSTEM.—Not-
12 withstanding any other provision of law, nothing in
13 this subsection shall be construed to permit or allow
14 any department, bureau, or other agency of the
15 United States Government to utilize any informa-
16 tion, database, or other records assembled under this
17 subsection for any purpose other than for the en-
18 forcement and administration of the immigration
19 laws, anti-terrorism laws, or for enforcement of Fed-
20 eral criminal law related to the functions of the
21 EEVS, including prohibitions on forgery, fraud and
22 identity theft.

23 “(11) UNAUTHORIZED USE OR DISCLOSURE OF
24 INFORMATION.—Any employee of the Department of
25 Homeland Security or another Federal or State

1 agency who knowingly uses or discloses the informa-
2 tion assembled under this subsection for a purpose
3 other than one authorized under this section shall
4 pay a civil penalty of \$5,000–\$50,000 for each viola-
5 tion.

6 “(12) CONFORMING AMENDMENT.—Public Law
7 104–208, div. C, title IV, subtitle A, sections 401–
8 05 are repealed, provided that nothing in this sub-
9 section shall be construed to limit the authority of
10 the Secretary to allow or continue to allow the par-
11 ticipation of Basic Pilot employers in the EEVS es-
12 tablished by this subsection.

13 “(13) FUNDS.—In addition to any appropriated
14 funds, the Secretary is authorized to use funds pro-
15 vided in sections 286(m) and (n), for the mainte-
16 nance and operation of the EEVS. EEVS shall be
17 considered an immigration adjudication service for
18 purposes of sections 286(m) and (n).”

19 “(14) The employer shall use the procedures for
20 EEVS specified in this section for all employees
21 without regard to national origin or citizenship sta-
22 tus.

23 “(e) COMPLIANCE.—

1 “(1) COMPLAINTS AND INVESTIGATIONS.—The
2 Secretary of Homeland Security shall establish pro-
3 cedures—

4 “(A) for individuals and entities to file
5 complaints respecting potential violations of
6 subsection (a) or (g)(1);

7 “(B) for the investigation of those com-
8 plaints which the Secretary deems it appro-
9 priate to investigate; and

10 “(C) for the investigation of such other
11 violations of subsection (a) or (g)(1) as the Sec-
12 retary determines to be appropriate.

13 “(2) AUTHORITY IN INVESTIGATIONS.—In con-
14 ducting investigations and hearings under this sub-
15 section—

16 “(A) immigration officers shall have rea-
17 sonable access to examine evidence of any em-
18 ployer being investigated; and

19 “(B) immigration officers designated by
20 the Secretary may compel by subpoena the at-
21 tendance of witnesses and the production of evi-
22 dence at any designated place in an investiga-
23 tion or case under this subsection. In case of
24 contumacy or refusal to obey a subpoena law-
25 fully issued under this paragraph, the Secretary

1 may request that the Attorney General apply in
2 an appropriate district court of the United
3 States for an order requiring compliance with
4 such subpoena, and any failure to obey such
5 order may be punished by such court as a con-
6 tempt thereof. Failure to cooperate with such
7 subpoena shall be subject to further penalties,
8 including but not limited to further fines and
9 the voiding of any mitigation of penalties or ter-
10 mination of proceedings under subsection
11 (e)(3)(B).

12 “(3) COMPLIANCE PROCEDURES.—

13 “(A) PRE-PENALTY NOTICE.—If the Sec-
14 retary has reasonable cause to believe that
15 there has been a civil violation of this section or
16 the requirements of this section, including but
17 not limited to subsections (b), (c), (d) and (k),
18 and determines that further proceedings are
19 warranted, the Secretary shall issue to the em-
20 ployer concerned a written notice of the Depart-
21 ment’s intention to issue a claim for a monetary
22 or other penalty. Such pre-penalty notice shall:

23 “(i) describe the violation;

24 “(ii) specify the laws and regulations
25 allegedly violated;

1 “(iii) disclose the material facts which
2 establish the alleged violation; and

3 “(iv) inform such employer that he or
4 she shall have a reasonable opportunity to
5 make representations as to why a claim for
6 a monetary or other penalty should not be
7 imposed.

8 “(B) REMISSION OR MITIGATION OF PEN-
9 ALTIES.—Whenever any employer receives writ-
10 ten pre-penalty notice of a fine or other penalty
11 in accordance with subparagraph (A), the em-
12 ployer may file, within 15 days from receipt of
13 such notice, with the Secretary a petition for
14 the remission or mitigation of such fine or pen-
15 alty, or a petition for termination of the pro-
16 ceedings. The petition may include any relevant
17 evidence or proffer of evidence the employer
18 wishes to present, and shall be filed and consid-
19 ered in accordance with procedures to be estab-
20 lished by the Secretary. If the Secretary finds
21 that such fine, penalty, or forfeiture was in-
22 curred erroneously, or finds the existence of
23 such mitigating circumstances as to justify the
24 remission or mitigation of such fine or penalty,
25 the Secretary may remit or mitigate the same

1 upon such terms and conditions as the Sec-
2 retary deems reasonable and just, or order ter-
3 mination of any proceedings relating thereto.
4 Such mitigating circumstances may include, but
5 need not be limited to, good faith compliance
6 and participation in, or agreement to partici-
7 pate in, the EEVS, if not otherwise required.

8 “This subparagraph shall not apply to an em-
9 ployer that has or is engaged in a pattern or
10 practice of violations of subsection (a)(1)(A),
11 (a)(1)(B), or (a)(2) or of any other require-
12 ments of this section.

13 “(C) PENALTY CLAIM.—After considering
14 evidence and representations, if any, offered by
15 the employer pursuant to subparagraph (B),
16 the Secretary shall determine whether there was
17 a violation and promptly issue a written final
18 determination setting forth the findings of fact
19 and conclusions of law on which the determina-
20 tion is based. If the Secretary determines that
21 there was a violation, the Secretary shall issue
22 the final determination with a written penalty
23 claim. The penalty claim shall specify all
24 charges in the information provided under
25 clauses (i) through (iii) of subparagraph (A)

1 and any mitigation or remission of the penalty
2 that the Secretary deems appropriate.

3 “(4) CIVIL PENALTIES.—

4 “(A) Hiring or continuing to employ unau-
5 thorized aliens. Any employer that violates any
6 provision of subsection (a)(1)(A) or (a)(2) shall:

7 “(1) pay a civil penalty of \$5,000 for
8 each unauthorized alien with respect to
9 which each violation of either subsection
10 (a)(1)(A) or (a)(2) occurred;

11 “(2) if an employer has previously
12 been fined under subsection (e)(4)(A), pay
13 a civil penalty of \$10,000 for each unau-
14 thorized alien with respect to which a vio-
15 lation of either subsection (a)(1)(A) or
16 (a)(2) occurred; and

17 “(3) if an employer has previously
18 been fined more than once under sub-
19 section (e)(4), pay a civil penalty of
20 \$25,000 for each unauthorized alien with
21 respect to which a violation of either sub-
22 section has occurred. This penalty shall
23 apply, in addition to any penalties pre-
24 viously assessed, to employers who fail to

1 comply with a previously issued and final
2 order under this section.

3 “(4) if an employer has previously
4 been fined more than twice under sub-
5 section (e)(4)(A), pay a civil penalty of
6 \$75,000 for each alien with respect to
7 which a violation of either subsection
8 (a)(1) or (a)(2) occurred;

9 “(5) In addition to any penalties pre-
10 viously assessed, an employer who fails to
11 comply with a previously issued and final
12 order under this section shall be fined
13 \$75,000 for each violation.

14 “(B) RECORDKEEPING OR VERIFICATION
15 PRACTICES.—Any employer that violates or fails
16 to comply with any requirement of subsection
17 (b), (c), and (d), shall pay a civil penalty as fol-
18 lows:

19 “(1) pay a civil penalty of \$1,000 for
20 each violation;

21 “(2) if an employer has previously
22 been fined under subsection (e)(4)(B), pay
23 a civil penalty of \$2,000 for each violation;
24 and

1 “(3) if an employer has previously
2 been fined more than once under sub-
3 section (e)(4), pay a civil penalty of \$5,000
4 for each violation. This penalty shall apply,
5 in addition to any penalties previously as-
6 sessed, to employers who fail to comply
7 with a previously issued and final order
8 under this section.

9 “(4) if an employer has previously
10 been fined more than twice under sub-
11 section (e)(4)(B), pay a civil penalty of
12 \$15,000 for each violation.

13 “(5) In addition to any penalties pre-
14 viously assessed, an employer who fails to
15 comply with a previously issued and final
16 order under this section shall be fined
17 \$15,000 for each violation.

18 “(C) OTHER PENALTIES.—The Secretary
19 may impose additional penalties for violations,
20 including cease and desist orders, specially de-
21 signed compliance plans to prevent further vio-
22 lations, suspended fines to take effect in the
23 event of a further violation, and in appropriate
24 cases, the remedy provided by paragraph (g)(2).
25 All penalties in this section may be adjusted

1 every four years to account for inflation as pro-
2 vided by law.

3 “(D) The Secretary is authorized to reduce
4 or mitigate penalties imposed upon employers,
5 based upon factors including, but not limited to,
6 the employer’s hiring volume, compliance his-
7 tory, good-faith implementation of a compliance
8 program, participation in a temporary worker
9 program, and voluntary disclosure of violations
10 of this subsection to the Secretary.

11 “(5) ORDER OF INTERNAL REVIEW AND CER-
12 TIFICATION OF COMPLIANCE.—If the Secretary has
13 reasonable cause to believe that an employer has
14 failed to comply with this section, the Secretary is
15 authorized, at any time, to require that the employer
16 certify that it is in compliance with this section, or
17 has instituted a program to come into compliance.
18 Within 60 days of receiving a notice from the Sec-
19 retary requiring such a certification, the employer’s
20 chief executive officer or similar official with respon-
21 sibility for, and authority to bind the company on,
22 all hiring and immigration compliance notices shall
23 certify under penalty of perjury that the employer is
24 in conformance with the requirements of subsections
25 (c)(1) through (c)(4), pertaining to document

1 verification requirements, and with subsection (d),
2 pertaining to the EEVS (once that system is imple-
3 mented according to the requirements of (d)(1)),
4 and with any additional requirements that the Sec-
5 retary may promulgate by regulation pursuant to
6 subsections (c), (d), and (k), or that the employer
7 has instituted a program to come into compliance
8 with these requirements. At the request of the em-
9 ployer, the Secretary may extend the 60-day dead-
10 line for good cause. The Secretary is authorized to
11 publish in the Federal Register standards or meth-
12 ods for such certification, require specific record-
13 keeping practices with respect to such certifications,
14 and audit the records thereof at any time. This au-
15 thority shall not be construed to diminish or qualify
16 any other penalty provided by this section.

17 “(6) JUDICIAL REVIEW.—

18 “(A) Notwithstanding any other provision
19 of law (statutory or nonstatutory) including sec-
20 tions 1361 and 1651 of title 28, no court shall
21 have jurisdiction to consider a final determina-
22 tion or penalty claim issued under subpara-
23 graph (3)(C), except as specifically provided by
24 this paragraph. Judicial review of a final deter-
25 mination under paragraph (e)(4) is governed

1 only by chapter 158 of title 28, except as spe-
2 cifically provided below. The filing of a petition
3 as provided in this paragraph shall stay the
4 Secretary's determination until entry of judg-
5 ment by the court. The Secretary is authorized
6 to require that petitioner provide, prior to filing
7 for review, security for payment of fines and
8 penalties through bond or other guarantee of
9 payment acceptable to the Secretary.

10 (B) REQUIREMENTS FOR REVIEW OF A
11 FINAL DETERMINATION.—With respect to judi-
12 cial review of a final determination or penalty
13 claim issued under subparagraph (3)(C), the
14 following requirements apply:

15 (i) DEADLINE.—The petition for re-
16 view must be filed no later than 30 days
17 after the date of the final determination or
18 penalty claim issued under subparagraph
19 (3)(C).

20 (ii) VENUE AND FORMS.—The petition
21 for review shall be filed with the court of
22 appeals for the judicial circuit wherein the
23 employer resided when the final determina-
24 tion or penalty claim was issued. The
25 record and briefs do not have to be print-

1 ed. The court of appeals shall review the
2 proceeding on a typewritten record and on
3 typewritten briefs.

4 (iii) SERVICE.—The respondent is ei-
5 ther the Secretary of Homeland Security
6 or the Commissioner of Social Security,
7 but not both, depending upon who issued
8 (or affirmed) the final nonconfirmation no-
9 tice. In addition to serving the respondent,
10 the petitioner must also serve the Attorney
11 General.

12 (iv) PETITIONER'S BRIEF.—The peti-
13 tioner shall serve and file a brief in connec-
14 tion with a petition for judicial review not
15 later than 40 days after the date on which
16 the administrative record is available, and
17 may serve and file a reply brief not later
18 than 14 days after service of the brief of
19 the respondent, and the court may not ex-
20 tend these deadlines, except for good cause
21 shown. If a petitioner fails to file a brief
22 within the time provided in this paragraph,
23 the court shall dismiss the appeal unless a
24 manifest injustice would result.

1 (v) SCOPE AND STANDARD FOR RE-
2 VIEW.—The court of appeals shall decide
3 the petition only on the administrative
4 record on which the final determination is
5 based. The burden shall be on the peti-
6 tioner to show that the final determination
7 was arbitrary, capricious, not supported by
8 substantial evidence, or otherwise not in
9 accordance with law. Administrative find-
10 ings of fact are conclusive unless any rea-
11 sonable adjudicator would be compelled to
12 conclude to the contrary.

13 “(C) EXHAUSTION OF ADMINISTRATIVE
14 REMEDIES.—A court may review a final deter-
15 mination under subparagraph (3)(C) only if—

16 (1) the petitioner has exhausted all
17 administrative remedies available to the pe-
18 titioner as of right, and

19 (2) another court has not decided the
20 validity of the order, unless the reviewing
21 court finds that the petition presents
22 grounds that could not have been pre-
23 sented in the prior judicial proceeding or
24 that the remedy provided by the prior pro-

1 ceeding was inadequate or ineffective to
2 test the validity of the order.

3 “(D) LIMIT ON INJUNCTIVE RELIEF.—Re-
4 gardless of the nature of the action or claim or
5 of the identity of the party or parties bringing
6 the action, no court (other than the Supreme
7 Court) shall have jurisdiction or authority to
8 enjoin or restrain the operation of the provi-
9 sions in this section, other than with respect to
10 the application of such provisions to an indi-
11 vidual petitioner.

12 “(7) ENFORCEMENT OF ORDERS.—If an em-
13 ployer fails to comply with a final determination
14 issued against that employer under this subsection,
15 and the final determination is not subject to review
16 as provided in paragraph (6), the Attorney General
17 may file suit to enforce compliance with the final de-
18 termination in any appropriate district court of the
19 United States. In any such suit, the validity and ap-
20 propriateness of the final determination shall not be
21 subject to review.

22 “(8) LIENS.—

23 “(A) CREATION OF LIEN.—If any employer
24 liable for a fee or penalty under this section ne-
25 glects or refuses to pay such liability and fails

1 to file a petition for review (if applicable) as
2 provided in paragraph 6 of this subsection, such
3 liability is a lien in favor of the United States
4 on all property and rights to property of such
5 person as if the liability of such person were a
6 liability for a tax assessed under the Internal
7 Revenue Code of 1986. If a petition for review
8 is filed as provided in paragraph 6 of this sub-
9 section, the lien (if any) shall arise upon the
10 entry of a final judgment by the court. The lien
11 continues for 20 years or until the liability is
12 satisfied, remitted, set aside, or is terminated.

13 “(B) EFFECT OF FILING NOTICE OF
14 LIEN.—Upon filing of a notice of lien in the
15 manner in which a notice of tax lien would be
16 filed under section 6323(f)(1) and (2) of the In-
17 ternal Revenue Code of 1986, the lien shall be
18 valid against any purchaser, holder of a security
19 interest, mechanic’s lien or judgment lien cred-
20 itor, except with respect to properties or trans-
21 actions specified in subsection (b), (c), or (d) of
22 section 6323 of the Internal Revenue Code of
23 1986 for which a notice of tax lien properly
24 filed on the same date would not be valid. The
25 notice of lien shall be considered a notice of lien

1 for taxes payable to the United States for the
2 purpose of any State or local law providing for
3 the filing of a notice of a tax lien. A notice of
4 lien that is registered, recorded, docketed, or in-
5 dexed in accordance with the rules and require-
6 ments relating to judgments of the courts of the
7 State where the notice of lien is registered, re-
8 corded, docketed, or indexed shall be considered
9 for all purposes as the filing prescribed by this
10 section. The provisions of section 3201(e) of
11 chapter 176 of title 28 shall apply to liens filed
12 as prescribed by this section.

13 “(C) ENFORCEMENT OF A LIEN.—A lien
14 obtained through this process shall be consid-
15 ered a debt as defined by 28 U.S.C. § 3002 and
16 enforceable pursuant to the Federal Debt Col-
17 lection Procedures Act.

18 “(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR
19 PATTERN OR PRACTICE VIOLATIONS.—

20 “(1) CRIMINAL PENALTY.—Any employer which
21 engages in a pattern or practice of knowing viola-
22 tions of subsection (a)(1)(A) or (a)(2) shall be fined
23 not more than \$75,000 for each unauthorized alien
24 with respect to whom such a violation occurs, im-

1 prisoned for not more than six months for the entire
2 pattern or practice, or both.

3 “(2) ENJOINING OF PATTERN OR PRACTICE
4 VIOLATIONS.—Whenever the Secretary or the Attor-
5 ney General has reasonable cause to believe that an
6 employer is engaged in a pattern or practice of em-
7 ployment, recruitment, or referral in violation of
8 paragraph (1)(A) or (2) of subsection (a), the Attor-
9 ney General may bring a civil action in the appro-
10 priate district court of the United States requesting
11 such relief, including a permanent or temporary in-
12 junction, restraining order, or other order against
13 the employer, as the Secretary deems necessary.

14 “(g) PROHIBITION OF INDEMNITY BONDS.—

15 “(1) PROHIBITION.—It is unlawful for an em-
16 ployer, in the hiring, recruiting, or referring for em-
17 ployment of any individual, to require the individual
18 to post a bond or security, to pay or agree to pay
19 an amount, or otherwise to provide a financial guar-
20 antee or indemnity, against any potential liability
21 arising under this section relating to such hiring, re-
22 cruiting, or referring of the individual.

23 “(2) CIVIL PENALTY.—Any employer which is
24 determined, after notice and opportunity for mitiga-
25 tion of the monetary penalty under subsection (e), to

1 have violated paragraph (1) of this subsection shall
2 be subject to a civil penalty of \$10,000 for each vio-
3 lation and to an administrative order requiring the
4 return of any amounts received in violation of such
5 paragraph to the employee or, if the employee can-
6 not be located, to the general fund of the Treasury.

7 “(h) GOVERNMENT CONTRACTS.—

8 “(1) EMPLOYERS.—Whenever an employer who
9 does not hold Federal contracts, grants, or coopera-
10 tive agreements is determined by the Secretary to be
11 a repeat violator of this section or is convicted of a
12 crime under this section, the employer shall be sub-
13 ject to debarment from the receipt of Federal con-
14 tracts, grants, or cooperative agreements for a pe-
15 riod of up to two years in accordance with the proce-
16 dures and standards prescribed by the Federal Ac-
17 quisition Regulations. The Secretary or the Attorney
18 General shall advise the Administrator of General
19 Services of any such debarment, and the Adminis-
20 trator of General Services shall list the employer on
21 the List of Parties Excluded from Federal Procure-
22 ment and Nonprocurement Programs for the period
23 of the debarment. The Administrator of General
24 Services, in consultation with the Secretary and At-
25 torney General, may waive operation of this sub-

1 section or may limit the duration or scope of the de-
2 barment.

3 “(2) CONTRACTORS AND RECIPIENTS.—When-
4 ever an employer who holds Federal contracts,
5 grants, or cooperative agreements is determined by
6 the Secretary to be a repeat violator of this section
7 or is convicted of a crime under this section, the em-
8 ployer shall be subject to debarment from the receipt
9 of Federal contracts, grants, or cooperative agree-
10 ments for a period of up to two years in accordance
11 with the procedures and standards prescribed by the
12 Federal Acquisition Regulations. Prior to debarring
13 the employer, the Secretary, in cooperation with the
14 Administrator of General Services, shall advise all
15 agencies holding contracts, grants, or cooperative
16 agreements with the employer of the proceedings to
17 debar the employer from the receipt of new Federal
18 contracts, grants, or cooperative agreements for a
19 period of up to two years. After consideration of the
20 views of agencies holding contracts, grants or coop-
21 erative agreements with the employer, the Secretary
22 may, in lieu of proceedings to debar the employer
23 from the receipt of new Federal contracts, grants, or
24 cooperative agreements for a period of up to two
25 years, waive operation of this subsection, limit the

1 duration or scope of the proposed debarment, or
2 may refer to an appropriate lead agency the decision
3 of whether to seek debarment of the employer, for
4 what duration, and under what scope in accordance
5 with the procedures and standards prescribed by the
6 Federal Acquisition Regulation. However, any pro-
7 posed debarment predicated on an administrative de-
8 termination of liability for civil penalty by the Sec-
9 retary or the Attorney General shall not be review-
10 able in any debarment proceeding.

11 “(3) Indictments for violations of this section or
12 adequate evidence of actions that could form the
13 basis for debarment under this subsection shall be
14 considered a cause for suspension under the proce-
15 dures and standards for suspension prescribed by
16 the Federal Acquisition Regulation.

17 “(4) Inadvertent violations of recordkeeping or
18 verification requirements, in the absence of any
19 other violations of this section, shall not be a basis
20 for determining that an employer is a repeat violator
21 for purposes of this subsection.

22 “(i) MISCELLANEOUS PROVISIONS.—

23 “(1) DOCUMENTATION.—In providing docu-
24 mentation or endorsement of authorization of aliens
25 (other than aliens lawfully admitted for permanent

1 residence) authorized to be employed in the United
2 States, the Secretary shall provide that any limita-
3 tions with respect to the period or type of employ-
4 ment or employer shall be conspicuously stated on
5 the documentation or endorsement.

6 “(2) PREEMPTION.—The provisions of this sec-
7 tion preempt any State or local law that requires the
8 use of the EEVS in a fashion that conflicts with
9 Federal policies, procedures or timetables, or that
10 imposes civil or criminal sanctions (other than
11 through licensing and similar laws) upon those who
12 employ, or recruit or refer for a fee for employment,
13 unauthorized aliens.

14 “(j) DEPOSIT OF AMOUNTS RECEIVED.—Except as
15 otherwise specified, civil penalties collected under this sec-
16 tion shall be deposited by the Secretary into the general
17 fund of the Treasury.

18 “(k) NO MATCH NOTICE.—

19 “(1) For the purpose of this subsection, a no
20 match notice is written notice from the Social Secu-
21 rity Administration (SSA) to an employer reporting
22 earnings on a Form W-2 that employees’ names or
23 corresponding social security account numbers fail to
24 match SSA records. The Secretary, in consultation
25 with the Commissioner of the Social Security Ad-

1 ministration, is authorized to establish by regulation
2 requirements for verifying the identity and work au-
3 thorization of employees who are the subject of no-
4 match notices. The Secretary shall establish by regu-
5 lation a reasonable period during which an employer
6 must allow an employee who is subject to a no-
7 match notice to resolve the no match notice with no
8 adverse employment consequences to the employee.
9 The Secretary may also establish penalties for non-
10 compliance by regulation.

11 “(1) CHALLENGES TO VALIDITY.—

12 “(1) IN GENERAL.—Any right, benefit, or claim
13 not otherwise waived or limited pursuant to this sec-
14 tion is available in an action instituted in the United
15 States District Court for the District of Columbia,
16 but shall be limited to determinations of—

17 “(A) whether this section, or any regula-
18 tion issued to implement this section, violates
19 the Constitution of the United States; or

20 “(B) whether such a regulation issued by
21 or under the authority of the Secretary to im-
22 plement this section, is contrary to applicable
23 provisions of this section or was issued in viola-
24 tion of title 5, chapter 5, United States Code.

1 “(2) DEADLINES FOR BRINGING ACTIONS.—
2 Any action instituted under this paragraph must be
3 filed no later than 90 days after the date the chal-
4 lenged section or regulation described in clause (i) or
5 (ii) of subparagraph (A) is first implemented.

6 “(3) CLASS ACTIONS.—The court may not cer-
7 tify a class under Rule 23 of the Federal Rules of
8 Civil Procedure in any action under this section.

9 “(4) RULE OF CONSTRUCTION.—In determining
10 whether the Secretary’s interpretation regarding any
11 provision of this section is contrary to law, a court
12 shall accord to such interpretation the maximum
13 deference permissible under the Constitution.

14 “(5) NO ATTORNEYS’ FEES.—Notwithstanding
15 any other provision of law, the court shall not award
16 fees or other expenses to any person or entity based
17 upon any action relating to this Title brought pursu-
18 ant to this section (1).”

19 **SEC. 303. EFFECTIVE DATE.**

20 This title shall become effective on the date of enact-
21 ment.

1 the date specified in subparagraph (D)
2 which contains—

3 “(I) 1 (or any greater number
4 the Secretary shall request) taxpayer
5 identifying number, name, and ad-
6 dress of any employee (within the
7 meaning of such section) that did not
8 match the records maintained by the
9 Commissioner of Social Security, or

10 “(II) 2 (or any greater number
11 the Secretary shall request) names,
12 and addresses of employees (within
13 the meaning of such section), with the
14 same taxpayer identifying number,

15 “and the taxpayer identity of each
16 such employee, and

17 “(ii) the taxpayer identity of each per-
18 son who has filed an information return re-
19 quired by reason of section 6051 after cal-
20 endar year 2005 and before the date speci-
21 fied in subparagraph (D) which contains
22 the taxpayer identifying number (assigned
23 under section 6109) of an employee (within
24 the meaning of section 6051)—

1 “(I) who is under the age of 14 (or any
2 lesser age the Secretary shall request), accord-
3 ing to the records maintained by the Commis-
4 sioner of Social Security,

5 “(II) whose date of death, according to the
6 records so maintained, occurred in a calendar
7 year preceding the calendar year for which the
8 information return was filed,

9 “(III) whose taxpayer identifying number
10 is contained in more than one (or any greater
11 number the Secretary shall request) information
12 return filed in such calendar year, or

13 “(IV) who is not authorized to work in the
14 United States, according to the records main-
15 tained by the Commissioner of Social Security,

16 “and the taxpayer identity and date of
17 birth of each such employee.

18 “(B) REIMBURSEMENT.—The Secretary
19 shall transfer to the Commissioner the funds
20 necessary to cover the additional cost directly
21 incurred by the Commissioner in carrying out
22 the searches or manipulations requested by the
23 Secretary.”

24 (2) COMPLIANCE BY DHS CONTRACTORS
25 WITH CONFIDENTIALITY SAFEGUARDS.—

1 (A) IN GENERAL.—Section 6103(p) of
2 such Code is amended by adding at the end the
3 following new paragraph:

4 “(9) DISCLOSURE TO DHS CONTRACTORS.—
5 Notwithstanding any other provision of this section,
6 no return or return information shall be disclosed to
7 any contractor of the Department of Homeland Se-
8 curity unless such Department, to the satisfaction of
9 the Secretary—

10 “(A) has requirements in effect which re-
11 quire each such contractor which would have
12 access to returns or return information to pro-
13 vide safeguards (within the meaning of para-
14 graph (4)) to protect the confidentiality of such
15 returns or return information,

16 “(B) agrees to conduct an on-site review
17 every 3 years (mid-point review in the case of
18 contracts or agreements of less than 3 years in
19 duration) of each contractor to determine com-
20 pliance with such requirements,

21 “(C) submits the findings of the most re-
22 cent review conducted under subparagraph (B)
23 to the Secretary as part of the report required
24 by paragraph (4)(E), and

1 “(D) certifies to the Secretary for the most
2 recent annual period that such contractor is in
3 compliance with all such requirements.

4 The certification required by subparagraph (D) shall
5 include the name and address of each contractor, a
6 description of the contract or agreement with such
7 contractor, and the duration of such contract or
8 agreement.”.

9 (3) CONFORMING AMENDMENTS.—

10 (A) Section 6103(a)(3) of such Code is
11 amended by striking “or (20)” and inserting
12 “(20), or (21)”.

13 (B) Section 6103(p)(3)(A) of such Code is
14 amended by adding at the end the following
15 new sentence: “The Commissioner of Social Se-
16 curity shall provide to the Secretary such infor-
17 mation as the Secretary may require in carrying
18 out this paragraph with respect to return infor-
19 mation inspected or disclosed under the author-
20 ity of subsection (l)(21).”.

21 (C) Section 6103(p)(4) of such Code is
22 amended—

23 (i) by striking “or (17)” both places it
24 appears and inserting “(17), or (21)”; and

1 (ii) by striking “or (20)” each place it
2 appears and inserting “(20), or (21)”.

3 (D) Section 6103(p)(8)(B) of such Code is
4 amended by inserting “or paragraph (9)” after
5 “subparagraph (A)”.

6 (E) Section 7213(a)(2) of such Code is
7 amended by striking “or (20)” and inserting
8 “(20), or (21)”.

9 (b) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated to the Secretary of
11 Homeland Security such sums as are necessary to carry
12 out the amendments made by this section.

13 (c) REPEAL OF REPORTING REQUIREMENTS.—

14 (1) REPORT ON EARNINGS OF ALIENS NOT AU-
15 THORIZED TO WORK.—Subsection (c) of section 290
16 of the Immigration and Nationality Act (8 U.S.C.
17 1360) is repealed.

18 (2) REPORT ON FRAUDULENT USE OF SOCIAL
19 SECURITY ACCOUNT NUMBERS.—Subsection (b) of
20 section 414 of the Illegal Immigration Reform and
21 Immigrant Responsibility Act of 1996 (division C of
22 Public Law 104–208; 8 U.S.C. 1360 note) is re-
23 pealed.

24 (d) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
2 subsection (a) shall apply to disclosures made after
3 the date of the enactment of this Act.

4 (2) CERTIFICATIONS.—The first certification
5 under section 6103(p)(9)(D) of the Internal Revenue
6 Code of 1986, as added by subsection (a)(2), shall
7 be made with respect to calendar year 2007.

8 (3) REPEALS.—The repeals made by subsection
9 (c) shall take effect on the date of the enactment of
10 this Act.

11 **SEC. 305. INCREASING SECURITY AND INTEGRITY OF SO-**
12 **CIAL SECURITY CARDS.**

13 (a) FRAUD-RESISTANT, TAMPER-RESISTANT AND
14 WEAR-RESISTANT SOCIAL SECURITY CARDS.—

15 (1) ISSUANCE.—

16 (A) PRELIMINARY WORK.—Not later than
17 180 days after the date of enactment of this
18 title, the Commissioner of Social Security shall
19 begin work to administer and issue fraud-resist-
20 ant, tamper-resistant Social Security cards.

21 (B) COMPLETION.—Not later than two
22 years after the date of enactment of this title,
23 the Commissioner of Social Security shall only
24 issue fraud-resistant, tamper-resistant and
25 wear-resistant Social Security cards.

1 (2) AMENDMENT.—Section 205(c)(2)(G) of the
2 Social Security Act (42 U.S.C. 405(c)(2)(G)) is
3 amended to read—

4 “(i) The Commissioner of Social Secu-
5 rity shall issue a social security card to
6 each individual at the time of the issuance
7 of a social security account number to such
8 individual. The social security card shall be
9 fraud-resistant, tamper-resistant and wear-
10 resistant.”

11 (3) AUTHORIZATION OF APPROPRIATIONS.—

12 There are authorized to be appropriated such sums
13 as may be necessary to carry out this subsection and
14 the amendments made by this subsection.

15 (4) REPORT ON FEASIBILITY OF INCLUDING

16 BIOMETRICS.—Within 180 days of enactment, the
17 Commissioner of Social Security shall provide to
18 Congress a report on the utility, costs and feasibility
19 of including a photograph and other biometric infor-
20 mation on the Social Security card.

21 (b) MULTIPLE CARDS.—Section 205(c)(2)(G) of the
22 Social Security Act (42 U.S.C. 405(c)(2)(G)) is further
23 amended by adding at the end the following:

24 “(ii) The Commissioner of Social Se-
25 curity shall not issue a replacement Social

1 Security card to any individual unless the
2 Commissioner determines that the purpose
3 for requiring the issuance of the replace-
4 ment document is legitimate.”

5 **SEC. 306. INCREASING SECURITY AND INTEGRITY OF IDEN-**
6 **TITY DOCUMENTS.**

7 (a) PURPOSE.—The Secretary of Homeland Security,
8 shall establish the State Records Improvement Grant Pro-
9 gram (referred to in this section as the “Program”), under
10 which the Secretary may award grants to States for the
11 purpose of advancing the purposes of this Act and of
12 issuing or implementing plans to issue driver’s license and
13 identity cards that can be used for purposes of verifying
14 identity under this Title and that comply with the state
15 license requirements in section 202 of the REAL ID Act
16 of 2005 (division B of Public Law 109–13; 49 U.S.C.
17 30301 note).

18 (b) States that do not certify their intent to comply
19 with the REAL ID Act and implementing regulations or
20 that do not submit a compliance plan acceptable to the
21 Secretary are not eligible for grants under the Program.
22 Driver’s license or identification cards issued by States
23 that do not comply with REAL ID may not be used to
24 verify identity under this Title except under conditions ap-
25 proved by the Secretary.

1 (c) GRANTS AND CONTRACTS AUTHORIZED.—

2 (1) IN GENERAL.—The Secretary is authorized
3 to award grants, subject to the availability of appro-
4 priations, to a State to provide assistance to such
5 State agency to meet the deadlines for the issuance
6 of a driver’s license which meets the requirements of
7 section 202 of the REAL ID Act of 2005 (division
8 B of Public Law 109–13; 49 U.S.C. 30301 note).

9 (2) DURATION.—Grants may be awarded under
10 this subsection during fiscal years 2007 through
11 2011.

12 (3) COMPETITIVE BASIS.—The Secretary shall
13 give priority to States whose REAL ID implementa-
14 tion plan is compatible with the employment
15 verification systems, processes, and implementation
16 schedules set forth in Section 302, as determined by
17 the Secretary. Minimum standards for compatibility
18 will include the ability of the State to promptly
19 verify the document and provide access to the digital
20 photograph displayed on the document.

21 (4) Where the Secretary of Homeland Security
22 determines that compliance with REAL ID and with
23 the requirements of the employment verification sys-
24 tem can best be met by awarding grants or contracts
25 to a State, a group of States, a government agency,

1 or a private entity, the Secretary may utilize Pro-
2 gram funds to award such a grant, grants, contract
3 or contracts.

4 (5) On an expedited basis, the Secretary shall
5 award grants or contracts for the purpose of improv-
6 ing the accuracy and electronic availability of states'
7 records of births, deaths, driver's licenses, and of
8 other records necessary for implementation of EEVS
9 and as otherwise necessary to advance the purposes
10 of this Act.

11 (d) USE OF FUNDS.—Grants or contracts awarded
12 pursuant to the Program may be used to assist State com-
13 pliance with the REAL ID requirements, including, but
14 not limited to—

- 15 (1) upgrade and maintain technology;
16 (2) obtain equipment;
17 (3) hire additional personnel;
18 (4) cover operational costs, including overtime;
19 and
20 (5) such other resources as are available to as-
21 sist that agency.

22 (e) APPLICATION.—

23 (1) IN GENERAL.—Each eligible state seeking a
24 grant under this section shall submit an application
25 to the Secretary at such time, in such manner, and

1 accompanied by such information as the Secretary
2 may reasonably require.

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

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

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

11 (f) CONDITIONS.—All grants under the Program
12 shall be conditioned on the recipient providing REAL ID
13 compliance certification and implementation plans accept-
14 able to the Secretary which include—

15 (1) adopting appropriate security measures to
16 protect against improper issuance of driver's licenses
17 and identity cards, tampering with electronic
18 issuance systems, and identity theft as the Secretary
19 may prescribe;

20 (2) ensuring introduction and maintenance of
21 such security features and other measures necessary
22 to make the documents issued by recipient resistant
23 to tampering, counterfeiting, and fraudulent use as
24 the Secretary may prescribe; and

1 (3) ensuring implementation and maintenance
2 of such safeguards for the security of the informa-
3 tion contained on these documents as the Secretary
4 may prescribe.

5 All grants shall also be conditioned on the recipient agree-
6 ing to adhere to the timetables and procedures for issuing
7 REAL ID driver's licenses and identification cards as
8 specified in section 274A(c)(1)(F). All grants shall further
9 be conditioned on the recipient agreeing to implement the
10 requirements of this Act and any implementing regula-
11 tions to the satisfaction of the Secretary of Homeland Se-
12 curity.

13 (g) AUTHORIZATION OF APPROPRIATIONS.—IN GEN-
14 ERAL.—There is authorized to be appropriated
15 \$300,000,000 for each of fiscal years 2007 through 2011
16 to carry out the provisions of this section.

17 (h) SUPPLEMENT NOT SUPPLANT.—Amounts appro-
18 priated for grants under this section shall be used to sup-
19 plement and not supplant other State and local public
20 funds obligated for the purposes provided under this title.

21 (i) ADDITIONAL USES.—Amounts authorized under
22 this section may also be used to assist in sharing of law
23 enforcement information between States and the Depart-
24 ment of Homeland Security for purposes of implementing
25 Section 602(c), at the discretion of the Secretary.

1 **SEC. 307. VOLUNTARY ADVANCED VERIFICATION PROGRAM**
2 **TO COMBAT IDENTITY THEFT.**

3 (a) VOLUNTARY ADVANCED VERIFICATION PRO-
4 GRAM.—The Secretary shall establish and make available
5 a voluntary program allowing employers to submit and
6 verify an employee’s fingerprints for purposes of deter-
7 mining the identity and work authorization of the em-
8 ployee.

9 (1) IMPLEMENTATION DATE.—No later than 18
10 months after the date of enactment of this Act, the
11 Secretary shall implement the voluntary advanced
12 verification program and make it available to em-
13 ployers willing to volunteer in the program.

14 (2) VOLUNTARY PARTICIPATION.—The finger-
15 print verification program is voluntary; employers
16 are not required to participate in it.

17 (b) LIMITED RETENTION PERIOD FOR FINGER-
18 PRINTS.—

19 (1) The Secretary shall only maintain finger-
20 print records of a U.S. Citizen that were submitted
21 by an employer through the EEVS for 10 business
22 days, upon which such records shall be purged from
23 any EEVS-related system unless the fingerprints
24 have been ordered to be retained for purposes of a
25 fraud or similar investigation by a government agen-
26 cy with criminal or other investigative authority.

1 (2) Exception: For purposes of preventing iden-
2 tity theft or other harm, a U.S. Citizen employee
3 may request in writing that his fingerprint records
4 be retained for employee verification purposes by the
5 Secretary. In such instances of written consent, the
6 Secretary may retain such fingerprint records until
7 notified in writing by the U.S. Citizen of his with-
8 drawal of consent, at which time the Secretary must
9 purge such fingerprint records within 10 business
10 days unless the fingerprints have been ordered to be
11 retained for purposes of a fraud or similar investiga-
12 tion by a government agency with an independent
13 criminal or other investigative authority.

14 (d) LIMITED USE OF FINGERPRINTS SUBMITTED
15 FOR PROGRAM.—The Secretary and the employer may use
16 any fingerprints taken from the employee and transmitted
17 for querying the EEVS solely for the purposes of verifying
18 identity and employment eligibility during the employee
19 verification process. Such transmitted fingerprints may
20 not be used for any other purpose. This provision does
21 not alter any other provisions regarding the use of non-
22 fingerprint information in the EEVS.

23 (e) SAFEGUARDING OF FINGERPRINT INFORMA-
24 TION.—The Secretary, subject to specifications and limita-
25 tions set forth under this section and other relevant provi-

1 sions of this Act, shall be responsible for safely and se-
2 curely maintaining and storing all fingerprints submitted
3 under this program.

4 **SEC. 308. RESPONSIBILITIES OF THE SOCIAL SECURITY AD-**
5 **MINISTRATION.**

6 Section 205(c)(12) of the Social Security Act, 42
7 U.S.C. 405(c)(2), is amended by adding at the end the
8 following new subparagraphs:

9 “(I) RESPONSIBILITIES OF THE COMMIS-
10 SIONER OF SOCIAL SECURITY.—

11 “(i) As part of the verification system,
12 the Commissioner of Social Security shall,
13 subject to the provisions of section
14 274A(d) of the Immigration and Nation-
15 ality Act, establish a reliable, secure meth-
16 od that, operating through the EEVS and
17 within the time periods specified in section
18 274A(d) of the Immigration and Nation-
19 ality Act:

20 “(I) compares the name, social
21 security account number and available
22 citizenship information provided in an
23 inquiry against such information
24 maintained by the Commissioner in
25 order to confirm (or not confirm) the

1 validity of the information provided
2 regarding an individual whose identity
3 and employment eligibility must be
4 confirmed;

5 “(II) the correspondence of the
6 name, number, and any other identi-
7 fying information;

8 “(III) whether the name and
9 number belong to an individual who is
10 deceased;

11 “(IV) whether an individual is a
12 national of the United States (when
13 available); and

14 “(V) whether the individual has
15 presented a social security account
16 number that is not valid for employ-
17 ment.

18 The EEVS shall not disclose or release so-
19 cial security information to employers
20 through the confirmation system (other
21 than such confirmation or nonconfirma-
22 tion).

23 “(ii) SOCIAL SECURITY ADMINISTRA-
24 TION DATABASE IMPROVEMENTS.—For
25 purposes of preventing identity theft, pro-

1 tecting employees, and reducing burden on
2 employers, and notwithstanding section
3 6103 of title 26, United States Code, the
4 Commissioner of Social Security, in con-
5 sultation with the Secretary, shall review
6 the Social Security Administration data-
7 bases and information technology to iden-
8 tify any deficiencies and discrepancies re-
9 lated to name, birth date, citizenship sta-
10 tus, or death records of the social security
11 accounts and social security account hold-
12 ers likely to contribute to fraudulent use of
13 documents, or identity theft, or to affect
14 the proper functioning of the EEVS and
15 shall correct any identified errors. The
16 Commissioner shall ensure that a system
17 for identifying and correcting such defi-
18 ciencies and discrepancies is adopted to en-
19 sure the accuracy of the Social Security
20 Administration’s databases.

21 “(iii) NOTIFICATION TO ‘FREEZE’ USE
22 OF SOCIAL SECURITY NUMBER.—The Com-
23 missioner of Social Security, in consulta-
24 tion with the Secretary of Homeland Secu-
25 rity, shall establish a secure process where-

1 by an individual can request that the Com-
 2 missioner preclude any confirmation under
 3 the EEVS based on that individual's Social
 4 Security number until it is reactivated by
 5 that individual.”.

6 **SEC. 309. IMMIGRATION ENFORCEMENT SUPPORT BY THE**
 7 **INTERNAL REVENUE SERVICE AND THE SO-**
 8 **CIAL SECURITY ADMINISTRATION.**

9 (a) TIGHTENING REQUIREMENTS FOR THE PROVI-
 10 SION OF SOCIAL SECURITY NUMBERS ON FORM W-2
 11 WAGE AND TAX STATEMENTS.—Section 6724 of the In-
 12 ternal Revenue Code of 1986 (relating to waiver; defini-
 13 tions and special rules) is amended by adding at the end
 14 the following new subsection:

15 “(f) Special rules with respect to social security num-
 16 bers on withholding exemption certificates.

17 “(l) Reasonable cause waiver not to apply.
 18 Subsection (a) shall not apply with respect to the social
 19 security account number of an employee furnished under
 20 section 6051(a)(2).

21 “(2) EXCEPTION.—

22 “(A) IN GENERAL.—Except as provided in
 23 subparagraph (B), [paragraph (1)] shall not
 24 apply in any case in which the employer—

1 “(i) receives confirmation that the dis-
2 crepancy described in section 205(c)(2)(I)
3 of the Social Security Act has been re-
4 solved, or

5 “(ii) corrects a clerical error made by
6 the employer with respect to the social se-
7 curity account number of an employee
8 within 60 days after notification under sec-
9 tion 205(c)(2)(1) of the Social Security
10 Act that the social security account num-
11 ber contained in wage records provided to
12 the Social Security Administration by the
13 employer with respect to the employee does
14 not match the social security account num-
15 ber of the employee contained in relevant
16 records otherwise maintained by the Social
17 Security Administration.

18 “(B) Exception not applicable to frequent
19 offenders. Subparagraph (A) shall not apply—

20 “(i) in any case in which not less than
21 50 of the statements required to be made
22 by an employer pursuant to section 6051
23 either fail to include an employee’s social
24 security account number or include an in-
25 correct social security account number, or

1 “(ii) with respect to any employer who
2 has received written notification under sec-
3 tion 205(c)(2)(1) of the Social Security
4 Act during each of the 3 preceding taxable
5 years that the social security account num-
6 bers in the wage records provided to the
7 Social Security Administration by such em-
8 ployer with respect to 10 more employees
9 do not match relevant records otherwise
10 maintained by the Social Security Adminis-
11 tration.”

12 (b) ENFORCEMENT.—

13 (1) IN GENERAL.—Not later than 90 days after
14 the date of the enactment of this Act, the Secretary
15 of the Treasury, in consultation with the Secretary
16 of Homeland Security, shall establish a unit within
17 the Criminal Investigation office of the Internal Rev-
18 enue Service to investigate violations of the Internal
19 Revenue Code of 1986 related to the employment of
20 individuals who are not authorized to work in the
21 United States.

22 (2) SPECIAL AGENTS; SUPPORT STAFF.—The
23 Secretary of the Treasury shall assign to the unit a
24 minimum of 10 full-time special agents and nec-
25 essary support staff and is authorized to employ up

1 to 200 full time special agents for this unit based on
2 investigative requirements and work load.

3 (3) REPORTS.—During each of the first 5 cal-
4 endar years beginning after the establishment of
5 such unit and biennially thereafter, the unit shall
6 transmit to Congress a report that describes its ac-
7 tivities and includes the number of investigations
8 and cases referred for prosecution.

9 (c) INCREASE IN PENALTY ON EMPLOYER FAILING
10 TO FILE CORRECT INFORMATION RETURNS.—Section
11 6721 of such Code (relating to failure to file correct infor-
12 mation returns) is amended as follows—

13 (1) in subsection (a)(1)—

14 (A) by striking “\$50” and inserting
15 “\$200”, and

16 (B) by striking “\$250,000” and inserting
17 “\$1,000,000”,

18 (2) in subsection (b)(1)(A), by striking “\$15 in
19 lieu of \$50” and inserting “\$60 in lieu of \$200”,

20 (3) in subsection (b)(1)(B), by striking
21 “\$75,000” and inserting “\$300,000”,

22 (4) in subsection (b)(2)(A), by striking “\$30 in
23 lieu of \$50” and inserting “\$120 in lieu of \$200”,

24 (5) in subsection (b)(2)(B), by striking
25 “\$150,000” and inserting “\$600,000”,

1 (6) in subsection (d)(A) in paragraph (1)—

2 (A) by striking “‘\$100,000’ for
3 ‘\$250,000’” and inserting “‘\$400,000’ for
4 ‘\$1,000,000’” in subparagraph (A),

5 (B) by striking “‘\$25,000’ for ‘\$75,000’”
6 and inserting “‘\$100,000’ for ‘\$300,000’” in
7 subparagraph (B), and

8 (C) by striking “‘\$50,000’ for ‘\$150,000’”
9 and inserting “‘\$200,000’ for ‘\$600,000’” in
10 subparagraph (C),

11 (D) in paragraph (2)(A), by striking
12 “‘\$5,000,000” and inserting “‘\$2,000,000”, and

13 (E) in the heading, by striking
14 “‘\$5,000,000” and inserting “‘\$2,000,000”,

15 (7) in subsection (e)(2)—

16 (A) by striking “‘\$100” and inserting
17 “‘\$400”,

18 (B) by striking “‘\$25,000” and inserting
19 “‘\$100,000” in subparagraph (C)(i), and

20 (C) by striking “‘\$100,000” and inserting
21 “‘\$400,000” in subparagraph (C)(ii), and

22 (8) in subsection (e)(3)(A), by striking
23 “‘\$250,000” and inserting “‘\$1,000,000”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 subsections (b) and (c) shall apply to failures occurring
3 after December 31, 2006.

4 **SEC. 310. AUTHORIZATION OF APPROPRIATIONS.**

5 (a) There are authorized to be appropriated to the
6 Secretary of Homeland Security such sums as may be nec-
7 essary to carry out the provisions of this Act, and the
8 amendments made by this Act, including the following ap-
9 propriations:

10 (1) In each of the five years beginning on the
11 date of the enactment of this Act, the appropriations
12 necessary to increase to a level not less than 4500
13 the number of personnel of the Department of
14 Homeland Security assigned exclusively or prin-
15 cipally to an office or offices dedicated to monitoring
16 and enforcing compliance with sections 274A and
17 274C of the Immigration and Nationality Act (8
18 U.S.C. 1324a and 1324c), including compliance with
19 the requirements of the EEVS. These personnel
20 shall perform the following compliance and moni-
21 toring activities:

22 (A) Verify Employment Identification
23 Numbers of employers participating in the
24 EEVS.

1 (B) Verify compliance of employers partici-
2 pating in the EEVS with the requirements for
3 participation that are prescribed by the Sec-
4 retary.

5 (C) Monitor the EEVS for multiple uses of
6 Social Security Numbers and any immigration
7 identification numbers for evidence that could
8 indicate identity theft or fraud.

9 (D) Monitor the EEVS to identify dis-
10 crimatory practices.

11 (E) Monitor the EEVS to identify employ-
12 ers who are not using the system properly, in-
13 cluding employers who fail to make appropriate
14 records with respect to their queries and any
15 notices of confirmation, nonconfirmation, or
16 further action.

17 (F) Identify instances where employees al-
18 lege that an employer violated their privacy
19 rights.

20 (G) Analyze and audit the use of the
21 EEVS and the data obtained through the
22 EEVS to identify fraud trends, including fraud
23 trends across industries, geographical areas, or
24 employer size.

1 (H) Analyze and audit the use of the
2 EEVS and the data obtained through the
3 EEVS to develop compliance tools as necessary
4 to respond to changing patterns of fraud.

5 (I) Provide employers with additional
6 training and other information on the proper
7 use of the EEVS.

8 (J) Perform threshold evaluation of cases
9 for referral to the U.S. Immigration and Customs
10 Enforcement and to liaise with the U.S.
11 Immigration and Customs Enforcement with re-
12 spect to these referrals.

13 (K) Any other compliance and monitoring
14 activities that, in the Secretary's judgment, are
15 necessary to ensure the functioning of the
16 EEVS.

17 (L) Investigate identity theft and fraud de-
18 tected through the EEVS and undertake the
19 necessary enforcement actions.

20 (M) Investigate use of fraudulent docu-
21 ments or access to fraudulent documents
22 through local facilitation and undertake the
23 necessary enforcement actions.

24 (N) Provide support to the U.S. Citizen-
25 ship and Immigration Services with respect to

1 the evaluation of cases for referral to the U.S.
2 Immigration and Customs Enforcement.

3 (O) Perform any other investigations that,
4 in the Secretary's judgment, are necessary to
5 ensure the functioning of the EEVS, and un-
6 dertake any enforcement actions necessary as a
7 result of these investigations.

8 (2) The appropriations necessary to acquire, in-
9 stall and maintain technological equipment necessary
10 to support the functioning of the EEVS and the
11 connectivity between U.S. Citizenship and Immigra-
12 tion Services and the U.S. Immigration and Cus-
13 toms Enforcement with respect to the sharing of in-
14 formation to support the EEVS and related immi-
15 gration enforcement actions.

16 (b) There are authorized to be appropriated to Com-
17 missioner of Social Security such sums as may be nec-
18 essary to carry out the provisions of this Act, including
19 Section 308 of this Act.

1 **TITLE IV—NEW TEMPORARY**
 2 **WORKER PROGRAM**
 3 **Subtitle A—Seasonal Non-Agricul-**
 4 **tural and Year-Round Non-**
 5 **immigrant Temporary Workers**

6 **SEC. 401. NONIMMIGRANT TEMPORARY WORKER.**

7 (a) IN GENERAL.—Section 101(a)(15) of the Immi-
 8 gration and Nationality Act (8 U.S.C. 1101(a)(15)) is
 9 amended—

10 (1) in subparagraph (H)—

11 (A) by striking subclause (ii)(b);

12 (B) by striking “or (iii)” and inserting
 13 “(iii)”; and

14 (C) by striking “; and the alien spouse”
 15 and inserting “; or (iv) the alien spouse”;

16 (2) by striking “or” at the end of subparagraph
 17 (U);

18 (3) by striking the period at the end of sub-
 19 paragraph (V) and inserting a semi-colon; and

20 (4) by inserting at the end the following new
 21 subparagraphs.—

22 “(W) [Reserved];

23 “(X) [Reserved]; or

24 “(Y) subject to section 218A, an alien hav-
 25 ing a residence in a foreign country which the

1 alien has no intention of abandoning and who
2 is coming temporarily to the United States—

3 “(i) to perform temporary labor or
4 services other than the labor or services
5 described in clause (i)(b), (i)(b1), (i)(c), or
6 (iii) of subparagraph (H), subparagraph
7 (D), (E), (I), (L), (O), (P), or (R), or sec-
8 tion 214(e) (if United States workers who
9 are able, willing, and qualified to perform
10 such labor or services cannot be found in
11 the United States);

12 “(ii) to perform seasonal non-agricul-
13 tural labor or services; or

14 “(iii) as the spouse or child of an
15 alien described in clause (i) or (ii) of this
16 subparagraph.”.

17 (b) REFERENCES.—All references in the immigration
18 laws as amended by this Title to section
19 101(a)(15)(H)(ii)(b) of the Immigration and Nationality
20 Act shall be considered a reference to both that section
21 of the Act and to section 101(a)(15)(Y)(ii) of the Act.

22 (c) EFFECTIVE DATE.—The effective date of the
23 amendment made by subparagraph (1)(A) of subsection
24 (a) shall be the date on which the Secretary of Homeland

1 Security makes the certification described in section 1(a)
2 of this Act.

3 (d) SUNSET OF Y-1 VISA PROGRAM.—

4 (1) SUNSET.—Notwithstanding any other provi-
5 sion of this Act, or any amendment made by this
6 Act, no alien may be issued a new visa as a Y-1
7 nonimmigrant (as defined in section 218B of the
8 Immigration and Nationality Act, as added by sec-
9 tion 403) on the date that is 5 years after the date
10 that the first such visa is issued.

11 (2) CONSTRUCTION.—Nothing in paragraph (1)
12 may be construed to affect issuance of visas to Y-
13 2B nonimmigrants (as defined in such section
14 218B), under the AgJOBS Act of 2007, as added by
15 subtitle C, under the H-2A visa program, or any
16 visa program other than the Y-1 visa program.

17 **SEC. 402. ADMISSION OF NONIMMIGRANT WORKERS.**

18 (a) NEW WORKERS.—Chapter 2 of title II of the Act
19 (8 U.S.C. 1181 et seq.) is amended by striking section
20 218 and inserting the following:

21 **“SEC. 218A. ADMISSION OF Y NONIMMIGRANTS.**

22 “(a) APPLICATION PROCEDURES.—

23 “(1) LABOR CERTIFICATION.—The Secretary of
24 Labor shall prescribe by regulation the procedures
25 for a United States employer to obtain a labor cer-

1 tification of a job opportunity under the terms set
2 forth in section 218B.

3 “(2) PETITION.—The Secretary of Homeland
4 Security shall prescribe by regulation the procedures
5 for a United States employer to petition to the Sec-
6 retary of Homeland Security for authorization to
7 employ an alien as a Y nonimmigrant worker and
8 the evidence required to demonstrate eligibility for
9 such authorization under the terms set forth in sub-
10 section (c).

11 “(3) Y NONIMMIGRANT VISA.—The Secretary of
12 State and the Secretary of Homeland Security, as
13 appropriate, shall prescribe by regulation the proce-
14 dures for an alien to apply for a Y nonimmigrant
15 visa and the evidence required to demonstrate eligi-
16 bility for such visa under the terms set forth in sub-
17 section (e).

18 “(4) REGULATIONS.—The regulations ref-
19 erenced in paragraphs (1), (2), and (3) shall de-
20 scribe, at a minimum—

21 “(A) the procedures for collection and
22 verification of biometric data from an alien
23 seeking a Y nonimmigrant visa or admission in
24 Y nonimmigrant status; and

1 “(B) the procedure and standards for vali-
2 dating an employment arrangement between a
3 United States employer and an alien seeking a
4 visa or admission described in (A).

5 “(b) APPLICATION FOR CERTIFICATION OF A JOB
6 OPPORTUNITY OFFERED TO Y NONIMMIGRANT WORK-
7 ERS.—An employer desiring to employ a Y nonimmigrant
8 worker shall, with respect to a specific opening that the
9 employer seeks to fill with such a Y nonimmigrant, submit
10 an application for labor certification of the job opportunity
11 filed in accordance with the procedures established by sec-
12 tion 218B.

13 “(c) PETITION TO EMPLOY Y NONIMMIGRANT
14 WORKERS.—

15 “(1) IN GENERAL.—An employer that seeks au-
16 thorization to employ a Y nonimmigrant worker
17 must file a petition with the Secretary of Homeland
18 Security. The petition must be accompanied by—

19 “(A) evidence that the employer has ob-
20 tained a certification under section 218B from
21 the Secretary of Labor for the position sought
22 to be filled by a Y nonimmigrant worker and
23 that such certification remains valid;

24 “(B) evidence that the job offer was and
25 remains valid;

1 “(C) the name and other biographical in-
2 formation of the alien beneficiary and any ac-
3 companying spouse or child; and

4 “(D) any biometrics from the beneficiary
5 that the Secretary of Homeland Security may
6 require by regulation.

7 “(2) TIMING OF FILING.—

8 “(A) IN GENERAL.—A petition under this
9 subsection must be filed with the Secretary of
10 Homeland Security within 180 days of the date
11 of certification under section 218B by the Sec-
12 retary of Labor of the job opportunity.

13 “(B) EXPIRATION OF CERTIFICATION.—If
14 a labor certification is not filed in support of a
15 petition under this subsection with the Sec-
16 retary of Homeland Security within 180 days of
17 the date of certification by the Secretary of
18 Labor, then the certification expires and may
19 not support a Y nonimmigrant petition or be
20 the basis for Y nonimmigrant visa issuance.

21 “(3) ABILITY TO REQUEST DOCUMENTATION.—

22 The Secretary of Homeland Security may request in-
23 formation to verify the attestations the employer
24 made during the labor certification process, and any

1 other fact relevant to the adjudication of the peti-
2 tion.

3 “(4) ADJUDICATION OF PETITION.—

4 “(A) POST-ADJUDICATION ACTION.—After
5 review of the petition, if the Secretary—

6 “(i) is satisfied that the petition meets
7 all of the requirements of paragraph (1),
8 and any other requirements the Secretary
9 has prescribed in regulations, he may ap-
10 prove the petition and by fax, cable, elec-
11 tronic, or any other means assuring expe-
12 dited delivery—

13 “(I) transmit a copy of the notice
14 of action on the petition to the peti-
15 tioner; and

16 “(II) in the case of approved pe-
17 titions, transmit notice of the approval
18 to the Secretary of State;

19 “(ii) finds that the employer is not eli-
20 gible or that the petition is otherwise not
21 approvable, the Secretary may—

22 “(I) deny the petition without
23 seeking additional evidence and in-
24 form the petitioner—

1 “(aa) that the petition was
2 denied and the reason for the de-
3 nial;

4 “(bb) of any available proc-
5 ess for administrative appeal of
6 the decision; and

7 “(cc) that the denial is with-
8 out prejudice to the filing of any
9 subsequent petitions, except as
10 provided in section 218B(e)(4);

11 “(II) issue a request for docu-
12 mentation of the attestations or any
13 other information or evidence that is
14 material to the petition; or

15 “(III) audit, investigate or other-
16 wise review the petition in such man-
17 ner as he may determine and refer
18 evidence of fraud to appropriate law
19 enforcement agencies based on the
20 audit information.

21 “(B) VALIDITY OF APPROVED PETITION.—

22 An approved petition shall have the same period
23 of validity as the certification described in sub-
24 section (c)(1)(A) and expire on the same date
25 that the certification expires, except that the

1 Secretary of Homeland Security may terminate
2 in his discretion an approved petition—

3 “(i) when he determines that any ma-
4 terial fact, including, but not limited to the
5 proffered wage rate, the geographic loca-
6 tion of employment, or the duties of the
7 position, has changed in a way that would
8 invalidate the recruitment actions; or

9 “(ii) when he or the Secretary of
10 Labor makes a finding of fraud or mis-
11 representation concerning the facts on the
12 petition or any other representation made
13 by the employer before the Secretary of
14 Labor or Secretary of Homeland Security.

15 “(C) ADMINISTRATIVE REVIEW.—The Sec-
16 retary of Homeland Security shall authorize a
17 single level of administrative review with the
18 United States Citizenship and Immigration
19 Services Administrative Appeals Office of a pe-
20 tition denial or termination.

21 “(d) AUTHORIZATION TO GRANT Y NONIMMIGRANT
22 VISA.—

23 “(1) IN GENERAL.—A consular officer may
24 grant a single-entry temporary visa to a Y non-
25 immigrant who demonstrates an intent to perform

1 labor or services in the United States (other than
2 the labor or services described in clause (i)(b),
3 (i)(b1), (i)(c), or (iii) of section 101(a)(15)(H), sub-
4 paragraph (D), (E), (I), (L), (O), (P), or (R) of sec-
5 tion 101(a)(15), or section 214(e) (if United States
6 workers who are able, willing, and qualified to per-
7 form such labor or services cannot be found in the
8 United States).

9 “(2) APPLICANTS FROM CANADA.—Notwith-
10 standing any waivers of the visa requirement under
11 section 212(a)(7)(B)(i)(II), a national of Canada
12 seeking admission as a Y nonimmigrant will be inad-
13 missible if not in possession of—

14 “(I) a valid Y nonimmigrant visa; or

15 “(II) documentation of Y nonimmigrant
16 status, as described in subsection (m).

17 “(e) REQUIREMENTS FOR ADMISSION.—An alien
18 shall be eligible for Y nonimmigrant status if the alien
19 meets the following requirements:

20 “(1) ELIGIBILITY TO WORK.—The alien shall
21 establish that the alien is capable of performing the
22 labor or services required for an occupation de-
23 scribed in section 101(a)(15)(Y)(i) or (Y)(ii).

24 “(2) EVIDENCE OF EMPLOYMENT OFFER.—The
25 alien’s evidence of employment shall be provided in

1 accordance with the requirements issued by the Sec-
2 retary of State, in consultation with the Secretary of
3 Labor. In carrying out this paragraph, the Secretary
4 may consider evidence from employers, employer as-
5 sociations, and labor representatives.

6 “(3) FEES.—

7 “(A) PROCESSING FEES.—An alien making
8 an application for a Y nonimmigrant visa shall
9 be required to pay, in addition to any fees
10 charged by the Department of State for proc-
11 essing and adjudicating such visa application, a
12 processing fee in an amount sufficient to re-
13 cover the full cost to the Secretary of Homeland
14 Security of administrative and other expenses
15 associated with processing the alien’s participa-
16 tion in the Y nonimmigrant program, including
17 the costs of production of documentation of evi-
18 dence under subsection (m).

19 “(B) STATE IMPACT FEE.—Aliens making
20 an application for a Y-1 nonimmigrant visa
21 shall pay a state impact fee of \$500 and an ad-
22 ditional \$250 for each dependent accompanying
23 or following to join the alien, not to exceed
24 \$1,500 per family.

1 “(C) DEPOSIT AND SPENDING OF FEES.—
2 The processing fees under subparagraph (A)
3 shall be deposited and remain available until ex-
4 pended as provided by sections 286 (m) and
5 (n).

6 “(D) DEPOSIT AND DISPOSITION OF STATE
7 IMPACT ASSISTANCE FUNDS.—The funds de-
8 scribed in subparagraph (B) shall be deposited
9 and remain available as provided by section
10 286(x).

11 “(E) CONSTRUCTION.—Nothing in this
12 paragraph shall be construed to affect consular
13 procedures for collection of machine-readable
14 visa fees or reciprocal fees for the issuance of
15 the visa.

16 “(4) MEDICAL EXAMINATION.—The alien shall
17 undergo a medical examination (including a deter-
18 mination of immunization status), at the alien’s ex-
19 pense, that conforms to generally accepted standards
20 of medical practice.

21 “(5) APPLICATION CONTENT AND WAIVER.—

22 “(A) APPLICATION FORM.—The alien shall
23 submit to the Secretary of State a completed
24 application, which contains evidence that the re-

1 requirements under paragraphs (1) and (2) have
2 been met.

3 “(B) CONTENT.—In addition to any other
4 information that the Secretary requires to de-
5 termine an alien’s eligibility for Y non-
6 immigrant status, the Secretary of State shall
7 require an alien to provide information con-
8 cerning the alien’s—

9 “(i) physical and mental health;

10 “(ii) criminal history, including all ar-
11 rests and dispositions, and gang member-
12 ship;

13 “(iii) immigration history; and

14 “(iv) involvement with groups or indi-
15 viduals that have engaged in terrorism,
16 genocide, persecution, or who seek the
17 overthrow of the United States Govern-
18 ment.

19 “(C) KNOWLEDGE.—The alien shall in-
20 clude with the application submitted under this
21 paragraph a signed certification in which the
22 alien certifies that—

23 “(i) the alien has read and under-
24 stands all of the questions and statements
25 on the application form;

1 “(ii) the alien certifies under penalty
2 of perjury under the laws of the United
3 States that the application, and any evi-
4 dence submitted with it, are all true and
5 correct; and

6 “(iii) the applicant authorizes the re-
7 lease of any information contained in the
8 application and any attached evidence for
9 law enforcement purposes.

10 “(6) MUST NOT BE INELIGIBLE.—The alien
11 must not fall within a class of aliens ineligible for
12 Y nonimmigrant status listed under subsection (h).

13 “(7) MUST NOT BE INADMISSIBLE.—The alien
14 must not be inadmissible as a nonimmigrant to the
15 United States under section 212, except as provided
16 in subsection (f).

17 “(8) SPOUSE OR CHILD OF Y NON-
18 IMMIGRANT.—An alien seeking admission as a deriv-
19 ative Y-3 nonimmigrant must demonstrate, in addi-
20 tion to satisfaction of the requirements of para-
21 graphs (2) through (6)—

22 “(A) that the annual wage of the principal
23 Y nonimmigrant paid by the principal non-
24 immigrant’s U.S. employer, combined with the
25 annual wage of the principal Y nonimmigrant’s

1 spouse where the Y-3 nonimmigrant is a child
2 and the Y nonimmigrant's spouse is a member
3 of the principal Y nonimmigrant's household, is
4 equal to or greater than 150 percent of the
5 U.S. poverty level for a household size equal in
6 size to that of the principal alien (including all
7 dependents, family members supported by the
8 principal alien, and the spouse or child seeking
9 to accompany or join the principal alien), as de-
10 termined by the Secretary of Health and
11 Human Services for the fiscal year in which the
12 spouse or child's application for a non-
13 immigrant visa is filed; and

14 “(B) that the alien's cost of medical care
15 is covered by medical insurance, valid in the
16 United States, carried by the principal Y non-
17 immigrant alien, the principal Y non-
18 immigrant's spouse (where the Y-3 non-
19 immigrant is a child), or the principal Y non-
20 immigrant alien's employer.

21 “(f) GROUNDS OF INADMISSIBILITY.—

22 “(1) WAIVED GROUNDS OF INADMISSIBILITY.—
23 In determining an alien's admissibility as a Y non-
24 immigrant, such alien shall be found to be inadmis-

1 sible if the alien would be subject to the grounds of
2 inadmissibility under section 601(d)(2).

3 “(2) WAIVER.—The Secretary may in his dis-
4 cretion waive the application of any provision of sec-
5 tion 212(a) of the Act not listed in paragraph (2)
6 on behalf of an individual alien for humanitarian
7 purposes, to ensure family unity, or if such waiver
8 is otherwise in the public interest.

9 “(3) CONSTRUCTION.—Nothing in this sub-
10 section shall be construed as affecting the authority
11 of the Secretary other than under this paragraph to
12 waive the provisions of section 212(a).

13 “(g) BACKGROUND CHECKS.—The Secretary of
14 Homeland Security shall not admit, and the Secretary of
15 State shall not issue a visa to, an alien seeking Y non-
16 immigrant visa or status unless all appropriate back-
17 ground checks have been completed to the satisfaction of
18 the Secretaries of State and Homeland Security.

19 “(h) GROUNDS OF INELIGIBILITY.—

20 “(1) IN GENERAL.—An alien is ineligible for a
21 Y nonimmigrant visa or Y nonimmigrant status if
22 the alien is described in section 601(d)(1)(A), (D),
23 (E), (F), or (G) of the [insert title of Act].

24 “(2) INELIGIBILITY OF DERIVATIVE Y-3 NON-
25 IMMIGRANTS.—An alien is ineligible for Y-3 non-

1 immigrant status if the principal Y nonimmigrant is
2 ineligible under paragraph (1).

3 “(3) APPLICABILITY TO GROUNDS OF INADMISS-
4 SIBILITY.—Nothing in this subsection shall be con-
5 strued to limit the applicability of any ground of in-
6 admissibility under section 212.

7 “(i) PERIOD OF AUTHORIZED ADMISSION.—

8 “(1) IN GENERAL.—Aliens admitted to the
9 United States as Y nonimmigrants shall be granted
10 the following periods of admission:

11 “(A) Y-1 NONIMMIGRANTS.—Except as
12 provided in (2), aliens granted admission as Y-
13 1 nonimmigrants shall be granted an authorized
14 period of admission of two years. Subject to
15 paragraph (4), such two-year period of admis-
16 sion may be extended for two additional two-
17 year periods.

18 “(B) Y-2B NONIMMIGRANTS.—Aliens
19 granted admission as Y-2B nonimmigrants
20 shall be granted an authorized period of admis-
21 sion of 10 months.

22 “(2) Y-1 NONIMMIGRANTS WITH Y-3 DEPEND-
23 ENTS.—A Y-1 nonimmigrant who has accompanying
24 or following-to-join derivative family members in Y-
25 3 nonimmigrant status shall be limited to two two-

1 year periods of admission. If the family members ac-
2 company the Y-1 nonimmigrant during the alien's
3 first period of admission the family members may
4 not accompany or join the Y-1 nonimmigrant during
5 the alien's second period of admission. If the Y-1
6 nonimmigrant's family members accompany or fol-
7 low to join the Y-1 nonimmigrant during the alien's
8 second period of admission, but not his first period
9 of admission, then the Y-1 nonimmigrant shall not
10 be granted any additional periods of admission in Y
11 nonimmigrant status. The period of authorized ad-
12 mission of a Y-3 nonimmigrant shall expire on the
13 same date as the period of authorized admission of
14 the principal Y-1 nonimmigrant worker.

15 “(3) SUPPLEMENTARY PERIODS.—Each period
16 of authorized admission described in paragraph (1)
17 shall be supplemented by a period of not more than
18 1 week before the beginning of the period of employ-
19 ment for the purpose of travel to the worksite and,
20 except where such period of authorized admission
21 has been terminated under subsection (j), a period
22 of 14 days following the period of employment for
23 the purpose of departure or extension based on a
24 subsequent offer of employment, except that—

1 “(A) the alien is not authorized to be em-
2 ployed during such 14-day period except in the
3 employment for which the alien was previously
4 authorized; and

5 “(B) the total period of employment, in-
6 cluding such 14-day period, may not exceed the
7 maximum applicable period of admission under
8 paragraph (1).

9 “(4) EXTENSIONS OF THE PERIOD OF ADMIS-
10 SION.—

11 “(A) IN GENERAL.—The periods of author-
12 ized admission described in paragraph (1) may
13 not, except as provided in subparagraph (C)(2)
14 of paragraph (1), be extended beyond the max-
15 imum period of admission set forth in that
16 paragraph.

17 “(B) EXTENSION OF Y-1 NONIMMIGRANT
18 STATUS.—A Y-1 nonimmigrant described in
19 paragraph (1)(A) who has spent 24 months in
20 the United States in Y-1 nonimmigrant status
21 may not seek extension or be readmitted to the
22 United States as a Y-1 nonimmigrant unless
23 the alien has resided and been physically
24 present outside the United States for the imme-
25 diate prior 12 months.

1 “(5) LIMITATION ON ADMISSION.—

2 “(A) Y-1 NONIMMIGRANTS.—An alien who
3 has been admitted to the United States in Y-
4 1 nonimmigrant status for a period of two
5 years under paragraph (1)(B), or as the Y-3
6 nonimmigrant spouse or child of such a Y-1
7 nonimmigrant, may not be readmitted to the
8 United States as a Y-1 or Y-3 nonimmigrant
9 after expiration of such period of authorized ad-
10 mission, regardless of whether the alien was
11 employed or present in the United States for all
12 or a part of such period.

13 “(B) Y-2B NONIMMIGRANTS.—An alien
14 who has been admitted to the United States in
15 Y-2B nonimmigrant status may not, after expi-
16 ration of the alien’s period of authorized admis-
17 sion, be readmitted to the United States as a
18 Y nonimmigrant after expiration of the alien’s
19 period of authorized admission, regardless of
20 whether the alien was employed or present in
21 the United States for all or only a part of such
22 period, unless the alien has resided and been
23 physically present outside the United States for
24 the immediately preceding two months.

1 “(C) READMISSION WITH NEW EMPLOY-
2 MENT.—Nothing in this paragraph shall be con-
3 strued to prevent a Y nonimmigrant, whose pe-
4 riod of authorized admission has not yet expired
5 or been terminated under subsection (j), and
6 who leaves the United States in a timely fash-
7 ion after completion of the employment de-
8 scribed in the petition of the Y nonimmigrant’s
9 most recent employer, from reentering the
10 United States as a Y nonimmigrant to work for
11 a new employer, if the alien and the new em-
12 ployer have complied with all applicable require-
13 ments of this section and section 218B.

14 “(6) INTERNATIONAL COMMUTERS.—An alien
15 who maintains actual residence and place of abode
16 outside the United States and commutes, on days
17 the alien is working, into the United States to work
18 as a Y–1 nonimmigrant, shall be granted an author-
19 ized period of admission of three years. The limita-
20 tions described in paragraphs (3) and (4) shall not
21 apply to commuters described in this paragraph.

22 “(j) TERMINATION.—

23 “(1) IN GENERAL.—The period of authorized
24 admission of a Y nonimmigrant shall terminate im-
25 mediately if:

1 “(A) the Secretary of Homeland Security
2 determines that the alien was not eligible for
3 such Y nonimmigrant status at the time of visa
4 application or admission;

5 “(B)(i) the alien commits an act that
6 makes the alien removable from the United
7 States under section 237;

8 “(ii) the alien becomes inadmissible under
9 section 212 (except as provided in subsection
10 (f)); or

11 “(iii) the alien becomes ineligible under
12 subsection (h);

13 “(C) the alien uses the documentation of
14 his or her Y nonimmigrant status issued under
15 subsection (m) for unlawful or fraudulent pur-
16 poses;

17 “(D) subject to paragraph (2), the alien is
18 unemployed within the United States for—

19 “(i) 60 or more consecutive days;

20 “(ii) in the case of a Y-1 non-
21 immigrant, an aggregate period of 120
22 days, provided that the alien’s 14-day pe-
23 riod to lawfully depart the United States
24 shall not be considered to begin until the

1 date that the alien has been provided no-
2 tice of the termination; or

3 “(iii) in the case of a Y-2B non-
4 immigrant, an aggregate period of 30 days,
5 provided that the alien’s 14-day period to
6 lawfully depart the United States shall not
7 be considered to begin until the date that
8 the alien has been provided notice of the
9 termination; or;

10 “(E) the alien is a Y-3 nonimmigrant
11 whose spouse or parent in Y-1 nonimmigrant
12 status is an alien described in subparagraphs
13 (A), (B), (C), or (D).

14 “(2) EXCEPTION.—The period of authorized
15 admission of a Y nonimmigrant shall not terminate
16 for unemployment under subparagraph (1)(D) if the
17 alien submits documentation to the Secretary of
18 Homeland Security that establishes that such unem-
19 ployment was caused by—

20 “(A) a period of physical or mental dis-
21 ability of the alien or the spouse, son, daughter,
22 or parent (as defined in section 101 of the
23 Family and Medical Leave Act of 1993 (29
24 U.S.C. 2611)) of the alien;

1 “(B) a period of vacation, medical leave,
2 maternity leave, or similar leave from employ-
3 ment authorized by employer policy, State law,
4 or Federal law; or

5 “(C) any other period of temporary unem-
6 ployment that is the direct result of a force
7 majeure event.

8 “(3) RETURN TO FOREIGN RESIDENCE.—Any
9 alien whose period of authorized admission termi-
10 nates under paragraph (1) shall be required to leave
11 the United States immediately and register such de-
12 parture at a designated port of departure in a man-
13 ner to be prescribed by the Secretary.

14 “(4) INVALIDATION OF DOCUMENTATION.—Any
15 documentation that is issued by the Secretary of
16 Homeland Security under subsection (m) to any
17 alien, whose period of authorized admission termi-
18 nates under paragraph (1), shall automatically be
19 rendered invalid for any purpose except departure.

20 “(k) VISITS OUTSIDE THE UNITED STATES.—

21 “(A) IN GENERAL.—Under regulations estab-
22 lished by the Secretary of Homeland Security, a Y
23 nonimmigrant—

24 “(i) may travel outside of the United
25 States; and

1 “(ii) may be readmitted for a period not
2 more than the remaining time left until the
3 alien accrues the maximum period of admission
4 set forth in subsection (i), and without having
5 to obtain a new visa if:

6 “(A) the period of authorized admis-
7 sion has not expired or been terminated;

8 “(B) the alien is the bearer of valid
9 documentary evidence of Y nonimmigrant
10 status that satisfies the conditions set
11 forth in subsection (m); and

12 “(C) the alien is not subject to the
13 bars on extension or admission described
14 in subsection (l).

15 “(B) EFFECT ON PERIOD OF AUTHORIZED AD-
16 MISSION.—Time spent outside the United States
17 under subparagraph (A) shall not extend the most
18 recent period of authorized admission in the United
19 States.

20 “(l) BARS TO EXTENSION OR ADMISSION.—An alien
21 may not be granted Y nonimmigrant status if—

22 “(1) the alien has violated any material term or
23 condition of such status granted previously, includ-
24 ing failure to comply with the change of address re-
25 porting requirements under section 265;

1 “(2) the alien is inadmissible as a non-
2 immigrant, except for those grounds previously
3 waived under subsection (f); or

4 “(3) the granting of such status would allow
5 the alien to exceed limitations on stay in the United
6 States in Y status described in subsection (i).

7 “(m) EVIDENCE OF NONIMMIGRANT STATUS.—Each
8 Y nonimmigrant shall be issued documentary evidence of
9 nonimmigrant status, which—

10 “(1) shall be machine-readable, tamper-resist-
11 ant, and shall contain a digitized photograph and
12 other biometric identifiers that can be authenticated;

13 “(2) shall, during the alien’s authorized period
14 of admission under subsection (i), serve as a valid
15 entry document for the purpose of applying for ad-
16 mission to the United States—

17 “(A) instead of a passport and visa if the
18 alien—

19 “(i) is a national of a foreign territory
20 contiguous to the United States; and

21 “(ii) is applying for admission at a
22 land border port of entry; and

23 “(B) in conjunction with a valid passport,
24 if the alien is applying for admission at an air
25 or sea port of entry;

1 “(3) may be accepted during the period of its
2 validity by an employer as evidence of employment
3 authorization and identity under section
4 274A(b)(1)(B); and

5 “(4) shall be issued to the Y nonimmigrant by
6 the Secretary of Homeland Security promptly after
7 such alien’s admission to the United States as a Y
8 nonimmigrant and reporting to the employer’s work-
9 site under subsection (q) or, at the discretion of the
10 Secretary of Homeland Security, may be issued by
11 the Secretary of State at a consulate instead of a
12 visa.

13 “(n) PERMANENT BARS FOR OVERSTAYS.—

14 “(1) IN GENERAL.—Any Y nonimmigrant who
15 remains beyond his or her initial authorized period
16 of admission is permanently barred from any future
17 benefits under the immigration laws, except—

18 “(A) asylum under section 208(a);

19 “(B) withholding of removal under section
20 241(b)(3); or

21 “(C) protection under the Convention
22 Against Torture and Other Cruel, Inhuman or
23 Degrading Treatment or Punishment, done at
24 New York December 10, 1984.

1 “(2) EXCEPTION.—Overstay of the authorized
2 period of admission may be excused in the discretion
3 of the Secretary where it is demonstrated that:

4 “(A) the period of overstay was due to ex-
5 traordinary circumstances beyond the control of
6 the applicant, and the Secretary finds the pe-
7 riod commensurate with the circumstances; and

8 “(B) the alien has not otherwise violated
9 his Y nonimmigrant status.

10 “(o) PENALTY FOR ILLEGAL ENTRY OR OVER-
11 STAY.—

12 “(1) ILLEGAL ENTRY.—Any alien who after the
13 date of the enactment of this section, unlawfully en-
14 ters, attempts to enter, or crosses the border, and is
15 physically present in the United States after such
16 date in violation of the immigration laws, is barred
17 permanently from any future benefits under the im-
18 migration laws, except as provided in paragraph (3)
19 or (4).

20 “(2) OVERSTAY.—Any alien, other than a Y
21 nonimmigrant, who, after the date of the enactment
22 of this section remains unlawfully in the United
23 States beyond the period of authorized admission, is
24 barred for a period of ten years from any future

1 benefits under the immigration laws, except as pro-
2 vided in paragraph (3) or (4).

3 “(3) RELIEF.—Notwithstanding the bar in
4 paragraph (1) or (2), an alien may apply for—

5 “(A) asylum under section 208(a);

6 “(B) withholding of removal under section
7 241(b)(3); or

8 “(C) protection under the Convention
9 Against Torture and Other Cruel, Inhuman or
10 Degrading Treatment or Punishment, done at
11 New York December 10, 1984.

12 “(4) EXCEPTION.—Overstay of the authorized
13 period of admission may be excused in the discretion
14 of the Secretary where it is demonstrated that:

15 “(A) the period of overstay was due to ex-
16 traordinary circumstances beyond the control of
17 the applicant, and the Secretary finds the pe-
18 riod commensurate with the circumstances; and

19 “(B) the alien has not otherwise violated
20 his nonimmigrant status.

21 “(p) PORTABILITY.—A Y nonimmigrant worker, who
22 was previously issued a visa or otherwise provided Y non-
23 immigrant status, may accept a new offer of employment
24 with a subsequent employer, if—

1 “(1) the position being offered the Y non-
2 immigrant has been certified by the Secretary of
3 Labor under section 218B and the employer com-
4 plies with all requirements of this section and sec-
5 tion 218B;

6 “(2) the alien, after lawful admission to the
7 United States, did not work without authorization;
8 and

9 “(3) the subsequent employer has notified the
10 Secretary of Homeland Security under subsection
11 (q) of the Y nonimmigrant’s change of employment.

12 “(q) REPORTING OF START AND TERMINATION OF
13 EMPLOYMENT.—

14 “(1) START OF Y WORKER EMPLOYMENT.—A Y
15 nonimmigrant shall report in the manner prescribed
16 by the Secretary of Homeland Security to the em-
17 ployer whose job offer was the basis for issuance of
18 the alien’s Y nonimmigrant visa within 7 days of ad-
19 mission into the United States.

20 “(2) EMPLOYER NOTIFICATION REQUIRE-
21 MENT.—An employer shall within three days make
22 notification in the manner prescribed by the Sec-
23 retary of Homeland Security, of the following events:

1 “(A) a Y nonimmigrant worker has re-
2 ported for work pursuant to paragraph (1)
3 after admission in Y nonimmigrant status;

4 “(B) a Y nonimmigrant worker has
5 changed jobs under subsection (r) and started
6 employment with the employer;

7 “(C) the employment of a Y nonimmigrant
8 worker has terminated; or

9 “(D) a Y nonimmigrant worker on whose
10 behalf the employer has filed a petition under
11 this subsection that has been approved by the
12 Secretary of Homeland Security has failed to
13 report for work within three days of the em-
14 ployment start date agreed upon between the
15 employer and the Y nonimmigrant.

16 “(3) VERIFICATION.—An employer shall provide
17 upon request of the Secretary of Homeland Security
18 verification that an alien who has been granted ad-
19 mission as a Y nonimmigrant worker was or con-
20 tinues to be employed by the employer.

21 “(4) FINE.—Any employer that fails to comply
22 with the notification requirements of this subsection
23 shall pay to the Secretary of Homeland Security a
24 fine, in an amount and under procedures established
25 by the Secretary in regulation.

1 “(r) NO THREATENING OF EMPLOYEES.—It shall be
2 a violation of this section for an employer who has filed
3 a petition under this section to threaten the alien bene-
4 ficiary of such petition with the withdrawal of such a peti-
5 tion in retaliation for the beneficiary’s exercise of a right
6 protected by section 218B.

7 “(s) CHANGE OF STATUS.—

8 “(1) IN GENERAL.—

9 “(A) A Y nonimmigrant may apply to
10 change status to another nonimmigrant status,
11 subject to section 248 and if otherwise eligible.

12 “(B) No alien admitted to the United
13 States under the immigration laws in a classi-
14 fication other than Y nonimmigrant status may
15 change status to Y nonimmigrant status.

16 “(C) An alien in Y nonimmigrant status
17 may not change status to any other Y non-
18 immigrant status.

19 “(2) CONSTRUCTION.—Nothing in this sub-
20 section shall be construed to prevent an alien who is
21 precluded from changing status to a particular Y
22 nonimmigrant classification under subparagraphs
23 (1)(B), (C), or (D) from leaving the United States
24 and applying at a U.S. consulate for the desired
25 nonimmigrant visa, subject to all applicable eligi-

1 bility requirements, in the appropriate Y classifica-
2 tion.

3 “(t) VISITATION OF Y NONIMMIGRANT BY SPOUSE
4 OR CHILD WITHOUT A Y-3 NONIMMIGRANT VISA.—Noth-
5 ing in this section shall be construed to prohibit the spouse
6 or child of a Y nonimmigrant worker to be admitted to
7 the United States under any other existing legal basis for
8 which the spouse or child may qualify.

9 “(u) CHANGE OF ADDRESS.—A Y nonimmigrant
10 shall comply with the change of address reporting require-
11 ments under section 265 through electronic or paper noti-
12 fication.”

13 (b) CONFORMING AMENDMENT REGARDING CRE-
14 ATION OF TREASURY ACCOUNTS.—Section 286 of the Im-
15 migration and Nationality Act (8 U.S.C. 1356) is amend-
16 ed by inserting at the end the following new subsections—

17 “(w) TEMPORARY WORKER PROGRAM ACCOUNT.—

18 “(1) IN GENERAL.—There is established in the
19 general fund of the Treasury a separate account,
20 which shall be known as the ‘Temporary Worker
21 Program Account’. Notwithstanding any other sec-
22 tion of this Act, there shall be deposited into the ac-
23 count all fines and civil penalties collected under sec-
24 tions 218A, 218B, or 218F and Title VI of [name

1 of Act], except as specifically provided otherwise in
2 such sections.

3 “(2) USE OF FUNDS.—Amounts deposited into
4 the Temporary Worker Program Account shall re-
5 main available until expended as follows:

6 “(A) for the administration of the Stand-
7 ing Commission on Immigration and Labor
8 Markets, established under section 409 of the
9 [Insert title of Act]; and

10 “(B) after amounts needed by the Stand-
11 ing Commission on Immigration and Labor
12 Markets have been expended, for the Secre-
13 taries of Labor and Homeland Security, as fol-
14 lows:

15 “(i) one-third to the Secretary of
16 Labor to carry out the Secretary of La-
17 bor’s functions and responsibilities, includ-
18 ing enforcement of labor standards under
19 sections 218A, 218B, and 218F, and
20 under applicable labor laws including the
21 Fair Labor Standards Act of 1938 (29
22 U.S.C. 201 et seq.) and the Occupational
23 Safety and Health Act of 1970 (29 U.S.C.
24 651 et seq.). Such activities shall include

1 random audits of employers that partici-
2 pate in the Y visa program; and

3 “(ii) two-thirds to the Secretary of
4 Homeland Security to improve immigration
5 services and enforcement.

6 “(x) STATE IMPACT ASSISTANCE ACCOUNT.—

7 “(1) IN GENERAL.—There is established in the
8 general fund of the Treasury a separate account,
9 which shall be known as the ‘State Impact Assistant
10 Account’.

11 “(2) SOURCE OF FUNDS.—Notwithstanding any
12 other provision under this Act, there shall be depos-
13 ited as offsetting receipts into the State Impact As-
14 sistance Account all State Impact Assistance fees
15 collected under sections 218A(e)(3)(B) and section
16 601(e)(6)(C) of the [Insert title of Act].

17 “(3) USE OF FUNDS.—Amounts deposited into
18 the State Impact Assistance Account may only be
19 used to carry out the State Impact Assistance Grant
20 Program established under paragraph (4).

21 “(4) STATE IMPACT ASSISTANCE GRANT PRO-
22 GRAM.—

23 “(A) ESTABLISHMENT.—The Secretary of
24 Health and Human Services, in consultation
25 with the Secretary of Education, shall establish

1 the State Impact Assistance Grant Program
2 (referred to in this subsection as the ‘Pro-
3 gram’), under which the Secretary may award
4 grants to States to provide health and edu-
5 cation services to noncitizens in accordance with
6 this paragraph.

7 “(B) STATE ALLOCATIONS.—The Sec-
8 retary of Health and Human Services shall an-
9 nually allocate the amounts available in the
10 State Impact Assistance Account among the
11 States as follows:

12 “(i) NONCITIZEN POPULATION.—
13 Eighty percent of such amounts shall be
14 allocated so that each State receives the
15 greater of—

16 “(I) \$5,000,000; or

17 “(II) after adjusting for alloca-
18 tions under subclause (I), the percent-
19 age of the amount to be distributed
20 under this clause that is equal to the
21 noncitizen resident population of the
22 State divided by the noncitizen resi-
23 dent population of all States, based on
24 the most recent data available from
25 the Bureau of the Census.

1 “(ii) HIGH GROWTH RATES.—Twenty
2 percent of such amounts shall be allocated
3 among the 20 States with the largest
4 growth rates in noncitizen resident popu-
5 lation, as determined by the Secretary of
6 Health and Human Services, so that each
7 such State receives the percentage of the
8 amount distributed under this clause that
9 is equal to—

10 “(I) the growth rate in the non-
11 citizen resident population of the
12 State during the most recent 3-year
13 period for which data is available from
14 the Bureau of the Census; divided by

15 “(II) the average growth rate in
16 noncitizen resident population for the
17 20 States during such 3-year period.

18 “(iii) LEGISLATIVE APPROPRIA-
19 TIONS.—The use of grant funds allocated
20 to States under this paragraph shall be
21 subject to appropriation by the legislature
22 of each State in accordance with the terms
23 and conditions under this paragraph.

24 “(C) FUNDING FOR LOCAL GOVERN-
25 MENT.—

1 “(i) DISTRIBUTION CRITERIA.—Grant
2 funds received by States under this para-
3 graph shall be distributed to units of local
4 government based on need and function.

5 “(ii) MINIMUM DISTRIBUTION.—Ex-
6 cept as provided in clause (iii), a State
7 shall distribute not less than 30 percent of
8 the grant funds received under this para-
9 graph to units of local government not
10 later than 180 days after receiving such
11 funds.

12 “(iii) EXCEPTION.—If an eligible unit
13 of local government that is available to
14 carry out the activities described in sub-
15 paragraph (D) cannot be found in a State,
16 the State does not need to comply with
17 clause (ii).

18 “(iv) UNEXPENDED FUNDS.—Any
19 grant funds distributed by a State to a
20 unit of local government that remain unex-
21 pended as of the end of the grant period
22 shall revert to the State for redistribution
23 to another unit of local government.

24 “(D) USE OF FUNDS.—States and units of
25 local government shall use grant funds received

1 under this paragraph to provide health services,
2 educational services, and related services to
3 noncitizens within their jurisdiction directly, or
4 through contracts with eligible services pro-
5 viders, including—

6 “(i) health care providers;

7 “(ii) local educational agencies; and

8 “(iii) charitable and religious organi-
9 zations.

10 “(E) STATE DEFINED.—In this paragraph,
11 the term ‘State’ means each of the several
12 States of the United States, the District of Co-
13 lumbia, the Commonwealth of Puerto Rico, the
14 Virgin Islands, Guam, American Samoa, and
15 the Commonwealth of the Northern Mariana Is-
16 lands.

17 “(F) CERTIFICATION.—In order to receive
18 a payment under this section, the State shall
19 provide the Secretary of Health and Human
20 Services with a certification that the State’s
21 proposed uses of the fund are consistent with
22 (D).

23 “(G) ANNUAL REPORT.—The Secretary of
24 Health and Human Services shall inform the

1 States annually of the amount of funds avail-
2 able to each State under the Program.”.

3 “(c) CLERICAL AMENDMENT.—The table of contents
4 Immigration and Nationality Act (8 U.S.C. 1101 et seq.)
5 is amended by inserting after the item relating to section
6 218 the following:

“Sec. 218A. Admission of Y nonimmigrants.”.

7 **SEC. 403. GENERAL Y NONIMMIGRANT EMPLOYER OBLIGA-**
8 **TIONS.**

9 (a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.)
10 is amended by inserting after section 218A of the Immi-
11 gration and Nationality Act, as added by section 402, the
12 following:

13 **“SEC. 218B. GENERAL Y NONIMMIGRANT EMPLOYER OBLI-**
14 **GATIONS.**

15 “(a) GENERAL REQUIREMENTS.—Each employer
16 who seeks to employ a Y nonimmigrant shall—

17 “(1) file in accordance with subsection (b) an
18 application for labor certification of the position that
19 the employer seeks to fill with a Y nonimmigrant
20 that contains—

21 “(A) the attestation described in sub-
22 section (c);

23 “(B) a description of the nature and loca-
24 tion of the work to be performed;

1 “(C) the anticipated period (expected be-
2 ginning and ending dates) for which the work-
3 ers will be needed; and

4 “(D) the number of job opportunities in
5 which the employer seeks to employ the work-
6 ers;

7 “(2) include with the application filed under
8 paragraph (1) a copy of the job offer describing the
9 wages and other terms and conditions of employ-
10 ment and the bona fide occupational qualifications
11 that shall be possessed by a worker to be employed
12 in the job opportunity in question; and

13 “(3) be required to pay, with respect to an ap-
14 plication to employ a Y-1 worker—

15 “(A) an application processing fee for each
16 alien, in an amount sufficient to recover the full
17 cost to the Secretary of Labor of administrative
18 and other expenses associated with adjudicating
19 the application; and

20 “(B) a secondary fee, to be deposited in
21 the Treasury in accordance with section 286(x),
22 of—

23 “(i) \$500, in the case of an employer
24 employing 25 employees or less;

1 “(ii) \$750, in the case of an employer
2 employing between 26 and 150 employees;

3 “(iii) \$1,000, in the case of an em-
4 ployer employing between 151 and 500 em-
5 ployees; or

6 “(iv) \$1,250, in the case of an em-
7 ployer employing more than 500 employ-
8 ees;

9 “provided that an employer who provides a Y
10 nonimmigrant health insurance coverage shall
11 not be required to pay the impact fee.

12 “(b) REQUIRED PROCEDURE.—Each employer of Y
13 nonimmigrants shall comply with the following require-
14 ments:

15 “(1) EFFORTS TO RECRUIT UNITED STATES
16 WORKERS.—The employer involved shall recruit
17 United States workers for the position for which
18 labor certification is sought under this section, by—

19 “(A) Not later than 90 days before the
20 date on which an application is filed under sub-
21 section (a)(1) submitting a copy of the job op-
22 portunity, including a description of the wages
23 and other terms and conditions of employment
24 and the minimum education, training, experi-

1 ence and other requirements of the job, to the
2 designated state agency and—

3 “(i) authorizing the designated state
4 agency to post the job opportunity on the
5 Internet website established under section
6 414 of [Title of bill], with local job banks,
7 and with unemployment agencies and other
8 labor referral and recruitment sources per-
9 tinent to the job involved; and

10 “(ii) authorizing the designated state
11 agency to notify labor organizations in the
12 State in which the job is located and, if ap-
13 plicable, the office of the local union which
14 represents the employees in the same or
15 substantially equivalent job classification of
16 the job opportunity;

17 “(B) posting the availability of the job op-
18 portunity for which the employer is seeking a
19 worker in conspicuous locations at the place of
20 employment for all employees to see for a pe-
21 riod of time beginning not later than 90 days
22 before the date on which an application is filed
23 under subsection (a)(1) and ending no earlier
24 than 14 days before such filing date;

1 “(C) advertising the availability of the job
2 opportunity for which the employer is seeking a
3 worker in one of the three highest circulation
4 publications in the labor market that is likely to
5 be patronized by a potential worker for not
6 fewer than 10 consecutive days during the pe-
7 riod of time beginning not later than 90 days
8 before the date on which an application is filed
9 under subsection (a)(1) and ending no earlier
10 than 14 days before such filing date; and

11 “(D) advertising the availability of the job
12 opportunity in professional, trade, or ethnic
13 publications that are likely to be patronized by
14 a potential worker, as recommended by the des-
15 ignated state agency. The employer shall not be
16 required to advertise in more than three such
17 recommended publications.

18 “(2) EFFORTS TO EMPLOY UNITED STATES
19 WORKERS.—An employer that seeks to employ a Y
20 nonimmigrant shall first offer the job with, at a
21 minimum, the same wages, benefits, and working
22 conditions, to any eligible United States worker who
23 applies, is qualified for the job and is available at
24 the time of need.

1 “(3) DEFINITION.—For purposes of this sub-
2 section, ‘designated state agency’ shall mean the
3 state agency designated to perform the functions in
4 this subsection in the area of employment in the
5 State in which the employer is located.

6 “(c) APPLICATION.—An application under this sec-
7 tion for labor certification of a position that an employer
8 seeks to fill with a Y nonimmigrant shall be filed with the
9 Secretary of Labor and shall include an attestation by the
10 employer of the following:

11 “(1) with respect to an application for labor
12 certification of a position that an employer seeks to
13 fill with a Y-1 or Y-2B nonimmigrant—

14 “(A) PROTECTION OF UNITED STATES
15 WORKERS.—The employment of a Y non-
16 immigrant—

17 “(i) will not adversely affect the wages
18 and working conditions of workers in the
19 United States similarly employed; and

20 “(ii) did not and will not cause the
21 separation from employment of a United
22 States worker employed by the employer
23 within the 180-day period beginning 90
24 days before the date on which the petition
25 is filed.

1 “(B) WAGES.—

2 “(i) IN GENERAL.—The Y non-
3 immigrant worker will be paid not less
4 than the greater of—

5 “(I) the actual wage level paid by
6 the employer to all other individuals
7 with similar experience and qualifica-
8 tions for the specific employment in
9 question; or

10 “(II) the prevailing competitive
11 wage level for the occupational classi-
12 fication in the area of employment,
13 taking into account experience and
14 skill levels of employees.

15 “(ii) CALCULATION.—The wage levels
16 under subparagraph (A) shall be calculated
17 based on the best information available at
18 the time of the filing of the application.

19 “(iii) PREVAILING COMPETITIVE
20 WAGE LEVEL.—For purposes of subclause
21 (i)(II), the prevailing competitive wage
22 level shall be determined as follows:

23 “(I) If the job opportunity is cov-
24 ered by a collective bargaining agree-
25 ment between a union and the em-

1 ployer, the prevailing competitive
2 wage shall be the wage rate set forth
3 in the collective bargaining agreement.

4 “(II) If the job opportunity is not
5 covered by such an agreement and it
6 is on a project that is covered by a
7 wage determination under a provision
8 of subchapter IV of chapter 31 of title
9 40, United States Code, or the Service
10 Contract Act of 1965 (41 U.S.C. 351
11 et seq.), the prevailing competitive
12 wage level shall be the appropriate
13 statutory wage.

14 “(III)(aa) If the job opportunity
15 is not covered by such an agreement
16 and it is not on a project covered by
17 a wage determination under a provi-
18 sion of subchapter IV of chapter 31 of
19 title 40, United States Code, or the
20 Service Contract Act of 1965 (41
21 U.S.C. 351 et seq.), the prevailing
22 competitive wage level shall be based
23 on published wage data for the occu-
24 pation from the Bureau of Labor Sta-
25 tistics, including the Occupational

1 Employment Statistics survey, Cur-
2 rent Employment Statistics data, Na-
3 tional Compensation Survey, and Oc-
4 cupational Employment Projections
5 program. If the Bureau of Labor Sta-
6 tistics does not have wage data appli-
7 cable to such occupation, the employer
8 may base the prevailing competitive
9 wage level on data from another wage
10 survey approved by the state work-
11 force agency under regulations pro-
12 mulgated by the Secretary of Labor.

13 “(bb) Such regulations shall re-
14 quire, among other things, that such
15 surveys are statistically valid and re-
16 cently conducted.

17 “(D) LABOR DISPUTE.—There is not a
18 strike, lockout, or work stoppage in the course
19 of a labor dispute in the occupation at the place
20 of employment at which the Y nonimmigrant
21 will be employed. If such strike, lockout, or
22 work stoppage occurs following submission of
23 the application, the employer will provide notifi-
24 cation in accordance with regulations promul-
25 gated by the Secretary of Labor.

1 “(E) PROVISION OF INSURANCE.—If the
2 position for which the Y nonimmigrant is
3 sought is not covered by the State workers’
4 compensation law, the employer will provide, at
5 no cost to the Y nonimmigrant, insurance cov-
6 ering injury and disease arising out of, and in
7 the course of, the worker’s employment, which
8 will provide benefits at least equal to those pro-
9 vided under the State workers’ compensation
10 law for comparable employment.

11 “(F) NOTICE TO EMPLOYEES.—

12 “(i) IN GENERAL.—The employer has
13 provided notice of the filing of the applica-
14 tion to the bargaining representative of the
15 employer’s employees in the occupational
16 classification and area of employment for
17 which the Y nonimmigrant is sought.

18 “(ii) No bargaining representative.—
19 If there is no such bargaining representa-
20 tive, the employer has—

21 “(I) posted a notice of the filing
22 of the application in a conspicuous lo-
23 cation at the place or places of em-
24 ployment for which the Y non-
25 immigrant is sought; or

1 “(II) electronically disseminated
2 such a notice to the employer’s em-
3 ployees in the occupational classifica-
4 tion for which the Y nonimmigrant is
5 sought.

6 “(G) RECRUITMENT.—That—

7 “(i) there are not sufficient workers
8 who are able, willing, and qualified, and
9 who will be available at the time and place
10 needed, to perform the labor or services de-
11 scribed in the application; and

12 “(ii) good faith efforts have been
13 taken to recruit United States workers, in
14 accordance with regulations promulgated
15 by the Secretary of Labor, which efforts
16 included—

17 “(I) the completion of recruit-
18 ment during the period beginning on
19 the date that is 90 days before the
20 date on which the application was
21 filed with the Department of Labor
22 and ending on the date that is 14
23 days before such filing date; and

24 “(II) the wages that the em-
25 ployer would be required by law to

1 provide for the Y nonimmigrant were
2 used in conducting recruitment.

3 “(H) INELIGIBILITY.—The employer is not
4 currently ineligible from using the Y non-
5 immigrant program described in this section.

6 “(I) BONA FIDE OFFER OF EMPLOY-
7 MENT.—The job for which the Y nonimmigrant
8 is sought is a bona fide job—

9 “(i) for which the employer needs
10 labor or services;

11 “(ii) which has been and is clearly
12 open to any United States worker; and

13 “(iii) for which the employer will be
14 able to place the Y nonimmigrant on the
15 payroll.

16 (J) PUBLIC AVAILABILITY AND RECORDS
17 RETENTION.—A copy of each application filed
18 under this section and documentation sup-
19 porting each attestation, in accordance with
20 regulations promulgated by the Secretary of
21 Labor, will—

22 “(i) be provided to every Y non-
23 immigrant employed under the petition;

1 “(ii) be made available for public ex-
2 amination at the employer’s place of busi-
3 ness or work site;

4 “(iii) be made available to the Sec-
5 retary of Labor during any audit; and

6 “(iv) remain available for examination
7 for 5 years after the date on which the ap-
8 plication is filed.

9 “(K) NOTIFICATION UPON SEPARATION
10 FROM OR TRANSFER OF EMPLOYMENT.—The
11 employer will notify the Secretary of Labor and
12 the Secretary of Homeland Security of a Y non-
13 immigrant’s separation from employment or
14 transfer to another employer not more than 3
15 business days after the date of such separation
16 or transfer, in accordance with section
17 218A(q)(2).

18 “(L) ACTUAL NEED FOR LABOR OR SERV-
19 ICES.—The application was filed not more than
20 60 days before the date on which the employer
21 needed labor or services for which the Y non-
22 immigrant is sought.

23 “(d) AUDIT OF ATTESTATIONS.—

24 “(1) REFERRALS BY SECRETARY OF HOMELAND
25 SECURITY.—The Secretary of Homeland Security

1 shall refer all petitions approved under section 218A
2 to the Secretary of Labor for potential audit.

3 (2) AUDITS AUTHORIZED.—The Secretary of
4 Labor may audit any approved petition referred pur-
5 suant to paragraph (1), in accordance with regula-
6 tions promulgated by the Secretary of Labor.

7 “(e) INELIGIBLE EMPLOYERS.—

8 “(1) IN GENERAL.—In addition to any other
9 applicable penalties under law, the Secretary of
10 Labor and the Secretary of Homeland Security shall
11 not, for the period described in paragraph (2), ap-
12 prove an employer’s petition or application for a
13 labor certification under any immigrant or non-
14 immigrant program if the Secretary of Labor deter-
15 mines, after notice and an opportunity for a hearing,
16 that the employer submitting such documents—

17 “(A) has, with respect to the application
18 required under subsection (a), including attesta-
19 tions required under subsection (b)—

20 “(i) misrepresented a material fact;

21 “(ii) made a fraudulent statement; or

22 “(iii) failed to comply with the terms
23 of such attestations; or

1 “(B) failed to cooperate in the audit proc-
2 ess in accordance with regulations promulgated
3 by the Secretary of Labor;

4 “(C) has been convicted of any of the of-
5 fenses codified in Chapter 77 of Title 18 of the
6 United States Code (slave labor) or any con-
7 spiracy to commit such offenses, or any human
8 trafficking offense under state or territorial law;

9 “(D) has, within three years prior to the
10 date of application:

11 “(i) committed any hazardous occupa-
12 tion orders violation resulting in injury or
13 death under the child labor provisions con-
14 tained in section 12 of the Fair Labor
15 Standards Act and any regulation there-
16 under;

17 “(ii) been assessed a civil money pen-
18 alty for any repeated or willful violation of
19 the minimum wage provisions of section 6
20 of the Fair Labor Standards Act; or

21 “(iii) been assessed a civil money pen-
22 alty for any repeated or willful violation of
23 the overtime provisions of section 7 of the
24 Fair Labor Standards Act or any regula-

1 tions thereunder, other than a repeated
2 violation that is self-reported; or

3 “(E) has, within three years prior to the
4 date of application, received a citation for:

5 “(i) a willful violation; or

6 “(ii) repeated serious violations involv-
7 ing injury or death of section 5 of the Oc-
8 cupational Safety and Health Act, or any
9 standard, rule, or order promulgated pur-
10 suant to section 6 of the Occupational
11 Safety and Health Act, or any regulations
12 prescribed pursuant to that. This sub-
13 section shall also apply to equivalent viola-
14 tions of a plan approved under section 18
15 of the Occupational Safety and Health Act.

16 “(2) LENGTH OF INELIGIBILITY.—An employer
17 described in paragraph (1) shall be ineligible to par-
18 ticipate in the labor certification programs of the
19 Secretary of Labor for not less than the time period
20 determined by the Secretary, not to exceed 3 years.
21 However, an employer who has been convicted of
22 any of the offenses codified in Chapter 77 of Title
23 18 of the United States Code (slave labor) or any
24 conspiracy to commit such offenses, or any human
25 trafficking offense under state or territorial law shall

1 be permanently ineligible to participate in the labor
2 certification programs.

3 “(3) EMPLOYERS IN HIGH UNEMPLOYMENT
4 AREAS.—The Secretary of Labor may not approve
5 any employer’s application under subsection (b) if
6 the work to be performed by the Y nonimmigrant is
7 not agriculture based and is located in a county
8 where the unemployment rate during the most re-
9 cently completed year is more than 7 percent. An
10 employer in a high unemployment area may petition
11 the Secretary for a waiver of this provision. The Sec-
12 retary shall promulgate regulations for the expedi-
13 tious review of such waivers, which shall specify that
14 the employer must satisfy the requirements of sec-
15 tion (b) above and in addition must provide docu-
16 mentation of its recruitment efforts, including proof
17 that it has advertised the position in one of the three
18 publications that have the highest circulation in the
19 labor market that is likely to be patronized by a po-
20 tential worker for not fewer than 20 consecutive
21 days under the rules and conditions set forth in sec-
22 tion (b). An employer who has provided proof of ad-
23 vertising in accordance with this section shall be
24 deemed to be in compliance with the requirements of
25 subsection (b)(1)(D) of this section. The Secretary

1 shall provide for a process to promptly respond to all
2 waiver requests, and shall maintain on the Depart-
3 ment of Labor’s website an annual list of counties
4 to which this subsection applies.

5 “(4) INELIGIBILITY FOR PETITIONS.—The Sec-
6 retary of Labor shall inform the Secretary of Home-
7 land Security of a determination under paragraph
8 (1) with respect to a specific employer. The Sec-
9 retary of Homeland Security shall not, for the period
10 described in paragraph (2), approve the petitions or
11 applications of any such employer for any immigrant
12 or nonimmigrant program, regardless of whether
13 such application or petition requires a labor certifi-
14 cation.

15 “(f) PROHIBITION OF INDEPENDENT CONTRAC-
16 TORS.—

17 “(1) COVERAGE.—Notwithstanding any other
18 provision of law—

19 “(A) a Y nonimmigrant is prohibited from
20 being treated as an independent contractor
21 under any federal or state law;

22 “(B) no person, including an employer or
23 labor contractor and any persons who are affili-
24 ated with or contract with an employer or labor

1 contractor, may treat a Y nonimmigrant as an
2 independent contractor; and

3 “(C) this provision shall not be construed
4 to prevent employers who operate as inde-
5 pendent contractors from employing Y non-
6 immigrants as employees.

7 “(2) APPLICABILITY OF LAWS.—A Y non-
8 immigrant shall not be denied any right or any reme-
9 dy under Federal, State, or local labor or employ-
10 ment law that would be applicable to a United
11 States worker employed in a similar position with
12 the employer because of the alien’s status as a non-
13 immigrant worker.

14 “(3) TAX RESPONSIBILITIES.—With respect to
15 each employed Y nonimmigrant, an employer shall
16 comply with all applicable Federal, State, and local
17 tax and revenue laws.

18 “(g) WHISTLEBLOWER PROTECTION.—

19 “(1) PROHIBITED ACTIVITIES.—It shall be un-
20 lawful for an employer or a labor contractor of a Y
21 nonimmigrant to intimidate, threaten, restrain, co-
22 erce, retaliate, discharge, or in any other manner,
23 discriminate against an employee or former em-
24 ployee because the employee or former employee—

1 “(A) discloses information to the employer
2 or any other person that the employee or
3 former employee reasonably believes dem-
4 onstrates a violation of this Act or [title of bill];
5 or

6 “(B) cooperates or seeks to cooperate in an
7 investigation or other proceeding concerning
8 compliance with the requirements of this Act or
9 [title of bill].

10 “(2) RULEMAKING.—The Secretary of Labor
11 shall promulgate regulations that establish a process
12 by which a nonimmigrant alien described in section
13 101(a)(15)(Y) or 101(a)(15)(H) who files a non-
14 frivolous complaint (as defined by the Federal Rules
15 of Civil Procedure) regarding a violation of this Act,
16 [title of bill] or any other Federal labor or employ-
17 ment law, or any other rule or regulation pertaining
18 to such laws and is otherwise eligible to remain and
19 work in the United States prior to the expiration of
20 the maximum period of stay authorized for that non-
21 immigrant classification for a period of 120 consecu-
22 tive days or such additional time period as the Sec-
23 retary shall determine through rulemaking is nec-
24 essary to collect information or take evidence from
25 the nonimmigrant alien regarding a complaint or

1 agency investigation. This period shall be allowed to
2 exceed the maximum period of stay authorized for
3 that nonimmigrant classification if the Secretary of
4 Labor has designated the nonimmigrant alien as a
5 necessary witness.

6 “(h) LABOR RECRUITERS.—With respect to the em-
7 ployment of Y nonimmigrant workers—

8 “(1) IN GENERAL.—Each employer that en-
9 gages in foreign labor contracting activity and each
10 foreign labor contractor shall ascertain and disclose,
11 to each such worker who is recruited for employment
12 at the time of the worker’s recruitment—

13 “(A) the place of employment;

14 “(B) the compensation for the employ-
15 ment;

16 “(C) a description of employment activi-
17 ties;

18 “(D) the period of employment;

19 “(E) any other employee benefit to be pro-
20 vided and any costs to be charged for each ben-
21 efit;

22 “(F) any travel or transportation expenses
23 to be assessed;

1 “(G) the existence of any labor organizing
2 effort, strike, lockout, or other labor dispute at
3 the place of employment;

4 “(H) the existence of any arrangement
5 with any owner, employer, foreign contractor,
6 or its agent where such person receives a com-
7 mission from the provision of items or services
8 to workers;

9 “(I) the extent to which workers will be
10 compensated through workers’ compensation,
11 private insurance, or otherwise for injuries or
12 death, including—

13 “(i) work related injuries and death
14 during the period of employment;

15 “(ii) the name of the State workers’
16 compensation insurance carrier or the
17 name of the policyholder of the private in-
18 surance;

19 “(iii) the name and the telephone
20 number of each person who must be noti-
21 fied of an injury or death; and

22 “(iv) the time period within which
23 such notice must be given;

24 “(J) any education or training to be pro-
25 vided or required, including—

1 “(i) the nature and cost of such train-
2 ing;

3 “(ii) the entity that will pay such
4 costs; and

5 “(iii) whether the training is a condi-
6 tion of employment, continued employ-
7 ment, or future employment; and

8 “(K) a statement, in a form specified by
9 the Secretary of Labor, describing the protec-
10 tions of this Act and of the Trafficking Victims
11 Protection Act of 2000, P.L. 106–486, for
12 workers recruited abroad.

13 “(2) FALSE OR MISLEADING INFORMATION.—
14 No foreign labor contractor or employer who en-
15 gages in foreign labor contracting activity shall
16 knowingly provide materially false or misleading in-
17 formation to any worker concerning any matter re-
18 quired to be disclosed in paragraph (1).

19 “(3) LANGUAGES.—The information required to
20 be disclosed under paragraph (1) shall be provided
21 in writing in English or, as necessary and reason-
22 able, in the language of the worker being recruited.
23 The Secretary of Labor shall make forms available
24 in English, Spanish, and other languages, as nec-
25 essary and reasonable, which may be used in pro-

1 viding workers with information required under this
2 section.

3 “(4) FEES.—A person conducting a foreign
4 labor contracting activity shall not assess any fee to
5 a worker for such foreign labor contracting activity.

6 “(5) TERMS.—No employer or foreign labor
7 contractor shall, without justification, violate the
8 terms of any agreement related to the requirements
9 of this section made by that contractor or employer
10 regarding employment under this program.

11 “(6) TRAVEL COSTS.—If the foreign labor con-
12 tractor or employer charges the employee for trans-
13 portation, such transportation costs shall be reason-
14 able.

15 “(7) OTHER WORKER PROTECTIONS.—

16 “(A) NOTIFICATION.—Not less frequently
17 than once every year, each employer shall notify
18 the Secretary of Labor of the identity of any
19 foreign labor contractor engaged by the em-
20 ployer in any foreign labor contractor activity
21 for, or on behalf of, the employer.

22 “(B) REGISTRATION OF FOREIGN LABOR
23 CONTRACTORS.—

24 “(i) IN GENERAL.—No person shall
25 engage in foreign labor recruiting activity

1 unless such person has a certificate of reg-
2 istration from the Secretary of Labor
3 specifying the activities that such person is
4 authorized to perform. An employer who
5 retains the services of a foreign labor con-
6 tractor shall only use those foreign labor
7 contractors who are registered under this
8 subparagraph.

9 “(ii) ISSUANCE.—The Secretary shall
10 promulgate regulations to establish an effi-
11 cient electronic process for the investiga-
12 tion and approval of an application for a
13 certificate of registration of foreign labor
14 contractors not later than 14 days after
15 such application is filed, including—

16 “(I) requirements under para-
17 graphs (1), (4), and (5) of section 102
18 of the Migrant and Seasonal Agricul-
19 tural Worker Protection Act (29
20 U.S.C. 1812);

21 “(II) an expeditious means to up-
22 date registrations and renew certifi-
23 cates; and

24 “(III) any other requirements
25 that the Secretary may prescribe.

1 “(iii) TERM.—Unless suspended or re-
2 voked, a certificate under this subpara-
3 graph shall be valid for 2 years.

4 “(iv) REFUSAL TO ISSUE; REVOCA-
5 TION; SUSPENSION.—In accordance with
6 regulations promulgated by the Secretary
7 of Labor, the Secretary may refuse to issue
8 or renew, or may suspend or revoke, a cer-
9 tificate of registration under this subpara-
10 graph if—

11 “(I) the application or holder of
12 the certification has knowingly made a
13 material misrepresentation in the ap-
14 plication for such certificate;

15 “(II) the applicant for, or holder
16 of, the certification is not the real
17 party in interest in the application or
18 certificate of registration and the real
19 party in interest—

20 “(aa) is a person who has
21 been refused issuance or renewal
22 of a certificate;

23 “(bb) has had a certificate
24 suspended or revoked; or

1 “(cc) does not qualify for a
2 certificate under this paragraph;
3 or

4 “(III) the applicant for or holder
5 of the certification has failed to com-
6 ply with this Act.

7 “(C) REMEDY FOR VIOLATIONS.—An em-
8 ployer engaging in foreign labor contracting ac-
9 tivity and a foreign labor contractor that vio-
10 lates the provisions of this subsection shall be
11 subject to remedies for foreign labor contractor
12 violations under subsections (j) and (k). If a
13 foreign labor contractor who is an agent of an
14 employer violates any provision of this sub-
15 section when acting within the scope of its
16 agency, the employer shall be subject to rem-
17 edies under subsections (j) and (k). An em-
18 ployer shall not be subject to remedies for viola-
19 tions committed by a foreign labor contractor
20 when such contractor is acting in direct con-
21 travention of an express, written contractual
22 provision contained in the agreement between
23 the employer and the foreign labor contractor.
24 An employer that violates a provision of this
25 subsection relating to employer obligations shall

1 be subject to remedies under subsections (j)
2 and (k).

3 “(D) EMPLOYER NOTIFICATION.—An em-
4 ployer shall notify the Secretary of Labor if the
5 employer becomes aware of a violation of this
6 subsection by a foreign labor recruiter.

7 “(E) WRITTEN AGREEMENTS.—A foreign
8 labor contractor may not violate the terms of
9 any written agreements made with an employer
10 relating to any contracting activity or worker
11 protection under this subsection.

12 “(F) BONDING REQUIREMENT.—The Sec-
13 retary of Labor may require a foreign labor
14 contractor to post a bond in an amount suffi-
15 cient to ensure the protection of individuals re-
16 cruited by the foreign labor contractor. The
17 Secretary may consider the extent to which the
18 foreign labor contractor has sufficient ties to
19 the United States to adequately enforce this
20 subsection.

21 “(i) WAIVER OF RIGHTS PROHIBITED.—A Y non-
22 immigrant may not be required to waive any rights or pro-
23 tections under this Act. Nothing under this subsection
24 shall be construed to affect the interpretation of other
25 laws.

1 “(j) ENFORCEMENT.—With respect to violations of
2 the provisions of this section relating to the employment
3 of Y nonimmigrant workers—

4 “(1) IN GENERAL.—The Secretary of Labor
5 shall promulgate regulations for the receipt, inves-
6 tigation, and disposition of complaints by an ag-
7 grievied person respecting a violation of this section.

8 “(2) FILING DEADLINE.—No investigation or
9 hearing shall be conducted on a complaint con-
10 cerning a violation under this section unless the
11 complaint was filed not later than 12 months after
12 the date of such violation.

13 “(3) REASONABLE BASIS.—The Secretary of
14 Labor shall conduct an investigation under this sub-
15 section if there is reasonable basis to believe that a
16 violation of this section has occurred. The process
17 established under this subsection shall provide that,
18 not later than 30 days after a complaint is filed, the
19 Secretary shall determine if there is reasonable
20 cause to find such a violation.

21 “(4) NOTICE AND HEARING.—

22 “(A) IN GENERAL.—Not later than 60
23 days after the Secretary of Labor makes a de-
24 termination of reasonable basis under para-
25 graph (3), the Secretary shall issue a notice to

1 the interested parties and offer an opportunity
2 for a hearing on the complaint, in accordance
3 with section 556 of title 5, United States Code.

4 “(B) COMPLAINT.—If the Secretary of
5 Labor, after receiving a complaint under this
6 subsection, does not offer the aggrieved person
7 or organization an opportunity for a hearing
8 under subparagraph (A), the Secretary shall no-
9 tify the aggrieved person or organization of
10 such determination and the aggrieved person or
11 organization may seek a hearing on the com-
12 plaint under procedures established by the Sec-
13 retary which comply with the requirements of
14 section 556.

15 “(C) HEARING DEADLINE.—Not later than
16 60 days after the date of a hearing under this
17 paragraph, the Secretary of Labor shall make a
18 finding on the matter in accordance with para-
19 graph (5).

20 “(5) ATTORNEY’S FEES.—A complainant who
21 prevails in an action under this section with respect
22 to a claim related to wages or compensation for em-
23 ployment, or a claim for a violation of subsection (j),
24 shall be entitled to an award of reasonable attorney’s
25 fees and costs.

1 “(6) POWER OF THE SECRETARY.—The Sec-
2 retary may bring an action in any court of com-
3 petent jurisdiction—

4 “(A) to seek remedial action, including in-
5 junctive relief;

6 “(B) to recover the damages described in
7 subsection (k); or

8 “(C) to ensure compliance with terms and
9 conditions described in subsection (g).

10 “(7) SOLICITOR OF LABOR.—Except as pro-
11 vided in section 518(a) of title 28, United States
12 Code, the Solicitor of Labor may appear for and rep-
13 resent the Secretary of Labor in any civil litigation
14 brought under this subsection. All such litigation
15 shall be subject to the direction and control of the
16 Attorney General.

17 “(8) PROCEDURES IN ADDITION TO OTHER
18 RIGHTS OF EMPLOYEES.—The rights and remedies
19 provided to workers under this section are in addi-
20 tion to any other contractual or statutory rights and
21 remedies of the workers, and are not intended to
22 alter or affect such rights and remedies.

23 “(k) PENALTIES.—With respect to violations of the
24 provisions of this section relating to the employment of
25 Y-1 or Y-2B nonimmigrants—

1 “(1) IN GENERAL.—If, after notice and an op-
2 portunity for a hearing, the Secretary of Labor finds
3 a violation of this section, the Secretary may impose
4 administrative remedies and penalties, including—

5 “(A) back wages;

6 “(B) benefits; and

7 “(C) civil monetary penalties.

8 “(2) CIVIL PENALTIES.—The Secretary of
9 Labor may impose, as a civil penalty—

10 “(A) for a violation of subsections (b)
11 through (g)—

12 “(i) a fine in an amount not more
13 than \$2,000 per violation per affected
14 worker and \$4,000 per violation per af-
15 fected worker for each subsequent viola-
16 tion;

17 “(ii) if the violation was willful, a fine
18 in an amount not more than \$5,000 per
19 violation per affected worker;

20 “(iii) if the violation was willful and if
21 in the course of such violation a United
22 States worker was harmed, a fine in an
23 amount not more than \$25,000 per viola-
24 tion per affected worker; and

25 “(B) for a violation of subsection (h)—

1 “(i) a fine in an amount not less than
2 \$500 and not more than \$4,000 per viola-
3 tion per affected worker;

4 “(ii) if the violation was willful, a fine
5 in an amount not less than \$2,000 and not
6 more than \$5,000 per violation per af-
7 fected worker; and

8 “(iii) if the violation was willful and if
9 in the course of such violation a United
10 States worker was harmed, a fine in an
11 amount not less than \$6,000 and not more
12 than \$35,000 per violation per affected
13 worker.

14 “(C) for knowingly or recklessly failing to
15 comply with the terms of representations made
16 in petitions, applications, certifications, or at-
17 testations under any immigrant or non-
18 immigrant program, or with representations
19 made in materials required by section (h) (con-
20 cerning labor recruiters)—

21 “(1) a fine in an amount not more than \$4,000
22 per affected worker; and

23 “(2) upon the occasion of a third offense of fail-
24 ure to comply with representations, a fine in an
25 amount not to exceed \$5,000 per affected worker

1 and designation as an ineligible employer, recruiter,
2 or broker for purposes of any immigrant or non-
3 immigrant program.

4 “(3) USE OF CIVIL PENALTIES.—All penalties
5 collected under this subsection shall be deposited in
6 the Treasury in accordance with section 286(w).

7 “(4) CRIMINAL PENALTIES.—If a willful and
8 knowing violation of subsection (g) causes extreme
9 physical or financial harm to an individual, the per-
10 son in violation of such subsection may be impris-
11 oned for not more than 6 months, fined in an
12 amount not more than \$35,000, or both.

13 “(l) DEFINITIONS.—Unless otherwise provided, in
14 this section and section 218A:

15 “(1) AGGRIEVED PERSON.—The term ‘ag-
16 grievied person’ means a person adversely affected by
17 an alleged violation of this section, including—

18 “(A) a worker whose job, wages, or work-
19 ing conditions are adversely affected by the vio-
20 lation; and

21 “(B) a representative authorized by a
22 worker whose jobs, wages, or working condi-
23 tions are adversely affected by the violation who
24 brings a complaint on behalf of such worker.

1 “(2) AREA OF EMPLOYMENT.—The terms ‘area
2 of employment’ and ‘area of intended employment’
3 mean the area within normal commuting distance of
4 the worksite or physical location at which the work
5 of the Y worker is or will be performed. If such
6 worksite or location is within a Metropolitan Statis-
7 tical Area, any place within such area is deemed to
8 be within the area of employment.

9 “(3) CONVENTION AGAINST TORTURE.—The
10 term ‘Convention Against Torture’ shall refer to the
11 United Nations Convention Against Torture and
12 Other Cruel, Inhuman or Degrading Treatment or
13 Punishment, subject to any reservations, under-
14 standings, declarations, and provisos contained in
15 the United States Senate resolution of ratification of
16 the Convention, as implemented by section 2242 of
17 the Foreign Affairs Reform and Restructuring Act
18 of 1998 (Public Law 105–277, 112 Stat. 2681,
19 2681–821).

20 “(4) DERIVATIVE Y NONIMMIGRANT.—The term
21 ‘derivative’ Y nonimmigrant means an alien de-
22 scribed at paragraph (Y)(iii) of subsection
23 101(a)(15).

24 “(5) ELIGIBLE; ELIGIBLE INDIVIDUAL.—The
25 term ‘eligible’, when used with respect to an indi-

1 vidual, or ‘eligible individual’, means, with respect to
2 employment, an individual who is not an unauthor-
3 ized alien (as defined in section 274A) with respect
4 to that employment.

5 “(6) EMPLOY; EMPLOYEE; EMPLOYER.—The
6 terms ‘employ’, ‘employee’, and ‘employer’ have the
7 meanings given such terms in section 3 of the Fair
8 Labor Standards Act of 1938 (29 U.S.C. 203).

9 “(7) FELONY.—The term ‘felony’, with regard
10 to a conviction in a foreign jurisdiction, means a
11 crime for which a sentence of one year or longer in
12 prison may be imposed.

13 “(8) FORCE MAJEURE EVENT.—The term ‘force
14 majeure event’ shall mean an event that is beyond
15 the control of either party, including, without limita-
16 tion, hurricanes, earthquakes, act of terrorism, war,
17 fire, civil disorder or other events of a similar or dif-
18 ferent kind.

19 “(9) FOREIGN LABOR CONTRACTOR.—The term
20 ‘foreign labor contractor’ means any person who for
21 any compensation or other valuable consideration
22 paid or promised to be paid, performs any foreign
23 labor contracting activity.

24 “(10) FOREIGN LABOR CONTRACTING ACTIV-
25 ITY.—The term ‘foreign labor contracting activity’

1 means recruiting, soliciting, hiring, employing, or
2 furnishing, an individual who resides outside of the
3 United States for employment in the United States
4 as a nonimmigrant alien described in section
5 101(a)(15)(H)(ii)(c).

6 “(11) FULL TIME.—The term ‘full time’, with
7 respect to a job in agricultural labor or services,
8 means any job in which the individual is employed
9 5.75 or more hours per day; and for any job, means
10 in any period of authorized admission or portion of
11 such period, employment or study for at least 90
12 percent of the total number of work-hours in such
13 period, calculated at a rate of 1,575 work-hours per
14 year (1,438 work-hours per year for agricultural em-
15 ployment). Each credit-hour of study shall be count-
16 ed as the equivalent of 50 work-hours.

17 “(12) JOB OPPORTUNITY.—The term ‘job op-
18 portunity’ means a job opening for temporary or
19 seasonal full-time employment at a place in the
20 United States to which United States workers can
21 be referred.

22 “(B) STATUTORY CONSTRUCTION.—Noth-
23 ing in this paragraph is intended to limit an
24 employee’s rights under a collective bargaining
25 agreement or other employment contract.

1 “(14) MISDEMEANOR.—The term ‘mis-
2 demeanor’, with regard to a conviction in a foreign
3 jurisdiction, means a crime for which a sentence of
4 no more than 364 days in prison may be imposed.

5 “(15) REGULATORY DROUGHT.—The term ‘reg-
6 ulatory drought’ means a decision subsequent to the
7 filing of the application under section 218B by an
8 entity not under the control of the employer making
9 such filing which restricts the employer’s access to
10 water for irrigation purposes and reduces or limits
11 the employer’s ability to produce an agricultural
12 commodity, thereby reducing the need for labor.

13 “(16) SEASONAL.—Labor is performed on a
14 ‘seasonal’ basis if—

15 “(A) ordinarily, it pertains to or is of the
16 kind exclusively performed at certain seasons or
17 periods of the year; and

18 “(B) from its nature, it may not be contin-
19 uous or carried on throughout the year.

20 “(17) SECRETARY.—Except as otherwise pro-
21 vided, the term ‘Secretary’ means the Secretary of
22 Homeland Security.

23 “(18) SEPARATION FROM EMPLOYMENT.—The
24 term ‘separation from employment’ means the work-
25 er’s loss of employment, other than through a dis-

1 charge for inadequate performance, violation of
2 workplace rules, cause, voluntary departure, vol-
3 untary retirement, or the expiration of a grant or
4 contract. The term does not include any situation in
5 which the worker is offered, as an alternative to
6 such loss of employment, a similar employment op-
7 portunity with the same employer at equivalent or
8 higher compensation and benefits than the position
9 from which the employee was discharged, regardless
10 of whether the employee accepts the offer. Nothing
11 in this paragraph shall limit an employee's rights
12 under a collective bargaining agreement or other em-
13 ployment contract.

14 “(19) UNITED STATES WORKER.—The term
15 ‘United States worker’ means an employee who is—

16 “(A) a citizen or national of the United
17 States; or

18 “(B) an alien who is—

19 “(i) lawfully admitted for permanent
20 residence;

21 “(ii) admitted as a refugee under sec-
22 tion 207;

23 “(iii) granted asylum under section
24 208; or

1 “(iv) otherwise authorized, under this
2 Act or by the Secretary of Homeland Secu-
3 rity, to be employed in the United States.’.

4 “(20) Y NONIMMIGRANT; Y NONIMMIGRANT
5 WORKER.—

6 “(A) The term ‘Y nonimmigrant’ means an
7 alien admitted to the United States under para-
8 graph (Y)(i) or (Y)(ii) of subsection 101(a)(15),
9 or the spouse or child of such nonimmigrant in
10 derivative status under (Y)(iii); and

11 “(B) The term ‘Y nonimmigrant worker’
12 means an alien admitted to the United States
13 under paragraph (Y)(i) or (Y)(ii) of subsection
14 101(a)(15).

15 “(21) Y-1 NONIMMIGRANT; Y-1 WORKER.—The
16 term ‘Y-1 nonimmigrant’ or ‘Y-1 worker’ means an
17 alien admitted to the United States under paragraph
18 (i) of subsection 101(a)(15)(Y).

19 “(23) Y-2B NONIMMIGRANT; Y-2B WORKER.—
20 The term ‘Y-2B nonimmigrant’ or ‘Y-2B worker’
21 means an alien admitted to the United States under
22 paragraph (ii) of subsection 101(a)(15)(Y).

23 “(24) Y-3 NONIMMIGRANT.—The term ‘Y-3
24 nonimmigrant’ means an alien admitted to the

1 United States under paragraph (iii) of subsection
2 101(a)(15)(Y).”.

3 “(b) CLERICAL AMENDMENT.—The table of contents
4 is amended by inserting after the item relating to section
5 218A, as added by section 402, the following:

“Sec. 218B. Employer obligations.”.

6 **Subtitle B—Seasonal Agricultural**
7 **Nonimmigrant Temporary Workers**

8 **SEC. 404. AMENDMENT TO THE IMMIGRATION AND NATION-**
9 **ALITY ACT.**

10 (a) IN GENERAL.—Title II of the Immigration and
11 Nationality Act (8 U.S.C. 1151 et seq.) is amended insert-
12 ing the following after section 218B:

13 **“SEC. 218C. H-2A EMPLOYER APPLICATIONS.**

14 “(a) APPLICATIONS TO THE SECRETARY OF
15 LABOR.—

16 “(1) IN GENERAL.—No alien may be admitted
17 to the United States as an H-2A worker, or other-
18 wise provided status as an H-2A worker, unless the
19 employer has filed with the Secretary of Labor an
20 application containing—

21 “(A) the assurances described in sub-
22 section (b);

23 “(B) a description of the nature and loca-
24 tion of the work to be performed;

1 “(C) the anticipated period (expected be-
2 ginning and ending dates) for which the work-
3 ers will be needed; and

4 “(D) the number of job opportunities in
5 which the employer seeks to employ the work-
6 ers.

7 “(2) ACCOMPANIED BY JOB OFFER.—Each ap-
8 plication filed under paragraph (1) shall be accom-
9 panied by a copy of the job offer describing the
10 wages and other terms and conditions of employ-
11 ment and the bona fide occupational qualifications
12 that shall be possessed by a worker to be employed
13 in the job opportunity in question.

14 “(b) ASSURANCES FOR INCLUSION IN APPLICA-
15 TIONS.—The assurances referred to in subsection (a)(1)
16 are the following:

17 “(1) JOB OPPORTUNITIES COVERED BY COL-
18 LECTIVE BARGAINING AGREEMENTS.—With respect
19 to a job opportunity that is covered under a collec-
20 tive bargaining agreement:

21 “(A) UNION CONTRACT DESCRIBED.—The
22 job opportunity is covered by a union contract
23 which was negotiated at arm’s length between a
24 bona fide union and the employer.

1 “(B) STRIKE OR LOCKOUT.—The specific
2 job opportunity for which the employer is re-
3 questing an H-2A worker is not vacant because
4 the former occupant is on strike or being locked
5 out in the course of a labor dispute.

6 “(C) NOTIFICATION OF BARGAINING REP-
7 RESENTATIVES.—The employer, at the time of
8 filing the application, has provided notice of the
9 filing under this paragraph to the bargaining
10 representative of the employer’s employees in
11 the occupational classification at the place or
12 places of employment for which aliens are
13 sought.

14 “(D) TEMPORARY OR SEASONAL JOB OP-
15 PORTUNITIES.—The job opportunity is tem-
16 porary or seasonal.

17 “(E) OFFERS TO UNITED STATES WORK-
18 ERS.—The employer has offered or will offer
19 the job to any eligible United States worker
20 who applies and is equally or better qualified
21 for the job for which the nonimmigrant is, or
22 the nonimmigrants are, sought and who will be
23 available at the time and place of need.

24 “(F) PROVISION OF INSURANCE.—If the
25 job opportunity is not covered by the State

1 workers' compensation law, the employer will
2 provide, at no cost to the worker, insurance cov-
3 ering injury and disease arising out of, and in
4 the course of, the worker's employment which
5 will provide benefits at least equal to those pro-
6 vided under the State's workers' compensation
7 law for comparable employment.

8 “(2) JOB OPPORTUNITIES NOT COVERED BY
9 COLLECTIVE BARGAINING AGREEMENTS.—With re-
10 spect to a job opportunity that is not covered under
11 a collective bargaining agreement:

12 “(A) STRIKE OR LOCKOUT.—The specific
13 job opportunity for which the employer has ap-
14 plied for an H-2A worker is not vacant because
15 the former occupant is on strike or being locked
16 out in the course of a labor dispute.

17 “(B) TEMPORARY OR SEASONAL JOB OP-
18 PORTUNITIES.—The job opportunity is tem-
19 porary or seasonal.

20 “(C) BENEFIT, WAGE, AND WORKING CON-
21 DITIONS.—The employer will provide, at a min-
22 imum, the benefits, wages, and working condi-
23 tions required by section 218E to all workers
24 employed in the job opportunities for which the
25 employer has applied for an H-2A worker

1 under subsection (a) and to all other workers in
2 the same occupation at the place of employ-
3 ment.

4 “(D) NONDISPLACEMENT OF UNITED
5 STATES WORKERS.—The employer did not dis-
6 place and will not displace a United States
7 worker employed by the employer during the
8 period of employment and for a period of 30
9 days preceding the period of employment in the
10 occupation at the place of employment for
11 which the employer has applied for an H-2A
12 worker.

13 “(E) REQUIREMENTS FOR PLACEMENT OF
14 THE NONIMMIGRANT WITH OTHER EMPLOY-
15 ERS.—The employer will not place the non-
16 immigrant with another employer unless—

17 “(i) the nonimmigrant performs du-
18 ties in whole or in part at 1 or more work-
19 sites owned, operated, or controlled by
20 such other employer;

21 “(ii) there are indicia of an employ-
22 ment relationship between the non-
23 immigrant and such other employer; and

24 “(iii) the employer has inquired of the
25 other employer as to whether, and has no

1 actual knowledge or notice that, during the
2 period of employment and for a period of
3 30 days preceding the period of employ-
4 ment, the other employer has displaced or
5 intends to displace a United States worker
6 employed by the other employer in the oc-
7 cupation at the place of employment for
8 which the employer seeks approval to em-
9 ploy H-2A workers.

10 “(F) STATEMENT OF LIABILITY.—The ap-
11 plication form shall include a clear statement
12 explaining the liability under subparagraph (E)
13 of an employer if the other employer described
14 in such subparagraph displaces a United States
15 worker as described in such subparagraph.

16 “(G) PROVISION OF INSURANCE.—If the
17 job opportunity is not covered by the State
18 workers’ compensation law, the employer will
19 provide, at no cost to the worker, insurance cov-
20 ering injury and disease arising out of and in
21 the course of the worker’s employment which
22 will provide benefits at least equal to those pro-
23 vided under the State’s workers’ compensation
24 law for comparable employment.

1 “(H) EMPLOYMENT OF UNITED STATES
2 WORKERS.—

3 “(i) RECRUITMENT.—The employer
4 has taken or will take the following steps
5 to recruit United States workers for the
6 job opportunities for which the H-2A non-
7 immigrant is, or H-2A nonimmigrants are,
8 sought:

9 (I) CONTACTING FORMER WORK-
10 ERS.—The employer shall make rea-
11 sonable efforts through the sending of
12 a letter by United States Postal Serv-
13 ice mail, or otherwise, to contact any
14 United States worker the employer
15 employed during the previous season
16 in the occupation at the place of in-
17 tended employment for which the em-
18 ployer is applying for workers and has
19 made the availability of the employer’s
20 job opportunities in the occupation at
21 the place of intended employment
22 known to such previous workers, un-
23 less the worker was terminated from
24 employment by the employer for a
25 lawful job-related reason or aban-

1 done the job before the worker com-
2 pleted the period of employment of
3 the job opportunity for which the
4 worker was hired.

5 (II) FILING A JOB OFFER WITH
6 THE LOCAL OFFICE OF THE STATE
7 EMPLOYMENT SECURITY AGENCY.—

8 Not later than 28 days before the
9 date on which the employer desires to
10 employ an H-2A worker in a tem-
11 porary or seasonal agricultural job op-
12 portunity, the employer shall submit a
13 copy of the job offer described in sub-
14 section (a)(2) to the local office of the
15 State workforce agency which serves
16 the area of intended employment and
17 authorize the posting of the job oppor-
18 tunity on its electronic job registry,
19 except that nothing in this subclause
20 shall require the employer to file an
21 interstate job order under section 653
22 of title 20, Code of Federal Regula-
23 tions.

24 “(III) ADVERTISING OF JOB OP-
25 PORTUNITIES.—Not later than 14

1 days before the date on which the em-
2 ployer desires to employ an H-2A
3 worker in a temporary or seasonal ag-
4 ricultural job opportunity, the em-
5 ployer shall advertise the availability
6 of the job opportunities for which the
7 employer is seeking workers in a pub-
8 lication in the local labor market that
9 is likely to be patronized by potential
10 farm workers.

11 “(IV) EMERGENCY PROCE-
12 DURES.—The Secretary of Labor
13 shall, by regulation, provide a proce-
14 dure for acceptance and approval of
15 applications in which the employer
16 has not complied with the provisions
17 of this subparagraph because the em-
18 ployer’s need for H-2A workers could
19 not reasonably have been foreseen.

20 “(ii) JOB OFFERS.—The employer has
21 offered or will offer the job to any eligible
22 United States worker who applies and is
23 equally or better qualified for the job for
24 which the nonimmigrant is, or non-

1 immigrants are, sought and who will be
2 available at the time and place of need.

3 “(iii) PERIOD OF EMPLOYMENT.—The
4 employer will provide employment to any
5 qualified United States worker who applies
6 to the employer during the period begin-
7 ning on the date on which the H-2A work-
8 er departs for the employer’s place of em-
9 ployment and ending on the date on which
10 50 percent of the period of employment for
11 which the H-2A worker who is in the job
12 was hired has elapsed, subject to the fol-
13 lowing requirements:

14 “(I) PROHIBITION.—No person
15 or entity shall willfully and knowingly
16 withhold United States workers before
17 the arrival of H-2A workers in order
18 to force the hiring of United States
19 workers under this clause.

20 “(II) COMPLAINTS.—Upon re-
21 ceipt of a complaint by an employer
22 that a violation of subclause (I) has
23 occurred, the Secretary of Labor shall
24 immediately investigate. The Sec-
25 retary of Labor shall, within 36 hours

1 of the receipt of the complaint, issue
2 findings concerning the alleged viola-
3 tion. If the Secretary of Labor finds
4 that a violation has occurred, the Sec-
5 retary of Labor shall immediately sus-
6 pend the application of this clause
7 with respect to that certification for
8 that date of need.

9 “(III) PLACEMENT OF UNITED
10 STATES WORKERS.—Before referring
11 a United States worker to an em-
12 ployer during the period described in
13 the matter preceding subclause (I),
14 the Secretary of Labor shall make all
15 reasonable efforts to place the United
16 States worker in an open job accept-
17 able to the worker, if there are other
18 job offers pending with the job service
19 that offer similar job opportunities in
20 the area of intended employment.

21 “(iv) STATUTORY CONSTRUCTION.—
22 Nothing in this subparagraph shall be con-
23 strued to prohibit an employer from using
24 such legitimate selection criteria relevant
25 to the type of job that are normal or cus-

1 tomary to the type of job involved so long
2 as such criteria are not applied in a dis-
3 criminatory manner.

4 “(v) UNITED STATES WORKER.—For
5 purpose of this subparagraph, the term
6 “United States worker” means an alien de-
7 scribed in section 218G(14) except an alien
8 admitted or otherwise provided status
9 under section 101(a)(15)(Z).

10 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
11 OF EMPLOYER MEMBERS.—

12 “(1) IN GENERAL.—An agricultural association
13 may file an application under subsection (a) on be-
14 half of 1 or more of its employer members that the
15 association certifies in its application has or have
16 agreed in writing to comply with the requirements of
17 this section and sections 218E, 218F, and 218G.

18 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
19 EMPLOYERS.—If an association filing an application
20 under paragraph (1) is a joint or sole employer of
21 the temporary or seasonal agricultural workers re-
22 quested on the application, the certifications granted
23 under subsection (e)(2)(B) to the association may be
24 used for the certified job opportunities of any of its
25 producer members named on the application, and

1 such workers may be transferred among such pro-
2 ducer members to perform the agricultural services
3 of a temporary or seasonal nature for which the cer-
4 tifications were granted.

5 “(d) WITHDRAWAL OF APPLICATIONS.—

6 “(1) IN GENERAL.—An employer may withdraw
7 an application filed pursuant to subsection (a), ex-
8 cept that if the employer is an agricultural associa-
9 tion, the association may withdraw an application
10 filed pursuant to subsection (a) with respect to 1 or
11 more of its members. To withdraw an application,
12 the employer or association shall notify the Sec-
13 retary of Labor in writing, and the Secretary of
14 Labor shall acknowledge in writing the receipt of
15 such withdrawal notice. An employer who withdraws
16 an application under subsection (a), or on whose be-
17 half an application is withdrawn, is relieved of the
18 obligations undertaken in the application.

19 “(2) LIMITATION.—An application may not be
20 withdrawn while any alien provided status under sec-
21 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
22 tion is employed by the employer.

23 “(3) OBLIGATIONS UNDER OTHER STATUTES.—
24 Any obligation incurred by an employer under any
25 other law or regulation as a result of the recruit-

1 ment of United States workers or H-2A workers
2 under an offer of terms and conditions of employ-
3 ment required as a result of making an application
4 under subsection (a) is unaffected by withdrawal of
5 such application.

6 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

7 “(1) RESPONSIBILITY OF EMPLOYERS.—The
8 employer shall make available for public examina-
9 tion, within 1 working day after the date on which
10 an application under subsection (a) is filed, at the
11 employer’s principal place of business or worksite, a
12 copy of each such application (and such accom-
13 panying documents as are necessary).

14 “(2) RESPONSIBILITY OF THE SECRETARY OF
15 LABOR.—

16 “(A) COMPILATION OF LIST.—The Sec-
17 retary of Labor shall compile, on a current
18 basis, a list (by employer and by occupational
19 classification) of the applications filed under
20 subsection (a). Such list shall include the wage
21 rate, number of workers sought, period of in-
22 tended employment, and date of need. The Sec-
23 retary of Labor shall make such list available
24 for examination in the District of Columbia.

1 “(B) REVIEW OF APPLICATIONS.—The
2 Secretary of Labor shall review such an applica-
3 tion only for completeness and obvious inac-
4 curacies. Unless the Secretary of Labor finds
5 that the application is incomplete or obviously
6 inaccurate, the Secretary of Labor shall certify
7 that the intending employer has filed with the
8 Secretary of Labor an application as described
9 in subsection (a). Such certification shall be
10 provided within 7 days of the filing of the appli-
11 cation.”

12 **“SEC. 218D. H-2A EMPLOYMENT REQUIREMENTS.**

13 “(a) PREFERENTIAL TREATMENT OF ALIENS PRO-
14 HIBITED.—Employers seeking to hire United States work-
15 ers shall offer the United States workers no less than the
16 same benefits, wages, and working conditions that the em-
17 ployer is offering, intends to offer, or will provide to H-
18 2A workers. Conversely, no job offer may impose on
19 United States workers any restrictions or obligations
20 which will not be imposed on the employer’s H-2A work-
21 ers.

22 “(b) MINIMUM BENEFITS, WAGES, AND WORKING
23 CONDITIONS.—Except in cases where higher benefits,
24 wages, or working conditions are required by the provi-
25 sions of subsection (a), in order to protect similarly em-

1 ployed United States workers from adverse effects with
2 respect to benefits, wages, and working conditions, every
3 job offer which shall accompany an application under sec-
4 tion 218C(b)(2) shall include each of the following benefit,
5 wage, and working condition provisions:

6 “(1) REQUIREMENT TO PROVIDE HOUSING OR A
7 HOUSING ALLOWANCE.—

8 “(A) IN GENERAL.—An employer applying
9 under section 218C(a) for H-2A workers shall
10 offer to provide housing at no cost to all work-
11 ers in job opportunities for which the employer
12 has applied under that section and to all other
13 workers in the same occupation at the place of
14 employment, whose place of residence is beyond
15 normal commuting distance.

16 “(B) TYPE OF HOUSING.—In complying
17 with subparagraph (A), an employer may, at
18 the employer’s election, provide housing that
19 meets applicable Federal standards for tem-
20 porary labor camps or secure housing that
21 meets applicable local standards for rental or
22 public accommodation housing or other sub-
23 stantially similar class of habitation, or in the
24 absence of applicable local standards, State
25 standards for rental or public accommodation

1 housing or other substantially similar class of
2 habitation. In the absence of applicable local or
3 State standards, Federal temporary labor camp
4 standards shall apply.

5 “(C) FAMILY HOUSING.—If it is the pre-
6 vailing practice in the occupation and area of
7 intended employment to provide family housing,
8 family housing shall be provided to workers
9 with families who request it.

10 “(D) WORKERS ENGAGED IN THE RANGE
11 PRODUCTION OF LIVESTOCK.—The Secretary of
12 Labor shall issue regulations that address the
13 specific requirements for the provision of hous-
14 ing to workers engaged in the range production
15 of livestock.

16 “(E) LIMITATION.—Nothing in this para-
17 graph shall be construed to require an employer
18 to provide or secure housing for persons who
19 were not entitled to such housing under the
20 temporary labor certification regulations in ef-
21 fect on June 1, 1986.

22 “(F) CHARGES FOR HOUSING.—

23 “(i) CHARGES FOR PUBLIC HOUS-
24 ING.—If public housing provided for mi-
25 grant agricultural workers under the aus-

1 pices of a local, county, or State govern-
2 ment is secured by an employer, and use of
3 the public housing unit normally requires
4 charges from migrant workers, such
5 charges shall be paid by the employer di-
6 rectly to the appropriate individual or enti-
7 ty affiliated with the housing's manage-
8 ment.

9 “(ii) DEPOSIT CHARGES.—Charges in
10 the form of deposits for bedding or other
11 similar incidentals related to housing shall
12 not be levied upon workers by employers
13 who provide housing for their workers. An
14 employer may require a worker found to
15 have been responsible for damage to such
16 housing which is not the result of normal
17 wear and tear related to habitation to re-
18 imburse the employer for the reasonable
19 cost of repair of such damage.

20 “(G) HOUSING ALLOWANCE AS ALTER-
21 NATIVE.—

22 “(i) IN GENERAL.—If the requirement
23 set out in clause (ii) is satisfied, the em-
24 ployer may provide a reasonable housing
25 allowance instead of offering housing

1 under subparagraph (A). Upon the request
2 of a worker seeking assistance in locating
3 housing, the employer shall make a good
4 faith effort to assist the worker in identi-
5 fying and locating housing in the area of
6 intended employment. An employer who of-
7 fers a housing allowance to a worker, or
8 assists a worker in locating housing which
9 the worker occupies, pursuant to this
10 clause shall not be deemed a housing pro-
11 vider under section 203 of the Migrant and
12 Seasonal Agricultural Worker Protection
13 Act (29 U.S.C. 1823) solely by virtue of
14 providing such housing allowance. No
15 housing allowance may be used for housing
16 which is owned or controlled by the em-
17 ployer.

18 “(ii) CERTIFICATION.—The require-
19 ment of this clause is satisfied if the Gov-
20 ernor of the State certifies to the Secretary
21 of Labor that there is adequate housing
22 available in the area of intended employ-
23 ment for migrant farm workers and H-2A
24 workers who are seeking temporary hous-
25 ing while employed in agricultural work.

1 Such certification shall expire after 3 years
2 unless renewed by the Governor of the
3 State.

4 “(iii) AMOUNT OF ALLOWANCE.—

5 “(I) NONMETROPOLITAN COUN-
6 TIES.—If the place of employment of
7 the workers provided an allowance
8 under this subparagraph is a non-
9 metropolitan county, the amount of
10 the housing allowance under this sub-
11 paragraph shall be equal to the state-
12 wide average fair market rental for
13 existing housing for nonmetropolitan
14 counties for the State, as established
15 by the Secretary of Housing and
16 Urban Development pursuant to sec-
17 tion 8(c) of the United States Hous-
18 ing Act of 1937 (42 U.S.C. 1437f(c)),
19 based on a 2-bedroom dwelling unit
20 and an assumption of 2 persons per
21 bedroom.

22 “(II) METROPOLITAN COUN-
23 TIES.—If the place of employment of
24 the workers provided an allowance
25 under this paragraph is in a metro-

1 politan county, the amount of the
2 housing allowance under this subpara-
3 graph shall be equal to the statewide
4 average fair market rental for existing
5 housing for metropolitan counties for
6 the State, as established by the Sec-
7 retary of Housing and Urban Devel-
8 opment pursuant to section 8(c) of
9 the United States Housing Act of
10 1937 (42 U.S.C. 1437f(c)), based on
11 a 2-bedroom dwelling unit and an as-
12 sumption of 2 persons per bedroom.

13 “(2) REIMBURSEMENT OF TRANSPORTATION.—

14 “(A) TO PLACE OF EMPLOYMENT.—A
15 worker who completes 50 percent of the period
16 of employment of the job opportunity for which
17 the worker was hired shall be reimbursed by the
18 employer for the cost of the worker’s transpor-
19 tation and subsistence from the place from
20 which the worker came to work for the em-
21 ployer (or place of last employment, if the
22 worker traveled from such place) to the place of
23 employment.

24 “(B) FROM PLACE OF EMPLOYMENT.—A
25 worker who completes the period of employment

1 for the job opportunity involved shall be reim-
2 bursed by the employer for the cost of the
3 worker's transportation and subsistence from
4 the place of employment to the place from
5 which the worker, disregarding intervening em-
6 ployment, came to work for the employer, or to
7 the place of next employment, if the worker has
8 contracted with a subsequent employer who has
9 not agreed to provide or pay for the worker's
10 transportation and subsistence to such subse-
11 quent employer's place of employment.

12 “(C) LIMITATION.—

13 “(i) AMOUNT OF REIMBURSEMENT.—

14 Except as provided in clause (ii), the
15 amount of reimbursement provided under
16 subparagraph (A) or (B) to a worker or
17 alien shall not exceed the lesser of—

18 “(I) the actual cost to the worker
19 or alien of the transportation and sub-
20 sistence involved; or

21 “(II) the most economical and
22 reasonable common carrier transpor-
23 tation charges and subsistence costs
24 for the distance involved.

1 “(ii) DISTANCE TRAVELED.—No reim-
2 bursement under subparagraph (A) or (B)
3 shall be required if the distance traveled is
4 100 miles or less, or the worker is not re-
5 siding in employer-provided housing or
6 housing secured through an allowance as
7 provided in paragraph (1)(G).

8 “(D) EARLY TERMINATION.—If the worker
9 is laid off or employment is terminated for con-
10 tract impossibility (as described in paragraph
11 (4)(D)) before the anticipated ending date of
12 employment, the employer shall provide the
13 transportation and subsistence required by sub-
14 paragraph (B) and, notwithstanding whether
15 the worker has completed 50 percent of the pe-
16 riod of employment, shall provide the transpor-
17 tation reimbursement required by subparagraph
18 (A).

19 “(E) TRANSPORTATION BETWEEN LIVING
20 QUARTERS AND WORKSITE.—The employer
21 shall provide transportation between the work-
22 er’s living quarters and the employer’s worksite
23 without cost to the worker, and such transpor-
24 tation will be in accordance with applicable laws
25 and regulations.

1 “(3) REQUIRED WAGES.—

2 “(A) IN GENERAL.—An employer applying
3 for workers under section 218C(a) shall offer to
4 pay, and shall pay, all workers in the occupa-
5 tion for which the employer has applied for
6 workers, not less (and is not required to pay
7 more) than the greater of the prevailing wage
8 in the occupation in the area of intended em-
9 ployment or the adverse effect wage rate. No
10 worker shall be paid less than the greater of the
11 hourly wage prescribed under section 6(a)(1) of
12 the Fair Labor Standards Act of 1938 (29
13 U.S.C. 206(a)(1)) or the applicable State min-
14 imum wage.

15 “(B) LIMITATION.—Effective on the date
16 of the enactment of the Agricultural Job Op-
17 portunities, Benefits, and Security Act of 2007
18 and continuing for 3 years thereafter, no ad-
19 verse effect wage rate for a State may be more
20 than the adverse effect wage rate for that State
21 in effect on January 1, 2003, as established by
22 section 655.107 of title 20, Code of Federal
23 Regulations.

24 “(C) REQUIRED WAGES AFTER 3-YEAR
25 FREEZE.—

1 “(i) FIRST ADJUSTMENT.—If Con-
2 gress does not set a new wage standard
3 applicable to this section before the first
4 March 1 that is not less than 3 years after
5 the date of enactment of this section, the
6 adverse effect wage rate for each State be-
7 ginning on such March 1 shall be the wage
8 rate that would have resulted if the ad-
9 verse effect wage rate in effect on January
10 1, 2003, had been annually adjusted, be-
11 ginning on March 1, 2006, by the lesser
12 of—

13 “(I) the 12-month percentage
14 change in the Consumer Price Index
15 for All Urban Consumers between De-
16 cember of the second preceding year
17 and December of the preceding year;
18 and

19 “(II) 4 percent.

20 “(ii) SUBSEQUENT ANNUAL ADJUST-
21 MENTS.—Beginning on the first March 1
22 that is not less than 4 years after the date
23 of enactment of this section, and each
24 March 1 thereafter, the adverse effect

1 wage rate then in effect for each State
2 shall be adjusted by the lesser of—

3 “(I) the 12-month percentage
4 change in the Consumer Price Index
5 for All Urban Consumers between De-
6 cember of the second preceding year
7 and December of the preceding year;
8 and

9 “(II) 4 percent.

10 “(D) DEDUCTIONS.—The employer shall
11 make only those deductions from the worker’s
12 wages that are authorized by law or are reason-
13 able and customary in the occupation and area
14 of employment. The job offer shall specify all
15 deductions not required by law which the em-
16 ployer will make from the worker’s wages.

17 “(E) FREQUENCY OF PAY.—The employer
18 shall pay the worker not less frequently than
19 twice monthly, or in accordance with the pre-
20 vailing practice in the area of employment,
21 whichever is more frequent.

22 (F) HOURS AND EARNINGS STATE-
23 MENTS.—The employer shall furnish to the
24 worker, on or before each payday, in 1 or more
25 written statements—

1 “(i) the worker’s total earnings for
2 the pay period;

3 “(ii) the worker’s hourly rate of pay,
4 piece rate of pay, or both;

5 “(iii) the hours of employment which
6 have been offered to the worker (broken
7 out by hours offered in accordance with
8 and over and above the $\frac{3}{4}$ guarantee de-
9 scribed in paragraph (4);

10 “(iv) the hours actually worked by the
11 worker;

12 “(v) an itemization of the deductions
13 made from the worker’s wages; and

14 “(vi) if piece rates of pay are used,
15 the units produced daily.

16 (G) REPORT ON WAGE PROTECTIONS.—

17 Not later than December 31, 2009, the Comp-
18 troller General of the United States shall pre-
19 pare and transmit to the Secretary of Labor,
20 the Committee on the Judiciary of the Senate,
21 and Committee on the Judiciary of the House
22 of Representatives, a report that addresses—

23 “(i) whether the employment of H-2A
24 or unauthorized aliens in the United States
25 agricultural workforce has depressed

1 United States farm worker wages below
2 the levels that would otherwise have pre-
3 vailed if alien farm workers had not been
4 employed in the United States;

5 “(ii) whether an adverse effect wage
6 rate is necessary to prevent wages of
7 United States farm workers in occupations
8 in which H-2A workers are employed from
9 falling below the wage levels that would
10 have prevailed in the absence of the em-
11 ployment of H-2A workers in those occu-
12 pations;

13 “(iii) whether alternative wage stand-
14 ards, such as a prevailing wage standard,
15 would be sufficient to prevent wages in oc-
16 cupations in which H-2A workers are em-
17 ployed from falling below the wage level
18 that would have prevailed in the absence of
19 H-2A employment;

20 “(iv) whether any changes are war-
21 ranted in the current methodologies for
22 calculating the adverse effect wage rate
23 and the prevailing wage; and

24 “(v) recommendations for future wage
25 protection under this section.

1 “(H) COMMISSION ON WAGE STAND-
2 ARDS.—

3 “(i) ESTABLISHMENT.—There is es-
4 tablished the Commission on Agricultural
5 Wage Standards under the H-2A program
6 (in this subparagraph referred to as the
7 ‘Commission’).

8 “(ii) COMPOSITION.—The Commission
9 shall consist of 10 members as follows:

10 “(I) Four representatives of agri-
11 cultural employers and 1 representa-
12 tive of the Department of Agriculture,
13 each appointed by the Secretary of
14 Agriculture.

15 “(II) Four representatives of agri-
16 cultural workers and 1 representa-
17 tive of the Department of Labor, each
18 appointed by the Secretary of Labor.

19 “(iii) FUNCTIONS.—The Commission
20 shall conduct a study that shall address—

21 “(I) whether the employment of
22 H-2A or unauthorized aliens in the
23 United States agricultural workforce
24 has depressed United States farm
25 worker wages below the levels that

1 would otherwise have prevailed if alien
2 farm workers had not been employed
3 in the United States;

4 “(II) whether an adverse effect
5 wage rate is necessary to prevent
6 wages of United States farm workers
7 in occupations in which H-2A work-
8 ers are employed from falling below
9 the wage levels that would have pre-
10 vailed in the absence of the employ-
11 ment of H-2A workers in those occu-
12 pations;

13 “(III) whether alternative wage
14 standards, such as a prevailing wage
15 standard, would be sufficient to pre-
16 vent wages in occupations in which
17 H-2A workers are employed from fall-
18 ing below the wage level that would
19 have prevailed in the absence of H-2A
20 employment;

21 “(IV) whether any changes are
22 warranted in the current methodolo-
23 gies for calculating the adverse effect
24 wage rate and the prevailing wage
25 rate; and

1 “(V) recommendations for future
2 wage protection under this section.

3 “(iv) The Commission may for the
4 purpose of carrying out this section, hold
5 such hearings, sit and act at such times
6 and places, take such testimony, and re-
7 ceive such evidence as the Commission con-
8 siders appropriate.

9 “(v) INTERIM REPORT.—The Commis-
10 sion shall issue an interim report, pub-
11 lished in the Federal Register, with oppor-
12 tunity and comment, for a period of at
13 least 90 days.

14 “(vi) FINAL REPORT.—After consid-
15 ering recommendations from interested
16 persons (including an opportunity for com-
17 ment from the public and affected States),
18 the Commission shall submit a report to
19 the Congress setting forth the findings of
20 the study conducted under clause (iii) not
21 later than December 31, 2009.

22 “(vii) TERMINATION DATE.—The
23 Commission shall terminate upon submit-
24 ting its final report.

25 “(4) GUARANTEE OF EMPLOYMENT.—

1 “(A) OFFER TO WORKER.—The employer
2 shall guarantee to offer the worker employment
3 for the hourly equivalent of at least $\frac{3}{4}$ of the
4 work days of the total period of employment,
5 beginning with the first work day after the ar-
6 rival of the worker at the place of employment
7 and ending on the expiration date specified in
8 the job offer. For purposes of this subpara-
9 graph, the hourly equivalent means the number
10 of hours in the work days as stated in the job
11 offer and shall exclude the worker’s Sabbath
12 and Federal holidays. If the employer affords
13 the United States or H-2A worker less employ-
14 ment than that required under this paragraph,
15 the employer shall pay such worker the amount
16 which the worker would have earned had the
17 worker, in fact, worked for the guaranteed
18 number of hours.

19 “(B) FAILURE TO WORK.—Any hours
20 which the worker fails to work, up to a max-
21 imum of the number of hours specified in the
22 job offer for a work day, when the worker has
23 been offered an opportunity to do so, and all
24 hours of work actually performed (including vol-
25 untary work in excess of the number of hours

1 specified in the job offer in a work day, on the
2 worker's Sabbath, or on Federal holidays) may
3 be counted by the employer in calculating
4 whether the period of guaranteed employment
5 has been met.

6 “(C) ABANDONMENT OF EMPLOYMENT,
7 TERMINATION FOR CAUSE.—If the worker vol-
8 untarily abandons employment before the end
9 of the contract period, or is terminated for
10 cause, the worker is not entitled to the ‘ $\frac{3}{4}$
11 guarantee’ described in subparagraph (A).

12 “(D) CONTRACT IMPOSSIBILITY.—If, be-
13 fore the expiration of the period of employment
14 specified in the job offer, the services of the
15 worker are no longer required for reasons be-
16 yond the control of the employer due to any
17 form of natural disaster, including a flood, hur-
18 ricane, freeze, earthquake, fire, drought, plant
19 or animal disease or pest infestation, or regu-
20 latory drought, before the guarantee in sub-
21 subparagraph (A) is fulfilled, the employer may
22 terminate the worker's employment. In the
23 event of such termination, the employer shall
24 fulfill the employment guarantee in subpara-
25 graph (A) for the work days that have elapsed

1 from the first work day after the arrival of the
2 worker to the termination of employment. In
3 such cases, the employer will make efforts to
4 transfer the United States worker to other com-
5 parable employment acceptable to the worker. If
6 such transfer is not effected, the employer shall
7 provide the return transportation required in
8 paragraph (2)(D).

9 “(5) MOTOR VEHICLE SAFETY.—

10 “(A) MODE OF TRANSPORTATION SUBJECT
11 TO COVERAGE.—

12 “(i) IN GENERAL.—Except as pro-
13 vided in clauses (iii) and (iv), this sub-
14 section applies to any H-2A employer that
15 uses or causes to be used any vehicle to
16 transport an H-2A worker within the
17 United States.

18 “(ii) DEFINED TERM.—In this para-
19 graph, the term ‘uses or causes to be
20 used’—

21 “(I) applies only to transpor-
22 tation provided by an H-2A employer
23 to an H-2A worker, or by a farm
24 labor contractor to an H-2A worker

1 at the request or direction of an H-
2 2A employer; and

3 “(II) does not apply to—

4 “(aa) transportation pro-
5 vided, or transportation arrange-
6 ments made, by an H-2A work-
7 er, unless the employer specifi-
8 cally requested or arranged such
9 transportation; or

10 “(bb) car pooling arrange-
11 ments made by H-2A workers
12 themselves, using 1 of the work-
13 ers’ own vehicles, unless specifi-
14 cally requested by the employer
15 directly or through a farm labor
16 contractor.

17 “(iii) CLARIFICATION.—Providing a
18 job offer to an H-2A worker that causes
19 the worker to travel to or from the place
20 of employment, or the payment or reim-
21 bursement of the transportation costs of
22 an H-2A worker by an H-2A employer,
23 shall not constitute an arrangement of, or
24 participation in, such transportation.

1 “(iv) AGRICULTURAL MACHINERY AND
2 EQUIPMENT EXCLUDED.—This subsection
3 does not apply to the transportation of an
4 H-2A worker on a tractor, combine, har-
5 vester, picker, or other similar machinery
6 or equipment while such worker is actually
7 engaged in the planting, cultivating, or
8 harvesting of agricultural commodities or
9 the care of livestock or poultry or engaged
10 in transportation incidental thereto.

11 “(v) COMMON CARRIERS EX-
12 CLUDED.—This subsection does not apply
13 to common carrier motor vehicle transpor-
14 tation in which the provider holds itself out
15 to the general public as engaging in the
16 transportation of passengers for hire and
17 holds a valid certification of authorization
18 for such purposes from an appropriate
19 Federal, State, or local agency.

20 “(B) APPLICABILITY OF STANDARDS, LI-
21 CENSING, AND INSURANCE REQUIREMENTS.—

22 “(i) In general.—When using, or
23 causing to be used, any vehicle for the pur-
24 pose of providing transportation to which

1 this subparagraph applies, each employer
2 shall—

3 “(I) ensure that each such vehi-
4 cle conforms to the standards pre-
5 scribed by the Secretary of Labor
6 under section 401(b) of the Migrant
7 and Seasonal Agricultural Worker
8 Protection Act (29 U.S.C. 1841(b))
9 and other applicable Federal and
10 State safety standards;

11 “(II) ensure that each driver has
12 a valid and appropriate license, as
13 provided by State law, to operate the
14 vehicle; and

15 “(III) have an insurance policy
16 or a liability bond that is in effect
17 which insures the employer against li-
18 ability for damage to persons or prop-
19 erty arising from the ownership, oper-
20 ation, or causing to be operated, of
21 any vehicle used to transport any H-
22 2A worker.

23 “(ii) AMOUNT OF INSURANCE RE-
24 QUIRED.—The level of insurance required
25 shall be determined by the Secretary of

1 Labor pursuant to regulations to be issued
2 under this subsection.

3 “(iii) EFFECT OF WORKERS’ COM-
4 PENSATION COVERAGE.—If the employer
5 of any H-2A worker provides workers’
6 compensation coverage for such worker in
7 the case of bodily injury or death as pro-
8 vided by State law, the following adjust-
9 ments in the requirements of subparagraph
10 (B)(i)(III) relating to having an insurance
11 policy or liability bond apply:

12 “(I) No insurance policy or liabil-
13 ity bond shall be required of the em-
14 ployer, if such workers are trans-
15 ported only under circumstances for
16 which there is coverage under such
17 State law.

18 “(II) An insurance policy or li-
19 ability bond shall be required of the
20 employer for circumstances under
21 which coverage for the transportation
22 of such workers is not provided under
23 such State law.

24 “(c) COMPLIANCE WITH LABOR LAWS.—An em-
25 ployer shall assure that, except as otherwise provided in

1 this section, the employer will comply with all applicable
2 Federal, State, and local labor laws, including laws affect-
3 ing migrant and seasonal agricultural workers, with re-
4 spect to all United States workers and alien workers em-
5 ployed by the employer, except that a violation of this as-
6 surance shall not constitute a violation of the Migrant and
7 Seasonal Agricultural Worker Protection Act (29 U.S.C.
8 1801 et seq.).

9 “(d) COPY OF JOB OFFER.—The employer shall pro-
10 vide to the worker, not later than the day the work com-
11 mences, a copy of the employer’s application and job offer
12 described in section 218C(a), or, if the employer will re-
13 quire the worker to enter into a separate employment con-
14 tract covering the employment in question, such separate
15 employment contract.

16 “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing
17 in this section, section 218C, or section 218E shall pre-
18 clude the Secretary of Labor and the Secretary from con-
19 tinuing to apply special procedures and requirements to
20 the admission and employment of aliens in occupations in-
21 volving the range production of livestock.

22 “(f) EVIDENCE OF NONIMMIGRANT STATUS.—Each
23 H-2A nonimmigrant shall be issued documentary evidence
24 of nonimmigrant status, which—

1 “(1) shall be machine-readable, tamper-resist-
2 ant, and shall contain a digitized photograph and
3 other biometric identifiers that can be authenticated;

4 “(2) shall, during the alien’s authorized period
5 of admission as an H–2A nonimmigrant, serve as a
6 valid entry document for the purpose of applying for
7 admission to the United States—

8 “(A) instead of a passport and visa if the
9 alien—

10 “(i) is a national of a foreign territory
11 contiguous to the United States; and

12 “(ii) is applying for admission at a
13 land border port of entry; or

14 “(B) in conjunction with a valid passport,
15 if the alien is applying for admission at an air
16 or sea port of entry;

17 “(3) may be accepted during the period of its
18 validity by an employer as evidence of employment
19 authorization and identity under section
20 274A(b)(1)(B); and

21 “(4) shall be issued to the H–2A nonimmigrant
22 by the Secretary promptly after such alien’s admis-
23 sion to the United States as an H–2A nonimmigrant
24 and reporting to the employer’s worksite under or,
25 at the discretion of the Secretary, may be issued by

1 the Secretary of State at a consulate instead of a
2 visa.

3 **“SEC. 218E. PROCEDURE FOR ADMISSION AND EXTENSION**
4 **OF STAY OF H-2A WORKERS.**

5 “(a) PETITIONING FOR ADMISSION.—An employer,
6 or an association acting as an agent or joint employer for
7 its members, that seeks the admission into the United
8 States of an H-2A worker may file a petition with the
9 Secretary. The petition shall be accompanied by an accept-
10 ed and currently valid certification provided by the Sec-
11 retary of Labor under section 218C(e)(2)(B) covering the
12 petitioner.

13 “(b) EXPEDITED ADJUDICATION BY THE SEC-
14 RETARY.—The Secretary shall establish a procedure for
15 expedited adjudication of petitions filed under subsection
16 (a) and within 7 working days shall, by fax, cable, or other
17 means assuring expedited delivery, transmit a copy of no-
18 tice of action on the petition to the petitioner and, in the
19 case of approved petitions, to the appropriate immigration
20 officer at the port of entry or United States consulate (as
21 the case may be) where the petitioner has indicated that
22 the alien beneficiary (or beneficiaries) will apply for a visa
23 or admission to the United States.

24 “(c) CRITERIA FOR ADMISSIBILITY.—

1 “(1) IN GENERAL.—An H-2A worker shall be
2 considered admissible to the United States if the
3 alien is otherwise admissible under this section, sec-
4 tion 218C, and section 218D, and the alien is not
5 ineligible under paragraph (2).

6 “(2) DISQUALIFICATION.—An alien shall be
7 considered inadmissible to the United States and in-
8 eligible for nonimmigrant status under section
9 101(a)(15)(H)(ii)(a) if the alien has, at any time
10 during the past 5 years—

11 “(A) violated a material provision of this
12 section, including the requirement to promptly
13 depart the United States when the alien’s au-
14 thorized period of admission under this section
15 has expired; or

16 “(B) otherwise violated a term or condition
17 of admission into the United States as a non-
18 immigrant, including overstaying the period of
19 authorized admission as such a nonimmigrant.

20 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
21 FUL PRESENCE.—

22 “(A) IN GENERAL.—An alien who has not
23 previously been admitted into the United States
24 pursuant to this section, and who is otherwise
25 eligible for admission in accordance with para-

1 graphs (1) and (2), shall not be deemed inad-
2 missible by virtue of section 212(a)(9)(B). If an
3 alien described in the preceding sentence is
4 present in the United States, the alien may
5 apply from abroad for H-2A status, but may
6 not be granted that status in the United States.

7 “(B) MAINTENANCE OF WAIVER.—An
8 alien provided an initial waiver of ineligibility
9 pursuant to subparagraph (A) shall remain eli-
10 gible for such waiver unless the alien violates
11 the terms of this section or again becomes ineli-
12 gible under section 212(a)(9)(B) by virtue of
13 unlawful presence in the United States after
14 the date of the initial waiver of ineligibility pur-
15 suant to subparagraph (A).

16 “(d) PERIOD OF ADMISSION.—

17 “(1) IN GENERAL.—The alien shall be admitted
18 for the period of employment in the application cer-
19 tified by the Secretary of Labor pursuant to section
20 218C(e)(2)(B), not to exceed 10 months except as
21 specified in paragraph (2), supplemented by a period
22 of not more than 1 week before the beginning of the
23 period of employment for the purpose of travel to
24 the worksite and a period of 14 days following the
25 period of employment for the purpose of departure

1 or extension based on a subsequent offer of employ-
2 ment, except that—

3 “(A) the alien is not authorized to be em-
4 ployed during such 14-day period except in the
5 employment for which the alien was previously
6 authorized; and

7 “(B) the total period of employment, in-
8 cluding such 14-day period, may not exceed 10
9 months.

10 “(2) CONSTRUCTION.—Nothing in this sub-
11 section shall limit the authority of the Secretary to
12 extend the stay of the alien under any other provi-
13 sion of this Act.

14 “(e) ABANDONMENT OF EMPLOYMENT.—

15 “(1) IN GENERAL.—An alien admitted or pro-
16 vided status under section 101(a)(15)(H)(ii)(a) who
17 abandons the employment which was the basis for
18 such admission or status shall be considered to have
19 failed to maintain nonimmigrant status as an H-2A
20 worker and shall depart the United States or be sub-
21 ject to removal under section 237(a)(1)(C)(i).

22 “(2) REPORT BY EMPLOYER.—The employer, or
23 association acting as agent for the employer, shall
24 notify the Secretary not later than 7 days after an
25 H-2A worker prematurely abandons employment.

1 “(3) REMOVAL BY THE SECRETARY.—The Sec-
2 retary shall promptly remove from the United States
3 any H-2A worker who violates any term or condi-
4 tion of the worker’s nonimmigrant status.

5 “(4) VOLUNTARY TERMINATION.—Notwith-
6 standing paragraph (1), an alien may voluntarily
7 terminate his or her employment if the alien prompt-
8 ly departs the United States upon termination of
9 such employment.

10 “(f) REPLACEMENT OF ALIEN.—

11 “(1) IN GENERAL.—Upon presentation of the
12 notice to the Secretary required by subsection (e)(2),
13 the Secretary of State shall promptly issue a visa to,
14 and the Secretary shall admit into the United
15 States, an eligible alien designated by the employer
16 to replace an H-2A worker—

17 “(A) who abandons or prematurely termi-
18 nates employment; or

19 “(B) whose employment is terminated
20 after a United States worker is employed pur-
21 suant to section 218C(b)(2)(H)(iii), if the
22 United States worker voluntarily departs before
23 the end of the period of intended employment
24 or if the employment termination is for a lawful
25 job-related reason.

1 “(2) CONSTRUCTION.—Nothing in this sub-
2 section is intended to limit any preference required
3 to be accorded United States workers under any
4 other provision of this Act.

5 “(g) IDENTIFICATION DOCUMENT.—

6 “(1) IN GENERAL.—Each alien authorized to be
7 admitted under section 101(a)(15)(H)(ii)(a) shall be
8 provided an identification and employment eligibility
9 document to verify eligibility for employment in the
10 United States and verify the alien’s identity.

11 “(2) REQUIREMENTS.—No identification and
12 employment eligibility document may be issued
13 which does not meet the following requirements:

14 “(A) The document shall be capable of re-
15 liably determining whether—

16 “(i) the individual with the identifica-
17 tion and employment eligibility document
18 whose eligibility is being verified is in fact
19 eligible for employment;

20 “(ii) the individual whose eligibility is
21 being verified is claiming the identity of
22 another person; and

23 “(iii) the individual whose eligibility is
24 being verified is authorized to be admitted

1 into, and employed in, the United States
2 as an H-2A worker.

3 “(B) The document shall be in a form that
4 is resistant to counterfeiting and to tampering.

5 “(C) The document shall—

6 “(i) be compatible with other data-
7 bases of the Secretary for the purpose of
8 excluding aliens from benefits for which
9 they are not eligible and determining
10 whether the alien is unlawfully present in
11 the United States; and

12 “(ii) be compatible with law enforce-
13 ment databases to determine if the alien
14 has been convicted of criminal offenses.

15 “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE
16 UNITED STATES.—

17 “(1) EXTENSION OF STAY.—If an employer
18 seeks approval to employ an H-2A alien who is law-
19 fully present in the United States, the petition filed
20 by the employer or an association pursuant to sub-
21 section (a), shall request an extension of the alien’s
22 stay and a change in the alien’s employment.

23 “(2) LIMITATION ON FILING A PETITION FOR
24 EXTENSION OF STAY.—A petition may not be filed
25 for an extension of an alien’s stay to a date that is

1 more than 10 months after the date of the alien's
2 last admission to the United States under this sec-
3 tion.

4 “(3) WORK AUTHORIZATION UPON FILING A
5 PETITION FOR EXTENSION OF STAY.—

6 “(A) IN GENERAL.—An alien who is law-
7 fully present in the United States may com-
8 mence the employment described in a petition
9 under paragraph (1) on the date on which the
10 petition is filed.

11 “(B) DEFINITION.—For purposes of sub-
12 paragraph (A), the term ‘file’ means sending
13 the petition by certified mail via the United
14 States Postal Service, return receipt requested,
15 or delivered by guaranteed commercial delivery
16 which will provide the employer with a docu-
17 mented acknowledgment of the date of receipt
18 of the petition.

19 “(C) HANDLING OF PETITION.—The em-
20 ployer shall provide a copy of the employer's pe-
21 tition to the alien, who shall keep the petition
22 with the alien's identification and employment
23 eligibility document as evidence that the peti-
24 tion has been filed and that the alien is author-
25 ized to work in the United States.

1 “(D) APPROVAL OF PETITION.—Upon ap-
2 proval of a petition for an extension of stay or
3 change in the alien’s authorized employment,
4 the Secretary shall provide a new or updated
5 employment eligibility document to the alien in-
6 dicating the new validity date, after which the
7 alien is not required to retain a copy of the pe-
8 tition.

9 “(4) LIMITATION ON AN INDIVIDUAL’S STAY IN
10 STATUS.—

11 “(A) MAXIMUM PERIOD.—The maximum
12 continuous period of authorized status as an
13 H–2A worker (including any extensions), other
14 than a worker admitted pursuant to subsection
15 (d)(2), is 10 months.

16 “(B) REQUIREMENT TO REMAIN OUTSIDE
17 THE UNITED STATES.—

18 “(i) IN GENERAL.—Subject to clause
19 (ii), in the case of an alien outside the
20 United States whose period of authorized
21 status as an H–2A worker (including any
22 extensions) has expired, the alien may not
23 again apply for admission to the United
24 States as an H–2A worker unless the alien
25 has remained outside the United States for

1 a continuous period equal to at least $\frac{1}{5}$
2 the duration of the alien's previous period
3 of authorized status as an H-2A worker
4 (including any extensions).

5 “(ii) EXCEPTION.—Clause (i) shall
6 not apply in the case of an alien if the
7 alien's period of authorized status as an
8 H-2A worker (including any extensions)
9 was for a period of not more than 10
10 months and such alien has been outside
11 the United States for at least 2 months
12 during the 12 months preceding the date
13 the alien again is applying for admission to
14 the United States as an H-2A worker.

15 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS
16 DAIRY WORKERS.—Notwithstanding any provision of this
17 Act, an alien admitted under section 101(a)(15)(H)(ii)(a)
18 for employment as a dairy worker—

19 “(1) may be admitted for a period of up to 3
20 years;

21 “(2) may not be extended beyond 3 years; and

22 “(3) shall not be subject to the requirements of
23 subsection (h)(4).

1 **“SEC. 218F. WORKER PROTECTIONS AND LABOR STAND-**
2 **ARDS ENFORCEMENT.**

3 “(a) ENFORCEMENT AUTHORITY.—

4 “(1) INVESTIGATION OF COMPLAINTS.—

5 “(A) AGGRIEVED PERSON OR THIRD-PARTY
6 COMPLAINTS.—The Secretary of Labor shall es-
7 tablish a process for the receipt, investigation,
8 and disposition of complaints respecting a peti-
9 tioner’s failure to meet a condition specified in
10 section 218C(b), or an employer’s misrepresen-
11 tation of material facts in an application under
12 section 218C(a). Complaints may be filed by
13 any aggrieved person or organization (including
14 bargaining representatives). No investigation or
15 hearing shall be conducted on a complaint con-
16 cerning such a failure or misrepresentation un-
17 less the complaint was filed not later than 12
18 months after the date of the failure, or mis-
19 representation, respectively. The Secretary of
20 Labor shall conduct an investigation under this
21 subparagraph if there is reasonable cause to be-
22 lieve that such a failure or misrepresentation
23 has occurred.

24 “(B) DETERMINATION ON COMPLAINT.—

25 Under such process, the Secretary of Labor
26 shall provide, within 30 days after the date

1 such a complaint is filed, for a determination as
2 to whether or not a reasonable basis exists to
3 make a finding described in subparagraph (C),
4 (D), (E), or (G). If the Secretary of Labor de-
5 termines that such a reasonable basis exists,
6 the Secretary of Labor shall provide for notice
7 of such determination to the interested parties
8 and an opportunity for a hearing on the com-
9 plaint, in accordance with section 556 of title 5,
10 United States Code, within 60 days after the
11 date of the determination. If such a hearing is
12 requested, the Secretary of Labor shall make a
13 finding concerning the matter not later than 60
14 days after the date of the hearing. In the case
15 of similar complaints respecting the same appli-
16 cant, the Secretary of Labor may consolidate
17 the hearings under this subparagraph on such
18 complaints.

19 “(C) FAILURES TO MEET CONDITIONS.—If
20 the Secretary of Labor finds, after notice and
21 opportunity for a hearing, a failure to meet a
22 condition of paragraph (1)(A), (1)(B), (1)(D),
23 (1)(F), (2)(A), (2)(B), or (2)(G) of section
24 218C(b), a substantial failure to meet a condi-
25 tion of paragraph (1)(C), (1)(E), (2)(C),

1 (2)(D), (2)(E), or (2)(H) of section 218C(b), or
2 a material misrepresentation of fact in an appli-
3 cation under section 218C(a)—

4 “(i) the Secretary of Labor shall no-
5 tify the Secretary of such finding and may,
6 in addition, impose such other administra-
7 tive remedies (including civil money pen-
8 alties in an amount not to exceed \$1,000
9 per violation) as the Secretary of Labor
10 determines to be appropriate; and

11 “(ii) the Secretary may disqualify the
12 employer from the employment of aliens
13 described in section 101(a)(15)(H)(ii)(a)
14 for a period of 1 year.

15 “(D) WILLFUL FAILURES AND WILLFUL
16 MISREPRESENTATIONS.—If the Secretary of
17 Labor finds, after notice and opportunity for
18 hearing, a willful failure to meet a condition of
19 section 218C(b), a willful misrepresentation of
20 a material fact in an application under section
21 218C(a), or a violation of subsection (d)(1)—

22 “(i) the Secretary of Labor shall no-
23 tify the Secretary of such finding and may,
24 in addition, impose such other administra-
25 tive remedies (including civil money pen-

1 alties in an amount not to exceed \$5,000
2 per violation) as the Secretary of Labor
3 determines to be appropriate;

4 “(ii) the Secretary of Labor may seek
5 appropriate legal or equitable relief to ef-
6 fectuate the purposes of subsection (d)(1);
7 and

8 “(iii) the Secretary may disqualify the
9 employer from the employment of H-2A
10 workers for a period of 2 years.

11 “(E) DISPLACEMENT OF UNITED STATES
12 WORKERS.—If the Secretary of Labor finds,
13 after notice and opportunity for hearing, a will-
14 ful failure to meet a condition of section
15 218C(b) or a willful misrepresentation of a ma-
16 terial fact in an application under section
17 218C(a), in the course of which failure or mis-
18 representation the employer displaced a United
19 States worker employed by the employer during
20 the period of employment on the employer’s ap-
21 plication under section 218C(a) or during the
22 period of 30 days preceding such period of em-
23 ployment—

24 “(i) the Secretary of Labor shall no-
25 tify the Secretary of such finding and may,

1 in addition, impose such other administra-
2 tive remedies (including civil money pen-
3 alties in an amount not to exceed \$15,000
4 per violation) as the Secretary of Labor
5 determines to be appropriate; and

6 “(ii) the Secretary may disqualify the
7 employer from the employment of H-2A
8 workers for a period of 3 years.

9 “(F) LIMITATIONS ON CIVIL MONEY PEN-
10 ALTIES.—The Secretary of Labor shall not im-
11 pose total civil money penalties with respect to
12 an application under section 218C(a) in excess
13 of \$90,000.

14 “(G) FAILURES TO PAY WAGES OR RE-
15 QUIRED BENEFITS.—If the Secretary of Labor
16 finds, after notice and opportunity for a hear-
17 ing, that the employer has failed to pay the
18 wages, or provide the housing allowance, trans-
19 portation, subsistence reimbursement, or guar-
20 antee of employment, required under section
21 218D(b), the Secretary of Labor shall assess
22 payment of back wages, or other required bene-
23 fits, due any United States worker or H-2A
24 worker employed by the employer in the specific
25 employment in question. The back wages or

1 other required benefits under section 218D(b)
2 shall be equal to the difference between the
3 amount that should have been paid and the
4 amount that actually was paid to such worker.

5 “(2) STATUTORY CONSTRUCTION.—Nothing in
6 this section shall be construed as limiting the au-
7 thority of the Secretary of Labor to conduct any
8 compliance investigation under any other labor law,
9 including any law affecting migrant and seasonal ag-
10 ricultural workers, or, in the absence of a complaint
11 under this section, under section 218C or 218D.

12 “(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF
13 ACTION.—H-2A workers may enforce the following rights
14 through the private right of action provided in subsection
15 (c), and no other right of action shall exist under Federal
16 or State law to enforce such rights:

17 “(1) The providing of housing or a housing al-
18 lowance as required under section 218D(b)(1).

19 “(2) The reimbursement of transportation as
20 required under section 218D(b)(2).

21 “(3) The payment of wages required under sec-
22 tion 218D(b)(3) when due.

23 “(4) The benefits and material terms and con-
24 ditions of employment expressly provided in the job
25 offer described in section 218C(a)(2), not including

1 the assurance to comply with other Federal, State,
2 and local labor laws described in section 218D(c),
3 compliance with which shall be governed by the pro-
4 visions of such laws.

5 “(5) The guarantee of employment required
6 under section 218D(b)(4).

7 “(6) The motor vehicle safety requirements
8 under section 218D(b)(5).

9 “(7) The prohibition of discrimination under
10 subsection (d)(2).

11 “(c) PRIVATE RIGHT OF ACTION.—

12 “(1) MEDIATION.—Upon the filing of a com-
13 plaint by an H-2A worker aggrieved by a violation
14 of rights enforceable under subsection (b), and with-
15 in 60 days of the filing of proof of service of the
16 complaint, a party to the action may file a request
17 with the Federal Mediation and Conciliation Service
18 to assist the parties in reaching a satisfactory reso-
19 lution of all issues involving all parties to the dis-
20 pute. Upon a filing of such request and giving of no-
21 tice to the parties, the parties shall attempt medi-
22 ation within the period specified in subparagraph
23 (B).

24 “(A) MEDIATION SERVICES.—The Federal
25 Mediation and Conciliation Service shall be

1 available to assist in resolving disputes arising
2 under subsection (b) between H-2A workers
3 and agricultural employers without charge to
4 the parties.

5 “(B) 90-DAY LIMIT.—The Federal Medi-
6 ation and Conciliation Service may conduct me-
7 diation or other nonbinding dispute resolution
8 activities for a period not to exceed 90 days be-
9 ginning on the date on which the Federal Medi-
10 ation and Conciliation Service receives the re-
11 quest for assistance unless the parties agree to
12 an extension of this period of time.

13 “(C) AUTHORIZATION.—

14 “(i) IN GENERAL.—Subject to clause
15 (ii), there are authorized to be appro-
16 priated to the Federal Mediation and Con-
17 ciliation Service \$500,000 for each fiscal
18 year to carry out this section.

19 “(ii) MEDIATION.—Notwithstanding
20 any other provision of law, the Director of
21 the Federal Mediation and Conciliation
22 Service is authorized to conduct the medi-
23 ation or other dispute resolution activities
24 from any other appropriated funds avail-
25 able to the Director and to reimburse such

1 appropriated funds when the funds are ap-
2 propriated pursuant to this authorization,
3 such reimbursement to be credited to ap-
4 propriations currently available at the time
5 of receipt.

6 “(2) MAINTENANCE OF CIVIL ACTION IN DIS-
7 TRICT COURT BY AGGRIEVED PERSON.—An H-2A
8 worker aggrieved by a violation of rights enforceable
9 under subsection (b) by an agricultural employer or
10 other person may file suit in any district court of the
11 United States having jurisdiction over the parties,
12 without regard to the amount in controversy, with-
13 out regard to the citizenship of the parties, and
14 without regard to the exhaustion of any alternative
15 administrative remedies under this Act, not later
16 than 3 years after the date the violation occurs.

17 “(3) ELECTION.—An H-2A worker who has
18 filed an administrative complaint with the Secretary
19 of Labor may not maintain a civil action under
20 paragraph (2) unless a complaint based on the same
21 violation filed with the Secretary of Labor under
22 subsection (a)(1) is withdrawn before the filing of
23 such action, in which case the rights and remedies
24 available under this subsection shall be exclusive.

1 “(4) PREEMPTION OF STATE CONTRACT
2 RIGHTS.—Nothing in this Act shall be construed to
3 diminish the rights and remedies of an H-2A worker
4 under any other Federal or State law or regulation
5 or under any collective bargaining agreement, except
6 that no court or administrative action shall be avail-
7 able under any State contract law to enforce the
8 rights created by this Act.

9 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-
10 ments by employees purporting to waive or modify
11 their rights under this Act shall be void as contrary
12 to public policy, except that a waiver or modification
13 of the rights or obligations in favor of the Secretary
14 of Labor shall be valid for purposes of the enforce-
15 ment of this Act. The preceding sentence may not
16 be construed to prohibit agreements to settle private
17 disputes or litigation.

18 “(6) AWARD OF DAMAGES OR OTHER EQUI-
19 TABLE RELIEF.—

20 “(A) If the court finds that the respondent
21 has intentionally violated any of the rights en-
22 forceable under subsection (b), it shall award
23 actual damages, if any, or equitable relief.

1 “(B) Any civil action brought under this
2 section shall be subject to appeal as provided in
3 chapter 83 of title 28, United States Code.

4 “(C) In determining the amount of dam-
5 ages to be awarded under subparagraph (A),
6 the court is authorized to consider whether an
7 attempt was made to resolve the issues in dis-
8 pute before the resort to litigation.

9 “(7) WORKERS’ COMPENSATION BENEFITS.—

10 “(A) EXCLUSIVE REMEDY.—Notwith-
11 standing any other provision of this section,
12 where a State’s workers’ compensation law is
13 applicable and coverage is provided for an H-
14 2A worker, the workers’ compensation benefits
15 shall be the exclusive remedy for the loss of
16 such worker under this section in the case of
17 bodily injury or death in accordance with such
18 State’s workers’ compensation law.

19 “(B) RELATIONSHIP TO OTHER RELIEF.—
20 The exclusive remedy prescribed in subpara-
21 graph (A) precludes the recovery under para-
22 graph (6) of actual damages for loss from an
23 injury or death but does not preclude other eq-
24 uitable relief, except that such relief shall not
25 include back or front pay or in any manner, di-

1 rectly or indirectly, expand or otherwise alter or
2 affect—

3 “(i) a recovery under a State workers’
4 compensation law; or

5 “(ii) rights conferred under a State
6 workers’ compensation law.

7 “(C) CONSIDERATIONS.—In determining
8 the amount of damages to be awarded under
9 subparagraph (A), a court may consider wheth-
10 er an attempt was made to resolve the issues in
11 dispute prior to resorting to litigation.

12 “(8) TOLLING OF STATUTE OF LIMITATIONS.—
13 If it is determined under a State workers’ compensa-
14 tion law that the workers’ compensation law is not
15 applicable to a claim for bodily injury or death of an
16 H-2A worker, the statute of limitations for bringing
17 an action for actual damages for such injury or
18 death under subsection (c) shall be tolled for the pe-
19 riod during which the claim for such injury or death
20 under such State workers’ compensation law was
21 pending. The statute of limitations for an action for
22 actual damages or other equitable relief arising out
23 of the same transaction or occurrence as the injury
24 or death of the H-2A worker shall be tolled for the
25 period during which the claim for such injury or

1 death was pending under the State workers' com-
2 pensation law.

3 “(9) PRECLUSIVE EFFECT.—Any settlement by
4 an H-2A worker and an H-2A employer or any per-
5 son reached through the mediation process required
6 under subsection (c)(1) shall preclude any right of
7 action arising out of the same facts between the par-
8 ties in any Federal or State court or administrative
9 proceeding, unless specifically provided otherwise in
10 the settlement agreement.

11 “(10) SETTLEMENTS.—Any settlement by the
12 Secretary of Labor with an H-2A employer on be-
13 half of an H-2A worker of a complaint filed with the
14 Secretary of Labor under this section or any finding
15 by the Secretary of Labor under subsection
16 (a)(1)(B) shall preclude any right of action arising
17 out of the same facts between the parties under any
18 Federal or State court or administrative proceeding,
19 unless specifically provided otherwise in the settle-
20 ment agreement.

21 “(d) DISCRIMINATION PROHIBITED.—

22 “(1) IN GENERAL.—It is a violation of this sub-
23 section for any person who has filed an application
24 under section 218C(a), to intimidate, threaten, re-
25 strain, coerce, blacklist, discharge, or in any other

1 manner discriminate against an employee (which
2 term, for purposes of this subsection, includes a
3 former employee and an applicant for employment)
4 because the employee has disclosed information to
5 the employer, or to any other person, that the em-
6 ployee reasonably believes evidences a violation of
7 section 218C or 218D or any rule or regulation per-
8 taining to section 218C or 218D, or because the em-
9 ployee cooperates or seeks to cooperate in an inves-
10 tigation or other proceeding concerning the employ-
11 er's compliance with the requirements of section
12 218C or 218D or any rule or regulation pertaining
13 to either of such sections.

14 “(2) DISCRIMINATION AGAINST H-2A WORK-
15 ERS.—It is a violation of this subsection for any per-
16 son who has filed an application under section
17 218C(a), to intimidate, threaten, restrain, coerce,
18 blacklist, discharge, or in any manner discriminate
19 against an H-2A employee because such worker has,
20 with just cause, filed a complaint with the Secretary
21 of Labor regarding a denial of the rights enumer-
22 ated and enforceable under subsection (b) or insti-
23 tuted, or caused to be instituted, a private right of
24 action under subsection (c) regarding the denial of
25 the rights enumerated under subsection (b), or has

1 testified or is about to testify in any court pro-
2 ceeding brought under subsection (c).

3 “(e) AUTHORIZATION TO SEEK OTHER APPRO-
4 PRIATE EMPLOYMENT.—The Secretary of Labor and the
5 Secretary shall establish a process under which an H-2A
6 worker who files a complaint regarding a violation of sub-
7 section (d) and is otherwise eligible to remain and work
8 in the United States may be allowed to seek other appro-
9 priate employment in the United States for a period not
10 to exceed the maximum period of stay authorized for such
11 nonimmigrant classification.

12 “(f) ROLE OF ASSOCIATIONS.—

13 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
14 TION.—An employer on whose behalf an application
15 is filed by an association acting as its agent is fully
16 responsible for such application, and for complying
17 with the terms and conditions of sections 218C and
18 218D, as though the employer had filed the applica-
19 tion itself. If such an employer is determined, under
20 this section, to have committed a violation, the pen-
21 alty for such violation shall apply only to that mem-
22 ber of the association unless the Secretary of Labor
23 determines that the association or other member
24 participated in, had knowledge, or reason to know,
25 of the violation, in which case the penalty shall be

1 invoked against the association or other association
2 member as well.

3 “(2) VIOLATIONS BY AN ASSOCIATION ACTING
4 AS AN EMPLOYER.—If an association filing an appli-
5 cation as a sole or joint employer is determined to
6 have committed a violation under this section, the
7 penalty for such violation shall apply only to the as-
8 sociation unless the Secretary of Labor determines
9 that an association member or members participated
10 in or had knowledge, or reason to know of the viola-
11 tion, in which case the penalty shall be invoked
12 against the association member or members as well.

13 **“SEC. 218G. DEFINITIONS.**

14 “For purposes of this section and section 218C,
15 218D, 218E, and 218F:

16 “(1) AGRICULTURAL EMPLOYMENT.—The term
17 ‘agricultural employment’ means any service or ac-
18 tivity that is considered to be agricultural under sec-
19 tion 3(f) of the Fair Labor Standards Act of 1938
20 (29 U.S.C. 203(f)) or agricultural labor under sec-
21 tion 3121(g) of the Internal Revenue Code of 1986
22 or the performance of agricultural labor or services
23 described in section 101(a)(15)(H)(ii)(a).

24 “(2) BONA FIDE UNION.—The term ‘bona fide
25 union’ means any organization in which employees

1 participate and which exists for the purpose of deal-
2 ing with employers concerning grievances, labor dis-
3 putes, wages, rates of pay, hours of employment, or
4 other terms and conditions of work for agricultural
5 employees. Such term does not include an organiza-
6 tion formed, created, administered, supported, domi-
7 nated, financed, or controlled by an employer or em-
8 ployer association or its agents or representatives.

9 “(3) DISPLACE.—The term ‘displace’, in the
10 case of an application with respect to 1 or more H-
11 2A workers by an employer, means laying off a
12 United States worker from a job for which the H-
13 2A worker or workers is or are sought.

14 “(4) ELIGIBLE.—The term ‘eligible’, when used
15 with respect to an individual, means an individual
16 who is not an unauthorized alien (as defined in sec-
17 tion 274A).

18 “(5) EMPLOYER.—The term ‘employer’ means
19 any person or entity, including any farm labor con-
20 tractor and any agricultural association, that em-
21 ploys workers in agricultural employment.

22 “(6) H-2A EMPLOYER.—The term ‘H-2A em-
23 ployer’ means an employer who seeks to hire 1 or
24 more nonimmigrant aliens described in section
25 101(a)(15)(H)(ii)(a).

1 “(7) H-2A WORKER.—The term ‘H-2A worker’
2 means a nonimmigrant described in section
3 101(a)(15)(H)(ii)(a).

4 “(8) JOB OPPORTUNITY.—The term ‘job oppor-
5 tunity’ means a job opening for temporary or sea-
6 sonal full-time employment at a place in the United
7 States to which United States workers can be re-
8 ferred.

9 “(9) LAYING OFF.—

10 “(A) IN GENERAL.—The term ‘laying off’,
11 with respect to a worker—

12 “(i) means to cause the worker’s loss
13 of employment, other than through a dis-
14 charge for inadequate performance, viola-
15 tion of workplace rules, cause, voluntary
16 departure, voluntary retirement, contract
17 impossibility (as described in section
18 218D(b)(4)(D)), or temporary suspension
19 of employment due to weather, markets, or
20 other temporary conditions; but

21 “(ii) does not include any situation in
22 which the worker is offered, as an alter-
23 native to such loss of employment, a simi-
24 lar employment opportunity with the same
25 employer (or, in the case of a placement of

1 a worker with another employer under sec-
2 tion 218C(b)(2)(E), with either employer
3 described in such section) at equivalent or
4 higher compensation and benefits than the
5 position from which the employee was dis-
6 charged, regardless of whether or not the
7 employee accepts the offer.

8 “(B) STATUTORY CONSTRUCTION.—Noth-
9 ing in this paragraph is intended to limit an
10 employee’s rights under a collective bargaining
11 agreement or other employment contract.

12 “(10) REGULATORY DROUGHT.—The term ‘reg-
13 ulatory drought’ means a decision subsequent to the
14 filing of the application under section 218C by an
15 entity not under the control of the employer making
16 such filing which restricts the employer’s access to
17 water for irrigation purposes and reduces or limits
18 the employer’s ability to produce an agricultural
19 commodity, thereby reducing the need for labor.

20 “(11) SEASONAL.—

21 “(A) IN GENERAL.—The term ‘seasonal’,
22 with respect to the performance of labor, means
23 that the labor—

1 “(i) ordinarily pertains to or is of the
2 kind exclusively performed at certain sea-
3 sons or periods of the year; and

4 “(ii) because of the nature of the
5 labor, cannot be continuous or carried on
6 throughout the year.

7 “(B) EXCEPTION.—Labor performed on a
8 dairy farm shall be considered to be seasonal
9 labor.

10 “(12) SECRETARY.—Except as otherwise pro-
11 vided, the term ‘Secretary’ means the Secretary of
12 Homeland Security.

13 “(13) TEMPORARY.—A worker is employed on a
14 ‘temporary’ basis where the employment is intended
15 not to exceed 10 months.

16 “(14) UNITED STATES WORKER.—The term
17 ‘United States worker’ means any worker, whether
18 a national of the United States, an alien lawfully ad-
19 mitted for permanent residence, or any other alien,
20 who is authorized to work in the job opportunity
21 within the United States, except an alien admitted
22 or otherwise provided status under section
23 101(a)(15)(H)(ii)(a).”.

24 “(b) TABLE OF CONTENTS.—The table of contents of
25 the Immigration and Nationality Act (8 U.S.C. 1101 et

1 seq.) is amended by striking the item relating to section
 2 218 and inserting the following:

“Sec. 218C. H-2A employer applications.

“Sec. 218D. H-2A employment requirements.

“Sec. 218E. Procedure for admission and extension of stay of H-2A workers.

“Sec. 218F. Worker protections and labor standards enforcement.

“Sec. 218G. Definitions.”.

3 (c) CONFORMING AMENDMENT.—Section
 4 101(a)(15)(H)(ii)(a) of the Immigration and Nationality
 5 Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is amended by in-
 6 serting “or work on a dairy farm,” after “seasonal na-
 7 ture,”.

8 **SEC. 405. DETERMINATION AND USE OF USER FEES.**

9 (a) SCHEDULE OF FEES.—The Secretary shall estab-
 10 lish and periodically adjust a schedule of fees for the em-
 11 ployment of aliens pursuant to the amendment made by
 12 section 404(a) of this Act and a collection process for such
 13 fees from employers. Such fees shall be the only fees
 14 chargeable to employers for services provided under such
 15 amendment.

16 (b) DETERMINATION OF SCHEDULE.—

17 (1) IN GENERAL.—The schedule under sub-
 18 section (a) shall reflect a fee rate based on the num-
 19 ber of job opportunities indicated in the employer’s
 20 application under section 218C of the Immigration
 21 and Nationality Act, as amended by section 404 of
 22 this Act, and sufficient to provide for the direct
 23 costs of providing services related to an employer’s

1 authorization to employ aliens pursuant to the
2 amendment made by section 404(a) of this Act, to
3 include the certification of eligible employers, the
4 issuance of documentation, and the admission of eli-
5 gible aliens.

6 (2) PROCEDURE.—

7 (A) IN GENERAL.—In establishing and ad-
8 justing such a schedule, the Secretary shall
9 comply with Federal cost accounting and fee
10 setting standards.

11 (B) PUBLICATION AND COMMENT.—The
12 Secretary shall publish in the Federal Register
13 an initial fee schedule and associated collection
14 process and the cost data or estimates upon
15 which such fee schedule is based, and any sub-
16 sequent amendments thereto, pursuant to which
17 public comment shall be sought and a final rule
18 issued.

19 (c) USE OF PROCEEDS.—Notwithstanding any other
20 provision of law, all proceeds resulting from the payment
21 of the fees pursuant to the amendment made by section
22 404(a) of this Act shall be available without further appro-
23 priation and shall remain available without fiscal year lim-
24 itation to reimburse the Secretary, the Secretary of State,
25 and the Secretary of Labor for the costs of carrying out

1 sections 218C and 218E of the Immigration and Nation-
2 ality Act, as amended and added, respectively, by section
3 404 of this Act, and the provisions of this Act.

4 **SEC. 406. REGULATIONS.**

5 (a) **REQUIREMENT FOR THE SECRETARY TO CON-**
6 **SULT.**—The Secretary shall consult with the Secretary of
7 Labor and the Secretary of Agriculture during the promul-
8 gation of all regulations to implement the duties of the
9 Secretary under this Act and the amendments made by
10 this Act.

11 (b) **REQUIREMENT FOR THE SECRETARY OF STATE**
12 **TO CONSULT.**—The Secretary of State shall consult with
13 the Secretary, the Secretary of Labor, and the Secretary
14 of Agriculture on all regulations to implement the duties
15 of the Secretary of State under this Act and the amend-
16 ments made by this Act.

17 (c) **REQUIREMENT FOR THE SECRETARY OF LABOR**
18 **TO CONSULT.**—The Secretary of Labor shall consult with
19 the Secretary of Agriculture and the Secretary on all regu-
20 lations to implement the duties of the Secretary of Labor
21 under this Act and the amendments made by this Act.

22 (d) **DEADLINE FOR ISSUANCE OF REGULATIONS.**—
23 All regulations to implement the duties of the Secretary,
24 the Secretary of State, and the Secretary of Labor created
25 under sections 218C, 218D, 218E, 218F, and 218G of

1 the Immigration and Nationality Act, as amended or
2 added by section 404 of this Act, shall take effect on the
3 effective date of section 404 and shall be issued not later
4 than 1 year after the date of enactment of this Act, or
5 the date such regulations are promulgated, whichever is
6 sooner.

7 **SEC. 407. REPORTS TO CONGRESS.**

8 (a) ANNUAL REPORT.—Not later than September 30
9 of each year, the Secretary shall submit a report to Con-
10 gress that identifies, for the previous year—

11 (1) the number of job opportunities approved
12 for employment of aliens admitted under section
13 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
14 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the
15 number of workers actually admitted, disaggregated
16 by State and by occupation;

17 (2) the number of such aliens reported to have
18 abandoned employment pursuant to subsection
19 218E(e)(2) of such Act;

20 (3) the number of such aliens who departed the
21 United States within the period specified in sub-
22 section 218E(d) of such Act;

23 (4) the number of aliens who applied for adjust-
24 ment of status pursuant to section 623;

1 (5) the number of such aliens whose status was
2 adjusted under section 623;

3 (6) the number of aliens who applied for perma-
4 nent residence pursuant to section 214A(j) of the
5 Immigration and Nationality Act, as amended by
6 623(b); and

7 (7) the number of such aliens who were ap-
8 proved for permanent residence pursuant to section
9 214A(j) of the Immigration and Nationality Act, as
10 amended by 623(b).

11 (b) IMPLEMENTATION REPORT.—Not later than 180
12 days after the date of the enactment of this Act, the Sec-
13 retary shall prepare and submit to Congress a report that
14 describes the measures being taken and the progress made
15 in implementing this Act.

16 **SEC. 408. EFFECTIVE DATE.**

17 Except as otherwise provided, sections 404 and 405
18 shall take effect 1 year after the date of the enactment
19 of this Act, or the date such regulations are promulgated,
20 whichever is sooner.

21 **SEC. 409. NUMERICAL LIMITATIONS.**

22 Section 214(g) of the Act (8 U.S.C. 1184(g)) is
23 amended—

24 (1) in paragraph (1)—

1 (A) by striking “(beginning with fiscal year
2 1992)”;

3 (B) by striking subparagraph (B) and in-
4 serting the following:

5 “(B) under section 101(a)(15)(Y)(i), may
6 not exceed 200,000 for each fiscal year; or

7 “(C) under section 101(a)(15)(Y)(iii), may
8 not exceed twenty percent of the annual limit
9 on admissions of aliens under section
10 101(a)(15)(Y)(i) for that fiscal year; or

11 “(D) under section 101(a)(15)(Y)(ii)(II),
12 may not exceed—

13 “(i) 100,000 for the first fiscal year
14 in which the program is implemented;

15 “(ii) in any subsequent fiscal year,
16 subject to clause (iii), the number for the
17 previous fiscal year as adjusted in accord-
18 ance with the method set forth in para-
19 graph (2); and

20 “(iii) 200,000 for any fiscal year.”;

21 and

22 (2) by renumbering paragraph (2) as paragraph
23 (3), and renumbering all subsequent paragraphs ac-
24 cordingly, and inserting the following as paragraph
25 (2):

1 “(2) MARKET-BASED ADJUSTMENT.—With re-
2 spect to the numerical limitation set in subpara-
3 graph (A)(ii) or (D)(ii) of paragraph (1)—

4 “(A) if the total number of visas allocated
5 for that fiscal year are allotted within the first
6 half of that fiscal year, then an additional 15
7 percent of the allocated number shall be made
8 available immediately and the allocated amount
9 for the following fiscal year shall increase by 15
10 percent of the original allocated amount in the
11 prior fiscal year;

12 “(B) if the total number of visas allocated
13 for that fiscal year are allotted within the sec-
14 ond half of that fiscal year, then the allocated
15 amount for the following fiscal year shall in-
16 crease by 10 percent of the original allocated
17 amount in the prior fiscal year; and

18 “(C) with the exception of the first subse-
19 quent fiscal year to the fiscal year in which the
20 program is implemented, if fewer visas were al-
21 lotted the previous fiscal year than the number
22 of visas allocated for that year and the reason
23 was not due to processing delays or delays in
24 promulgating regulations, then the allocated
25 amount for the following fiscal year shall de-

1 crease by 10 percent of the allocated amount in
2 the prior fiscal year.”

3 (3) in paragraph (9)(A) by striking “an alien
4 who has already been counted toward the numerical
5 limitation of paragraph (1)(B) during fiscal year
6 2004, 2005, or 2006 shall not again be counted to-
7 ward such limitation during fiscal year 2007.” and
8 inserting “an alien who has been present in the
9 United States as an H-2B nonimmigrant during
10 any 1 of 3 fiscal years immediately preceding the fis-
11 cal year of the approved start date of a petition for
12 a nonimmigrant worker described in section
13 101(a)(15)(H)(ii)(b) shall not be counted toward
14 such limitation for the fiscal year in which the peti-
15 tion is approved. Such alien shall be considered a re-
16 turning worker.”

17 **SEC. 410. REQUIREMENTS FOR PARTICIPATING COUN-**
18 **TRIES.**

19 (a) **IN GENERAL.**—The Secretary of State, in co-
20 operation with the Secretary and the Attorney General,
21 may, as a condition of authorizing the grant of non-
22 immigrant visas for Y nonimmigrants who are citizens or
23 nationals of any foreign country, negotiate with each such
24 country to enter into a bilateral agreement with the

1 United States that conforms to the requirements under
2 subsection (b).

3 (b) REQUIREMENTS OF BILATERAL AGREEMENTS.—

4 It is the sense of Congress that each agreement negotiated
5 under subsection (a) shall require the participating home
6 country to—

7 (1) accept the return of nationals who are or-
8 dered removed from the United States within 3 days
9 of such removal;

10 (2) cooperate with the United States Govern-
11 ment to—

12 (A) identify, track, and reduce gang mem-
13 bership, violence, and human trafficking and
14 smuggling; and

15 (B) control illegal immigration;

16 (3) provide the United States Government
17 with—

18 (A) passport information and criminal
19 records of aliens who are seeking admission to,
20 or are present in, the United States; and

21 (B) admission and entry data to facilitate
22 United States entry-exit data systems;

23 (4) educate nationals of the home country re-
24 garding United States temporary worker programs
25 to ensure that such nationals are not exploited; and

1 (5) evaluate means to provide housing incen-
2 tives in the alien's home country for returning work-
3 ers; and

4 (6) agree to such other terms as the Secretary
5 of State considers appropriate and necessary.

6 **SEC. 411. COMPLIANCE INVESTIGATORS.**

7 (a) The Secretary of Labor, subject to the availability
8 of appropriations for such purpose, shall increase, by not
9 less than 200 per year for each of the five fiscal years
10 after the date of enactment of [name of bill], the number
11 of positions for compliance investigators and attorneys
12 dedicated to the enforcement of labor standards, including
13 those contained in sections 218A, 218B, and 218C, the
14 Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.)
15 and the Occupational Safety and Health Act of 1970 (29
16 U.S.C. 651 et seq.) in geographic and occupational areas
17 in which a high percentage of workers are Y non-
18 immigrants.

19 **SEC. 412. STANDING COMMISSION ON IMMIGRATION AND**
20 **LABOR MARKETS.**

21 (a) ESTABLISHMENT OF COMMISSION.—

22 (1) IN GENERAL.—There is established an inde-
23 pendent Federal agency within the Executive Branch
24 to be known as the Standing Commission on Immi-

1 gration and Labor Markets (referred to in this sec-
2 tion as the “Commission”).

3 (2) PURPOSES.—The purposes of the Commis-
4 sion are—

5 (A) to study nonimmigrant programs and
6 the numerical limits imposed by law on admis-
7 sion of nonimmigrants;

8 (B) to study the numerical limits imposed
9 by law on immigrant visas;

10 (C) to study the allocation of immigrant
11 visas through the merit-based system;

12 (D) to make recommendations to the
13 President and Congress with respect to such
14 programs.

15 (3) MEMBERSHIP.—The Commission shall be
16 composed of—

17 (A) 6 voting members—

18 (i) who shall be appointed by the
19 President, with the advice and consent of
20 the Senate, not later than 6 months after
21 the establishment of the Y Nonimmigrant
22 Worker Program;

23 (ii) who shall serve for 3-year stag-
24 gered terms, which can be extended for 1
25 additional 3-year term;

1 (iii) who shall select a Chair from
2 among the voting members to serve a 2-
3 year term, which can be extended for 1 ad-
4 ditional 2-year term;

5 (iv) who shall have expertise in eco-
6 nomics, demography, labor, business, or
7 immigration or other pertinent qualifica-
8 tions or experience;

9 (v) who may not be an employee of
10 the Federal Government or of any State or
11 local government; and

12 (vi) not more than 3 of whom may be
13 members of the same political party.

14 (B) 7 ex-officio members, including—

15 (i) the Secretary;

16 (ii) the Secretary of State;

17 (iii) the Attorney General;

18 (iv) the Secretary of Labor;

19 (v) the Secretary of Commerce;

20 (vi) the Secretary of Health and
21 Human Services; and

22 (vii) the Secretary of Agriculture.

23 (4) VACANCIES.—Any vacancy in the Commis-
24 sion shall be filled in the same manner as the origi-
25 nal appointment.

1 (5) MEETINGS.—

2 (A) INITIAL MEETING.—The Commission
3 shall meet and begin carrying out the duties de-
4 scribed in subsection (b) as soon as practicable.

5 (B) SUBSEQUENT MEETINGS.—After its
6 initial meeting, the Commission shall meet at
7 least once per quarter upon the call of the
8 Chair or a majority of its members.

9 (C) QUORUM.—Four voting members of
10 the Commission shall constitute a quorum.

11 (b) DUTIES OF THE COMMISSION.—The Commission
12 shall—

13 (1) examine and analyze—

14 (A) the development and implementation of
15 the programs;

16 (B) the criteria for the admission of non-
17 immigrant workers;

18 (C) the formula for determining the annual
19 numerical limitations of nonimmigrant workers;

20 (D) the impact of nonimmigrant workers
21 on immigration;

22 (E) the impact of nonimmigrant workers
23 on the economy, unemployment rate, wages,
24 workforce, and businesses of the United States;

1 (F) the numerical limits imposed by law on
2 immigrant visas and its effect on the economy,
3 unemployment rate, wages, workforce, and busi-
4 nesses of the United States;

5 (G) the allocation of immigrant visas
6 through the evaluation system established by
7 title V of this Act; and

8 (H) any other matters regarding the pro-
9 grams that the Commission considers appro-
10 priate;

11 (2) not later than 18 months after the date of
12 enactment, and every year thereafter, submit a re-
13 port to the President and Congress that—

14 (A) contains the findings of the analysis
15 conducted under paragraph (1);

16 (B) makes recommendations regarding the
17 necessary adjustments to the programs studied
18 to meet the labor market needs of the United
19 States; and

20 (C) makes other recommendations regard-
21 ing the programs, including legislative or ad-
22 ministrative action, that the Commission deter-
23 mines to be in the national interest.

24 (c) INFORMATION AND ASSISTANCE FROM FEDERAL
25 AGENCIES.—

1 (1) INFORMATION.—The head of any Federal
2 department or agency that receives a request from
3 the Commission for information, including sugges-
4 tions, estimates, and statistics, as the Commission
5 considers necessary to carry out the provisions of
6 this section, shall furnish such information to the
7 Commission, to the extent allowed by law.

8 (2) ASSISTANCE.—

9 (A) GENERAL SERVICES ADMINISTRA-
10 TION.—The Administrator of General Services
11 shall, on a reimbursable basis, provide the Com-
12 mission with administrative support and other
13 services for the performance of the Commis-
14 sion's functions.

15 (B) OTHER FEDERAL AGENCIES.—The de-
16 partments and agencies of the United States
17 may provide the Commission with such services,
18 funds, facilities, staff, and other support serv-
19 ices as the heads of such departments and
20 agencies determine advisable and authorized by
21 law.

22 (d) PERSONNEL MATTERS.—

23 (1) STAFF.—

24 (A) APPOINTMENT AND COMPENSATION.—

25 The Chair, in accordance with rules agreed

1 upon by the Commission, may appoint and fix
2 the compensation of a staff director and such
3 other personnel as may be necessary to enable
4 the Commission to carry out its functions.

5 (B) FEDERAL EMPLOYEES.—

6 (i) IN GENERAL.—Except as provided
7 under clause (ii), the executive director and
8 any personnel of the Commission who are
9 employees shall be considered to be em-
10 ployees under section 2105 of title 5,
11 United States Code, for purposes of chap-
12 ters 63, 81, 83, 84, 85, 87, 89, and 90 of
13 such title.

14 (ii) COMMISSION MEMBERS.—Clause
15 (i) shall not apply to members of the Com-
16 mission.

17 (2) DETAILEES.—Any employee of the Federal
18 Government may be detailed to the Commission
19 without reimbursement from the Commission. Such
20 detailee shall retain the rights, status, and privileges
21 of his or her regular employment without interrup-
22 tion.

23 (3) CONSULTANT SERVICES.—The Commission
24 may procure the services of experts and consultants
25 in accordance with section 3109 of title 5, United

1 States Code, at rates not to exceed the daily rate
2 paid a person occupying a position at level IV of the
3 Executive Schedule under section 5315 of such title
4 5.

5 (e) COMPENSATION AND TRAVEL EXPENSES.—

6 (1) COMPENSATION.—Each voting member of
7 the Commission may be compensated at a rate not
8 to exceed the daily equivalent of the annual rate of
9 basic pay in effect for a position at level IV of the
10 Executive Schedule under section 5315 of title 5,
11 United States Code, for each day during which that
12 member is engaged in the actual performance of the
13 duties of the Commission.

14 (2) TRAVEL EXPENSES.—Members of the Com-
15 mission shall be allowed travel expenses, including
16 per diem in lieu of subsistence, under section
17 5703(b) of title 5, United States Code, while away
18 from their homes or regular places of business in the
19 performance of services for the Commission.

20 (f) FUNDING.—Fees and fines deposited into the
21 Temporary Worker Program Account under section
22 286(w) of the Immigration and Nationality Act, as added
23 by section 402 of [name of the Act], may be used by the
24 Commission to carry out its duties under this section.

1 **SEC. 412. AGENCY REPRESENTATION AND COORDINATION.**

2 Section 274A(e) (8 U.S.C. 1324a(e)) is amended—

3 (1) in paragraph (2)—

4 (A) in subparagraph (A), by striking the
5 comma at the end and inserting a semicolon;

6 (B) in subparagraph (B), by striking “,
7 and” and inserting a semicolon;

8 (C) in subparagraph (C), by striking
9 “paragraph (2).” and inserting “paragraph (1);
10 and”; and

11 (D) by inserting after subparagraph (C)
12 the following:

13 “(D) United States Immigration and Cus-
14 toms Enforcement officials may not misrepre-
15 sent to employees or employers that they are a
16 member of any agency or organization that pro-
17 vides domestic violence services, enforces health
18 and safety law, provides health care services, or
19 any other services intended to protect life and
20 safety.”.

21 **SEC. 413. BILATERAL EFFORTS WITH MEXICO TO REDUCE**
22 **MIGRATION PRESSURES AND COSTS.**

23 (a) FINDINGS.—Congress makes the following find-
24 ings:

1 (1) Migration from Mexico to the United States
2 is directly linked to the degree of economic oppor-
3 tunity and the standard of living in Mexico.

4 (2) Mexico comprises a prime source of migra-
5 tion to the United States.

6 (3) Remittances from Mexican citizens working
7 in the United States reached a record high of nearly
8 \$17,000,000,000 in 2004.

9 (4) Migration patterns may be reduced from
10 Mexico to the United States by addressing the de-
11 gree of economic opportunity available to Mexican
12 citizens.

13 (5) Many Mexican assets are held extra-legally
14 and cannot be readily used as collateral for loans.

15 (6) A majority of Mexican businesses are small
16 or medium size with limited access to financial cap-
17 ital.

18 (7) These factors constitute a major impedi-
19 ment to broad-based economic growth in Mexico.

20 (8) Approximately 20 percent of Mexico's popu-
21 lation works in agriculture, with the majority of this
22 population working on small farms and few on large
23 commercial enterprises.

24 (9) The Partnership for Prosperity is a bilateral
25 initiative launched jointly by the President of the

1 United States and the President of Mexico in 2001,
2 which aims to boost the social and economic stand-
3 ards of Mexican citizens, particularly in regions
4 where economic growth has lagged and emigration
5 has increased.

6 (10) The Presidents of Mexico and the United
7 States and the Prime Minister of Canada, at their
8 trilateral summit on March 23, 2005, agreed to pro-
9 mote economic growth, competitiveness, and quality
10 of life in the agreement on Security and Prosperity
11 Partnership of North America.

12 (b) SENSE OF CONGRESS REGARDING PARTNERSHIP
13 FOR PROSPERITY.—It is the sense of Congress that the
14 United States and Mexico should accelerate the implemen-
15 tation of the Partnership for Prosperity to help generate
16 economic growth and improve the standard of living in
17 Mexico, which will lead to reduced migration, by—

18 (1) increasing access for poor and under served
19 populations in Mexico to the financial services sec-
20 tor, including credit unions;

21 (2) assisting Mexican efforts to formalize its
22 extra-legal sector, including the issuance of formal
23 land titles, to enable Mexican citizens to use their
24 assets to procure capital;

1 (3) facilitating Mexican efforts to establish an
2 effective rural lending system for small- and me-
3 dium-sized farmers that will—

4 (A) provide long term credit to borrowers;

5 (B) develop a viable network of regional
6 and local intermediary lending institutions; and

7 (C) extend financing for alternative rural
8 economic activities beyond direct agricultural
9 production;

10 (4) expanding efforts to reduce the transaction
11 costs of remittance flows in order to increase the
12 pool of savings available to help finance domestic in-
13 vestment in Mexico;

14 (5) encouraging Mexican corporations to adopt
15 internationally recognized corporate governance
16 practices, including anti-corruption and transparency
17 principles;

18 (6) enhancing Mexican efforts to strengthen
19 governance at all levels, including efforts to improve
20 transparency and accountability, and to eliminate
21 corruption, which is the single biggest obstacle to de-
22 velopment;

23 (7) assisting the Government of Mexico in im-
24 plementing all provisions of the Inter-American Con-
25 vention Against Corruption (ratified by Mexico on

1 May 27, 1997) and urging the Government of Mex-
2 ico to participate fully in the Convention's formal
3 implementation monitoring mechanism;

4 (8) helping the Government of Mexico to
5 strengthen education and training opportunities
6 throughout the country, with a particular emphasis
7 on improving rural education; and

8 (9) encouraging the Government of Mexico to
9 create incentives for persons who have migrated to
10 the United States to return to Mexico.

11 (c) SENSE OF CONGRESS REGARDING BILATERAL
12 PARTNERSHIP ON HEALTH CARE.—It is the sense of Con-
13 gress that the Government of the United States and the
14 Government of Mexico should enter into a partnership to
15 examine uncompensated and burdensome health care costs
16 incurred by the United States due to legal and illegal im-
17 migration, including—

18 (1) increasing health care access for poor and
19 under served populations in Mexico;

20 (2) assisting Mexico in increasing its emergency
21 and trauma health care facilities along the border,
22 with emphasis on expanding prenatal care in the
23 United States-Mexico border region;

24 (3) facilitating the return of stable, incapaci-
25 tated workers temporarily employed in the United

1 States to Mexico in order to receive extended, long-
2 term care in their home country; and

3 (4) helping the Government of Mexico to estab-
4 lish a program with the private sector to cover the
5 health care needs of Mexican nationals temporarily
6 employed in the United States.

7 **SEC. 414. WILLING WORKER-WILLING EMPLOYER ELEC-**
8 **TRONIC DATABASE.**

9 (a) **ELECTRONIC JOB REGISTRY LINK.**—

10 (1) The Secretary of Labor shall establish a
11 publicly accessible Web page on the internet website
12 of the Department of Labor that provides a single
13 Internet link to each State workforce agency's state-
14 wide electronic registry of jobs available throughout
15 the United States to United States workers.

16 (2) The Secretary of Labor shall promulgate
17 regulations regarding the maintenance of electronic
18 job registry records by the employer for the purpose
19 of audit or investigations.

20 (3) The Secretary of Labor shall ensure that
21 job opportunities advertised on a State workforce
22 agency statewide electronic job registry established
23 under this section are accessible—

1 (A) by the State workforce agencies, which
2 may further disseminate job opportunity infor-
3 mation to interested parties; and

4 (B) through the internet, for access by
5 workers, employers, labor organizations and
6 other interested parties.

7 (4) The Secretary of Labor may work with pri-
8 vate companies and nonprofit organizations in the
9 development and operation of the job registry link
10 and system under paragraph (1).

11 (b) ELECTRONIC REGISTRY OF CERTIFIED APPLICA-
12 TIONS.—

13 (1) The Secretary of Labor shall compile, on a
14 current basis, a registry (by employer and by occu-
15 pational classification) of the approved labor certifi-
16 cation applications filed under this program. Such
17 registry shall include the wage rate, number of work-
18 ers sought, period of intended employment, and date
19 of need. The Secretary of Labor shall make such
20 registry publicly available through an Internet
21 website.

22 (2) The Secretary of Labor may consult with
23 the Secretary of Homeland Security, and others as
24 appropriate, in the establishment of the registry de-
25 scribed in paragraph (1) to ensure its compatibility

1 with any system designed to track Y nonimmigrant
2 employment that is operated and maintained by the
3 Secretary of Homeland Security.

4 (3) The Secretary of Labor shall ensure that
5 job opportunities advertised on the electronic job
6 registry established under this subsection are acces-
7 sible by the State workforce agencies, which may
8 further disseminate job opportunity information to
9 other interested parties.

10 **SEC. 415. ENUMERATION OF SOCIAL SECURITY NUMBER.**

11 The Secretary of Homeland Security, in coordination
12 with the Commissioner of the Social Security Administra-
13 tion, shall implement a system to allow for the prompt
14 enumeration of a Social Security number after the Sec-
15 retary of Homeland Security has granted an alien Y non-
16 immigrant status.

17 **SEC. 416. CONTRACTING.**

18 Nothing in this section shall be construed to limit the
19 authority of the Secretary of Homeland Security or Sec-
20 retary of Labor to contract with or license United States
21 entities, as provided for in regulation, to implement any
22 provision of this title, either entirely or in part, to the ex-
23 tent that each Secretary in his discretion determines that
24 such implementation is feasible, cost-effective, secure, and
25 in the interest of the United States. However, nothing in

1 this provision shall be construed to alter or amend any
2 of the requirements of OMB Circular A-76 or any other
3 current law governing federal contracting. Any inherently
4 governmental work already performed by employees of the
5 Department of Homeland Security or the Department of
6 Labor, or any inherently governmental work generated by
7 the requirements of this legislation, shall continue to be
8 performed by Federal employees, and any current com-
9 mercial work, or new commercial work generated by the
10 requirements of this legislation, that is subject to public-
11 private competition under OMB Circular A-76 or any
12 other relevant law shall continue to be subject to public-
13 private competition.

14 **SEC. 417. FEDERAL RULEMAKING REQUIREMENTS.**

15 (a) The Secretaries of Labor and Homeland Security
16 shall each issue an interim final rule within six months
17 of the date of enactment of this subtitle to implement this
18 title and the amendments made by this title. Each such
19 interim final rule shall become effective immediately upon
20 publication in the Federal Register. Each such interim
21 final rule shall sunset two years after issuance unless the
22 relevant Secretary issues a final rule within two years of
23 the issuance of the interim final rule.

24 (b) The exemption provided under subsection (a)
25 shall sunset no later than two years after the date of en-

1 actment of this title, provided that, such sunset shall not
2 be construed to impose any requirements on, or affect the
3 validity of, any rule issued or other action taken by either
4 Secretary under such exemption.

5 **Subtitle C—Nonimmigrant Visa**
6 **Reform**

7 **SEC. 418. STUDENT VISAS.**

8 (a) IN GENERAL.—Section 101(a)(15)(F) of the Im-
9 migration and Nationality Act (8 U.S.C. 1101(a)(15)(F))
10 is amended—

11 (1) in clause (i)—

12 (A) by striking “who is” and inserting,
13 “who is—

14 “(I”;

15 (B) by striking “consistent with section
16 214(l)” and inserting “consistent with section
17 214(m”;

18 (C) by striking the comma at the end and
19 inserting the following: “; or

20 “(II) engaged in temporary em-
21 ployment for optional practical train-
22 ing for an aggregate period of not
23 more than 24 months and related to
24 such alien’s major area of study,
25 where such alien has been lawfully en-

1 rolled on a full time basis as a non-
2 immigrant under clause (i) or (iv) at
3 a college, university, conservatory, or
4 seminary described in subclause (i)(I)
5 for one full academic year and such
6 employment occurs:

7 “(aa) during the student’s
8 annual vacation and at other
9 times when school is not in ses-
10 sion, if the student is currently
11 enrolled, and is eligible for reg-
12 istration and intends to register
13 for the next term or session;

14 “(bb) while school is in ses-
15 sion, provided that practical
16 training does not exceed 20 hours
17 a week while school is in session;
18 or

19 “(cc) within a 26-month pe-
20 riod after completion of all course
21 requirements for the degree (ex-
22 cluding thesis or equivalent);”;
23 and

1 (D) by striking “Attorney General” the
2 two times that phrase appears and inserting
3 “Secretary of Homeland Security”.

4 (2) in clause (ii)—

5 (A) by inserting “or (iv)” after “clause
6 (i)”; and

7 (B) by striking “, and” and inserting a
8 semicolon; and

9 (3) by adding at the end the following:

10 “(iv) an alien described in clause (i),
11 except that the alien is not required to
12 have a residence in a foreign country that
13 the alien has no intention of abandoning,
14 who has been accepted at and plans to at-
15 tend an accredited graduate program in
16 mathematics, engineering, information
17 technology, or the natural sciences in the
18 United States for the purpose of obtaining
19 an advanced degree; and

20 “(v) an alien who maintains actual
21 residence and place of abode in the alien’s
22 country of nationality, who is described in
23 clause (i), except that the alien’s actual
24 course of study may involve a distance
25 learning program, for which the alien is

1 temporarily visiting the United States for
2 a period not to exceed 30 days;”.

3 (b) OFF CAMPUS WORK AUTHORIZATION FOR FOR-
4 EIGN STUDENTS.—

5 (1) IN GENERAL.—An alien admitted as a non-
6 immigrant student described in section
7 101(a)(15)(F) of the Immigration and Nationality
8 Act (8 U.S.C. 1101(a)(15)(F)) may be employed in
9 an off-campus position unrelated to the alien’s field
10 of study if—

11 (A) the alien has enrolled full-time at the
12 educational institution and is maintaining good
13 academic standing;

14 (B) the employer provides the educational
15 institution and the Secretary of Labor with an
16 attestation that the employer—

17 (i) has spent at least 21 days recruit-
18 ing United States workers to fill the posi-
19 tion; and

20 (ii) will pay the alien and other simi-
21 larly situated workers at a rate equal to
22 not less than the greater of—

23 (I) the actual wage level for the
24 occupation at the place of employ-
25 ment; or

1 (II) the prevailing wage level for
2 the occupation in the area of employ-
3 ment; and

4 (C) the alien will not be employed more
5 than—

6 (i) 20 hours per week during the aca-
7 demic term; or

8 (ii) 40 hours per week during vacation
9 periods and between academic terms.

10 (2) DISQUALIFICATION.—If the Secretary of
11 Labor determines that an employer has provided an
12 attestation under paragraph (1)(B) that is materi-
13 ally false or has failed to pay wages in accordance
14 with the attestation, the employer, after notice and
15 opportunity for a hearing, may be disqualified for a
16 period of no more than 5 years from employing an
17 alien student under paragraph (1).

18 (3) SOCIAL SECURITY.—Any employment en-
19 gaged in by a student pursuant to paragraph (1) of
20 this subsection shall, for purposes of section 210 of
21 the Social Security Act (42 USC 410) and section
22 3121 of the Internal Revenue Code (26 USC 3121),
23 not be considered to be for a purpose related to sec-
24 tion 101(a)(15)(F) of the Immigration and Nation-
25 ality Act.

1 (c) CLARIFYING THE IMMIGRANT INTENT PROVI-
2 SION.—Subsection (b) of section 214 of the Immigration
3 and Nationality Act (8 U.S.C. 1184(b)) is amended—

4 (1) by striking the parenthetical phrase “(other
5 than a nonimmigrant described in subparagraph (L)
6 or (V) of section 101(a)(15), and other than a non-
7 immigrant described in any provision of section
8 101(a)(15)(H)(i) except subclause (b1) of such sec-
9 tion)” in the first sentence; and

10 (2) by striking “under section 101(a)(15)” and
11 inserting in its place “under the immigration laws.”.

12 (d) GRANTING DUAL INTENT TO CERTAIN NON-
13 IMMIGRANT STUDENTS.—Subsection (h) of section 214 of
14 the Immigration and Nationality Act (8 U.S.C. 1184(h))
15 is amended—

16 (1) by inserting “(F)(iv),” following “(H)(i)(b)
17 or (c),”; and

18 (2) by striking “if the alien had obtained a
19 change of status” and inserting in its place “if the
20 alien had been admitted as, provided status as, or
21 obtained a change of status”.

22 **SEC. 419. H-1B STREAMLINING AND SIMPLIFICATION.**

23 (a) H-1B AMENDMENTS.—Section 214(g) of the Im-
24 migration and Nationality Act (8 U.S.C. 1184(g)) is
25 amended—

1 (1) in paragraph (1) by deleting clauses (i)
2 through (vii) of subparagraph (A) and inserting in
3 their place—

4 “(i) 115,000 in fiscal year 2008;

5 “(ii) in any subsequent fiscal year,
6 subject to clause (iii), the number for the
7 previous fiscal year as adjusted in accord-
8 ance with the method set forth in para-
9 graph (2); and

10 “(iii) 180,000 for any fiscal year; or”.

11 (2) in paragraph (9), as renumbered by Section
12 405—

13 (A) by striking “The annual numeric limi-
14 tations described in clause (i) shall not exceed”
15 from subclause (ii) of subparagraph (B) and in-
16 serting the following: “Without respect to the
17 annual numeric limitation described in clause
18 (i), the Secretary may issue a visa or otherwise
19 grant nonimmigrant status pursuant to section
20 1101(a)(15)(H)(i)(b) in the following quan-
21 tities:”;

22 (B) by striking subparagraph (B)(iv); and

23 (C) by striking subparagraph (D).

1 (b) REQUIRING A DEGREE.—Paragraph (2) of sec-
2 tion 214(i) of the Immigration and Nationality Act (8
3 U.S.C. 1184(i)) is amended—

4 (1) by deleting the comma at the end of sub-
5 paragraph (A) and inserting in its place “; and”;
6 and

7 (2) by striking subparagraphs (B) and (C) and
8 inserting the following:

9 “(B) attainment of a bachelor’s or higher
10 degree in the specific specialty from an edu-
11 cational institution in the United States accred-
12 ited by a nationally recognized accrediting agen-
13 cy or association (or an equivalent degree from
14 a foreign educational institution that is equiva-
15 lent to such an institution) as a minimum for
16 entry into the occupation in the United
17 States.”.

18 (c) PROVISION OF W-2 FORMS.—Section 214(g)(5)
19 of the Immigration and Nationality Act (8 U.S.C.
20 1184(g)(5)), as renumbered by Section 405, is amended
21 to read as follows:

22 “(5) In the case of a nonimmigrant described in
23 section 1101(a)(15)(H)(i)(b) of this title—

24 “(A) The period of authorized admission
25 as such a nonimmigrant may not exceed six

1 years; [Provided that, this provision shall not
2 apply to such a nonimmigrant who has filed a
3 petition for an immigrant visa under section
4 203(b)(1), if 365 days or more have elapsed
5 since filing and it has not been denied, in which
6 case the Secretary of Homeland Security may
7 extend the stay of an alien in one-year incre-
8 ments until such time as a final decision is
9 made on the alien's lawful permanent resi-
10 dence].

11 “(B) If the alien is granted an initial pe-
12 riod of admission less than six years, any subse-
13 quent application for an extension of stay for
14 such alien must include the Form W-2 Wage
15 and Tax Statement filed by the employer for
16 such employee, and such other form or informa-
17 tion relating to such employment as the Sec-
18 retary of Homeland Security may in his discre-
19 tion specify, with respect to such nonimmigrant
20 alien employee for the period of admission
21 granted to the alien.

22 “(C) Notwithstanding section 6103 of title
23 26, United States Code, or any other law, the
24 Commissioner of Internal Revenue or the Com-
25 missioner of the Social Security Administration

1 shall upon request of the Secretary confirm
2 whether the Form W-2 Wage and Tax State-
3 ment filed by the employer under clause (i)
4 matches a Form W-2 Wage and Tax Statement
5 filed with the Internal Revenue Service or the
6 Social Security Administration, as the case may
7 be.”

8 (d) EXTENSION OF H-1B STATUS FOR MERIT-
9 BASED ADJUSTMENT APPLICANTS.—

10 (1) Section 214(g)(4) of the Immigration and
11 Nationality Act (8 U.S.C. 1184(g)(4)) is amended
12 by inserting before the period: “; Provided that, this
13 provision shall not apply to such a nonimmigrant
14 who has filed a petition for an immigrant visa ac-
15 companied by a qualifying employer recommendation
16 under section 203(b)(1), if 365 days or more have
17 elapsed since filing and it has not been denied, in
18 which case the Secretary of Homeland Security may
19 extend the stay of an alien in one-year increments
20 until such time as a final decision is made on the
21 alien’s lawful permanent residence.”

22 (2) Sections 106(a) and 106(b) of the American
23 Competitiveness in the Twenty-First Century Act of
24 2000—Immigration Services and Infrastructure Im-

1 provements Act of 2000, Public Law 106–313, are
2 hereby repealed.

3 **SEC. 420. H-1B EMPLOYER REQUIREMENTS.**

4 (a) APPLICATION OF NONDISPLACEMENT AND GOOD
5 FAITH RECRUITMENT REQUIREMENTS TO ALL H-1B
6 EMPLOYERS.—

7 (1) AMENDMENTS.—Section 212(n) of the Im-
8 migration and Nationality Act (8 U.S.C. 1182(n)) is
9 amended—

10 (A) in paragraph (1)—

11 (i) in subparagraph (E);

12 (I) in clause (i), by striking
13 “(E)(i) In the case of an application
14 described in clause (ii), the” and in-
15 sserting “(E) The”; and

16 (II) by striking clause (ii);

17 (ii) in subparagraph (F), by striking
18 “In the case of” and all that follows
19 through “where—” and inserting the fol-
20 lowing: “The employer will not place the
21 nonimmigrant with another employer if—
22 ”; and

23 (iii) in subparagraph (G), by striking
24 “In the case of an application described in

1 subparagraph (E)(ii), subject” and insert-
2 ing “Subject”;

3 (B) in paragraph (2)—

4 (i) in subparagraph (E), by striking
5 “If an H-1B-dependent employer” and in-
6 serting “If an employer that employs H-
7 1B nonimmigrants”; and

8 (ii) in subparagraph (F), by striking
9 “The preceding sentence shall apply to an
10 employer regardless of whether or not the
11 employer is an H-1B-dependent em-
12 ployer.”; and

13 (C) by striking paragraph (3).

14 (2) EFFECTIVE DATE.—The amendments made
15 by paragraph (1) shall apply to applications filed on
16 or after the date of the enactment of this Act.

17 (b) NONDISPLACEMENT REQUIREMENT.—

18 (1) EXTENDING TIME PERIOD FOR NON-
19 DISPLACEMENT.—Section 212(n) of such Act, as
20 amended by subsection (a), is further amended—

21 (A) in paragraph (1)—

22 (i) in subparagraph (E), by striking
23 “90 days” each place it appears and in-
24 serting “180 days”;

1 (ii) in subparagraph (F)(ii), by strik-
2 ing “90 days” each place it appears and
3 inserting “180 days”; and

4 (B) in paragraph (2)(C)(iii), by striking
5 “90 days” each place it appears and inserting
6 “180 days”.

7 (2) EFFECTIVE DATE.—The amendments made
8 by paragraph (1)—

9 (A) shall apply to applications filed on or
10 after the date of the enactment of this Act; and

11 (B) shall not apply to displacements for
12 periods occurring more than 90 days before
13 such date.

14 (c) H-1B NONIMMIGRANTS NOT ADMITTED FOR
15 JOBS ADVERTISED OR OFFERED ONLY TO H-1B NON-
16 IMMIGRANTS.—Section 212(n)(1) of such Act, as amended
17 by this section, is further amended—

18 (1) by inserting after subparagraph (G) the fol-
19 lowing:

20 “(H)(i) The employer has not advertised
21 the available jobs specified in the application in
22 an advertisement that states or indicates that—

23 “(I) the job or jobs are only available
24 to persons who are or who may become H-
25 1B nonimmigrants; or

1 “(II) persons who are or who may be-
 2 come H–1B nonimmigrants shall receive
 3 priority or a preference in the hiring proc-
 4 ess.

5 “(ii) The employer has not only recruited
 6 persons who are, or who may become, H–1B
 7 nonimmigrants to fill the job or jobs.”; and

8 (2) in the undesignated paragraph at the end,
 9 by striking “The employer” and inserting the fol-
 10 lowing:

11 “(K) The employer”.

12 (d) LIMIT ON PERCENTAGE OF H–1B EMPLOY-
 13 EES.—Section 212(n)(1) of such Act, as amended by this
 14 section, is further amended by inserting after subpara-
 15 graph (H), as added by subsection (d)(1), the following:

16 “(I) If the employer employs not less than
 17 50 employees in the United States, not more
 18 than 50 percent of such employees are H–1B
 19 nonimmigrants.”.

20 **SEC. 421. H–1B GOVERNMENT AUTHORITY AND REQUIRE-**
 21 **MENTS.**

22 (a) SAFEGUARDS AGAINST FRAUD AND MISREPRE-
 23 SENTATION IN APPLICATION REVIEW PROCESS.—Section
 24 212(n)(1)(K) of the Immigration and Nationality Act, as
 25 redesignated by section 2(d)(2), is amended—

1 (1) by inserting “and through the Department
2 of Labor’s website, without charge.” after “D.C.”;

3 (2) by inserting “, clear indicators of fraud,
4 misrepresentation of material fact,” after “complete-
5 ness”;

6 (3) by striking “or obviously inaccurate” and
7 inserting “, presents clear indicators of fraud or
8 misrepresentation of material fact, or is obviously in-
9 accurate”;

10 (4) by striking “within 7 days of” and inserting
11 “not later than 14 days after”; and

12 (5) by adding at the end the following: “If the
13 Secretary’s review of an application identifies clear
14 indicators of fraud or misrepresentation of material
15 fact, the Secretary may conduct an investigation and
16 hearing under paragraph (2).”

17 (b) INVESTIGATIONS BY DEPARTMENT OF LABOR.—
18 Section 212(n)(2) of such Act is amended—

19 (1) in subparagraph (A)—

20 (A) by striking “12 months” and inserting
21 “24 months”; and

22 (B) by striking “The Secretary shall con-
23 duct” and all that follows and inserting “Upon
24 the receipt of such a complaint, the Secretary
25 may initiate an investigation to determine if

1 such a failure or misrepresentation has oc-
2 curred.”;

3 (2) in subparagraph (C)(i)—

4 (A) by striking “a condition of paragraph
5 (1)(B), (1)(E), or (1)(F)” and inserting “a con-
6 dition under subparagraph (B), (C)(i), (E), (F),
7 (H), (I), or (J) of paragraph (1)”;

8 (B) by striking “(1)(C)” and inserting
9 “(1)(C)(ii)”;

10 (3) in subparagraph (G)—

11 (A) in clause (i), by striking “if the Sec-
12 retary” and all that follows and inserting “with
13 regard to the employer’s compliance with the
14 requirements of this subsection.”;

15 (B) in clause (ii), by striking “and whose
16 identity” and all that follows through “failure
17 or failures.” and inserting “the Secretary of
18 Labor may conduct an investigation into the
19 employer’s compliance with the requirements of
20 this subsection.”;

21 (C) in clause (iii), by striking the last sen-
22 tence;

23 (D) by striking clauses (iv) and (v);

24 (E) by redesignating clauses (vi), (vii), and
25 (viii) as clauses (iv), (v), and (vi), respectively;

1 (F) in clause (iv), as redesignated, by
2 striking “meet a condition described in clause
3 (ii), unless the Secretary of Labor receives the
4 information not later than 12 months” and in-
5 serting “comply with the requirements under
6 this subsection, unless the Secretary of Labor
7 receives the information not later than 24
8 months”;

9 (G) by amending clause (v), as redesign-
10 nated, to read as follows:

11 “(v) The Secretary of Labor shall pro-
12 vide notice to an employer of the intent to
13 conduct an investigation. The notice shall
14 be provided in such a manner, and shall
15 contain sufficient detail, to permit the em-
16 ployer to respond to the allegations before
17 an investigation is commenced. The Sec-
18 retary is not required to comply with this
19 clause if the Secretary determines that
20 such compliance would interfere with an
21 effort by the Secretary to investigate or se-
22 cure compliance by the employer with the
23 requirements of this subsection. A deter-
24 mination by the Secretary under this

1 clause shall not be subject to judicial re-
2 view.”.

3 (H) in clause (vi), as redesignated, by
4 striking “An investigation” and all that follows
5 through “the determination.” and inserting “If
6 the Secretary of Labor, after an investigation
7 under clause (i) or (ii), determines that a rea-
8 sonable basis exists to make a finding that the
9 employer has failed to comply with the require-
10 ments under this subsection, the Secretary shall
11 provide interested parties with notice of such
12 determination and an opportunity for a hearing
13 in accordance with section 556 of title 5,
14 United States Code, not later than 120 days
15 after the date of such determination.”; and

16 (I) by adding at the end the following:

17 “(vii) If the Secretary of Labor, after
18 a hearing, finds a reasonable basis to be-
19 lieve that the employer has violated the re-
20 quirements under this subsection, the Sec-
21 retary may impose a penalty under sub-
22 paragraph (C).”; and

23 (4) by striking subparagraph (H).

24 (c) INFORMATION SHARING BETWEEN DEPARTMENT
25 OF LABOR AND DEPARTMENT OF HOMELAND SECUR-

1 RITY.—Section 212(n)(2) of such Act, as amended by this
2 section, is further amended by inserting after subpara-
3 graph (G) the following:

4 “(H) The Director of United States Citi-
5 zenship and Immigration Services shall provide
6 the Secretary of Labor with any information
7 contained in the materials submitted by H–1B
8 employers as part of the adjudication process
9 that indicates that the employer is not com-
10 plying with H–1B visa program requirements.
11 The Secretary may initiate and conduct an in-
12 vestigation and hearing under this paragraph
13 after receiving information of noncompliance
14 under this subparagraph.”.

15 (d) AUDITS.—Section 212(n)(2)(A) of such Act, as
16 amended by this section, is further amended by adding
17 at the end the following: “The Secretary may conduct sur-
18 veys of the degree to which employers comply with the re-
19 quirements under this subsection and may conduct annual
20 compliance audits of employers that employ H–1B non-
21 immigrants. The Secretary shall conduct annual compli-
22 ance audits of not less than 1 percent of the employers
23 that employ H–1B nonimmigrants during the applicable
24 calendar year.”

1 (e) PENALTIES.—Section 212(n)(2)(C) of such Act,
2 as amended by this section, is further amended—

3 (1) in clause (i)(I), by striking “\$1,000” and
4 inserting “\$2,000”;

5 (2) in clause (ii)(I), by striking “\$5,000” and
6 inserting “\$10,000”; and

7 (3) in clause (vi)(III), by striking “\$1,000” and
8 inserting “\$2,000”.

9 (f) INFORMATION PROVIDED TO H-1B NON-
10 IMMIGRANTS UPON VISA ISSUANCE.—Section 212(n) of
11 such Act, as amended by this section, is further amended
12 by inserting after paragraph (2) the following:

13 “(3)(A) Upon issuing an H-1B visa to an ap-
14 plicant outside the United States, the issuing office
15 shall provide the applicant with—

16 “(i) a brochure outlining the employer’s
17 obligations and the employee’s rights under
18 Federal law, including labor and wage protec-
19 tions; and

20 “(ii) the contact information for Federal
21 agencies that can offer more information or as-
22 sistance in clarifying employer obligations and
23 workers’ rights.”.

24 “(B) Upon the issuance of an H-1B visa to an
25 alien inside the United States, the officer of the De-

1 department of Homeland Security shall provide the ap-
 2 plicant with—

3 “(i) a brochure outlining the employer’s
 4 obligations and the employee’s rights under
 5 Federal law, including labor and wage protec-
 6 tions; and

7 “(ii) the contact information for Federal
 8 agencies that can offer more information or as-
 9 sistance in clarifying employer’s obligations and
 10 workers’ rights.”.

11 **SEC. 422. L-1 VISA FRAUD AND ABUSE PROTECTIONS.**

12 (a) IN GENERAL.—Section 214(c)(2) of the Immigra-
 13 tion and Nationality Act (8 U.S.C. 1184(c)(2)) is amend-
 14 ed—

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

18 (2) in subparagraph (E), by striking “In the
 19 case of an alien spouse admitted under section
 20 101(a)(15)(L), who” and inserting “Except as pro-
 21 vided in subparagraph (H), if an alien spouse admit-
 22 ted under section 101(a)(15)(L)”;

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

24 “(G)(i) If the beneficiary of a petition
 25 under this subsection is coming to the United

1 States to open, or be employed in, a new facil-
2 ity, the petition may be approved for up to 12
3 months only if the employer operating the new
4 facility has—

5 “(I) a business plan;

6 “(II) sufficient physical premises to
7 carry out the proposed business activities;
8 and

9 “(III) the financial ability to com-
10 mence doing business immediately upon
11 the approval of the petition.

12 “(ii) An extension of the approval period
13 under clause (i) may not be granted until the
14 importing employer submits an application to
15 the Secretary of Homeland Security that con-
16 tains—

17 “(I) evidence that the importing em-
18 ployer meets the requirements of this sub-
19 section;

20 “(II) evidence that the beneficiary
21 meets the requirements under section
22 101(a)(15)(L);

23 “(III) a statement summarizing the
24 original petition;

1 “(IV) evidence that the importing em-
2 ployer has fully complied with the business
3 plan submitted under clause (i)(I);

4 “(V) evidence of the truthfulness of
5 any representations made in connection
6 with the filing of the original petition;

7 “(VI) evidence that the importing
8 employer, during the preceding 12
9 months, has been doing business at
10 the new facility through regular, sys-
11 tematic, and continuous provision of
12 goods or services, or has otherwise
13 been taking commercially reasonable
14 steps to establish the new facility as a
15 commercial enterprise;

16 “(VII) a statement of the duties
17 the beneficiary has performed at the
18 new facility during the preceding 12
19 months and the duties the beneficiary
20 will perform at the new facility during
21 the extension period approved under
22 this clause;

23 “(VIII) a statement describing
24 the staffing at the new facility, includ-
25 ing the number of employees and the

1 types of positions held by such em-
2 ployees;

3 “(IX) evidence of wages paid to
4 employees;

5 “(X) evidence of the financial
6 status of the new facility; and

7 “(XI) any other evidence or data
8 prescribed by the Secretary.

9 “(iii) Notwithstanding subclauses (I)
10 through (VI) of clause (ii), and subject to
11 the maximum period of authorized admis-
12 sion set forth in subparagraph (D), the
13 Secretary of Homeland Security may ap-
14 prove a petition subsequently filed on be-
15 half of the beneficiary to continue employ-
16 ment at the facility described in this sub-
17 section for a period beyond the initially
18 granted 12-month period if the importing
19 employer demonstrates that the failure to
20 satisfy any of the requirements described
21 in those subclauses was directly caused by
22 extraordinary circumstances beyond the
23 control of the importing employer.

24 “(iv) For purposes of determining the
25 eligibility of an alien for classification

1 under section 101(a)(15)(L), the Secretary
2 of Homeland Security shall work coopera-
3 tively with the Secretary of State to verify
4 a company or facility’s existence in the
5 United States and abroad.”.

6 (b) INVESTIGATIONS AND AUDITS BY DEPARTMENT
7 OF HOMELAND SECURITY.—

8 (1) DEPARTMENT OF HOMELAND SECURITY IN-
9 VESTIGATIONS.—Section 214(c)(2) of such Act, as
10 amended by this section, is further amended by add-
11 ing at the end the following:

12 “(I)(i) The Secretary of Homeland Secu-
13 rity may initiate an investigation of any em-
14 ployer that employs nonimmigrants described in
15 section 101(a)(15)(L) with regard to the em-
16 ployer’s compliance with the requirements of
17 this subsection.

18 “(ii) If the Secretary of Homeland Secu-
19 rity receives specific credible information from a
20 source who is likely to have knowledge of an
21 employer’s practices, employment conditions, or
22 compliance with the requirements under this
23 subsection, the Secretary may conduct an inves-
24 tigation into the employer’s compliance with the
25 requirements of this subsection. The Secretary

1 may withhold the identity of the source from
2 the employer, and the source’s identity shall not
3 be subject to disclosure under section 552 of
4 title 5.

5 “(iii) The Secretary of Homeland Security
6 shall establish a procedure for any person desir-
7 ing to provide to the Secretary of Homeland Se-
8 curity information described in clause (ii) that
9 may be used, in whole or in part, as the basis
10 for the commencement of an investigation de-
11 scribed in such clause, to provide the informa-
12 tion in writing on a form developed and pro-
13 vided by the Secretary of Homeland Security
14 and completed by or on behalf of the person.

15 “(iv) No investigation described in clause
16 (ii) (or hearing described in clause (vi) based on
17 such investigation) may be conducted with re-
18 spect to information about a failure to comply
19 with the requirements under this subsection,
20 unless the Secretary of Homeland Security re-
21 ceives the information not later than 24 months
22 after the date of the alleged failure.

23 “(v) Before commencing an investigation
24 of an employer under clause (i) or (ii), the Sec-
25 retary of Homeland Security shall provide no-

1 tice to the employer of the intent to conduct
2 such investigation. The notice shall be provided
3 in such a manner, and shall contain sufficient
4 detail, to permit the employer to respond to the
5 allegations before an investigation is com-
6 menced. The Secretary is not required to com-
7 ply with this clause if the Secretary determines
8 that to do so would interfere with an effort by
9 the Secretary to investigate or secure compli-
10 ance by the employer with the requirements of
11 this subsection. There shall be no judicial re-
12 view of a determination by the Secretary under
13 this clause.

14 “(vi) If the Secretary of Homeland Secu-
15 rity, after an investigation under clause (i) or
16 (ii), determines that a reasonable basis exists to
17 make a finding that the employer has failed to
18 comply with the requirements under this sub-
19 section, the Secretary shall provide interested
20 parties with notice of such determination and
21 an opportunity for a hearing in accordance with
22 section 556 of title 5, United States Code, not
23 later than 120 days after the date of such de-
24 termination. If such a hearing is requested, the
25 Secretary shall make a finding concerning the

1 matter by not later than 120 days after the
2 date of the hearing.

3 “(vii) If the Secretary of Homeland Secu-
4 rity, after a hearing, finds a reasonable basis to
5 believe that the employer has violated the re-
6 quirements under this subsection, the Secretary
7 may impose a penalty under section
8 214(c)(2)(J).”.

9 (2) AUDITS.—Section 214(c)(2)(I) of such Act,
10 as added by paragraph (1), is amended by adding at
11 the end the following:

12 “(viii) The Secretary of Homeland Se-
13 curity may conduct surveys of the degree
14 to which employers comply with the re-
15 quirements under this section and may
16 conduct annual compliance audits of em-
17 ployers that employ H–1B nonimmigrants.
18 The Secretary shall conduct annual compli-
19 ance audits of not less than 1 percent of
20 the employers that employ nonimmigrants
21 described in section 101(a)(15)(L) during
22 the applicable calendar year.”.

23 (3) REPORTING REQUIREMENT.—Section
24 214(c)(8) of such Act is amended by inserting
25 “(L),” after “(H),”.

1 (c) PENALTIES.—Section 214(c)(2) of such Act, as
2 amended by this section, is further amended by adding
3 at the end the following:

4 “(J)(i) If the Secretary of Homeland Secu-
5 rity finds, after notice and an opportunity for
6 a hearing, a failure by an employer to meet a
7 condition under subparagraph (F), (G), (H),
8 (I), or (K) or a misrepresentation of material
9 fact in a petition to employ 1 or more aliens as
10 nonimmigrants described in section
11 101(a)(15)(L)—

12 “(I) the Secretary of Homeland Secu-
13 rity may impose such other administrative
14 remedies (including civil monetary pen-
15 alties in an amount not to exceed \$2,000
16 per violation) as the Secretary determines
17 to be appropriate; and

18 “(II) the Secretary of Homeland Se-
19 curity may not, during a period of at least
20 1 year, approve a petition for that em-
21 ployer to employ 1 or more aliens as such
22 nonimmigrants.

23 “(ii) If the Secretary of Homeland Secu-
24 rity finds, after notice and an opportunity for
25 a hearing, a willful failure by an employer to

1 meet a condition under subparagraph (F), (G),
2 (H), (I), or (K) or a misrepresentation of mate-
3 rial fact in a petition to employ 1 or more
4 aliens as nonimmigrants described in section
5 101(a)(15)(L)—

6 “(I) the Secretary of Homeland Secu-
7 rity may impose such other administrative
8 remedies (including civil monetary pen-
9 alties in an amount not to exceed \$10,000
10 per violation) as the Secretary determines
11 to be appropriate; and

12 “(II) the Secretary of Homeland Se-
13 curity may not, during a period of at least
14 2 years, approve a petition filed for that
15 employer to employ 1 or more aliens as
16 such nonimmigrants.

17 “(iii) If the Secretary of Homeland Secu-
18 rity finds, after notice and an opportunity for
19 a hearing, a willful failure by an employer to
20 meet a condition under subparagraph (L)(i)—

21 “(I) the Secretary of Homeland Secu-
22 rity may impose such other administrative
23 remedies (including civil monetary pen-
24 alties in an amount not to exceed \$10,000

1 per violation) as the Secretary determines
2 to be appropriate; and

3 “(II) the employer shall be liable to
4 employees harmed for lost wages and bene-
5 fits.”.

6 **SEC. 423. WHISTLEBLOWER PROTECTIONS.**

7 (a) H-1B WHISTLEBLOWER PROTECTIONS.—Section
8 212(n)(2)(C)(iv) of the Immigration and Nationality Act
9 (8 U.S.C. 1182(n)(2)(C)(iv)) is amended—

10 (1) by inserting “take, fail to take, or threaten
11 to take or fail to take, a personnel action, or” before
12 “to intimidate”; and

13 (2) by adding at the end the following: “An em-
14 ployer that violates this clause shall be liable to the
15 employees harmed by such violation for lost com-
16 pensation, including back pay.”.

17 (b) L-1 WHISTLEBLOWER PROTECTIONS.—Section
18 214(e)(2) of such Act, as amended by section 4, is further
19 amended by adding at the end the following:

20 “(L)(i) It is a violation of this subpara-
21 graph for an employer who has filed a petition
22 to import 1 or more aliens as nonimmigrants
23 described in section 101(a)(15)(L) to take, fail
24 to take, or threaten to take or fail to take, a
25 personnel action, or to intimidate, threaten, re-

1 strain, coerce, blacklist, discharge, or discrimi-
2 nate in any other manner against an employee
3 because the employee—

4 “(I) has disclosed information that
5 the employee reasonably believes evidences
6 a violation of this subsection, or any rule
7 or regulation pertaining to this subsection;
8 or

9 “(II) cooperates or seeks to cooperate
10 with the requirements of this subsection,
11 or any rule or regulation pertaining to this
12 subsection.

13 “(ii) An employer that violates this sub-
14 paragraph shall be liable to the employees
15 harmed by such violation for lost wages and
16 benefits.

17 “(iii) In this subparagraph, the term “em-
18 ployee” includes—

19 “(I) a current employee;

20 “(II) a former employee; and

21 “(III) an applicant for employment.”.

22 **SEC. 424. LIMITATIONS ON APPROVAL OF L-1 PETITIONS**
23 **FOR START-UP COMPANIES.**

24 Section 214(c)(2) of the Immigration and Nationality
25 Act (8 U.S.C. 1184(c)(2)) is amended—

1 (a) by striking “Attorney General” each place it ap-
2 pears and inserting “Secretary of Homeland Security”;

3 (b) in subparagraph (E), by striking “In the case”
4 and inserting “Except as provided in subparagraph (H),
5 in the case”; and

6 (c) by adding at the end the following:

7 (G)(i) If the beneficiary of a petition under
8 this subsection is coming to the United States
9 to be employed in a new office, the petition may
10 be approved for a period not to exceed 12
11 months only if the alien has not been the bene-
12 ficiary of two or more petitions under this sub-
13 paragraph within the immediately preceding
14 two years and only if the employer operating
15 the new office has—

16 “(I) an adequate business plan;

17 “(II) sufficient physical premises to
18 carry out the proposed business activities;
19 and

20 “(III) the financial ability to com-
21 mence doing business immediately upon
22 the approval of the petition.

23 “(ii) An extension of the approval period
24 under clause (i) may not be granted until the

1 importing employer submits to the Secretary of
2 Homeland Security—

3 “(I) evidence that the importing em-
4 ployer meets the requirements of this sub-
5 section;

6 “(II) evidence that the beneficiary
7 meets the requirements of section
8 101(a)(15)(L);

9 “(III) a statement summarizing the
10 original petition;

11 “(IV) evidence that the importing em-
12 ployer has substantially complied with the
13 business plan submitted under clause (i);

14 “(V) evidence of the truthfulness of
15 any representations made in connection
16 with the filing of the original petition if re-
17 quested by the Secretary;

18 “(VI) evidence that the importing em-
19 ployer, from the date of petition approval
20 under clause (i), has been doing business
21 at the new office through regular, system-
22 atic, and continuous provision of goods or
23 services;

24 “(VII) a statement of the duties the
25 beneficiary has performed at the new office

1 during the approval period under clause (i)
2 and the duties the beneficiary will perform
3 at the new office during the extension pe-
4 riod approved under this clause;

5 “(VIII) a statement describing the
6 staffing at the new office, including the
7 number of employees and the types of posi-
8 tions held by such employees;

9 “(IX) evidence of wages paid to em-
10 ployees if the beneficiary will be employed
11 in a managerial or executive capacity;

12 “(X) evidence of the financial
13 status of the new office; and

14 “(XI) any other evidence or data
15 prescribed by the Secretary.

16 “(iii) A new office employing the ben-
17 eficiary of an L-1 petition approved under
18 this subparagraph must do business
19 through regular, systematic, and contin-
20 uous provision of goods or services for the
21 entire period of petition approval.

22 “(iv) Notwithstanding clause (iii) or
23 subclauses (I) through (VI) of clause (ii),
24 and subject to the maximum period of au-
25 thorized admission set forth in subpara-

1 graph (D), the Secretary of Homeland Se-
2 curity may in his discretion approve a sub-
3 sequently filed petition on behalf of the
4 beneficiary to continue employment at the
5 office described in this subsection for a pe-
6 riod beyond the initially granted 12-month
7 period if the importing employer has been
8 doing business at the new office through
9 regular, systematic, and continuous provi-
10 sion of goods or services for the 6 months
11 immediately preceding the date of exten-
12 sion petition filing and demonstrates that
13 the failure to satisfy any of the require-
14 ments described in those subclauses was
15 directly caused by extraordinary cir-
16 cumstances, as determined by the Sec-
17 retary in his discretion.

18 “(H)(i) The Secretary of Homeland Secu-
19 rity may not authorize the spouse of an alien
20 described under section 101(a)(15)(L), who is a
21 dependent of a beneficiary under subparagraph
22 (G), to engage in employment in the United
23 States during the initial 12-month period de-
24 scribed in subparagraph (G)(i).

1 “(ii) A spouse described in clause (i) may
2 be provided employment authorization upon the
3 approval of an extension under subparagraph
4 (G)(ii).

5 “(I) For purposes of determining the
6 eligibility of an alien for classification
7 under section 101(a)(15)(L) of this Act,
8 the Secretary of Homeland Security shall
9 establish procedures with the Department
10 of State to verify a company or office’s ex-
11 istence in the United States and abroad.”

12 **SEC. 425. MEDICAL SERVICES IN UNDERSERVED AREAS.**

13 (a) PERMANENT AUTHORIZATION OF THE CONRAD
14 PROGRAM.—

15 (1) IN GENERAL.—Section 220(c) of the Immi-
16 gration and Nationality Technical Corrections Act of
17 1994 (8 U.S.C. 1182 note) (as amended by section
18 1(a) of Public Law 108–441 and section 2 of Public
19 Law 109–477) is amended by striking “and before
20 June 1, 2008.”.

21 (2) EFFECTIVE DATE.—The amendment made
22 by paragraph (1) shall take effect as if enacted on
23 June 1, 2007.

1 (b) PILOT PROGRAM REQUIREMENTS.—Section
2 214(l) of the Immigration and Nationality Act (8 U.S.C.
3 1184(l)) is amended—

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

5 “(4)(A) Notwithstanding paragraph (1)(B), the
6 Secretary of Homeland Security may grant up to a
7 total of 50 waivers for a State under section 212(e)
8 in a fiscal year if, after the first 30 such waivers for
9 the State are granted in that fiscal year—

10 “(i) an interested State agency requests a
11 waiver; and

12 “(ii) the requirements under subparagraph
13 (B) are met.

14 “(B) The requirements under this subpara-
15 graph are met if—

16 “(i) fewer than 20 percent of the physician
17 vacancies in the health professional shortage
18 areas of the State, as designated by the Sec-
19 retary of Health and Human Services, were
20 filled in the most recent fiscal year;

21 “(ii) all of the waivers allotted for the
22 State under paragraph (1)(B) were used in the
23 most recent fiscal year; and

24 “(iii) all underserved highly rural States—

1 “(I) used the minimum guaranteed
2 number of waivers under section 212(e) in
3 health professional shortage areas in the
4 most recent fiscal year; or

5 “(II) all agreed to waive the right to
6 receive the minimum guaranteed number
7 of such waivers.

8 “(C) In this paragraph:

9 “(i) The term ‘health professional shortage
10 area’ has the meaning given the term in section
11 332(a)(1) of the Public Health Service Act (42
12 U.S.C. 254e(a)(1));

13 “(ii) The term ‘underserved highly rural
14 State’ means a State with at least 30 counties
15 with a population density of not more than 10
16 people per square mile, based on the latest
17 available decennial census conducted by the Bu-
18 reau of Census.

19 “(iii) The term ‘minimum guaranteed
20 number’ means—

21 “(I) for the first fiscal year of the
22 pilot program, 15;

23 “(II) for each subsequent fiscal year,
24 the sum of—

1 “(aa) the minimum guaranteed
2 number for the second fiscal year; and

3 “(bb) 3, if any State received ad-
4 ditional waivers under this paragraph
5 in the first fiscal year.

6 “(III) for the third fiscal year, the
7 sum of—

8 “(aa) the minimum guaranteed
9 number for the second fiscal year; and

10 “(bb) 3, if any State received ad-
11 ditional waivers under this paragraph
12 in the first fiscal year.”.

13 (c) TERMINATION DATE.—The authority provided by
14 the amendments made by subsection (b) shall expire on
15 September 30, 2011.

16 (d) Section 212(j) of the Immigration and Nation-
17 ality Act (8 U.S.C. 1182(j)) is amended by—

18 (1) revising the preamble of paragraph (2) to
19 read “An alien who has graduated from a medical
20 school and who is coming to the United States to
21 practice primary care or specialty medicine as a
22 member of the medical profession may not be admit-
23 ted as a nonimmigrant under section
24 1101(a)(15)(H)(i)(b) of this title unless—”

1 (2) redesignating paragraph (2) as paragraph
2 (3);

3 (3) adding new paragraph (2) to read—

4 “(2)(A) An alien who is coming to the United
5 States to receive graduate medical education or
6 training (or seeks to acquire status as a non-
7 immigrant under section 1101(a)(15)(J) to receive
8 graduate medical education or training) may not
9 change status under section 1258 to a nonimmigrant
10 under section 1101(a)(15)(H)(i)(b) until the alien
11 graduates from the medical education or training
12 program and meets the requirements of paragraph
13 (3)(B).

14 “(B) Any occupation that an alien described in
15 paragraph (2)(A) may be employed in while receiv-
16 ing graduate medical education or training shall not
17 be deemed a “specialty occupation” within the
18 meaning of section 1184(i) for purposes of section
19 1101(a)(15)(H)(i)(b).”

20 (e) Section 101(a)(15)(J) is amended by adding “(ex-
21 cept an alien coming to the United States to receive grad-
22 uate medical education or training)” after “abandoning”.

23 (f) Section 214(h) of the Immigration and Nation-
24 ality Act (8 U.S.C. 1184(h)) is amended by inserting
25 “(E), (J) who is coming to the United States to receive

1 graduate medical education or training,” after “subpara-
2 graph” where that term first appears.

3 (g) MEDICAL RESIDENTS INELIGIBLE FOR H-1B
4 NONIMMIGRANT STATUS.—Section 214(i) of the Immigra-
5 tion and Nationality Act (8 U.S.C. 1184(i)) is amended
6 to read—

7 “(1) Except as provided in paragraph (3), for
8 purposes of section 101(a)(15)(H)(i)(b), section
9 101(a)(15)(E)(iii), and paragraph (2), the term
10 “specialty occupation”—

11 “(A) means an occupation that requires—

12 “(i) theoretical and practical applica-
13 tion of a body of highly specialized knowl-
14 edge, and

15 “(ii) attainment of a bachelor’s or
16 higher degree in the specific specialty (or
17 its equivalent) as a minimum for entry into
18 the occupation in the United States; and

19 “(B) shall not include graduate medical
20 education or training.”

21 (h) Section 214(l) of the Immigration and Nationality
22 Act (8 U.S.C. 1184(l)) is amended—

23 (1) in paragraph (1)(C)(i) by striking “Attor-
24 ney General” and inserting “Secretary of Homeland
25 Security”;

1 (2) in paragraph (1)(C) by striking subclause
2 (ii) and inserting the following:

3 “(ii) the alien has accepted employ-
4 ment with the health facility or health care
5 organization and agrees to continue to
6 work for a total of not less than 3 years;
7 and

8 “(iii) the alien begins employment
9 within 90 days of:

10 “(I) receiving such waiver; or

11 “(II) receiving nonimmigrant sta-
12 tus or employment authorization pur-
13 suant to an application filed under
14 paragraph (2)(A) (if such application
15 is filed with 90 days of eligibility of
16 completing graduate medical edu-
17 cation or training under a program
18 approved pursuant to section
19 212(j)(1));

20 “whichever is latest.”

21 (3) by striking at the end “.”, inserting “; or”
22 and adding new paragraph (1)(E) to read—

23 “(E) in the case of a request by an inter-
24 ested State agency, the alien agrees to practice
25 primary care or specialty medicine care, for a

1 continuous period of 2 years, only at a federally
2 qualified health facility, health care organiza-
3 tion or center, or in a rural health clinic that
4 is located in:

5 “(i) a geographic area which is des-
6 ignated by the Secretary of Health and
7 Human Services as having a shortage of
8 health care professionals; and

9 “(ii) a State that utilized less than 10
10 of the total allotted waivers for the State
11 under paragraph (1)(B) (excluding the
12 number of waivers available pursuant to
13 paragraph (1)(D)(ii)) in the most recent
14 fiscal year.”

15 (4) in paragraph (2), by amending subpara-
16 graph (A) to read as follows:

17 “(A) Notwithstanding section 248(a)(2),
18 upon submission of a request to an interested
19 Federal agency or an interested State agency
20 for recommendation of a waiver under this sec-
21 tion by a physician who is maintaining valid
22 nonimmigrant status under section
23 101(a)(15)(J), the Secretary of Homeland Se-
24 curity may accept as properly filed an applica-
25 tion to change the status of such physician to

1 [any applicable nonimmigrant status]. Upon fa-
2 vorable recommendation by the Secretary of
3 State of such request, and approval by the Sec-
4 retary of Homeland Security the waiver under
5 this section, the Secretary of Homeland Secu-
6 rity may change the status of such physician to
7 that of [an appropriate nonimmigrant status.]”

8 (5) in paragraph (3)(A) amended by inserting
9 “requirement of or” before “agreement entered
10 into”.

11 (i) PERIOD OF AUTHORIZED ADMISSION FOR PHYSI-
12 CIANS ON H-1B VISAS WHO WORK IN MEDICALLY UNDER-
13 SERVED COMMUNITIES.—Section 214(g)(5), as renum-
14 bered by Section 405 and amended by Section 719(c), is
15 further amended by adding at the end the following new
16 subparagraph:

17 “(D) The period of authorized admission
18 under subparagraph (A) shall not apply to an
19 alien physician who fulfills the requirements of
20 section 214(l)(1)(E) and who has practiced pri-
21 mary or specialty care in a medically under-
22 served community for a continuous period of 5
23 years.”

1 **SEC. 426. B-1 VISITOR VISA GUIDELINES AND DATA TRACK-**
2 **ING SYSTEMS.**

3 (a) GUIDELINES.—

4 (1) IN GENERAL.—Not later than 6 months
5 after the date of enactment of this Act—

6 (A) the Secretary of State shall review ex-
7 isting regulations or internal guidelines relating
8 to the decisionmaking process with respect to
9 the issuance of B-1 visas by consular officers
10 and determine whether modifications are nec-
11 essary to ensure that such officers make deci-
12 sions with respect to the issuance of B-1 visas
13 as consistently as possible while ensuring secu-
14 rity and maintaining officer discretion over such
15 issuance determinations; and

16 (B) the Secretary of Homeland Security
17 shall review existing regulations or internal
18 guidelines relating to the decisionmaking proc-
19 ess of Customs and Border Protection officers
20 concerning whether travelers holding a B-1 vis-
21 itor visa are admissible to the United States
22 and the appropriate length of stay and shall de-
23 termine whether modifications are necessary to
24 ensure that such officers make decisions with
25 respect to travelers admissibility and length of
26 stay as consistently as possible while ensuring

1 security and maintaining officer discretion over
2 such determinations.

3 (2) MODIFICATION.—If after conducting the re-
4 views under paragraph (1), the Secretary of State or
5 the Secretary of Homeland Security determine that
6 modifications to existing regulations or internal
7 guidelines, or the establishment of new regulations
8 or guidelines, are necessary, the relevant Secretary
9 shall make such modifications during the 6-month
10 period referred to in such paragraph.

11 (3) CONSULTATIONS.—In making determina-
12 tions and preparing guidelines under paragraph (1),
13 the Secretary of State and the Secretary of Home-
14 land Security shall consult with appropriate stake-
15 holders, including consular officials and immigration
16 inspectors.

17 (b) DATA TRACKING SYSTEMS.—

18 (1) IN GENERAL.—Not later than 18 months
19 after the date of enactment of this Act—

20 (A) the Secretary of State shall develop
21 and implement a system to track aggregate
22 data relating to the issuance of B-1 visitor
23 visas in order to ensure the consistent applica-
24 tion of the guidelines established under sub-
25 section (a)(1)(A); and

1 (B) the Secretary of Homeland Security
2 shall develop and implement a system to track
3 aggregate data relating to admissibility deci-
4 sion, and length of stays under, B–1 visitor
5 visas in order to ensure the consistent applica-
6 tion of the guidelines established under sub-
7 section (a)(1)(B).

8 (2) LIMITATION.—The systems implemented
9 under paragraph (1) shall not store or track person-
10 ally identifiable information, except that this para-
11 graph shall not be construed to limit the application
12 of any other system that is being implemented by
13 the Department of State or the Department of
14 Homeland Security to track travelers or travel to the
15 United States.

16 (c) PUBLIC EDUCATION.—The Secretary of State
17 and the Secretary of Homeland Security shall carry out
18 activities to provide guidance and education to the public
19 and to visa applicants concerning the nature, purposes,
20 and availability of the B–1 visa for business travelers.

21 (d) REPORT.—Not later than 6 and 18 months after
22 the date of enactment of this Act, the Secretary of State
23 and the Secretary of Homeland Security shall submit to
24 Congress, reports concerning the status of the implemen-
25 tation of this section.

1 **SEC. 427. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums
3 as may be necessary to carry out this title, and the amend-
4 ments made by this title.

5 **TITLE V—IMMIGRATION**
6 **BENEFITS**

7 **SEC. 501. REBALANCING OF IMMIGRANT VISA ALLOCATION.**

8 (a) **FAMILY-SPONSORED IMMIGRANTS.**—Section
9 201(c) of the Immigration and Nationality Act (8 U.S.C.
10 1151(c)) is amended to read as follows:

11 “(c) **WORLDWIDE LEVEL OF FAMILY-SPONSORED**
12 **IMMIGRANTS.**—

13 “(1) For each fiscal year until visas needed for
14 petitions described in section 503(f)(2) of the [Insert
15 title of Act] become available, the worldwide level of
16 family-sponsored immigrants under this subsection
17 is 567,000 for petitions for classifications under
18 203(a), plus any immigrant visas not required for
19 the class specified in (d).

20 “(2) Except as provided in paragraph (1), the
21 worldwide level of family-sponsored immigrants
22 under this subsection for a fiscal year is 127,000,
23 plus any immigrant visas not required for the class
24 specified in (d).”.

1 (b) MERIT-BASED IMMIGRANTS.—Section 201(d) of
2 the Immigration and Nationality Act (8 U.S.C. 1151(d))
3 is amended to read as follows:

4 “(d) WORLDWIDE LEVEL OF MERIT-BASED, SPE-
5 CIAL, AND EMPLOYMENT CREATION IMMIGRANTS.—

6 “(1) IN GENERAL.—The worldwide level of
7 merit-based, special, and employment creation immi-
8 grants under this subsection for a fiscal year—

9 “(A) for the first five fiscal years shall be
10 equal to the number of immigrant visas made
11 available to aliens seeking immigrant visas
12 under section 203(b) of this Act for fiscal year
13 2005, plus any immigrant visas not required for
14 the class specified in (c), of which:

15 “(i) at least 10,000 will be for excep-
16 tional aliens in nonimmigrant status under
17 section 101(a)(15)(Y); and

18 “(ii) 90,000 will be for aliens who
19 were the beneficiaries of an application
20 that was pending or approved at the time
21 of the effective date of this section, per
22 Section 502(d) of the [Insert title of Act].

23 “(B) stating in the sixth fiscal year, shall
24 be equal to 140,000 for each fiscal year until
25 aliens described in section 101(a)(15)(Z) of this

1 Act first become eligible for an immigrant visa,
2 plus any immigrant visas not required for the
3 class specified in (c), of which:

4 “(i) at least 10,000 will be for excep-
5 tional aliens in nonimmigrant status under
6 section 101(a)(15)(Y); and

7 “(ii) no more than 90,000 will be for
8 aliens who were the beneficiaries of an ap-
9 plication that was pending or approved at
10 the time of the effective date of this sec-
11 tion, per Section 502(d) of the [Insert title
12 of Act].

13 “(C)(i) 380,000, for each fiscal year start-
14 ing in the first fiscal year in which aliens de-
15 scribed in section 101(a)(15)(Z) of this Act be-
16 come eligible for an immigrant visa, of which at
17 least 10,000 will be for exceptional aliens in
18 nonimmigrant status under section
19 101(a)(15)(Y), plus any immigrant visas not re-
20 quired for the class specified in (c); plus

21 “(ii) the temporary supplemental allocation
22 of additional visas described in paragraph (2)
23 for nonimmigrants described in section
24 101(a)(15)(Z).

1 “(2) TEMPORARY SUPPLEMENTAL ALLOCA-
2 TION.—The temporary supplemental allocation of
3 visas described in this paragraph is as follows:

4 “(A) for the first five fiscal years in which
5 aliens described in section 101(a)(15)(Z) of this
6 Act are eligible for an immigrant visa, the num-
7 ber calculated pursuant to section 503(f)(2) of
8 the [Insert title of Act];

9 “(B) in the sixth fiscal year in which aliens
10 described in section 101(a)(15)(Z) of this Act
11 are eligible for an immigrant visa, the number
12 calculated pursuant to section 503(f)(3) of [In-
13 sert title of Act]; and

14 “(C) starting in the seventh fiscal year in
15 which aliens described in section 101(a)(15)(Z)
16 of this Act are eligible for an immigrant visa,
17 the number equal to the number of Z non-
18 immigrants who became aliens admitted for
19 permanent residence based on the merit-based
20 evaluation system in the prior fiscal year until
21 no further Z nonimmigrants adjust status;

22 “(3) TERMINATION OF TEMPORARY SUPPLE-
23 MENTAL ALLOCATION.—The temporary supple-
24 mental allocation of visas shall terminate when the

1 number of visas calculated pursuant to paragraph
2 (2)(C) is zero.

3 “(4) LIMITATION.—The temporary supple-
4 mental visas in paragraph (2) shall not be awarded
5 to any individual other than an individual described
6 in section 101(a)(15)(Z).

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on the first day of the fiscal
9 year subsequent to the fiscal year of enactment.

10 **SEC. 502. INCREASING AMERICAN COMPETITIVENESS**
11 **THROUGH A MERIT-BASED EVALUATION SYS-**
12 **TEM FOR IMMIGRANTS.**

13 (a) SENSE OF CONGRESS.—It is the sense of Con-
14 gress that the United States benefits from a work force
15 that has diverse skills, experience and training.

16 (b) CREATION OF MERIT-BASED EVALUATION SYS-
17 TEM FOR IMMIGRANTS AND REALLOCATION OF VISAS.—
18 Section 203(b) of the Immigration and Nationality Act (8
19 U.S.C. 1153(b)) is amended by—

20 (1) striking paragraphs (1), (2), and (3) and
21 inserting the following:

22 “(1) MERIT-BASED IMMIGRANTS.—Visas shall
23 first be made available in a number not to exceed 95
24 percent of such worldwide level, plus any visas not
25 required for the classes in paragraphs (2) and (3),

1 to qualified immigrants selected through a merit-
2 based evaluation system.

3 “(A) The merit-based evaluation system
4 shall initially consist of the following criteria
5 and weights:

Category	Description	Max pts
Employment		47
<i>Occupation</i>	U.S. employment in Specialty Occupation (DoL definition)— 20 pts	
	U.S. employment in High Demand Occupation (BLS largest 10-yr job growth, top 30) 16 pts	
<i>National interest/critical infrastructure—</i>	U.S. employment in STEM or health occupation, current for at least 1 year— 8 pts (extraordinary or ordinary)	
<i>Employer endorsement</i>	A U.S. employer willing to pay 50% of LPR application fee either 1) offers a job, or 2) attests for a current employee— 6 pts	
<i>Experience</i>	Years of work for U.S. firm— 2 pts/year (max 10 pts)	
<i>Age of worker</i>	Worker’s age: 25–39— 3 pts	
Education		28
<i>(terminal degree)</i>	M.D., M.B.A., Graduate degree, etc.— 20 pts	
	Bachelor’s degree— 16 pts	
	Associate’s degree— 10 pts	
	High School diploma or GED— 6 pts	
	Completed certified Perkins Vocational Education program— 5 pts	
	Completed DoL Registered Apprenticeship— 8 pts	
	STEM, assoc & above— 8 pts	
English & civics		15
	Native speaker of English or TOEFL score of 75 or higher— 15 pts	

Category	Description	Max pts
Extended family (Applied if threshold of 55 in above categories.)	TOEFL score of 60–74— 10 pts Pass USCIS Citizenship Tests in English & Civics— 6 pts Adult (21 or older) son or daughter of USC— 8 pts Adult (21 or older) son or daughter of LPR— 6 pts Sibling of USC or LPR— 4 pts If had applied for a family visa in any of the above categories after May 1, 2005— 2 pts	10
Supplemental schedule for Zs		100
<i>Agriculture National Interest</i>	Worked in agriculture for 3 years, 150 days per year— 21 pts	25
	Worked in agriculture for 4 years (150 days for 3 years, 100 days for 1 year)— 23 pts	
	Worked in agriculture for 5 years, 100 days per year— 25 pts	
<i>U.S. employment exp.</i>	Year of lawful employment— 1 pt	15
<i>Home ownership</i>	Own place of residence— 1 pt/year owned	5
<i>Medical Insurance</i>	Current medical insurance for entire family	5

1 “(B) The Secretary of Homeland Security,
2 after consultation with the Secretaries of Com-
3 merce and Labor, shall establish procedures to
4 adjudicate petitions filed pursuant to the merit-
5 based evaluation system. The Secretary may es-

1 tabish a time period in a fiscal year in which
2 such petitions must be submitted.

3 “(C) The Standing Commission on Immi-
4 gration and Labor Markets established pursu-
5 ant to Section 407 of the [Insert title of Act]
6 shall submit recommendations to Congress con-
7 cerning the establishment of procedures for
8 modifying the selection criteria and relative
9 weights accorded such criteria in order to en-
10 sure that the merit-based evaluation system
11 corresponds to the current needs of the United
12 States economy and the national interest.

13 “(D) No modifications to the selection cri-
14 teria and relative weights accorded such criteria
15 that are established by the [Insert title of Act]
16 should take effect earlier than the sixth fiscal
17 year in which aliens described in section
18 101(a)(15)(Z) of this Act are eligible for an im-
19 migrant visa.

20 “(E) The application of the selection cri-
21 teria to any particular visa petition or applica-
22 tion pursuant to the merit-based evaluation sys-
23 tem shall be within the Secretary’s sole and
24 unreviewable discretion.

1 “(F) Any petition filed pursuant to this
2 paragraph that has not been found by the Sec-
3 retary to have qualified in the merit-based eval-
4 uation system shall be deemed denied on the
5 first day of the third fiscal year following the
6 date of such application. Such denial shall not
7 preclude the petitioner from filing a successive
8 petition pursuant to this paragraph. Notwith-
9 standing this paragraph, the Secretary may
10 deny a petition when denial is appropriate
11 under other provisions of law, including but not
12 limited to sections 204(c).”.

13 (2) redesignating paragraph (4) as paragraph
14 (2), by striking “7.1 percent” and inserting
15 “4,200”, and striking “5,000” and inserting
16 “2,500”;

17 (3) redesignating paragraph (5) as paragraph
18 (3), by striking “7.1 percent” and inserting
19 “2,800”, and striking “3,000” and inserting
20 “1,500”;

21 (4) redesignating paragraph (6) as paragraph
22 (4).

23 (c) PROCEDURE FOR GRANTING IMMIGRANT STA-
24 TUS.—Section 204(a)(1) of the Immigration and Nation-

1 ality Act (8 U.S.C. 1154(a)(1)) is amended by striking
2 subparagraphs (E) and (F).

3 (d) EFFECTIVE DATE.—

4 (1) IN GENERAL.—Subject to paragraph (2),
5 the amendments made by this section shall take ef-
6 fect on the first day of the fiscal year subsequent to
7 the fiscal year of enactment, unless such date is less
8 than 270 days after the date of enactment, in which
9 case the amendments shall take effect on the first
10 day of the following fiscal year.

11 (2) PENDING AND APPROVED PETITIONS AND
12 APPLICATIONS.—Petitions for an employment-based
13 visa filed for classification under section 203(b)(1),
14 (2), or (3) of the Immigration and Nationality Act
15 (as such provisions existed prior to the enactment of
16 this section) that were filed prior to the date of the
17 introduction of the [Insert title of Act] and were
18 pending or approved at the time of the effective date
19 of this section, shall be treated as if such provision
20 remained effective and an approved petition may
21 serve as the basis for issuance of an immigrant visa.
22 Aliens with applications for a labor certification pur-
23 suant to section 212(a)(5)(A) of the Immigration
24 and Nationality Act shall preserve the immigrant

1 visa priority date accorded by the date of filing of
2 such labor certification application.

3 (e) CONFORMING AMENDMENTS.—

4 (1) Section 201 of the Immigration and Nation-
5 ality Act (8 U.S.C. 1151) is amended by striking
6 “employment-based” each place it appears and in-
7 serting “merit-based”.

8 (2) Section 202 of the Immigration and Nation-
9 ality Act (8 U.S.C. 1152) is amended by striking
10 “employment-based” each place it appears and in-
11 serting “merit-based”.

12 (3) Section 203(b) of the Immigration and Na-
13 tionality Act (8 U.S.C. 1153(b)) is amended by:

14 (A) striking the heading and first sentence
15 and inserting the following:

16 “(b) Preference allocation for merit-based, special
17 and employment creation immigrants. Aliens subject to
18 the worldwide level specified in section 201(d) for merit-
19 based, special and employment creation immigrants in a
20 fiscal year shall be allotted visas as follows:”;

21 (B) striking “employment based” and in-
22 serting “merit-based” and striking “paragraphs
23 (1), (2), and (3)” and inserting “paragraph
24 (1)” in subparagraph (6)(B)(i); and

1 (C) striking “employment based” and in-
2 serting “merit-based” and striking “each of
3 paragraphs (1) through (3)” and inserting
4 “paragraph (1)” in subparagraph (6)(B)(iii).

5 (4) Section 212(a)(4) of the Immigration and
6 Nationality Act (8 U.S.C. 1182(a)(4)) is amended
7 by striking subparagraph (D).

8 (5) Section 213A(f) of the Immigration and
9 Nationality Act (8 U.S.C. 1183a(f)) is amended by:

10 (A) striking subparagraph (4);

11 (B) striking subparagraph (5) and insert-
12 ing the following:

13 “(4) NON-PETITIONING CASES.—Such term also
14 includes an individual who does not meet the re-
15 quirement of paragraph (1)(D) but who is a spouse,
16 parent, mother in law, father in law, sibling, child (if
17 at least 18 years of age), son, daughter, son in law,
18 daughter in law, sister in law, brother in law, grand-
19 parent, or grandchild of a sponsored alien or a legal
20 guardian of a sponsored alien, meets the require-
21 ments of paragraph (1) (other than subparagraph
22 (D)), and executes an affidavit of support with re-
23 spect to such alien in a case in which—

1 “(A) the individual petitioning under sec-
2 tion 204 for the classification of such alien died
3 after the approval of such petition; and

4 “(B) the Secretary of Homeland Security
5 has determined for humanitarian reasons that
6 revocation of such petition under section 205
7 would be inappropriate.”;

8 (C) redesignating subparagraph (6) as sub-
9 paragraph (5); and

10 (D) striking “(6)” and inserting “(5)” in
11 subparagraph (1)(E).

12 (6) Section 212(a) of the Immigration and Na-
13 tionality Act (8 U.S.C. 1182(a)) is amended by
14 striking paragraph (5).

15 (7) Section 218(g)(3) of the Immigration and
16 Nationality Act (8 U.S.C. 1188) is amended by
17 striking paragraph (3) and redesignating paragraph
18 (4) as paragraph (3).

19 (8)(A) Section 207(c)(3) of the Immigration
20 and Nationality Act (8 U.S.C. 1157(c)(3)) is amend-
21 ed by striking “(5),” in the first sentence.

22 (B) Section 209(c) of the Immigration and Na-
23 tionality Act (8 U.S.C. 1159(c)) is amended by
24 striking “(5),” in the second sentence.

1 (C) Section 210(c)(2)(A) of the Immigration
2 and Nationality Act (8 U.S.C. 1160(c)(2)(A)) is
3 amended by striking “paragraphs (5) and,” and in-
4 serting “paragraph”.

5 (D) Section 237(a)(1)(H)(i)(II) of the Immi-
6 gration and Nationality Act (8 U.S.C.
7 1227(a)(1)(H)(i)(II)) is amended by striking “para-
8 graphs (5) and,” and inserting “paragraph”.

9 (E) Section 245(h)(2)(A) of the Immigration
10 and Nationality Act (8 U.S.C. 1255(h)(2)(A)) is
11 amended by striking “(5)(a),”.

12 (F) Section 245A(d)(2)(A) of the Immigration
13 and Nationality Act (8 U.S.C. 1255a(d)(2)(A)) is
14 amended by striking “paragraphs (5) and,” and in-
15 serting “paragraph”.

16 (G) Section 286(s)(6) of the Immigration and
17 Nationality Act (8 U.S.C. 1356(s)(6)) is amended by
18 striking “and section 212(a)(5)(A)”.

19 (f) REFERENCES TO SECRETARY OF HOMELAND SE-
20 CURITY.—

21 (1) Section 203 of the Immigration and Nation-
22 ality Act (8 U.S.C. 1153) is amended by striking
23 “Attorney General” each place it appears and insert-
24 ing “Secretary of Homeland Security”.

1 (2) Section 204 of the Immigration and Nation-
2 ality Act (8 U.S.C. 1154) is amended by striking
3 “Attorney General” each place it appears, except for
4 section 204(f)(4)(B), and inserting “Secretary of
5 Homeland Security”.

6 **SEC. 503. REDUCING CHAIN MIGRATION AND PERMITTING**
7 **PETITIONS BY NATIONALS.**

8 (a) CAP EXEMPT CATEGORIES.—Paragraph (1) of
9 section 201(b) of the Immigration and Nationality Act (8
10 U.S.C. 1151(b)) is amended by adding the following two
11 new subparagraphs at the end:

12 “(F) Aliens admitted under section 211(a)
13 on the basis of a prior issuance of a visa under
14 section 203(a) to their accompanying parent
15 who is an immediate relative.

16 “(G) Aliens born to an alien lawfully ad-
17 mitted for permanent residence during a tem-
18 porary visit abroad.”.

19 (b) IMMEDIATE RELATIVES.—

20 (1) IMMEDIATE RELATIVE REDEFINED.—Para-
21 graph (2) of section 201(b) of the Immigration and
22 Nationality Act (8 U.S.C. 1151(b)) is amended to
23 read as follows:

24 “(2) IMMEDIATE RELATIVES.—

1 “(A) IN GENERAL.—For purposes of this
2 subsection, the term ‘immediate relative’ means
3 a child or spouse of a citizen of the United
4 States (and each child of such child or spouse
5 who is accompanying or following to join the
6 alien).

7 “(B) SPOUSE OF A DECEASED U.S. CIT-
8 IZEN.—An alien who was the spouse of a citizen
9 of the United States and not legally separated
10 from the citizen at the time of the citizen’s
11 death, who was married to the citizen for not
12 less than 2 years at the time of the citizen’s
13 death (or, if married for less than 2 years at
14 the time of the citizen’s death, who proves by
15 a preponderance of the evidence that the mar-
16 riage was entered into in good faith and not
17 solely for the purpose of obtaining an immigra-
18 tion benefit), and each child of such alien, may
19 be considered, for purposes of this subsection,
20 to remain an immediate relative after the date
21 of the citizen’s death if the spouse files a peti-
22 tion under section 204(a)(1)(A)(ii) before the
23 earlier of—

24 “(i) 2 years after such date; or

1 “(ii) the date on which the spouse re-
2 marries.

3 “(C) BATTERED SPOUSE OR CHILD.—An
4 alien who has filed a petition under clause (iii)
5 or (iv) of section 204(a)(1)(A) remains an im-
6 mediate relative if the United States citizen
7 spouse or parent loses United States citizenship
8 on account of the abuse.”.

9 (2) PETITION.—Section 204(a)(1)(A)(ii) of the
10 Immigration and Nationality Act (8 U.S.C.
11 1154(a)(1)(A)(ii)) is amended by striking “in the
12 second sentence of section 201(b)(2)(A)(i)” and in-
13 serting “in section 201(b)(2)(B)”.

14 (c) PREFERENCE CATEGORIES.—Section 203(a) of
15 the Immigration and Nationality Act (8 U.S.C. 1153(a))
16 is amended:

17 (1) By striking paragraph (1) and inserting the
18 following:

19 “(1) Parents of a citizen of the United States
20 if the citizen is at least 21 years of age. Qualified
21 immigrants who are the parents of a citizen of the
22 United States where the citizen is at least 21 years
23 of age shall be allocated visas in a number not to ex-
24 ceed 40,000, plus any visas not required for the
25 classes specified in paragraph (3), or”.

1 (2) By striking paragraph (2) and inserting the
2 following:

3 “(2) Spouses or children of an alien lawfully
4 admitted for permanent residence or a national.
5 Qualified immigrants who are the spouses or chil-
6 dren of an alien lawfully admitted for permanent
7 residence or a noncitizen national of the United
8 States as defined in section 101(a)(22)(B) of this
9 Act who is resident in the United States shall be al-
10 located visas in a number not to exceed 87,000, plus
11 any visas not required for the class specified in para-
12 graph (1)”

13 (3) By striking paragraph (3) and inserting the
14 following:

15 “(3) FAMILY-BASED VISA PETITIONS FILED BE-
16 FORE JANUARY 1, 2007, FOR WHICH VISAS WILL BE
17 AVAILABLE BEFORE JANUARY 1, 2027.—

18 “(A) IN GENERAL.—The allocation of im-
19 migrant visas described in paragraph (4) shall
20 apply to an alien for whom—

21 “(i) a family-based visa petition was
22 filed on or before January 1, 2007; and

23 “(ii) as of January 1, 2007, the Sec-
24 retary of Homeland Security calculates
25 under subparagraph (B) that a visa can

1 reasonably be expected to become available
2 before January 1, 2027.

3 “(B) REASONABLE EXPECTATION OF
4 AVAILABILITY OF VISAS.—In calculating the
5 date on which a family-based visa can reason-
6 ably be expected to become available for an
7 alien described in subparagraph (A), the Sec-
8 retary of Homeland Security shall take into ac-
9 count—

10 “(i) the number of visas allocated an-
11 nually for the family preference class
12 under which the alien’s petition was filed;

13 “(ii) the effect of any per country ceil-
14 ings applicable to the alien’s petition;

15 “(iii) the number of petitions filed be-
16 fore the alien’s petition was filed that were
17 filed under the same family preference
18 class; and

19 “(iv) the rate at which visas made
20 available in the family preference class
21 under which the alien’s petition was filed
22 were unclaimed in previous years.

23 “(4) ALLOCATION OF FAMILY-BASED IMMIG-
24 GRANT VISAS.—Immigrant visas totaling 440,000
25 shall be allotted visas as follows:

1 “(A) Qualified immigrants who are the un-
2 married sons or daughters of citizens of the
3 United States shall be allocated visas totaling
4 70,400 immigrant visas, plus any visas not re-
5 quired for the class specified in (D).

6 “(B) Qualified immigrants who are the un-
7 married sons or unmarried daughters of an
8 alien lawfully admitted for permanent residence,
9 shall be allocated visas totaling 110,000 immi-
10 grant visas, plus any visas not required for the
11 class specified in (A).

12 “(C) Qualified immigrants who are the
13 married sons or married daughters of citizens
14 of the United States shall be allocated visas to-
15 taling 70,400 immigrant visas, plus any visas
16 not required for the class specified in (A) and
17 (B).

18 “(D) Qualified immigrants who are the
19 brothers or sisters of citizens of the United
20 States, if such citizens are at least 21 years of
21 age, shall be allocated visas totaling 189,200
22 immigrant visas, plus any visas not required for
23 the class specified in (A), (B), and (C).”.

24 (4) By striking paragraph (4).

1 (d) PETITION.—Section 204(a)(1)(A)(i) of the Immi-
2 gration and Nationality Act (8 U.S.C. 1154(a)(1)(A)(i))
3 is amended by striking “, (3), or (4)” after “paragraph
4 (1)”.

5 (e) EFFECTIVE DATE.—

6 (1) IN GENERAL.—The amendments made by
7 this section shall take effect on the first day of the
8 fiscal year subsequent to the fiscal year of enact-
9 ment.

10 (2) PENDING AND APPROVED PETITIONS.—Pe-
11 titions for a family-sponsored visa filed for classifica-
12 tion under section 203(a)(1), (2)(B), (3), or (4) of
13 the Immigration and Nationality Act (as such provi-
14 sions existed prior to the enactment of this section)
15 which were filed before May 1, 2005, regardless of
16 whether the petitions have been approved before
17 May 1, 2005, shall be treated as if such provision
18 remained in effect, and an approved petition may be
19 the basis of an immigrant visa pursuant to section
20 203(a)(3).

21 (f) DETERMINATIONS OF NUMBER OF INTENDING
22 LAWFUL PERMANENT RESIDENTS.—

23 (1) SURVEY OF PENDING AND APPROVED FAM-
24 ILY-BASED PETITIONS.—The Secretary of Homeland
25 Security may require a submission from petitioners

1 with approved or pending family-based petitions filed
2 for classification under section 203(a)(1), (2)(B),
3 (3), or (4) of the Immigration and Nationality Act
4 (as such provisions existed prior to the enactment of
5 this section) filed on or before May 1, 2005 to deter-
6 mine that the petitioner and the beneficiary have a
7 continuing commitment to the petition for the alien
8 relative under the classification. In the event the
9 Secretary requires a submission pursuant to this
10 section, the Secretary shall take reasonable steps to
11 provide notice of such a requirement. In the event
12 that the petitioner or beneficiary is no longer com-
13 mitted to the beneficiary obtaining an immigrant
14 visa under this classification or if the petitioner does
15 not respond to the request for a submission, the Sec-
16 retary of Homeland Security may deny the petition
17 if the petition has not been adjudicated or revoke
18 the petition without additional notice pursuant to
19 section 205 if it has been approved.

20 (2) FIRST SURVEY OF Z NONIMMIGRANTS IN-
21 TENDING TO ADJUST STATUS.—The Secretary shall
22 establish procedures by which nonimmigrants de-
23 scribed in section 101(a)(15)(Z) who seek to become
24 aliens lawfully admitted for permanent residence
25 under the merit-based immigrant system shall estab-

1 lish their eligibility, pay any applicable fees and pen-
2 alties, and file their petitions. No later than the con-
3 clusion of the eighth fiscal year after the effective
4 date of section 218D of the Immigration and Na-
5 tionality Act, the Secretary will determine the total
6 number of qualified applicants who have followed the
7 procedures set forth in this section. The number cal-
8 culated pursuant to this paragraph shall be 20 per-
9 cent of the total number of qualified applicants. The
10 Secretary will calculate the number of visas needed
11 per year.

12 (3) SECOND SURVEY OF Z NONIMMIGRANTS IN-
13 TENDING TO ADJUST STATUS.—No later than the
14 conclusion of the thirteenth fiscal year after the ef-
15 fective date of section 218D of the Immigration and
16 Nationality Act, the Secretary will determine the
17 total number of qualified applicants not described in
18 paragraph (2) who have followed the procedures set
19 forth in this section. The number calculated pursu-
20 ant to this paragraph shall be the lesser of:

21 (A) the number of qualified applicants, as
22 determined by the Secretary pursuant to this
23 paragraph; and

24 (B) the number calculated pursuant to
25 paragraph (2).

1 (g) CONFORMING AMENDMENTS.—

2 (1) Section 212(d)(12)(B) of the Immigration
3 and Nationality Act (8 U.S.C. 1182(d)(12)(B)) is
4 amended by striking “201(b)(2)(A)” and inserting
5 “201(b)(2)”;

6 (2) Section 101(a)(15)(K) of the Immigration
7 and Nationality Act (8 U.S.C. 1101(a)(15)(K)) is
8 amended by striking “201(b)(2)(A)(i)” and inserting
9 “201(b)(2)”;

10 (3) Section 204(a) of the Immigration and Na-
11 tionality Act (8 U.S.C. 1154(a)) is amended by
12 striking “201(b)(2)(A)(i)” each place it appears and
13 inserting “201(b)(2)”;

14 (4) Section 214(r)(3)(A) of the Immigration
15 and Nationality Act (8 U.S.C. 1184(r)(3)(A)) is
16 amended by striking “201(b)(2)(A)(i)” and inserting
17 “201(b)(2)”.

18 **SEC. 504. CREATION OF PROCESS FOR IMMIGRATION OF**

19 **FAMILY MEMBERS IN HARDSHIP CASES.**

20 (a) IN GENERAL.—The Immigration and Nationality
21 Act (8 U.S.C. 1101 et seq.) is amended by adding a new
22 section 203A reading:

23 **“SEC. 203A. IMMIGRANT VISAS FOR HARDSHIP CASES.**

24 “(a) IN GENERAL.—Immigrant visas under this sec-
25 tion may not exceed 5,000 per fiscal year.

1 “(b) DETERMINATION OF ELIGIBILITY.—The Sec-
2 retary of Homeland Security may grant an immigrant visa
3 to an applicant who satisfies the following qualifications:

4 “(1) FAMILY RELATIONSHIP.—Visas under this
5 section will be given to aliens who are:

6 “(A) the unmarried sons or daughters of
7 citizens of the United States;

8 “(B) the unmarried sons or the unmarried
9 daughters of aliens lawfully admitted for per-
10 manent residence;

11 “(C) the married sons or married daugh-
12 ters of citizens of the United States; or

13 “(D) the brothers or sisters of citizens of
14 the United States, if such citizens are at least
15 21 years of age,

16 “(2) NECESSARY HARDSHIP.—The petitioner
17 must demonstrate to the satisfaction of the Sec-
18 retary of Homeland Security that the lack of an im-
19 migrant visa under this clause would result in ex-
20 treme hardship to the petitioner or the beneficiary
21 that cannot be relieved by temporary visits as a non-
22 immigrant.

23 “(3) INELIGIBILITY TO IMMIGRATE THROUGH
24 OTHER MEANS.—The alien described in clause (1)
25 must be ineligible to immigrate or adjust status

1 through other means, including but not limited to
2 obtaining an immigrant visa filed for classification
3 under section 201(b)(2)(A) or section 203(a) or (b)
4 of this Act, and obtaining cancellation of removal
5 under section 240A(b) of this Act. A determination
6 under this section that an alien is eligible to immi-
7 grate through other means does not foreclose or re-
8 strict any later determination on the question of eli-
9 gibility by the Secretary of Homeland Security or
10 the Attorney General.

11 “(c) PROCESSING OF APPLICATIONS.—

12 “(1) An alien selected for an immigrant visa
13 pursuant to this section shall remain eligible to re-
14 ceive such visa only if the alien files an application
15 for an immigrant visa or an application for adjust-
16 ment of status within the fiscal year in which the
17 visa becomes available, or at such reasonable time as
18 the Secretary may specify after the end of the fiscal
19 year for petitions approved in the last quarter of the
20 fiscal year.

21 “(2) All petitions for an immigrant visa under
22 this section shall automatically terminate if not
23 granted within the fiscal year in which they were
24 filed. The Secretary may in his discretion establish
25 such reasonable application period or other proce-

1 dures for filing petitions as he may deem necessary
2 in order to ensure their orderly processing within the
3 fiscal year of filing.

4 “(3) The secretary may reserve up to 2,500 of
5 the immigrant visas under this section for approval
6 in the period between March 31 and September 30
7 of a fiscal year.

8 “(d) Decisions whether an alien qualifies for an immi-
9 grant visa under this section are in the unreviewable dis-
10 cretion of the Secretary.”.

11 **SEC. 505. ELIMINATION OF DIVERSITY VISA PROGRAM.**

12 (a) Section 201 of the Immigration and Nationality
13 Act (8 U.S.C. 1151) is amended—

14 (1) in subsection (a)—

15 (A) by inserting “and” at the end of para-
16 graph (1);

17 (B) by striking “; and” at the end of para-
18 graph (2) and inserting a period; and

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

20 (2) by striking subsection (e).

21 (b) Section 203 of the Immigration and Nationality
22 Act (8 U.S.C. 1153) is amended—

23 (1) by striking subsection (c);

24 (2) in subsection (d), by striking “(a), (b), or
25 (c),” and inserting “(a) or (b),”;

1 (3) in subsection (e), by striking paragraph (2)
2 and redesignating paragraph (3) as paragraph (2);
3 (4) in subsection (f), by striking “(a), (b), or
4 (c)” and inserting “(a) or (b)”; and
5 (5) in subsection (g), by striking “(a), (b), and
6 (c)” and inserting “(a) and (b)”.

7 (c) Section 204 of the Immigration and Nationality
8 Act (8 U.S.C. 1154) is amended—

9 (1) by striking subsection (a)(1)(I);

10 (2) by redesignating subparagraphs (J), (K),
11 and (L) of subsection (a)(1) as subparagraphs (I),
12 (J), and (K), respectively; and

13 (3) in subsection (e), by striking “(a), (b), or
14 (c)” and inserting “(a) or (b)”.

15 (d) REPEAL OF TEMPORARY REDUCTION IN VISAS
16 FOR OTHER WORKERS.—Section 203(e) of the Nica-
17 ragan Adjustment and Central American Relief Act, as
18 amended (Public Law 105–100; 8 U.S.C. 1153 note), is
19 repealed.

20 (e) EFFECTIVE DATE.—

21 (1) The amendments made by this section shall
22 take effect on October 1, 2008;

23 (2) No alien may receive lawful permanent resi-
24 dent status based on the diversity visa program on
25 or after the effective date of this section.

1 (g) CONFORMING AMENDMENTS.—Section 203 of the
2 Immigration and Nationality Act (8 U.S.C. 1153(a)) is
3 amended by redesignating paragraphs (d), (e), (f), (g),
4 and (h) as paragraphs (c), (d), (e), (f), and (g), respec-
5 tively.

6 **SEC. 506. FAMILY VISITOR VISAS.**

7 (a) Section 101(a)(15)(B) of the Immigration and
8 Nationality Act (8 U.S.C. 1101(a)(15)(B)) is amended to
9 read as follows:

10 “(B) an alien (other than one coming for
11 the purpose of study or of performing skilled or
12 unskilled labor or as a representative of foreign
13 press, radio, film, or other foreign information
14 media coming to engage in such vocation) hav-
15 ing a residence in a foreign country which he or
16 she has no intention of abandoning and who is
17 visiting the United States temporarily for busi-
18 ness or temporarily for pleasure. The require-
19 ment that the alien have a residence in a for-
20 eign country which the alien has no intention of
21 abandoning shall not apply to an alien de-
22 scribed in section 214(s) who is seeking to enter
23 as a temporary visitor for pleasure;”.

1 (b) Section 214 of the Immigration and Nationality
2 Act (8 U.S.C. 1184) is amended by adding at the end the
3 following new subsection:

4 “(s) PARENT VISITOR VISAS.—

5 “(1) IN GENERAL.—The parent of a United
6 States citizen at least 21 years of age, or the spouse
7 or child of an alien in nonimmigrant status under
8 101(a)(15)(Y)(i), demonstrating satisfaction of the
9 requirements of this subsection may be granted a
10 nonimmigrant visa under section 101(a)(15)(B) as a
11 temporary visitor for pleasure.

12 “(2) REQUIREMENTS.—An alien seeking a non-
13 immigrant visa under this subsection must dem-
14 onstrate through presentation of such documentation
15 as the Secretary may by regulations prescribe,
16 that—

17 “(A) the alien’s United States citizen son
18 or daughter who is at least 21 years of age or
19 the alien’s spouse or parent in nonimmigrant
20 status under 101(a)(15)(Y)(i), is sponsoring the
21 alien’s visit to the United States;

22 “(B) the sponsoring United States citizen,
23 or spouse or parent in nonimmigrant status
24 under 101(a)(15)(Y)(i), has, according to such
25 procedures as the Secretary may by regulations

1 prescribe, posted on behalf of the alien a bond
2 in the amount of \$1,000, which shall be forfeit
3 if the alien overstays the authorized period of
4 admission (except as provided in subparagraph
5 (5)(B)) or otherwise violates the terms and con-
6 ditions of his or her nonimmigrant status; and

7 “(C) the alien, the sponsoring United
8 States citizen son or daughter, or the spouse or
9 parent in nonimmigrant status under
10 101(a)(15)(Y)(i), possesses the ability and fi-
11 nancial means to return the alien to his or her
12 country of residence.

13 “(3) TERMS AND CONDITIONS.—An alien ad-
14 mitted as a visitor for pleasure under the provisions
15 of this subsection—

16 “(A) may not stay in the United States for
17 an aggregate period in excess of 30 days within
18 any calendar year;

19 “(B) must, according to such procedures
20 as the Secretary may by regulations prescribe,
21 register with the Secretary upon departure from
22 the United States; and

23 “(C) may not be issued employment au-
24 thorization by the Secretary or be employed.

25 “(4) CERTIFICATION.—

1 “(A) REPORT.—No later than January 1
2 of each year, the Secretary of Homeland Secu-
3 rity shall submit a written report to Congress
4 estimating the percentage of aliens admitted to
5 the United States during the preceding fiscal
6 year as visitors for pleasure under the terms
7 and conditions of this subsection who have re-
8 mained in the United States beyond their au-
9 thorized period of admission (except as provided
10 in subparagraph (5)(B)). When preparing this
11 report, the Secretary shall determine which
12 countries, if any, have a disproportionately high
13 rate of nationals overstaying their period of au-
14 thorized admission under this subsection.

15 “(B) TERMINATION OF ELIGIBILITY OF
16 NATIONALS OF CERTAIN COUNTRIES.—Except
17 as provided in subparagraph (C), if the Sec-
18 retary reports under subparagraph (A) for two
19 consecutive fiscal years that the percentage of
20 aliens overstaying their period of authorized ad-
21 mission exceeds 7 percent, the Secretary may,
22 in his discretion, determine that no more visas
23 under this section may be issued for those
24 countries whose nationals have a disproportion-

1 ately high rate of aliens overstaying their period
2 of authorized admission under this subsection.

3 “(C) TERMINATION OF THE PROGRAM.—

4 Notwithstanding subparagraph (B), if the Sec-
5 retary reports under subparagraph (A) for two
6 consecutive fiscal years that the percentage of
7 aliens overstaying their period of authorized ad-
8 mission under this subsection exceeds 7 percent
9 and the percentage is not significantly affected
10 by countries whose nationals have a dispropor-
11 tionately high rate of aliens overstaying their
12 period of authorized admission, the Secretary
13 may, in his discretion, determine that no more
14 visas may be issued under this subsection as of
15 the date of the second consecutive report de-
16 scribed in subparagraph (A) finding an overstay
17 rate in excess of 7 percent.

18 “(D) EFFECT ON EXISTING VISAS.—In the

19 event the Secretary determines to that no more
20 visas shall be issued under subparagraphs (B)
21 or (C), all visas previously issued under this
22 subsection and still valid on the date that the
23 Secretary determines that no more visas should
24 be issued shall expire on the visa’s date of expi-

1 ration or 12 months after the date of the deter-
2 mination, whichever is soonest.

3 “(5) PERMANENT BARS FOR OVERSTAYS.—

4 “(A) IN GENERAL.—Any alien admitted as
5 a visitor for pleasure under the terms and con-
6 ditions of this subsection who remains in the
7 United States beyond his or her authorized pe-
8 riod of admission is permanently barred from
9 any future immigration benefits under the im-
10 migration laws, except—

11 “(i) asylum under section 208(a);

12 “(ii) withholding of removal under
13 section 241(b)(3); or

14 “(iii) protection under the Convention
15 Against Torture and Other Cruel, Inhu-
16 man or Degrading Treatment or Punish-
17 ment, done at New York December 10,
18 1984.

19 “(B) EXCEPTION.—Overstay of the au-
20 thorized period of admission granted to aliens
21 admitted as visitors for pleasure under the
22 terms and conditions of this subsection may be
23 excused in the discretion of the Secretary where
24 it is demonstrated that—

1 “(i) the period of overstay was due to
2 extraordinary circumstances beyond the
3 control of the applicant, and the Secretary
4 finds the period commensurate with the
5 circumstances; and

6 “(ii) the alien has not otherwise vio-
7 lated his or her nonimmigrant status.

8 “(6) BAR ON SPONSOR OF OVERSTAY.—The
9 United States citizen or Y-1 nonimmigrant sponsor
10 of an alien—

11 “(A) admitted as a visitor for pleasure
12 under the terms and conditions of this sub-
13 section, and

14 “(B) who remains in the United States be-
15 yond his or her authorized period of admission,
16 shall be permanently barred from sponsoring that
17 alien or any other alien for admission as a visitor for
18 pleasure under the terms and conditions of this sub-
19 section, and, in the case of a Y-1 nonimmigrant
20 sponsor, shall have his Y-1 nonimmigrant status
21 terminated.

22 “(7) CONSTRUCTION.—Nothing in this sub-
23 section shall be construed, except as provided in this
24 subsection, to make inapplicable the requirements
25 for admissibility and eligibility, as well as the terms

1 and conditions of admission, as a nonimmigrant
2 under section 101(a)(15)(B).”.

3 **SEC. 507. PREVENTION OF VISA FRAUD.**

4 (a) Section 204 of the Immigration and Nationality
5 Act (8 U.S.C. 1154) is amended by adding a paragraph
6 at the end:

7 “(h) FRAUD PREVENTION.—The Secretary of Home-
8 land Security may audit and evaluate the information fur-
9 nished as part of the applications filed under subsection
10 (a) and refer evidence of fraud to appropriate law enforce-
11 ment agencies based on the audit information.”.

12 (b) Sections 286(v)(2)(B) and (C) of the Immigration
13 and Nationality Act (8 U.S.C. 1356(v)(2)(B), (C)) are
14 amended to read as follows:

15 “(B) SECRETARY OF HOMELAND SECUR-
16 RITY.—One-third of the amounts deposited into
17 the Fraud Prevention and Detection Account
18 shall remain available to the Secretary of
19 Homeland Security until expended for programs
20 and activities to prevent and detect immigration
21 benefit fraud, including but not limited to fraud
22 with respect to petitions under paragraph (1) or
23 (2)(A) of section 214(c) to grant an alien non-
24 immigrant status described in subparagraph
25 (H)(i), (H)(ii), or (L) of section 101(a)(15).

1 “(C) SECRETARY OF LABOR.—One third of
2 the amounts deposited into the Fraud Preven-
3 tion and Detection Account shall remain avail-
4 able to the Secretary of Labor until expended
5 for enforcement programs and activities de-
6 scribed in section 212(n), and for enforcement
7 programs, and fraud detection and prevention
8 activities not otherwise authorized under
9 212(n), to be conducted by the Secretary of
10 Labor that focus on industries likely to employ
11 nonimmigrants.”.

12 **SEC. 508. INCREASING PER-COUNTRY LIMITS FOR FAMILY-**
13 **BASED AND EMPLOYMENT-BASED IMMI-**
14 **GRANTS.**

15 (a) Section 202(a) of the Immigration and Nation-
16 ality Act (8 U.S.C. 1152(a)) is amended by amending
17 paragraph (2) to read as follows:

18 “(2) PER COUNTRY LEVELS FOR FAMILY-SPON-
19 SORED AND MERIT-BASED IMMIGRANTS.—Subject to
20 paragraphs (3), (4), (5), (6), and (7), the total num-
21 ber of immigrant visas made available to natives of
22 any single foreign state or dependent area under
23 subsections (a) and (b) of section 203 in any fiscal
24 year may not exceed 10 percent (in the case of a sin-
25 gle foreign state) or 3 percent (in the case of a de-

1 pendent area) of the total number of such visas
2 made available under such subsections in that fiscal
3 year;”.

4 (b) Section 202(a) of the Immigration and Nation-
5 ality Act (8 U.S.C. 1152(a)) is amended by adding at the
6 end the following:

7 “(6) RULES FOR CERTAIN FAMILY-BASED PETI-
8 TION FILED BEFORE MAY 1, 2005.—In the event that
9 the per country levels in paragraph (2) prevent the
10 use of otherwise available visas described in section
11 201(c)(1)(B), then the per country level will not
12 apply for such visas.

13 “(7) EXCEPTION FOR Z NONIMMIGRANTS.—
14 Paragraph (2) shall not apply to aliens who are non-
15 immigrants described in section 101(a)(15)(Z) of
16 this Act who are eligible to seek lawful permanent
17 resident status based on a petition for classification
18 under section 203(b)(1) of this Act.”.

19 **SEC. 509. EXEMPTION FROM IMMIGRANT VISA LIMIT.**

20 Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended
21 by inserting after subparagraph (G), as added by section
22 503 of this Act, the following:

23 “(H) Aliens who are eligible for a visa
24 under paragraph (1) or (3) of section 203(a)
25 and who have a parent who was naturalized

1 pursuant to section 405 of the Immigration Act
2 of 1990 (8 U.S.C. 1440 note).”.

3 **TITLE VI—NONIMMIGRANTS IN**
4 **THE UNITED STATES PRE-**
5 **VIOUSLY IN UNLAWFUL STA-**
6 **TUS**

7 SEC. 601. (a) IN GENERAL.—Notwithstanding any
8 other provision of law, (including section 244(h) of the Im-
9 migration and Nationality Act (hereinafter “the Act”) (8
10 U.S.C. 1254a(h)), the Secretary may permit an alien, or
11 dependent of such alien, described in this section, to re-
12 main lawfully in the United States under the conditions
13 set forth in this title.

14 (b) DEFINITION OF Z NONIMMIGRANTS.—Section
15 101(a)(15) of the Act (8 U.S.C. 1101(a)(15)) is amended
16 by inserting at the end the following new subparagraph—

17 “(Z) subject to Title VI of the [Insert title
18 of Act], an alien who—

19 “(i) is physically present in the
20 United States, has maintained continuous
21 physical presence in the United States
22 since January 1, 2007, is employed, and
23 seeks to continue performing labor, serv-
24 ices or education; or

1 “(ii) is physically present in the
2 United States, has maintained continuous
3 physical presence in the United States
4 since January 1, 2007, and—

5 “(I) is the spouse or parent (65
6 years of age or older) of an alien de-
7 scribed in (i); or

8 “(II) was, within two years of the
9 date on which [Name of this Act] was
10 introduced, the spouse of an alien who
11 was subsequently classified as a Z
12 nonimmigrant under this section, or is
13 eligible for such classification, if—

14 “(aa) the termination of the
15 relationship with such spouse was
16 connected to domestic violence;
17 and

18 “(bb) the spouse has been
19 battered or subjected to extreme
20 cruelty by the spouse or parent
21 who is a Z nonimmigrant.

22 “(iii) is under 18 years of age at the
23 time of application for nonimmigrant sta-
24 tus under this subparagraph, is physically
25 present in the United States, has main-

1 tained continuous physical presence in the
2 United States since January 1, 2007, and
3 was born to or legally adopted by at least
4 one parent who is at the time of applica-
5 tion described in (i) or (ii).”

6 (c) PRESENCE IN THE UNITED STATES.—

7 (1) IN GENERAL.—The alien shall establish
8 that the alien was not present in lawful status in the
9 United States on January 1, 2007, under any classi-
10 fication described in section 101(a)(15) of the Act (8
11 U.S.C. 1101(a)(15)) or any other immigration sta-
12 tus made available under a treaty or other multi-
13 national agreement that has been ratified by the
14 Senate.

15 (2) CONTINUOUS PRESENCE.—For purposes of
16 this section, an absence from the United States
17 without authorization for a continuous period of 90
18 days or more than 180 days in the aggregate shall
19 constitute a break in continuous physical presence.

20 (d) OTHER CRITERIA.—

21 (1) GROUNDS OF INELIGIBILITY.—An alien is
22 ineligible for Z nonimmigrant status if the Secretary
23 determines that the alien—

1 (A)(1) is inadmissible to the United States
2 under section 212(a) of the Act (8 U.S.C.
3 1182(a)), except as provided in paragraph (2);

4 (2) Nothing in this paragraph shall require
5 the Secretary to commence removal proceedings
6 against an alien.

7 (B) is subject to the execution of an out-
8 standing administratively final order of re-
9 moval, deportation, or exclusion;

10 (C) is described in or is subject to section
11 241(a)(5) of the Act;

12 (D) has ordered, incited, assisted, or other-
13 wise participated in the persecution of any per-
14 son on account of race, religion, nationality,
15 membership in a particular social group, or po-
16 litical opinion;

17 (E) is an alien—

18 (i) for whom there are reasonable
19 grounds for believing that the alien has
20 committed a serious criminal offense as de-
21 scribed in section 101(h) of the Act outside
22 the United States before arriving in the
23 United States; or

1 (ii) for whom there are reasonable
2 grounds for regarding the alien as a dan-
3 ger to the security of the United States; or
4 (F) has been convicted of—

5 (i) a felony;

6 (ii) an aggravated felony as defined at
7 section 101(a)(43) of the Act;

8 (iii) 3 or more misdemeanors under
9 Federal or State law; or

10 (iv) a serious criminal offense as de-
11 scribed in section 101(h) of the Act;

12 (G) has entered or attempted to enter the
13 United States illegally on or after January 1,
14 2007; and

15 (H) with respect to an applicant for Z-2
16 or Z-3 nonimmigrant status, a Z-2 non-
17 immigrant, or a Z-3 nonimmigrant who is
18 under 18 years of age, the alien is ineligible for
19 Z nonimmigrant status if the principal Z-1
20 nonimmigrant or Z-1 nonimmigrant status ap-
21 plicant is ineligible.

22 (I) The Secretary may in his discretion
23 waive ineligibility under subparagraph (B) or
24 (C) if the alien has not been physically removed
25 from the United States and if the alien dem-

1 onstrates that his departure from the United
2 States would result in extreme hardship to the
3 alien or the alien's spouse, parent or child.

4 (2) GROUNDS OF INADMISSIBILITY.—

5 (A) IN GENERAL.—In determining an
6 alien's admissibility under paragraph (1)(A)—

7 (i) paragraphs (6)(A)(i) (with respect
8 to an alien present in the United States
9 without being admitted or paroled before
10 the date of application, but not with re-
11 spect to an alien who has arrived in the
12 United States on or after January 1,
13 2007), (6)(B), (6)(C)(i), (6)(C)(ii), (6)(D),
14 (6)(F), (6)(G), (7), (9)(B), (9)(C)(i)(I),
15 and (10)(B) of section 212(a) of the Act
16 shall not apply, but only with respect to
17 conduct occurring or arising before the
18 date of application;

19 (ii) the Secretary may not waive—

20 (I) subparagraph (A), (B), (C),
21 (D)(ii), (E), (F), (G), (H), or (I) of
22 section 212(a)(2) of the Act (relating
23 to criminals);

1 (II) section 212(a)(3) of the Act
2 (relating to security and related
3 grounds);

4 (III) with respect to an applica-
5 tion for Z nonimmigrant status, sec-
6 tion 212(a)(6)(C)(i) of the Act;

7 (IV) paragraph (6)(A)(i) of sec-
8 tion 212(a) of the Act (with respect to
9 any entries occurring on or after Jan-
10 uary 1, 2007);

11 (V) section 212(a)(9)(C)(i)(II);

12 (VI) subparagraph (A), (C), or
13 (D) of section 212(a)(10) of the Act
14 (relating to polygamists, child abduc-
15 tors, and unlawful voters);

16 (iii) the Secretary may in his discre-
17 tion waive the application of any provision
18 of section 212(a) of the Act not listed in
19 subparagraph (B) on behalf of an indi-
20 vidual alien for humanitarian purposes, to
21 ensure family unity, or if such waiver is
22 otherwise in the public interest; and

23 (B) CONSTRUCTION.—Nothing in this
24 paragraph shall be construed as affecting the
25 authority of the Secretary other than under this

1 paragraph to waive the provisions of section
2 212(a) of the Act.

3 (e) ELIGIBILITY REQUIREMENTS.—To be eligible for
4 Z nonimmigrant status an alien shall meet the following
5 and any other applicable requirements set forth in this
6 section:

7 (1) ELIGIBILITY.—The alien must not fall with-
8 in a class of aliens ineligible for Z nonimmigrant
9 status listed under subsection (d)(1).

10 (2) ADMISSIBILITY.—The alien must not be in-
11 admissible as a nonimmigrant to the United States
12 under section 212, except as provided in subsection
13 (d)(2), regardless of whether the alien has previously
14 been admitted to the United States.

15 (3) PRESENCE.—To be eligible for Z-1 or Z-
16 2 nonimmigrant status, or for nonimmigrant status
17 under section 101(a)(15)(Z)(iii)(I), the alien must—

18 (A) have been physically present in the
19 United States before January 1, 2007, and
20 have maintained continuous physical presence
21 in the United States since that date;

22 (B) be physically present in the United
23 States on the date of application for Z non-
24 immigrant status; and

1 (C) be on January 1, 2007, and on the
2 date of application for Z nonimmigrant status,
3 not present in lawful status in the United
4 States under any classification described in sec-
5 tion 101(a)(15) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1101(a)(15)) or any other
7 immigration status made available under a trea-
8 ty or other multinational agreement that has
9 been ratified by the Senate.

10 (4) EMPLOYMENT.—An alien seeking Z–1 non-
11 immigrant status must be employed in the United
12 States on the date of filing of the application for Z–
13 1 nonimmigrant status.

14 (5) FEES AND PENALTIES.—

15 (A) PROCESSING FEES.—

16 (i) An alien making an initial applica-
17 tion for Z nonimmigrant status shall be re-
18 quired to pay a processing fee in an
19 amount sufficient to recover the full cost of
20 adjudicating the application, but no more
21 than \$1,500 for a single Z nonimmigrant.

22 (ii) An alien applying for extension of
23 his Z nonimmigrant status shall be re-
24 quired to pay a processing fee in an
25 amount sufficient to cover administrative

1 and other expenses associated with proc-
2 essing the extension application, but no
3 more than \$1,500 for a single Z non-
4 immigrant.

5 (B) PENALTIES.—

6 (i) An alien making an initial applica-
7 tion for Z-1 nonimmigrant status shall be
8 required to pay, in addition to the proc-
9 essing fee in subparagraph (A), a penalty
10 of \$1,000.

11 (ii) A Z-1 nonimmigrant making an
12 initial application for Z-1 nonimmigrant
13 status shall be required to pay a \$500 pen-
14 alty for each alien seeking Z-2 or Z-3
15 nonimmigrant status derivative to the Z-1
16 applicant.

17 (iii) An alien who is a Z-2 or Z-3
18 nonimmigrant and who has not previously
19 been a Z-1 nonimmigrant, and who
20 changes status to that of a Z-1 non-
21 immigrant, shall in addition to processing
22 fees be required to pay the initial applica-
23 tion penalties applicable to Z-1 non-
24 immigrants.

1 (C) STATE IMPACT ASSISTANCE FEE.—In
2 addition to any other amounts required to be
3 paid under this subsection, a Z-1 non-
4 immigrant making an initial application for Z-
5 1 nonimmigrant status shall be required to pay
6 a State impact assistance fee equal to \$500.

7 (D) DEPOSIT AND SPENDING OF FEES.—
8 The processing fees under subparagraph (A)
9 shall be deposited and remain available until ex-
10 pended as provided by sections 286(m) and (n).

11 (E) DEPOSIT, ALLOCATION, AND SPEND-
12 ING OF PENALTIES.—

13 (i) DEPOSIT OF PENALTIES.—The
14 penalty under subparagraph (B) shall be
15 deposited and remain available as provided
16 by section 286(w).

17 (ii) DEPOSIT OF STATE IMPACT AS-
18 SISTANCE FUNDS.—The funds under sub-
19 paragraph (C) shall be deposited and re-
20 main available as provided by section
21 286(x).

22 (6) INTERVIEW.—An applicant for Z non-
23 immigrant status must appear to be interviewed.

24 (7) MILITARY SELECTIVE SERVICE.—The alien
25 shall establish that if the alien is within the age pe-

1 riod required under the Military Selective Service
2 Act (50 U.S.C. App. 451 et seq.) that such alien has
3 registered under that Act.

4 (f) APPLICATION PROCEDURES.—

5 (1) IN GENERAL.—The Secretary of Homeland
6 Security shall prescribe by notice in the Federal
7 Register, in accordance with the procedures de-
8 scribed in section 610 of the [NAME OF THIS
9 ACT], the procedures for an alien in the United
10 States to apply for Z nonimmigrant status and the
11 evidence required to demonstrate eligibility for such
12 status.

13 (2) INITIAL RECEIPT OF APPLICATIONS.—The
14 Secretary of Homeland Security, or such other enti-
15 ties as are authorized by the Secretary to accept ap-
16 plications under the procedures established under
17 this subsection, shall accept applications from aliens
18 for Z nonimmigrant status for a period of one year
19 starting the first day of the first month beginning
20 no more than 180 days after the date of enactment
21 of this section. If, during the one-year initial period
22 for the receipt of applications for Z nonimmigrant
23 status, the Secretary of Homeland Security deter-
24 mines that additional time is required to register ap-
25 plicants for Z nonimmigrant status, the Secretary

1 may in his discretion extend the period for accepting
2 applications by up to 12 months.

3 (3) BIOMETRIC DATA.—Each alien applying for
4 Z nonimmigrant status must submit biometric data
5 in accordance with procedures established by the
6 Secretary of Homeland Security.

7 (g) CONTENT OF APPLICATION FILED BY ALIEN.—

8 (1) APPLICATION FORM.—The Secretary of
9 Homeland Security shall create an application form
10 that an alien shall be required to complete as a con-
11 dition of obtaining Z nonimmigrant status.

12 (2) APPLICATION INFORMATION.—

13 (A) IN GENERAL.—The application form
14 shall request such information as the Secretary
15 deems necessary and appropriate, including but
16 not limited to, information concerning the
17 alien's physical and mental health; complete
18 criminal history, including all arrests and dis-
19 positions; gang membership, renunciation of
20 gang affiliation; immigration history; employ-
21 ment history; and claims to United States citi-
22 zenship.

23 (3) SECURITY AND LAW ENFORCEMENT BACK-
24 GROUND CHECKS.—

1 (A) SUBMISSION OF FINGERPRINTS.—The
2 Secretary may not accord Z nonimmigrant sta-
3 tus unless the alien submits fingerprints and
4 other biometric data in accordance with proce-
5 dures established by the Secretary.

6 (B) BACKGROUND CHECKS.—The Sec-
7 retary shall utilize fingerprints and other bio-
8 metric data provided by the alien to conduct ap-
9 propriate background checks of such alien to
10 search for criminal, national security, or other
11 law enforcement actions that would render the
12 alien ineligible for classification under this sec-
13 tion.

14 (h) TREATMENT OF APPLICANTS.—

15 (1) IN GENERAL.—An alien who files an appli-
16 cation for Z nonimmigrant status shall, upon sub-
17 mission of any evidence required under paragraphs
18 (f) and (g) and after the Secretary has conducted
19 appropriate background checks, to include name and
20 fingerprint checks, that have not by the end of the
21 next business day produced information rendering
22 the applicant ineligible—

23 (A) be granted probationary benefits in the
24 form of employment authorization pending final
25 adjudication of the alien’s application;

1 (B) may in the Secretary's discretion re-
2 ceive advance permission to re-enter the United
3 States pursuant to existing regulations gov-
4 erning advance parole;

5 (C) may not be detained for immigration
6 purposes, determined inadmissible or deport-
7 able, or removed pending final adjudication of
8 the alien's application, unless the alien is deter-
9 mined to be ineligible for Z nonimmigrant sta-
10 tus; and

11 (D) may not be considered an unauthor-
12 ized alien (as defined in section 274A(h)(3) of
13 the Immigration and Nationality Act (8 U.S.C.
14 1324a(h)(3))) unless employment authorization
15 under subparagraph (A) is denied.

16 (2) TIMING OF PROBATIONARY BENEFITS.—No
17 probationary benefits shall be issued to an alien
18 until the alien has passed all appropriate back-
19 ground checks or the end of the next business day,
20 whichever is sooner.

21 (3) CONSTRUCTION.—Nothing in this section
22 shall be construed to limit the Secretary's authority
23 to conduct any appropriate background and security
24 checks subsequent to issuance of evidence of proba-
25 tionary benefits under paragraph (4).

1 (4) PROBATIONARY AUTHORIZATION DOCU-
2 MENT.—The Secretary shall provide each alien de-
3 scribed in paragraph (1) with a counterfeit-resistant
4 document that reflects the benefits and status set
5 forth in paragraph (h)(1). The Secretary may by
6 regulation establish procedures for the issuance of
7 documentary evidence of probationary benefits and,
8 except as provided herein, the conditions under
9 which such documentary evidence expires, termi-
10 nates, or is renewed. All documentary evidence of
11 probationary benefits shall expire no later than six
12 months after the date on which the Secretary begins
13 to approve applications for Z nonimmigrant status.

14 (5) BEFORE APPLICATION PERIOD.—If an alien
15 is apprehended between the date of enactment and
16 the date on which the period for initial registration
17 closes under subsection (f)(2), and the alien can es-
18 tablish prima facie eligibility for Z nonimmigrant
19 status, the Secretary shall provide the alien with a
20 reasonable opportunity to file an application under
21 this section after such regulations are promulgated.

22 (6) DURING CERTAIN PROCEEDINGS.—Notwith-
23 standing any provision of the Act, if the Secretary
24 determines that an alien who is in removal pro-
25 ceedings is prima facie eligible for Z nonimmigrant

1 status, then the Secretary shall affirmatively com-
2 municate such determination to the immigration
3 judge. The immigration judge shall then terminate
4 or administratively close such proceedings and per-
5 mit the alien a reasonable opportunity to apply for
6 such classification.

7 (i) ADJUDICATION OF APPLICATION FILED BY
8 ALIEN.—

9 (1) IN GENERAL.—The Secretary may approve
10 the issuance of documentation of status, as de-
11 scribed in subsection (j), to an applicant for a Z
12 nonimmigrant visa who satisfies the requirements of
13 this section.

14 (2) EVIDENCE OF CONTINUOUS PHYSICAL
15 PRESENCE, EMPLOYMENT, OR EDUCATION.—

16 (A) PRESUMPTIVE DOCUMENTS.—A Z
17 nonimmigrant or an applicant for Z non-
18 immigrant status may presumptively establish
19 satisfaction of each required period of presence,
20 employment, or study by submitting records to
21 the Secretary that demonstrate such presence,
22 employment, or study, and that the Secretary
23 verifies have been maintained by the Social Se-
24 curity Administration, the Internal Revenue

1 Service, or any other Federal, State, or local
2 government agency.

3 (B) VERIFICATION.—Each Federal agency,
4 and each State or local government agency, as
5 a condition of receipt of any funds under Sec-
6 tion 286(x), shall within 90 days of enactment
7 ensure that procedures are in place under which
8 such agency shall—

9 (i) consistent with all otherwise appli-
10 cable laws, including but not limited to
11 laws governing privacy, provide documenta-
12 tion to an alien upon request to satisfy the
13 documentary requirements of this para-
14 graph; or

15 (ii) notwithstanding any other provi-
16 sion of law, including section 6103 of title
17 26, United States Code, provide
18 verification to the Secretary of documenta-
19 tion offered by an alien as evidence of—

20 (I) presence or employment re-
21 quired under this section, or

22 (II) a requirement for any other
23 benefit under the immigration laws.

24 (C) OTHER DOCUMENTS.—A Z non-
25 immigrant or an applicant for Z nonimmigrant

1 status who is unable to submit a document de-
2 scribed in subparagraph (i) may establish satis-
3 faction of each required period of presence, em-
4 ployment, or study by submitting to the Sec-
5 retary at least 2 other types of reliable docu-
6 ments that provide evidence of employment, in-
7 cluding—

8 (i) bank records;

9 (ii) business records;

10 (iii) employer records;

11 (iv) records of a labor union or day

12 labor center; and

13 (v) remittance records.

14 (D) ADDITIONAL DOCUMENTS.—The Sec-
15 retary may—

16 (i) designate additional documents to
17 evidence the required period of presence,
18 employment, or study; and

19 (ii) set such terms and conditions on
20 the use of affidavits as is necessary to
21 verify and confirm the identity of any affi-
22 ant or otherwise prevent fraudulent sub-
23 missions.

24 (3) PAYMENT OF INCOME TAXES.—

1 (A) IN GENERAL.—Not later than the date
2 on which status is adjusted under this section,
3 the alien establishes the payment of any appli-
4 cable Federal tax liability by establishing that—

5 (i) no such tax liability exists;

6 (ii) all outstanding liabilities have
7 been paid; or

8 (iii) the alien has entered into an
9 agreement for payment of all outstanding
10 liabilities with the Internal Revenue Serv-
11 ice.

12 (B) APPLICABLE FEDERAL TAX LIABIL-
13 ITY.—For purposes of clause (i), the term ‘ap-
14 plicable Federal tax liability’ means liability for
15 Federal taxes, including penalties and interest,
16 owed for any year during the period of employ-
17 ment required by subparagraph (D)(i) for
18 which the statutory period for assessment of
19 any deficiency for such taxes has not expired.

20 (C) IRS COOPERATION.—The Secretary of
21 the Treasury shall establish rules and proce-
22 dures under which the Commissioner of Inter-
23 nal Revenue shall provide documentation to an
24 alien upon request to establish the payment of
25 all taxes required by this subparagraph.

1 (D) IN GENERAL.—The alien may satisfy
2 such requirement by establishing that—

3 (i) no such tax liability exists;

4 (ii) all outstanding liabilities have
5 been met; or

6 (iii) the alien has entered into an
7 agreement for payment of all outstanding
8 liabilities with the Internal Revenue Serv-
9 ice and with the department of revenue of
10 each State to which taxes are owed.

11 (4) BURDEN OF PROOF.—An alien who is ap-
12 plying for a Z nonimmigrant visa under this section
13 shall prove, by a preponderance of the evidence, that
14 the alien has satisfied the requirements of this sec-
15 tion.

16 (5) DENIAL OF APPLICATION.—

17 (i) An alien who fails to satisfy the
18 eligibility requirements for a Z non-
19 immigrant visa shall have his application
20 denied and may not file additional applica-
21 tions.

22 (ii) An alien who fails to submit re-
23 quested initial evidence, including re-
24 quested biometric data, and requested ad-
25 ditional evidence by the date required by

1 the Secretary shall, except where the alien
2 demonstrates to the satisfaction of the Sec-
3 retary that such failure was reasonably ex-
4 cusable or was not willful, have his applica-
5 tion considered abandoned. Such applica-
6 tion shall be denied and the alien may not
7 file additional applications.

8 (j) EVIDENCE OF NONIMMIGRANT STATUS.—

9 (1) IN GENERAL.—Documentary evidence of
10 nonimmigrant status shall be issued to each Z non-
11 immigrant.

12 (2) FEATURES OF DOCUMENTATION.—Docu-
13 mentary evidence of Z nonimmigrant status:

14 (A) shall be machine-readable, tamper-re-
15 sistant, and shall contain a digitized photo-
16 graph and other biometric identifiers that can
17 be authenticated;

18 (B) shall be designed in consultation with
19 U.S. Immigration and Customs Enforcement's
20 Forensic Document Laboratory;

21 (C) shall, during the alien's authorized pe-
22 riod of admission under subsection (k), serve as
23 a valid travel and entry document for the pur-
24 pose of applying for admission to the United

1 States where the alien is applying for admission
2 at a Port of Entry.

3 (D) may be accepted during the period of
4 its validity by an employer as evidence of em-
5 ployment authorization and identity under sec-
6 tion 274A(b)(1)(B); and

7 (E) shall be issued to the Z nonimmigrant
8 by the Secretary of Homeland Security prompt-
9 ly after final adjudication of such alien's appli-
10 cation for Z nonimmigrant status, except that
11 an alien may not be granted permanent Z non-
12 immigrant status until all appropriate back-
13 ground checks on the alien are completed to the
14 satisfaction of the Secretary of Homeland Secu-
15 rity.

16 (k) PERIOD OF AUTHORIZED ADMISSION.—

17 (1) INITIAL PERIOD.—The initial period of au-
18 thorized admission as a Z nonimmigrant shall be
19 four years.

20 (2) EXTENSIONS.—

21 (A) IN GENERAL.—Z nonimmigrants may
22 seek an indefinite number of four-year exten-
23 sions of the initial period of authorized admis-
24 sion.

1 (B) REQUIREMENTS.—In order to be eligi-
2 ble for an extension of the initial or any subse-
3 quent period of authorized admission under this
4 paragraph, an alien must satisfy the following
5 requirements:

6 (i) ELIGIBILITY.—The alien must
7 demonstrate continuing eligibility for Z
8 nonimmigrant status;

9 (ii) ENGLISH LANGUAGE AND
10 CIVICS.—

11 (I) REQUIREMENT AT FIRST RE-
12 NEWAL.—At or before the time of ap-
13 plication for the first extension of Z
14 nonimmigrant status, an alien who is
15 18 years of age or older must dem-
16 onstrate an attempt to gain an under-
17 standing of the English language and
18 knowledge of United States civics by
19 taking the naturalization test de-
20 scribed in sections 312(a)(1) and (2)
21 by demonstrating enrollment in or
22 placement on a waiting list for
23 English classes.

24 (II) REQUIREMENT AT SECOND
25 RENEWAL.—At or before the time of

1 application for the second extension of
2 Z nonimmigrant status, an alien who
3 is 18 years of age or older must pass
4 the naturalization test described in
5 sections 312(a)(1) and (2). The alien
6 may make up to three attempts to
7 demonstrate such understanding and
8 knowledge but must satisfy this re-
9 quirement prior to the expiration of
10 the second extension of Z non-
11 immigrant status.

12 (III) EXCEPTION.—The require-
13 ment of subclauses (I) and (II) shall
14 not apply to any person who, on the
15 date of the filing of the person’s appli-
16 cation for an extension of Z non-
17 immigrant status—

18 (aa) is unable because of
19 physical or developmental dis-
20 ability or mental impairment to
21 comply therewith;

22 (bb) is over 50 years of age
23 and has been living in the United
24 States for periods totaling at
25 least 20 years; or

1 (cc) is over 55 years of age
2 and has been living in the United
3 States for periods totaling at
4 least fifteen years.

5 (iii) EMPLOYMENT.—With re-
6 spect to an extension of Z-1 or Z-3
7 nonimmigrant status an alien must
8 demonstrate satisfaction of the em-
9 ployment or study requirements pro-
10 vided in subsection (m) during the
11 alien's most recent authorized period
12 of stay as of the date of application;
13 and

14 (iv) FEES.—The alien must pay
15 a processing fee in an amount suffi-
16 cient to recover the full cost of adjudi-
17 cating the application, but no more
18 than \$1,500 for a single Z non-
19 immigrant.

20 (C) SECURITY AND LAW ENFORCEMENT
21 BACKGROUND CHECKS.—An alien applying for
22 extension of Z nonimmigrant status may be re-
23 quired to submit to a renewed security and law
24 enforcement background check that must be
25 completed to the satisfaction of the Secretary of

1 Homeland Security before such extension may
2 be granted.

3 (D) TIMELY FILING AND MAINTENANCE OF
4 STATUS.—

5 (i) IN GENERAL.—An extension of
6 stay under this paragraph, or a change of
7 status to another Z nonimmigrant status
8 under subsection (l), may not be approved
9 for an applicant who failed to maintain Z
10 nonimmigrant status or where such status
11 expired or terminated before the applica-
12 tion was filed.

13 (ii) EXCEPTION.—Failure to file be-
14 fore the period of previously authorized
15 status expired or terminated may be ex-
16 cused in the discretion of the Secretary
17 and without separate application, with any
18 extension granted from the date the pre-
19 viously authorized stay expired, where it is
20 demonstrated at the time of filing that:

21 (I) the delay was due to extraor-
22 dinary circumstances beyond the con-
23 trol of the applicant, and the Sec-
24 retary finds the delay commensurate
25 with the circumstances; and

1 (II) the alien has not otherwise
2 violated his Z nonimmigrant status.

3 (iii) EXEMPTIONS FROM PENALTY
4 AND EMPLOYMENT REQUIREMENTS.—An
5 alien demonstrating extraordinary cir-
6 cumstances under clause (ii), including the
7 spouse of a Z-1 nonimmigrant who has
8 been battered or has been the subject of
9 extreme cruelty perpetrated by the Z-1
10 nonimmigrant, and who is changing to Z-
11 1 nonimmigrant status, may be exempted
12 by the Secretary, in his discretion, from—

13 (I) the requirements under sub-
14 section (m) for a period of up to 180
15 days; and

16 (II) the penalty provisions of sec-
17 tion (e)(6)(B)(iii), except that the
18 alien must pay the penalty under sec-
19 tion (e)(6)(B) at the time of applica-
20 tion for the alien's first subsequent
21 extension of Z-1 nonimmigrant sta-
22 tus.

23 (E) BARS TO EXTENSION.—Except as pro-
24 vided in subparagraph (D), a Z nonimmigrant

1 shall not be eligible to extend such non-
2 immigrant status if:

3 (i) the alien has violated any term or
4 condition of his or her Z nonimmigrant
5 status, including but not limited to failing
6 to comply with the change of address re-
7 porting requirements under section 265;

8 (ii) the period of authorized admission
9 of the Z nonimmigrant has been termi-
10 nated for any reason; or

11 (iii) with respect to a Z-2 or Z-3 non-
12 immigrant, the principal alien's Z-1 non-
13 immigrant status has been terminated.

14 (I) CHANGE OF STATUS.—

15 (1) CHANGE FROM Z NONIMMIGRANT STA-
16 TUS.—

17 (A) IN GENERAL.—A Z nonimmigrant may
18 not change status under section 248 to another
19 nonimmigrant status, except another Z non-
20 immigrant status or status under subparagraph
21 (U) of section 101(a)(15).

22 (B) CHANGE FROM Z-A STATUS.—A Z-A
23 nonimmigrant may change status to Z non-
24 immigrant status at the time of renewal ref-

1 erenced in section 214A(j)(1)(C) of the Immi-
2 gration and Nationality Act.

3 (C) LIMIT ON CHANGES.—A Z non-
4 immigrant may not change status more than
5 one time per 365-day period. The Secretary
6 may, in his discretion, waive the application of
7 this subparagraph to an alien if it is established
8 to the satisfaction of the Secretary that applica-
9 tion of this subparagraph would result in ex-
10 treme hardship to the alien.

11 (2) NO CHANGE TO Z NONIMMIGRANT STA-
12 TUS.—A nonimmigrant under the immigration laws
13 may not change status under section 248 to Z non-
14 immigrant status.

15 (m) EMPLOYMENT.—

16 (1) Z-1 AND Z-3 NONIMMIGRANTS.—

17 (A) IN GENERAL.—Z-1 and Z-3 non-
18 immigrants shall be authorized to work in the
19 United States.

20 (B) CONTINUOUS EMPLOYMENT REQUIRE-
21 MENT.—All requirements that an alien be em-
22 ployed or seeking employment for purposes of
23 this Title shall not apply to an alien who is
24 under 16 years or over 65 years of age. A Z-
25 1 or Z-3 nonimmigrant between 16 and 65

1 years of age must remain continuously em-
2 ployed full time in the United States as a condi-
3 tion of such nonimmigrant status, except
4 where—

5 (i) the alien is pursuing a full course
6 of study at an established college, univer-
7 sity, seminary, conservatory, trade school,
8 academic high school, elementary school, or
9 other academic institution or language
10 training program;

11 (ii) the alien is employed while also
12 engaged in study at an established college,
13 university, seminary, conservatory, aca-
14 demic high school, elementary school, or
15 other academic institution or language
16 training program;

17 (iii) the alien cannot demonstrate em-
18 ployment because of a physical or mental
19 disability (as defined under section 3(2) of
20 the Americans with Disabilities Act of
21 1990 (42 U.S.C. 12102(2)) or as a result
22 of pregnancy if such condition is evidenced
23 by the submission of documentation pre-
24 scribed by the Secretary; or

1 (iv) the alien's ability to work has
2 been temporarily interrupted by an event
3 that the Secretary has determined to be a
4 force majeure interruption.

5 (2) Z-2 NONIMMIGRANTS.—Z-2 nonimmigrants
6 shall be authorized to work in the United States.

7 (3) PORTABILITY.—Nothing in this subsection
8 shall be construed to limit the ability of a Z non-
9 immigrant to change employers during the alien's
10 period of authorized admission.

11 (n) TRAVEL OUTSIDE THE UNITED STATES.—

12 (1) IN GENERAL.—A Z nonimmigrant—

13 (A) may travel outside of the United
14 States; and

15 (B) may be readmitted (if otherwise admis-
16 sible) without having to obtain a visa if—

17 (i) the alien's most recent period of
18 authorized admission has not expired;

19 (ii) the alien is the bearer of valid
20 documentary evidence of Z nonimmigrant
21 status that satisfies the conditions set
22 forth in section (j); and

23 (iii) the alien is not subject to the
24 bars on extension described in subsection
25 (k)(2)(E).

1 (2) ADMISSIBILITY.—On seeking readmission to
2 the United States after travel outside the United
3 States an alien granted Z nonimmigrant status must
4 establish that he or she is not inadmissible, except
5 as provided by subsection (d)(2).

6 (3) EFFECT ON PERIOD OF AUTHORIZED AD-
7 MISSION.—Time spent outside the United States
8 under paragraph (1) shall not extend the most re-
9 cent period of authorized admission in the United
10 States under subsection (k).

11 (o) TERMINATION OF BENEFITS.—

12 (1) IN GENERAL.—Any benefit provided to a Z
13 nonimmigrant or an applicant for Z nonimmigrant
14 status under this section shall terminate if—

15 (A) the Secretary determines that the alien
16 is ineligible for such classification and all review
17 procedures under section 603 of the [Insert title
18 of Act] have been exhausted or waived by the
19 alien;

20 (B)(i) the alien is found removable from
21 the United States under section 237 of the Im-
22 migration and Nationality Act (8 U.S.C. 1227);

23 (ii) the alien becomes inadmissible under
24 section 212 (except as provided in subsection
25 (d)(2), or

1 (iii) the alien becomes ineligible under sub-
2 section (d)(1);

3 (C) the alien has used documentation
4 issued under this section for unlawful or fraud-
5 ulent purposes;

6 (D) in the case of the spouse or child of
7 an alien applying for a Z nonimmigrant visa or
8 classified as a Z nonimmigrant under this sec-
9 tion, the benefits for the principal alien are ter-
10 minated;

11 (E) with respect to a Z-1 or Z-3 non-
12 immigrant, the employment or study require-
13 ments under subsection (m) have been violated;
14 or

15 (F) with respect to probationary benefits,
16 the alien's application for Z nonimmigrant sta-
17 tus is denied.

18 (2) DENIAL OF IMMIGRANT VISA OR ADJUST-
19 MENT APPLICATION.—Any application for an immi-
20 grant visa or adjustment of status to lawful perma-
21 nent resident status made under this section by an
22 alien whose Z nonimmigrant status is terminated
23 under paragraph (1) shall be denied.

24 (3) DEPARTURE FROM THE UNITED STATES.—
25 Any alien whose period of authorized admission or

1 probationary benefits is terminated under paragraph
2 (1), as well as the alien's Z-2 or Z-3 nonimmigrant
3 dependents, shall depart the United States imme-
4 diately.

5 (4) INVALIDATION OF DOCUMENTATION.—Any
6 documentation that is issued by the Secretary of
7 Homeland Security under subsection (j) or pursuant
8 to subsection (h)(4) to any alien, whose period of au-
9 thorized admission terminates under paragraph (1),
10 shall automatically be rendered invalid for any pur-
11 pose except departure.

12 (p) REVOCATION.—If, at any time after an alien has
13 obtained status under section 601 of the [Insert title of
14 Act] but not yet adjusted such status to that of an alien
15 lawfully admitted for permanent residence under section
16 602, the Secretary may, for good and sufficient cause, if
17 it appears that the alien was not in fact eligible for status
18 under section 601, revoke the alien's status following ap-
19 propriate notice to the alien.

20 (q) DISSEMINATION OF INFORMATION ON Z PRO-
21 GRAM.—During the 2-year period immediately after the
22 issuance of regulations implementing this title, the Sec-
23 retary, in cooperation with entities approved by the Sec-
24 retary, shall broadly disseminate information respecting Z
25 classification under this section and the requirements to

1 be satisfied to obtain such classification. The Secretary
2 shall disseminate information to employers and labor
3 unions to advise them of the rights and protections avail-
4 able to them and to workers who file applications under
5 this section. Such information shall be broadly dissemi-
6 nated, in no fewer than the top five principal languages,
7 as determined by the Secretary in his discretion, spoken
8 by aliens who would qualify for classification under this
9 section, including to television, radio, and print media to
10 which such aliens would have access.

11 (r) DEFINITIONS.—In this title and section 214A of
12 the Immigration and Nationality Act:

13 (1) Z NONIMMIGRANT; Z NONIMMIGRANT WORK-
14 ER.—The term “Z nonimmigrant worker” means an
15 alien admitted to the United States under paragraph
16 (Z) of subsection 101(a)(15). The term does not in-
17 clude aliens granted probationary benefits under
18 subsection (h) and whose applications for non-
19 immigrant status under section 101(a)(15)(Z) of the
20 Act have not yet been adjudicated.

21 (2) Z-1 NONIMMIGRANT; z-1 WORKER.—The
22 term “Z-1 nonimmigrant” or “Z-1 worker” means
23 an alien admitted to the United States under para-
24 graph (i)(I) of subsection 101(a)(15)(Z).

1 (3) Z–A NONIMMIGRANT; Z–A WORKER.—The
2 term “Z–A nonimmigrant” or “Z–A worker” means
3 an alien admitted to the United States under para-
4 graph (ii)(II) of subsection 101(a)(15)(Z).

5 (4) Z–2 NONIMMIGRANT.—The term “Z–2 non-
6 immigrant” means an alien admitted to the United
7 States under paragraph (ii) of subsection
8 101(a)(15)(Z).

9 (5) Z–3 NONIMMIGRANT; Z–3 WORKER.—The
10 term “Z–3 nonimmigrant” or “Z–3 worker” means
11 an alien admitted to the United States under para-
12 graph (iii) of subsection 101(a)(15)(Z).

13 **SEC. 602. EARNED ADJUSTMENT FOR Z STATUS ALIENS.**

14 (a) **LAWFUL PERMANENT RESIDENCE.**—

15 (1) **Z–1 NONIMMIGRANTS.**—

16 (A) **PROHIBITION ON IMMIGRANT VISA.**—A
17 Z–1 nonimmigrant may not be issued an immi-
18 grant visa pursuant to sections 221 and 222.

19 (B) **ADJUSTMENT.**—Notwithstanding sec-
20 tions 245 (a) and (c), the status of any Z–1
21 nonimmigrant may be adjusted by the Secretary
22 of Homeland Security to that of an alien law-
23 fully admitted for permanent residence.

24 (C) **REQUIREMENTS.**—A Z–1 non-
25 immigrant may adjust status to that of an alien

1 lawfully admitted for permanent residence upon
2 satisfying, in addition to all other requirements
3 imposed by law, including the merit require-
4 ments set forth in section
5 203(b)(1)(A)[INSERT CITE], the following re-
6 quirements:

7 (i) STATUS.—The alien must be in
8 valid Z–1 nonimmigrant status.

9 (ii) CONSULAR APPLICATION.—

10 (I) IN GENERAL.—A Z–1 non-
11 immigrant’s application for adjust-
12 ment of status to that of an alien law-
13 fully admitted for permanent resi-
14 dence must be filed in person with a
15 United States consulate abroad.

16 (II) PLACE OF APPLICATION.—
17 Unless otherwise directed by the Sec-
18 retary of State, a Z–1 nonimmigrant
19 applying for adjustment of status
20 under this paragraph shall make an
21 application at a consular office in the
22 alien’s country of origin. A consular
23 office in a country that is not a Z–1
24 nonimmigrant’s country of origin may
25 as a matter of discretion, or shall at

1 the direction of the Secretary of
2 State, accept an application for ad-
3 justment of status from such an alien.

4 (iii) APPROVED PETITION.—The alien
5 must be the beneficiary of an approved pe-
6 tition under section 204 of the Act or have
7 an approved petition that was filed pursu-
8 ant to the evaluation system under section
9 203(b)(1)(A) of the Act.

10 (iv) ADMISSIBILITY.—The alien must
11 not be inadmissible under section 212(a),
12 except for those grounds previously waived
13 under subsection (d)(2).

14 (v) FEES AND PENALTIES.—In addi-
15 tion to the fees payable to the Secretary of
16 Homeland Security and Secretary of State
17 in connection with the filing of an immi-
18 grant petition and application for adjust-
19 ment of status, a Z-1 head of household
20 must pay a \$4,000 penalty at the time of
21 submission of any immigrant petition on
22 his behalf, regardless of whether the alien
23 submits such petition on his own behalf or
24 the alien is the beneficiary of an immigrant
25 petition filed by another party.

1 (D) EXEMPTIONS.—Section
2 602(a)(1)(c)(ii) shall not apply to an alien who,
3 on the date on which the application for adjust-
4 ment of status is filed under this section, is ex-
5 empted from the employment requirements
6 under subsection (m)(1)(B)(iii).

7 (E) FAILURE TO ESTABLISH LAWFUL AD-
8 MISSION TO THE UNITED STATES.—Unless ex-
9 empted under subparagraph (D), a Z immi-
10 grant who fails to depart and reenter the
11 United States in accordance with paragraph (1)
12 may not become a lawful permanent resident
13 under this section.

14 (2) Z-2 AND Z-3 NONIMMIGRANTS.—

15 (A) RESTRICTION ON VISA ISSUANCE OR
16 ADJUSTMENT.—An application for an immi-
17 grant visa or for adjustment of status to that
18 of an alien lawfully admitted for permanent res-
19 idence of a Z-2 nonimmigrant or a Z-3 non-
20 immigrant under 18 years of age may not be
21 approved before the adjustment of status of the
22 alien's principal Z-1 nonimmigrant.

23 (B) ADJUSTMENT OF STATUS.—

24 (i) ADJUSTMENT.—Notwithstanding
25 sections 245 (a) and (c), the status of any

1 Z-2 or Z-3 nonimmigrant may be adjusted
2 by the Secretary of Homeland Security to
3 that of an alien lawfully admitted for per-
4 manent residence.

5 (ii) REQUIREMENTS.—A Z-2 or Z-3
6 nonimmigrant may adjust status to that of
7 an alien lawfully admitted for permanent
8 residence upon satisfying, in addition to all
9 other requirements imposed by law, the fol-
10 lowing requirements:

11 (I) STATUS.—The alien must be
12 in valid Z-2 or Z-3 nonimmigrant
13 status.

14 (II) APPROVED PETITION.—The
15 alien must be the beneficiary of an ap-
16 proved petition under section 204 of
17 the Act or have an approved petition
18 that was filed pursuant to the merit-
19 based evaluation system under section
20 203(b)(1)(A) of the Act.

21 (III) ADMISSIBILITY.—The alien
22 must not be inadmissible under sec-
23 tion 212(a), except for those grounds
24 previously waived under subsection
25 (d)(2).

1 (IV) FEES.—The alien must pay
2 the fees payable to the Secretary of
3 Homeland Security and Secretary of
4 State in connection with the filing of
5 an immigrant petition and application
6 for an immigrant visa.

7 (3) MAINTENANCE OF WAIVERS OF INADMIS-
8 SIBILITY.—The grounds of inadmissibility not appli-
9 cable under section (d)(2) shall also be considered
10 inapplicable for purposes of admission as an immi-
11 grant or adjustment pursuant to this subsection.

12 (4) APPLICATION OF OTHER LAW.—In proc-
13 essing applications under this subsection on behalf
14 of aliens who have been battered or subjected to ex-
15 treme cruelty, the Secretary shall apply—

16 (A) the provisions under section
17 204(a)(1)(J) of the Immigration and Nation-
18 ality Act (8 U.S.C. 1154(a)(1)(J)); and

19 (B) the protections, prohibitions, and pen-
20 alties under section 384 of the Illegal Immigra-
21 tion Reform and Immigrant Responsibility Act
22 of 1996 (8 U.S.C. 1367).

23 (5) BACK OF THE LINE.—An alien may not ad-
24 just status to that of a lawful permanent resident
25 under this section until 30 days after an immigrant

1 visa becomes available for approved petitions filed
2 under sections 201, 202, and 203 of the Act that
3 were filed before May 1, 2005.

4 (6) INELIGIBILITY FOR PUBLIC BENEFITS.—

5 For purposes of section 403 of the Personal Respon-
6 sibility and Work Opportunity Reconciliation Act of
7 1996 (8 U.S.C. 1613), an alien whose status has
8 been adjusted under this section shall not be eligible
9 for any Federal means-tested public benefit unless
10 the alien meets the alien eligibility criteria for such
11 benefit under title IV of such Act (8 U.S.C. 1601 et
12 seq.).

13 (7) MEDICAL EXAMINATION.—An applicant for

14 earned adjustment shall undergo an appropriate
15 medical examination (including a determination of
16 immunization status) that conforms to generally ac-
17 cepted professional standards of medical practice.

18 (8) PAYMENT OF INCOME TAXES.—

19 (A) IN GENERAL.—Not later than the date
20 on which status is adjusted under this section,
21 the applicant shall satisfy any applicable Fed-
22 eral tax liability accrued during the period of Z
23 status by establishing that—

24 (i) no such tax liability exists;

1 (ii) all outstanding liabilities have
2 been paid; or

3 (iii) the applicant has entered into,
4 and is in compliance with, an agreement
5 for payment of all outstanding liabilities
6 with the Internal Revenue Service.

7 (B) IRS COOPERATION.—The Secretary of
8 the Treasury shall establish rules and proce-
9 dures under which the Commissioner of Inter-
10 nal Revenue shall provide documentation to—

11 (i) the applicant, upon request, to es-
12 tablish the payment of all taxes required
13 under this subsection; or

14 (ii) the Secretary, upon request, re-
15 garding the payment of Federal taxes by
16 an alien applying for a benefit under this
17 section.

18 (9) DEPOSIT OF FEES.—Fees collected under
19 this paragraph shall be deposited into the Immigra-
20 tion Examination Fee Account and shall remain
21 available as provided under subsections (m) and (n)
22 of section 286 of the Immigration and Nationality
23 Act (8 U.S.C. 1356).

24 (10) DEPOSIT OF PENALTIES.—Penalties col-
25 lected under this paragraph shall be deposited into

1 the Temporary Worker Program Account and shall
2 remain available as provided under section 286(w) of
3 the Immigration and Nationality Act.

4 **SEC. 603. ADMINISTRATIVE REVIEW, REMOVAL PRO-**
5 **CEEDINGS, AND JUDICIAL REVIEW FOR**
6 **ALIENS WHO HAVE APPLIED FOR LEGAL STA-**
7 **TUS.**

8 (a) ADMINISTRATIVE REVIEW FOR ALIENS WHO
9 HAVE APPLIED FOR STATUS UNDER THIS TITLE.—

10 (1) EXCLUSIVE REVIEW.—Administrative re-
11 view of a determination respecting nonimmigrant
12 status under this title shall be conducted solely in
13 accordance with this subsection.

14 (2) ADMINISTRATIVE APPELLATE REVIEW.—
15 Except as provided in subparagraph (b)(2), an alien
16 whose status under this title has been denied, termi-
17 nated, or revoked may file not more than one appeal
18 of the denial, termination, or rescission with the Sec-
19 retary not later than 30 calendar days after the date
20 of the decision or mailing thereof, whichever occurs
21 later in time. The Secretary shall establish an appel-
22 late authority to provide for a single level of admin-
23 istrative appellate review of a denial, termination, or
24 rescission of status under [this Act].

1 (3) STANDARD FOR REVIEW.—Such administra-
2 tive appellate review shall be based solely upon the
3 administrative record established at the time of the
4 determination on the application and upon such ad-
5 ditional newly discovered or previously unavailable
6 evidence as the administrative appellate review au-
7 thority may decide to consider at the time of the de-
8 termination.

9 (4) LIMITATION ON MOTIONS TO REOPEN AND
10 RECONSIDER.—During the administrative appellate
11 review process the alien may file not more than one
12 motion to reopen or to reconsider. The Secretary's
13 decision whether to consider any such motion is
14 committed to the Secretary's discretion.

15 (b) REMOVAL OF ALIENS WHO HAVE BEEN DENIED
16 STATUS UNDER THIS TITLE.—

17 (1) SELF-INITIATED REMOVAL.—Any alien who
18 receives a denial under subsection (a) may request,
19 not later than 30 calendar days after the date of the
20 denial or the mailing thereof, whichever occurs later
21 in time, that the Secretary place the alien in removal
22 proceedings. The Secretary shall place the alien in
23 removal proceedings to which the alien would other-
24 wise be subject, unless the alien is subject to an ad-
25 ministratively final order of removal, provided that

1 no court shall have jurisdiction to review the timing
2 of the Secretary's initiation of such proceedings. If
3 the alien is subject to an administratively final order
4 of removal, the alien may seek review of the denial
5 under this section pursuant to subsection 242(h) as
6 though the order of removal had been entered on the
7 date of the denial, provided that the court shall not
8 review the order of removal except as otherwise pro-
9 vided by law.

10 (2) ALIENS WHO ARE DETERMINED TO BE IN-
11 ELIGIBLE DUE TO CRIMINAL CONVICTIONS.—

12 (A) AGGRAVATED FELONS.—Notwith-
13 standing any other provision of this Act, an
14 alien whose application for status under this
15 title has been denied or whose status has been
16 terminated or revoked by the Secretary under
17 clause (1)(F)(ii) of subsection 601(d) of [this
18 Act] because the alien has been convicted of an
19 aggravated felony, as defined in paragraph
20 101(a)(43) of the INA, may be placed forthwith
21 in proceedings pursuant to section 238(b) of
22 the INA.

23 (B) OTHER CRIMINALS.—Notwithstanding
24 any other provision of this Act, any other alien
25 whose application for status under this title has

1 been denied or whose status has been termi-
2 nated or revoked by the Secretary under clauses
3 (1)(F) (i), (iii), or (iv) of subsection [CITE:
4 601(d)] of [this Act] may be placed forthwith
5 in removal proceedings under section 240 of the
6 INA.

7 (C) FINAL DENIAL, TERMINATION OR RE-
8 SCISSION.—The Secretary’s denial, termination,
9 or rescission of the status of any alien described
10 in clauses (i) and (ii) of this subparagraph shall
11 be final for purposes of subparagraph
12 242(h)(3)(C) of the INA and shall represent
13 the exhaustion of all review procedures for pur-
14 poses of subsections 601(h) (relating to treat-
15 ment of applicants) and 601(o) (relating to ter-
16 mination of proceedings) of this Act, notwith-
17 standing paragraph (a)(2) of this section.

18 (3) LIMITATION ON MOTIONS TO REOPEN AND
19 RECONSIDER.—During the removal process under
20 this subsection the alien may file not more than one
21 motion to reopen or to reconsider. The Secretary’s
22 or Attorney General’s decision whether to consider
23 any such motion is committed to the Attorney Gen-
24 eral’s discretion.

1 (c) JUDICIAL REVIEW.—Section 242 of the Immigra-
2 tion and Nationality Act is amended by adding at the end
3 the following subsection (h):

4 “(h) JUDICIAL REVIEW OF ELIGIBILITY DETERMINA-
5 TIONS RELATING TO STATUS UNDER TITLE VI OF [THIS
6 ACT].—

7 “(1) EXCLUSIVE REVIEW.—Notwithstanding
8 any other provision of law (statutory or nonstatu-
9 tory), including section 2241 of title 28, or any
10 other habeas corpus provision, and sections 1361
11 and 1651 of such title, and except as provided in
12 this subsection, no court shall have jurisdiction to
13 review a determination respecting an application for
14 status under title VI of [this Act], including, without
15 limitation, a denial, termination, or rescission of
16 such status.

17 “(2) NO REVIEW FOR LATE FILINGS.—An alien
18 may not file an application for status under title VI
19 of [this Act] beyond the period for receipt of such
20 applications established by subsection 601(f) thereof.
21 The denial of any application filed beyond the expi-
22 ration of the period established by that subsection
23 shall not be subject to judicial review or remedy.

24 “(3) REVIEW OF A DENIAL, TERMINATION, OR
25 RESCISSION OF STATUS UNDER TITLE VI OF [THIS

1 ACT].—A denial, termination, or rescission of status
2 under subsection 601 of [this Act] may be reviewed
3 only in conjunction with the judicial review of an
4 order of removal under this section, provided that:

5 “(A) the venue provision set forth in (b)(2)
6 shall govern;

7 “(B) the deadline for filing the petition for
8 review in (b)(1) shall control;

9 “(C) the alien has exhausted all adminis-
10 trative remedies available to the alien as of
11 right, including but not limited to the timely fil-
12 ing of an administrative appeal pursuant to
13 subsection 603(a) of [this Act];

14 “(D) the court shall decide a challenge to
15 the denial of status only on the administrative
16 record on which the Secretary’s denial, termi-
17 nation, or rescission was based;

18 “(E) LIMITATION ON REVIEW.—Notwith-
19 standing any other provision of law (statutory
20 or nonstatutory), including section 2241 of title
21 28, or any other habeas corpus provision, and
22 sections 1361 and 1651 of such title, no court
23 reviewing a denial, termination, or rescission of
24 status under Title VI of [this Act] may review
25 any discretionary decision or action of the Sec-

1 retary regarding any application for or termi-
2 nation or rescission of such status; and

3 “(F) LIMITATION ON MOTIONS TO REOPEN
4 AND RECONSIDER.—The alien may file not
5 more than one motion to reopen or to recon-
6 sider in proceedings brought under this section.

7 “(4) STANDARD FOR JUDICIAL REVIEW.—Judi-
8 cial review of the Secretary’s denial, termination, or
9 rescission of status under title VI of [this Act] relat-
10 ing to any alien shall be based solely upon the ad-
11 ministrative record before the Secretary when he en-
12 ters a final denial, termination, or rescission. The
13 administrative findings of fact are conclusive unless
14 any reasonable adjudicator would be compelled to
15 conclude to the contrary. The legal determinations
16 are conclusive unless manifestly contrary to law.

17 “(5) CHALLENGES ON VALIDITY OF THE SYS-
18 TEM.—

19 “(A) IN GENERAL.—Any claim that title
20 VI of [this Act], or any regulation, written pol-
21 icy, or written directive issued or unwritten pol-
22 icy or practice initiated by or under the author-
23 ity of the Secretary of Homeland Security to
24 implement that title, violates the Constitution
25 of the United States or is otherwise in violation

1 of law is available exclusively in an action insti-
2 tuted in the United States District Court for
3 the District of Columbia in accordance with the
4 procedures prescribed in this paragraph. Noth-
5 ing in this subparagraph shall preclude an ap-
6 plicant for status under title VI of [this Act]
7 from asserting that an action taken or decision
8 made by the Secretary with respect to his sta-
9 tus under that title was contrary to law in a
10 proceeding under section 603 of [this Act] and
11 paragraph (b)(2) of this section.

12 “(B) DEADLINES FOR BRINGING AC-
13 TIONS.—Any action instituted under this para-
14 graph,

15 (i) must, if it asserts a claim that title
16 VI of [this Act] or any regulation, written
17 policy, or written directive issued by or
18 under the authority of the Secretary to im-
19 plement that title violates the Constitution
20 or is otherwise unlawful, be filed no later
21 than one year after the date of the publica-
22 tion or promulgation of the challenged reg-
23 ulation, policy or directive or, in cases
24 challenging the validity of the Act, within
25 one year of enactment; and

1 (ii) must, if it asserts a claim that an
2 unwritten policy or practice initiated by or
3 under the authority of the Secretary vio-
4 lates the Constitution or is otherwise un-
5 lawful, be filed no later than one year after
6 the plaintiff knew or reasonably should
7 have known of the unwritten policy or
8 practice.

9 “(C) CLASS ACTIONS.—Any claim de-
10 scribed in subparagraph (A) that is brought as
11 a class action shall be brought in conformity
12 with Public Law 109–2 and the Federal Rules
13 of Civil Procedure.”

14 “(D) PRECLUSIVE EFFECT.—The final dis-
15 position of any claim brought under subpara-
16 graph (5)(A) shall be preclusive of any such
17 claim asserted in a subsequent proceeding
18 under this subsection or under subsection 603
19 [of this Act].

20 “(E) EXHAUSTION AND STAY OF PRO-
21 CEEDINGS.—No claim brought under this para-
22 graph shall require the plaintiff to exhaust ad-
23 ministrative remedies under subsection 603 of
24 [this Act], but nothing shall prevent the court
25 from staying proceedings under this paragraph

1 to permit the Secretary to evaluate an allega-
2 tion of an unwritten policy or practice or to
3 take corrective action. In issuing such a stay,
4 the court shall take into account any harm the
5 stay may cause to the claimant. The court shall
6 have no authority to stay proceedings initiated
7 under any other section of the INA.”

8 **SEC. 604. MANDATORY DISCLOSURE OF INFORMATION.**

9 (a) IN GENERAL.—Except as otherwise provided in
10 this section, no Federal agency or bureau, or any officer
11 or employee of such agency or bureau, may—

12 (1) use the information furnished by the appli-
13 cant pursuant to an application filed under section
14 601 and 602, for any purpose, other than to make
15 a determination on the application;

16 (2) make any publication through which the in-
17 formation furnished by any particular applicant can
18 be identified; or

19 (3) permit anyone other than the sworn offi-
20 cers, employees or contractors of such agency, bu-
21 reau, or approved entity, as approved by the Sec-
22 retary of Homeland Security, to examine individual
23 applications that have been filed.

24 (b) REQUIRED DISCLOSURES.—The Secretary of
25 Homeland Security and the Secretary of State shall pro-

1 vide the information furnished pursuant to an application
2 filed under section 601 and 602, and any other informa-
3 tion derived from such furnished information, to—

4 (1) a law enforcement entity, intelligence agen-
5 cy, national security agency, component of the De-
6 partment of Homeland Security, court, or grand
7 jury in connection with a criminal investigation or
8 prosecution or a national security investigation or
9 prosecution, in each instance about an individual
10 suspect or group of suspects, when such information
11 is requested by such entity;

12 (2) a law enforcement entity, intelligence agen-
13 cy, national security agency, or component of the
14 Department of Homeland Security in connection
15 with a duly authorized investigation of a civil viola-
16 tion, in each instance about an individual suspect or
17 group of suspects, when such information is re-
18 quested by such entity; or

19 (3) an official coroner for purposes of affirma-
20 tively identifying a deceased individual, whether or
21 not the death of such individual resulted from a
22 crime.

23 (c) INAPPLICABILITY AFTER DENIAL.—The limita-
24 tions under subsection (a)—

1 (1) shall apply only until an application filed
2 under section 601 and 602 is denied and all oppor-
3 tunities for administrative appeal of the denial have
4 been exhausted; and

5 (2) shall not apply to the use of the information
6 furnished pursuant to such application in any re-
7 moval proceeding or other criminal or civil case or
8 action relating to an alien whose application has
9 been granted that is based upon any violation of law
10 committed or discovered after such grant.

11 (d) CRIMINAL CONVICTIONS.—Notwithstanding any
12 other provision of this section, information concerning
13 whether the applicant has at any time been convicted of
14 a crime may be used or released for immigration enforce-
15 ment and law enforcement purposes.

16 (e) AUDITING AND EVALUATION OF INFORMATION.—
17 The Secretary may audit and evaluate information fur-
18 nished as part of any application filed under sections 601
19 and 602, any application to extend such status under sec-
20 tion 601(k), or any application to adjust status to that
21 of an alien lawfully admitted for permanent residence
22 under section 602, for purposes of identifying fraud or
23 fraud schemes, and may use any evidence detected by
24 means of audits and evaluations for purposes of inves-

1 tivating, prosecuting or referring for prosecution, denying,
2 or terminating immigration benefits.

3 (f) USE OF INFORMATION IN PETITIONS AND APPLI-
4 CATIONS SUBSEQUENT TO ADJUSTMENT OF STATUS.—If
5 the Secretary has adjusted an alien's status to that of an
6 alien lawfully admitted for permanent residence pursuant
7 to section 602, then at any time thereafter the Secretary
8 may use the information furnished by the alien in the ap-
9 plication for adjustment of status or in the applications
10 for status pursuant to sections 601 or 602 to make a de-
11 termination on any petition or application.

12 (g) CRIMINAL PENALTY.—Whoever knowingly uses,
13 publishes, or permits information to be examined in viola-
14 tion of this section shall be fined not more than \$10,000.

15 (h) CONSTRUCTION.—Nothing in this section shall be
16 construed to limit the use, or release, for immigration en-
17 forcement purposes of information contained in files or
18 records of the Secretary or Attorney General pertaining
19 to an application filed under sections 601 or 602, other
20 than information furnished by an applicant pursuant to
21 the application, or any other information derived from the
22 application, that is not available from any other source.

23 (i) REFERENCES.—References in this section to sec-
24 tion 601 or 602 are references to sections 601 and 602
25 of this Act and the amendments made by those sections.

1 **SEC. 605. EMPLOYER PROTECTIONS.**

2 (a) Copies of employment records or other evidence
3 of employment provided by an alien or by an alien's em-
4 ployer in support of an alien's application for Z non-
5 immigrant status shall not be used in a prosecution or
6 investigation (civil or criminal) of that employer under sec-
7 tion 247A (8 U.S.C. 1324a) or the tax laws of the United
8 States for the prior unlawful employment of that alien,
9 regardless of the adjudication of such application or recon-
10 sideration by the Secretary of such alien's prima facie eli-
11 gibility determination.

12 (b) **APPLICABILITY OF OTHER LAW.**—Nothing in
13 this section may be used to shield an employer from liabil-
14 ity under section 274B of the Immigration and Nation-
15 ality Act (8 U.S.C. 1324b) or any other labor or employ-
16 ment law.

17 **SEC. 606. ENUMERATION OF SOCIAL SECURITY NUMBER.**

18 The Secretary of Homeland Security, in coordination
19 with the Commissioner of the Social Security Administra-
20 tion, shall implement a system to allow for the prompt
21 enumeration of a Social Security number after the Sec-
22 retary of Homeland Security has granted an alien Z non-
23 immigrant status or any probationary benefits based upon
24 application for such status.

1 **SEC. 607. PRECLUSION OF SOCIAL SECURITY CREDITS FOR**
2 **PERIODS WITHOUT WORK AUTHORIZATION.**

3 (a) **INSURED STATUS.**—Section 214 of the Social Se-
4 curity Act (42 U.S.C. 414) is amended by striking sub-
5 section (c) and inserting the following new subsections:

6 “(c)(1) Except as provided in paragraph (2), for pur-
7 poses of subsections (a) and (b), no quarter of coverage
8 shall be credited for any calendar year beginning on or
9 after January 1, 2004, with respect to an individual who
10 is not a natural-born United States citizen, unless the
11 Commissioner of Social Security determines, on the basis
12 of information provided to the Commissioner in accord-
13 ance with an agreement entered into under subsection (d)
14 or otherwise, that the individual was authorized to be em-
15 ployed in the United States during such quarter.

16 “(2) Paragraph (1) shall not apply to an indi-
17 vidual who was assigned a social security account
18 number prior to January 1, 2004.

19 “(d) Not later than 180 days after the date of the
20 enactment of this subsection, the Secretary of Homeland
21 Security shall enter into an agreement with the Commis-
22 sioner of Social Security to provide such information as
23 the Commissioner determines necessary to carry out the
24 limitation on crediting quarters of coverage under sub-
25 section (c).”.

1 (b) BENEFIT COMPUTATION.—Section 215(e) of the
2 Social Security Act (42 U.S.C. 415(e)) is amended—

3 (1) by striking “and” at the end of paragraph
4 (1);

5 (2) by striking the period at the end of para-
6 graph (2) and inserting “; and”; and

7 (3) by adding at the end the following new
8 paragraph:

9 “(3) in computing the average indexed monthly
10 earnings of an individual, there shall not be counted
11 any wages or self-employment income for any year
12 for which no quarter of coverage may be credited to
13 such individual as a result of the application of sec-
14 tion 214(c).”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to benefit applications filed on or
17 after the date that is 180 days after the date of the enact-
18 ment of this Act based on the wages or self-employment
19 income of an individual with respect to whom a primary
20 insurance amount has not been determined under title II
21 of the Social Security Act (42 U.S.C. 401 et seq.) before
22 such date.

1 **SEC. 608. PAYMENT OF PENALTIES AND USE OF PENALTIES**
2 **COLLECTED.**

3 (a) The Secretary shall by regulation establish proce-
4 dures allowing for the payment of 80 percent of the pen-
5 alties described in Section 601(e)(6)(B) and Section
6 602(a)(1)(C)(v) through an installment payment plan.

7 (b) Any penalties received under this title with re-
8 spect to an application for Z-1 nonimmigrant status shall
9 be used in the following order of priority:

10 (1) shall be credited as offsetting collections to
11 appropriations provided pursuant to section 611 for
12 the fiscal year in which this Act is enacted and the
13 subsequent fiscal year; and

14 (2) shall be deposited and remain available as
15 otherwise provided under this title.

16 **SEC. 609. LIMITATIONS ON ELIGIBILITY.**

17 (a) IN GENERAL.—An alien is not ineligible for any
18 immigration benefit under any provision of this title, or
19 any amendment made by this title, solely on the basis that
20 the alien violated section 1543, 1544, or 1546 of title 18,
21 United States Code, or any amendments made by the
22 [NAME OF THIS ACT], during the period beginning on
23 the date of the enactment of such Act and ending on the
24 date on which the alien applies for any benefits under this
25 title, except with respect to any forgery, fraud or misrepre-

1 sentation on the application for Z nonimmigrant status
2 filed by the alien.

3 (b) PROSECUTION.—An alien who commits a viola-
4 tion of section 1543, 1544, or 1546 of such title or any
5 amendments made by the [NAME OF THIS ACT], dur-
6 ing the period beginning on the date of the enactment of
7 such Act and ending on the date that the alien applies
8 for eligibility for such benefit may be prosecuted for the
9 violation if the alien’s application for such benefit is de-
10 nied.

11 **SEC. 610. RULEMAKING.**

12 (a) The Secretary shall issue an interim final rule
13 within six months of the date of enactment of this subtitle
14 to implement this title and the amendments made by this
15 title. The interim final rule shall become effective imme-
16 diately upon publication in the Federal Register. The in-
17 terim final rule shall sunset two years after issuance un-
18 less the Secretary issues a final rule within two years of
19 the issuance of the interim final rule.

20 (b) The exemption provided under this section shall
21 sunset no later than two years after the date of enactment
22 of this subtitle, provided that, such sunset shall not be
23 construed to impose any requirements on, or affect the
24 validity of, any rule issued or other action taken by the
25 Secretary under such exemptions.

1 **SEC. 611. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) The first \$4,400,000,000 of such penalties shall
3 be deposited into the general fund of the Treasury as re-
4 payment of funds transferred into the Immigration Secu-
5 rity Account under section 286(z)(1) of the Immigration
6 and Nationality Act.

7 (b) Penalties in excess of \$4,400,000,000 shall be de-
8 posited and remain available as otherwise provided under
9 this Act.

10 (c) SENSE OF CONGRESS.—It is the sense of the Con-
11 gress that funds authorized to be appropriated under sub-
12 section (a) should be directly appropriated so as to facili-
13 tate the orderly and timely commencement of the proc-
14 essing of applications filed under sections 601 and 602.

15 **Subtitle B—DREAM Act**

16 **SEC. 612. SHORT TITLE.**

17 This subtitle may be cited as the “Development, Re-
18 lief, and Education for Alien Minors Act of 2007” or the
19 “DREAM Act of 2007”.

20 **SEC. 613. DEFINITIONS.**

21 In this subtitle:

22 (1) INSTITUTION OF HIGHER EDUCATION.—The
23 term “institution of higher education” has the
24 meaning given that term in section 101 of the High-
25 er Education Act of 1965 (20 U.S.C. 1001).

1 (2) UNIFORMED SERVICES.—The term “uni-
2 formed services” has the meaning given that term in
3 section 101(a) of title 10, United States Code.

4 **SEC. 614. ADJUSTMENT OF STATUS OF CERTAIN LONG-**
5 **TERM RESIDENTS WHO ENTERED THE**
6 **UNITED STATES AS CHILDREN.**

7 (a) SPECIAL RULE FOR CERTAIN LONG-TERM RESI-
8 DENTS WHO ENTERED THE UNITED STATES AS CHIL-
9 DREN.—

10 (1) IN GENERAL.—Notwithstanding any other
11 provision of law and except as otherwise provided in
12 this subtitle, the Secretary may beginning on the
13 date that is three years after the date of enactment
14 of this Act adjust to the status of an alien lawfully
15 admitted for permanent residence an alien who is
16 determined to be eligible for or has been issued a
17 probationary Z or Z nonimmigrant visa if the alien
18 demonstrates that—

19 (A) the alien has been physically present in
20 the United States for a continuous period since
21 January 1, 2007, is under 30 years of age on
22 the date of enactment, and had not yet reached
23 the age of 16 years at the time of initial entry;

1 (B) the alien has earned a high school di-
2 ploma or obtained a general education develop-
3 ment certificate in the United States;

4 (C) The alien has not abandoned the
5 alien's residence in the United States. The Sec-
6 retary shall presume that the alien has aban-
7 doned such residence if the alien is absent from
8 the United States for more than 365 days, in
9 the aggregate, during the period of conditional
10 residence, unless the alien demonstrates that
11 alien has not abandoned the alien's residence.
12 An alien who is absent from the United States
13 due to active service in the uniformed services
14 has not abandoned the alien's residence in the
15 United States during the period of such service.

16 (D) The alien has—

17 (i) acquired a degree from an institu-
18 tion of higher education in the United
19 States or has completed at least 2 years, in
20 good standing, in a program for a bach-
21 elor's degree or higher degree in the
22 United States; or

23 (ii) The alien has served in the uni-
24 formed services for at least 2 years and, if

1 discharged, has received an honorable dis-
2 charge.

3 (E) The alien has provided a list of all of
4 the secondary educational institutions that the
5 alien attended in the United States; and

6 (F) The alien is in compliance with the eli-
7 gibility and admissibility criteria set forth in
8 section 601(d).

9 (b) TREATMENT OF PERIOD FOR PURPOSES OF NAT-
10 URALIZATION.—Solely for purposes of title III of the Im-
11 migration and Nationality Act (8 U.S.C. 1401 et seq.),
12 an alien who has been granted probationary benefits under
13 section 601(h) or Z nonimmigrant status and has satisfied
14 the requirements of subparagraphs (a)(1)(A) through (F)
15 shall beginning on the date that is eight years after the
16 date of enactment be considered to have satisfied the re-
17 quirements of Section 316(a)(1) of the Act (8 U.S.C.
18 1427(a)(1)).

19 (c) EXEMPTION FROM NUMERICAL LIMITATIONS.—
20 Nothing in this section may be construed to apply a nu-
21 merical limitation on the number of aliens who may be
22 eligible for adjustment of status.

23 (d) REGULATIONS.—

24 (1) PROPOSED REGULATIONS.—Not later than
25 180 days after the date of enactment of this Act, the

1 Secretary shall publish proposed regulations imple-
2 menting this section. Such regulations shall be effec-
3 tive immediately on an interim basis, but are subject
4 to change and revision after public notice and oppor-
5 tunity for a period for public comment.

6 (2) INTERIM, FINAL REGULATIONS.—Within a
7 reasonable time after publication of the interim reg-
8 ulations in accordance with paragraph (1), the Sec-
9 retary shall publish final regulations implementing
10 this section.

11 **SEC. 615. EXPEDITED PROCESSING OF APPLICATIONS; PRO-**
12 **HIBITION ON FEES.**

13 Regulations promulgated under this subtitle shall
14 provide that no additional fee will be charged to an appli-
15 cant for a Z nonimmigrant visa for applying for benefits
16 under this subtitle.

17 **SEC. 616. HIGHER EDUCATION ASSISTANCE.**

18 (a) Section 505 of the Illegal Immigration Reform
19 and Immigrant Responsibility Act of 1996 (8 U.S.C.
20 1623) shall have no force or effect with respect to an alien
21 who is a probationary Z or Z nonimmigrant.

22 (b) Notwithstanding any provision of the Higher
23 Education Act of 1965 (20 U.S.C. 1001 et seq.), with re-
24 spect to assistance provided under title IV of the Higher
25 Education Act of 1965 (20 U.S.C. 1070 et seq.), an alien

1 who adjusts status to that of a lawful permanent resident
2 under this title, or who is a probationary Z or Z non-
3 immigrant under this title and who meets the eligibility
4 criteria set forth in section 614(a)(1)(A), (B), and (F),
5 shall be eligible for the following assistance under such
6 title IV:

7 (1) Student loans under parts B, D, and E of
8 such title IV (20 U.S.C. 1071 et seq., 1087a et seq.,
9 1087aa et seq.), subject to the requirements of such
10 parts.

11 (2) Federal work-study programs under part C
12 of such title IV (42 U.S.C. 2751 et seq.), subject to
13 the requirements of such part.

14 (3) Services under such title IV (20 U.S.C.
15 1070 et seq.), subject to the requirements for such
16 services.

17 **SEC. 617. DELAY OF FINES AND FEES.**

18 (a) Payment of the penalties and fees specified in sec-
19 tion 601(e)(6) shall not be required with respect to an
20 alien who meets the eligibility criteria set forth in section
21 614(a)(1)(A), (B), and (F) until the date that is six years
22 and six months after the date of enactment of this Act
23 or the alien reaches the age of 24, whichever is later. If
24 the alien makes all of the demonstrations specified in sec-
25 tion 614(a)(1) by such date, the penalties shall be waived.

1 If the alien fails to make the demonstrations specified in
2 section 614(a)(1) by such date, the alien's Z non-
3 immigrant status will be terminated unless the alien pays
4 the penalties and fees specified in section 601(e)(6) con-
5 sistent with the procedures set forth in section 608 within
6 90 days.

7 (b) With respect to an alien who meets the eligibility
8 criteria set forth in section 614(a)(1)(A) and (F), but not
9 the eligibility criteria in section 614(a)(1)(B), the indi-
10 vidual who pays the penalties specified in section
11 601(e)(6) shall be entitled to a refund when the alien
12 makes all the demonstrations specified in section
13 614(a)(1).

14 **SEC. 618. GAO REPORT.**

15 Seven years after the date of enactment of this Act,
16 the Comptroller General of the United States shall submit
17 a report to the Committee on the Judiciary of the Senate
18 and the Committee on the Judiciary of the House of Rep-
19 resentatives, which sets forth—

20 (1) the number of aliens who were eligible for
21 adjustment of status under section 623(a);

22 (2) the number of aliens who applied for adjust-
23 ment of status under section 623(a); and

24 (3) the number of aliens who were granted ad-
25 justment of status under section 623(a).

1 **SEC. 619. REGULATIONS, EFFECTIVE DATE, AUTHORIZA-**
2 **TION OF APPROPRIATIONS.**

3 (a) REGULATIONS.—The Secretary shall issue regula-
4 tions to carry out the amendments made by this subtitle
5 not later than the first day of the seventh month that be-
6 gins after the date of enactment of this Act.

7 (b) EFFECTIVE DATE.—This subtitle shall take effect
8 on the date that regulations required by subsection (a) are
9 issued, regardless of whether such regulations are issued
10 on an interim basis or on any other basis.

11 (c) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Secretary such
13 sums as may be necessary to implement this subtitle, in-
14 cluding any sums needed for costs associated with the ini-
15 tiation of such implementation.

16 **PART II—CORRECTION OF SOCIAL SECURITY**
17 **RECORDS**

18 **SEC. 620. CORRECTION OF SOCIAL SECURITY RECORDS.**

19 (a) IN GENERAL.—Section 208(e)(1) of the Social
20 Security Act (42 U.S.C. 408(e)(1)) is amended—

21 (1) in subparagraph (B)(ii), by striking “or” at
22 the end;

23 (2) in subparagraph (C), by inserting “or” at
24 the end;

25 (3) by inserting after subparagraph (C) the fol-
26 lowing:

1 “(D) who is granted nonimmigrant status
2 pursuant to section 101(a)(15)(Z–A) of the Im-
3 migration and Nationality Act,”; and

4 (4) by striking “1990.” and inserting “1990, or
5 in the case of an alien described in subparagraph
6 (D), if such conduct is alleged to have occurred be-
7 fore the date on which the alien was granted such
8 nonimmigrant status.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 subsection (a) shall take effect on the first day of the sev-
11 enth month that begins after the date of the enactment
12 of this Act.

13 **Subtitle C—Agricultural Workers**

14 **SEC. 621. SHORT TITLE.**

15 This subtitle may be cited as the “Agricultural Job
16 Opportunities, Benefits, and Security Act of 2007” or the
17 “AgJOBS Act of 2007”.

18 **PART I—ADMISSION OF AGRICULTURAL**

19 **WORKERS**

20 **SEC. 622. ADMISSION OF AGRICULTURAL WORKERS.**

21 (a) Z–A NONIMMIGRANT VISA CATEGORY.—

22 (1) ESTABLISHMENT.—Paragraph (15) of sec-
23 tion 101(a) of the Immigration and Nationality Act
24 (8 U.S.C. 1101(a)), as amended by section 601(b),

1 is further amended by adding at the end the fol-
 2 lowing new subparagraph:

3 “(Z–A)(i) an alien who is coming to the
 4 United States to perform any service or activity
 5 that is considered to be agricultural under sec-
 6 tion 3(f) of the Fair Labor Standards Act of
 7 1938 (29 U.S.C. 203(f)), agricultural labor
 8 under section 3121(g) of the Internal Revenue
 9 Code of 1986, or the performance of agricul-
 10 tural labor or services described in subpara-
 11 graph (H)(ii)(a), who meets the requirements of
 12 section 214A of this Act; or

13 “(ii) the spouse or minor child of an
 14 alien described in clause (i) who is residing
 15 in the United States.”.

16 (b) REQUIREMENTS FOR ISSUANCE OF NON-
 17 IMMIGRANT VISA.—Chapter 2 of title II of the Immigra-
 18 tion and Nationality Act (8 U.S.C. 1181 et seq.) is amend-
 19 ed by inserting after section 214 the following new section:

20 **“SEC. 214A. ADMISSION OF AGRICULTURAL WORKERS.**

21 “(a) DEFINITIONS.—In this section:

22 “(1) AGRICULTURAL EMPLOYMENT.—The term
 23 ‘agricultural employment’ means any service or ac-
 24 tivity that is considered to be agricultural under sec-
 25 tion 3(f) of the Fair Labor Standards Act of 1938

1 (29 U.S.C. 203(f)) or agricultural labor under sec-
2 tion 3121(g) of the Internal Revenue Code of 1986
3 or the performance of agricultural labor or services
4 described in section 101(a)(15)(H)(ii)(a).

5 “(2) DEPARTMENT.—The term ‘Department’
6 means the Department of Homeland Security.

7 “(3) EMPLOYER.—The term ‘employer’ means
8 any person or entity, including any farm labor con-
9 tractor and any agricultural association, that em-
10 ploys workers in agricultural employment.

11 “(4) QUALIFIED DESIGNATED ENTITY.—The
12 term ‘qualified designated entity’ means—

13 “(A) a qualified farm labor organization or
14 an association of employers designated by the
15 Secretary; or

16 “(B) any such other person designated by
17 the Secretary if that Secretary determines such
18 person is qualified and has substantial experi-
19 ence, demonstrated competence, and has a his-
20 tory of long-term involvement in the prepara-
21 tion and submission of applications for adjust-
22 ment of status under section 209, 210, or 245,
23 the Act entitled ‘An Act to adjust the status of
24 Cuban refugees to that of lawful permanent
25 residents of the United States, and for other

1 purposes’, approved November 2, 1966 (Public
2 Law 89–732; 8 U.S.C. 1255 note), Public Law
3 95–145 (8 U.S.C. 1255 note), or the Immigra-
4 tion Reform and Control Act of 1986 (Public
5 Law 99–603; 100 Stat. 3359) or any amend-
6 ment made by that Act.

7 “(5) SECRETARY.—Except as otherwise pro-
8 vided, the term ‘Secretary’ means the Secretary of
9 Homeland Security.

10 “(6) TEMPORARY.—A worker is employed on a
11 ‘temporary’ basis when the employment is intended
12 not to exceed 10 months.

13 “(7) WORK DAY.—The term ‘work day’ means
14 any day in which the individual is employed 5.75 or
15 more hours in agricultural employment.

16 “(8) Z–A DEPENDENT VISA.—The term ‘Z–A
17 dependent visa’ means a nonimmigrant visa issued
18 pursuant to section 101(a)(15)(Z–A)(ii).

19 “(9) Z–A VISA.—The term ‘Z–A visa’ means a
20 nonimmigrant visa issued pursuant to section
21 101(a)(15)(Z–A)(i).

22 “(b) AUTHORIZATION FOR PRESENCE, EMPLOY-
23 MENT, AND TRAVEL IN THE UNITED STATES.—

24 “(1) IN GENERAL.—An alien issued a Z–A visa
25 or a Z–A dependent visa may remain in, and be em-

1 employed in, the United States during the period such
2 visa is valid.

3 “(2) AUTHORIZED EMPLOYMENT.—The Sec-
4 retary shall provide an alien who is granted a Z–A
5 visa or a Z–A dependent visa an employment author-
6 ized endorsement or other appropriate work permit,
7 in the same manner as an alien lawfully admitted
8 for permanent residence.

9 “(3) AUTHORIZED TRAVEL.—An alien who is
10 granted a Z–A visa or a Z–A dependent visa is au-
11 thorized to travel outside the United States (includ-
12 ing commuting to the United States from a resi-
13 dence in a foreign country) in the same manner as
14 an alien lawfully admitted for permanent residence.

15 “(c) QUALIFICATIONS.—

16 “(1) Z–A VISA.—Notwithstanding any other
17 provision of law, the Secretary shall, pursuant to the
18 requirements of this section, grant a Z–A visa to an
19 alien if the Secretary determines that the alien—

20 (A) has performed agricultural employment
21 in the United States for at least 863 hours or
22 150 work days during the 24-month period end-
23 ing on December 31, 2006;

24 (B) applied for such status during the 18-
25 month application period beginning on the first

1 day of the seventh month that begins after the
2 date of enactment of this Act;

3 (C) is admissible to the United States
4 under section 212, except as otherwise provided
5 in paragraph (4);

6 (D) has not been convicted of any felony or
7 a misdemeanor, an element of which involves
8 bodily injury, threat of serious bodily injury, or
9 harm to property in excess of \$500; and

10 “(E) meets the requirements of paragraph
11 (3).

12 “(2) Z–A DEPENDENT VISA.—Notwithstanding
13 any other provision of law, the Secretary shall grant
14 a Z–A dependent visa to an alien who is—

15 (A) described in section 101(a)(15)(Z–
16 A)(ii);

17 (B) meets the requirements of paragraph
18 (3); and

19 (C) is admissible to the United States
20 under section 212, except as otherwise provided
21 in paragraph (4).

22 “(3) SECURITY AND LAW ENFORCEMENT BACK-
23 GROUND CHECKS.—

24 (A) FINGERPRINTS.—An alien seeking a
25 Z–A visa or a Z–A dependent visa shall submit

1 fingerprints to the Secretary at such time and
2 in manner as the Secretary may require.

3 (B) BACKGROUND CHECKS.—The Sec-
4 retary shall utilize fingerprints provided under
5 subparagraph (A) and other biometric data pro-
6 vided by an alien to conduct a background
7 check of the alien, including searching the
8 alien’s criminal history and any law enforce-
9 ment actions taken with respect to the alien
10 and ensuring that the alien is not a risk to na-
11 tional security.

12 “(4) WAIVER OF CERTAIN GROUNDS OF INAD-
13 MISSIBILITY.—In the determination of an alien’s eli-
14 gibility for a Z–A visa or a Z–A dependent visa the
15 following shall apply:

16 (A) GROUNDS OF EXCLUSION NOT APPLI-
17 CABLE.—The provisions of paragraphs (5),
18 (6)(A), (7), and (9) of section 212(a) shall not
19 apply.

20 (B) WAIVER OF OTHER GROUNDS.—

21 “(i) IN GENERAL.—Except as pro-
22 vided in clause (ii), the Secretary may
23 waive any provision of such section 212(a),
24 other than the paragraphs described in
25 subparagraph (A), in the case of individual

1 aliens for humanitarian purposes, to en-
2 sure family unity, or if such waiver is oth-
3 erwise in the public interest.

4 “(ii) GROUNDS THAT MAY NOT BE
5 WAIVED.—Except as provided in subpara-
6 graph (C), subparagraphs (A), (B), and
7 (C) of paragraph (2), and paragraphs (3)
8 and (4) of section 212(a) may not be
9 waived by the Secretary under clause (i).

10 “(iii) CONSTRUCTION.—Nothing in
11 this subparagraph shall be construed as af-
12 fecting the authority of the Secretary other
13 than under this subparagraph to waive
14 provisions of such section 212(a).

15 “(C) SPECIAL RULE FOR DETERMINATION
16 OF PUBLIC CHARGE.—An alien is not ineligible
17 for a Z–A visa or a Z–A dependent visa by rea-
18 son of a ground of inadmissibility under section
19 212(a)(4) if the alien demonstrates a history of
20 employment in the United States evidencing
21 self-support without reliance on public cash as-
22 sistance.

23 “(d) APPLICATION.—

24 “(1) IN GENERAL.—An alien seeking a Z–A
25 visa shall submit an application to the Secretary for

1 such a visa, including information regarding any Z-
2 A dependent visa for the spouse of child of the alien.

3 “(2) SUBMISSION.—Applications for a Z-A visa
4 under may be submitted—

5 “(A) to the Secretary if the applicant is
6 represented by an attorney or a nonprofit reli-
7 gious, charitable, social service, or similar orga-
8 nization recognized by the Board of Immigra-
9 tion Appeals under section 292.2 of title 8,
10 Code of Federal Regulations (or similar suc-
11 cessor regulations); or

12 “(B) to a qualified designated entity if the
13 applicant consents to the forwarding of the ap-
14 plication to the Secretary.

15 “(3) PROOF OF ELIGIBILITY.—

16 “(A) IN GENERAL.—An alien may estab-
17 lish that the alien meets the requirement for a
18 Z-A visa through government employment
19 records or records supplied by employers or col-
20 lective bargaining organizations, and other reli-
21 able documentation as the alien may provide.
22 The Secretary shall establish special procedures
23 to properly credit work in cases in which an
24 alien was employed under an assumed name.

1 “(B) DOCUMENTATION OF WORK HIS-
2 TORY.—

3 “(i) BURDEN OF PROOF.—An alien
4 applying for a Z–A visa or applying for ad-
5 justment of status described in subsection
6 (j) has the burden of proving by a prepon-
7 derance of the evidence that the alien has
8 performed the requisite number of hours or
9 days of agricultural employment required
10 for such application or adjustment of sta-
11 tus, as applicable.

12 “(ii) TIMELY PRODUCTION OF
13 RECORDS.—If an employer or farm labor
14 contractor employing such an alien has
15 kept proper and adequate records respect-
16 ing such employment, the alien’s burden of
17 proof under clause (i) may be met by se-
18 curing timely production of such records
19 under regulations to be promulgated by the
20 Secretary.

21 “(iii) SUFFICIENT EVIDENCE.—An
22 alien may meet the burden of proof under
23 clause (i) to establish that the alien has
24 performed the requisite number of hours or
25 days of agricultural employment by pro-

1 ducing sufficient evidence to show the ex-
2 tent of that employment as a matter of
3 just and reasonable inference.

4 “(4) APPLICATIONS SUBMITTED TO QUALIFIED
5 DESIGNATED ENTITIES.—

6 “(A) REQUIREMENTS.—Each qualified
7 designated entity shall agree—

8 “(i) to forward to the Secretary an
9 application submitted to that entity pursu-
10 ant to paragraph (2)(B) if the alien for
11 whom the application is being submitted
12 has consented to such forwarding;

13 “(ii) not to forward to the Secretary
14 any such application if such an alien has
15 not consented to such forwarding; and

16 “(iii) to assist an alien in obtaining
17 documentation of the alien’s work history,
18 if the alien requests such assistance.

19 “(B) NO AUTHORITY TO MAKE DETER-
20 MINATIONS.—No qualified designated entity
21 may make a determination required by this sec-
22 tion to be made by the Secretary.

23 “(5) APPLICATION FEES.—

24 “(A) FEE SCHEDULE.—The Secretary
25 shall provide for a schedule of fees that—

1 “(i) shall be charged for applying for
2 a Z–A visa under this section or for an ad-
3 justment of status described in subsection
4 (j); and

5 “(ii) may be charged by qualified des-
6 ignated entities to help defray the costs of
7 services provided to such aliens making
8 such an application.

9 “(B) PROHIBITION ON EXCESS FEES BY
10 QUALIFIED DESIGNATED ENTITIES.—A quali-
11 fied designated entity may not charge any fee
12 in excess of, or in addition to, the fees author-
13 ized under subparagraph (A)(ii) for services
14 provided to applicants.

15 “(6) LIMITATION ON ACCESS TO INFORMA-
16 TION.—Files and records collected or compiled by a
17 qualified designated entity for the purposes of this
18 section are confidential and the Secretary shall not
19 have access to such a file or record relating to an
20 alien without the consent of the alien, except as al-
21 lowed by a court order issued pursuant to [__].

22 “(7) TREATMENT OF APPLICANTS.—

23 (A) IN GENERAL.—An alien who files an
24 application under this section to receive a Z–A
25 visa and any spouse or child of the alien seek-

1 ing a Z–A dependant visa, on the date de-
2 scribed in subparagraph (B)—

3 “(i) shall be granted probationary
4 benefits in the form of employment author-
5 ization pending final adjudication of the
6 alien’s application;

7 “(ii) may in the Secretary’s discretion
8 receive advance permission to re-enter the
9 United States pursuant to existing regula-
10 tions governing advance parole;

11 “(iii) may not be detained for immi-
12 gration purposes, determined inadmissible
13 or deportable, or removed pending final ad-
14 judication of the alien’s application, unless
15 the alien is determined to be ineligible for
16 Z–A visa; and

17 “(iv) may not be considered an unau-
18 thorized alien (as defined in section 274A)
19 until the date on which [the alien’s appli-
20 cation for a Z–A visa] is denied.

21 “(B) TIMING OF PROBATIONARY BENE-
22 FITS.—

23 “(i) IN GENERAL.—Subject to clause
24 (ii), an alien who submits an application
25 for a Z–A visa under subsection (d), in-

1 cluding any evidence required under such
2 subsection, and any spouse or child of the
3 alien seeking a Z–A dependent visa shall
4 receive the probationary benefits described
5 in clauses (i) through (iv) of subparagraph
6 (A) at the earlier of—

7 “(I) the date and time that the
8 alien has passed all appropriate back-
9 ground checks, including name and
10 fingerprint checks; or

11 “(II) the end of the next business
12 day after the date that the Secretary
13 receives the alien’s application for Z–
14 A visa.

15 “(ii) EXCEPTION.—If the Secretary
16 determines that the alien fails the back-
17 ground checks referred to in clause (i)(I),
18 the alien may not be granted probationary
19 benefits described in clauses (i) through
20 (iv) of subparagraph (A).

21 “(C) PROBATIONARY AUTHORIZATION DOC-
22 UMENT.—The Secretary shall provide each alien
23 granted probationary benefits described in
24 clauses (i) through (iv) of subparagraph (A)
25 with a counterfeit-resistant document that re-

1 reflects the benefits and status set forth in sub-
2 paragraph (A). The Secretary may by regula-
3 tion establish procedures for the issuance of
4 documentary evidence of probationary benefits
5 and, except as provided herein, the conditions
6 under which such documentary evidence ex-
7 pires, terminates, or is renewed.

8 “(D) CONSTRUCTION.—Nothing in this
9 section may be construed to limit the Sec-
10 retary’s authority to conduct any appropriate
11 background and security checks subsequent to
12 issuance of evidence of probationary benefits
13 under this paragraph.

14 “(8) TEMPORARY STAY OF REMOVAL AND WORK
15 AUTHORIZATION FOR CERTAIN APPLICANTS.—

16 “(A) BEFORE APPLICATION PERIOD.—Be-
17 ginning on the date of enactment of the
18 AgJOBS Act of 2007, the Secretary shall pro-
19 vide that, in the case of an alien who is appre-
20 hended prior to the first date of the application
21 period described in subsection (c)(1)(B) and
22 who can establish a nonfrivolous case of eligi-
23 bility for a Z–A visa (but for the fact that the
24 alien may not apply for such status until the
25 beginning of such period), the alien—

1 “(i) may not be removed; and

2 “(ii) shall be granted authorization to
3 engage in employment in the United States
4 and be provided an employment authorized
5 endorsement or other appropriate work
6 permit for such purpose.

7 “(B) DURING APPLICATION PERIOD.—The
8 Secretary shall provide that, in the case of an
9 alien who presents a nonfrivolous application
10 for Z–A visa during the application period de-
11 scribed in subsection (c)(1)(B), including an
12 alien who files such an application within 30
13 days of the alien’s apprehension, and until a
14 final determination on the application has been
15 made in accordance with this section, the
16 alien—

17 “(i) may not be removed; and

18 “(ii) shall be granted authorization to
19 engage in employment in the United States
20 and be provided an employment authorized
21 endorsement or other appropriate work
22 permit for such purpose.

23 “(e) NUMERICAL LIMITATIONS.—

24 “(1) Z–A VISA.—The Secretary may not issue
25 more than 1,500,000 Z–A visas.

1 “(2) Z–A DEPENDENT VISA.—The Secretary
2 may not count any Z–A dependent visa issued
3 against the numerical limitation described in para-
4 graph (1).

5 “(f) EVIDENCE OF NONIMMIGRANT STATUS.—

6 “(1) IN GENERAL.—Documentary evidence of
7 nonimmigrant status shall be issued to each alien
8 granted a Z–A visa or a Z–A dependent visa.

9 “(2) FEATURES OF DOCUMENTATION.—Docu-
10 mentary evidence of a Z–A visa or a Z–A dependent
11 visa—

12 “(A) shall be machine-readable, tamper-re-
13 sistant, and shall contain a digitized photo-
14 graph and other biometric identifiers that can
15 be authenticated;

16 “(B) shall be designed in consultation with
17 U.S. Immigration and Customs Enforcement’s
18 Forensic Document Laboratory;

19 “(C) shall serve as a valid travel and entry
20 document for an alien granted a Z–A visa or a
21 Z–A dependent visa for the purpose of applying
22 for admission to the United States where the
23 alien is applying for admission at a port of
24 entry;

1 “(D) may be accepted during the period of
2 its validity by an employer as evidence of em-
3 ployment authorization and identity under sec-
4 tion 274A; and

5 “(E) shall be issued to the alien granted
6 the visa by the Secretary promptly after final
7 adjudication of such alien’s application for the
8 visa, except that an alien may not be granted
9 a Z–A visa or a Z–A dependent visa until all
10 appropriate background checks on each alien
11 are completed to the satisfaction of the Sec-
12 retary.

13 “(g) FINE.—An alien granted a Z–A visa shall pay
14 a fine of \$100 to the Secretary.

15 “(h) TREATMENT OF ALIENS GRANTED A Z–A
16 VISA.—

17 “(1) IN GENERAL.—Except as otherwise pro-
18 vided under this subsection, an alien granted a Z–
19 A visa or a Z–A dependent visa shall be considered
20 to be an alien lawfully admitted for permanent resi-
21 dence for purposes of any law other than any provi-
22 sion of this Act.

23 “(2) DELAYED ELIGIBILITY FOR CERTAIN FED-
24 ERAL PUBLIC BENEFITS.—An alien granted a Z–A
25 visa shall not be eligible, by reason of such status,

1 for any form of assistance or benefit described in
2 section 403(a) of the Personal Responsibility and
3 Work Opportunity Reconciliation Act of 1996 (8
4 U.S.C. 1613(a)) until 5 years after the date on
5 which the alien is granted an adjustment of status
6 under subsection (d).

7 “(3) TERMS OF EMPLOYMENT.—

8 “(A) PROHIBITION.—No alien granted a
9 Z–A visa may be terminated from employment
10 by any employer during the period of a Z–A
11 visa except for just cause.

12 “(B) TREATMENT OF COMPLAINTS.—

13 “(i) ESTABLISHMENT OF PROCESS.—

14 The Secretary shall establish a process for
15 the receipt, initial review, and disposition
16 of complaints by aliens granted a Z–A visa
17 who allege that they have been terminated
18 without just cause. No proceeding shall be
19 conducted under this subparagraph with
20 respect to a termination unless the Sec-
21 retary determines that the complaint was
22 filed not later than 6 months after the
23 date of the termination.

24 “(ii) INITIATION OF ARBITRATION.—

25 If the Secretary finds that an alien has

1 filed a complaint in accordance with clause
2 (i) and there is reasonable cause to believe
3 that the alien was terminated from employ-
4 ment without just cause, the Secretary
5 shall initiate binding arbitration pro-
6 ceedings by requesting the Federal Medi-
7 ation and Conciliation Service to appoint a
8 mutually agreeable arbitrator from the ros-
9 ter of arbitrators maintained by such Serv-
10 ice for the geographical area in which the
11 employer is located. The procedures and
12 rules of such Service shall be applicable to
13 the selection of such arbitrator and to such
14 arbitration proceedings. The Secretary
15 shall pay the fee and expenses of the arbi-
16 trator, subject to the availability of appro-
17 priations for such purpose.

18 “(iii) ARBITRATION PROCEEDINGS.—

19 The arbitrator shall conduct the pro-
20 ceeding under this subparagraph in accord-
21 ance with the policies and procedures pro-
22 mulgated by the American Arbitration As-
23 sociation applicable to private arbitration
24 of employment disputes. The arbitrator
25 shall make findings respecting whether the

1 termination was for just cause. The arbi-
2 trator may not find that the termination
3 was for just cause unless the employer so
4 demonstrates by a preponderance of the
5 evidence. If the arbitrator finds that the
6 termination was not for just cause, the ar-
7 bitrator shall make a specific finding of the
8 number of days or hours of work lost by
9 the employee as a result of the termi-
10 nation. The arbitrator shall have no au-
11 thority to order any other remedy, includ-
12 ing reinstatement, back pay, or front pay
13 to the affected employee. Not later than 30
14 days after the date of the conclusion of the
15 arbitration proceeding, the arbitrator shall
16 transmit the findings in the form of a writ-
17 ten opinion to the parties to the arbitration
18 and the Secretary. Such findings shall be
19 final and conclusive, and no official or
20 court of the United States shall have the
21 power or jurisdiction to review any such
22 findings.

23 “(iv) EFFECT OF ARBITRATION FIND-
24 INGS.—If the Secretary receives a finding
25 of an arbitrator that an employer has ter-

1 minated the employment of an alien who is
2 granted a Z–A visa without just cause, the
3 Secretary shall credit the alien for the
4 number of days of work not performed
5 during such period of termination for the
6 purpose of determining if the alien meets
7 the qualifying employment requirement of
8 subsection (f)(2).

9 “(v) TREATMENT OF ATTORNEY’S
10 FEES.—Each party to an arbitration under
11 this subparagraph shall bear the cost of
12 their own attorney’s fees for the arbitra-
13 tion.

14 “(vi) NONEXCLUSIVE REMEDY.—The
15 complaint process provided for in this sub-
16 paragraph is in addition to any other
17 rights an employee may have in accordance
18 with applicable law.

19 “(vii) EFFECT ON OTHER ACTIONS OR
20 PROCEEDINGS.—Any finding of fact or
21 law, judgment, conclusion, or final order
22 made by an arbitrator in the proceeding
23 before the Secretary shall not be conclusive
24 or binding in any separate or subsequent
25 action or proceeding between the employee

1 and the employee's current or prior em-
2 ployer brought before an arbitrator, admin-
3 istrative agency, court, or judge of any
4 State or the United States, regardless of
5 whether the prior action was between the
6 same or related parties or involved the
7 same facts, except that the arbitrator's
8 specific finding of the number of days or
9 hours of work lost by the employee as a re-
10 sult of the employment termination may be
11 referred to the Secretary pursuant to
12 clause (iv).

13 “(4) RECORD OF EMPLOYMENT.—

14 “(A) IN GENERAL.—Each employer of an
15 alien who is granted a Z–A visa shall annu-
16 ally—

17 “(i) provide a written record of em-
18 ployment to the alien; and

19 “(ii) provide a copy of such record to
20 the Secretary.

21 “(B) CIVIL PENALTIES.—

22 “(i) IN GENERAL.—If the Secretary
23 finds, after notice and opportunity for a
24 hearing, that an employer of an alien
25 granted a Z–A visa has failed to provide

1 the record of employment required under
2 subparagraph (A) or has provided a false
3 statement of material fact in such a
4 record, the employer shall be subject to a
5 civil money penalty in an amount not to
6 exceed \$1,000 per violation.

7 “(ii) LIMITATION.—The penalty appli-
8 cable under clause (i) for failure to provide
9 records shall not apply unless the alien has
10 provided the employer with evidence of em-
11 ployment authorization granted under this
12 subsection.

13 “(i) TERMINATION OF A GRANT OF Z–A VISA.—

14 “(1) IN GENERAL.—The Secretary may termi-
15 nate a Z–A visa or a Z–A dependent visa granted
16 to an alien only if the Secretary determines that the
17 alien is deportable.

18 “(2) GROUNDS FOR TERMINATION.—Prior to
19 the date that an alien granted a Z–A visa or a Z–
20 A dependent visa becomes eligible for adjustment of
21 status described in subsection (j), the Secretary may
22 deny adjustment to permanent resident status and
23 provide for termination of the alien’s Z–A visa or Z–
24 A dependent visa if—

1 “(A) the Secretary finds, by a preponder-
2 ance of the evidence, that the grant of a Z–A
3 visa was the result of fraud or willful misrepre-
4 sentation (as described in section
5 212(a)(6)(C)(i)); or

6 “(B) the alien—

7 “(i) commits an act that makes the
8 alien inadmissible to the United States as
9 an immigrant, except as provided under
10 subsection (c)(4);

11 “(ii) is convicted of a felony or 3 or
12 more misdemeanors committed in the
13 United States;

14 “(iii) is convicted of an offense, an
15 element of which involves bodily injury,
16 threat of serious bodily injury, or harm to
17 property in excess of \$500; or

18 “(iv) in the case of an alien granted
19 a Z–A visa, fails to perform the agricul-
20 tural employment described in subsection
21 (j)(1)(A) unless the alien was unable to
22 work in agricultural employment due to
23 the extraordinary circumstances described
24 in subsection (j)(1)(A)(iii).

1 “(3) REPORTING REQUIREMENT.—The Sec-
2 retary shall promulgate regulations to ensure that
3 the alien granted a Z–A visa complies with the quali-
4 fying agricultural employment described in sub-
5 section (j)(1)(A) at the end of the 5-year work pe-
6 riod, which may include submission of an application
7 pursuant to this subsection.

8 “(j) ADJUSTMENT TO PERMANENT RESIDENCE.—

9 “(1) Z–A VISA.—Except as provided in this
10 subsection, the Secretary shall award the maximum
11 number of points available pursuant to section
12 203(b)(1) and adjust the status of an alien granted
13 a Z–A visa to that of an alien lawfully admitted for
14 permanent residence under this Act, if the Secretary
15 determines that the following requirements are satis-
16 fied:

17 “(A) QUALIFYING EMPLOYMENT.—

18 “(i) IN GENERAL.—Subject to clauses
19 (ii) and (iii), the alien has performed at
20 least—

21 “(I) 5 years of agricultural em-
22 ployment in the United States for at
23 least 100 work days per year, during
24 the 5-year period beginning on the

1 date of enactment of the AgJobs Act
2 of 2007; or

3 “(II) 3 years of agricultural em-
4 ployment in the United States for at
5 least 150 work days per year, during
6 the 3-year period beginning on such
7 date of enactment.

8 “(ii) FOUR-YEAR PERIOD OF EMPLOY-
9 MENT.—An alien shall be considered to
10 meet the requirements of clause (i) if the
11 alien has performed 4 years of agricultural
12 employment in the United States for at
13 least 150 work days during 3 years of
14 those 4 years and at least 100 work days
15 during the remaining year, during the 4-
16 year period beginning on such date of en-
17 actment.

18 “(iii) EXTRAORDINARY CIR-
19 CUMSTANCES.—In determining whether an
20 alien has met the requirement of clause (i),
21 the Secretary may credit the alien with not
22 more than 12 additional months to meet
23 the requirement of that clause if the alien
24 was unable to work in agricultural employ-
25 ment due to—

1 “(I) pregnancy, injury, or dis-
2 ease, if the alien can establish such
3 pregnancy, disabling injury, or disease
4 through medical records;

5 “(II) illness, disease, or other
6 special needs of a minor child, if the
7 alien can establish such illness, dis-
8 ease, or special needs through medical
9 records; or

10 “(III) severe weather conditions
11 that prevented the alien from engag-
12 ing in agricultural employment for a
13 significant period of time.

14 “(B) PROOF.—An alien may demonstrate
15 compliance with the requirements of subpara-
16 graph (A) by submitting—

17 “(i) the record of employment de-
18 scribed in subsection (h)(4); or

19 “(ii) such documentation as may be
20 submitted under subsection (d)(3).

21 “(C) APPLICATION PERIOD.—Not later
22 than 8 years after the date of the enactment of
23 the AgJOBS Act of 2007, the alien must—

24 “(i) apply for adjustment of status; or

1 “(ii) renew the alien’s Z visa status as
2 described in section 601(k)(2).

3 “(D) FINE.—The alien pays to the Sec-
4 retary a fine of \$400; or

5 “(2) SPOUSES AND MINOR CHILDREN.—Not-
6 withstanding any other provision of law, the Sec-
7 retary shall confer the status of lawful permanent
8 resident on the spouse and minor child of an alien
9 granted any adjustment of status under paragraph
10 (1), including any individual who was a minor child
11 on the date such alien was granted a Z–A visa, if
12 the spouse or minor child applies for such status, or
13 if the principal alien includes the spouse or minor
14 child in an application for adjustment of status to
15 that of a lawful permanent resident.

16 “(3) GROUNDS FOR DENIAL OF ADJUSTMENT
17 OF STATUS.—The Secretary may deny an alien
18 granted a Z–A visa or a Z–A dependent visa an ad-
19 justment of status under this Act and provide for
20 termination of such visa if—

21 “(A) the Secretary finds by a preponder-
22 ance of the evidence that grant of the Z–A visa
23 was the result of fraud or willful misrepresenta-
24 tion (as described in section 212(a)(6)(C)(i)); or

25 “(B) the alien—

1 “(i) commits an act that makes the
2 alien inadmissible to the United States
3 under section 212, except as provided
4 under subsection (c)(4);

5 “(ii) is convicted of a felony or 3 or
6 more misdemeanors committed in the
7 United States; or

8 “(iii) is convicted of an offense, an
9 element of which involves bodily injury,
10 threat of serious bodily injury, or harm to
11 property in excess of \$500.

12 “(4) GROUNDS FOR REMOVAL.—Any alien
13 granted Z–A visa status who does not apply for ad-
14 justment of status or renewal of Z status under sec-
15 tion 601(k)(2) prior to the expiration of the applica-
16 tion period described in subsection (c)(1)(B) or who
17 fails to meet the other requirements of paragraph
18 (1) by the end of the application period, is deport-
19 able and may be removed under section 240.

20 “(5) PAYMENT OF TAXES.—

21 “(A) IN GENERAL.—Not later than the
22 date on which an alien’s status is adjusted as
23 described in this subsection, the alien shall es-
24 tablish that the alien does not owe any applica-
25 ble Federal tax liability by establishing that—

1 “(i) no such tax liability exists;

2 “(ii) all such outstanding tax liabil-
3 ities have been paid; or

4 “(iii) the alien has entered into an
5 agreement for payment of all outstanding
6 liabilities with the Internal Revenue Serv-
7 ice.

8 “(B) APPLICABLE FEDERAL TAX LIABIL-
9 ITY.—In this paragraph, the term ‘applicable
10 Federal tax liability’ means liability for Federal
11 taxes, including penalties and interest, owed for
12 any year during the period of employment re-
13 quired under paragraph (1)(A) for which the
14 statutory period for assessment of any defi-
15 ciency for such taxes has not expired.

16 “(C) IRS COOPERATION.—The Secretary
17 of the Treasury shall establish rules and proce-
18 dures under which the Commissioner of Inter-
19 nal Revenue shall provide documentation to an
20 alien upon request to establish the payment of
21 all taxes required by this subsection.

22 “(6) ENGLISH LANGUAGE.—

23 “(A) IN GENERAL.—Not later than the
24 date on which a Z–A nonimmigrant’s status is
25 adjusted or renewed under section 601(k)(2), a

1 Z–A nonimmigrant who is 18 years of age or
2 older must pass the naturalization test de-
3 scribed in sections 312(a)(1) and (2).

4 “(B) EXCEPTION.—The requirement of
5 subparagraph (A) shall not apply to any person
6 who, on the date of the filing of the person’s
7 application for an extension of Z–A non-
8 immigrant status—

9 (i) is unable because of physical or de-
10 velopmental disability or mental impair-
11 ment to comply therewith;

12 (ii) is over fifty years of age and has
13 been living in the United States for periods
14 totaling at least twenty years, or

15 (iii) is over fifty-five years of age and
16 has been living in the United States for pe-
17 riods totaling at least fifteen years.

18 “(7) PRIORITY OF APPLICATIONS.—

19 “(A) BACK OF LINE.—An alien may not
20 adjust status to that of a lawful permanent
21 resident under this subsection until 30 days
22 after the date on which an immigrant visa be-
23 comes available for approved petitions filed
24 under sections 201, 202, and 203 of the Act

1 that were filed before May 1, 2005 (referred to
2 in this paragraph as the ‘processing date’).

3 “(B) OTHER APPLICANTS.—The proc-
4 essing of applications for an adjustment of sta-
5 tus under this subsection shall be processed not
6 later than 1 year after the processing date.

7 “(C) CONSULAR APPLICATION.—

8 (i) IN GENERAL.—A Z–A non-
9 immigrant’s application for adjustment of
10 status to that of an alien lawfully admitted
11 for permanent residence must be filed in
12 person with a United States consulate
13 abroad.

14 (ii) PLACE OF APPLICATION.—Unless
15 otherwise directed by the Secretary of
16 State, a Z–A nonimmigrant applying for
17 adjustment of status under this paragraph
18 shall make an application at a consular of-
19 fice in the alien’s country of origin. The
20 Secretary of State shall direct a consular
21 office in a country that is not a Z–A non-
22 immigrant’s country of origin to accept an
23 application for adjustment of status from
24 such an alien, where the Z–A non-
25 immigrant’s country of origin is not contig-

1 uous to the United States, and as consular
2 resources make possible.

3 “(k) CONFIDENTIALITY OF INFORMATION.—Appli-
4 cants for Z–A nonimmigrant status under this subtitle
5 shall be afforded confidentiality as provided under section
6 604.

7 “(l) PENALTIES FOR FALSE STATEMENTS IN APPLI-
8 CATIONS.—

9 “(1) CRIMINAL PENALTY.—Any person who—
10 “(A) applies for a Z–A visa or a Z–A de-
11 pendent visa under this section or an adjust-
12 ment of status described in subsection (j) and
13 knowingly and willfully falsifies, conceals, or
14 covers up a material fact or makes any false,
15 fictitious, or fraudulent statements or represen-
16 tations, or makes or uses any false writing or
17 document knowing the same to contain any
18 false, fictitious, or fraudulent statement or
19 entry; or

20 “(B) creates or supplies a false writing or
21 document for use in making such an applica-
22 tion, shall be fined in accordance with title 18,
23 United States Code, imprisoned not more than
24 5 years, or both.

1 “(2) INADMISSIBILITY.—An alien who is con-
2 victed of a crime under paragraph (1) shall be con-
3 sidered to be inadmissible to the United States on
4 the ground described in section 212(a)(6)(C)(i).

5 “(m) ELIGIBILITY FOR LEGAL SERVICES.—Section
6 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53
7 et seq.) shall not be construed to prevent a recipient of
8 funds under the Legal Services Corporation Act (42
9 U.S.C. 2996 et seq.) from providing legal assistance di-
10 rectly related to an application for a Z–A visa under sub-
11 section (b) or an adjustment of status under subsection
12 (j).

13 “(n) ADMINISTRATIVE AND JUDICIAL REVIEW.—Ad-
14 ministrative or judicial review of a determination on an
15 application for a Z–A visa shall be such as is provided
16 under section 603.

17 “(o) PUBLIC OUTREACH.—Beginning not later than
18 the first day of the application period described in sub-
19 section (c)(1)(B), the Secretary shall cooperate with quali-
20 fied designated entities to broadly disseminate information
21 regarding the availability of Z–A visas, the benefits of
22 such visas, and the requirements to apply for and be
23 granted such a visa.”.

24 (c) NUMERICAL LIMITATIONS.—

1 (1) WORLDWIDE LEVEL OF IMMIGRATION.—
2 Section 201(b)(1) of the Immigration and Nation-
3 ality Act (8 U.S.C. 1151(b)(1)), as amended by
4 [____], is further amended—

5 (A) in subparagraph (A), by striking “sub-
6 paragraph (A) or (B)” and inserting “subpara-
7 graph (A), (B), or (N)”;

8 (B) by adding at the end, the following
9 new subparagraph:

10 “(N) Aliens issued a Z–A visa or a Z–A
11 dependent visa (as those terms are defined in
12 section 214A) who receive an adjustment of sta-
13 tus to that of an alien lawfully admitted for
14 permanent residence.”.

15 (2) NUMERICAL LIMITATIONS ON INDIVIDUAL
16 FOREIGN STATES.—Section 202(a) of the Immigra-
17 tion and Nationality Act (8 U.S.C. 1152) is amend-
18 ed by adding at the end the following new para-
19 graph:

20 “(6) SPECIAL RULE FOR Z–A NON-
21 IMMIGRANTS.—An immigrant visa may be made
22 available to an alien issued a Z–A visa or a Z–A de-
23 pendent visa (as those terms are defined in section
24 214A) without regard to the numerical limitations of
25 this section.”.

1 (d) CLERICAL AMENDMENT.—The table of contents
 2 of the Immigration and Nationality Act (8 U.S.C. 1101
 3 et seq.) is amended by inserting after the item relating
 4 to section 214 the following:

“Sec. 214A. Admission of agricultural worker.”.

5 **SEC. 623. AGRICULTURAL WORKER IMMIGRATION STATUS**
 6 **ADJUSTMENT ACCOUNT.**

7 Section 286 of the Immigration and Nationality Act
 8 (8 U.S.C. 1356) is amended by adding at the end the fol-
 9 lowing new subsection:

10 “(y) AGRICULTURAL WORKER IMMIGRATION STATUS
 11 ADJUSTMENT ACCOUNT.—

12 “(1) ESTABLISHMENT.—There is established in
 13 the general fund of the Treasury a separate account,
 14 which shall be known as the ‘Agricultural Worker
 15 Immigration Status Adjustment Account’. Notwith-
 16 standing any other provision of law, there shall be
 17 deposited as offsetting receipts into the account all
 18 fees collected under section 214A.

19 “(2) USE OF FEES.—The fees deposited into
 20 the Agricultural Worker Immigration Status Adjust-
 21 ment Account shall be used by the Secretary of
 22 Homeland Security for processing applications made
 23 by aliens seeking nonimmigrant status under section
 24 101(a)(15)(Z–A) or for processing applications made

1 by such an alien who is seeking an adjustment of
2 status.

3 “(3) AVAILABILITY OF FUNDS.—All amounts
4 deposited in the Agricultural Worker Immigration
5 Status Adjustment Account under this subsection
6 shall remain available until expended.”.

7 **SEC. 624. REGULATIONS, EFFECTIVE DATE, AUTHORIZA-**
8 **TION OF APPROPRIATIONS.**

9 (a) REGULATIONS.—The Secretary shall issue regula-
10 tions to carry out the amendments made by this subtitle
11 not later than the first day of the seventh month that be-
12 gins after the date of enactment of this Act.

13 (b) EFFECTIVE DATE.—This subtitle shall take effect
14 on the date that regulations required by subsection (a) are
15 issued, regardless of whether such regulations are issued
16 on an interim basis or on any other basis.

17 (c) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to the Secretary such
19 sums as may be necessary to implement this subtitle, in-
20 cluding any sums needed for costs associated with the ini-
21 tiation of such implementation.

22 **SEC. 625. LIMITATION ON CLAIMING EARNED INCOME TAX**
23 **CREDIT.**

24 Any alien who is unlawfully present in the United
25 States, receives adjustment of status under section 601

1 of this Act (relating to aliens who were illegally present
2 in the United States prior to January 1, 2007), or enters
3 the United States to work on a Y visa under section 402
4 of this Act, shall not be eligible for the tax credit provided
5 under section 32 of the Internal Revenue Code (relating
6 to earned income) until such alien has his or her status
7 adjusted to legal permanent resident status.

8 **SEC. 626. EARNED INCOME TAX CREDIT.**

9 Nothing in this Act, or the amendments made by this
10 Act, may be construed to modify any provision of the In-
11 ternal Revenue Code of 1986 which prohibits illegal aliens
12 from qualifying for earned income tax credit under section
13 32 of such Code.

14 **PART II—CORRECTION OF SOCIAL SECURITY**

15 **RECORDS**

16 **SEC. 627. CORRECTION OF SOCIAL SECURITY RECORDS.**

17 (a) IN GENERAL.—Section 208(e)(1) of the Social
18 Security Act (42 U.S.C. 408(e)(1)) is amended—

19 (1) in subparagraph (B)(ii), by striking “or” at
20 the end;

21 (2) in subparagraph (C), by inserting “or” at
22 the end;

23 (3) by inserting after subparagraph (C) the fol-
24 lowing:

1 “(D) who is granted nonimmigrant status
2 pursuant to section 101(a)(15)(Z–A) of the Im-
3 migration and Nationality Act,”; and

4 (4) by striking “1990.” and inserting “1990, or
5 in the case of an alien described in subparagraph
6 (D), if such conduct is alleged to have occurred be-
7 fore the date on which the alien was granted such
8 nonimmigrant status.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 subsection (a) shall take effect on the first day of the sev-
11 enth month that begins after the date of the enactment
12 of this Act.

13 **TITLE VII—MISCELLANEOUS**
14 **Subtitle A—Miscellaneous**
15 **Immigration Reform**

16 **SEC. 701. WAIVER OF REQUIREMENT FOR FINGERPRINTS**
17 **FOR MEMBERS OF THE ARMED FORCES.**

18 Notwithstanding any other provision of law or any
19 regulation, for aliens currently serving in the U.S. Armed
20 Forces overseas and applying for naturalization from over-
21 seas, the Secretary of Defense shall provide in a form des-
22 ignated by the Secretary of Homeland Security, and the
23 Secretary of Homeland Security shall use the fingerprints
24 provided by the Secretary of Defense for such individuals,
25 if the individual—

1 (a) may be naturalized pursuant to section 328 or
 2 329 of the Immigration and Nationality Act (8 U.S.C.
 3 1439 or 1440);

4 (b) was fingerprinted in accordance with the require-
 5 ments of the Secretary of Defense at the time the indi-
 6 vidual enlisted in the Armed Forces; and

7 (c) submits the application to become a naturalized
 8 citizen of the United States not later than 12 months after
 9 the date the applicant is fingerprinted.

10 **SEC. 702. ENGLISH AS NATIONAL LANGUAGE.**

11 (a) **SHORT TITLE.**—This section may be cited as the
 12 “S.I. Hayakawa National Language Amendment Act of
 13 2007”.

14 (b) **IN GENERAL.**—Title 4, United States Code, is
 15 amended by adding at the end the following new chapter:

“CHAPTER 6—LANGUAGE OF THE GOVERNMENT

“Sec.

“161. Declaration of national language.

“162. Preserving and enhancing the role of the national language.

“163. Use of language other than English.

16 **“SEC. 161. DECLARATION OF NATIONAL LANGUAGE.**

17 “English shall be the national language of the Gov-
 18 ernment of the United States.

1 **“SEC. 162. PRESERVING AND ENHANCING THE ROLE OF**
 2 **THE NATIONAL LANGUAGE.**

3 “(a) IN GENERAL.—The Government of the United
 4 States shall preserve and enhance the role of English as
 5 the national language of the United States of America.

6 “(b) EXCEPTION.—Unless specifically provided by
 7 statute, no person has a right, entitlement, or claim to
 8 have the Government of the United States or any of its
 9 officials or representatives act, communicate, perform or
 10 provide services, or provide materials in any language
 11 other than English. If an exception is made with respect
 12 to the use of a language other than English, the exception
 13 does not create a legal entitlement to additional services
 14 in that language or any language other than English.

15 “(c) FORMS.—If any form is issued by the Federal
 16 Government in a language other than English (or such
 17 form is completed in a language other than English), the
 18 English language version of the form is the sole authority
 19 for all legal purposes.

20 **“SEC. 163. USE OF LANGUAGE OTHER THAN ENGLISH.**

21 “Nothing in this chapter shall prohibit the use of a
 22 language other than English.”

23 (c) CONFORMING AMENDMENT.—The table of chap-
 24 ters for title 4, United States Code, is amended by adding
 25 at the end the following new item:

“6. Language of the Government 161”.

1 **SEC. 703. DECLARATION OF ENGLISH AS LANGUAGE.**

2 (a) IN GENERAL.—English is the common language
3 of the United States.

4 (b) PRESERVING AND ENHANCING THE ROLE OF
5 THE ENGLISH LANGUAGE.—The Government of the
6 United States shall preserve and enhance the role of
7 English as the language of the United States. Nothing in
8 this Act shall diminish or expand any existing rights under
9 the laws of the United States relative to services or mate-
10 rials provided by the Government of the United States in
11 any language other than English.

12 (c) DEFINITION OF LAW.—For purposes of this sec-
13 tion, the term “laws of the United States” includes the
14 Constitution of the United States, any provision of Fed-
15 eral statute, or any rule or regulation issued under such
16 statute, any judicial decisions interpreting such statute,
17 or any Executive Order of the President.

18 **SEC. 704. PILOT PROJECT REGARDING IMMIGRATION**
19 **PRACTITIONER COMPLAINTS.**

20 (a) Within 180 days of the enactment of this Act,
21 the Secretary of Homeland Security, in consultation with
22 the Attorney General, shall institute a three-year pilot
23 project to—

24 (1) Encourage alien victims of immigration
25 practitioner fraud, and related crimes, to come for-
26 ward and file practitioner fraud complaints with the

1 Department of Homeland Security by utilizing exist-
2 ing statutory and administrative authority;

3 (2) Cooperate with Federal, State, and local law
4 enforcement officials who are responsible for inves-
5 tigating and prosecuting such crimes; and

6 (3) Increase public awareness regarding the
7 problem of immigration practitioner fraud.

8 (b) REPORTING.—Not later than 1 year after the end
9 of the three-year pilot period, the Secretary of Homeland
10 Security shall submit to Congress a report that includes
11 information concerning—

12 (1) the number of individuals who file practi-
13 tioner fraud complaints via the pilot program;

14 (2) the demographic characteristics, nationality,
15 and immigration status of the complainants;

16 (3) the number of indictments that result from
17 the pilot; and

18 (4) the number of successful fraud prosecutions
19 that result from the pilot.

20 **Subtitle B—Assimilation and**
21 **Naturalization**

22 **SEC. 705. THE OFFICE OF CITIZENSHIP AND INTEGRATION.**

23 Section 451(f) of the Homeland Security Act of 2002,
24 Public Law 107–296 (6 U.S.C. 271(f)), is amended by—

1 (1) inserting “and Integration” after “Office of
2 Citizenship” the two times that phrase appears; and

3 (2) in paragraph (f)(2), striking “instruction
4 and training on citizenship responsibilities” and in-
5 serting “civic integration, and instruction and train-
6 ing on citizenship responsibilities and requirements
7 for citizenship”.

8 **SEC. 706. SPECIAL PROVISIONS FOR ELDERLY IMMI-**
9 **GRANTS.**

10 Section 312(b) of the Immigration and Nationality
11 Act (8 U.S.C. 1423(b)) is amended by adding at the end
12 the following: “(4) The requirements of subsection (a) of
13 this section shall not apply to a person who is over 75
14 years of age on the date of filing an application for natu-
15 ralization; Provided that, the person expresses, in English
16 or in the applicant’s native language, at the time of exam-
17 ination for naturalization that the person understands and
18 agrees to the elements of the oath required by section 337
19 of this Act.”.

20 **SEC. 707. FUNDING FOR THE OFFICE OF CITIZENSHIP AND**
21 **INTEGRATION.**

22 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There is
23 authorized to be appropriated to the Secretary of Home-
24 land Security the sum of [\$100] million to carry out the
25 mission and operations of the Office of Citizenship and

1 Integration in U.S. Citizenship and Immigration Services,
2 including the patriotic integration of prospective citizens
3 into—

4 (1) American common values and traditions, in-
5 cluding an understanding of American history and
6 the principles of the Constitution of the United
7 States; and

8 (2) civic traditions of the United States, includ-
9 ing the Pledge of Allegiance, respect for the flag of
10 the United States, and voting in public elections.

11 **SEC. 708. CITIZENSHIP AND INTEGRATION COUNCILS.**

12 (a) GRANTS AUTHORIZED.—The Office of Citizen-
13 ship and Immigrant Integration shall provide grants to
14 States and municipalities for effective integration of immi-
15 grants into American society through the creation of New
16 Americans Integrations Councils.

17 (b) USE OF FUNDS.—

18 (1) IN GENERAL.—Grants awarded under this
19 section shall be used—

20 (A) To report on the status of new immi-
21 grants, lawful permanent residents, and citizens
22 within the State or municipality;

23 (B) To conduct a needs assessment, in-
24 cluding the availability of and demand for
25 English language services and instruction class-

1 es, for new immigrants, lawful permanent resi-
2 dents, Z non-immigrants, and citizens;

3 (C) To convene public hearings and meet-
4 ings to assist in the development of a com-
5 prehensive plan to integrate new immigrants,
6 lawful permanent residents, Z non-immigrants,
7 and citizens; and

8 (D) To develop a comprehensive plan to in-
9 tegrate new immigrants, lawful permanent resi-
10 dents, Z non-immigrants, and citizens into
11 States and municipalities.

12 (2) MEMBERSHIP OF INTEGRATION COUN-
13 CILS.—New Americans Integration Councils estab-
14 lished under this section shall consist of no less than
15 ten and no more than fifteen individuals from the
16 following sectors:

17 (A) State and local government;

18 (B) Business;

19 (C) Faith-based organizations;

20 (D) Civic organizations;

21 (E) Philanthropic leaders; and

22 (F) Nonprofit organizations with experi-
23 ence working with immigrant communities.

24 (c) REPORTING.—The Government Accountability
25 Office, in coordination with the Office of Citizenship and

1 Immigrant Integration, shall conduct an annual evaluation
2 of the grant program conducted under this section. Such
3 evaluation shall be used by the Office of Citizenship and
4 Immigrant Integration—

5 (1) To determine and improve upon the pro-
6 gram's effectiveness;

7 (2) To develop recommended best practices for
8 states and municipalities who receive grant awards;
9 and

10 (3) To further define the program's goals and
11 objectives.

12 (d) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to the Office of Citizen-
14 ship and Immigrant Integration such sums as may be nec-
15 essary for each of the fiscal years 2008 through 2012 to
16 carry out this section.

17 **SEC. 709. PRESIDENTIAL AWARD FOR BUSINESS LEADER-**
18 **SHIP IN PROMOTING AMERICAN CITIZEN-**
19 **SHIP.**

20 (a) ESTABLISHMENT.—There is established the Pres-
21 idential Award for Business Leadership in Promoting
22 American Citizenship, which shall be awarded to compa-
23 nies and other organizations that make extraordinary ef-
24 forts in assisting their employees and members to learn

1 English and increase their understanding of American his-
2 tory and civics.

3 (b) SELECTION AND PRESENTATION OF AWARD.—

4 (1) SELECTION.—The President, upon rec-
5 ommendations from the Secretary, the Secretary of
6 Labor, and the Secretary of Education, shall periodi-
7 cally award the Citizenship Education Award to
8 large and small companies and other organizations
9 described in subsection (a).

10 (2) PRESENTATION.—The presentation of the
11 award shall be made by the President, or designee
12 of the President, in conjunction with an appropriate
13 ceremony.

14 **SEC. 710. HISTORY AND GOVERNMENT TEST.**

15 (a) HISTORY AND GOVERNMENT TEST.—The Sec-
16 retary shall incorporate a knowledge and understanding
17 of the meaning of the Oath of Allegiance provided by sec-
18 tion 337 of the Immigration and Nationality Act (8 U.S.C.
19 1448) into the history and government test given to appli-
20 cants for citizenship. Nothing in this Act, other than the
21 amendment made by this subsection, shall be construed
22 to influence the naturalization test redesign process cur-
23 rently underway under the direction of U.S. Citizenship
24 and Immigration Services.

1 **SEC. 711. ENGLISH LEARNING PROGRAM.**

2 (a) The Secretary of Education shall develop an open
3 source electronic program, useable on personal computers
4 and through the Internet, that teaches the English lan-
5 guage at various levels of proficiency, up to and including
6 the ability to pass the Test of English as a Foreign Lan-
7 guage, to individuals inside the United States whose pri-
8 mary language is a language other than English. The Sec-
9 retary shall make the program available to the public for
10 free, including by placing it on the Department of Edu-
11 cation website, and shall ensure that it is readily accessible
12 to public libraries throughout the United States. The pro-
13 gram shall be fully accessible, at a minimum, to speakers
14 of the top five foreign languages spoken inside the United
15 States.

16 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
17 authorized to be appropriated to the Secretary of Edu-
18 cation such sums as are necessary to carry out the pur-
19 poses of this section.

20 **SEC. 712. GAO STUDY ON THE APPELLATE PROCESS FOR**
21 **IMMIGRATION APPEALS.**

22 (a) IN GENERAL.—The Comptroller General of the
23 United States shall, not later than 180 days after enact-
24 ment of this Act, conduct a study on the appellate process
25 for immigration appeals.

1 (b) REQUIREMENTS.—In conducting the study under
2 subsection (a), the Comptroller General shall consider the
3 possibility of consolidating all appeals from the Board of
4 Immigration Appeals and habeas corpus petitions in immi-
5 gration cases into 1 United States Court of Appeals, by—

6 (1) consolidating all such appeals into an exist-
7 ing circuit court, such as the United States Court of
8 Appeals for the Federal Circuit;

9 (2) consolidating all such appeals into a central-
10 ized appellate court consisting of active circuit court
11 judges temporarily assigned from the various cir-
12 cuits, in a manner similar to the Foreign Intel-
13 ligence Surveillance Court or the Temporary Emer-
14 gency Court of Appeals; or

15 (3) implementing a mechanism by which a
16 panel of active circuit court judges shall have the au-
17 thority to reassign such appeals from circuits with
18 relatively high caseloads to circuits with relatively
19 low caseloads.

20 (c) FACTORS TO CONSIDER.—In conducting the
21 study under subsection (a), the Comptroller General, in
22 consultation with the Attorney General, the Secretary, and
23 the Judicial Conference of the United States, shall con-
24 sider—

1 (1) the resources needed for each alternative,
2 including judges, attorneys and other support staff,
3 case management techniques including technological
4 requirements, physical infrastructure, and other pro-
5 cedural and logistical issues as appropriate;

6 (2) the impact of each plan on various circuits,
7 including their caseload in general and caseload per
8 panel;

9 (3) the possibility of utilizing case management
10 techniques to reduce the impact of any consolidation
11 option, such as requiring certificates of reviewability,
12 similar to procedures for habeas and existing sum-
13 mary dismissal procedures in local rules of the
14 courts of appeals;

15 (4) the effect of reforms in this Act on the abil-
16 ity of the circuit courts to adjudicate such appeals;

17 (5) potential impact, if any, on litigants; and

18 (6) other reforms to improve adjudication of
19 immigration matters, including appellate review of
20 motions to reopen and reconsider, and attorney fee
21 awards with respect to review of final orders of re-
22 moval.

1 **Subtitle C—American Competitive-**
2 **ness Scholarship Program**

3 **SEC. 713. AMERICAN COMPETITIVENESS SCHOLARSHIP**
4 **PROGRAM.**

5 (a) ESTABLISHMENT.—The Director of the National
6 Science Foundation (referred to in this section as the “Di-
7 rector”) shall award scholarships to eligible individuals to
8 enable such individuals to pursue associate, under-
9 graduate, or graduate level degrees in mathematics, engi-
10 neering, health care, or computer science.

11 (b) ELIGIBILITY.—

12 (1) IN GENERAL.—To be eligible to receive a
13 scholarship under this section, an individual shall—

14 (A) be a citizen of the United States, a na-
15 tional of the United States (as defined in sec-
16 tion 101(a) of the Immigration and Nationality
17 Act (8 U.S.C. 1101(a)), an alien admitted as a
18 refugee under section 207 of such Act (8
19 U.S.C. 1157), or an alien lawfully admitted to
20 the United States for permanent residence;

21 (B) prepare and submit to the Director an
22 application at such time, in such manner, and
23 containing such information as the Director
24 may require; and

1 (C) certify to the Director that the indi-
2 vidual intends to use amounts received under
3 the scholarship to enroll or continue enrollment
4 at an institution of higher education (as defined
5 in section 101(a) of the Higher Education Act
6 of 1965 (20 U.S.C. 1001(a)) in order to pursue
7 an associate, undergraduate, or graduate level
8 degree in mathematics, engineering, computer
9 science, nursing, medicine, or other clinical
10 medical program, or technology, or science pro-
11 gram designated by the Director.

12 (2) ABILITY.—Awards of scholarships under
13 this section shall be made by the Director solely on
14 the basis of the ability of the applicant, except that
15 in any case in which 2 or more applicants for schol-
16 arships are deemed by the Director to be possessed
17 of substantially equal ability, and there are not suffi-
18 cient scholarships available to grant one to each of
19 such applicants, the available scholarship or scholar-
20 ships shall be awarded to the applicants in a manner
21 that will tend to result in a geographically wide dis-
22 tribution throughout the United States of recipients'
23 places of permanent residence.

24 (c) AMOUNT OF SCHOLARSHIP; RENEWAL.—

1 (1) AMOUNT OF SCHOLARSHIP.—The amount
2 of a scholarship awarded under this section shall be
3 \$15,000 per year, except that no scholarship shall be
4 greater than the annual cost of tuition and fees at
5 the institution of higher education in which the
6 scholarship recipient is enrolled or will enroll.

7 (2) RENEWAL.—The Director may renew a
8 scholarship under this section for an eligible indi-
9 vidual for not more than 4 years.

10 (d) FUNDING.—The Director shall carry out this sec-
11 tion only with funds made available under section 286(x)
12 of the Immigration and Nationality Act (as added by sec-
13 tion 712) (8 U.S.C. 1356).

14 (e) FEDERAL REGISTER.—Not later than 60 days
15 after the date of enactment of this Act, the Director shall
16 publish in the Federal Register a list of eligible programs
17 of study for a scholarship under this section.

18 **SEC. 714. SUPPLEMENTAL H-1B NONIMMIGRANT PETI-**
19 **TIONER ACCOUNT.**

20 Section 286 of the Immigration and Nationality Act
21 (8 U.S.C. 1356) (as amended by this Act) is further
22 amended by inserting after subsection (w) the following:

23 “(x) SUPPLEMENTAL H-1B NONIMMIGRANT PETI-
24 TIONER ACCOUNT.—

1 “(1) IN GENERAL.—There is established in the
2 general fund of the Treasury a separate account,
3 which shall be known as the ‘Supplemental H–1B
4 Nonimmigrant Petitioner Account’. Notwithstanding
5 any other section of this Act, there shall be depos-
6 ited as offsetting receipts into the account all fees
7 collected under section 214(c)(15).

8 “(2) USE OF FEES FOR AMERICAN COMPETI-
9 TIVENESS SCHOLARSHIP PROGRAM.—The amounts
10 deposited into the Supplemental H–1B Non-
11 immigrant Petitioner Account shall remain available
12 to the Director of the National Science Foundation
13 until expended for scholarships described in section
14 711 of the Secure Borders, Economic Opportunity
15 and Immigration Reform Act of 2007 for students
16 enrolled in a program of study leading to a degree
17 in mathematics, engineering, health care, or com-
18 puter science.”.

19 **SEC. 715. SUPPLEMENTAL FEES.**

20 Section 214(c) of the Immigration and Nationality
21 Act (8 U.S.C. 1184(c)) is amended by adding at the end
22 the following:

23 “(15)(A) In each instance where the Attorney
24 General, the Secretary of Homeland Security, or the
25 Secretary of State is required to impose a fee pursu-

1 ant to paragraph (9) or (11), the Attorney General,
 2 the Secretary of Homeland Security, or the Sec-
 3 retary of State, as appropriate, shall impose a sup-
 4 plemental fee on the employer in addition to any
 5 other fee required by such paragraph or any other
 6 provision of law, in the amount determined under
 7 subparagraph (B).

8 “(B) The amount of the supplemental fee
 9 shall be \$3,500, except that the fee shall be $\frac{1}{2}$
 10 that amount for any employer with not more
 11 than 25 full-time equivalent employees who are
 12 employed in the United States (determined by
 13 including any affiliate or subsidiary of such em-
 14 ployer).

15 “(C) Fees collected under this paragraph
 16 shall be deposited in the Treasury in accordance
 17 with section 286(x).”.

18 **TITLE VIII—MISCELLANEOUS**
 19 **Subtitle A—Unaccompanied Alien**
 20 **Child Protection Act of 2007**

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

22 (a) **SHORT TITLE.**—This Act may be cited as the
 23 “Unaccompanied Alien Child Protection Act of 2007”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND
DETENTION

- Sec. 101. Procedures when encountering unaccompanied alien children.
 Sec. 102. Family reunification for unaccompanied alien children with relatives
 in the United States.
 Sec. 103. Appropriate conditions for detention of unaccompanied alien children.
 Sec. 104. Repatriated unaccompanied alien children.
 Sec. 105. Establishing the age of an unaccompanied alien child.
 Sec. 106. Effective date.

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO
CHILD ADVOCATES AND COUNSEL

- Sec. 201. Child advocates.
 Sec. 202. Counsel.
 Sec. 203. Effective date; applicability.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT
PROTECTION OF ALIEN CHILDREN

- Sec. 301. Special immigrant juvenile classification.
 Sec. 302. Training for officials and certain private parties who come into con-
 tact with unaccompanied alien children.
 Sec. 303. Report.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

- Sec. 401. Guidelines for children’s asylum claims.
 Sec. 402. Unaccompanied refugee children.
 Sec. 403. Exceptions for unaccompanied alien children in asylum and refugeelike
 circumstances.

TITLE V—AMENDMENTS TO THE HOMELAND SECURITY ACT OF
2002

- Sec. 501. Additional responsibilities and powers of the Office of Refugee Reset-
 tlement with respect to unaccompanied alien children.
 Sec. 502. Technical corrections.
 Sec. 503. Effective date.

TITLE VI—AUTHORIZATION OF APPROPRIATIONS

- Sec. 601. Authorization of appropriations.

1 SEC. 2. DEFINITIONS.

2 (a) IN GENERAL.—In this Act:

3 (1) COMPETENT.—The term “competent”, in
4 reference to counsel, means an attorney, or a rep-
5 representative authorized to represent unaccompanied

1 alien children in immigration proceedings or mat-
2 ters, who—

3 (A) complies with the duties set forth in
4 this Act;

5 (B) is—

6 (i) properly qualified to handle mat-
7 ters involving unaccompanied alien chil-
8 dren; or

9 (ii) working under the auspices of a
10 qualified nonprofit organization that is ex-
11 periented in handling such matters; and

12 (C) if an attorney—

13 (i) is a member in good standing of
14 the bar of the highest court of any State,
15 possession, territory, Commonwealth, or
16 the District of Columbia; and

17 (ii) is not under any order of any
18 court suspending, enjoining, restraining,
19 disbarring, or otherwise restricting the at-
20 torney in the practice of law.

21 (2) DEPARTMENT.—The term “Department”
22 means the Department of Homeland Security.

23 (3) DIRECTOR.—The term “Director” means
24 the Director of the Office.

1 (4) OFFICE.—The term “Office” means the Of-
2 fice of Refugee Resettlement established by section
3 411 of the Immigration and Nationality Act (8
4 U.S.C. 1521).

5 (5) SECRETARY.—The term “Secretary” means
6 the Secretary of Homeland Security.

7 (6) UNACCOMPANIED ALIEN CHILD.—The term
8 “unaccompanied alien child” has the meaning given
9 the term in 101(a)(51) of the Immigration and Na-
10 tionality Act, as added by subsection (b).

11 (7) VOLUNTARY AGENCY.—The term “vol-
12 untary agency” means a private, nonprofit voluntary
13 agency with expertise in meeting the cultural, devel-
14 opmental, or psychological needs of unaccompanied
15 alien children, as certified by the Director.

16 (b) AMENDMENTS TO THE IMMIGRATION AND NA-
17 TIONALITY ACT.—Section 101(a) of the Immigration and
18 Nationality Act (8 U.S.C. 1101(a)) is amended by adding
19 at the end the following:

20 “(51) The term ‘unaccompanied alien child’
21 means a child who—

22 “(A) has no lawful immigration status in
23 the United States;

24 “(B) has not attained 18 years of age; and

25 “(C) with respect to whom—

1 “(i) there is no parent or legal guard-
2 ian in the United States; or

3 “(ii) no parent or legal guardian in
4 the United States is available to provide
5 care and physical custody.

6 “(52) The term ‘unaccompanied refugee chil-
7 dren’ means persons described in paragraph (42)
8 who—

9 “(A) have not attained 18 years of age;
10 and

11 “(B) with respect to whom there are no
12 parents or legal guardians available to provide
13 care and physical custody.”.

14 (c) RULE OF CONSTRUCTION.—

15 “(1) STATE COURTS ACTING IN LOCO
16 PARENTIS.—A department or agency of a State, or
17 an individual or entity appointed by a State court or
18 a juvenile court located in the United States, acting
19 in loco parentis, shall not be considered a legal
20 guardian for purposes of section 462 of the Home-
21 land Security Act of 2002 (6 U.S.C. 279) or this
22 Act.

23 (2) CLARIFICATION OF THE DEFINITION OF UN-
24 ACCOMPANIED ALIEN CHILD.—For the purposes of
25 section 462(g)(2) of the Homeland Security Act of

1 2002 (6 U.S.C. 279(g)(2)) and this Act, a parent or
2 legal guardian shall not be considered to be available
3 to provide care and physical custody of an alien child
4 unless such parent is in the physical presence of,
5 and able to exercise parental responsibilities over,
6 such child at the time of such child's apprehension
7 and during the child's detention.

8 **TITLE I—CUSTODY, RELEASE,**
9 **FAMILY REUNIFICATION, AND**
10 **DETENTION**

11 **SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOM-**
12 **PANIED ALIEN CHILDREN.**

13 (a) UNACCOMPANIED CHILDREN FOUND ALONG THE
14 UNITED STATES BORDER OR AT UNITED STATES PORTS
15 OF ENTRY.—

16 (1) IN GENERAL.—Subject to paragraph (2), an
17 immigration officer who finds an unaccompanied
18 alien child described in paragraph (2) at a land bor-
19 der or port of entry of the United States and deter-
20 mines that such child is inadmissible under the Im-
21 migration and Nationality Act (8 U.S.C. 1101 et
22 seq.) shall—

23 (A) permit such child to withdraw the
24 child's application for admission pursuant to

1 section 235(a)(4) of the Immigration and Na-
2 tionality Act (8 U.S.C. 1225(a)(4)); and

3 (B) return such child to the child's country
4 of nationality or country of last habitual resi-
5 dence.

6 (2) SPECIAL RULE FOR CONTIGUOUS COUN-
7 TRIES.—

8 (A) IN GENERAL.—Any child who is a na-
9 tional or habitual resident of a country, which
10 is contiguous with the United States and has
11 an agreement in writing with the United States
12 that provides for the safe return and orderly re-
13 patriation of unaccompanied alien children who
14 are nationals or habitual residents of such
15 country, shall be treated in accordance with
16 paragraph (1) if the Secretary determines, on a
17 case-by-case basis, that—

18 (i) such child is a national or habitual
19 resident of a country described in this sub-
20 paragraph;

21 (ii) such child does not have a fear of
22 returning to the child's country of nation-
23 ality or country of last habitual residence
24 owing to a fear of persecution;

1 (iii) the return of such child to the
2 child's country of nationality or country of
3 last habitual residence would not endanger
4 the life or safety of such child; and

5 (iv) the child is able to make an inde-
6 pendent decision to withdraw the child's
7 application for admission due to age or
8 other lack of capacity.

9 (B) RIGHT OF CONSULTATION.—Any child
10 described in subparagraph (A) shall have the
11 right, and shall be informed of that right in the
12 child's native language—

13 (i) to consult with a consular officer
14 from the child's country of nationality or
15 country of last habitual residence prior to
16 repatriation; and

17 (ii) to consult, telephonically, with the
18 Office.

19 (3) RULE FOR APPREHENSIONS AT THE BOR-
20 DER.—The custody of unaccompanied alien children
21 not described in paragraph (2) who are apprehended
22 at the border of the United States or at a United
23 States port of entry shall be treated in accordance
24 with subsection (b).

1 (b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN
2 CHILDREN FOUND IN THE INTERIOR OF THE UNITED
3 STATES.—

4 (1) ESTABLISHMENT OF JURISDICTION.—

5 (A) IN GENERAL.—Except as otherwise
6 provided under subparagraphs (B) and (C) and
7 subsection (a), the care and custody of all unac-
8 companied alien children, including responsi-
9 bility for their detention, where appropriate,
10 shall be under the jurisdiction of the Office.

11 (B) EXCEPTION FOR CHILDREN WHO HAVE
12 COMMITTED CRIMES.—Notwithstanding sub-
13 paragraph (A), the Department of Justice shall
14 retain or assume the custody and care of any
15 unaccompanied alien who is—

16 (i) in the custody of the Department
17 of Justice pending prosecution for a Fed-
18 eral crime other than a violation of the Im-
19 migration and Nationality Act; or

20 (ii) serving a sentence pursuant to a
21 conviction for a Federal crime.

22 (C) EXCEPTION FOR CHILDREN WHO
23 THREATEN NATIONAL SECURITY.—Notwith-
24 standing subparagraph (A), the Department
25 shall retain or assume the custody and care of

1 an unaccompanied alien child if the Secretary
2 has substantial evidence, based on an individ-
3 ualized determination, that such child could
4 personally endanger the national security of the
5 United States.

6 (2) NOTIFICATION.—

7 (A) IN GENERAL.—Each department or
8 agency of the Federal Government shall
9 promptly notify the Office upon—

10 (i) the apprehension of an unaccom-
11 panied alien child;

12 (ii) the discovery that an alien in the
13 custody of such department or agency is
14 an unaccompanied alien child;

15 (iii) any claim by an alien in the cus-
16 tody of such department or agency that
17 such alien is younger than 18 years of age;
18 or

19 (iv) any suspicion that an alien in the
20 custody of such department or agency who
21 has claimed to be at least 18 years of age
22 is actually younger than 18 years of age.

23 (B) SPECIAL RULE.—The Director shall—

24 (i) make an age determination for an
25 alien described in clause (iii) or (iv) of sub-

1 paragraph (A) in accordance with section
2 105; and

3 (ii) take whatever other steps are nec-
4 essary to determine whether such alien is
5 eligible for treatment under section 462 of
6 the Homeland Security Act of 2002 (6
7 U.S.C. 279) or under this Act.

8 (3) TRANSFER OF UNACCOMPANIED ALIEN
9 CHILDREN.—

10 (A) TRANSFER TO THE OFFICE.—Any
11 Federal department or agency that has an un-
12 accompanied alien child in its custody shall
13 transfer the custody of such child to the Of-
14 fice—

15 (i) not later than 72 hours after a de-
16 termination is made that such child is an
17 unaccompanied alien, if the child is not de-
18 scribed in subparagraph (B) or (C) of
19 paragraph (1);

20 (ii) if the custody and care of the
21 child has been retained or assumed by the
22 Attorney General under paragraph (1)(B)
23 or by the Department under paragraph
24 (1)(C), following a determination that the

1 child no longer meets the description set
2 forth in such subparagraphs; or

3 (iii) if the child was previously re-
4 leased to an individual or entity described
5 in section 102(a)(1), upon a determination
6 by the Director that such individual or en-
7 tity is no longer able to care for the child.

8 (B) TRANSFER TO THE DEPARTMENT.—

9 The Director shall transfer the care and cus-
10 tody of an unaccompanied alien child in the
11 custody of the Office or the Department of Jus-
12 tice to the Department upon determining that
13 the child is described in subparagraph (B) or
14 (C) of paragraph (1).

15 (C) PROMPTNESS OF TRANSFER.—If a
16 child needs to be transferred under this para-
17 graph, the sending office shall make prompt ar-
18 rangements to transfer such child and the re-
19 ceiving office shall make prompt arrangements
20 to receive such child.

21 (c) AGE DETERMINATIONS.—If the age of an alien
22 is in question and the resolution of questions about the
23 age of such alien would affect the alien's eligibility for
24 treatment under section 462 of the Homeland Security
25 Act of 2002 (6 U.S.C. 279) or this Act, a determination

1 of whether or not such alien meets such age requirements
2 shall be made in accordance with section 105, unless oth-
3 erwise specified in subsection (b)(2)(B).

4 (d) ACCESS TO ALIEN.—The Secretary and the At-
5 torney General shall permit the Office to have reasonable
6 access to aliens in the custody of the Secretary or the At-
7 torney General to ensure a prompt determination of the
8 age of such alien, if necessary under subsection (b)(2)(B).

9 **SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED**
10 **ALIEN CHILDREN WITH RELATIVES IN THE**
11 **UNITED STATES.**

12 (a) PLACEMENT OF RELEASED CHILDREN.—

13 (1) ORDER OF PREFERENCE.—Subject to the
14 discretion of the Director under paragraph (4), sec-
15 tion 103(a)(2), and section 462(b)(2) of the Home-
16 land Security Act of 2002 (6 U.S.C. 279(b)(2)), an
17 unaccompanied alien child in the custody of the Of-
18 fice shall be promptly placed with 1 of the following
19 individuals or entities in the following order of pref-
20 erence:

21 (A) A parent who seeks to establish cus-
22 tody under paragraph (3)(A).

23 (B) A legal guardian who seeks to estab-
24 lish custody under paragraph (3)(A).

25 (C) An adult relative.

1 (D) An individual or entity designated by
2 the parent or legal guardian that is capable and
3 willing to care for the well being of the child.

4 (E) A State-licensed family foster home,
5 small group home, or juvenile shelter willing to
6 accept custody of the child.

7 (F) A qualified adult or entity, as deter-
8 mined by the Director by regulation, seeking
9 custody of the child if the Director determines
10 that no other likely alternative to long-term de-
11 tention exists and family reunification does not
12 appear to be a reasonable alternative.

13 (2) SUITABILITY ASSESSMENT.—

14 (A) GENERAL REQUIREMENTS.—Notwith-
15 standing paragraph (1), and subject to the re-
16 quirements of subparagraph (B), an unaccom-
17 panied alien child may not be placed with a per-
18 son or entity described in any of subparagraphs
19 (A) through (F) of paragraph (1) unless the
20 Director provides written certification that the
21 proposed custodian is capable of providing for
22 the child's physical and mental well-being,
23 based on—

24 (i) with respect to an individual custo-
25 dian—

1 (I) verification of such individ-
2 ual's identity and employment;

3 (II) a finding that such indi-
4 vidual has not engaged in any activity
5 that would indicate a potential risk to
6 the child, including the people and ac-
7 tivities described in paragraph
8 (4)(A)(i);

9 (III) a finding that such indi-
10 vidual is not the subject of an open
11 investigation by a State or local child
12 protective services authority due to
13 suspected child abuse or neglect;

14 (IV) verification that such indi-
15 vidual has a plan for the provision of
16 care for the child;

17 (V) verification of familial rela-
18 tionship of such individual, if any re-
19 lationship is claimed; and

20 (VI) verification of nature and
21 extent of previous relationship;

22 (ii) with respect to a custodial entity,
23 verification of such entity's appropriate li-
24 censure by the State, county, or other ap-
25 plicable unit of government; and

1 (iii) such other information as the Di-
2 rector determines appropriate.

3 (B) HOME STUDY.—

4 (i) IN GENERAL.—The Director shall
5 place a child with any custodian described
6 in any of subparagraphs (A) through (F)
7 of paragraph (1) unless the Director deter-
8 mines that a home study with respect to
9 such custodian is necessary.

10 (ii) SPECIAL NEEDS CHILDREN.—A
11 home study shall be conducted to deter-
12 mine if the custodian can properly meet
13 the needs of—

14 (I) a special needs child with a
15 disability (as defined in section 3 of
16 the Americans with Disabilities Act of
17 1990 (42 U.S.C. 12102(2)); or

18 (II) a child who has been the ob-
19 ject of physical or mental injury, sex-
20 ual abuse, negligent treatment, or
21 maltreatment under circumstances
22 which indicate that the child's health
23 or welfare has been harmed or threat-
24 ened.

1 (iii) FOLLOW-UP SERVICES.—The Di-
2 rector shall conduct follow-up services for
3 at least 90 days on custodians for whom a
4 home study was conducted under this sub-
5 paragraph.

6 (C) CONTRACT AUTHORITY.—The Director
7 may, by grant or contract, arrange for some or
8 all of the activities under this section to be car-
9 ried out by—

10 (i) an agency of the State of the
11 child's proposed residence;

12 (ii) an agency authorized by such
13 State to conduct such activities; or

14 (iii) an appropriate voluntary or non-
15 profit agency.

16 (D) DATABASE ACCESS.—In conducting
17 suitability assessments, the Director shall have
18 access to all relevant information in the appro-
19 priate Federal, State, and local law enforcement
20 and immigration databases.

21 (3) RIGHT OF PARENT OR LEGAL GUARDIAN TO
22 CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

23 (A) PLACEMENT WITH PARENT OR LEGAL
24 GUARDIAN.—If an unaccompanied alien child is
25 placed with any person or entity other than a

1 parent or legal guardian, and subsequent to
2 that placement a parent or legal guardian seeks
3 to establish custody, the Director shall—

4 (i) assess the suitability of placing the
5 child with the parent or legal guardian;
6 and

7 (ii) make a written determination re-
8 garding the child's placement within 30
9 days.

10 (B) RULE OF CONSTRUCTION.—Nothing in
11 this Act shall be construed to—

12 (i) supersede obligations under any
13 treaty or other international agreement to
14 which the United States is a party, includ-
15 ing—

16 (I) the Convention on the Civil
17 Aspects of International Child Abduc-
18 tion, done at The Hague, October 25,
19 1980 (TIAS 11670);

20 (II) the Vienna Declaration and
21 Program of Action, adopted at Vi-
22 enna, June 25, 1993; and

23 (III) the Declaration of the
24 Rights of the Child, adopted at New
25 York, November 20, 1959; or

1 (ii) limit any right or remedy under
2 such international agreement.

3 (4) PROTECTION FROM SMUGGLERS AND TRAF-
4 FICKERS.—

5 (A) POLICIES AND PROGRAMS.—

6 (i) IN GENERAL.—The Director shall
7 establish policies and programs to ensure
8 that unaccompanied alien children are pro-
9 tected from smugglers, traffickers, or other
10 persons seeking to victimize or otherwise
11 engage such children in criminal, harmful,
12 or exploitative activity.

13 (ii) WITNESS PROTECTION PROGRAMS
14 INCLUDED.—Programs established pursu-
15 ant to clause (i) may include witness pro-
16 tection programs.

17 (B) CRIMINAL INVESTIGATIONS AND PROS-
18 ECUTIONS.—Any officer or employee of the Of-
19 fice or of the Department, and any grantee or
20 contractor of the Office or of the Department,
21 who suspects any individual of involvement in
22 any activity described in subparagraph (A) shall
23 report such individual to Federal or State pros-
24 ecutors for criminal investigation and prosecu-
25 tion.

1 (C) DISCIPLINARY ACTION.—Any officer or
2 employee of the Office or the Department, and
3 any grantee or contractor of the Office, who be-
4 lieves that a competent attorney or representa-
5 tive has been a participant in any activity de-
6 scribed in subparagraph (A), shall report the
7 attorney to the State bar association of which
8 the attorney is a member, or to other appro-
9 priate disciplinary authorities, for appropriate
10 disciplinary action, including private or public
11 admonition or censure, suspension, or disbar-
12 ment of the attorney from the practice of law.

13 (5) GRANTS AND CONTRACTS.—The Director
14 may award grants to, and enter into contracts with,
15 voluntary agencies to carry out this section or sec-
16 tion 462 of the Homeland Security Act of 2002 (6
17 U.S.C. 279).

18 (b) CONFIDENTIALITY.—

19 (1) IN GENERAL.—All information obtained by
20 the Office relating to the immigration status of a
21 person described in subparagraphs (A), (B), and (C)
22 of subsection (a)(1) shall remain confidential and
23 may only be used to determine such person’s quali-
24 fications under subsection (a)(1).

1 (2) NONDISCLOSURE OF INFORMATION.—In
2 consideration of the needs and privacy of unaccom-
3 panied alien children in the custody of the Office or
4 its agents, and the necessity to guarantee the con-
5 fidentiality of such children’s information in order to
6 facilitate their trust and truthfulness with the Of-
7 fice, its agents, and clinicians, the Office shall main-
8 tain the privacy and confidentiality of all informa-
9 tion gathered in the course of the care, custody, and
10 placement of unaccompanied alien children, con-
11 sistent with its role and responsibilities under the
12 Homeland Security Act to act as guardian in loco
13 parentis in the best interest of the unaccompanied
14 alien child, by not disclosing such information to
15 other government agencies or nonparental third par-
16 ties.

17 (c) REQUIRED DISCLOSURE.—The Secretary or the
18 Secretary of Health and Human Services shall provide the
19 information furnished under this section, and any other
20 information derived from such furnished information, to—

21 (1) a duly recognized law enforcement entity in
22 connection with an investigation or prosecution of an
23 offense described in paragraph (2) or (3) of section
24 212(a) of the Immigration and Nationality Act (8

1 U.S.C. 1182(a)), when such information is requested
2 in writing by such entity; or

3 (2) an official coroner for purposes of affirma-
4 tively identifying a deceased individual (whether or
5 not such individual is deceased as a result of a
6 crime).

7 (d) PENALTY.—Any person who knowingly uses, pub-
8 lishes, or permits information to be examined in violation
9 of this section shall be fined not more than \$10,000.

10 **SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF**
11 **UNACCOMPANIED ALIEN CHILDREN.**

12 (a) STANDARDS FOR PLACEMENT.—

13 (1) ORDER OF PREFERENCE.—An unaccom-
14 panied alien child who is not released pursuant to
15 section 102(a)(1) shall be placed in the least restric-
16 tive setting possible in the following order of pref-
17 erence:

18 (A) Licensed family foster home.

19 (B) Small group home.

20 (C) Juvenile shelter.

21 (D) Residential treatment center.

22 (E) Secure detention.

23 (2) PROHIBITION OF DETENTION IN CERTAIN
24 FACILITIES.—Except as provided under paragraph
25 (3), an unaccompanied alien child shall not be

1 placed in an adult detention facility or a facility
2 housing delinquent children.

3 (3) DETENTION IN APPROPRIATE FACILITIES.—

4 An unaccompanied alien child who has exhibited vio-
5 lent or criminal behavior that endangers others may
6 be detained in conditions appropriate to such behav-
7 ior in a facility appropriate for delinquent children.

8 (4) STATE LICENSURE.—A child shall not be
9 placed with an entity described in section
10 102(a)(1)(E), unless the entity is licensed by an ap-
11 propriate State agency to provide residential, group,
12 child welfare, or foster care services for dependent
13 children.

14 (5) CONDITIONS OF DETENTION.—

15 (A) IN GENERAL.—The Director and the
16 Secretary shall promulgate regulations incor-
17 porating standards for conditions of detention
18 in placements described in paragraph (1) that
19 provide for—

20 (i) educational services appropriate to
21 the child;

22 (ii) medical care;

23 (iii) mental health care, including
24 treatment of trauma, physical and sexual
25 violence, and abuse;

- 1 (iv) access to telephones;
- 2 (v) access to legal services;
- 3 (vi) access to interpreters;
- 4 (vii) supervision by professionals
- 5 trained in the care of children, taking into
- 6 account the special cultural, linguistic, and
- 7 experiential needs of children in immigra-
- 8 tion proceedings;
- 9 (viii) recreational programs and activi-
- 10 ties;
- 11 (ix) spiritual and religious needs; and
- 12 (x) dietary needs.

13 (B) NOTIFICATION OF CHILDREN.—Regu-

14 lations promulgated under subparagraph (A)

15 shall provide that all children in such place-

16 ments are notified of such standards orally and

17 in writing in the child’s native language.

18 (b) PROHIBITION OF CERTAIN PRACTICES.—The Di-

19 rector and the Secretary shall develop procedures prohib-

20 iting the unreasonable use of—

- 21 (1) shackling, handcuffing, or other restraints
- 22 on children;
- 23 (2) solitary confinement; or
- 24 (3) pat or strip searches.

1 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed to supersede procedures favoring
3 release of children to appropriate adults or entities or
4 placement in the least secure setting possible, as described
5 in paragraph 23 of the Stipulated Settlement Agreement
6 under *Flores v. Reno*.

7 **SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHIL-**
8 **DREN.**

9 (a) COUNTRY CONDITIONS.—

10 (1) SENSE OF CONGRESS.—It is the sense of
11 Congress that, to the extent consistent with the trea-
12 ties and other international agreements to which the
13 United States is a party, and to the extent prac-
14 ticable, the United States Government should under-
15 take efforts to ensure that it does not repatriate
16 children in its custody into settings that would
17 threaten the life and safety of such children.

18 (2) ASSESSMENT OF CONDITIONS.—

19 (A) IN GENERAL.—The Secretary of State
20 shall include, in the annual Country Reports on
21 Human Rights Practices, an assessment of the
22 degree to which each country protects children
23 from smugglers and traffickers.

24 (B) FACTORS FOR ASSESSMENT.—The
25 Secretary shall consult the Country Reports on

1 Human Rights Practices and the Trafficking in
2 Persons Report in assessing whether to repa-
3 triate an unaccompanied alien child to a par-
4 ticular country.

5 (b) REPORT ON REPATRIATION OF UNACCOMPANIED
6 ALIEN CHILDREN.—

7 (1) IN GENERAL.—Not later than 18 months
8 after the date of the enactment of this Act, and an-
9 nually thereafter, the Secretary shall submit a report
10 to the Committee on the Judiciary of the Senate and
11 the Committee on the Judiciary of the House of
12 Representatives on efforts to repatriate unaccom-
13 panied alien children.

14 (2) CONTENTS.—The report submitted under
15 paragraph (1) shall include—

16 (A) the number of unaccompanied alien
17 children ordered removed and the number of
18 such children actually removed from the United
19 States;

20 (B) a description of the type of immigra-
21 tion relief sought and denied to such children;

22 (C) a statement of the nationalities, ages,
23 and gender of such children;

1 (D) a description of the procedures used to
2 effect the removal of such children from the
3 United States;

4 (E) a description of steps taken to ensure
5 that such children were safely and humanely re-
6 patriated to their country of origin; and

7 (F) any information gathered in assess-
8 ments of country and local conditions pursuant
9 to subsection (a)(2).

10 **SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED**
11 **ALIEN CHILD.**

12 (a) PROCEDURES.—

13 (1) IN GENERAL.—The Director, in consulta-
14 tion with the Secretary, shall develop procedures to
15 make a prompt determination of the age of an alien,
16 which procedures shall be used—

17 (A) by the Secretary, with respect to aliens
18 in the custody of the Department;

19 (B) by the Director, with respect to aliens
20 in the custody of the Office; and

21 (C) by the Attorney General, with respect
22 to aliens in the custody of the Department of
23 Justice.

24 (2) EVIDENCE.—The procedures developed
25 under paragraph (1) shall—

1 (A) permit the presentation of multiple
2 forms of evidence, including testimony of the
3 alien, to determine the age of the unaccom-
4 panied alien for purposes of placement, custody,
5 parole, and detention; and

6 (B) allow the appeal of a determination to
7 an immigration judge.

8 (b) PROHIBITION ON SOLE MEANS OF DETERMINING
9 AGE.—Radiographs or the attestation of an alien may not
10 be used as the sole means of determining age for the pur-
11 poses of determining an alien’s eligibility for treatment
12 under this Act or section 462 of the Homeland Security
13 Act of 2002 (6 U.S.C. 279).

14 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion may be construed to place the burden of proof in de-
16 termining the age of an alien on the Government.

17 **SEC. 106. EFFECTIVE DATE.**

18 This title shall take effect on the date which is 90
19 days after the date of the enactment of this Act.

1 **TITLE II—ACCESS BY UNACCOM-**
2 **PANIED ALIEN CHILDREN TO**
3 **CHILD ADVOCATES AND**
4 **COUNSEL**

5 **SEC. 201. CHILD ADVOCATES.**

6 (a) ESTABLISHMENT OF CHILD ADVOCATE PRO-
7 GRAM.—

8 (1) APPOINTMENT.—The Director may appoint
9 a child advocate, who meets the qualifications de-
10 scribed in paragraph (2), for an unaccompanied
11 alien child. The Director is encouraged, if prac-
12 ticable, to contract with a voluntary agency for the
13 selection of an individual to be appointed as a child
14 advocate under this paragraph.

15 (2) QUALIFICATIONS OF CHILD ADVOCATE.—

16 (A) IN GENERAL.—A person may not serve
17 as a child advocate unless such person—

18 (i) is a child welfare professional or
19 other individual who has received training
20 in child welfare matters;

21 (ii) possesses special training on the
22 nature of problems encountered by unac-
23 companied alien children; and

24 (iii) is not an employee of the Depart-
25 ment, the Department of Justice, or the

1 Department of Health and Human Serv-
2 ices.

3 (B) INDEPENDENCE OF CHILD ADVOCATE.—
4

5 (i) INDEPENDENCE FROM AGENCIES
6 OF GOVERNMENT.—The child advocate
7 shall act independently of any agency of
8 government in making and reporting find-
9 ings or making recommendations with re-
10 spect to the best interests of the child. No
11 agency shall terminate, reprimand, de-
12 fund, intimidate, or retaliate against any
13 person or entity appointed under para-
14 graph (1) because of the findings and rec-
15 ommendations made by such person relat-
16 ing to any child.

17 (ii) PROHIBITION OF CONFLICT OF IN-
18 TEREST.—No person shall serve as a child
19 advocate for a child if such person is pro-
20 viding legal services to such child.

21 (3) DUTIES.—The child advocate of a child
22 shall—

23 (A) conduct interviews with the child in a
24 manner that is appropriate, taking into account
25 the child's age;

1 (B) investigate the facts and circumstances
2 relevant to the child's presence in the United
3 States, including facts and circumstances—

4 (i) arising in the country of the child's
5 nationality or last habitual residence; and

6 (ii) arising subsequent to the child's
7 departure from such country;

8 (C) work with counsel to identify the
9 child's eligibility for relief from removal or vol-
10 untary departure by sharing with counsel rel-
11 evant information collected under subparagraph
12 (B);

13 (D) develop recommendations on issues
14 relative to the child's custody, detention, re-
15 lease, and repatriation;

16 (E) take reasonable steps to ensure that—

17 (i) the best interests of the child are
18 promoted while the child participates in, or
19 is subject to, proceedings or matters under
20 the Immigration and Nationality Act (8
21 U.S.C. 1101 et seq.);

22 (ii) the child understands the nature
23 of the legal proceedings or matters and de-
24 terminations made by the court, and that

1 all information is conveyed to the child in
2 an age-appropriate manner;

3 (F) report factual findings and rec-
4 ommendations consistent with the child's best
5 interests relating to the custody, detention, and
6 release of the child during the pendency of the
7 proceedings or matters, to the Director and the
8 child's counsel;

9 (G) in any proceeding involving an alien
10 child in which a complaint has been filed with
11 any appropriate disciplinary authority against
12 an attorney or representative for criminal, un-
13 ethical, or unprofessional conduct in connection
14 with the representation of the alien child, pro-
15 vide the immigration judge with written rec-
16 ommendations or testimony on any information
17 the child advocate may have regarding the con-
18 duct of the attorney; and

19 (H) in any proceeding involving an alien
20 child in which the safety of the child upon repa-
21 triation is at issue, and after the immigration
22 judge has considered and denied all applications
23 for relief other than voluntary departure, pro-
24 vide the immigration judge with written rec-
25 ommendations or testimony on any information

1 the child advocate may have regarding the
2 child's safety upon repatriation.

3 (4) TERMINATION OF APPOINTMENT.—The
4 child advocate shall carry out the duties described in
5 paragraph (3) until the earliest of the date on
6 which—

7 (A) those duties are completed;

8 (B) the child departs from the United
9 States;

10 (C) the child is granted permanent resi-
11 dent status in the United States;

12 (D) the child reaches 18 years of age; or

13 (E) the child is placed in the custody of a
14 parent or legal guardian.

15 (5) POWERS.—The child advocate—

16 (A) shall have reasonable access to the
17 child, including access while such child is being
18 held in detention or in the care of a foster fam-
19 ily;

20 (B) shall be permitted to review all records
21 and information relating to such proceedings
22 that are not deemed privileged or classified;

23 (C) may seek independent evaluations of
24 the child;

1 (D) shall be notified in advance of all hear-
2 ings or interviews involving the child that are
3 held in connection with proceedings or matters
4 under the Immigration and Nationality Act (8
5 U.S.C. 1101 et seq.), and shall be given a rea-
6 sonable opportunity to be present at such hear-
7 ings or interviews;

8 (E) shall be permitted to accompany and
9 consult with the child during any hearing or
10 interview involving such child; and

11 (F) shall be provided at least 24 hours ad-
12 vance notice of a transfer of that child to a dif-
13 ferent placement, absent compelling and un-
14 usual circumstances warranting the transfer of
15 such child before such notification.

16 (b) TRAINING.—

17 (1) IN GENERAL.—The Director shall provide
18 professional training for all persons serving as child
19 advocates under this section.

20 (2) TRAINING TOPICS.—The training provided
21 under paragraph (1) shall include training in—

22 (A) the circumstances and conditions faced
23 by unaccompanied alien children; and

24 (B) various immigration benefits for which
25 such alien child might be eligible.

1 (c) PILOT PROGRAM.—

2 (1) IN GENERAL.—Not later than 180 days
3 after the date of the enactment of this Act, the Di-
4 rector shall establish and begin to carry out a pilot
5 program to test the implementation of subsection
6 (a). Any pilot program existing before the date of
7 the enactment of this Act shall be deemed insuffi-
8 cient to satisfy the requirements of this subsection.

9 (2) PURPOSE.—The purpose of the pilot pro-
10 gram established pursuant to paragraph (1) is to—

11 (A) study and assess the benefits of pro-
12 viding child advocates to assist unaccompanied
13 alien children involved in immigration pro-
14 ceedings or matters;

15 (B) assess the most efficient and cost-ef-
16 fective means of implementing the child advo-
17 cate provisions under this section; and

18 (C) assess the feasibility of implementing
19 such provisions on a nationwide basis for all un-
20 accompanied alien children in the care of the
21 Office.

22 (3) SCOPE OF PROGRAM.—

23 (A) SELECTION OF SITE.—The Director
24 shall select 3 sites at which to operate the pilot
25 program established under paragraph (1).

1 (B) NUMBER OF CHILDREN.—Each site
2 selected under subparagraph (A) should have
3 not less than 25 children held in immigration
4 custody at any given time, to the greatest ex-
5 tent possible.

6 (4) REPORT TO CONGRESS.—Not later than 1
7 year after the date on which the first pilot program
8 site is established under paragraph (1), the Director
9 shall submit a report on the achievement of the pur-
10 poses described in paragraph (2) to the Committee
11 on the Judiciary of the Senate and the Committee
12 on the Judiciary of the House of Representatives.

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

16 **SEC. 202. COUNSEL.**

17 (a) ACCESS TO COUNSEL.—

18 (1) IN GENERAL.—The Director shall ensure, to
19 the greatest extent practicable, that all unaccom-
20 panied alien children in the custody of the Office or
21 the Department, who are not described in section
22 101(a)(2), have competent counsel to represent them
23 in immigration proceedings or matters.

24 (2) PRO BONO REPRESENTATION.—To the
25 greatest extent practicable, the Director shall—

1 (A) make every effort to utilize the services
2 of competent pro bono counsel who agree to
3 provide representation to such children without
4 charge; and

5 (B) ensure that placements made under
6 subparagraphs (D), (E), and (F) of section
7 102(a)(1) are in cities in which there is a dem-
8 onstrated capacity for competent pro bono rep-
9 resentation.

10 (3) DEVELOPMENT OF NECESSARY INFRA-
11 STRUCTURES AND SYSTEMS.—The Director shall de-
12 velop the necessary mechanisms to identify and re-
13 cruit entities that are available to provide legal as-
14 sistance and representation under this subsection.

15 (4) CONTRACTING AND GRANT MAKING AU-
16 THORITY.—

17 (A) IN GENERAL.—The Director shall
18 enter into contracts with, or award grants to,
19 nonprofit agencies with relevant expertise in the
20 delivery of immigration-related legal services to
21 children in order to carry out the responsibil-
22 ities of this Act, including providing legal ori-
23 entation, screening cases for referral, recruiting,
24 training, and overseeing pro bono attorneys.

1 (B) SUBCONTRACTING.—Nonprofit agen-
2 cies may enter into subcontracts with, or award
3 grants to, private voluntary agencies with rel-
4 evant expertise in the delivery of immigration-
5 related legal services to children in order to
6 carry out this subsection.

7 (C) CONSIDERATIONS REGARDING GRANTS
8 AND CONTRACTS.—In awarding grants and en-
9 tering into contracts with agencies under this
10 paragraph, the Director shall take into consid-
11 eration the capacity of the agencies in question
12 to properly administer the services covered by
13 such grants or contracts without an undue con-
14 flict of interest.

15 (5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

17 (A) DEVELOPMENT OF GUIDELINES.—The
18 Director of the Executive Office for Immigra-
19 tion Review of the Department of Justice, in
20 consultation with voluntary agencies and na-
21 tional experts, shall develop model guidelines
22 for the legal representation of alien children in
23 immigration proceedings. Such guidelines shall
24 be based on the children’s asylum guidelines,
25 the American Bar Association Model Rules of

1 Professional Conduct, and other relevant do-
2 mestic or international sources.

3 (B) PURPOSE OF GUIDELINES.—The
4 guidelines developed under subparagraph (A)
5 shall be designed to help protect each child
6 from any individual suspected of involvement in
7 any criminal, harmful, or exploitative activity
8 associated with the smuggling or trafficking of
9 children, while ensuring the fairness of the re-
10 moval proceeding in which the child is involved.

11 (C) IMPLEMENTATION.—Not later than
12 180 days after the date of the enactment of this
13 Act, the Director of the Executive Office for
14 Immigration Review shall—

15 (i) adopt the guidelines developed
16 under subparagraph (A); and

17 (ii) submit the guidelines for adoption
18 by national, State, and local bar associa-
19 tions.

20 (b) DUTIES.—Counsel under this section shall—

21 (1) represent the unaccompanied alien child in
22 all proceedings and matters relating to the immigra-
23 tion status of the child or other actions involving the
24 Department;

1 (2) appear in person for all individual merits
2 hearings before the Executive Office for Immigration
3 Review and interviews involving the Department;
4 and

5 (3) owe the same duties of undivided loyalty,
6 confidentiality, and competent representation to the
7 child as is due to an adult client.

8 (c) ACCESS TO CHILD.—

9 (1) IN GENERAL.—Counsel under this section
10 shall have reasonable access to the unaccompanied
11 alien child, including access while the child is—

12 (A) held in detention;

13 (B) in the care of a foster family; or

14 (C) in any other setting that has been de-
15 termined by the Office.

16 (2) RESTRICTION ON TRANSFERS.—Absent
17 compelling and unusual circumstances, a child who
18 is represented by counsel may not be transferred
19 from the child's placement to another placement un-
20 less advance notice of at least 24 hours is made to
21 counsel of such transfer.

22 (d) NOTICE TO COUNSEL DURING IMMIGRATION
23 PROCEEDINGS.—

24 (1) IN GENERAL.—Except when otherwise re-
25 quired in an emergency situation involving the phys-

1 ical safety of the child, counsel shall be given prompt
2 and adequate notice of all immigration matters af-
3 fecting or involving an unaccompanied alien child,
4 including adjudications, proceedings, and processing,
5 before such actions are taken.

6 (2) OPPORTUNITY TO CONSULT WITH COUN-
7 SEL.—An unaccompanied alien child in the custody
8 of the Office may not give consent to any immigra-
9 tion action, including consenting to voluntary depart-
10 ure, unless first afforded an opportunity to consult
11 with counsel.

12 (e) ACCESS TO RECOMMENDATIONS OF CHILD ADVO-
13 CATE.—Counsel shall be given an opportunity to review
14 the recommendations of the child advocate affecting or in-
15 volving a client who is an unaccompanied alien child.

16 (f) COUNSEL FOR UNACCOMPANIED ALIEN CHIL-
17 DREN.—Nothing in this Act may be construed to require
18 the Government of the United States to pay for counsel
19 to any unaccompanied alien child.

20 **SEC. 203. EFFECTIVE DATE; APPLICABILITY.**

21 (a) EFFECTIVE DATE.—This title shall take effect on
22 the date which is 180 days after the date of the enactment
23 of this Act.

1 (b) APPLICABILITY.—The provisions of this title shall
2 apply to all unaccompanied alien children in Federal cus-
3 tody before, on, or after the effective date of this title.

4 **TITLE III—STRENGTHENING**
5 **POLICIES FOR PERMANENT**
6 **PROTECTION OF ALIEN CHIL-**
7 **DREN**

8 **SEC. 301. SPECIAL IMMIGRANT JUVENILE CLASSIFICATION.**

9 (a) J CLASSIFICATION.—

10 (1) IN GENERAL.—Section 101(a)(27)(J) of the
11 Immigration and Nationality Act (8 U.S.C.
12 1101(a)(27)(J)) is amended to read as follows:

13 “(J) an immigrant, who is 18 years of age
14 or younger on the date of application for classi-
15 fication as a special immigrant and present in
16 the United States—

17 “(i) who, by a court order supported
18 by written findings of fact, which shall be
19 binding on the Secretary of Homeland Se-
20 curity for purposes of adjudications under
21 this subparagraph—

22 “(I) was declared dependent on a
23 juvenile court located in the United
24 States or has been legally committed
25 to, or placed under the custody of, a

1 department or agency of a State, or
2 an individual or entity appointed by a
3 State or juvenile court located in the
4 United States; and

5 “(II) should not be reunified with
6 his or her parents due to abuse, ne-
7 glect, abandonment, or a similar basis
8 found under State law;

9 “(ii) for whom it has been determined
10 by written findings of fact in administra-
11 tive or judicial proceedings that it would
12 not be in the alien’s best interest to be re-
13 turned to the alien’s or parent’s previous
14 country of nationality or country of last
15 habitual residence; and

16 “(iii) with respect to a child in Fed-
17 eral custody, for whom the Office of Ref-
18 ugee Resettlement of the Department of
19 Health and Human Services has certified
20 to the Director of U.S. Citizenship and Im-
21 migration Services that the classification of
22 an alien as a special immigrant under this
23 subparagraph has not been made solely to
24 provide an immigration benefit to that
25 alien.”.

1 (2) RULE OF CONSTRUCTION.—Nothing in sub-
2 paragraph (J) of section 101(a)(27) of the Immigra-
3 tion and Nationality Act, as amended by paragraph
4 (1), shall be construed to grant, to any natural par-
5 ent or prior adoptive parent of any alien provided
6 special immigrant status under such subparagraph,
7 by virtue of such parentage, any right, privilege, or
8 status under such Act.

9 (b) ADJUSTMENT OF STATUS.—Section 245(h)(2)(A)
10 of the Immigration and Nationality Act (8 U.S.C.
11 1255(h)(2)(A)) is amended to read as follows:

12 “(A) paragraphs (4), (5)(A), (6)(A),
13 (7)(A), 9(B), and 9(C)(i)(I) of section 212(a)
14 shall not apply; and’.

15 (c) ELIGIBILITY FOR ASSISTANCE.—

16 (1) IN GENERAL.—A child who has been cer-
17 tified under section 101(a)(27)(J) of the Immigra-
18 tion and Nationality Act, as amended by subsection
19 (a)(1), and who was in the custody of the Office at
20 the time a dependency order was granted for such
21 child, shall be eligible for placement and services
22 under section 412(d) of such Act (8 U.S.C. 1522(d))
23 until the earlier of—

1 (A) the date on which the child reaches the
2 age designated in section 412(d)(2)(B) of such
3 Act (8 U.S.C. 1522(d)(2)(B)); or

4 (B) the date on which the child is placed
5 in a permanent adoptive home.

6 (2) STATE REIMBURSEMENT.—If foster care
7 funds are expended on behalf of a child who is not
8 described in paragraph (1) and has been granted re-
9 lief under section 101(a)(27)(J) of the Immigration
10 and Nationality Act, the Federal Government shall
11 reimburse the State in which the child resides for
12 such expenditures by the State.

13 (d) TRANSITION RULE.—Notwithstanding any other
14 provision of law, a child described in section 101(a)(27)(J)
15 of the Immigration and Nationality Act, as amended by
16 subsection (a)(1), may not be denied such special immi-
17 grant juvenile classification after the date of the enact-
18 ment of this Act based on age if the child—

19 (1) filed an application for special immigrant
20 juvenile classification before the date of the enact-
21 ment of this Act and was 21 years of age or younger
22 on the date such application was filed; or

23 (2) was younger than 21 years of age on the
24 date on which the child applied for classification as

1 a special immigrant juvenile and can demonstrate
2 exceptional circumstances warranting relief.

3 (e) RULEMAKING.—Not later than 90 days after the
4 date of the enactment of this Act, the Secretary shall pro-
5 mulgate rules to carry out this section.

6 (f) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to all aliens who were in the United
8 States before, on, or after the date of enactment of this
9 Act.

10 **SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE**
11 **PARTIES WHO COME INTO CONTACT WITH**
12 **UNACCOMPANIED ALIEN CHILDREN.**

13 (a) TRAINING OF STATE AND LOCAL OFFICIALS AND
14 CERTAIN PRIVATE PARTIES.—

15 (1) IN GENERAL.—The Secretary of Health and
16 Human Services, acting jointly with the Secretary,
17 shall provide appropriate training materials, and
18 upon request, direct training, to State and county
19 officials, child welfare specialists, teachers, public
20 counsel, and juvenile judges who come into contact
21 with unaccompanied alien children.

22 (2) CURRICULUM.—The training required under
23 paragraph (1) shall include education on the proc-
24 esses pertaining to unaccompanied alien children
25 with pending immigration status and on the forms

1 of relief potentially available. The Director shall es-
2 tablish a core curriculum that can be incorporated
3 into education, training, or orientation modules or
4 formats that are currently used by these profes-
5 sionals.

6 (3) VIDEO CONFERENCING.—Direct training re-
7 quested under paragraph (1) may be conducted
8 through video conferencing.

9 (b) TRAINING OF DEPARTMENT PERSONNEL.—The
10 Secretary, acting jointly with the Secretary of Health and
11 Human Services, shall provide specialized training to all
12 personnel of the Department who come into contact with
13 unaccompanied alien children. Training for agents of the
14 Border Patrol and immigration inspectors shall include
15 specific training on identifying—

16 (1) children at the international borders of the
17 United States or at United States ports of entry
18 who have been victimized by smugglers or traf-
19 fickers; and

20 (2) children for whom asylum or special immi-
21 grant relief may be appropriate, including children
22 described in section 101(a)(2)(A).

23 **SEC. 303. REPORT.**

24 Not later than 1 year after the date of the enactment
25 of this Act, and annually thereafter, the Secretary of

1 Health and Human Services shall submit a report to the
2 Committee on the Judiciary of the Senate and the Com-
3 mittee on the Judiciary of the House of Representatives
4 that contains, for the most recently concluded fiscal
5 year—

6 (1) data related to the implementation of sec-
7 tion 462 of the Homeland Security Act (6 U.S.C.
8 279);

9 (2) data regarding the care and placement of
10 children under this Act;

11 (3) data regarding the provision of child advo-
12 cate and counsel services under this Act; and

13 (4) any other information that the Director or
14 the Secretary of Health and Human Services deter-
15 mines to be appropriate.

16 **TITLE IV—CHILDREN REFUGEE**
17 **AND ASYLUM SEEKERS**

18 **SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.**

19 (a) SENSE OF CONGRESS.—Congress—

20 (1) commends the former Immigration and
21 Naturalization Service for its “Guidelines for Chil-
22 dren’s Asylum Claims”, issued in December 1998;

23 (2) encourages and supports the Department to
24 implement such guidelines to facilitate the handling
25 of children’s affirmative asylum claims;

1 (3) commends the Executive Office for Immi-
2 gration Review of the Department of Justice for its
3 “Guidelines for Immigration Court Cases Involving
4 Unaccompanied Alien Children”, issued in Sep-
5 tember 2004;

6 (4) encourages and supports the continued im-
7 plementation of such guidelines by the Executive Of-
8 fice for Immigration Review in its handling of chil-
9 dren’s asylum claims before immigration judges; and

10 (5) understands that the guidelines described in
11 paragraph (3)—

12 (A) do not specifically address the issue of
13 asylum claims; and

14 (B) address the broader issue of unaccom-
15 panied alien children.

16 (b) TRAINING.—

17 (1) IMMIGRATION OFFICERS.—The Secretary
18 shall provide periodic comprehensive training under
19 the “Guidelines for Children’s Asylum Claims” to
20 asylum officers and immigration officers who have
21 contact with children in order to familiarize and sen-
22 sitize such officers to the needs of children asylum
23 seekers.

24 (2) IMMIGRATION JUDGES.—The Director of
25 the Executive Office for Immigration Review shall—

1 (A) provide periodic comprehensive train-
2 ing under the “Guidelines for Immigration
3 Court Cases Involving Unaccompanied Alien
4 Children” and the “Guidelines for Children’s
5 Asylum Claims” to immigration judges and
6 members of the Board of Immigration Appeals;
7 and

8 (B) redistribute the “Guidelines for Chil-
9 dren’s Asylum Claims” to all immigration
10 courts as part of its training of immigration
11 judges.

12 (3) USE OF VOLUNTARY AGENCIES.—Voluntary
13 agencies shall be allowed to assist in the training de-
14 scribed in this subsection.

15 (c) STATISTICS AND REPORTING.—

16 (1) STATISTICS.—

17 (A) DEPARTMENT OF JUSTICE.—The At-
18 torney General shall compile and maintain sta-
19 tistics on the number of cases in immigration
20 court involving unaccompanied alien children,
21 which shall include, with respect to each such
22 child, information about—

23 (i) the age;

24 (ii) the gender;

25 (iii) the country of nationality;

- 1 (iv) representation by counsel;
2 (v) the relief sought; and
3 (vi) the outcome of such cases.

4 (B) DEPARTMENT OF HOMELAND SECUR-
5 RITY.—The Secretary shall compile and main-
6 tain statistics on the instances of unaccom-
7 panied alien children in the custody of the De-
8 partment, which shall include, with respect to
9 each such child, information about—

- 10 (i) the age;
11 (ii) the gender;
12 (iii) the country of nationality; and
13 (iv) the length of detention.

14 (2) REPORTS TO CONGRESS.—Not later than
15 90 days after the date of the enactment of this Act
16 and annually, thereafter, the Attorney General, in
17 consultation with the Secretary, Secretary of Health
18 and Human Services, and any other necessary gov-
19 ernment official, shall submit a report to the Com-
20 mittee on the Judiciary of the Senate and the Com-
21 mittee on the Judiciary House of Representatives on
22 the number of alien children in Federal custody dur-
23 ing the most recently concluded fiscal year. Informa-
24 tion contained in the report, with respect to such
25 children, shall be categorized by—

- 1 (A) age;
- 2 (B) gender;
- 3 (C) country of nationality;
- 4 (D) length of time in custody;
- 5 (E) the department or agency with cus-
- 6 tody; and
- 7 (F) treatment as an unaccompanied alien
- 8 child.

9 **SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.**

10 (a) IDENTIFYING UNACCOMPANIED REFUGEE CHIL-

11 DREN.—Section 207(e) of the Immigration and Nation-

12 ality Act (8 U.S.C. 1157(e)) is amended—

13 (1) by redesignating paragraphs (3), (4), (5),

14 (6), and (7) as paragraphs (4), (5), (6), (7), and

15 (8), respectively; and

16 (2) by inserting after paragraph (2) the fol-

17 lowing:

18 “(3) An analysis of the worldwide situation

19 faced by unaccompanied refugee children, cat-

20 egorized by region, which shall include an assess-

21 ment of—

22 “(A) the number of unaccompanied refugee

23 children;

24 “(B) the capacity of the Department of

25 State to identify such refugees;

1 “(C) the capacity of the international com-
2 munity to care for and protect such refugees;

3 “(D) the capacity of the voluntary agency
4 community to resettle such refugees in the
5 United States;

6 “(E) the degree to which the United States
7 plans to resettle such refugees in the United
8 States in the following fiscal year; and

9 “(F) the fate that will befall such unac-
10 companied refugee children for whom resettle-
11 ment in the United States is not possible.”.

12 (b) TRAINING ON THE NEEDS OF UNACCOMPANIED
13 REFUGEE CHILDREN.—Section 207(f)(2) of the Immigra-
14 tion and Nationality Act (8 U.S.C. 1157(f)(2)) is amend-
15 ed—

16 (1) by striking “and” after “countries,”; and

17 (2) by inserting “, and instruction on the needs
18 of unaccompanied refugee children” before the pe-
19 riod at the end.

20 **SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHIL-**
21 **DREN IN ASYLUM AND REFUGEE-LIKE CIR-**
22 **CUMSTANCES.**

23 (a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any
24 unaccompanied alien child apprehended by the Depart-
25 ment, except for an unaccompanied alien child subject to

1 exceptions under paragraph (1)(A) or (2) of section
2 (101)(a), shall be placed in removal proceedings under sec-
3 tion 240 of the Immigration and Nationality Act (8 U.S.C.
4 1229a).

5 (b) EXCEPTION FROM TIME LIMIT FOR FILING ASY-
6 LUM APPLICATION.—Section 208 of the Immigration and
7 Nationality Act (8 U.S.C. 1158(a)(2)) is amended—

8 (1) in subsection (a)(2), by adding at the end
9 the following:

10 “(E) APPLICABILITY.—Subparagraphs (A)
11 and (B) shall not apply to an unaccompanied
12 alien child.”; and

13 (2) in subsection (b)(3), by adding at the end
14 the following:

15 “(C) INITIAL JURISDICTION.—United
16 States Citizenship and Immigration Services
17 shall have initial jurisdiction over any asylum
18 application filed by an unaccompanied alien
19 child.”.

1 **TITLE V—AMENDMENTS TO THE**
2 **HOMELAND SECURITY ACT**
3 **OF 2002**

4 **SEC. 501. ADDITIONAL RESPONSIBILITIES AND POWERS OF**
5 **THE OFFICE OF REFUGEE RESETTLEMENT**
6 **WITH RESPECT TO UNACCOMPANIED ALIEN**
7 **CHILDREN.**

8 (a) ADDITIONAL RESPONSIBILITIES OF THE DIREC-
9 TOR.—Section 462(b)(1) of the Homeland Security Act of
10 2002 (6 U.S.C. 279(b)(1)) is amended—

11 (1) in subparagraph (K), by striking “and” at
12 the end;

13 (2) in subparagraph (L), by striking the period
14 at the end and inserting “, including regular follow-
15 up visits to such facilities, placements, and other en-
16 tities, to assess the continued suitability of such
17 placements; and”;

18 (3) by adding at the end the following:

19 “(M) ensuring minimum standards of care
20 for all unaccompanied alien children—

21 “(i) for whom detention is necessary;

22 and

23 “(ii) who reside in settings that are
24 alternative to detention.”.

1 (b) ADDITIONAL AUTHORITY OF THE DIRECTOR.—
2 Section 462(b) of the Homeland Security Act of 2002 (6
3 U.S.C. 279(b)) is amended by adding at the end the fol-
4 lowing:

5 “(4) AUTHORITY.—In carrying out the duties
6 under paragraph (3), the Director may—

7 “(A) contract with service providers to per-
8 form the services described in sections 102,
9 103, 201, and 202 of the Unaccompanied Alien
10 Child Protection Act of 2007; and

11 “(B) compel compliance with the terms
12 and conditions set forth in section 103 of such
13 Act, by—

14 “(i) declaring providers to be in
15 breach and seek damages for noncompli-
16 ance;

17 “(ii) terminating the contracts of pro-
18 viders that are not in compliance with such
19 conditions; or

20 “(iii) reassigning any unaccompanied
21 alien child to a similar facility that is in
22 compliance with such section.”.

1 **SEC. 502. TECHNICAL CORRECTIONS.**

2 Section 462(b) of the Homeland Security Act of 2002
3 (6 U.S.C. 279(b)), as amended by section 501, is further
4 amended—

5 (1) in paragraph (3), by striking “paragraph
6 (1)(G)” and inserting “paragraph (1)”; and

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

8 “(5) **RULE OF CONSTRUCTION.**—Nothing in
9 paragraph (2)(B) may be construed to require that
10 a bond be posted for unaccompanied alien children
11 who are released to a qualified sponsor.”.

12 **SEC. 503. EFFECTIVE DATE.**

13 The amendments made by this title shall take effect
14 as if included in the Homeland Security Act of 2002 (6
15 U.S.C. 101 et seq.).

16 **TITLE VI—AUTHORIZATION OF**
17 **APPROPRIATIONS**

18 **SEC. 601. AUTHORIZATION OF APPROPRIATIONS.**

19 (a) **IN GENERAL.**—There are authorized to be appro-
20 priated to the Department, the Department of Justice,
21 and the Department of Health and Human Services, such
22 sums as may be necessary to carry out—

23 (1) the provisions of section 462 of the Home-
24 land Security Act of 2002 (6 U.S.C. 279); and

25 (2) the provisions of this Act.

1 (b) AVAILABILITY OF FUNDS.—Amounts appro-
2 priated pursuant to subsection (a) shall remain available
3 until expended.

4 **TITLE IX—STUDY OF WARTIME**
5 **TREATMENT OF CERTAIN**
6 **PEOPLE**

7 **SEC. 901. SHORT TITLE.**

8 This title may be cited as the “Wartime Treatment
9 Study Act”.

10 **SEC. 902. FINDINGS.**

11 Congress makes the following findings:

12 (1) During World War II, the United States
13 Government deemed as “enemy aliens” more than
14 600,000 Italian-born and 300,000 German-born
15 United States resident aliens and their families and
16 required them to carry Certificates of Identification
17 and limited their travel and personal property rights.
18 At that time, these groups were the 2 largest for-
19 eign-born groups in the United States.

20 (2) During World War II, the United States
21 Government arrested, interned, or otherwise de-
22 tained thousands of European Americans, some re-
23 maining in custody for years after cessation of
24 World War II hostilities, and repatriated, exchanged,
25 or deported European Americans, including Amer-

1 ican-born children, to European Axis nations, many
2 to be exchanged for Americans held in those nations.

3 (3) Pursuant to a policy coordinated by the
4 United States with Latin American nations, many
5 European Latin Americans, including German and
6 Austrian Jews, were arrested, brought to the United
7 States, and interned. Many were later expatriated,
8 repatriated, or deported to European Axis nations
9 during World War II, many to be exchanged for
10 Americans and Latin Americans held in those na-
11 tions.

12 (4) Millions of European Americans served in
13 the armed forces and thousands sacrificed their lives
14 in defense of the United States.

15 (5) The wartime policies of the United States
16 Government were devastating to the Italian Amer-
17 ican and German American communities, individ-
18 uals, and their families. The detrimental effects are
19 still being experienced.

20 (6) Prior to and during World War II, the
21 United States restricted the entry of Jewish refugees
22 who were fleeing persecution or genocide and sought
23 safety in the United States. During the 1930s and
24 1940s, the quota system, immigration regulations,
25 visa requirements, and the time required to process

1 visa applications affected the number of Jewish refu-
2 gees, particularly those from Germany and Austria,
3 who could gain admittance to the United States.

4 (7) The United States Government should con-
5 duct an independent review to fully assess and ac-
6 knowledge these actions. Congress has previously re-
7 viewed the United States Government's wartime
8 treatment of Japanese Americans through the Com-
9 mission on Wartime Relocation and Internment of
10 Civilians. An independent review of the treatment of
11 German Americans and Italian Americans and of
12 Jewish refugees fleeing persecution and genocide has
13 not yet been undertaken.

14 (8) Time is of the essence for the establishment
15 of commissions, because of the increasing danger of
16 destruction and loss of relevant documents, the ad-
17 vanced age of potential witnesses and, most impor-
18 tantly, the advanced age of those affected by the
19 United States Government's policies. Many who suf-
20 fered have already passed away and will never know
21 of this effort.

22 **SEC. 903. DEFINITIONS.**

23 In this title:

1 (1) DURING WORLD WAR II.—The term “during
2 World War II” refers to the period between Sep-
3 tember 1, 1939, through December 31, 1948.

4 (2) EUROPEAN AMERICANS.—

5 (A) IN GENERAL.—The term “European
6 Americans” refers to United States citizens and
7 resident aliens of European ancestry, including
8 Italian Americans, German Americans, Hun-
9 garian Americans, Romanian Americans, and
10 Bulgarian Americans.

11 (B) ITALIAN AMERICANS.—The term
12 “Italian Americans” refers to United States
13 citizens and resident aliens of Italian ancestry.

14 (C) GERMAN AMERICANS.—The term
15 “German Americans” refers to United States
16 citizens and resident aliens of German ancestry.

17 (3) EUROPEAN LATIN AMERICANS.—The term
18 “European Latin Americans” refers to persons of
19 European ancestry, including Italian or German an-
20 cestry, residing in a Latin American nation during
21 World War II.

22 (4) LATIN AMERICAN NATION.—The term
23 “Latin American nation” refers to any nation in
24 Central America, South America, or the Carribean.

1 (d) REPRESENTATION.—The European American
2 Commission shall include 2 members representing the in-
3 terests of Italian Americans and 2 members representing
4 the interests of German Americans.

5 (e) MEETINGS.—The President shall call the first
6 meeting of the European American Commission not later
7 than 120 days after the date of enactment of this Act.

8 (f) QUORUM.—Four members of the European Amer-
9 ican Commission shall constitute a quorum, but a lesser
10 number may hold hearings.

11 (g) CHAIRMAN.—The European American Commis-
12 sion shall elect a Chairman and Vice Chairman from
13 among its members. The term of office of each shall be
14 for the life of the European American Commission.

15 (h) COMPENSATION.—

16 (1) IN GENERAL.—Members of the European
17 American Commission shall serve without pay.

18 (2) REIMBURSEMENT OF EXPENSES.—All mem-
19 bers of the European American Commission shall be
20 reimbursed for reasonable travel and subsistence,
21 and other reasonable and necessary expenses in-
22 curred by them in the performance of their duties.

1 **SEC. 912. DUTIES OF THE EUROPEAN AMERICAN COMMIS-**
2 **SION.**

3 (a) IN GENERAL.—It shall be the duty of the Euro-
4 pean American Commission to review the United States
5 Government’s wartime treatment of European Americans
6 and European Latin Americans as provided in subsection
7 (b).

8 (b) SCOPE OF REVIEW.—The European American
9 Commission’s review shall include the following:

10 (1) A comprehensive review of the facts and cir-
11 cumstances surrounding United States Government
12 actions during World War II with respect to Euro-
13 pean Americans and European Latin Americans
14 pursuant to the Alien Enemies Acts (50 U.S.C. 21
15 et seq.), Presidential Proclamations 2526, 2527,
16 2655, 2662, and 2685, Executive Orders 9066 and
17 9095, and any directive of the United States Gov-
18 ernment pursuant to such law, proclamations, or ex-
19 ecutive orders respecting the registration, arrest, ex-
20 clusion, internment, exchange, or deportation of Eu-
21 ropean Americans and European Latin Americans.
22 This review shall include an assessment of the un-
23 derlying rationale of the United States Government’s
24 decision to develop related programs and policies,
25 the information the United States Government re-
26 ceived or acquired suggesting the related programs

1 and policies were necessary, the perceived benefit of
2 enacting such programs and policies, and the imme-
3 diate and long-term impact of such programs and
4 policies on European Americans and European
5 Latin Americans and their communities.

6 (2) A comprehensive review of United States
7 Government action during World War II with re-
8 spect to European Americans and European Latin
9 Americans pursuant to the Alien Enemies Acts (50
10 U.S.C. 21 et seq.), Presidential Proclamations 2526,
11 2527, 2655, 2662, and 2685, Executive Orders
12 9066 and 9095, and any directive of the United
13 States Government pursuant to such law, proclama-
14 tions, or executive orders, including registration re-
15 quirements, travel and property restrictions, estab-
16 lishment of restricted areas, raids, arrests, intern-
17 ment, exclusion, policies relating to the families and
18 property that excludées and internees were forced to
19 abandon, internee employment by American compa-
20 nies (including a list of such companies and the
21 terms and type of employment), exchange, repatri-
22 ation, and deportation, and the immediate and long-
23 term effect of such actions, particularly internment,
24 on the lives of those affected. This review shall in-
25 clude a list of—

1 (A) all temporary detention and long-term
2 internment facilities in the United States and
3 Latin American nations that were used to de-
4 tain or intern European Americans and Euro-
5 pean Latin Americans during World War II (in
6 this paragraph referred to as “World War II
7 detention facilities”);

8 (B) the names of European Americans and
9 European Latin Americans who died while in
10 World War II detention facilities and where
11 they were buried;

12 (C) the names of children of European
13 Americans and European Latin Americans who
14 were born in World War II detention facilities
15 and where they were born; and

16 (D) the nations from which European
17 Latin Americans were brought to the United
18 States, the ships that transported them to the
19 United States and their departure and disem-
20 barkation ports, the locations where European
21 Americans and European Latin Americans were
22 exchanged for persons held in European Axis
23 nations, and the ships that transported them to
24 Europe and their departure and disembarkation
25 ports.

1 (3) A brief review of the participation by Euro-
2 pean Americans in the United States Armed Forces
3 including the participation of European Americans
4 whose families were excluded, interned, repatriated,
5 or exchanged.

6 (4) A recommendation of appropriate remedies,
7 including how civil liberties can be protected during
8 war, or an actual, attempted, or threatened invasion
9 or incursion, an assessment of the continued viabil-
10 ity of the Alien Enemies Acts (50 U.S.C. 21 et seq.),
11 and public education programs related to the United
12 States Government's wartime treatment of European
13 Americans and European Latin Americans during
14 World War II.

15 (c) FIELD HEARINGS.—The European American
16 Commission shall hold public hearings in such cities of the
17 United States as it deems appropriate.

18 (d) REPORT.—The European American Commission
19 shall submit a written report of its findings and rec-
20 ommendations to Congress not later than 18 months after
21 the date of the first meeting called pursuant to section
22 —011(e).

1 **SEC. 913. POWERS OF THE EUROPEAN AMERICAN COMMIS-**
2 **SION.**

3 (a) IN GENERAL.—The European American Commis-
4 sion or, on the authorization of the Commission, any sub-
5 committee or member thereof, may, for the purpose of car-
6 rying out the provisions of this subtitle, hold such hearings
7 and sit and act at such times and places, and request the
8 attendance and testimony of such witnesses and the pro-
9 duction of such books, records, correspondence, memo-
10 randum, papers, and documents as the Commission or
11 such subcommittee or member may deem advisable. The
12 European American Commission may request the Attor-
13 ney General to invoke the aid of an appropriate United
14 States district court to require, by subpoena or otherwise,
15 such attendance, testimony, or production.

16 (b) GOVERNMENT INFORMATION AND COOPERA-
17 TION.—The European American Commission may acquire
18 directly from the head of any department, agency, inde-
19 pendent instrumentality, or other authority of the execu-
20 tive branch of the Government, available information that
21 the European American Commission considers useful in
22 the discharge of its duties. All departments, agencies, and
23 independent instrumentalities, or other authorities of the
24 executive branch of the Government shall cooperate with
25 the European American Commission and furnish all infor-
26 mation requested by the European American Commission

1 to the extent permitted by law, including information col-
2 lected under the Commission on Wartime and Internment
3 of Civilians Act (Public Law 96–317; 50 U.S.C. App.
4 1981 note) and the Wartime Violation of Italian Ameri-
5 cans Civil Liberties Act (Public Law 106–451; 50 U.S.C.
6 App. 1981 note). For purposes of section 552a(b)(9) of
7 title 5, United States Code (commonly known as the “Pri-
8 vacy Act of 1974”), the European American Commission
9 shall be deemed to be a committee of jurisdiction.

10 **SEC. 914. ADMINISTRATIVE PROVISIONS.**

11 The European American Commission is authorized
12 to—

13 (1) appoint and fix the compensation of such
14 personnel as may be necessary, without regard to
15 the provisions of title 5, United States Code, gov-
16 erning appointments in the competitive service, and
17 without regard to the provisions of chapter 51 and
18 subchapter III of chapter 53 of such title relating to
19 classification and General Schedule pay rates, except
20 that the compensation of any employee of the Com-
21 mission may not exceed a rate equivalent to the rate
22 payable under GS–15 of the General Schedule under
23 section 5332 of such title;

1 (2) obtain the services of experts and consult-
2 ants in accordance with the provisions of section
3 3109 of such title;

4 (3) obtain the detail of any Federal Govern-
5 ment employee, and such detail shall be without re-
6 imbursement or interruption or loss of civil service
7 status or privilege;

8 (4) enter into agreements with the Adminis-
9 trator of General Services for procurement of nec-
10 essary financial and administrative services, for
11 which payment shall be made by reimbursement
12 from funds of the Commission in such amounts as
13 may be agreed upon by the Chairman of the Com-
14 mission and the Administrator;

15 (5) procure supplies, services, and property by
16 contract in accordance with applicable laws and reg-
17 ulations and to the extent or in such amounts as are
18 provided in appropriation Acts; and

19 (6) enter into contracts with Federal or State
20 agencies, private firms, institutions, and agencies for
21 the conduct of research or surveys, the preparation
22 of reports, and other activities necessary to the dis-
23 charge of the duties of the Commission, to the ex-
24 tent or in such amounts as are provided in appro-
25 priation Acts.

1 **SEC. 915. FUNDING.**

2 Of the amounts authorized to be appropriated to the
3 Department of Justice, \$600,000 shall be available to
4 carry out this subtitle.

5 **SEC. 916. SUNSET.**

6 The European American Commission shall terminate
7 60 days after it submits its report to Congress.

8 **Subtitle B—Commission on War-**
9 **time Treatment of Jewish Refu-**
10 **gees**

11 **SEC. 921. ESTABLISHMENT OF COMMISSION ON WARTIME**
12 **TREATMENT OF JEWISH REFUGEES.**

13 (a) **IN GENERAL.**—There is established the Commis-
14 sion on Wartime Treatment of Jewish Refugees (referred
15 to in this subtitle as the “Jewish Refugee Commission”).

16 (b) **MEMBERSHIP.**—The Jewish Refugee Commission
17 shall be composed of 7 members, who shall be appointed
18 not later than 90 days after the date of enactment of this
19 Act as follows:

20 (1) Three members shall be appointed by the
21 President.

22 (2) Two members shall be appointed by the
23 Speaker of the House of Representatives, in con-
24 sultation with the minority leader.

1 (3) Two members shall be appointed by the ma-
2 jority leader of the Senate, in consultation with the
3 minority leader.

4 (c) TERMS.—The term of office for members shall be
5 for the life of the Jewish Refugee Commission. A vacancy
6 in the Jewish Refugee Commission shall not affect its pow-
7 ers, and shall be filled in the same manner in which the
8 original appointment was made.

9 (d) REPRESENTATION.—The Jewish Refugee Com-
10 mission shall include 2 members representing the interests
11 of Jewish refugees.

12 (e) MEETINGS.—The President shall call the first
13 meeting of the Jewish Refugee Commission not later than
14 120 days after the date of enactment of this Act.

15 (f) QUORUM.—Four members of the Jewish Refugee
16 Commission shall constitute a quorum, but a lesser num-
17 ber may hold hearings.

18 (g) CHAIRMAN.—The Jewish Refugee Commission
19 shall elect a Chairman and Vice Chairman from among
20 its members. The term of office of each shall be for the
21 life of the Jewish Refugee Commission.

22 (h) COMPENSATION.—

23 (1) IN GENERAL.—Members of the Jewish Ref-
24 ugee Commission shall serve without pay.

1 (2) REIMBURSEMENT OF EXPENSES.—All mem-
2 bers of the Jewish Refugee Commission shall be re-
3 imbursed for reasonable travel and subsistence, and
4 other reasonable and necessary expenses incurred by
5 them in the performance of their duties.

6 **SEC. 922. DUTIES OF THE JEWISH REFUGEE COMMISSION.**

7 (a) IN GENERAL.—It shall be the duty of the Jewish
8 Refugee Commission to review the United States Govern-
9 ment's refusal to allow Jewish and other refugees fleeing
10 persecution or genocide in Europe entry to the United
11 States as provided in subsection (b).

12 (b) SCOPE OF REVIEW.—The Jewish Refugee Com-
13 mission's review shall cover the period between January
14 1, 1933, through December 31, 1945, and shall include,
15 to the greatest extent practicable, the following:

16 (1) A review of the United States Government's
17 decision to deny Jewish and other refugees fleeing
18 persecution or genocide entry to the United States,
19 including a review of the underlying rationale of the
20 United States Government's decision to refuse the
21 Jewish and other refugees entry, the information the
22 United States Government received or acquired sug-
23 gesting such refusal was necessary, the perceived
24 benefit of such refusal, and the impact of such re-
25 fusal on the refugees.

1 (2) A review of Federal refugee law and policy
2 relating to those fleeing persecution or genocide, in-
3 cluding recommendations for making it easier in the
4 future for victims of persecution or genocide to ob-
5 tain refuge in the United States.

6 (c) FIELD HEARINGS.—The Jewish Refugee Com-
7 mission shall hold public hearings in such cities of the
8 United States as it deems appropriate.

9 (d) REPORT.—The Jewish Refugee Commission shall
10 submit a written report of its findings and recommenda-
11 tions to Congress not later than 18 months after the date
12 of the first meeting called pursuant to section __021(e).

13 **SEC. 923. POWERS OF THE JEWISH REFUGEE COMMISSION.**

14 (a) IN GENERAL.—The Jewish Refugee Commission
15 or, on the authorization of the Commission, any sub-
16 committee or member thereof, may, for the purpose of car-
17 rying out the provisions of this subtitle, hold such hearings
18 and sit and act at such times and places, and request the
19 attendance and testimony of such witnesses and the pro-
20 duction of such books, records, correspondence, memo-
21 randum, papers, and documents as the Commission or
22 such subcommittee or member may deem advisable. The
23 Jewish Refugee Commission may request the Attorney
24 General to invoke the aid of an appropriate United States

1 district court to require, by subpoena or otherwise, such
2 attendance, testimony, or production.

3 (b) GOVERNMENT INFORMATION AND COOPERA-
4 TION.—The Jewish Refugee Commission may acquire di-
5 rectly from the head of any department, agency, inde-
6 pendent instrumentality, or other authority of the execu-
7 tive branch of the Government, available information that
8 the Jewish Refugee Commission considers useful in the
9 discharge of its duties. All departments, agencies, and
10 independent instrumentalities, or other authorities of the
11 executive branch of the Government shall cooperate with
12 the Jewish Refugee Commission and furnish all informa-
13 tion requested by the Jewish Refugee Commission to the
14 extent permitted by law, including information collected
15 as a result of the Commission on Wartime and Internment
16 of Civilians Act (Public Law 96–317; 50 U.S.C. App.
17 1981 note) and the Wartime Violation of Italian Ameri-
18 cans Civil Liberties Act (Public Law 106–451; 50 U.S.C.
19 App. 1981 note). For purposes of section 552a(b)(9) of
20 title 5, United States Code (commonly known as the “Pri-
21 vacy Act of 1974”), the Jewish Refugee Commission shall
22 be deemed to be a committee of jurisdiction.

23 **SEC. 924. ADMINISTRATIVE PROVISIONS.**

24 The Jewish Refugee Commission is authorized to—

1 (1) appoint and fix the compensation of such
2 personnel as may be necessary, without regard to
3 the provisions of title 5, United States Code, gov-
4 erning appointments in the competitive service, and
5 without regard to the provisions of chapter 51 and
6 subchapter III of chapter 53 of such title relating to
7 classification and General Schedule pay rates, except
8 that the compensation of any employee of the Com-
9 mission may not exceed a rate equivalent to the rate
10 payable under GS-15 of the General Schedule under
11 section 5332 of such title;

12 (2) obtain the services of experts and consult-
13 ants in accordance with the provisions of section
14 3109 of such title;

15 (3) obtain the detail of any Federal Govern-
16 ment employee, and such detail shall be without re-
17 imbursement or interruption or loss of civil service
18 status or privilege;

19 (4) enter into agreements with the Adminis-
20 trator of General Services for procurement of nec-
21 essary financial and administrative services, for
22 which payment shall be made by reimbursement
23 from funds of the Commission in such amounts as
24 may be agreed upon by the Chairman of the Com-
25 mission and the Administrator;

1 (5) procure supplies, services, and property by
2 contract in accordance with applicable laws and reg-
3 ulations and to the extent or in such amounts as are
4 provided in appropriation Acts; and

5 (6) enter into contracts with Federal or State
6 agencies, private firms, institutions, and agencies for
7 the conduct of research or surveys, the preparation
8 of reports, and other activities necessary to the dis-
9 charge of the duties of the Commission, to the ex-
10 tent or in such amounts as are provided in appro-
11 priation Acts.

12 **SEC. 925. FUNDING.**

13 Of the amounts authorized to be appropriated to the
14 Department of Justice, \$600,000 shall be available to
15 carry out this subtitle.

16 **SEC. 926. SUNSET.**

17 The Jewish Refugee Commission shall terminate 60
18 days after it submits its report to Congress

Calendar No. 208

110TH CONGRESS
1ST Session

S. 1639

A BILL

To provide for comprehensive immigration reform
and for other purposes.

JUNE 19, 2007

Read the second time and placed on the calendar