

111TH CONGRESS  
1ST SESSION

# H. R. 4321

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

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 15, 2009

Mr. ORTIZ (for himself, Mr. CONYERS, Mr. SERRANO, Mr. RANGEL, Mr. PASTOR of Arizona, Mr. STARK, Mr. GUTIERREZ, Mr. WAXMAN, Mr. BECERRA, Mr. FRANK of Massachusetts, Ms. ROYBAL-ALLARD, Mr. BERMAN, Ms. VELÁZQUEZ, Mrs. CHRISTENSEN, Mr. HINOJOSA, Mr. TOWNS, Mr. REYES, Mr. LEWIS of Georgia, Mr. BACA, Mr. PALLONE, Mr. GONZALEZ, Mr. ANDREWS, Mrs. NAPOLITANO, Mr. MCDERMOTT, Mr. GRIJALVA, Mr. ENGEL, Mr. CUELLAR, Mr. FALEOMAVAEGA, Mr. SALAZAR, Mr. NEAL of Massachusetts, Mr. SIRES, Mr. ABERCROMBIE, Mr. LUJÁN, Ms. NORTON, Mr. PIERLUISI, Mr. MORAN of Virginia, Mr. SABLAN, Mr. NADLER of New York, Mr. OLVER, Ms. WATERS, Ms. CORRINE BROWN of Florida, Mr. FARR, Mr. FILNER, Mr. GENE GREEN of Texas, Mr. HASTINGS of Florida, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. MALONEY, Mr. RUSH, Mr. SCOTT of Virginia, Ms. WOOLSEY, Mr. BLUMENAUER, Mr. FATTAH, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mrs. CAPPS, Mr. DAVIS of Illinois, Ms. DEGETTE, Ms. KILPATRICK of Michigan, Mr. KUCINICH, Ms. LEE of California, Mr. MCGOVERN, Mr. MEEKS of New York, Ms. SCHAKOWSKY, Ms. BERKLEY, Mr. CAPUANO, Mr. CROWLEY, Mr. WEINER, Mr. CLAY, Mr. HONDA, Mr. ISRAEL, Ms. WATSON, Ms. BORDALLO, Mr. MEEK of Florida, Mr. CLEAVER, Mr. AL GREEN of Texas, Ms. MATSUI, Ms. MOORE of Wisconsin, Mr. CARSON of Indiana, Ms. CLARKE, Ms. EDWARDS of Maryland, Mr. ELLISON, Ms. FUDGE, Ms. HIRONO, Mr. JOHNSON of Georgia, Mr. PERLMUTTER, Ms. RICHARDSON, Mr. WELCH, Ms. CHU, Mr. HEINRICH, Ms. PINGREE of Maine, Mr. POLIS of Colorado, and Mr. QUIGLEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Homeland Security, Armed Services, Foreign Affairs, Natural Resources, Ways and Means, Education and Labor, Oversight and Government Reform, and House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

# A BILL

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

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

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

4        (a) SHORT TITLE.—This Act may be cited as the  
 5 “Comprehensive Immigration Reform for America’s Secu-  
 6 rity and Prosperity Act of 2009”, the “Comprehensive Im-  
 7 migration Reform ASAP Act of 2009”, or as the “CIR  
 8 ASAP Act of 2009”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Reference to the Immigration and Nationality Act.
- Sec. 4. Definitions.
- Sec. 5. Severability.

## TITLE I—BORDER SECURITY AND ENFORCEMENT

Sec. 101. Sense of Congress.

### Subtitle A—Border Security

- Sec. 111. National Strategy for Border Security.
- Sec. 112. Increase in number of Customs and Border Protection Officers.
- Sec. 113. Improving ports of entry for border security and other purposes.
- Sec. 114. Inventory of personnel.
- Sec. 115. Standards of professional conduct.
- Sec. 116. Inventory of assets.
- Sec. 117. Customs border patrol and border protection assets.
- Sec. 118. Technological assets.
- Sec. 119. Secure communication.
- Sec. 120. Surveillance plan.
- Sec. 121. Surveillance technologies programs.
- Sec. 122. Border security searches of electronic devices.
- Sec. 123. Border relief grant program.
- Sec. 124. Northern and Southern border drug prosecution initiative.
- Sec. 125. Operation Streamline prosecution initiative.

- Sec. 126. Project Gunrunner.
- Sec. 127. Operation Armas Cruzadas.
- Sec. 128. Combating human smuggling.
- Sec. 129. Report on deaths and strategy study.
- Sec. 130. United States-Mexico Border Enforcement Commission.
- Sec. 131. Prohibition on military involvement in nonemergency border enforcement.
- Sec. 132. Definitions.
- Sec. 133. Border protection strategy.
- Sec. 134. Actions to further secure operational control of the international land borders of the United States.
- Sec. 135. Borderlands monitoring and mitigation.
- Sec. 136. Border Communities Liaison Office.
- Sec. 137. Office of Civil Rights and Civil Liberties and Office of Inspector General.
- Sec. 138. Improving ports of entry for border security and other purposes.
- Sec. 139. Ports of entry.
- Sec. 140. Ports of entry infrastructure and operations assessment study.
- Sec. 141. National Land Border Ports of Entry Security Plan.
- Sec. 142. Ports of entry technology demonstration program.
- Sec. 143. Reports on improving the exchange of information on North American security.
- Sec. 144. Southern Border Security Task Force.
- Sec. 145. Cooperation with the Government of Mexico.
- Sec. 146. Enhanced international cooperation.
- Sec. 147. Expansion of commerce security programs.
- Sec. 148. Authorization of appropriations.

#### Subtitle B—Detention

- Sec. 151. Definitions.
- Sec. 152. Detention conditions.
- Sec. 153. Specific detention requirements for short-term detention facilities.
- Sec. 154. Rulemaking and enforcement.
- Sec. 155. Immigration Detention Commission.
- Sec. 156. Death in custody reporting requirement.
- Sec. 157. Protection of community-based organizations, faith-based organizations and other institutions.
- Sec. 158. Apprehension procedures for immigration-related enforcement activities.
- Sec. 159. Protections against unlawful detentions of United States citizens.
- Sec. 160. Basic protections for vulnerable populations.
- Sec. 161. Report on protections for vulnerable populations impacted by immigration enforcement activities.
- Sec. 162. Family Detention and Unity Protections.
- Sec. 163. Apprehension procedures for families and parents.
- Sec. 164. Child welfare services for children separated from parents detained or removed from the United States for immigration violations.
- Sec. 165. Vulnerable population and child welfare training for immigration enforcement officers.
- Sec. 166. Access for parents, legal guardians, and, primary caregiver relatives.
- Sec. 167. Enhanced protections for vulnerable unaccompanied alien children and female detainees.
- Sec. 168. Preventing unnecessary detention of refugees.
- Sec. 169. Reports on protections from unlawful detention.

Sec. 170. Rulemaking.

#### Subtitle C—Enforcement

- Sec. 181. Labor enforcement.
- Sec. 182. Mandatory address reporting requirements.
- Sec. 183. Preemption of State and local law.
- Sec. 184. Delegation of immigration authority.
- Sec. 185. Immigration and Customs Enforcement Ombudsman.
- Sec. 186. Eliminating arbitrary bar to asylum.
- Sec. 187. Restoration of judicial review.

### TITLE II—EMPLOYMENT VERIFICATION

- Sec. 201. Employment verification.
- Sec. 202. Parity with Civil Rights Act of 1964.
- Sec. 203. Amendments to the Social Security Act.

### TITLE III—VISA REFORMS

- Sec. 301. Elimination of existing backlogs.
- Sec. 302. Reclassification of spouses and minor children of legal permanent residents as immediate relatives.
- Sec. 303. Country limits.
- Sec. 304. Promoting family unity.
- Sec. 305. Surviving relatives.
- Sec. 306. Extension of waiver authority.
- Sec. 307. Discretionary waiver for long-term lawful permanent residents.
- Sec. 308. Continuous presence.
- Sec. 309. Bar on the removal of certain refugees, parolees or asylees.
- Sec. 310. Exemption from immigrant visa limit for certain veterans who are natives of Philippines.
- Sec. 311. Fiancée or fiancé child status protection.
- Sec. 312. Equal treatment for all stepchildren.
- Sec. 313. Sons and daughters of Filipino World War II veterans.
- Sec. 314. Determinations under the Haitian Refugee Immigration Fairness Act of 1998.
- Sec. 315. Discretionary authority.
- Sec. 316. Affidavit of support.
- Sec. 317. Visa to prevent unauthorized migration.
- Sec. 318. Adjustment of status.
- Sec. 319. Rulemaking.
- Sec. 320. United States-educated immigrants.
- Sec. 321. Retaining workers subject to green card backlog.
- Sec. 322. Return of talent program.

### TITLE IV—EARNED LEGALIZATION OF UNDOCUMENTED INDIVIDUALS

#### Subtitle A—Conditional Nonimmigrants

- Sec. 401. Conditional nonimmigrants.
- Sec. 402. Adjustment of status for conditional nonimmigrants.
- Sec. 403. Administrative and judicial review.
- Sec. 404. Mandatory disclosure of information.
- Sec. 405. Penalties for false statements in applications.
- Sec. 406. Aliens not subject to direct numerical limitations.

- Sec. 407. Employer protections.
- Sec. 408. Limitations on eligibility.
- Sec. 409. Rulemaking.
- Sec. 410. Correction of Social Security records.
- Sec. 411. Restoration of State option to determine residency for purposes of higher education benefits.
- Sec. 412. Authorization of appropriations.

Subtitle B—Agricultural Job Opportunities, Benefits, and Security

CHAPTER 1—TITLE AND DEFINITIONS

- Sec. 421. Short title.
- Sec. 422. Definitions.

CHAPTER 2—PILOT PROGRAM FOR EARNED STATUS ADJUSTMENT OF AGRICULTURAL WORKERS

SUBCHAPTER A—BLUE CARD STATUS

- Sec. 431. Requirements for blue card status.
- Sec. 432. Treatment of aliens granted blue card status.
- Sec. 433. Adjustment to permanent residence.
- Sec. 434. Applications.
- Sec. 435. Waiver of numerical limitations and certain grounds for inadmissibility.
- Sec. 436. Administrative and judicial review.
- Sec. 437. Use of information.
- Sec. 438. Regulations, effective date, authorization of appropriations.

SUBCHAPTER B—CORRECTION OF SOCIAL SECURITY RECORDS

- Sec. 441. Correction of Social Security records.

CHAPTER 3—REFORM OF H-2A WORKER PROGRAM

- Sec. 451. Amendments to the Immigration and Nationality Act.

CHAPTER 4—MISCELLANEOUS PROVISIONS

- Sec. 461. Determination and use of user fees.
- Sec. 462. Regulations.
- Sec. 463. Reports to Congress.
- Sec. 464. Effective date.

TITLE V—STRENGTHENING THE U.S. ECONOMY AND WORKFORCE

Subtitle A—Immigration and Labor

CHAPTER 1—IMMIGRATION AND LABOR MARKETS

- Sec. 501. Commission on Immigration and Labor Markets.
- Sec. 502. Security and prosperity account.
- Sec. 503. American recruit and match system.

CHAPTER 2—PROTECTION OF WORKERS RECRUITED ABROAD

- Sec. 511. Protections for workers recruited abroad.

- Sec. 512. Enforcement provisions.
- Sec. 513. Procedures in addition to other rights of employees.
- Sec. 514. Authority to prescribe regulations.
- Sec. 515. Definitions.

### CHAPTER 3—TECHNICAL CORRECTION

- Sec. 521. Technical correction.

#### Subtitle B—Reforms of Certain Classes of Employment-based Visas

### CHAPTER 1—H-1B VISA FRAUD AND ABUSE PROTECTIONS

#### SUBCHAPTER A—H-1B EMPLOYER APPLICATION REQUIREMENTS

- Sec. 531. Modification of application requirements.
- Sec. 532. New application requirements.
- Sec. 533. Application review requirements.

#### SUBCHAPTER B—INVESTIGATION AND DISPOSITION OF COMPLAINTS AGAINST H-1B

- Sec. 541. General modification of procedures for investigation and disposition.
- Sec. 542. Investigation, working conditions, and penalties.
- Sec. 543. Waiver requirements.
- Sec. 544. Initiation of investigations.
- Sec. 545. Information sharing.
- Sec. 546. Conforming amendment.

#### SUBCHAPTER C—OTHER H-1B PROVISIONS

- Sec. 551. Posting available H-1B positions through the Department of Labor.
- Sec. 552. H-1B government authority and requirements.
- Sec. 553. Additional Department of Labor employees.

### CHAPTER 2—L-1 NONIMMIGRANTS

- Sec. 561. Prohibition on outplacement of L-1 nonimmigrants.
- Sec. 562. L-1 employer petition requirements for employment at new offices.
- Sec. 563. Cooperation with Secretary of State.
- Sec. 564. Investigation and disposition of complaints against L-1 employers.
- Sec. 565. Wage rate and working conditions for L-1 nonimmigrant.
- Sec. 566. Penalties.
- Sec. 567. Prohibition on retaliation against L-1 nonimmigrants.
- Sec. 568. Technical amendments.
- Sec. 569. Reports on L-1 nonimmigrants.
- Sec. 570. Application.
- Sec. 571. Report on L-1 blanket petition process.
- Sec. 572. Requirements for information for H-1B and L-1 nonimmigrants.

### CHAPTER 3—PROTECTION OF H-2B NONIMMIGRANTS

- Sec. 581. Enforcement of federal labor laws relating to H-2B nonagricultural  
guest workers.
- Sec. 582. Recruitment of United States workers.
- Sec. 583. Prevailing wages for United States workers and H-2B workers.
- Sec. 584. Certification requirement.
- Sec. 585. Protections for workers.

- Sec. 586. Petitions by employers that have signed labor agreements with unions that operate hiring halls.
- Sec. 587. H-2B nonimmigrant labor certification application fees.

#### CHAPTER 4—ADJUSTMENTS TO THE EB-5 VISA PROGRAM

- Sec. 591. Permanent reauthorization of EB-5 regional center program; application fee.
- Sec. 592. Premium processing fee for EB-5 immigrant investors.
- Sec. 593. Concurrent filing of EB-5 petitions and applications for adjustment of status.
- Sec. 594. Improved set-aside for targeted employment areas.
- Sec. 595. Set-aside of visas for regional center program.
- Sec. 596. Extension.
- Sec. 597. Study.
- Sec. 598. Full-time equivalents.
- Sec. 599. Eligibility for adjustment of status.
- Sec. 599A. Expansion of EB-5 eligibility to include qualified immigrants who complete investment agreements.

#### CHAPTER 5—EFFECTIVE DATE

- Sec. 599B. Application.

### TITLE VI—INTEGRATION OF NEW AMERICANS

#### Subtitle A—Citizenship Promotion

- Sec. 601. Immigration service fees.
- Sec. 602. Administration of tests for naturalization; fulfillment by elderly persons of requirement for naturalization relating to knowledge of english language.
- Sec. 603. Voluntary electronic filing of applications.
- Sec. 604. Timely background checks.
- Sec. 605. National citizenship promotion program.
- Sec. 606. Effective date.

#### Subtitle B—Miscellaneous

- Sec. 611. Grants to support public education and community training.
- Sec. 612. Grant program to assist applicants for naturalization.
- Sec. 613. Naturalization for certain U.S. high school graduates.
- Sec. 614. Family integration.
- Sec. 615. Consideration for domestic resettlement of refugees.
- Sec. 616. Credits for teachers of English language learners.
- Sec. 617. Credits for employer-provided adult english literacy and basic education programs.
- Sec. 618. Grants to States to form New American Councils.
- Sec. 619. Independence Day Ceremonies for oaths of allegiance.

## 1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

1           (1) Federal immigration laws must uphold  
2 America's long history of being a Nation of immi-  
3 grants from every continent in the world, and reaf-  
4 firm our Nation's commitment to strong and united  
5 families, civil rights, economic opportunity and di-  
6 versity.

7           (2) The Government of the United States  
8 should reduce the deficit by ensuring that all individ-  
9 uals and employers pay their fair share of taxes and  
10 contribute equally to the prosperity of our great Na-  
11 tion.

12           (3) The Government of the United States has  
13 an obligation to ensure the labor rights of all work-  
14 ers in our country, and end the driving down of  
15 wages and workplace standards that exists today due  
16 to our broken immigration system. Unscrupulous  
17 employers should not be able to profit off of the  
18 backs of a workforce with no voice in the workplace  
19 or civic society.

20           (4) The Government of the United States also  
21 has an obligation to ensure the growth and vitality  
22 of honest American businesses that are playing by  
23 the rules and fueling our economic recovery.

24           (5) The labor and immigration policies of the  
25 United States Government should be modernized to



1 reflect the current needs of American workers and  
2 the American economy.

3 (6) The Government of the United States can-  
4 not effectively carry out its national security policies  
5 unless it requires undocumented immigrants to come  
6 forward and participate fully in our communities  
7 and legally in the economy of the United States, so  
8 that enforcement efforts are concentrated on the  
9 truly bad actors.

10 (7) Elimination of America's immigrant work-  
11 force is not an effective or honest solution to Amer-  
12 icas economic crisis. We need a solution that levels  
13 the playing field and promotes equal rights for all.

14 (8) Dividing American families in not a moral  
15 or just solution to the broken immigration system.  
16 We need policies that treat all families equally and  
17 keep them together, to support each other and build  
18 strong communities.

19 (9) Flawed immigration laws and persistent un-  
20 equal administration of justice at the local level,  
21 based on race or national origin, has undermined ef-  
22 fective community policing by discouraging the re-  
23 porting of crime and cooperation with prosecutors in  
24 immigrant communities, due to well-founded fears of  
25 immigration enforcement action against them. This

1 puts entire communities at risk and undermines  
2 public safety for all.

3 (10) The Government of the United States  
4 should ensure that racial profiling and unequal ad-  
5 ministration of the law based on race or national ori-  
6 gin is not permitted by any agency of Federal, State  
7 or local government bodies.

8 (11) Our Government should ensure that our  
9 Nation's borders are secure by investing in effective  
10 strategies, eliminating the millions of dollars cur-  
11 rently being allocated to ineffective ones, and by re-  
12 quiring consultation with state and local commu-  
13 nities on both the northern and southern borders be-  
14 fore implementing new border enforcement strate-  
15 gies.

16 (12) Foreign governments, particularly those  
17 that share an international border with the United  
18 States, must play a critical role in securing inter-  
19 national borders and deterring illegal entry of for-  
20 eign nationals into the United States.

21 (13) The Government of the United States has  
22 an obligation to reaffirm its commitment to effective  
23 immigrant integration by supporting the teaching  
24 and promoting the learning of English.



1 for any reason, the remainder of this Act, the amendments  
2 made by this Act, and the application of the provisions  
3 of such to any other person or circumstance shall not be  
4 affected by such holding.

5 **TITLE I—BORDER SECURITY**  
6 **AND ENFORCEMENT**

7 **SEC. 101. SENSE OF CONGRESS.**

8 It is the sense of Congress that—

9 (1) the Secretary of Homeland Security should  
10 establish a national strategic plan for short-term and  
11 long-term border security with improved account-  
12 ability and transparency in agency functions;

13 (2) the Secretary's border security priorities  
14 must support and strengthen the significant ad-  
15 vances in operational control of the border;

16 (3) the Secretary must secure our Nation's  
17 ports of entry and facilitate the flow of commerce  
18 and travel;

19 (4) the ports of entry to the United States re-  
20 quire additional assets, personnel, infrastructure and  
21 improvements in technology;

22 (5) although states along the Southern and  
23 Northern borders play a unique role in supporting  
24 the Federal Government, border security and en-

1 enforcement of the immigration laws are the responsi-  
2 bility of the Federal Government;

3 (6) combating human smuggling, arms traf-  
4 ficking and drug trafficking are essential to border  
5 security;

6 (7) protecting the economic and civic vitality of  
7 the border region is central to border security; and

8 (8) effective border security depends on sus-  
9 tained international cooperation.

## 10 **Subtitle A—Border Security**

### 11 **SEC. 111. NATIONAL STRATEGY FOR BORDER SECURITY.**

12 (a) REQUIREMENT FOR STRATEGY.—The Secretary,  
13 in consultation with the heads of other appropriate Fed-  
14 eral agencies, shall develop a National Strategy for Border  
15 Security that describes actions to be carried out to main-  
16 tain operational control over all ports of entry into the  
17 United States and the international land and maritime  
18 borders of the United States.

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

21 (1) An assessment of the threat posed by ter-  
22 rorists and terrorist groups that may try to infiltrate  
23 the United States at locations along the inter-  
24 national land and maritime borders of the United  
25 States.

1           (2) A risk assessment for all United States  
2 ports of entry and all portions of the international  
3 land and maritime borders of the United States that  
4 includes a description of activities being under-  
5 taken—

6                   (A) to prevent the entry of terrorists, un-  
7 lawful aliens, instruments of terrorism, nar-  
8 cotics, and other contraband into the United  
9 States; and

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

12           (3) An assessment of the most appropriate,  
13 practical, and cost-effective means of defending the  
14 international land and maritime borders of the  
15 United States against threats to security and illegal  
16 transit, including intelligence capacities, technology,  
17 equipment, personnel, and training needed to ad-  
18 dress security vulnerabilities to include—

19                   (A) a comprehensive assessment of risks in  
20 terms of cost, probability, and threats to society  
21 and risk prevention and response measures cur-  
22 rently taken and potentially taken relative to  
23 that assessment of risks;

1           (B) prevention efforts and response meas-  
2           ures to address such risks, whether already un-  
3           derway or planned;

4           (C) recommendations on realignment of  
5           programs, locations, and resources to best ad-  
6           dress the comprehensive assessment of risks.

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

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

19          (6) An assessment of existing programs, activi-  
20          ties and technologies used for border security and  
21          the effect of the use of such efforts and technologies  
22          on civil rights, family unity, private property rights,  
23          privacy rights, and civil liberties, including an as-  
24          sessment of efforts to take into account asylum seek-

1       ers, trafficking victims, unaccompanied minor aliens,  
2       and other vulnerable populations.

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

7               (8) A description of ways to ensure that the  
8       free flow of legitimate travel and commerce is not di-  
9       minished by efforts, activities, and programs aimed  
10      at securing the international land and maritime bor-  
11      ders of the United States.

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

15              (10) A schedule for the implementation of the  
16      security measures described in such Strategy, includ-  
17      ing a prioritization of security measures, realistic  
18      deadlines for addressing the security and enforce-  
19      ment needs, an estimate of the resources needed to  
20      carry out such measures, and a description of how  
21      such resources should be allocated.

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



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

4           (2) appropriate private sector entities, non-  
5           governmental organizations, and affected commu-  
6           nities that have expertise in areas related to border  
7           management.

8           (d) COORDINATION.—The National Strategy for Bor-  
9           der Security shall be consistent with the National Strategy  
10          for Maritime Security developed pursuant to Homeland  
11          Security Presidential Directive 13, dated December 21,  
12          2004.

13          (e) SUBMISSION TO CONGRESS.—

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

18           (2) UPDATES.—The Secretary shall submit to  
19          Congress any change of such Strategy that the Sec-  
20          retary determines is necessary, not later than 30  
21          days after such determination.

22          (f) IMMEDIATE ACTION.—Nothing in this section  
23          may be construed to relieve the Secretary of the responsi-  
24          bility to take all actions necessary and appropriate to

1 maintain and enhance operational control of the inter-  
2 national land and maritime borders of the United States.

3 **SEC. 112. INCREASE IN NUMBER OF CUSTOMS AND BORDER**  
4 **PROTECTION OFFICERS.**

5 (a) CUSTOMS AND BORDER PROTECTION OFFI-  
6 CERS.—During the 5-year period between fiscal years  
7 2010 and 2014, the Secretary of Homeland Security shall,  
8 subject to the availability of appropriations for such pur-  
9 pose, increase by not fewer than 5,000 the total number  
10 of full-time, active-duty Customs and Border Protection  
11 Officers within United States Customs and Border Protec-  
12 tion for posting at United States ports of entry above the  
13 number of such officers for which funds were made avail-  
14 able during fiscal year 2009.

15 (b) AGRICULTURE SPECIALISTS.—During the 5-year  
16 period between fiscal years 2010 and 2014, the Secretary  
17 of Homeland Security shall, subject to the availability of  
18 appropriations for such border security purposes, increase  
19 by not fewer than a total of 1,200 the number of full-  
20 time Customs and Border Protection agriculture special-  
21 ists for United States ports of entry above the number  
22 of such support personnel for which funds were made  
23 available during fiscal year 2009.

24 (c) BORDER SECURITY SUPPORT PERSONNEL.—  
25 During the 5-year period between fiscal years 2010 and

1 2014, the Secretary of Homeland Security shall, subject  
2 to the availability of appropriations for such purpose, in-  
3 crease by not fewer than a total of 350 the number of  
4 full-time border security support personnel for United  
5 States ports of entry above the number of such support  
6 personnel for which funds were made available during fis-  
7 cal year 2009.

8 **SEC. 113. IMPROVING PORTS OF ENTRY FOR BORDER SECU-**  
9 **RITY AND OTHER PURPOSES.**

10 (a) IN GENERAL.—There are authorized to be appro-  
11 priated to the Administrator of the General Services Ad-  
12 ministration \$1,000,000,000 for each of fiscal years 2010  
13 through 2014 to make improvements to existing ports of  
14 entry in the United States to improve border security and  
15 for other purposes.

16 (b) PRIORITY.—In making improvements described  
17 in subsection (a), the Administrator of the General Serv-  
18 ices Administration, in coordination with the Commis-  
19 sioner of Customs and Border Protection, shall give pri-  
20 ority to the ports of entry that the Administrator deter-  
21 mines are in most need of repair to improve border secu-  
22 rity and for other purposes in accordance with port of  
23 entry infrastructure assessment studies required in section  
24 603 of title VI, division E, of the Consolidated Appropria-  
25 tions Act of 2008 (Public Law 101–161).

1 **SEC. 114. INVENTORY OF PERSONNEL.**

2 (a) INVENTORY.—The Secretary shall identify and  
3 inventory the current personnel or other human resources  
4 dedicated to border security and enforcement prior to any  
5 increase in personnel or other human resources.

6 (b) REPORT.—The Secretary shall submit the inven-  
7 tory required in subsection (a) to the following congres-  
8 sional committees, 90 days after the enactment of this  
9 Act—

10 (1) the Committee on Homeland Security and  
11 Governmental Affairs and the Committee on the Ju-  
12 diciary of the Senate;

13 (2) the Committee on Homeland Security and  
14 the Committee on the Judiciary of the House of  
15 Representatives; and

16 (3) the Committee on Oversight and Govern-  
17 ment Reform of the House of Representatives.

18 **SEC. 115. STANDARDS OF PROFESSIONAL CONDUCT.**

19 (a) ESTABLISHMENT OF STANDARDS.—Not more  
20 than 90 days after the date of enactment of this Act, the  
21 Secretary of Homeland Security shall establish clear  
22 standards of professional conduct for interaction with the  
23 public, for all Customs and Border Protection agents, U.S.  
24 Border Patrol agents, Immigration and Customs Enforce-  
25 ment agents, and Agricultural Inspectors stationed within

1 100 miles of all land and marine borders and at ports of  
2 entry.

3 (b) PURPOSE.—These standards of professional con-  
4 duct will provide agents with a better understanding of  
5 the prohibitions and limitations pertaining to their con-  
6 duct and activities while representing the Department of  
7 Homeland Security. These standards are intended to—

8 (1) alert agents to some of the more sensitive  
9 and often problematic matters involved in agent con-  
10 duct;

11 (2) specify, where possible, actions and inac-  
12 tions that are contrary to and that conflict with the  
13 duties and responsibilities of Department of Home-  
14 land security agents; and

15 (3) guide agents in conducting themselves in a  
16 manner that reflects standards of department and  
17 professionalism.

18 (c) STANDARDS.—Department of Homeland Security  
19 agents stationed within 100 miles of all land and marine  
20 borders and at ports of entry—

21 (1) shall not violate any law or any agency pol-  
22 icy, rule, or procedure;

23 (2) shall obey all lawful orders;

24 (3) shall not engage in any conduct or activities  
25 on- or off-duty that reflect discredit on the agents,

1       tend to bring the agency into disrepute, or impair its  
2       efficient and effective operation;

3           (4) shall conduct themselves toward the public  
4       in a civil and professional manner that connotes a  
5       service orientation and that will foster public respect  
6       and cooperation;

7           (5) shall treat violators, or perceived violators,  
8       with respect and courtesy, guard against employing  
9       an officious or overbearing attitude or language that  
10      may belittle, ridicule, or intimidate the individual, or  
11      act in a manner that unnecessarily delays the per-  
12      formance of their duty;

13          (6) while recognizing the need to demonstrate  
14      authority and control over suspects and detainees,  
15      agents shall adhere to this agency's use-of-force pol-  
16      icy and shall observe the civil rights and protect the  
17      well-being of those in their charge; and

18          (7) shall not use their agency powers to resolve  
19      personal grievances (e.g., those involving the officer,  
20      family members, relatives, or friends) with individ-  
21      uals. In cases where there is personal involvement  
22      with a member of the public that would reasonably  
23      require law enforcement intervention, agents shall  
24      summon other on-duty personnel and a supervisor.

1 (d) OVERSIGHT AND EVALUATION.—The Depart-  
2 ment of Homeland Security shall develop and implement  
3 a plan that applies the aforementioned standards in officer  
4 evaluation and supervisor evaluation. This plan shall in-  
5 clude the following provisions to ensure responsibility and  
6 protect civil rights:

7 (1) Adherence to the standards of professional  
8 conduct shall be a central criterion in the change  
9 from probationary to journeyman status, as well as  
10 periodic evaluations and promotions of officers.

11 (2) Managers and senior officers will be held re-  
12 sponsible for—

13 (A) performance according to these stand-  
14 ards;

15 (B) assessments of subordinates according  
16 to these standards; and

17 (C) performance of their subordinates on  
18 these standards, with meaningful penalties to  
19 supervisors for failures of subordinates to ad-  
20 here to such standards.

21 (3) The Department shall establish strong pen-  
22 alties for failures to follow the standards of profes-  
23 sional conduct that were unaddressed until exposed  
24 by complaint processes or Inspector General inves-  
25 tigation. However, organizational peers and superi-

1       ors who uncover and act on failures or abuses shall  
2       be exempt from such penalties.

3           (4) Agents should not be indemnified when it is  
4       determined that a violation of civil rights standards  
5       occurred.

6       (e) EXCEPTION.—The standards of conduct set forth  
7       in this section are not intended to serve as an exhaustive  
8       treatment of requirements, limitations, or prohibitions on  
9       agent conduct and activities established by the Secretary  
10      of Homeland Security.

11      (f) NOTICE.—The standards of conduct established  
12      under this section shall be posted at all ports of entry in  
13      locations easily viewed by members of the public.

14      (g) COMPLAINTS.—Not more than 180 days after en-  
15      actment, the Secretary shall, in consultation with the Of-  
16      fice of Civil Rights and Civil Liberties, establish a uniform  
17      and standardized process for the public regarding com-  
18      plaints against all Customs and Border Protection agents,  
19      U.S. Border Patrol agents, and Agricultural Inspectors for  
20      violations of standards of professional conduct. The com-  
21      plaint process shall—

22           (1) quickly review, effectively investigate, mean-  
23      ingfully resolve complaints and identify patterns of  
24      abuse or malfeasance and be accessible, transparent,  
25      consistent, effective, and fair;



1           (2) apply uniformly to all Border Patrol Sectors  
2           and Ports of Entry;

3           (3) specify to whom, how, and where complaints  
4           are to be filed;

5           (4) be visible to the public at all ports of entry  
6           and interior checkpoints, and be accessible in mul-  
7           tiple languages;

8           (5) receive staff and funding commensurate  
9           with the quantity of complaints submitted and with  
10          the funding disbursed to Department enforcement  
11          initiatives;

12          (6) establish a publicly accessible national,  
13          standardized database capable of tracking and ana-  
14          lyzing complaints and their resolution; and

15          (7) provide publicly accessible records, with cop-  
16          ies of complaints and their resolutions permanently  
17          preserved and available for inspection, while main-  
18          taining the confidentiality of complainants' identi-  
19          ties.

20          (h) COMPLAINANTS.—The following shall apply to all  
21          complainants:

22                (1) Any interested party may file a complaint  
23                through the complaint procedure, including a legal  
24                representative.

1           (2) Complainants shall be protected from retal-  
2           iatory action by law enforcement.

3           (3) No officer of the US may use the informa-  
4           tion from a complaint to initiate removal pro-  
5           ceedings or removals against any person filing a  
6           complaint or identified in the complaint, nor remove  
7           any individual involved in a complaint while the com-  
8           plaint is pending.

9           (4) There shall be no publication of information  
10          to related to an individual involved in a complaint  
11          which would result in identification of the individual.

12          (5) Complainants shall receive full assistance  
13          from the Department in filing complaints, including  
14          language assistance, accommodations for disabilities,  
15          and accurate and complete responses to their ques-  
16          tions.

17          (i) REPORTING.—The Secretary shall report annually  
18          to the following Congressional Committees on the number  
19          and type of complaints received in each sector, demo-  
20          graphic of complainants, results of investigations includ-  
21          ing violations of standards and any disciplinary actions  
22          taken, and identifying any complaint patterns that could  
23          be prevented or reduced by policy or practice changes—

1           (1) the Committee on Homeland Security and  
2           Governmental Affairs and the Committee on the Ju-  
3           diciary of the Senate;

4           (2) the Committee on Homeland Security and  
5           the Committee on the Judiciary of the House of  
6           Representatives; and

7           (3) the Committee on Oversight and Govern-  
8           ment Reform of the House of Representatives.

9   **SEC. 116. INVENTORY OF ASSETS.**

10       (a) INVENTORY.—The Secretary shall identify and  
11       inventory the current assets, equipment, supplies, or other  
12       physical resources dedicated to border security and en-  
13       forcement prior to any increase in assets, equipment, sup-  
14       plies or other physical resources.

15       (b) REPORT.—The Secretary shall submit the inven-  
16       tory required in subsection (a) to the following congres-  
17       sional committees, 90 days from the enactment of this  
18       Act—

19           (1) the Committee on Homeland Security and  
20           Governmental Affairs and the Committee on the Ju-  
21           diciary of the Senate;

22           (2) the Committee on Homeland Security and  
23           the Committee on the Judiciary of the House of  
24           Representatives; and

1           (3) the Committee on Oversight and Govern-  
2           ment Reform of the House of Representatives.

3 **SEC. 117. CUSTOMS BORDER PATROL AND BORDER PRO-**  
4           **TECTION ASSETS.**

5           (a) **PERSONAL EQUIPMENT.**—

6           (1) **BODY ARMOR.**—The Secretary shall ensure  
7           that every agent is issued high-quality body armor  
8           that is appropriate for the climate and risks faced  
9           by the agent. Each agent shall be permitted to select  
10          from among a variety of approved brands and styles.  
11          Agents shall be strongly encouraged, but not re-  
12          quired, to wear such body armor whenever prac-  
13          ticable. All body armor shall be replaced not less  
14          often than once every five years.

15          (2) **WEAPONS.**—The Secretary shall ensure  
16          that agents are equipped with weapons that are reli-  
17          able and effective to protect themselves, their fellow  
18          agents, and innocent third parties from the threats  
19          posed by armed criminals. The Secretary shall en-  
20          sure that the policies of the Department authorize  
21          all agents to carry weapons that are suited to the  
22          potential threats that they face.

23          (3) **UNIFORMS.**—The Secretary shall ensure  
24          that all agents are provided with all necessary uni-  
25          form items, including outerwear suited to the cli-

1 mate, footwear, belts, holsters, and personal protec-  
2 tive equipment, at no cost to such agents. Such  
3 items shall be replaced at no cost to such agents as  
4 such items become worn or unserviceable or no  
5 longer fit properly

6 (b) HELICOPTERS AND POWER BOATS.—

7 (1) HELICOPTERS.—The Secretary shall con-  
8 duct a review of asset needs, and if determined to  
9 be insufficient, shall increase the number of heli-  
10 copters under the control of the Border Patrol. The  
11 Secretary shall ensure that appropriate types of heli-  
12 copters are procured for the various missions being  
13 performed.

14 (2) POWER BOATS.—The Secretary shall con-  
15 duct a review of asset needs and if determined to be  
16 insufficient, shall increase the number of power  
17 boats under the control of the Border Patrol. The  
18 Secretary shall ensure that the types of power boats  
19 that are procured are appropriate for both the wa-  
20 terways in which they are used and the mission re-  
21 quirements.

22 (3) USE AND TRAINING.—The Secretary shall—  
23 (A) establish an overall policy on how the  
24 helicopters and power boats procured under this  
25 subsection will be used; and

1           (B) implement training programs for the  
2           agents who use such assets, including safe oper-  
3           ating procedures and rescue operations.

4           (c) MOTOR VEHICLES.—

5           (1) QUANTITY.—The Secretary shall conduct a  
6           review of asset needs and if determined to be insuffi-  
7           cient, establish a fleet of motor vehicles appropriate  
8           for use by the Border Patrol. The Secretary shall  
9           ensure that there are sufficient numbers and types  
10          of other motor vehicles to support the mission of the  
11          Border Patrol.

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

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

16                (B) have a panic button and a global posi-  
17                tioning system device that is activated solely in  
18                emergency situations to track the location of  
19                agents in distress.

20          (d) ELECTRONIC EQUIPMENT.—

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

1 unique operational requirements of the Border Pa-  
2 trol.

3 (2) RADIO EQUIPMENT.—The Secretary shall  
4 augment the existing radio communications system  
5 so that all law enforcement personnel working in  
6 each area where Border Patrol operations are con-  
7 ducted have clear and encrypted 2-way radio com-  
8 munication capabilities at all times. Each portable  
9 communications device shall be equipped with a  
10 panic button and a global positioning system device  
11 that is activated solely in emergency situations to  
12 track the location of agents in distress.

13 (3) HANDHELD GLOBAL POSITIONING SYSTEM  
14 DEVICES.—The Secretary shall ensure that each  
15 Border Patrol agent who is determined by the Sec-  
16 retary to need a handheld global positioning device  
17 to effectively and safely carry out his or her duties  
18 is issued a state-of-the-art handheld global posi-  
19 tioning system device for navigational purposes.

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

1 (e) APPROPRIATIONS.—There are authorized to be  
2 appropriated to the Secretary such sums as may be nec-  
3 essary for each of fiscal years 2011 through 2015 to carry  
4 out this section.

5 **SEC. 118. TECHNOLOGICAL ASSETS.**

6 (a) INCREASED AVAILABILITY OF EQUIPMENT.—The  
7 Secretary and the Secretary of Defense shall analyze use  
8 of authorities provided to the Secretary of Defense under  
9 chapter 18 of title 10, United States Code, and whether  
10 to increase the availability and use of Department of De-  
11 fense equipment, including unmanned aerial vehicles, teth-  
12 ered aerostat radars, and other surveillance equipment, to  
13 assist the Secretary in carrying out surveillance activities  
14 conducted at or near the international land borders of the  
15 United States to deter criminal activity and terrorist  
16 threats.

17 (b) REPORT.—Not later than 180 days after the date  
18 of enactment of this Act, the Secretary and the Secretary  
19 of Defense shall submit to Congress a report that contains

20 (1) an analysis of the current use of Depart-  
21 ment of Defense equipment to assist the Secretary  
22 in carrying out surveillance of the international land  
23 borders of the United States and assessment of the  
24 risks to citizens of the United States and foreign



1 policy interests associated with the use of such  
2 equipment;

3 (2) an analysis of projected future use of De-  
4 partment of Defense equipment to assist such sur-  
5 veillance activities, including any increases;

6 (3) an analysis of the types of equipment and  
7 other support to be provided by the Secretary of De-  
8 fense under such plan during the one-year period be-  
9 ginning on the date of the submission of the report;

10 (4) an analysis of costs and cost-effectiveness  
11 related to any increase in the availability and use of  
12 Department of Defense equipment; and

13 (5) an analysis of projected schedules for imple-  
14 mentation.

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

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

1 **SEC. 119. SECURE COMMUNICATION.**

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

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

8 (2) between Border Patrol agents and their re-  
9 spective Border Patrol stations;

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

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

16 **SEC. 120. SURVEILLANCE PLAN.**

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

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

23 (1) An assessment of existing technologies em-  
24 ployed on the international land and maritime bor-  
25 ders of the United States.

1           (2) A description of the compatibility of new  
2 surveillance technologies with surveillance tech-  
3 nologies in use by the Secretary on the date of en-  
4 actment of this Act.

5           (3) A description of how the Commissioner of  
6 the United States Customs and Border Protection is  
7 working, or is expected to work, with the Under Sec-  
8 retary for Science and Technology of the Depart-  
9 ment to identify and test surveillance technology.

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

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

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

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

21          (8) A description of the demonstration program  
22 to fully integrate and utilize aerial surveillance tech-  
23 nologies developed pursuant to section 121(a).

1           (9) A description of the Integrated and Auto-  
2           mated Surveillance demonstration program estab-  
3           lished pursuant to section 121(b).

4           (c) SUBMISSION TO CONGRESS.—Not later than 180  
5           days after the date of enactment of this Act, the Secretary  
6           shall submit to Congress the plan required by this section.

7           **SEC. 121. SURVEILLANCE TECHNOLOGIES PROGRAMS.**

8           (a) AERIAL SURVEILLANCE DEMONSTRATION PRO-  
9           GRAM.—

10           (1) IN GENERAL.—In conjunction with the bor-  
11           der surveillance plan developed under section 5201  
12           of the Intelligence Reform and Terrorism Prevention  
13           Act of 2004 (Public Law 108–458; 8 U.S.C. 1701  
14           note), the Secretary, not later than 90 days after the  
15           date of enactment of this Act, shall develop a dem-  
16           onstration program to fully integrate and utilize aer-  
17           ial surveillance technologies, including unmanned  
18           aerial vehicles, to enhance the security of the inter-  
19           national border between the United States and Can-  
20           ada and the international border between the United  
21           States and Mexico.

22           (2) ASSESSMENT AND CONSULTATION REQUIRE-  
23           MENTS.—In developing the program under this sub-  
24           section, the Secretary shall—

1 (A) consider current and proposed aerial  
2 surveillance technologies;

3 (B) assess the feasibility and advisability  
4 of utilizing such technologies to address border  
5 threats, including an assessment of the tech-  
6 nologies considered best suited to address re-  
7 spective threats, cost-effectiveness, reliability,  
8 and minimal impact on border residential areas;

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

13 (D) consult with the Administrator of the  
14 Federal Aviation Administration regarding safe-  
15 ty, airspace coordination and regulation, and  
16 any other issues necessary for implementation  
17 of the program; and

18 (E) conduct a privacy impact assessment  
19 with the Officer for Civil Rights and Civil Lib-  
20 erties with the Department that includes rec-  
21 ommendations with respect to ensuring the civil  
22 liberties and civil rights of individuals in sur-  
23 rounding communities.

24 (3) ADDITIONAL REQUIREMENTS.—

1 (A) IN GENERAL.—The demonstration pro-  
2 gram developed under this subsection may in-  
3 clude the use of a variety of aerial surveillance  
4 technologies in a variety of topographies and  
5 areas, including populated and unpopulated  
6 areas located on or near an international border  
7 of the United States, in order to evaluate, for  
8 a range of circumstances—

9 (i) the significance of previous experi-  
10 ences with such technologies in border se-  
11 curity or critical infrastructure protection;

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

16 (iii) liability, safety, and privacy con-  
17 cerns relating to the utilization of such  
18 technologies for border security.

19 (4) CONTINUED USE OF AERIAL SURVEILLANCE  
20 TECHNOLOGIES.—The Secretary may continue the  
21 operation of aerial surveillance technologies while de-  
22 veloping the demonstration program and assessing  
23 the effectiveness of the utilization of such tech-  
24 nologies.

1           (5) REPORT TO CONGRESS.—Not later than  
2           180 days after developing the demonstration pro-  
3           gram under this subsection, the Secretary shall sub-  
4           mit to Congress a report regarding such program.  
5           The Secretary shall include in the report a descrip-  
6           tion of such program together with any rec-  
7           ommendations that the Secretary finds appropriate  
8           for implementing or terminating the program.

9           (b) INTEGRATED AND AUTOMATED SURVEILLANCE  
10          DEMONSTRATION PROGRAM.—

11           (1) REQUIREMENT FOR PROGRAM.—Subject to  
12           the availability of appropriations, the Secretary shall  
13           establish a demonstration program to procure addi-  
14           tional unmanned aerial vehicles, cameras, poles, sen-  
15           sors, satellites, radar coverage, and other tech-  
16           nologies necessary to enhance operational control of  
17           the international borders of the United States. Such  
18           program shall be known as the Integrated and Auto-  
19           mated Surveillance Demonstration Program.

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

22                   (A) the technologies utilized in the Inte-  
23                   grated and Automated Surveillance Demonstra-  
24                   tion Program are integrated and function cohe-  
25                   sively in an automated fashion, including the

1 integration of motion sensor alerts and cameras  
2 in a manner where a sensor alert automatically  
3 activates a corresponding camera to pan and  
4 tilt in the direction of the triggered sensor;

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

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

9 (D) surveillance video taken by such cam-  
10 eras is able to be viewed at multiple designated  
11 communications centers;

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

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

18 (G) performance measures are developed  
19 and applied that can evaluate whether the Pro-  
20 gram is providing desired results and increasing  
21 response effectiveness in monitoring and detect-  
22 ing illegal intrusions along the international  
23 borders of the United States;

24 (H) plans are developed under the Pro-  
25 gram to streamline site selection, site valida-



1           tion, and environmental assessment processes to  
2           minimize delays of installing surveillance tech-  
3           nology infrastructure;

4           (I) standards are developed under the Pro-  
5           gram to expand the shared use of existing pri-  
6           vate and governmental structures to install re-  
7           mote surveillance technology infrastructure  
8           where possible; and

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

14          (3) REPORT TO CONGRESS.—Not later than one  
15          year after the initial implementation of the Inte-  
16          grated and Automated Surveillance Demonstration  
17          Program, the Secretary shall submit to Congress a  
18          report regarding the Program. The Secretary shall  
19          include in the report a description of the Program  
20          together with any recommendation that the Sec-  
21          retary finds appropriate for enhancing or termi-  
22          nating the program.

23          (4) EVALUATION OF CONTRACTORS.—

24                  (A) REQUIREMENT FOR STANDARDS.—The  
25          Secretary shall develop appropriate standards

1 to evaluate the performance of any contractor  
2 providing goods or services to carry out the In-  
3 tegrated and Automated Surveillance Dem-  
4 onstration Program.

5 (B) REVIEW BY THE INSPECTOR GEN-  
6 ERAL.—

7 (i) IN GENERAL.—The Inspector Gen-  
8 eral of the Department shall review each  
9 new contract related to the Program that  
10 has a value of more than \$5,000,000 in a  
11 timely manner, to determine whether such  
12 contract fully complies with applicable cost  
13 requirements, performance objectives, pro-  
14 gram milestones, and schedules.

15 (ii) REPORTS.—The Inspector General  
16 shall report the findings of each review  
17 carried out under clause (i) to the Sec-  
18 retary in a timely manner. Not later than  
19 30 days after the date the Secretary re-  
20 ceives a report of findings from the Inspec-  
21 tor General, the Secretary shall submit to  
22 the Committee on Homeland Security and  
23 Governmental Affairs of the Senate and  
24 the Committee on Homeland Security of  
25 the House of Representatives a report of

1           such findings and a description of any the  
2           steps that the Secretary has taken or plans  
3           to take in response to such findings.

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

7 **SEC. 122. BORDER SECURITY SEARCHES OF ELECTRONIC**  
8           **DEVICES.**

9           (a) RULE.—Not later than 180 days after the date  
10          of the enactment of this Act, the Secretary, acting through  
11          the Commissioner of United States Customs and Border  
12          Protection, in coordination with the Assistant Secretary  
13          of Homeland Security for United States Immigration and  
14          Customs Enforcement and the senior official appointed  
15          pursuant to section 222 of the Homeland Security Act of  
16          2002 (6 U.S.C. 142), shall issue a rule with respect to  
17          the scope of and procedural and record keeping require-  
18          ments associated with border security searches of elec-  
19          tronic devices.

20          (b) CONTENT.—The rule issued pursuant to sub-  
21          section (a) shall include the following:

22               (1) A requirement that information collected  
23               during a border security search of an electronic de-  
24               vice that is determined to be commercial informa-  
25               tion, including trade secrets, information subject to

1 attorney-client privilege, information subject to doc-  
2 tor-patient privilege, or information subject to an-  
3 other privilege or protection shall be handled con-  
4 sistent with the laws, rules, and regulations gov-  
5 erning such information and shall not be shared  
6 with a Federal, State, local, tribal, or foreign agency  
7 unless it is determined that such agency has the  
8 mechanisms in place to comply with such laws, rules,  
9 and regulations.

10 (2) A requirement that authorized agents, to  
11 the greatest extent practicable, conduct all border  
12 security searches of electronic devices at a port of  
13 entry in the presence of a supervisor and, where ap-  
14 propriate, in the presence of the individuals whose  
15 electronic devices are subject to such searches.

16 (3) A determination of the number of days that  
17 an electronic device subjected to a border security  
18 search or the information collected from such device  
19 may be retained, unless probable cause exists, that  
20 prohibits retention exceeding the period necessary to  
21 translate, decrypt, or reasonably search such device  
22 or information and that requires such information to  
23 be destroyed if in the custody of an authorized agent  
24 after such number of days.

1           (4) A requirement that if information collected  
2           from an electronic device subjected to a border secu-  
3           rity search is copied, shared, retained, or entered  
4           into an electronic database, the individual from  
5           whose electronic device such information is collected  
6           shall receive written notification of such copying,  
7           sharing, retention, or entry unless such notification  
8           would hinder an investigation involving national se-  
9           curity or would meet another criteria established by  
10          the Secretary in the rule.

11          (5) A requirement that an individual subjected  
12          to a border security search of an electronic device  
13          shall receive a receipt for such device if such device  
14          is removed from the possession of such individual.

15          (6) A requirement that an individual subjected  
16          to a border security search of an electronic device  
17          shall receive notice of how to report abuses or con-  
18          cerns and how to seek redress from the Department  
19          of Homeland Security.

20          (7) A requirement that information on the  
21          rights of individuals with respect to border security  
22          searches and Department of Homeland Security re-  
23          dress procedures shall be posted at all ports of entry  
24          in locations that are likely to be viewed by individ-  
25          uals subject to border security searches.

1           (8) A privacy impact assessment of the rule, as  
2           prepared by the senior official appointed pursuant to  
3           section 222 of the Homeland Security Act of 2002,  
4           that includes recommendations with respect to the  
5           copying, sharing, retention, and entry into an elec-  
6           tronic database of personally identifiable information  
7           collected from electronic devices subjected to a bor-  
8           der security search.

9           (9) A civil liberties impact assessment of the  
10          rule, as prepared by the Officer for Civil Rights and  
11          Civil Liberties of the Department of Homeland Se-  
12          curity.

13          (c) TRAINING AND AUDITING WITH RESPECT TO  
14 SEARCHES.—

15           (1) TRAINING.—The Secretary shall provide  
16           each authorized agent with appropriate training to  
17           conduct border security searches of electronic devices  
18           at ports of entry in accordance with the rule issued  
19           pursuant to subsection (a). The training shall in-  
20           clude instruction on constitutional, privacy, civil  
21           rights, and civil liberties issues related to such  
22           searches.

23           (2) AUDITING.—The Secretary, acting through  
24           the Inspector General of the Department of Home-  
25           land Security, shall develop and annually administer

1 an auditing mechanism to review whether authorized  
2 agents are conducting border security searches of  
3 electronic devices at ports of entry in accordance  
4 with the rule issued pursuant to subsection (a).

5 (d) REPORT.—Not later than 180 days after the ef-  
6 fective date of the rule issued pursuant to subsection (a),  
7 and quarterly thereafter, the Secretary shall submit to the  
8 Committee on Homeland Security of the House of Rep-  
9 resentatives and to the Committee on Homeland Security  
10 and Governmental Affairs of the Senate a report that shall  
11 include the following:

12 (1) A description of the activities of authorized  
13 agents with respect to border security searches of  
14 electronic devices at ports of entry.

15 (2) A description of the manner in which the  
16 Department of Homeland Security has complied  
17 with this Act.

18 (3) The number, by port of entry, of border se-  
19 curity searches of electronic devices at ports of entry  
20 conducted during the reporting period.

21 (4) The number, by port of entry, of instances  
22 during the reporting period that information from  
23 an electronic device subjected to a border security  
24 search was retained, copied, shared, or entered in an  
25 electronic database, including the number of elec-

1       tronic devices retained as the result of a border se-  
2       curity search.

3           (5) The race, ethnicity, national origin, and citi-  
4       zenship of each individual whose electronic device  
5       was subjected to a border security at a port of entry  
6       search during the reporting period, to determine the  
7       existence or absence of racial profiling.

8           (6) The number of instances during the report-  
9       ing period that information collected from an elec-  
10      tronic device subjected to a border security search at  
11      a port of entry was referred to a law enforcement or  
12      intelligence agency for further action, including  
13      whether such information resulted in a prosecution  
14      or conviction.

15      (e) DEFINITIONS.—In this section, the following defi-  
16      nitions apply:

17           (1) AUTHORIZED AGENT.—The term “author-  
18      ized agent” means an agent, officer, or official of  
19      United States Customs and Border Protection,  
20      United States Immigration and Customs Enforce-  
21      ment, or any other office or agency of the Depart-  
22      ment of Homeland Security who is authorized to  
23      conduct a border security search.

24           (2) BORDER SECURITY SEARCH.—The term  
25      “border security search” means a search by an au-



1       thorized agent of persons, baggage, or cargo enter-  
2       ing, departing, or passing through the United States  
3       through any port of entry.

4               (3) **ELECTRONIC DEVICE.**—The term “elec-  
5       tronic device” means an electronic, magnetic, opti-  
6       cal, electrochemical, or other high-speed data proc-  
7       essing device performing logical, arithmetic, or stor-  
8       age functions, such as a computer, a cellular tele-  
9       phone, or any other device used for electronic com-  
10      munication or for storing electronic, digital or ana-  
11      log data, and which includes any data storage facil-  
12      ity or communications facility directly related to or  
13      operating in conjunction with such device.

14 **SEC. 123. BORDER RELIEF GRANT PROGRAM.**

15       (a) **GRANTS AUTHORIZED.**—

16               (1) **IN GENERAL.**—The Attorney General is au-  
17      thorized to award grants to—

18                       (A) eligible law enforcement agencies, or a  
19                       coalition of such agencies, including sheriff’s of-  
20                       fices, police departments and tribal police de-  
21                       partments; and

22                       (B) institutions of higher education that  
23                       provide assistance to law enforcement agencies  
24                       in counties described in subparagraph (A) or

1 (B) of subsection (d)(1) to provide the re-  
2 sources described in subsection (b)(4).

3 (2) COMPETITIVE BASIS.—The Attorney Gen-  
4 eral shall award grants under this section on a com-  
5 petitive basis.

6 (3) PRIORITY.—In awarding grants for the uses  
7 described in paragraphs (1) through (3) of sub-  
8 section (b), the Attorney General shall give priority  
9 to law enforcement agencies:

10 (A) located in a county that is within 100  
11 miles from the United States border with Mex-  
12 ico or Canada; and

13 (B) in compliance with Federal and State  
14 racial profiling laws and guidelines.

15 (4) DURATION.—Grants awarded under this  
16 section shall not exceed two years. Prior awardees  
17 must reapply to be considered for continued funding.

18 (5) PROHIBITION.—The Attorney General shall  
19 not award a grant to any applicant that is under in-  
20 vestigation for violations of federal or state racial  
21 profiling laws or guidelines.

22 (b) USE OF FUNDS.—Grants awarded under this sec-  
23 tion may only be used to provide additional resources for  
24 eligible law enforcement agencies to address drug-related  
25 criminal activity, and for the training and assistance de-

1 scribed in paragraph (4) for organizations described in  
2 subsection (a)(3), including resources to—

3 (1) combat criminal activities along the North-  
4 ern and Southern border by—

5 (A) obtaining, upgrading, or maintain  
6 equipment;

7 (B) hiring additional personnel;

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

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

13 (2) facilitate information sharing and collabora-  
14 tion by—

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

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

20 (C) strengthening partnerships between  
21 Federal, tribal, State, and local law enforce-  
22 ment agencies;

23 (3) enhance jails, community corrections, and  
24 detention operations by—

1 (A) improving the administration and oper-  
2 ations of correction functions related to reduc-  
3 ing and preventing criminal narcotics activity;

4 (B) improving access to intelligence and  
5 collaboration between law enforcement and cor-  
6 rectional system personnel;

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

9 (D) hiring detention, probation, parole,  
10 and other corrections personnel for implementa-  
11 tion of the efforts described in this paragraph;  
12 and

13 (4) provide training and technical assistance,  
14 including training and assistance related to—

15 (A) narcotics-related kidnapping negotia-  
16 tion and rescue tactics;

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

19 (C) the interdiction of narcotics, weapons,  
20 and illegal drug proceeds.

21 (c) APPLICATION.—

22 (1) IN GENERAL.—Each eligible law enforce-  
23 ment agency, or coalition of such agencies, seeking  
24 a grant under this section shall submit an applica-  
25 tion to the Attorney General at such time, in such

1 manner, and accompanied by such information as  
2 the Attorney General may reasonably require.

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

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

7 (B) disclose whether the applicant has ever  
8 been investigated for or convicted of violation of  
9 Federal or State racial profiling laws or guide-  
10 lines; and

11 (C) provide such additional assurances as  
12 the Attorney General determines to be essential  
13 to ensure compliance with the requirements  
14 under this section.

15 (d) MONITORING AND OVERSIGHT.—

16 (1) Each grantee shall submit to the Attorney  
17 General documentation of the use of grant funds, in-  
18 cluding an assessment of their utility in protecting  
19 border community safety, the prevention of smug-  
20 gling activities, and the apprehension of persons in-  
21 volved in violence and organized crime.

22 (2) These reports will determine whether the  
23 grantee uses funds appropriately and should be con-  
24 sidered for a renewal grant.

25 (e) DEFINITIONS.—In this section:

1 (1) ELIGIBLE LAW ENFORCEMENT AGENCY.—

2 The term “eligible law enforcement agency” means  
3 a tribal, State, or local law enforcement agency, in-  
4 cluding a community corrections agency and any  
5 agency that employs prosecutors, probation officers,  
6 or parole officers, which is located or performs du-  
7 ties in—

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

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

12 or

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

17 (2) HIGH INTENSITY DRUG TRAFFICKING  
18 AREA.—The term “High Intensity Drug Trafficking  
19 Area” means any jurisdiction designated as a “High  
20 Intensity Drug Trafficking Area” by the National  
21 Drug Control Program under section 707 of the Of-  
22 fice of National Drug Control Policy Reauthorization  
23 Act of 1998 (21 U.S.C. 1706).

24 (f) ASSESSMENT AND REPORT.—The Attorney Gen-  
25 eral shall submit a bi-annual report assessing the success

1 of the program in combating and reducing drug-traf-  
2 ficking and drug-related criminal activity, cost-effective-  
3 ness of the program, and future value and viability of the  
4 program to—

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

7 (2) the Committee on the Judiciary of the Sen-  
8 ate.

9 (g) AUTHORIZATION OF APPROPRIATIONS.—

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

14 (2) ALLOCATION OF AUTHORIZED FUNDS.—Of  
15 the amounts appropriated pursuant to paragraph  
16 (1)—

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

20 (B) not more than 30 percent may be used  
21 for activities described in paragraphs (3) and  
22 (4) of subsection (b).

23 (3) SUPPLEMENT NOT SUPPLANT.—Amounts  
24 appropriated for grants pursuant to paragraph (1)  
25 shall be used to supplement and not to supplant

1 other tribal, State, and local public funds obligated  
2 for the purposes provided under this section.

3 **SEC. 124. NORTHERN AND SOUTHERN BORDER DRUG PROS-**  
4 **ECUTION INITIATIVE.**

5 (a) REIMBURSEMENT TO STATE AND LOCAL PROS-  
6 ECUTORS FOR PROSECUTING FEDERALLY INITIATED  
7 DRUG CASES.—The Attorney General shall, subject to the  
8 availability of appropriations, reimburse State and county  
9 prosecutors located in States along the Northern or South-  
10 ern border of the United States for prosecuting federally  
11 initiated and referred drug cases.

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

16 **SEC. 125. OPERATION STREAMLINE PROSECUTION INITIA-**  
17 **TIVE.**

18 (a) SUSPENSION OF OPERATION STREAMLINE.—The  
19 Secretary shall suspend the program pending submission  
20 of the report in subsection (b) to the relevant congres-  
21 sional committees in subsection (c) and a revaluation of  
22 the program's future viability.

23 (b) REPORTING REQUIREMENT.—Not later than 180  
24 days after the date of the enactment of this Act, the Sec-  
25 retary of Homeland Security, in coordination with the At-



1 torney General, shall submit a report to the relevant con-  
2 gressional committees set forth in subsection (c) that pro-  
3 vides details about—

4 (1) operational goals and oversight mechanisms  
5 of “Operation Streamline” and similar programs;

6 (2) costs of seeking Federal court prosecution  
7 and jail time for all illegal entrants prior to referral  
8 to immigration court removal proceedings, as com-  
9 pared to initial referral of such entrants to immigra-  
10 tion courts upon apprehension;

11 (3) costs of detentions, prosecutions, and incar-  
12 cerations for immigrant offenses under Operation  
13 Streamline programs over the three years prior to  
14 enactment of this Act;

15 (4) cost estimates for federal resources that  
16 would be necessary to implement Operation Stream-  
17 line effectively in each Border Patrol sector, includ-  
18 ing sufficient judicial resources, Federal Public De-  
19 fenders, U.S. Marshals, detention facilities, United  
20 States Attorneys, and costs already being incurred  
21 in active areas;

22 (5) the impact of Operation Streamline pro-  
23 grams on federal prosecutorial initiatives focused on  
24 curbing border violence, including enhanced use of  
25 investigations and prosecutions for money laun-

1       dering or other financial offenses to disrupt the il-  
2       licit firearms trade, human smuggling, and cross-  
3       border drug and currency trafficking;

4               (6) the impact of Operation Streamline pro-  
5       grams on discretionary prosecutorial decisions;

6               (7) the numbers of Federal prosecutions for  
7       drug trafficking, human smuggling, white-collar,  
8       civil rights, environmental, and other criminal cases  
9       over the three years prior to enactment of this Act  
10      in areas utilizing Operation Streamline initiatives;

11              (8) lengths of imprisonment, names, convic-  
12      tions, and locations of prisons used for those ar-  
13      rested under Operation Streamline programs over  
14      the three years prior to enactment of this Act;

15              (9) Federal convictions obtained under Oper-  
16      ation Streamline including number of non-violent  
17      immigration offenses;

18              (10) comparison of rates of Federal prosecu-  
19      tions and convictions in districts along the southern  
20      border in relation to other districts nationwide; and

21              (11) interviews with criminal defense attorneys  
22      who have represented defendants charged under Op-  
23      eration Streamline, including review of the oppor-  
24      tunity of arrestees to consult with immigration at-

1       torneys prior to conviction, and the ratio of defend-  
2       ants to defense attorneys.

3       (c) RELEVANT CONGRESSIONAL COMMITTEES IN  
4 THIS SECTION.—

5           (1) The Committee on Appropriations of the  
6       Senate.

7           (2) The Committee on the Judiciary of the Sen-  
8       ate.

9           (3) The Committee on Appropriations of the  
10      House of Representatives.

11          (4) The Committee on the Judiciary of the  
12      House of Representatives.

13          (5) The Committee on Homeland Security and  
14      Governmental Affairs of the Senate.

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

17      (d) RE-EVALUATION OF PROGRAM.—The Secretary  
18 of Homeland Security, in coordination with the Attorney  
19 General, shall have 180 additional days, after submission  
20 of the report in subsection (b) to the relevant congres-  
21 sional committees, to re-evaluate the future viability of the  
22 program. At the end of the 180 day period, the Secretary  
23 shall determine whether to continue or terminate the pro-  
24 gram.

1 **SEC. 126. PROJECT GUNRUNNER.**

2 (a) IN GENERAL.—The Attorney General shall dedi-  
3 cate and expand the resources provided for the Project  
4 Gunrunner initiative of the Bureau of Alcohol, Tobacco,  
5 Firearms, and Explosives to identify, investigate, and  
6 prosecute individuals involved in the trafficking of fire-  
7 arms across the international border between the United  
8 States and Mexico.

9 (b) ACTIVITIES.—In carrying out this section, the At-  
10 torney General shall

11 (1) assign additional agents of the Bureau of  
12 Alcohol, Tobacco, Firearms, and Explosives to the  
13 area of the United States adjacent to the inter-  
14 national border between the United States and Mex-  
15 ico to support the expansion of Project Gunrunner  
16 teams;

17 (2) establish not fewer than one Project Gun-  
18 runner team in each State along the international  
19 border between the United States and Mexico; and

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

24 (c) ADDITIONAL STAFF.—The Attorney General may  
25 hire Bureau of Alcohol, Tobacco, Firearms, and Explo-

1 sives agents for, and otherwise expend additional resources  
2 needed to adequately support, Project Gunrunner.

3 (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
4 authorized to be appropriated \$15,000,000 for each of fis-  
5 cal years 2011 and 2015 to carry out this section.

6 **SEC. 127. OPERATION ARMAS CRUZADAS.**

7 (a) IN GENERAL.—In accordance with subsection (b),  
8 the Secretary of Homeland Security shall dedicate and ex-  
9 pand the resources provided for Operation Armas  
10 Cruzadas of United States Immigration and Customs En-  
11 forcement (ICE) to identify, investigate, and prosecute in-  
12 dividuals involved in the trafficking and smuggling of fire-  
13 arms across the international border between the United  
14 States and Mexico.

15 (b) RESOURCES.—To achieve the goal described in  
16 subsection (a), the Secretary of Homeland Security  
17 shall—

18 (1) increase the number of ICE agents assigned  
19 to Operation Armas Cruzadas over the number of  
20 such agents who are so assigned as of the date of  
21 the enactment of this section;

22 (2) increase the number of Border Enforcement  
23 Security Task Force (BEST) teams stationed along  
24 the border over the number of such teams so sta-

1 tioned as of the date of the enactment of this sec-  
2 tion; and

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

7 (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
8 authorized to be appropriated \$15,000,000 for each of fis-  
9 cal years 2011 and 2012 to carry out this section.

10 **SEC. 128. COMBATING HUMAN SMUGGLING.**

11 (a) REQUIREMENT FOR PLAN.—The Secretary shall  
12 develop and implement a plan to improve coordination  
13 among United States Immigration and Customs Enforce-  
14 ment and United States Customs and Border Protection  
15 and any other Federal, State, local, or tribal authorities,  
16 as determined appropriate by the Secretary, to improve  
17 coordination efforts to combat human smuggling.

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

20 (1) the interoperability of databases utilized to  
21 prevent human smuggling;

22 (2) adequate and effective personnel training,  
23 including methods to ascertain crime victims and  
24 vulnerable populations as described in subtitle B of  
25 this title;

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

3           (4) effective utilization of—

4                 (A) visas for victims of trafficking and  
5 other crimes; and

6                 (B) investigatory techniques, equipment,  
7 and procedures that prevent, detect, and pros-  
8 ecute international money laundering and other  
9 operations that are utilized in smuggling;

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

14           (6) other measures that the Secretary considers  
15 appropriate to combat human smuggling.

16         (c) REPORT.—Not later than one year after imple-  
17 menting the plan described in subsection (a), the Sec-  
18 retary shall submit to Congress a report on such plan, in-  
19 cluding any recommendations for legislative action to im-  
20 prove efforts to combating human smuggling.

21 **SEC. 129. REPORT ON DEATHS AND STRATEGY STUDY.**

22         (a) IN GENERAL.—The Commissioner of the United  
23 States Customs and Border Protection shall do the fol-  
24 lowing:

1           (1) COLLECTION OF STATISTICS.—Collect sta-  
2           tistics relating to deaths occurring at the border be-  
3           tween the United States and Mexico, including—

4                   (A) the causes of the deaths; and

5                   (B) the total number of deaths.

6           (2) PUBLICATION OF STATISTICS.—Publish the  
7           statistics collected in paragraph (1) quarterly.

8           (3) REPORT.—Not later than 1 year after the  
9           date of enactment of this Act, and annually there-  
10          after, submit to the Secretary a report that—

11                   (A) analyzes trends with respect to the sta-  
12           tistics collected under subsection (a) during the  
13           preceding year; and

14                   (B) recommends actions to reduce and pre-  
15           vent the deaths described in subsection (a).

16          (b) SOUTHWEST BORDER STRATEGY STUDY & ANAL-  
17          YSIS.—The Secretary shall conduct a study of Southwest  
18          Border Enforcement operations since 1994 and its rela-  
19          tionship to death rates on the US-Mexico border.

20           (1) SUBSTANCE.—The study shall include—

21                   (A) an analysis on the relationship of bor-  
22           der enforcement and deaths on the border;

23                   (B) an analysis of whether physical bar-  
24           riers, technology, and enforcement programs  
25           have contributed to the rate of migrant deaths;



1 (C) an analysis of the effectiveness of geo-  
2 graphical terrain as a natural barrier for entry  
3 into the United States in achieving Department  
4 goals and its role in contributing to rates of mi-  
5 grant deaths; and

6 (D) consultation with nongovernmental or-  
7 ganizations and other community stakeholders  
8 involved in recovering and identifying migrant  
9 deaths; and

10 (E) an assessment of existing protocol re-  
11 lated to reporting, tracking and inter-agency  
12 communications between CBP and local first  
13 responders and consular services.

14 (2) REPORT.—The studies shall be submitted  
15 to—

16 (3) the United States-Mexico Border Enforce-  
17 ment Commission as established in section 130;

18 (4) the Committee on Homeland Security and  
19 Governmental Affairs and the Committee on the Ju-  
20 diciary of the Senate;

21 (5) the Committee on Homeland Security and  
22 the Committee on the Judiciary of the House of  
23 Representatives; and

24 (6) the Committee on Oversight and Govern-  
25 ment Reform of the House of Representatives.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated such sums as are nec-  
3 essary to carry out this section.

4 **SEC. 130. UNITED STATES-MEXICO BORDER ENFORCEMENT**  
5 **COMMISSION.**

6 (a) ESTABLISHMENT OF COMMISSION.—

7 (1) IN GENERAL.—There is established an inde-  
8 pendent commission to be known as the Immigration  
9 and United States-Mexico Border Enforcement  
10 Commission (referred to in this section as the “Com-  
11 mission”).

12 (2) PURPOSES.—The purposes of the Commis-  
13 sion are—

14 (A) to study the overall enforcement strat-  
15 egies, programs and policies of Federal agencies  
16 along the United States-Mexico border, includ-  
17 ing the Department of Homeland Security, Jus-  
18 tice and other relevant agencies;

19 (B) to strengthen relations and collabora-  
20 tion between communities in the border regions  
21 and the Department of Homeland Security,  
22 Justice and other Federal agencies that carry  
23 out such strategies, programs and policies;

24 (C) to ensure the strategies, programs and  
25 policies of Federal agencies along the United

1 States-Mexico border and the agents and em-  
2 ployees charged to implement them protect the  
3 due process and civil and human rights of all  
4 individuals and communities at and near the  
5 border; and

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

9 (3) MEMBERSHIP.—The Commission shall be  
10 composed of 16 voting members, who shall be ap-  
11 pointed as follows:

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

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

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

19 (iii) 2 shall be from the State’s com-  
20 munities of academia, religious leaders,  
21 civic leaders or community leaders.

22 (B) 2 nonvoting members, of whom—

23 (i) 1 shall be appointed by the Sec-  
24 retary; and

1                   (ii) 1 shall be appointed by the Attor-  
2                   ney General.

3           (4) QUALIFICATIONS.—

4                   (A) IN GENERAL.—Members of the Com-  
5                   mission shall be—

6                           (i) individuals with expertise in migra-  
7                           tion, border enforcement and protection,  
8                           civil and human rights, community rela-  
9                           tions, cross-border trade and commerce or  
10                           other pertinent qualifications or experience;  
11                           and

12                           (ii) representative of a broad cross  
13                           section of perspectives from the region  
14                           along the international border between the  
15                           United States and Mexico.

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

20                   (C) NONGOVERNMENTAL APPOINTEES.—  
21                   An individual appointed as a voting member to  
22                   the Commission may not be an officer or em-  
23                   ployee of the Federal Government.

24                   (5) DEADLINE FOR APPOINTMENT.—All mem-  
25                   bers of the Commission shall be appointed not later

1 than 6 months after the enactment of this Act. If  
2 any member of the Commission described in para-  
3 graph (3)(A) is not appointed by such date, the  
4 Commission shall carry out its duties under this sec-  
5 tion without the participation of such member.

6 (6) TERM OF SERVICE.—The term of office for  
7 members shall be for the life of the Commission, or  
8 3 years, whichever is shorter.

9 (7) VACANCIES.—Any vacancy in the Commis-  
10 sion shall not affect its powers, but shall be filled in  
11 the same manner in which the original appointment  
12 was made.

13 (8) MEETINGS.—

14 (A) INITIAL MEETING.—The Commission  
15 shall meet and begin the operations of the Com-  
16 mission as soon as practical.

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

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

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

1           (10) CHAIR AND VICE CHAIR.—The voting  
2 members of the Commission shall elect a Chairman  
3 and Vice Chairman from among its members. The  
4 term of office shall be for the life of the Commission  
5 or by a vote of a minimum of quorum members of  
6 the Commission.

7           (11) STRUCTURE.—The Review Commission  
8 will have a Federal, regional and local review struc-  
9 ture, and will be divided into two subcommittees—  
10 one focused on border technology, equipment and in-  
11 frastructure, and a second to focus on border and  
12 immigration enforcement policies and programs.

13          (b) DUTIES.—The Commission shall review, examine,  
14 and make recommendations regarding immigration and  
15 border enforcement policies, strategies, and programs, in-  
16 cluding recommendations regarding—

17           (1) the compliance of the Department of Home-  
18 land Security and other immigration and border-re-  
19 lated agencies with existing laws and regulations;

20           (2) the extent to which agency policies and  
21 practices protect the civil rights of migrants and  
22 border community residents, including but not lim-  
23 ited to the contexts of engagement, detention, appre-  
24 hension, use of force, definition and use of reason-

1       able suspicion and probable cause, and racial  
2       profiling;

3               (3) the frequency, adequacy and effectiveness of  
4       human and civil rights training of border enforce-  
5       ment personnel and others from Federal agencies  
6       who have contact with the public in the border re-  
7       gions;

8               (4) the complaint process and the extent to  
9       which the process is transparent and accessible to  
10      the public, investigations are opened as necessary  
11      and effectively pursued and complaints are resolved  
12      in a timely and transparent manner;

13              (5) the effectiveness and capacity of agency  
14      oversight, accountability, and management including  
15      prevention and disciplinary policies involving use of  
16      force, abuse, malfeasance, corruption and illegal ac-  
17      tivity,

18              (6) the effect of operations, technology, and en-  
19      forcement infrastructure along such border on the—

20                      (A) environment;

21                      (B) crossborder traffic and commerce;

22                      (C) privacy rights and other civil liberties;

23                      and

24                      (D) the quality of life of border commu-  
25      nities;

1           (7) the extent to which State and local law en-  
2           forcement engage in the enforcement of Federal im-  
3           migration law;

4           (8) the extent of compliance with due process  
5           standards and equal protection of the law for immi-  
6           grants and other individuals at and near the border;

7           (9) whether border policies and agencies are ac-  
8           complishing their stated goals; and

9           (10) any other matters regarding immigration  
10          and border enforcement policies, strategies, and pro-  
11          grams the Commission determines appropriate.

12          (c) POWERS OF COMMISSION.—

13               (1) IN GENERAL.—

14                   (A) HEARINGS AND EVIDENCE.—The  
15                   Commission or, on the authority of the Com-  
16                   mission, any subcommittee or member thereof,  
17                   may, for the purpose of carrying out this title—

18                           (i) hold such hearings and sit and act  
19                           at such times and places, take such testi-  
20                           mony, receive such evidence, administer  
21                           such oaths; and

22                           (ii) subject to paragraph (2)(A), re-  
23                           quire, by subpoena or otherwise, the at-  
24                           tendance and testimony of such witnesses  
25                           and the production of such books, records,



1           correspondence, memoranda, papers, and  
2           documents, as the Commission or such  
3           designated subcommittee or designated  
4           member may determine advisable.

5           (B) SUBPOENAS.—

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

8                         (I) by the agreement of the  
9                         chairman and the vice chairman; or

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

12                 (ii) SIGNATURE.—Subject to clause  
13           (i), subpoenas issued under this subsection  
14           may be issued under the signature of the  
15           chairman or any member designated by a  
16           majority of the Commission, and may be  
17           served by any person designated by the  
18           chairman or by a member designated by a  
19           majority of the Commission.

20                 (iii) ENFORCEMENT.—In the case of  
21           contumacy or failure to obey a subpoena  
22           issued under subsection (a), the United  
23           States district court for the judicial district  
24           in which the subpoenaed person resides, is  
25           served, or may be found, or where the sub-

1 poena is returnable, may issue an order re-  
2 quiring such person to appear at any des-  
3 ignated place to testify or to produce docu-  
4 mentary or other evidence. Any failure to  
5 obey the order of the court may be pun-  
6 ished by the court as a contempt of that  
7 court.

8 (2) RECOMMENDATIONS.—

9 (A) The Commission has the ability to  
10 make recommendations to the Secretary of  
11 Homeland Security on the disposition of cases  
12 and discipline of personnel under the Immigra-  
13 tion and Naturalization Act.

14 (B) Within 180 days of receipt of a Com-  
15 mission report, the Secretary of Homeland Se-  
16 curity shall issue a response, which shall de-  
17 scribe how the Department of Homeland Secu-  
18 rity, the Department of Justice, and the De-  
19 partment of Defense have addressed the rec-  
20 ommendation.

21 (3) CONTRACTING.—The Commission may, to  
22 such extent and in such amounts as are provided in  
23 appropriation Acts, enter into contracts to enable  
24 the Commission to discharge its duties under this  
25 title.

1 (4) INFORMATION FROM FEDERAL AGENCIES.—

2 (A) IN GENERAL.—The Commission is au-  
3 thorized to secure directly from any executive  
4 department, bureau, agency, board, commission,  
5 office, independent establishment, or instrumen-  
6 tality of the Government, information, sugges-  
7 tions, estimates, and statistics for the purposes  
8 of this title. Each department, bureau, agency,  
9 board, commission, office, independent estab-  
10 lishment, or instrumentality shall, to the extent  
11 authorized by law, furnish such information,  
12 suggestions, estimates, and statistics directly to  
13 the Commission, upon request made by the  
14 chairman, the chairman of any subcommittee  
15 created by a majority of the Commission, or  
16 any member designated by a majority of the  
17 Commission.

18 (B) RECEIPT, HANDLING, STORAGE, AND  
19 DISSEMINATION.—Information shall only be re-  
20 ceived, handled, stored, and disseminated by  
21 members of the Commission and its staff con-  
22 sistent with all applicable statutes, regulations,  
23 and Executive orders.

24 (5) ASSISTANCE FROM FEDERAL AGENCIES.—

1           (A) GENERAL SERVICES ADMINISTRA-  
2           TION.—The Administrator of General Services  
3           shall provide to the Commission on a reimburs-  
4           able basis administrative support and other  
5           services for the performance of the Commis-  
6           sion's functions.

7           (B) OTHER DEPARTMENTS AND AGEN-  
8           CIES.—In addition to the assistance prescribed  
9           in paragraph (1), departments and agencies of  
10          the United States may provide to the Commis-  
11          sion such services, funds, facilities, staff, and  
12          other support services as they may determine  
13          advisable and as may be authorized by law.

14          (6) POSTAL SERVICES.—The Commission may  
15          use the United States mails in the same manner and  
16          under the same conditions as departments and agen-  
17          cies of the United States.

18          (d) COMPENSATION.—

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

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

1 (e) TRAINING.—The Commission shall establish a  
2 process and criteria by which Commission members re-  
3 ceive orientation and training on human, constitutional  
4 and civil rights.

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

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

11 (2) recommendations regarding border and im-  
12 migration enforcement policies, strategies, and pro-  
13 grams;

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

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

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

24 (h) SUNSET.—Unless the Commission is re-author-  
25 ized by Congress, the Commission shall terminate on the

1 date that is 60 days after the date the Commission sub-  
2 mits the report described in subsection (f).

3 **SEC. 131. PROHIBITION ON MILITARY INVOLVEMENT IN**  
4 **NONEMERGENCY BORDER ENFORCEMENT.**

5 (a) IN GENERAL.—The Armed Forces of the United  
6 States, including the National Guard, are prohibited from  
7 assisting in Federal, State and local and civilian law en-  
8 forcement of immigration laws.

9 (b) EXCEPTION.—The Armed Forces of the United  
10 States, including the National Guard may assist in Fed-  
11 eral, State and local and civilian law enforcement of immi-  
12 gration laws when the President of the United States has  
13 declared a national emergency or when required for spe-  
14 cific counter-terrorism duties. In the case that, Armed  
15 Forces of the United States, including the National Guard  
16 are required to perform such duties, those duties in sup-  
17 port of Federal, State and local and civilian law enforce-  
18 ment of immigration laws shall be limited to—

19 (1) rear echelon support duties, including  
20 logistical support, construction, and intelligence col-  
21 lection from positions at least 25 miles from the bor-  
22 der;

23 (2) nonarmed operations within 25 miles of the  
24 border, including listening posts and observation  
25 post operations; and

1           (3) armed operations outside 25 miles of the  
2           border, including listening posts and observation  
3           post operations.

4           (c) REPORT.—The Secretary shall submit on an an-  
5           nual basis a report to Congress that details the involve-  
6           ment of the Armed Forces in border security and the en-  
7           forcement of Federal immigration laws.

8           **SEC. 132. DEFINITIONS.**

9           For sections 124 through 128:

10          (a) INDIAN TRIBE.—The term “Indian tribe” has the  
11          meaning given such term in section 4 of the Indian Self-  
12          Determination and Education Assistance Act (25 U.S.C.  
13          450b).

14          (b) SECRETARY CONCERNED.—The term “Secretary  
15          concerned” means the Secretary of Agriculture with re-  
16          spect to land under the jurisdiction of the Secretary of  
17          Agriculture, the Secretary of the Interior with respect to  
18          land under the jurisdiction of the Secretary of the Interior,  
19          the Secretary of Defense with respect to land under the  
20          jurisdiction of the Secretary of Defense or the secretary  
21          of a military department, or the Secretary of Commerce  
22          with respect to land under the jurisdiction of the Secretary  
23          of Commerce.

1 **SEC. 133. BORDER PROTECTION STRATEGY.**

2 (a) IN GENERAL.—Not later than September 30,  
3 2010, the Secretary, the Secretary of the Interior, the Sec-  
4 retary of Agriculture, the Secretary of Defense, and the  
5 Secretary of Commerce, in consultation with tribal, State,  
6 and local officials, shall jointly develop and submit to Con-  
7 gress a border protection strategy for the international  
8 land borders of the United States.

9 (b) ELEMENTS OF THE STRATEGY.—The strategy  
10 developed in accordance with subsection (a) shall include  
11 the following components:

12 (1) A comparative analysis of the levels of oper-  
13 ational control, based on auditable and verifiable  
14 data, achievable through alternative tactical infra-  
15 structure and other security measures. Measures as-  
16 sessed shall include, at a minimum—

17 (A) pedestrian fencing;

18 (B) vehicle barriers, especially in the vicin-  
19 ity of existing or planned roads;

20 (C) additional Border Patrol agents;

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

24 (E) fielding of advanced remote sensing  
25 and information integration technology, includ-  
26 ing the use of unmanned aerial vehicles and



1 other advanced technologies and systems, in-  
2 cluding systems developed and employed, or  
3 under development, for tactical surveillance,  
4 multisource information integration, and re-  
5 sponse analysis in difficult terrain and under  
6 adverse environmental conditions;

7 (F) regional as well as urban and rural  
8 variation in border security methodologies, and  
9 incorporation of natural barriers;

10 (G) enhanced cooperation with, and assist-  
11 ance to, intelligence, security, and law enforce-  
12 ment agencies in Mexico and Canada in detect-  
13 ing, reporting, analyzing, and successfully re-  
14 sponding to unauthorized or unlawful border  
15 crossings from or into Mexico or Canada; and

16 (H) removal of obstructive non-native vege-  
17 tation.

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

21 (A) land acquisition costs, including re-  
22 lated litigation and other costs;

23 (B) construction costs, including both  
24 labor and material costs;

25 (C) maintenance costs over 25 years;

1 (D) contractor costs;

2 (E) management and overhead costs;

3 (F) the impacts on wildlife, wildlife habi-  
4 tat, natural communities, and functioning cross-  
5 border wildlife migration corridors and hydrolog-  
6 y (including water quantity, quality, and nat-  
7 ural hydrologic flows) on Federal, tribal, State,  
8 local, and private lands along the border; and

9 (G) costs of fully mitigating the adverse  
10 impacts to Federal, tribal, State, local, and pri-  
11 vate lands, waters (including water quality,  
12 quantity, and hydrological flows), wildlife, and  
13 wildlife habitats, including, where such action is  
14 possible, the full costs of the replacement or  
15 restoration of severed wildlife migration cor-  
16 ridors with protected corridors of equivalent bi-  
17 ological functionality, as determined by each  
18 Secretary concerned, in consultation with ap-  
19 propriate authorities of tribal, State, and local  
20 governments and appropriate authorities of  
21 Mexico and Canada.

22 (3) A comprehensive compilation of the fiscal  
23 investments in acquiring or managing Federal, trib-  
24 al, State, local, and private lands and waters in the  
25 vicinity of, or ecologically related to, the land bor-

1       ders of the United States that have been acquired or  
2       managed in whole or in part for conservation pur-  
3       poses (including the creation or management of pro-  
4       tected wildlife migration corridors) in—

5               (A) units of the National Park System;

6               (B) National Forest System land;

7               (C) land under the jurisdiction of the Bu-  
8       reau of Land Management;

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

11              (E) other relevant land under the jurisdic-  
12       tion of the Department of the Interior or the  
13       Department of Agriculture;

14              (F) land under the jurisdiction of the De-  
15       partment of Defense or the individual military  
16       department;

17              (G) land under the jurisdiction of the De-  
18       partment of Commerce;

19              (H) tribal lands;

20              (I) State and private lands; and

21              (J) lands within Mexico and Canada.

22              (4) Recommendations for strategic border secu-  
23       rity management based on comparative security as  
24       detailed in paragraph (1), the cost-benefit analysis  
25       as detailed in paragraph (2), as well as protection of

1 investments in public lands specified in paragraph  
2 (3).

3 (c) TRAINING.—

4 (1) REQUIRED TRAINING.—The Secretary, in  
5 cooperation with the Secretary concerned, shall pro-  
6 vide—

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

14 (B) cultural resource training for Customs  
15 and Border Protection agents and other Fed-  
16 eral personnel assigned to plan or oversee the  
17 construction or operation of border security tac-  
18 tical infrastructure or to patrol tribal lands.

19 (2) ADDITIONAL CONSIDERATIONS.—In devel-  
20 oping and providing training under subparagraph  
21 (A) of paragraph (1), the Secretary shall coordinate  
22 with the Secretary concerned and the relevant tribal  
23 government to ensure that such training is appro-  
24 priate to the mission of the relevant agency and is  
25 focused on achieving border security objectives while

1 avoiding or minimizing the adverse impact on nat-  
2 ural and cultural resources resulting from border se-  
3 curity tactical infrastructure, operations, or other  
4 activities.

5 **SEC. 134. ACTIONS TO FURTHER SECURE OPERATIONAL**  
6 **CONTROL OF THE INTERNATIONAL LAND**  
7 **BORDERS OF THE UNITED STATES.**

8 (a) IN GENERAL.—Section 102 of the Illegal Immi-  
9 gration Reform and Immigrant Responsibility Act of 1996  
10 (Public Law 104–208; 8 U.S.C. 1103 note) is amended  
11 to read as follows:

12 **“SEC. 102. IMPROVEMENT OF OPERATIONAL CONTROL OF**  
13 **BORDER.**

14 “(a) IN GENERAL.—The Secretary of Homeland Se-  
15 curity shall take such actions as may be required to gain  
16 operational control of the international land borders of the  
17 United States. Such actions may be taken only in accord-  
18 ance with the border protection strategy developed under  
19 section 124(a).

20 “(b) PRIORITY OF METHODS.—In carrying out the  
21 requirements of subsection (a), the Secretary of Homeland  
22 Security shall, where practicable, give first priority to the  
23 use of remote cameras, sensors, removal of nonnative  
24 vegetation, incorporation of natural barriers, additional

1 manpower, unmanned aerial vehicles, or other low impact  
2 border enforcement techniques.

3 “(c) CONSULTATION.—

4 “(1) IN GENERAL.—In carrying out this sec-  
5 tion, the Secretary of Homeland Security shall con-  
6 sult with the Secretary of the Interior, the Secretary  
7 of Agriculture, the Secretary of Defense, Secretary  
8 of Commerce, States, local governments, tribal gov-  
9 ernments, and private property owners in the United  
10 States to minimize the impact on the environment,  
11 culture, commerce, safety, and quality of life for the  
12 communities and residents located near the sites at  
13 which actions under subsection (a) are proposed to  
14 be taken.

15 “(2) RULE OF CONSTRUCTION.—Nothing in  
16 this subsection may be construed to—

17 “(A) create or negate any right of action  
18 for a State, local government, tribal govern-  
19 ment, or other person or entity affected by this  
20 subsection;

21 “(B) affect the eminent domain laws of the  
22 United States or of any State; or

23 “(C) waive the application of any other ap-  
24 plicable Federal, State, local, or tribal law.

1           “(3) LIMITATION ON REQUIREMENTS.—Not-  
2           withstanding subsection (a), nothing in this section  
3           shall require the Secretary of Homeland Security to  
4           install fencing, physical barriers, roads, lighting,  
5           cameras, or sensors in a particular location along an  
6           international border of the United States if the Sec-  
7           retary determines that the use or placement of such  
8           resources is not the most effective and appropriate  
9           means to achieve and maintain operational control  
10          over the international border at such location, or if  
11          the Secretary determines that the direct and indirect  
12          costs of or the impacts on the environment, culture,  
13          commerce, safety, or quality of life for the commu-  
14          nities and residents along the border likely to result  
15          from the use or placement of such resources out-  
16          weigh the benefits of such use or placement.”.

17          (b) PRECONDITIONS.—In fulfilling the requirements  
18          of section 102 of the Illegal Immigration Reform and Im-  
19          migrant Responsibility Act of 1996, as amended by this  
20          section, the Secretary of Homeland Security shall not com-  
21          mence any construction of fencing, physical barriers,  
22          roads, lighting, cameras, sensors, or other tactical infra-  
23          structure along or in the vicinity of an international land  
24          border of the United States, or award or expend funds  
25          pursuant to any contract or other agreement related there-

1 to, prior to 90 days following the submission to Congress  
2 of the border protection strategy required under section  
3 133(a) of this subtitle.

4 **SEC. 135. BORDERLANDS MONITORING AND MITIGATION.**

5 (a) IN GENERAL.—The Secretary, in consultation  
6 with the Secretary of the Interior, the Secretary of Agri-  
7 culture, the Secretary of Defense, the Secretary of Com-  
8 merce, and the heads of appropriate State and tribal wild-  
9 life agencies and entities, shall develop and implement a  
10 comprehensive monitoring and mitigation plan to address  
11 the ecological and environmental impacts of border secu-  
12 rity infrastructure, measures, and activities along the  
13 international land borders of the United States.

14 (b) REQUIREMENTS.—The mitigation plan required  
15 under subsection (a) shall include, at a minimum, meas-  
16 ures to address and mitigate the full range of ecological  
17 and environmental impacts of border security infrastruc-  
18 ture, measures, and activities, including—

19 (1) preserving, maintaining, and, if necessary,  
20 restoring wildlife migration corridors, key habitats,  
21 and the ecologically functional connectivity between  
22 and among key habitats sufficient to ensure that  
23 species (whether or not designated as rare, pro-  
24 tected, or of concern) remain viable and are able to  
25 adapt to the impacts of climate change;



1           (2) addressing control of invasive species and  
2           implementing measures necessary to avoid the  
3           spread of such species;

4           (3) maintaining hydrological functionality, in-  
5           cluding water quantity and quality;

6           (4) incorporating adaptive management, includ-  
7           ing detailed provisions for long-term monitoring of  
8           the mitigation plan's effectiveness and for necessary  
9           adjustments to such plan based on such monitoring  
10          results; and

11          (5) protection of cultural and historical re-  
12          sources.

13          (c) PREEMPTION.—

14           (1) IN GENERAL.—Notwithstanding any other  
15           provision of law, the Secretary may, subject to para-  
16           graph (2), carry out the mitigation plan required  
17           under subsection (a) on any Federal, State, local,  
18           tribal, or private lands in the vicinity of or eco-  
19           logically related to an international land border of  
20           the United States regardless of which individual,  
21           agency, or entity has ownership of or principal re-  
22           sponsibility for the management of any such lands.

23           (2) CONDITIONS.—Activities carried out pursu-  
24           ant to paragraph (1) in connection with the mitiga-  
25           tion plan shall be carried out in full consultation

1 with, and with the concurrence of, the owner of, or  
2 entity with principal responsibility for, the manage-  
3 ment of the lands described in such paragraph.

4 (d) ADMINISTRATION.—

5 (1) AUTHORIZATION.—The Secretary of Home-  
6 land Security may transfer funds of the Department  
7 of Homeland Security to other Federal agencies  
8 for—

9 (A) expenditure under programs (including  
10 any international programs) of such agencies  
11 that are designed to fund conservation related  
12 activities (directly or through grants or similar  
13 mechanisms) on non-Federal lands, including  
14 land acquisition programs; and

15 (B) mitigation activities on Federal lands  
16 managed by such agencies, if such activities are  
17 required to implement the mitigation plan re-  
18 quired under subsection (a) and if the costs of  
19 such activities are higher than the costs associ-  
20 ated with managing such lands in the absence  
21 of such activities.

22 (2) EXEMPTION FROM REPROGRAMMING RE-  
23 QUIREMENTS.—Funds transferred pursuant to the  
24 authorization under paragraph (1) shall not be sub-  
25 ject to reprogramming requirements.

1           (3) ACCEPTANCE AND USE OF DONATIONS.—

2           The Secretary may accept and use donations for the  
3           purpose of developing and implementing the mitiga-  
4           tion plan required under subsection (a), and may  
5           transfer such funds to any other Federal agency for  
6           expenditure under such plan pursuant to paragraph  
7           (1).

8           (e) AUTHORIZATION OF APPROPRIATIONS.—Notwith-  
9           standing any other provision of law, funds appropriated  
10          to the Department of Homeland Security for border secu-  
11          rity infrastructure and activities may be used by the Sec-  
12          retary to develop and implement the mitigation plan re-  
13          quired under subsection (a).

14       **SEC. 136. BORDER COMMUNITIES LIAISON OFFICE.**

15          (a) ESTABLISHMENT.—The Secretary shall establish,  
16          in consultation with the Office of Civil Rights and Civil  
17          Liberties, a Border Communities Liaison Office in every  
18          border patrol sector at the southern and northern borders.

19          (b) PURPOSE.—The purpose of the Border Commu-  
20          nities Liaison Office shall be—

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

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

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

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

5           (5) to receive assessments on agency perform-  
6 ance from border communities; and

7           (6) to receive complaints regarding agency per-  
8 formance and agent conduct.

9           (c) AUTHORIZATION OF APPROPRIATIONS.—There  
10 are authorized to be appropriated such sums as are nec-  
11 essary to carry out this section.

12 **SEC. 137. OFFICE OF CIVIL RIGHTS AND CIVIL LIBERTIES**  
13 **AND OFFICE OF INSPECTOR GENERAL.**

14           There are authorized to be appropriated such sums  
15 as are necessary for the Department's Office of Inspector  
16 General and the Department's Office of Civil Rights and  
17 Civil Liberties to be comparable to those of other Federal  
18 agencies and commensurate with the size and scope of the  
19 DHS operational budget.

20 **SEC. 138. IMPROVING PORTS OF ENTRY FOR BORDER SECU-**  
21 **RITY AND OTHER PURPOSES.**

22           (a) IN GENERAL.—There are authorized to be appro-  
23 priated to the Administrator of the General Services Ad-  
24 ministration such sums as may be necessary for each of  
25 fiscal years 2011 through 2015 to make improvements to

1 existing ports of entry in the United States to improve  
2 border security and for other purposes.

3 (b) **PRIORITY.**—In making improvements described  
4 in subsection (a), the Administrator of the General Serv-  
5 ices Administration, in coordination with the Commis-  
6 sioner of Customs and Border Protection, shall give pri-  
7 ority to the ports of entry that the Administrator deter-  
8 mines are in most need of repair to improve border secu-  
9 rity and for other purposes in accordance with port of  
10 entry infrastructure assessment studies required in section  
11 603 of title VI, division E, of the Consolidated Appropria-  
12 tions Act of 2008 (Public Law 101–161).

13 **SEC. 139. PORTS OF ENTRY.**

14 (a) **IN GENERAL.**—In order to aid in the enforcement  
15 of Federal customs, immigration, and agriculture laws,  
16 and national security goals the Customs and Border Pro-  
17 tection Commissioner may—

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

21 (2) acquire, by purchase, donation, or exchange,  
22 land or any interest in land determined to be nec-  
23 essary to carry out the Commissioner’s duties under  
24 this section; and

1           (3) construct additional ports of entry along the  
2 southern border and the northern border.

3           (b) CONSULTATION.—

4           (1) LOCATIONS FOR NEW PORTS OF ENTRY.—

5           The Secretary of Homeland Security shall consult  
6 with the Secretary of the Interior, the Secretary of  
7 Agriculture, the Secretary of State, the International  
8 Boundary and Water Commission, the International  
9 Joint Commission, and appropriate representatives  
10 of States, local governments, Indian tribes, and  
11 property owners to—

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

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

19           (2) ACQUISITION OF LEASEHOLD INTEREST.—

20           The Secretary of Homeland Security may acquire a  
21 leasehold interest in real property, and may con-  
22 struct or modify any facility on the leased property,  
23 if the Secretary determines that the acquisition of  
24 such interest, and such construction or modification,

1       are necessary to facilitate the implementation of this  
2       Act.

3               (3) CONSTRUCTION OF BORDER CONTROL FA-  
4       CILITIES.—Subject to the availability of appropria-  
5       tions, the Secretary may construct all-weather roads  
6       and acquire additional vehicle barriers and facilities  
7       necessary to maintain and enhance operational con-  
8       trol of the international borders of the United  
9       States.

10 **SEC. 140. PORTS OF ENTRY INFRASTRUCTURE AND OPER-**  
11 **ATIONS ASSESSMENT STUDY.**

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

23       (b) CONSULTATION.—In preparing the updated stud-  
24       ies required in subsection (a), the Administrator of Gen-  
25       eral Services shall consult with the Director of the Office

1 of Management and Budget, the Secretary, and the Com-  
2 missioner of U.S. Customs and Border Protection.

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

5 (1) identify port of entry infrastructure and  
6 technology improvement projects that would enhance  
7 border security and facilitate the flow of legitimate  
8 travel and commerce if implemented;

9 (2) identify port operations and practices (to in-  
10 clude, but not be limited to training and staffing lev-  
11 els) that would enhance border security and facili-  
12 tate the flow of legitimate individual travel and com-  
13 merce if implemented;

14 (3) establish a process to identify and prioritize  
15 needs at ports for shelter from the elements, Ameri-  
16 cans with Disability Act compliance, and related  
17 issues;

18 (4) include the projects identified in the Na-  
19 tional Land Border Ports of Entry Security Plan re-  
20 quired by section 141; and

21 (5) prioritize the projects described in para-  
22 graphs (1), (2), (3), and (4) based on the ability of  
23 a project to—

24 (A) fulfill immediate security requirements;



1 (B) facilitate trade across the borders of  
2 the United States;

3 (C) facilitate individual travel; and

4 (D) reduce individual and commercial wait  
5 times for pedestrians and vehicles.

6 (d) PROJECT IMPLEMENTATION.—The Commissioner  
7 shall implement the infrastructure, operations, and tech-  
8 nology improvement projects described in subsection (c)  
9 in the order of priority assigned to each project under  
10 paragraph (3) of such subsection.

11 (e) DIVERGENCE FROM PRIORITIES.—The Commis-  
12 sioner may diverge from the priority order if the Commis-  
13 sioner determines that significantly changed cir-  
14 cumstances, such as immediate security needs or changes  
15 in infrastructure in Mexico or Canada, compellingly alter  
16 the need for a project in the United States.

17 **SEC. 141. NATIONAL LAND BORDER PORTS OF ENTRY SECU-**  
18 **RITY PLAN.**

19 (a) IN GENERAL.—Not later than one year after the  
20 date of enactment of this Act, and annually thereafter,  
21 the Secretary, after consultation with representatives of  
22 Federal, State, and local law enforcement agencies and  
23 private entities that are involved in international trade  
24 across Northern or Southern ports of entry, shall submit

1 a National Land Border Ports of Entry Security Plan to  
2 Congress.

3 (b) VULNERABILITY ASSESSMENT.—

4 (1) IN GENERAL.—The plan required in sub-  
5 section (a) shall include a vulnerability assessment  
6 of each port of entry located on the northern border  
7 or the southern border.

8 (2) PORT SECURITY COORDINATORS.—The Sec-  
9 retary may establish 1 or more port security coordi-  
10 nators at each port of entry located on the northern  
11 border or the southern border—

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

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

17 **SEC. 142. PORTS OF ENTRY TECHNOLOGY DEMONSTRATION**  
18 **PROGRAM.**

19 (a) DEMONSTRATION PROGRAM.—The Secretary  
20 shall carry out a technology demonstration program to—

21 (1) test and evaluate new port of entry tech-  
22 nologies;

23 (2) refine port of entry technologies and oper-  
24 ational concepts; and

25 (3) train personnel under realistic conditions.

1 (b) TECHNOLOGY AND FACILITIES.—

2 (1) TECHNOLOGY TESTING.—Under the tech-  
3 nology demonstration program, the Secretary shall  
4 test technologies that enhance port of entry oper-  
5 ations, including operations related to—

6 (A) inspections;

7 (B) communications;

8 (C) port tracking;

9 (D) identification of persons and cargo;

10 (E) sensory devices;

11 (F) personal detection;

12 (G) decision support; and

13 (H) the detection and identification of  
14 weapons, including weapons of mass destruc-  
15 tion.

16 (2) DEVELOPMENT OF FACILITIES.—At a dem-  
17 onstration site selected pursuant to subsection  
18 (c)(2), the Secretary shall develop facilities to pro-  
19 vide appropriate training to law enforcement per-  
20 sonnel who have responsibility for border security,  
21 including—

22 (A) cross-training among agencies;

23 (B) advanced law enforcement training;

24 and

25 (C) equipment orientation.

1 (c) DEMONSTRATION SITES.—

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

5 (2) SELECTION CRITERIA.—To ensure that at  
6 least 1 of the facilities selected as a port of entry  
7 demonstration site for the demonstration program  
8 has the most up-to-date design, contains sufficient  
9 space to conduct the demonstration program, has a  
10 traffic volume low enough to easily incorporate new  
11 technologies without interrupting normal processing  
12 activity, and is able to efficiently carry out dem-  
13 onstration and port of entry operations, at least 1  
14 port of entry selected as a demonstration site shall—

15 (A) have been established not more than  
16 15 years before the date of enactment of this  
17 Act;

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

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

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

7 (e) REPORT.—

8 (1) REQUIREMENT.—Not later than one year  
9 after the date of enactment of this Act, and annually  
10 thereafter, the Secretary shall submit to Congress a  
11 report on the activities carried out at each dem-  
12 onstration site under the technology demonstration  
13 program established under this section.

14 (2) CONTENT.—The report submitted under  
15 paragraph (1) shall include an assessment by the  
16 Secretary of the feasibility of incorporating any dem-  
17 onstrated technology for use throughout United  
18 States Customs and Border Protection.

19 **SEC. 143. REPORTS ON IMPROVING THE EXCHANGE OF IN-**  
20 **FORMATION ON NORTH AMERICAN SECU-**  
21 **RITY.**

22 (a) REQUIREMENT FOR REPORTS.—Not later than  
23 one year after the date of enactment of this Act, and an-  
24 nually thereafter, the Secretary of State, in coordination  
25 with the Secretary and the heads of other appropriate

1 Federal agencies, shall submit to Congress a report on the  
2 status of improvements to information exchange related  
3 to the security of North America.

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

6 (1) SECURITY CLEARANCES AND DOCUMENT IN-  
7 TEGRITY.—The status of the development of com-  
8 mon enrollment, security, technical, and biometric  
9 standards for the issuance, authentication, valida-  
10 tion, and repudiation of secure documents, includ-  
11 ing—

12 (A) technical and biometric standards  
13 based on best practices and consistent with  
14 international standards for the issuance, au-  
15 thentication, validation, and repudiation of trav-  
16 el documents, including—

17 (i) passports;

18 (ii) visas; and

19 (iii) permanent resident cards;

20 (B) working with Canada and Mexico to  
21 encourage foreign governments to enact laws to  
22 combat alien smuggling and trafficking, and  
23 laws to forbid the use and manufacture of  
24 fraudulent travel documents; and

1 (C) applying the necessary pressures and  
2 support to ensure that other countries meet  
3 proper travel document standards and are com-  
4 mitted to travel document verification before  
5 the citizens of such countries travel internation-  
6 ally, including travel by such citizens to the  
7 United States.

8 (2) IMMIGRATION AND VISA MANAGEMENT.—

9 The progress of efforts to share information regard-  
10 ing high-risk individuals who may attempt to enter  
11 Canada, Mexico, or the United States, including the  
12 progress made—

13 (A) in implementing the Statement of Mu-  
14 tual Understanding on Information Sharing,  
15 signed by Canada and the United States in  
16 February 2003; and

17 (B) in identifying trends related to immi-  
18 gration fraud, including asylum and document  
19 fraud, and to analyze such trends.

20 (3) VISA POLICY COORDINATION AND IMMIGRA-  
21 TION SECURITY.—The progress made by Canada,  
22 Mexico, and the United States to enhance the secu-  
23 rity of North America by cooperating on visa policy  
24 and identifying best practices regarding immigration  
25 security, including the progress made—

1 (A) in enhancing consultation among offi-  
2 cials who issue visas at the consulates or em-  
3 bassies of Canada, Mexico, or the United States  
4 throughout the world to share information,  
5 trends, and best practices on visa flows;

6 (B) in comparing the procedures and poli-  
7 cies of Canada and the United States related to  
8 visitor visa processing, including—

- 9 (i) application process;
- 10 (ii) interview policy;
- 11 (iii) general screening procedures;
- 12 (iv) visa validity;
- 13 (v) quality control measures; and
- 14 (vi) access to appeal or review;

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

19 (D) in developing and implementing an im-  
20 migration security strategy for North America  
21 that works toward the development of a com-  
22 mon security perimeter by enhancing technical  
23 assistance for programs and systems to support  
24 advance automated reporting and risk targeting  
25 of international passengers;



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

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

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

15          (5) TERRORIST WATCH LISTS.—The status of  
16          the capacity of the United States to combat ter-  
17          rorism through the coordination of counterterrorism  
18          efforts, including any progress made—

19                 (A) in developing and implementing bilat-  
20                 eral agreements between Canada and the  
21                 United States and between Mexico and the  
22                 United States to govern the sharing of terrorist  
23                 watch list data and to comprehensively enu-  
24                 merate the uses of such data by the govern-  
25                 ments of each country;

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

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

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

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

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

1 (B) in determining the feasibility of formu-  
2 lating a firearms trafficking action plan be-  
3 tween Mexico and the United States;

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

7 (D) in determining the feasibility of formu-  
8 lating a joint threat assessment on organized  
9 crime between Mexico and the United States;

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

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

17 (7) LAW ENFORCEMENT COOPERATION.—The  
18 progress made in enhancing law enforcement co-  
19 operation among Canada, Mexico, and the United  
20 States through enhanced technical assistance for the  
21 development and maintenance of a national database  
22 built upon identified best practices to identify sus-  
23 pected criminals or terrorists, including exploring  
24 the formation of law enforcement teams that include

1 personnel from the United States and Mexico, and  
2 appropriate procedures for such teams.

3 **SEC. 144. SOUTHERN BORDER SECURITY TASK FORCE.**

4 (a) ESTABLISHMENT.—Not later than 180 days after  
5 the date of the enactment of this Act, the Secretary of  
6 Homeland Security shall establish a Southern Border Se-  
7 curity Task Force (in this Act referred to as the “Task  
8 Force”) to coordinate the efforts of Federal, State, and  
9 local border and law enforcement officials and task forces  
10 to protect United States border cities and communities  
11 from violence associated with drug trafficking,  
12 gunrunning, illegal alien smuggling, violence, and kidnap-  
13 ping along and across the international border between the  
14 United States and Mexico.

15 (b) COMPOSITION AND DEPLOYMENT.—

16 (1) COMPOSITION.—The Task Force shall be  
17 comprised of personnel from—

18 (A) United States Customs and Border  
19 Protection;

20 (B) United States Immigration and Cus-  
21 toms Enforcement;

22 (C) the Coast Guard;

23 (D) other Federal agencies, as appropriate;

24 (E) southern border State law enforcement  
25 agencies; and

1           (F) local law enforcement agencies from  
2           affected southern border cities and commu-  
3           nities.

4           (2) DEPLOYMENT.—The Secretary of Home-  
5           land Security shall deploy the Task Force along the  
6           international border between the United States and  
7           Mexico in cities and communities most affected by  
8           violence, as determined by the Secretary.

9           (c) DIRECTOR.—The Secretary of Homeland Security  
10          shall appoint as a Director of the Task Force an individual  
11          who is experienced and knowledgeable in law enforcement  
12          generally and border security issues specifically.

13          (d) REPORT.—Not later than 180 days after the date  
14          of the establishment of the Task Force under subsection  
15          (a) and annually thereafter, the Secretary of Homeland  
16          Security shall submit to the Committee on Homeland Se-  
17          curity of the House of Representatives and the Committee  
18          on Homeland Security and Governmental Affairs of the  
19          Senate a report on the effectiveness of the Task Force  
20          in reducing the drug trafficking, gunrunning, illegal alien  
21          smuggling, violence, and kidnapping along and across the  
22          international border between the United States and Mex-  
23          ico as measured by crime statistics, including violent  
24          deaths, incidents of violence, and drug related arrests.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There is  
2 authorized to be appropriated to the Secretary of Home-  
3 land Security \$10,000,000 for each of fiscal years 2010  
4 through 2014—

5 (1) to establish and operate the Task Force, in-  
6 cluding to provide for operational, administrative,  
7 and technological costs to Federal, State, and local  
8 law enforcement agencies participating in the Task  
9 Force; and

10 (2) to investigate, apprehend, and prosecute in-  
11 dividuals engaged in drug trafficking, gunrunning,  
12 illegal alien smuggling, violence, and kidnapping  
13 along and across the international border between  
14 the United States and Mexico.

15 **SEC. 145. COOPERATION WITH THE GOVERNMENT OF MEX-**  
16 **ICO.**

17 (a) COOPERATION REGARDING BORDER SECUR-  
18 RITY.—The Secretary of State, in cooperation with the  
19 Secretary and representatives of Federal, State, and local  
20 law enforcement agencies that are involved in border secu-  
21 rity and immigration enforcement efforts, shall work with  
22 the appropriate officials from the Government of Mexico  
23 to improve coordination between the United States and  
24 Mexico regarding—

1           (1) improved border security along the inter-  
2           national border between the United States and Mex-  
3           ico;

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

6           (3) the reduction of drug trafficking and smug-  
7           gling between the United States and Mexico;

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

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

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

14          (b) COOPERATION REGARDING EDUCATION ON IMMI-  
15          GRATION LAWS.—The Secretary of State, in cooperation  
16          with other appropriate Federal officials, shall work with  
17          the appropriate officials from the Government of Mexico  
18          to carry out activities to educate citizens and nationals  
19          of Mexico regarding eligibility for status as a non-  
20          immigrant under Federal law to ensure that the citizens  
21          and nationals are not exploited while working in the  
22          United States.

23          (c) COOPERATION REGARDING CIRCULAR MIGRA-  
24          TION.—The Secretary of State, in cooperation with the  
25          Secretary of Labor and other appropriate Federal offi-

1 cials, shall work with the appropriate officials from the  
2 Government of Mexico to improve coordination between  
3 the United States and Mexico to encourage circular migra-  
4 tion, including assisting in the development of economic  
5 opportunities and providing job training for citizens and  
6 nationals in Mexico.

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

- 13 (1) solicit the views of affected communities;  
14 (2) lessen tensions; and  
15 (3) foster greater understanding and stronger  
16 cooperation on this and other important security  
17 issues of mutual concern.

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

23 **SEC. 146. ENHANCED INTERNATIONAL COOPERATION.**

24 (a) IN GENERAL.—The Attorney General, in coopera-  
25 tion with the Secretary of State, shall—





1 lished pursuant to section 211 of the SAFE Port  
2 Act (6 U.S.C. 961), including adding additional per-  
3 sonnel for such programs, along the northern border  
4 and southern border, including the following pro-  
5 grams:

6 (A) The Business Anti-Smuggling Coali-  
7 tion.

8 (B) The Carrier Initiative Program.

9 (C) The Americas Counter Smuggling Ini-  
10 tiative.

11 (D) The Container Security Initiative es-  
12 tablished pursuant to section 205 of the SAFE  
13 Port Act (6 U.S.C. 945).

14 (E) The Free and Secure Trade Initiative.

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

17 (2) SOUTHERN BORDER DEMONSTRATION PRO-  
18 GRAM.—Not later than 180 days after the date of  
19 enactment of this Act, the Commissioner shall imple-  
20 ment, on a demonstration basis, at least 1 Customs–  
21 Trade Partnership Against Terrorism program,  
22 which has been successfully implemented along the  
23 northern border, along the southern border.

24 (b) DEMONSTRATION PROGRAM.—Not later than 180  
25 days after the date of enactment of this Act, the Commis-

1 sioner shall establish a demonstration program to develop  
2 a cooperative trade security system to improve supply  
3 chain security.

4 **SEC. 148. AUTHORIZATION OF APPROPRIATIONS.**

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

9 (b) INTERNATIONAL AGREEMENTS.—Amounts ap-  
10 propriated pursuant to the authorization of appropriations  
11 in subsection (a) may be used for the implementation of  
12 projects described in the Declaration on Embracing Tech-  
13 nology and Cooperation to Promote the Secure and Effi-  
14 cient Flow of People and Commerce across our Shared  
15 Border between the United States and Mexico, agreed to  
16 March 22, 2002, Monterrey, Mexico or the Smart Border  
17 Declaration between the United States and Canada,  
18 agreed to December 12, 2001, Ottawa, Canada that are  
19 consistent with the provisions of this subtitle.

20 **Subtitle B—Detention**

21 **SEC. 151. DEFINITIONS.**

22 In this subtitle:

23 (1) DETENTION.—The term “detention”, in the  
24 context of an immigration-related enforcement activ-  
25 ity, means government custody or any other depriva-

1       tion of an individual’s freedom of movement by gov-  
2       ernment agents.

3               (2) DETENTION FACILITY.—The term “deten-  
4       tion facility” means any Federal, State, local govern-  
5       ment facility, or privately owned and operated facil-  
6       ity that is used to hold immigration detainees for  
7       more than 72 hours.

8               (3) SHORT-TERM DETENTION FACILITY.—The  
9       term “short-term detention facility” means any Fed-  
10      eral, State, local government facility, or privately  
11      owned and operated facility that is used to hold im-  
12      migration detainees for 72 hours or less.

13              (4) IMMIGRATION-RELATED ENFORCEMENT AC-  
14      TIVITY.—The term “immigration-related enforce-  
15      ment activity” means any government action in  
16      which—

17                      (A) an individual suspected of an immigra-  
18                      tion violation is detained for such violation; or

19                      (B) an individual who has been detained  
20                      by government agents is questioned about pos-  
21                      sible immigration violations.

22              (5) SECURE ALTERNATIVES PROGRAMS.—The  
23      term “secure alternatives” means custodial or non-  
24      custodial programs under which aliens are screened  
25      and provided with appearance assistance services or

1 placed in supervision programs as needed to ensure  
2 they appear at all immigration interviews, appoint-  
3 ments and hearings.

4 (6) UNACCOMPANIED ALIEN CHILDREN.—The  
5 term “unaccompanied alien child or children” shall  
6 be defined as found in section 462(g) of the Home-  
7 land Security Act of 2002 (6 U.S.C. 279(g))

8 (7) APPREHENSION.—The term “apprehen-  
9 sion”, in the context of an immigration enforcement  
10 related activity, means government detention, arrest,  
11 or custody, or any significant deprivation of an indi-  
12 viduals freedom of action by government officials or  
13 entities acting under agreement with the Depart-  
14 ment of Homeland Security for suspicion of viola-  
15 tions under the Immigration and Nationality Act (8  
16 U.S.C. 1101 et seq.).

17 (8) SSA.—The term “SSA” means the appro-  
18 priate State or local service agency, including rel-  
19 evant nongovernmental organizations, child welfare  
20 agencies, child protective service agencies, school and  
21 head start administrators, mental health and legal  
22 service providers, and hospitals.

23 **SEC. 152. DETENTION CONDITIONS.**

24 (a) IN GENERAL.—The Secretary shall—

1           (1) ensure that all detainees are treated hu-  
2 manely and granted the protections described in this  
3 section; and

4           (2) comply with the minimum requirements set  
5 forth in this section.

6       (b) QUALITY OF MEDICAL CARE.—

7           (1) RIGHT TO MEDICAL CARE.—Each detainee  
8 has the right to—

9           (A) prompt and adequate medical care, de-  
10 signed to ensure continuity of care, at no cost  
11 to the detainee;

12           (B) care to address medical needs that ex-  
13 isted prior to detention; and

14           (C) primary care, emergency care, chronic  
15 care, prenatal care, dental care, eye care, men-  
16 tal health care, and other medically necessary  
17 specialized care.

18           (2) SCREENINGS AND EXAMINATIONS.—Each  
19 detainee shall receive—

20           (A) a comprehensive medical, dental, and  
21 mental health intake screening, including  
22 screening for sexual abuse or assault by a li-  
23 censed health care professional upon arrival at  
24 a detention facility or short-term detention fa-  
25 cility; and

1 (B) a comprehensive medical and mental  
2 health examination by a licensed health care  
3 professional not later than 14 days after the de-  
4 tainee's arrival at a detention facility.

5 (3) MEDICATIONS AND TREATMENT.—

6 (A) PRESCRIPTIONS.—Each detainee tak-  
7 ing prescribed medications prior to detention  
8 shall be allowed to continue taking such medica-  
9 tions, on schedule and without interruption,  
10 until and unless a licensed health care profes-  
11 sional examines the immigration detainee and  
12 decides upon an alternative course of treatment.  
13 Detainees who arrive at a detention facility  
14 without prescription medications and report  
15 being on such medications shall be evaluated by  
16 a qualified health care professional not later  
17 than 24 hours after arrival. All decisions to dis-  
18 continue or modify a detainee's reported pre-  
19 scription medication regimen shall be conveyed  
20 to the detainee in a language that the detainee  
21 understands and shall be recorded in writing in  
22 the detainee's medical records.

23 (B) PSYCHOTROPIC MEDICATION.—Medi-  
24 cation may not be forcibly administered to a de-  
25 tainee to facilitate transport, removal, or other-

1 wise to control the detainee's behavior. Involun-  
2 tary psychotropic medication may only be used,  
3 to the extent authorized by applicable law, in  
4 emergency situations after a physician has per-  
5 sonally examined the detainee and determined  
6 that—

7 (i) the detainee is imminently dan-  
8 gerous to self or others due to a mental ill-  
9 ness; and

10 (ii) involuntary psychotropic medica-  
11 tion is medically appropriate to treat the  
12 mental illness and necessary to prevent  
13 harm.

14 (C) TREATMENT.—Each detainee shall be  
15 provided medically necessary treatment, includ-  
16 ing prenatal care, prenatal vitamins, hormonal  
17 therapies, and birth control. Female detainees  
18 shall be provided with adequate access to sani-  
19 tary products.

20 (4) MEDICAL CARE DECISIONS.—Any decision  
21 regarding requested medical care for a detainee—

22 (A) shall be made in writing by an on-site  
23 licensed health care professional not later than  
24 72 hours after such medical care is requested;  
25 and



1 (B) shall be immediately communicated to  
2 the detainee.

3 (5) ADMINISTRATIVE APPEALS PROCESS.—

4 (A) IN GENERAL.—Detention facilities, in  
5 conjunction with the Department of Homeland  
6 Security, shall ensure that detainees, medical  
7 providers, and legally appointed advocates have  
8 the opportunity to appeal a denial of requested  
9 health care services by an on-site provider to an  
10 independent appeals board.

11 (B) APPEALS BOARD.—The appeals board  
12 shall include health care professionals in the  
13 fields relevant to the request for medical or  
14 mental health care.

15 (C) DECISION.—Not later than 7 days  
16 after an appeal is received by the appeals board  
17 under this paragraph, or earlier if medically  
18 necessary, the appeals board shall issue a writ-  
19 ten decision regarding the appeal and notify the  
20 detention facility and the appellee of such deci-  
21 sion.

22 (6) REVIEW OF ON-SITE MEDICAL PROVIDER  
23 REQUESTS.—

24 (A) IN GENERAL.—The Secretary shall re-  
25 spond within 72 hours to any request by an on-

1 site medical provider for authorization to pro-  
2 vide medical or mental health care to a de-  
3 tainee.

4 (B) WRITTEN EXPLANATION.—If the Sec-  
5 retary denies or fails to grant a request de-  
6 scribed in subparagraph (A), the Secretary shall  
7 immediately provide a written explanation of  
8 the reasons for such decision to the on-site  
9 medical provider and the detainee.

10 (C) APPEALS BOARD.—The on-site medical  
11 provider and the detainee (or the detainee’s le-  
12 gally appointed advocate) shall be permitted to  
13 appeal the denial of, or failure to grant, a re-  
14 quest described in subparagraph (A) to an inde-  
15 pendent appeals board.

16 (D) DECISION.—Not later than 7 days  
17 after an appeal is received by the appeals board  
18 under this paragraph, or earlier if medically  
19 necessary, the appeals board shall issue a writ-  
20 ten decision regarding the appeal and notify the  
21 on-site medical provider, the detainee, and the  
22 detention facility of such decision.

23 (7) CONDITIONAL RELEASE.—

24 (A) IN GENERAL.—If a licensed health  
25 care professional determines that a detainee has

1 a medical or mental health care condition, is  
2 pregnant, or is a nursing mother, the Secretary  
3 shall consider releasing the detainee on parole,  
4 on bond, or into a secure alternatives program.

5 (B) REEVALUATION.—If a detainee de-  
6 scribed in subparagraph (A) is not initially re-  
7 leased under this paragraph, the Secretary shall  
8 periodically reevaluate the situation of the de-  
9 tainee to determine if such a release would be  
10 appropriate.

11 (C) DISCHARGE PLANNING.—Upon re-  
12 moval or release, all detainees with medical or  
13 mental health conditions and women who are  
14 pregnant, post-natal, and nursing mothers shall  
15 receive discharge planning to ensure continuity  
16 of care for a reasonable period of time.

17 (8) MEDICAL RECORDS.—

18 (A) IN GENERAL.—The Secretary shall  
19 maintain complete, confidential medical records  
20 for every detainee and make such records avail-  
21 able to a detainee or to individuals authorized  
22 by the detainee not later than 72 hours after  
23 receiving a request for such records.

24 (B) TRANSFER OF MEDICAL RECORDS.—  
25 Immediately upon a detainee's transfer between

1 detention facilities, the detainee's complete  
2 medical records, including any transfer sum-  
3 mary, shall be provided to the receiving deten-  
4 tion facility.

5 (c) ACCESS TO TELEPHONES.—Detention facilities  
6 shall provide to detainees reasonable and equitable access  
7 to working telephones, and the ability to contact, through  
8 confidential toll-free numbers, legal representatives, family  
9 courts, child protective services, foreign consulates, the im-  
10 migration courts, Federal and state courts in which the  
11 detainee is, or may become, involved in a legal proceeding,  
12 the Board of Immigration Appeals, nongovernmental orga-  
13 nizations designated by the Secretary, all government im-  
14 migration agencies and adjudicatory bodies including the  
15 Office of the Inspector General of the Department of  
16 Homeland Security and the Office for Civil Rights and  
17 Civil Liberties of the Department of Homeland Security,  
18 in addition to persons and offices contacted for the pur-  
19 pose of obtaining legal representation. Detention facilities  
20 shall provide to detainees access to telephones during facil-  
21 ity working hours and on an emergency basis in accord-  
22 ance with the following:

23 (1) The detention facility shall provide to each  
24 detainee a copy of its rules governing telephone ac-  
25 cess and shall post those rules, together with an ex-

1 planation of how to make calls, within sight of each  
2 telephone available to detainees. These rules shall be  
3 translated into Spanish and two additional lan-  
4 guages spoken by a substantial part of the detainee  
5 population of the detention facility. If a detention fa-  
6 cility has determined that more than 5 percent of its  
7 population is of a certain language group, the docu-  
8 ment should be translated into that language  
9 group's appropriate language. The detention facility  
10 shall also provide oral interpretation and written  
11 translation assistance to detainees in reading any  
12 relevant materials required to request telephone ac-  
13 cess, including oral interpretation assistance for  
14 those who are not literate in English, Spanish, and  
15 other languages spoken by the detainee population  
16 of the facility.

17 (2) The rates charged for telephone calls shall  
18 be reasonable and equitable and shall not signifi-  
19 cantly impair detainees' access to telephones.

20 (3) The detention facility shall not restrict the  
21 number of calls detainees may place to their legal  
22 representatives or consular officials, or to any others  
23 for the purpose of obtaining legal representation, or  
24 limit the duration of those calls by rule or automatic  
25 cut-off, unless necessary for security reasons. The

1 detention facility shall have a reasonable number of  
2 working phones available to detainees, and at a min-  
3 imum one phone per each 25 users.

4 (4) The detention facility shall ensure the pri-  
5 vacy of telephone conversations between detainees  
6 and legal representatives or consular officials, and  
7 calls made for the purpose of obtaining legal rep-  
8 resentation. Means to ensure privacy may include  
9 the use of privacy panels, the placement of phones  
10 in housing pods, and other appropriate measures.

11 (5) Detainees' telephone calls to a court, legal  
12 representative, or consular official, or for the pur-  
13 pose of obtaining legal representation, shall not be  
14 monitored or recorded without a court order and  
15 without prior notification to the detainee.

16 (6) The detention facility shall take and deliver  
17 telephone messages to detainees as promptly as pos-  
18 sible, but no less often than twice a day. Detainees  
19 shall be permitted to make confidential telephone  
20 calls promptly within 8 hours of receipt of messages  
21 left by a court, legal representative, prospective legal  
22 representative, or consular official as soon as reason-  
23 ably possible after the delivery of the message.

24 (d) SEXUAL ABUSE REGULATIONS CONCERNING  
25 CARE AND CUSTODY OF DETAINEES.—

1           (1) IN GENERAL.—Detention facilities shall  
2 take all necessary measures to prevent sexual abuse  
3 of detainees, including sexual assaults, and shall ob-  
4 serve the minimum standards under the Prison Rape  
5 Elimination Act of 2003 (42 U.S.C. 15601 et seq.).

6           (2) MEASURES WHERE ABUSE OCCURS.—Where  
7 sexual abuse occurs, detention facilities shall ensure  
8 that—

9                   (A) prompt and appropriate medical inter-  
10 vention is taken to minimize medical and psy-  
11 chological trauma;

12                   (B) a medical history is taken and a phys-  
13 ical examination is conducted by qualified and  
14 culturally appropriate licensed medical profes-  
15 sionals to determine the extent of physical in-  
16 jury and whether referral to another medical fa-  
17 cility is indicated;

18                   (C) prophylactic treatment and follow-up  
19 for sexually transmitted diseases are provided  
20 within the appropriate time frame;

21                   (D) the case is evaluated by a qualified  
22 and culturally appropriate mental health profes-  
23 sional for crisis intervention counseling and  
24 long-term follow-up;

1 (E) victims are separated from their abus-  
2 ers and are considered for release on parole or  
3 for an alternative to detention program—

4 (i) shall not result in the transfer of  
5 the victim away from counsel absent  
6 exceptional circumstances; and

7 (ii) shall never result in the placement  
8 of the victim in solitary confinement; and

9 (F) any and all medical and mental health  
10 records arising out of a detainee's allegation of  
11 sexual abuse shall be treated as confidential, as  
12 required by the Health Insurance Portability  
13 and Accountability Act of 1996.

14 (3) REPORTING.—A detention facility shall not  
15 subject any person to punishment or any other form  
16 of retaliation for reporting incidents of sexual abuse.

17 (4) INVESTIGATION.—In all cases of alleged  
18 sexual abuse, the detention facility shall conduct a  
19 thorough and timely investigation and shall provide  
20 to the Secretary of Homeland Security a report of  
21 the circumstances and the response of the detention  
22 facility. If the report is not completed within 30  
23 days after alleged sexual abuse comes to the atten-  
24 tion of the detention facility, the detention facility  
25 shall submit to the Secretary of Homeland Security



1 a description of the status of the investigation and  
2 an estimated date of completion 30 days after the  
3 alleged sexual abuse comes to the attention of the  
4 detention facility and every 30 days thereafter until  
5 the report is provided to the Secretary of Homeland  
6 Security. The report required by this subsection  
7 shall include at minimum a determination of wheth-  
8 er the alleged sexual abuse occurred, an in-depth  
9 analysis of the relevant facts including the causes of  
10 any sexual abuse that may have occurred and wheth-  
11 er and to what extent the alleged abuse indicates a  
12 failure of policy, a failure of training, a failure of  
13 oversight, or a failure of management, and a de-  
14 scription of the actions that the facility will take to  
15 prevent the occurrence of similar incidents in the fu-  
16 ture and a plan for monitoring the implementation  
17 of those actions. The detention facility shall provide  
18 to the Secretary of Homeland Security periodic re-  
19 ports monitoring the implementation of the plan in  
20 accordance with the schedule set forth in such plan  
21 as approved by the Secretary of Homeland Security.

22 (e) TRANSFER OF DETAINEES.—

23 (1) PROCEDURES.—In adopting procedures gov-  
24 erning the transfer of individuals detained under the  
25 Immigration and Nationality Act (8 U.S.C. 1226),

1 the Secretary of Homeland Security shall prohibit  
2 transfer of a detainee if such transfer would—

3 (A) negatively affect an existing attorney-  
4 client relationship;

5 (B) negatively affect the detainee's legal  
6 proceedings, including merits or calendar hear-  
7 ings, or a pending application with United  
8 States Citizenship and Immigration Services or  
9 the Executive Office for Immigration Review,  
10 by—

11 (i) limiting the detainee's access to se-  
12 curing legal representation;

13 (ii) limiting the detainee's ability to  
14 prepare a legal defense to removal; or

15 (iii) removing the detainee from the  
16 legal venue of such proceeding;

17 (C) negatively affect the detainee's health  
18 and medical fitness; or

19 (D) to the extent it does not conflict with  
20 clauses (i), (ii), and (iii)—

21 (i) place the detainee in a location  
22 more distant from the detainee's residence  
23 than the original detention location; or

1                   (ii) place the detainee in a location  
2                   more distant from family members than  
3                   the original detention location.

4                   (2) NOTICE.—Unless exigent circumstances dic-  
5                   tate an immediate transfer—

6                   (A) the Secretary of Homeland Security  
7                   shall provide not less than 72 hours notice to  
8                   any detainee prior to transferring the detainee  
9                   to another detention facility;

10                  (B) detainees shall be afforded at least one  
11                  toll-free call and the Secretary of Homeland Se-  
12                  curity shall notify the detainee’s legal represent-  
13                  ative or if unrepresented, an adult family mem-  
14                  ber or other person designated by the detainee,  
15                  of the transfer and the detainee’s new location  
16                  by telephone and in writing;

17                  (C) if removal proceedings are pending, the  
18                  Secretary of Homeland Security shall also  
19                  promptly notify the Immigration Court, Board  
20                  of Immigration Appeals, or the Circuit Court of  
21                  Appeals, as appropriate of the transfer and the  
22                  detainee’s new address; and

23                  (D) the Secretary of Homeland Security  
24                  shall not transfer any detainee who has already

1 requested, and is awaiting, a bond hearing or a  
2 bond redetermination hearing.

3 (3) EXCEPTION.—The Secretary may transfer a  
4 detainee who has an existing attorney-client relation-  
5 ship to an alternate detention facility if such trans-  
6 fer is necessitated by a highly unusual emergency,  
7 such as a natural disaster or comparable emergency.

8 (4) PROTECTING DETAINEES LEGAL RIGHTS.—  
9 If the Secretary determines that a transfer is nec-  
10 essary due to a highly unusual emergency, the Sec-  
11 retary shall ensure that the detainee’s legal rights  
12 are not prejudiced and the existing attorney-client  
13 relationship is not impaired, including evaluating the  
14 location of the detention facility based on its prox-  
15 imity to the detainee’s counsel or nongovernmental  
16 or pro bono organizations providing free or low cost  
17 immigration legal services.

18 (5) RECORD.—In cases in which a detainee is  
19 transferred, the Secretary shall make a record of the  
20 reasons and circumstances necessitating such trans-  
21 fer.

22 **SEC. 153. SPECIFIC DETENTION REQUIREMENTS FOR**  
23 **SHORT-TERM DETENTION FACILITIES.**

24 (a) ACCESS TO BASIC NEEDS, PEOPLE, AND PROP-  
25 erty.—

1           (1) BASIC NEEDS.—All detainees in short-term  
2 detention facilities shall receive—

3                   (A) potable water;

4                   (B) food, if detained for more than 5  
5 hours;

6                   (C) basic toiletries, diapers, sanitary prod-  
7 ucts, and blankets;

8                   (D) access to bathroom facilities; and

9                   (E) access to telephones.

10           (2) PEOPLE.—The Secretary shall provide con-  
11 sular officials with access to detainees held at any  
12 short-term detention facility. Detainees shall be af-  
13 farded reasonable access to a licensed health care  
14 professional. The Secretary shall ensure that nursing  
15 mothers in such facilities have access to their chil-  
16 dren.

17           (3) PROPERTY.—Any property belonging to a  
18 detainee that was confiscated by an official of the  
19 Department of Homeland Security shall be returned  
20 to the detainee upon repatriation or transfer.

21           (b) PROTECTIONS FOR CHILDREN.—

22                   (1) QUALIFIED STAFF.—The Secretary shall  
23 ensure that adequately trained and qualified staff  
24 are stationed at each major port of entry at which,  
25 during the most recent 2 fiscal years, an average of

1 not fewer than 50 unaccompanied alien children per  
2 year have been held by United States Customs and  
3 Border Protection, such staff shall include—

4 (A) independent licensed social workers  
5 dedicated to ensuring the proper temporary  
6 care for the children while in the custody of  
7 United States Customs and Border Protection;  
8 and

9 (B) agents charged primarily with the safe,  
10 swift, and humane transportation of such chil-  
11 dren to the custody of the Office of Refugee Re-  
12 settlement.

13 (2) SPECIFIC RIGHTS.—The social workers de-  
14 scribed in paragraph (1)(A) shall ensure that each  
15 unaccompanied alien child—

16 (A) receives emergency medical care;

17 (B) receives mental health care in case of  
18 trauma;

19 (C) has access to psychosocial health serv-  
20 ices;

21 (D) is provided with—

22 (i) a pillow, linens, and sufficient  
23 blankets to rest at a comfortable tempera-  
24 ture; and

- 1                   (ii) a bed and mattress placed in an  
2                   area specifically designated for residential  
3                   use;  
4                   (E) receives adequate nutrition;  
5                   (F) enjoys a safe and sanitary living envi-  
6                   ronment;  
7                   (G) receives educational materials; and  
8                   (H) has access to at least 3 hours of in-  
9                   door and outdoor recreational programs and ac-  
10                  tivities per day.

11                  (c) CONFIDENTIALITY.—

12                  (1) IN GENERAL.—The Secretary of Health and  
13                  Human Services shall maintain the privacy and con-  
14                  fidentiality of all information gathered in the course  
15                  of providing care, custody, placement, and follow-up  
16                  services to unaccompanied alien children and sepa-  
17                  rated children as defined in section 164(c), con-  
18                  sistent with the best interest of such children, by not  
19                  disclosing such information to other government  
20                  agencies or nonparental third parties, except as pro-  
21                  vided under paragraph (2).

22                  (2) LIMITED DISCLOSURE OF INFORMATION.—

23                  The Secretary may only disclose information regard-  
24                  ing an unaccompanied alien child if—

1 (A) the child authorizes such disclosure  
2 and such is consistent with the child's best in-  
3 terest; or

4 (B) the disclosure is to a duly recognized  
5 law enforcement entity and is necessary to pre-  
6 vent imminent and serious harm to another in-  
7 dividual.

8 (3) WRITTEN RECORD.—All disclosures under  
9 paragraph (2) shall be duly recorded in writing and  
10 placed in the child's file.

11 **SEC. 154. RULEMAKING AND ENFORCEMENT.**

12 (a) REGULATIONS.—

13 (1) NOTICE OF PROPOSED RULEMAKING.—Not  
14 later than 60 days after the date of the enactment  
15 of this Act, the Secretary shall issue a notice of pro-  
16 posed rulemaking regarding the implementation of  
17 this Act.

18 (2) FINAL REGULATIONS.—Not later than 180  
19 days after the date of the enactment of this Act, the  
20 Secretary shall promulgate regulations, which shall  
21 be binding upon all detention facilities and short-  
22 term detention facilities, to ensure that the detention  
23 requirements under sections 142 and 143 are fully  
24 implemented and enforced and that all facilities  
25 comply with the regulations.



1 (b) ENFORCEMENT.—

2 (1) IN GENERAL.—The Secretary shall enforce  
3 all regulations and standards promulgated under  
4 subsection (a). Not later than 180 days after the  
5 date of the enactment of this Act, the Secretary  
6 shall issue guidance to detention facilities and short-  
7 term detention facilities to ensure compliance with  
8 all the detention requirements under sections 142  
9 and 143.

10 (2) INVESTIGATION.—

11 (A) GRIEVANCES.—Each detainee has the  
12 right to file grievances with the staff of deten-  
13 tion facilities, short-term detention facilities,  
14 and the Department of Homeland Security, and  
15 shall be protected from retaliation for exercising  
16 such right.

17 (B) REVIEW.—The Secretary shall—

18 (i) review any grievance or other com-  
19 plaint containing evidence that a detention  
20 facility or short-term detention facility has  
21 violated any requirement under this Act;

22 (ii) issue a determination in writing to  
23 the complainant indicating the Secretary's  
24 findings regarding the alleged violation not

1 later than 30 days after receiving such  
2 complaint;

3 (iii) remedy any violation not later  
4 than 30 days after issuing a determination  
5 under clause (ii); and

6 (iv) promptly advise the complainant  
7 of the remedy referred to in clause (iii).

8 (C) WRITTEN RESPONSE.—If the Sec-  
9 retary issues a written response under subpara-  
10 graph (B)(ii) indicating that no violation has  
11 occurred, such response shall constitute final  
12 agency action for the purposes of section 702 of  
13 title 5, United States Code.

14 (3) PENALTIES.—The Secretary shall enforce  
15 compliance with the detention requirements under  
16 sections 142 and 143 by—

17 (A) imposing financial penalties upon de-  
18 tention facilities and short-term detention facili-  
19 ties that are not in compliance with such re-  
20 quirements; and

21 (B) terminating the contracts of such fa-  
22 cilities if such noncompliance persists.

23 (4) COMPLIANCE OFFICER.—

24 (A) DESIGNATION.—Each detention facil-  
25 ity and short-term detention facility shall des-

1            designate an officer to ensure compliance with the  
2            provisions of this Act.

3            (B) DUTIES.—Each officer designated  
4            under subparagraph (A) shall—

5                    (i) investigate all evidence pertaining  
6                    to a violation of this Act; and

7                    (ii) if a violation is identified, remedy  
8                    the violation within 30 days.

9            (C) JUDICIAL REVIEW.—A detainee may  
10           not seek judicial review of the detention facili-  
11           ty’s determination until after the passage of the  
12           30-day period, except where irreparable harm  
13           would result.

14           (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
15           tion may be construed to preclude review of noncompliance  
16           with this Act under—

17                    (1) section 1331 or 2241 of title 28, United  
18           States Code; or

19                    (2) section 1979 of the Revised Statutes (42  
20           U.S.C. 1983).

21           (d) PUNITIVE DAMAGES.—No individual may seek  
22           punitive damages for any violation under this Act.

23           **SEC. 155. IMMIGRATION DETENTION COMMISSION.**

24           (a) APPOINTMENT.—The Secretary shall appoint and  
25           convene an Immigration Detention Commission (referred

1 to in this section as the “Commission”), which shall be  
2 comprised of—

3           (1) experts from United States Immigration  
4           and Customs Enforcement, United States Customs  
5           and Border Protection, the Office of Refugee Reset-  
6           tlement, and the Division of Immigration Health  
7           Services of the Department of Health and Human  
8           Services; and

9           (2) independent experts, in a number equal to  
10          the number of experts appointed under paragraph  
11          (1), from nongovernmental organizations and inter-  
12          governmental organizations with expertise in work-  
13          ing on behalf of detainees and other vulnerable pop-  
14          ulations.

15          (b) DUTIES.—The Commission shall conduct inde-  
16          pendent investigations, and evaluate and report on the  
17          compliance of detention facilities, short-term detention fa-  
18          cilities, and the Department of Homeland Security with  
19          the detention requirements under sections 142 and 143.

20          (c) BIENNIAL REPORTS.—Not later than 60 days  
21          after the end of the first fiscal year beginning after the  
22          date of the enactment of this Act, and every 2 years there-  
23          after, the Commission shall submit a report containing the  
24          findings of its investigations and evaluations under sub-  
25          section (b) to—

1 (1) the Committee on the Judiciary of the Sen-  
2 ate;

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

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

7 (4) the Committee on Homeland Security of the  
8 House of Representatives.

9 **SEC. 156. DEATH IN CUSTODY REPORTING REQUIREMENT.**

10 (a) IN GENERAL.—If an individual dies while in the  
11 custody of the Department of Homeland Security or en  
12 route to or from such custody—

13 (1) the supervising official at the detention fa-  
14 cility or short-term detention facility at which the  
15 death took place shall immediately notify the Sec-  
16 retary of such death; and

17 (2) not later than 48 hours after receiving a no-  
18 tification under paragraph (1), the Secretary shall  
19 report the death to—

20 (A) the Office of the Inspector General of  
21 the Department of Homeland Security; and

22 (B) the Department of Justice.

23 (b) MORBIDITY AND MORTALITY REVIEW.—The De-  
24 partment of Homeland Security shall complete an inves-  
25 tigation of each detainee death that shall be conducted

1 consistent with established medical practice for morbidity  
2 and mortality reviews and examine both individual and  
3 systemic contributors to the death. The investigation shall  
4 be conducted by a panel of physicians with experience in  
5 morbidity and mortality reviews and shall include the med-  
6 ical staff of the facility or facilities that cared for the de-  
7 ceased detainee, physicians from within the Department,  
8 and independent physicians not affiliated with the Depart-  
9 ment or facility. The panel shall complete a report and  
10 corrective action plan in each case.

11 (c) REPORT TO CONGRESS.—Not later than 60 days  
12 after the end of each fiscal year, the Secretary shall sub-  
13 mit a report containing detailed information regarding all  
14 the deaths of individuals in the custody of the Department  
15 of Homeland Security during the preceding fiscal year to  
16 the committees set forth in section 155(c).

17 (d) CONTENTS.—The reports submitted under sub-  
18 section (a)(2) and subsection (c) shall include—

19 (1) the name, gender, race, ethnicity, and age  
20 of the deceased;

21 (2) the date, time, and location of death;

22 (3) the law enforcement agency that detained,  
23 arrested, or was in the process of arresting the de-  
24 ceased;

1 (4) a description of the circumstances sur-  
2 rounding the death;

3 (5) the status and results of any investigation  
4 that has been conducted into the circumstances sur-  
5 rounding the death; and

6 (6) all medical records of the deceased.

7 **SEC. 157. PROTECTION OF COMMUNITY-BASED ORGANIZA-**  
8 **TIONS, FAITH-BASED ORGANIZATIONS AND**  
9 **OTHER INSTITUTIONS.**

10 (a) IN GENERAL.—The Secretary shall issue regula-  
11 tions requiring officials of the Department of Homeland  
12 Security to—

13 (1) prohibit the apprehension of persons on the  
14 premises or in the immediate vicinity of—

15 (A) a childcare provider;

16 (B) a school;

17 (C) a legal-service provider;

18 (D) a Federal court or State court pro-  
19 ceeding;

20 (E) an administrative proceeding;

21 (F) a funeral home;

22 (G) a cemetery;

23 (H) a college, university, or community  
24 college;

25 (I) a victim services agency;

1 (J) a social service agency;

2 (K) a hospital or emergency care center;

3 (L) a health care clinic;

4 (M) a place of worship;

5 (N) a day care center;

6 (O) a head start center;

7 (P) a school bus stop;

8 (Q) a recreation center;

9 (R) a mental health facility; and

10 (S) a community center; and

11 (2) tightly control investigative operations at  
12 the locations described in paragraph (1).

13 (b) NOTICE TO APPEAR.—The Secretary shall amend  
14 the Notice to Appear form to include a statement that no  
15 immigration enforcement activity was undertaken in any  
16 of the locations described in subsection (a)(1).

17 **SEC. 158. APPREHENSION PROCEDURES FOR IMMIGRA-**  
18 **TION-RELATED ENFORCEMENT ACTIVITIES.**

19 (a) IN GENERAL.—Any immigration-related enforce-  
20 ment activity engaged in by the Department of Homeland  
21 Security or by other entities under agreement with the De-  
22 partment of Homeland Security for alleged violations  
23 under the Immigration and Nationality Act (8 U.S.C.  
24 1101 et seq.), which results in the apprehension of at least



1 1 alien shall be carried out in accordance with the proce-  
2 dures described in this section.

3 (b) APPREHENSION PROCEDURES.—The Department  
4 of Homeland Security and entities under agreement with  
5 the Department of Homeland Security shall—

6 (1) conduct an initial review of each individual  
7 apprehended in an immigration-related enforcement  
8 activity to ascertain whether such individual may be  
9 a United States citizen, a lawful permanent resident  
10 of the United States, or an alien lawfully present in  
11 the United States;

12 (2) if an individual claims to be a United States  
13 citizen, a lawful permanent resident of the United  
14 States, or an alien lawfully present in the United  
15 States, ensure that personnel of the Department of  
16 Homeland Security or personnel under agreement  
17 with the Department of Homeland Security inves-  
18 tigate the individual's claims and considers the indi-  
19 vidual for release under section 160(c);

20 (3) notify SSAs of such immigration-related en-  
21 forcement activity not later than 24 hours before the  
22 commencement of such activity, specifically notifying  
23 the SSAs of—

24 (A) the specific area of the State that will  
25 be affected; and

1 (B) the languages anticipated may be spo-  
2 ken by individuals at the targeted site;

3 (4) if such immigration-related enforcement ac-  
4 tivities cannot be planned more than 24 hours in ad-  
5 vance, notify SSAs in a timely fashion before the ac-  
6 tivity commences or, if this is not possible, imme-  
7 diately following the commencement of such activity;

8 (5) provide SSAs with ongoing confidential ac-  
9 cess to individuals apprehended by the Department  
10 of Homeland Security or any entity operating under  
11 agreement with the Department of Homeland Secu-  
12 rity within six hours of the individual's apprehen-  
13 sion, to assist the Department of Homeland Security  
14 in determining if he or she is a member of a vulner-  
15 able population as described in section 160(a)(2);

16 (6) notify local law enforcement of the specific  
17 area of the State that will be affected by such immi-  
18 gration-related enforcement activity not later than  
19 24 hours before the commencement of such activity  
20 or, if such immigration-related enforcement activity  
21 cannot be planned more than 24 hours in advance,  
22 notify local law enforcement in a timely fashion be-  
23 fore the activity commences, or if this is not pos-  
24 sible, immediately following the commencement of  
25 such activity;

1           (7) provide all Department of Homeland Security  
2           personnel, personnel from entities under agree-  
3           ment with the Department of Homeland Security  
4           participating, SSAs, and medical personnel with de-  
5           tailed instructions on what steps to take if they en-  
6           counter individuals who are a member of a vulner-  
7           able population;

8           (8) ensure that not fewer than one independent  
9           certified interpreter who is fluent in Spanish or any  
10          language other than English spoken by more than 5  
11          percent of the target population of the immigration-  
12          related enforcement activity is available for in-person  
13          translation for every 5 individuals targeted by an  
14          immigration-related enforcement activity, and that  
15          the Department of Homeland Security and entities  
16          operating under agreement with the Department of  
17          Homeland Security utilize appropriate translation  
18          services where interpreters cannot or have not been  
19          retained prior to commencement of an immigration-  
20          related enforcement activity;

21          (9) permit nonprofit legal service providers, or-  
22          ganizations, and attorneys to offer free legal services  
23          to individuals subject to an immigration-related en-  
24          forcement activity at the time of the apprehension of  
25          such individuals; and

1           (10) permit access to a telephone within 6  
2           hours after an individual is detained.

3 **SEC. 159. PROTECTIONS AGAINST UNLAWFUL DETENTIONS**  
4                                   **OF UNITED STATES CITIZENS.**

5           (a) NOTIFICATIONS.—

6           (1) IN GENERAL.—Prior to questioning an indi-  
7           vidual who has been detained on the basis of a sus-  
8           pected immigration violation or has been detained  
9           during an immigration-related enforcement activity,  
10          a Department of Homeland Security or other officer  
11          must first advise the detainee, in the language spo-  
12          ken by the detainee that—

13                           (A) the detainee has the right to be rep-  
14                           resented by counsel at no expense to the Fed-  
15                           eral Government;

16                           (B) the detainee may remain silent; and

17                           (C) any statement made by the detainee  
18                           may be used against the detainee in a subse-  
19                           quent removal or criminal proceeding.

20          (2) EFFECT OF VIOLATION.—Any evidence ob-  
21          tained by an officer from a detainee in violation of  
22          paragraph (1) may not be—

23                           (A) admissible in a removal proceeding  
24                           against the detainee; or

1 (B) used to confirm that the detainee is a  
2 noncitizen for purposes of issuing an immigra-  
3 tion detainer.

4 (b) LEGAL ORIENTATION PROGRAM.—

5 (1) IN GENERAL.—The Attorney General, in  
6 consultation with the Secretary, shall ensure that all  
7 detained aliens who are in, or may be subject to, de-  
8 tention by the Department of Homeland Security,  
9 Immigration and Customs Enforcement, and who  
10 are, or may be, in EOIR Immigration Court pro-  
11 ceedings pursuant to sections 235, 238, 240, and  
12 241 of the Immigration and Nationality Act receive  
13 legal orientation through a program administered  
14 and implemented by the Executive Office of Immi-  
15 gration Review of the Department of Justice.

16 (2) CONTENT OF THE PROGRAM.—The legal  
17 orientation program developed pursuant to this sec-  
18 tion shall be based on the Legal Orientation Pro-  
19 gram carried out by the Executive Office for Immi-  
20 gration Review on the date of the enactment of this  
21 Act.

22 (3) AUTHORIZATION OF APPROPRIATIONS.—  
23 There are authorized to be appropriated such sums  
24 as may be necessary to carry out such legal orienta-  
25 tion program.

1 (c) ACCESS TO COUNSEL.—

2 (1) IN GENERAL.—An individual who is subject  
3 to or detained during an immigration-related en-  
4 forcement activity may be represented by legal coun-  
5 sel at any time.

6 (2) LIST OF FREE LEGAL SERVICES.—The ex-  
7 amining officer shall, in the language spoken by the  
8 individual being detained—

9 (A) provide the individual, prior to trans-  
10 ferring the individual from the point of appre-  
11 hension to the detention facility for an immi-  
12 gration-related violation with a list of available  
13 free or low-cost legal services provided by orga-  
14 nizations and attorneys that are located in the  
15 region in which the arrest occurred; and

16 (B) certify on the Notice to Appear issued  
17 to such individual that such a list was provided  
18 to the individual.

19 (3) AMENDMENT.—Section 236 of the Immi-  
20 gration and Nationality Act (8 U.S.C. 1226) is  
21 amended—

22 (A) by redesignating subsection (e) as sub-  
23 section (l);

1 (B) by redesignating subsections (b), (c),  
2 (d), and (e) as subsections (f), (g), and (h), and  
3 (i) respectively; and

4 (C) by inserting before subsection (l), as  
5 redesignated, the following:

6 “(k) RIGHT OF ACCESS TO COUNSEL.—An individual  
7 may be represented by counsel of the individual’s choosing  
8 while being subject to any immigration-related enforce-  
9 ment activity, including—

10 “(1) interviews;

11 “(2) processing appointments;

12 “(3) booking or intake questions;

13 “(4) hearings; and

14 “(5) any procedure that may result in a conclu-  
15 sion that the detainee will be detained or removed  
16 from the United States.”.

17 (d) REPRESENTATION OF DISABLED ALIENS; AC-  
18 CESS TO COUNSEL.—The Attorney General shall ensure  
19 that any alien with a legal, mental or physical disability  
20 that prevents him from meaningfully representing himself  
21 in proceedings shall have counsel, including counsel ap-  
22 pointed by the Attorney General at the expense of the Gov-  
23 ernment.

24 (e) NOTICE.—

1           (1) AMENDMENT.—Section 236 of such Act, as  
2           amended by subsection (b)(3), is further amended by  
3           inserting before subsection (k), the following:

4           “(j) NOTICE AND CHARGES.—

5                 “(1) IN GENERAL.—Not later than 48 hours  
6           after the commencement of a detention of an indi-  
7           vidual under this section, the Secretary of Homeland  
8           Security shall—

9                 “(A) file a Notice to Appear or other rel-  
10            evant charging document with the immigration  
11            court closest to the location at which the indi-  
12            vidual was apprehended; and

13                “(B) serve such notice or charging docu-  
14            ment on the individual.

15           “(2) CUSTODY DETERMINATION.—Any indi-  
16           vidual who is detained under this section for more  
17           than 48 hours shall be brought before an immigra-  
18           tion judge for a custody determination not later than  
19           72 hours after the commencement of such detention  
20           unless the individual waives the right in accordance  
21           with paragraph (3).

22                “(3) WAIVER.—The requirements of this sub-  
23            section may be waived for not more than 7 days if  
24            the detainee—



1           “(A) enters into a written agreement with  
2           the Department of Homeland Security to waive  
3           such requirements; and

4           “(B) is prima facie eligible for immigration  
5           benefits or demonstrates prima facie eligibility  
6           for a defense against removal.”.

7           (2) APPLICABILITY OF OTHER LAW.—Nothing  
8           in section 236(f) of the Immigration and Nationality  
9           Act, as added by paragraph (1), may be construed  
10          to repeal section 236A of such Act (8 U.S.C.  
11          1226a).

12          (f) ISSUANCE OF DETAINERS.—

13           (1) IN GENERAL.—Section 287(d) is amended  
14          by adding at the end the following: “The alien and  
15          his or her attorney in the criminal proceeding shall  
16          be provided with a written notice of the detainer in-  
17          dicating the intention of the Secretary to assume  
18          custody of the alien upon completion of the pending  
19          criminal proceedings. The written notice shall in-  
20          clude information about the specific basis for issuing  
21          the detainer and instructions about how individuals  
22          can challenge a detainer lodged in error. Where the  
23          state or federal criminal court has granted pre-trial  
24          release, and the alien has complied with conditions  
25          of such release, DHS shall not take custody of the

1 alien until resolution of the pending criminal  
2 charges. The existence of a detainer shall not be  
3 used as a basis for denying pre-trial release. This  
4 section is the sole authority for issuance of immigra-  
5 tion detainers.”.

6 (2) RULEMAKING.—The Secretary shall issue  
7 regulations that require officials of the Department  
8 of Homeland Security to confirm, before issuing a  
9 detainer, the alienage of the individual to be made  
10 subject to such detainer. The regulations shall re-  
11 quire officials of the Department of Homeland Secu-  
12 rity to confirm—

13 (A) the alienage of an individual through  
14 lawfully obtained information, including the  
15 name of the individual; the date of birth of the  
16 individual; or the fingerprints of the individual;  
17 and

18 (B) whether the individual is removable  
19 from the United States.

20 (3) DATA COLLECTION.—The Secretary of  
21 Homeland Security shall collect data regarding de-  
22 tainers issued under section 287(d) of the Immigra-  
23 tion and Nationality Act (8 U.S.C. 1357(d)) includ-  
24 ing—

1 (A) the criminal charge for which the indi-  
2 vidual was arrested and/or convicted;

3 (B) the date the detainer was issued;

4 (C) the basis for issuance of the detainer;

5 (D) the date(s) the detainer was lifted;

6 (E) the date(s) of release of the individual  
7 ordered by a State or Federal criminal court or  
8 other government entity;

9 (F) the date that DHS took custody of the  
10 individual;

11 (G) the race and ethnicity and country of  
12 origin of the individual against whom the de-  
13 tainer was issued;

14 (H) the disposition of criminal case;

15 (I) the ultimate disposition of immigration  
16 case or whether individual was discovered to be  
17 a United States citizen;

18 (J) the grounds of removal if applicable  
19 and any charges brought by the Secretary; and

20 (K) the number of individuals removed  
21 after the Secretary took custody while any  
22 criminal matter was still pending.

23 (4) REPORT ON DETAINERS.—On a yearly basis  
24 beginning one year after the date of the enactment  
25 of this Act, the Secretary of Homeland Security

1 shall report the results of the Secretary's data collec-  
2 tion to the Department of Homeland Security In-  
3 spector General, the Department of Justice Civil  
4 Rights Division, Congress, and the Department of  
5 Homeland Security Office of Civil Rights and Civil  
6 Liberties for purposes of ascertaining the extent to  
7 which detainees are erroneously lodged against indi-  
8 viduals who are United States citizens or not deport-  
9 able, how often individuals remain in detention un-  
10 lawfully past the expiration of the detainer, whether  
11 detainees are lodged disproportionately against cer-  
12 tain ethnicities, whether the lodging of detainees re-  
13 sults in longer incarceration times, and whether de-  
14 tainers are lodged for an investigatory purpose to in-  
15 vestigate criminal activity instead of placing individ-  
16 uals in removal proceedings.

17 (5) AUTHORIZATION OF APPROPRIATIONS.—

18 There are authorized to be appropriated such sums  
19 as may be necessary to carry out this section for  
20 each of fiscal years 2008 through 2012 to carry out  
21 this section.

22 **SEC. 160. BASIC PROTECTIONS FOR VULNERABLE POPU-**  
23 **LATIONS.**

24 (a) VULNERABLE POPULATIONS.—

1           (1) IN GENERAL.—Not later than 48 hours  
2 after the commencement of an immigration-related  
3 enforcement activity, the Department of Homeland  
4 Security shall screen each detainee to determine  
5 whether the detainee is a member of a vulnerable  
6 population.

7           (2) VULNERABLE POPULATIONS.—A member of  
8 a vulnerable population includes any of the fol-  
9 lowing:

10                   (A) Individuals with a nonfrivolous claim  
11 to United States citizenship.

12                   (B) Individuals who have a disability or  
13 have been determined by a medically trained  
14 professional to have medical or mental health  
15 needs.

16                   (C) Pregnant or nursing women.

17                   (D) Individuals who are detained with 1 or  
18 more of their children, and their detained chil-  
19 dren.

20                   (E) Individuals who provide financial,  
21 physical, and other direct support to their  
22 minor children, parents, or other dependents.

23                   (F) Individuals who are at least 65 years  
24 of age.

1 (G) Children (as defined in section  
2 101(b)(1) of the Immigration and Nationality  
3 Act (8 U.S.C. 1101(b)(1))).

4 (H) Victims of abuse, violence, crime, or  
5 human trafficking.

6 (I) Individuals who have been referred for  
7 a credible fear interview, a reasonable fear  
8 interview, or an asylum hearing.

9 (J) Stateless individuals.

10 (K) Individuals who have applied or intend  
11 to apply for asylum, withholding of removal, or  
12 protection under the Convention Against Tor-  
13 ture and Other Cruel, Inhuman or Degrading  
14 Treatment or Punishment, done at New York,  
15 December 10, 1984, and entered into force  
16 June 26, 1987.

17 (L) Individuals who make a prima facie  
18 case for eligibility for relief under any provision  
19 of the Immigration and Nationality Act (8  
20 U.S.C. 1101 et seq.), including returning lawful  
21 permanent residents.

22 (M) Any group designated by the Sec-  
23 retary as a vulnerable population.

24 (b) OPTIONS REGARDING DETENTION DECISIONS  
25 FOR VULNERABLE POPULATIONS.—Section 236 of the

1 Immigration and Nationality Act, as amended by this Act,  
2 is further amended—

3 (1) in subsection (a)—

4 (A) in the matter preceding paragraph (1),  
5 by striking “(c)” and inserting “(g)”; and

6 (B) in paragraph (2)—

7 (i) in subparagraph (A), by striking  
8 “or” at the end;

9 (ii) in subparagraph (B), by striking  
10 “but” and inserting “or”; and

11 (iii) by adding at the end the fol-  
12 lowing:

13 “(C) the individual’s own recognizance;”;

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

16 (D) by inserting after paragraph (2) the  
17 following:

18 “(3) may enroll the alien in a secure alter-  
19 natives program; but”; and

20 (2) by inserting after subsection (a) the fol-  
21 lowing:

22 “(b) DETENTION DECISION STANDARDS.—

23 “(1) CRITERIA TO BE CONSIDERED.—If an  
24 alien is not subject to mandatory detention under  
25 subsection (g) or section 236A, the criteria that the

1 Secretary or the Attorney General shall use to dem-  
2 onstrate that detention of the alien is necessary are  
3 the following:

4 “(A) Whether the alien poses a risk to  
5 public safety, including a risk to national secu-  
6 rity.

7 “(B) Whether—

8 “(i) the alien poses a risk of flight;  
9 and

10 “(ii) there are no conditions of release  
11 that will reasonably ensure that the alien  
12 will appear for immigration proceedings,  
13 including bond or other conditions of re-  
14 lease that reduce the risk of flight.

15 “(2) EXCEPTION FOR MANDATORY DETAIN-  
16 EES.—The requirements described in paragraph (1)  
17 shall not apply if the Secretary of Homeland Secu-  
18 rity demonstrates by substantial evidence that the  
19 alien is subject to detention under subsection (g).

20 “(c) CUSTODY DECISIONS FOR VULNERABLE POPU-  
21 LATIONS.—

22 “(1) IN GENERAL.—Not later than 72 hours  
23 after an individual is detained under this section  
24 (unless the 72-hour requirement is waived in writing  
25 by the individual), an individual who is a member of



1 a vulnerable population (as defined by section  
2 5(a)(3) of the Protect Citizens and Residents from  
3 Unlawful Detention Act) shall be released from the  
4 custody of the Department of Homeland Security  
5 and shall not be subject to electronic monitoring un-  
6 less the Department demonstrates by a preponder-  
7 ance of the evidence that the individual—

8 “(A) is subject to mandatory custody or  
9 mandatory detention under subsection (g) or  
10 section 236A;

11 “(B) poses a risk to the national security  
12 of the United States; or

13 “(C) is a flight risk and the risk cannot be  
14 mitigated through supervision in a non-custo-  
15 dial secure alternatives program.

16 “(2) RELEASE.—An individual shall be released  
17 from custody under this subsection—

18 “(A) on the individual’s own recognizance;

19 “(B) by posting a minimum bond under  
20 subsection (a)(2)(a); or

21 “(C) on parole in accordance with section  
22 212(d)(5)(A).

23 “(d) DECISIONS TO DETAIN ALIENS.—

24 “(1) IN GENERAL.—All detention decisions  
25 under this section shall—

1           “(A) be made in writing by an official of  
2 the Department of Homeland Security;

3           “(B) specify the reasons for the decision, if  
4 the decision is made to continue the detention  
5 without bond or parole; and

6           “(C) be served upon the detainee, in the  
7 language spoken by the alien, not later than 72  
8 hours after—

9                   “(i) the commencement of the deten-  
10 tion; or

11                   “(ii) a positive determination of cred-  
12 ible fear of persecution or reasonable fear  
13 of persecution or torture, if the detainee is  
14 subject to section 235 or 241(a)(5).

15           “(2) REDETERMINATION.—

16                   “(A) REQUEST.—Any alien detained by  
17 the Department of Homeland Security, at any  
18 time after being served with the decision de-  
19 scribed in paragraph (1)(A), may request a re-  
20 determination of such decision by an immigra-  
21 tion judge.

22                   “(B) OTHER DECISIONS.—All custody de-  
23 cisions by the Secretary of Homeland Security  
24 shall be subject to redetermination by an immi-  
25 gration judge.

1           “(C) SAVINGS PROVISION.—Nothing in  
2           this paragraph may be construed to prevent a  
3           detainee from requesting a bond redetermina-  
4           tion.

5           “(e) SECURE ALTERNATIVES PROGRAMS.—

6           “(1) IN GENERAL.—The Secretary of Homeland  
7           Security shall establish secure alternatives programs  
8           to ensure public safety and appearances at immigra-  
9           tion proceedings.

10          “(2) CONTRACT AUTHORITY.—The Secretary  
11          shall contract with nongovernmental organizations to  
12          conduct screening of detainees, provide appearance  
13          assistance services, and operate community-based  
14          supervision programs.

15          “(3) INDIVIDUALIZED DETERMINATIONS.—  
16          When deciding whether to use secure alternatives,  
17          the Secretary shall make an individualized deter-  
18          mination and review each case on a monthly basis.

19          “(4) CUSTODY.—If an individual is not eligible  
20          for release from custody, the Secretary shall con-  
21          sider the alien for placement in secure alternatives  
22          that maintain custody over the alien, including the  
23          use of electronic ankle devices. The Secretary may  
24          use secure alternatives programs to maintain cus-

1        today over any alien detained under this Act except  
2        for aliens detained under section 236A.”.

3    **SEC. 161. REPORT ON PROTECTIONS FOR VULNERABLE**  
4                            **POPULATIONS IMPACTED BY IMMIGRATION**  
5                            **ENFORCEMENT ACTIVITIES.**

6        (a) REQUIREMENT FOR REPORTS.—Not later than 1  
7    year after the date of the enactment of this Act, and annu-  
8    ally thereafter, the Secretary of Homeland Security shall  
9    submit a report to Congress that describes the impact of  
10   immigration-related enforcement activities and fugitive op-  
11   erations on United States citizens, lawful permanent resi-  
12   dents, individuals otherwise lawfully present in the United  
13   States, and, where possible, undocumented aliens present  
14   in the United States.

15        (b) CONTENT.—The report submitted under sub-  
16   section (a) shall include an assessment of—

17            (1) the number of individuals apprehended dur-  
18        ing immigration-related enforcement activities who  
19        are children, United States citizens, lawful perma-  
20        nent residents, lawfully present non-citizens;

21            (2) immigration-related apprehensions at  
22        homes, schools, school bus stops, day care centers,  
23        colleges, places of worship, hospitals, health care  
24        clinics, funeral homes, cemeteries, victim services  
25        agencies, social services agencies, head start centers,

1 recreation centers, legal service providers, courts and  
2 community centers;

3 (3) apprehensions, detentions, and removals of  
4 sole caregivers, primary breadwinners, pregnant and  
5 nursing mothers, and other vulnerable populations  
6 during an immigration-related enforcement activity;

7 (4) the extent to which the Department of  
8 Homeland Security cooperates and coordinates with  
9 State and local law enforcement during immigration-  
10 related enforcement activities;

11 (5) the number of immigration-related enforce-  
12 ment apprehensions resulting from cooperation with  
13 State and local law enforcement;

14 (6) whether apprehended individuals are pro-  
15 vided access to a telephone;

16 (7) how quickly apprehended individuals are  
17 provided access to a telephone;

18 (8) the manner through which family members  
19 of the target population of the immigration-related  
20 enforcement activity are notified of their family  
21 member's detention;

22 (9) the number of parents, guardians, or care-  
23 givers of children removed from the United States;

1           (10) the number of parents, guardians, or care-  
2           givers of children removed from the United States  
3           whose children accompany or join them;

4           (11) the number of parents, guardians, or care-  
5           givers of children removed from the United States  
6           who are removed without their children;

7           (12) the number of occasions on which both  
8           parents of a particular children are removed from  
9           the United States without their children;

10          (13) the length of time the parents, guardians,  
11          or caregivers of children were present in the United  
12          States before their removal from the United States;

13          (14) the number of United States citizen chil-  
14          dren that remain in the United States after the re-  
15          moval of a parent, guardian, or caregiver;

16          (15) the number of individuals apprehended de-  
17          termined to be part of a vulnerable population re-  
18          leased within specified time limit under section  
19          160(c);

20          (16) the length of time between when an indi-  
21          vidual is determined to be part of a vulnerable popu-  
22          lation and that individual is released under section  
23          160(c);

24          (17) the methodology of the Department of  
25          Homeland Security for notifying agents and entities

1 under agreement with the Department of Homeland  
2 Security about standards regarding enforcement ac-  
3 tions concerning vulnerable populations and holding  
4 them accountable when such standards are violated;

5 (18) the number of officials of the Department  
6 of Homeland Security disciplined for violations dur-  
7 ing apprehensions and in making detention deci-  
8 sions;

9 (19) transfers of immigrants during the course  
10 of an immigration-related enforcement activity, in-  
11 cluding—

12 (A) whether the immigrants had access to  
13 legal counsel before being transferred;

14 (B) whether the immigrant received notice  
15 of an impending transfer; and

16 (C) whether the immigrant was evaluated  
17 for vulnerability under section 160(a) before  
18 being transferred;

19 (20) apprehension procedures for immigration-  
20 related enforcement activities, and compliance with  
21 screening procedures for vulnerable populations;

22 (21) recommendations for improving immigra-  
23 tion-related enforcement activities and fugitive oper-  
24 ations by reducing the negative impact on children  
25 and vulnerable populations;

1           (22) secure alternatives programs, including the  
2 types of programs used, number of individuals  
3 placed in these programs, reasons for not placing  
4 immigrants that qualify as a member of a vulnerable  
5 population as defined in section 160(a) in these pro-  
6 grams, percentage of cases in which adjustment of  
7 immigration status is granted, percentage of cases in  
8 which removal is undertaken, and frequency of ab-  
9 sconding; and

10           (23) the number of individuals apprehended  
11 after officials were notified by a health or mental  
12 health professional.

13 **SEC. 162. FAMILY DETENTION AND UNITY PROTECTIONS.**

14           (a) DEFINITION OF FAMILIES WITH CHILDREN.—  
15 Family with Children is defined as any parent or legal  
16 guardian who is apprehended with one or more of their  
17 children.

18           (b) PLACEMENT IN REMOVAL PROCEEDINGS.—Any  
19 family with children sought to be removed by the Depart-  
20 ment of Homeland Security shall be placed in removal pro-  
21 ceedings under section 240 of the Immigration and Na-  
22 tionality Act (8 U.S.C. 1229a).

23           (c) CUSTODY OF FAMILIES WITH CHILDREN.—The  
24 following requirements shall apply with respect to families  
25 with children:



1           (1) Families with children shall not be sepa-  
2           rated or taken into custody except when justified by  
3           exceptional circumstances, or when required by law.

4           (2) In exceptional circumstances where release  
5           or a secure alternatives program is not an option,  
6           the Secretary shall ensure that—

7                   (A) special non-penal, residential, home-  
8                   like facilities that enable families to live as a  
9                   family unit are designed to house families with  
10                  children, taking into account the particular  
11                  needs and vulnerabilities of the children;

12                  (B) procedures and conditions of custody  
13                  are appropriate for families with children;

14                  (C) entities with demonstrated experience  
15                  and expertise in child welfare shall staff and be  
16                  responsible for the management of facilities  
17                  housing families with children;

18                  (D) no restrictions on freedom of move-  
19                  ment; visitations; telephone, internet, library,  
20                  and law library access; possession of personal  
21                  property, including personal clothing; age ap-  
22                  propriate education; or religious practice shall  
23                  apply other than to prevent flight and ensure  
24                  the safety of residents;

1 (E) individualized reviews by an immigra-  
2 tion judge of each family’s well being, custody  
3 status and the need for continued detention are  
4 conducted every 30 days for any family held in  
5 such a facility for more than three weeks, and  
6 all families shall be notified in writing of the  
7 decision and of the individualized reasons for  
8 the decision; and

9 (F) parents retain fundamental parental  
10 rights and responsibilities, including the dis-  
11 cipline of children, in keeping with applicable  
12 State laws.

13 (d) DISCRETIONARY WAIVER AUTHORITY FOR FAMI-  
14 LIES WITH CHILDREN.—Section 235(b)(1)(B)(iii) of the  
15 Immigration and Nationality Act (8 U.S.C.  
16 1225(b)(1)(B)(iii)) is amended—

17 (1) in subclause (IV), by striking “Any alien”  
18 and inserting “Except as provided in subclause (V),  
19 any alien”; and

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

21 “(V) DISCRETIONARY WAIVER  
22 AUTHORITY FOR FAMILIES WITH  
23 CHILDREN.—The Secretary of Home-  
24 land Security may decide for humani-  
25 tarian reasons or significant public

1 benefit not to detain families with  
2 children who are otherwise subject to  
3 mandatory detention under subclause  
4 (IV).”.

5 **SEC. 163. APPREHENSION PROCEDURES FOR FAMILIES**  
6 **AND PARENTS.**

7 The Department of Homeland Security and entities  
8 under agreement with the Department of Homeland Secu-  
9 rity shall—

10 (1) offer confidential psychosocial and mental  
11 health services to children and family members of  
12 such individuals at the time of the apprehension;

13 (2) provide, and advertise in the mainstream  
14 and foreign language media, as well as make avail-  
15 able to the public via the website of the Department  
16 of Homeland Security, a toll-free number through  
17 which family members of persons apprehended as a  
18 result of an immigration enforcement-related activity  
19 may report information relevant to the release of an  
20 apprehended family member as a member of a vul-  
21 nerable population, which will be conveyed to the ap-  
22 propriate Department of Homeland Security official  
23 and applicable SSA, and through which State child  
24 welfare service providers, family members, and legal  
25 counsel representing those who are apprehended may

1 obtain information about the apprehended family  
2 members, including their location, in English and  
3 the majority language of those who are apprehended;

4 (3) if there is reason to believe that an indi-  
5 vidual who is apprehended is a parent, legal guard-  
6 ian, or primary caregiver relative of a dependent  
7 child in the United States, provide this parent, legal  
8 guardian, or primary caregiver relative with—

9 (A) confidential and toll-free telephone  
10 calls to arrange for care of dependent children  
11 within 2 hours of screening;

12 (B) information regarding and contact in-  
13 formation for legal service providers, organiza-  
14 tions, and attorneys that can offer free legal ad-  
15 vice regarding child welfare and custody deter-  
16 minations; and

17 (C) information regarding and contact in-  
18 formation for multiple State and local child wel-  
19 fare providers;

20 (4) ensure that personnel of the Department of  
21 Homeland Security and of entities operating under  
22 agreement with the Department do not—

23 (A) interrogate or screen individuals in the  
24 immediate presence of children;

1 (B) interrogate, arrest, or detain any child  
2 apprehended with his or her parent or parents  
3 without the presence or consent of a parent,  
4 family member, legal guardian, or legal counsel;  
5 or

6 (C) compel or request children to translate  
7 for other individuals who are encountered as  
8 part of an immigration enforcement-related ac-  
9 tivity; and

10 (5) ensure that the best interests of children  
11 are considered in decisions and actions relating to  
12 the detention or release of any individual appre-  
13 hended by the Department of Homeland Security,  
14 and that there be a preference for family unity  
15 whenever appropriate.

16 **SEC. 164. CHILD WELFARE SERVICES FOR CHILDREN SEPA-**  
17 **RATED FROM PARENTS DETAINED OR RE-**  
18 **MOVED FROM THE UNITED STATES FOR IM-**  
19 **MIGRATION VIOLATIONS.**

20 (a) STATE PLAN REQUIREMENTS.—Section 471(a)  
21 of the Social Security Act (42 U.S.C. 671(a)) is amend-  
22 ed—

23 (1) by striking “and” at the end of paragraph  
24 (32);

1           (2) by striking the period at the end of para-  
2 graph (33) and inserting “; and”; and

3           (3) by adding at the end the following:

4           “(34) provides that the State shall—

5                 “(A) create and implement protocols to  
6 provide guidance on how all employees of State  
7 agencies providing services to children under  
8 the State plan should handle cases of separated  
9 children that take into account the best interest  
10 of the child, including consideration of the best  
11 outcome for the family of the child;

12                 “(B) develop and implement memoranda of  
13 understanding or protocols with the Depart-  
14 ment of Homeland Security, Federal, State,  
15 and local government agencies to facilitate com-  
16 munication between the agencies and such a  
17 child, a parent, guardian, or relative referred to  
18 in section 475(9)(B), family members of such a  
19 child, family courts, providers of services to  
20 such a child under the State plan, providers of  
21 long-term care to such a child, and legal rep-  
22 resentatives of such a child or of such a parent,  
23 guardian, or relative;

24                 “(C) develop and implement joint protocols  
25 and training with law enforcement agencies to

1 minimize the trauma, at the time of the apprehension of such a parent, guardian, or relative, to a child who will become a separated child as a result of the apprehension, including protocols and training for apprehension of such a parent, guardian, or relative in the presence of the child and how to best ensure appropriate and prompt care arrangements for the child;

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9 “(D) ensure that the case manager for such a child is capable of communicating in the native language of the child and of the family of the child, or an interpreter who is so capable is provided to communicate with the child and the family of the child at no cost to the child or the family of the child;

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16 “(E) require that, in all decisions and actions relating to the care, custody, and placement of such a child, the best interest of the child, including the best outcome for the family of the child, be considered, and ensure that the decisions are based on clearly articulated factors that do not include predictions or conclusions about immigration status or pending Federal immigration proceedings; and

1           “(F) coordinate with the Department of  
2           Homeland Security, foreign consular officials  
3           and nongovernmental organizations designated  
4           by the Secretary to ensure that parents of such  
5           a child who wish for the child to accompany  
6           them to their country of origin are given ade-  
7           quate time to obtain a passport and visa, collect  
8           all relevant vital documents such as birth cer-  
9           tificate, health and educational records, and  
10          other information.”.

11          (b) ADDITIONAL INFORMATION TO BE INCLUDED IN  
12          CASE PLAN.—Section 475(1) of such Act (42 U.S.C.  
13          675(1)) is amended by adding at the end the following:

14                 “(H) In the case of a separated child with  
15                 respect to whom the State plan requires the  
16                 State to provide services pursuant to section  
17                 471(a)(34)—

18                         “(i) the location of the parent, guard-  
19                         ian, or relative referred to in paragraph  
20                         (9)(B) of this subsection from whom the  
21                         child has been separated; and

22                         “(ii) a written record of each disclo-  
23                         sure to a government agency or person  
24                         (other than such a parent, guardian, or  
25                         relative) of information gathered in the



1 course of tracking the care, custody, and  
2 placement of, and follow-up services pro-  
3 vided to, the child.”.

4 (c) SEPARATED CHILDREN DEFINED.—Section 475  
5 of such Act (42 U.S.C. 675) is amended by adding at the  
6 end the following:

7 “(9) The term ‘separated children’ means indi-  
8 viduals who—

9 “(A) have a parent, legal guardian, or pri-  
10 mary caregiver relative who has been detained  
11 by a Federal, State, or local law enforcement  
12 agency in the enforcement of an immigration  
13 law, or removed from the United States as a re-  
14 sult of a violation of such a law; and

15 “(B) are in foster care under the responsi-  
16 bility of a State.”.

17 **SEC. 165. VULNERABLE POPULATION AND CHILD WELFARE**  
18 **TRAINING FOR IMMIGRATION ENFORCEMENT**  
19 **OFFICERS.**

20 (a) MANDATORY TRAINING.—

21 (1) IN GENERAL.—The Secretary of Homeland  
22 Security, in consultation with the Secretary of  
23 Health and Human Services, and independent child  
24 welfare experts shall mandate live specialized train-  
25 ing of all Federal personnel, relevant personnel em-

1       employed by those States reimbursed for activities re-  
2       lated to care and services for separated children, and  
3       State and local personnel and relevant SSAs, who  
4       come into contact with vulnerable populations as de-  
5       fined at section 160(a) in all relevant legal authori-  
6       ties, policies, and procedures pertaining to the hu-  
7       manitarian and due process protections for these  
8       vulnerable populations.

9               (2) VULNERABLE POPULATIONS.—Such per-  
10       sonnel shall be trained to work with vulnerable popu-  
11       lations, including identifying members of a vulner-  
12       able population, and identifying members of a vul-  
13       nerable population for whom asylum or special juve-  
14       nile immigrant relief may be appropriate.

15              (3) MENTAL HEALTH NEEDS.—Personnel shall  
16       establish collaborative relationships with local mental  
17       health professionals to provide training in prepara-  
18       tion for apprehensions of individuals with mental  
19       health needs.

20              (4) BEST PRACTICES.—Participants will be re-  
21       quired to undertake periodic and continuing training  
22       on best practices and changes in the law, policies,  
23       and procedures for these vulnerable populations.

24              (b) MEMORANDA OF UNDERSTANDING.—The Sec-  
25       retary of Homeland Security shall require all law enforce-

1 ment agencies under agreement with the Department of  
2 Homeland Security to establish Memoranda of Under-  
3 standing with SSAs with respect to the availability of serv-  
4 ices relevant to the humanitarian and due process protec-  
5 tions for vulnerable populations as defined in section  
6 160(a).

7 **SEC. 166. ACCESS FOR PARENTS, LEGAL GUARDIANS, AND,**  
8 **PRIMARY CAREGIVER RELATIVES.**

9 (a) IN GENERAL.—The Secretary of the Department  
10 of Homeland Security shall ensure that all detention facili-  
11 ties operated by or under agreement with the Department  
12 take steps to preserve family unity and ensure that the  
13 best outcome for families can be considered in decisions  
14 and actions relating to the custody of children whose par-  
15 ent, legal guardian, or primary caregiver relative is de-  
16 tained by reason of the parent’s, legal guardian’s, or pri-  
17 mary caregiver relative’s immigration status.

18 (b) TRAINING.—The Secretary of Homeland Secu-  
19 rity, in consultation with the Department of Health and  
20 Human Services, the Department of Justice, the Depart-  
21 ment of State, and independent family law experts, shall  
22 mandate live, specialized training of all personnel at deten-  
23 tion facilities operated by the Department of Homeland  
24 Security or under agreement with the Department of  
25 Homeland Security in all relevant legal authorities, poli-

1 cies and procedures related to ensuring that parents, legal  
2 guardians, and primary caregiver relatives of children  
3 have regular, ongoing and in-person access to children,  
4 State family courts, consular officers and staff of State  
5 social service agencies responsible for administering child  
6 welfare programs. Such personnel shall be required to un-  
7 dertake periodic and continuing training on best practices  
8 and changes in relevant law, policies, and procedures per-  
9 taining to the preservation of family unity.

10 (c) ACCESS TO CHILDREN, LOCAL AND STATE  
11 COURTS, CHILD PROTECTIVE SERVICES, AND CONSULAR  
12 OFFICIALS.—The Secretary of Homeland Security shall  
13 be responsible for—

14 (1) ensuring that detained parents, legal guard-  
15 ians, and primary caregiver relatives of children  
16 under 18 years of age are granted free and confiden-  
17 tial phone calls with their children on a daily basis;

18 (2) ensuring that detained parents, legal guard-  
19 ians, and primary caregiver relatives of children  
20 under 18 years of age are permitted regular contact  
21 visits with their children;

22 (3) ensuring that detained parents, legal guard-  
23 ians, and primary caregiver relatives of children  
24 under 18 years of age are able to participate fully,  
25 and to the extent possible in-person, in all family

1 court proceedings and any other proceeding impact-  
2 ing upon custody of their children;

3 (4) ensuring that detained parents, legal guard-  
4 ians, and primary caregiver relatives of children  
5 under 18 years of age are able to fully participate  
6 in and comply with all family court orders impacting  
7 upon custody of their child;

8 (5) ensuring that detained parents, legal guard-  
9 ians, and primary caregiver relatives of children  
10 under 18 years of age have regular, on-site access to  
11 reunification programming including parenting class-  
12 es;

13 (6) ensuring that detained parents, legal guard-  
14 ians, and primary caregiver relatives of children  
15 under 18 years of age are provided with contact in-  
16 formation for child protective services entities and  
17 family courts in all fifty States, the District of Co-  
18 lumbia, all United States territories, and are granted  
19 free, confidential, and unlimited telephone access to  
20 child protective services entities and family courts to  
21 report child abuse, abandonment or neglect;

22 (7) ensuring that detained parents, legal guard-  
23 ians, and primary caregiver relatives of children  
24 under 18 years of age are granted regular, confiden-  
25 tial and in-person access to consular officials; free,

1 unlimited, confidential phone calls to consular offi-  
2 cials; and access to United States passport applica-  
3 tions for the purpose of obtaining travel documents  
4 for their children;

5 (8) ensuring that detained parents, legal guard-  
6 ians, and primary caregiver relatives of children  
7 under 18 years of age who wish to take their chil-  
8 dren with them to their country of origin are grant-  
9 ed adequate time prior to being removed to obtain  
10 a passport and other relevant travel documents nec-  
11 essary for children to accompany them on their re-  
12 turn to their country of origin or join them in their  
13 country of origin; and

14 (9) facilitating detained parents', legal guard-  
15 ians', and primary caregiver relatives' ability to re-  
16 unify with their children under 18 years of age at  
17 the time of removal to their country of origin, in-  
18 cluding providing information about the detained  
19 parent, legal guardian, or primary caregiver rel-  
20 ative's travel arrangements to State social service  
21 agencies or other caregivers.

1 **SEC. 167. ENHANCED PROTECTIONS FOR VULNERABLE UN-**  
2 **ACCOMPANIED ALIEN CHILDREN AND FE-**  
3 **MALE DETAINEES.**

4 (a) **MANDATORY TRAINING.**—The Secretary of  
5 Homeland Security, in consultation with the Office of Ref-  
6 ugee Resettlement of the Department of Health and  
7 Human Services and independent child welfare experts,  
8 shall mandate live training of all personnel who come into  
9 contact with unaccompanied alien children (as defined in  
10 section 462 of the Homeland Security Act of 2002 (6  
11 U.S.C. 279)) in all relevant legal authorities, policies, and  
12 procedures pertaining to this vulnerable population.

13 (b) **CARE AND TRANSPORTATION.**—Notwithstanding  
14 any other provision of law, the Secretary of Homeland Se-  
15 curity shall ensure that all unaccompanied children who  
16 will undergo any immigration proceedings before the De-  
17 partment of Homeland Security and the Executive Office  
18 for Immigration Review are duly transported and placed  
19 in the care and legal and physical custody of the Office  
20 of Refugee Resettlement within a maximum of 24 hours  
21 of their apprehension absent narrowly defined exceptional  
22 circumstances, including a natural disaster or comparable  
23 emergency beyond the control of the Secretary of Home-  
24 land Security or the Office of Refugee Resettlement. The  
25 Secretary of Homeland Security shall ensure that female  
26 officers are responsible and at all times present during the

1 transfer and transport of female detainees who are in the  
2 custody of the Secretary of Homeland Security.

3 (c) NOTIFICATION.—The Secretary of Homeland Se-  
4 curity shall immediately notify the Office of Refugee Re-  
5 settlement of an unaccompanied alien child in the custody  
6 of the Department of Homeland Security to effectively and  
7 efficiently coordinate the child’s transfer to and placement  
8 with the Office of Refugee Resettlement.

9 (d) NOTICE OF RIGHTS AND ACCESS TO COUNSEL.—  
10 The Secretary of Homeland Security shall ensure that an  
11 independent licensed social worker, as described in section  
12 153(b)(1)(A), provides all unaccompanied alien children  
13 upon apprehension with both a video orientation and oral  
14 and written notice of their rights under the Immigration  
15 and Nationality Act including their rights to relief from  
16 removal and their rights to confer with counsel (as guar-  
17 anteed under section 292 of such Act), family, or friends  
18 while in the Department of Homeland Security’s tem-  
19 porary custody and relevant complaint mechanisms to re-  
20 port any abuse or misconduct they may have experienced.  
21 The Secretary of Homeland Security shall ensure that the  
22 video orientation and written notice of rights is available  
23 in English and in the five most common native languages  
24 spoken by the unaccompanied children held in custody at  
25 that location during the preceding fiscal year, and that



1 the oral notice of rights is available in English and in the  
2 most common native language spoken by the unaccom-  
3 panied children held in custody at that location during the  
4 preceding fiscal year.

5 (e) CONFIDENTIALITY.—The Secretary of Health  
6 and Human Services shall maintain the privacy and con-  
7 fidentiality of all information gathered in the course of  
8 providing care, custody, placement and follow-up services  
9 to unaccompanied alien children, consistent with the best  
10 interest of the unaccompanied alien child, by not dis-  
11 closing such information to other government agencies or  
12 nonparental third parties. The Secretary may share infor-  
13 mation when authorized to do so by the child and when  
14 consistent with the child’s best interest. The Secretary  
15 may provide information to a duly recognized law enforce-  
16 ment entity, if such disclosure would prevent imminent  
17 and serious harm to another individual. All disclosures  
18 shall be duly recorded in writing and placed in the child’s  
19 files.

20 (f) OTHER POLICIES AND PROCEDURES.—The Sec-  
21 retary shall further adopt fundamental child protection  
22 policies and procedures—

23 (1) for reliable age-determinations of children  
24 which exclude the use of fallible forensic testing of

1 children's bone and teeth developed in consultation  
2 with medical and child welfare experts;

3 (2) to ensure the safe and secure repatriation  
4 and reintegration of unaccompanied alien children to  
5 their home countries through specialized programs  
6 developed in close consultation with the Secretary of  
7 State, the Office of the Refugee Resettlement and  
8 reputable independent child welfare experts includ-  
9 ing placement of children with their families or non-  
10 governmental agencies to provide food, shelter and  
11 vocational training and microfinance opportunities;

12 (3) to utilize all legal authorities to defer the  
13 child's removal if the child faces a risk of life-threat-  
14 ening harm upon return including due to the child's  
15 mental health or medical condition; and

16 (4) to ensure that unaccompanied alien children  
17 (as defined in section 462 of the Homeland Security  
18 Act of 2002 (6 U.S.C. 279)) are physically sepa-  
19 rated from any adult who is not a family member,  
20 guardian, or caregiver and are separated by sight  
21 and sound from immigration detainees and inmates  
22 with criminal convictions, pretrial inmates facing  
23 criminal prosecution, children who have been adju-  
24 dicated delinquents or convicted of adult offenses or  
25 are pending delinquency or criminal proceedings,

1 and those inmates exhibiting violent behavior while  
2 in detention as is consistent with the Juvenile Jus-  
3 tice and Delinquency Prevention Act of 1974 (42  
4 U.S.C. 5601 et seq.).

5 **SEC. 168. PREVENTING UNNECESSARY DETENTION OF REF-**  
6 **UGEES.**

7 Section 209 of the Immigration and Nationality Act  
8 (8 U.S.C. 1159) is amended—

9 (1) in subsection (a)(1) by striking “return or  
10 be returned to the Department of Homeland Secu-  
11 rity for inspection and examination for admission”  
12 and also “in accordance with the provisions of sec-  
13 tions 235, 240, and 241” and inserting “be eligible  
14 for adjustment of status”;

15 (2) in subsection (a)(2) by striking “upon in-  
16 spection and examination”; and

17 (3) in subsection (c) by adding at the end “An  
18 application for adjustment under this section may be  
19 filed up to 3 months before the date the applicant  
20 would first otherwise be eligible for adjustment  
21 under this section.”.

22 **SEC. 169. REPORTS ON PROTECTIONS FROM UNLAWFUL**  
23 **DETENTION.**

24 (a) **REPORT REQUIREMENT.**—Not later than 1 year  
25 after the date of the enactment of this Act, and annually

1 thereafter, the Secretary shall prepare and submit a report  
2 to Congress that describes the impact of worksite and fu-  
3 gitive operations on United States citizens, lawful perma-  
4 nent residents, and individuals otherwise lawfully present  
5 in the United States.

6 (b) CONTENT.—The report submitted under sub-  
7 section (a) shall include an assessment of—

8 (1)(A) United States Immigration and Customs  
9 Enforcement protocol for humanitarian screening  
10 during a worksite enforcement action;

11 (B) the compliance with such protocol; and

12 (C) the nature of any related protocol in small-  
13 er worksite or nonworksite actions;

14 (2) collateral arrests under the National Fugitive  
15 Operations Program and worksite enforcement  
16 initiatives;

17 (3) whether individuals detained in an immigra-  
18 tion-related enforcement activity are notified of their  
19 right to counsel;

20 (4) whether United States Immigration and  
21 Customs Enforcement agents—

22 (A) use excessive force in executing war-  
23 rants, arrests, detentions, or other immigration-  
24 enforcement activities;

1 (B) enter private homes or residences with-  
2 out a search warrant or consent; or

3 (C) display and use weapons during immi-  
4 gration-enforcement activities or interrogations;

5 (5) whether United States Immigration and  
6 Customs Enforcement agents identify themselves  
7 when entering a location for enforcement purposes;

8 (6) the conditions under which individuals are  
9 confined;

10 (7) whether detainees are notified of their  
11 rights in a language they can understand;

12 (8) whether individuals detained during a raid  
13 or an immigration enforcement activity are forced or  
14 coerced to sign any documents or waive any rights  
15 without consulting with an attorney;

16 (9) the procedures used by the Department of  
17 Homeland Security—

18 (A) to notify agents about humanitarian  
19 standards regarding enforcement actions; and

20 (B) hold agents accountable when they vio-  
21 late such standards;

22 (10) the per detainee cost of each raid involving  
23 more than 50 detainees;

1           (11) the number of United States Immigration  
2           and Customs Enforcement agents disciplined for vio-  
3           lations in detention proceedings; and

4           (12) recommendations for improving worksite  
5           operations and fugitive operations.

6           (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
7           authorized to be appropriated such sums as may be nec-  
8           essary to carry out this section.

9           **SEC. 170. RULEMAKING.**

10          Not later than 1 year after the date of the enactment  
11          of this Act, the Secretary shall promulgate regulations to  
12          implement this subtitle and the amendments made by this  
13          subtitle.

14                           **Subtitle C—Enforcement**

15           **SEC. 181. LABOR ENFORCEMENT.**

16          (a) LABOR ENFORCEMENT ACTIONS.—Section  
17          274A(e) of the Immigration and Nationality Act (8 U.S.C.  
18          1324a(e)) is amended to add a new paragraph (10).

19                           “(10) CONDUCT IN ENFORCEMENT ACTIONS.—

20   “(A) ENFORCEMENT ACTION.—When an  
21   enforcement action is undertaken by the De-  
22   partment of Homeland Security and the De-  
23   partment receives information that there is a  
24   labor dispute in progress, or that information  
25   was provided to the Department of Homeland

1 Security to retaliate against employees for exer-  
2 cising their employment rights, the Department  
3 shall ensure that any aliens who are arrested or  
4 detained and are necessary for the prosecution  
5 of any labor or employment law violations are  
6 not removed from the country without notifying  
7 the appropriate law enforcement agency that  
8 has jurisdiction over the violations and pro-  
9 viding the agency with the opportunity to inter-  
10 view such aliens. The Department shall ensure  
11 that no aliens entitled to a stay of removal  
12 under this section are removed.

13 “(B) INTERVIEWS.—Any arrangements for  
14 aliens to be held or interviewed shall be made  
15 in consultation with the relevant labor and em-  
16 ployment law enforcement agencies.

17 “(C) STAY OF REMOVAL.—

18 “(i) An alien against whom removal  
19 proceedings have been initiated pursuant  
20 to chapter 4 of title III of the Immigration  
21 and Nationality Act, who has filed a work-  
22 place claim or who is a material witness in  
23 any pending or anticipated proceeding in-  
24 volving a workplace claim, shall be entitled  
25 to a stay of removal and to an employment

1 authorized endorsement unless the Depart-  
2 ment establishes by a preponderance of the  
3 evidence in proceedings before the immi-  
4 gration judge presiding over that alien’s  
5 removal hearing that—

6 “(I) the Department initiated the  
7 alien’s removal proceeding for wholly  
8 independent reasons and not in any  
9 respect based on, or as a result of,  
10 any information provided to or ob-  
11 tained by the Department from the  
12 aliens employer, from any outside  
13 source, including any anonymous  
14 source, or as a result of the filing or  
15 prosecution of the workplace claim;  
16 and

17 “(II) the workplace claim was  
18 filed in a bad faith with the intent to  
19 delay or avoid the alien’s removal.

20 “(ii) Any stay of removal or work au-  
21 thorization issued pursuant to subsection  
22 (i) shall remain valid and in effect at least  
23 during the pendency of the proceedings  
24 concerning such workplace claim. The Sec-  
25 retary of Homeland Security shall extend



1 such relief for a period of not longer than  
2 3 additional years upon determining that—

3 “(I) such relief would enable the  
4 alien asserting the workplace claim to  
5 be made whole;

6 “(II) the deterrent goals of any  
7 statute underlying the workplace  
8 claim would thereby be served; or

9 “(III) such extension would oth-  
10 erwise further the interests of justice.

11 “(iii) In this section—

12 “(I) the term ‘workplace claim’  
13 shall include any claim, charge, com-  
14 plaint, or grievance filed with or sub-  
15 mitted to the employer, a Federal or  
16 State or local agency or court, or an  
17 arbitrator, to challenge an employer’s  
18 alleged civil or criminal violation of  
19 any legal or administrative rule or re-  
20 quirement affecting the terms or con-  
21 ditions of its workers employment, the  
22 treatment of workers, or the hiring or  
23 firing of its workers; and

24 “(II) the term ‘material witness’  
25 means an individual who presents a

1 declaration from an attorney inves-  
2 tigating, prosecuting, or defending the  
3 workplace claim or from the presiding  
4 officer overseeing the workplace claim  
5 attesting that, to the best of the de-  
6 clarant’s knowledge and belief, reason-  
7 able cause exists to believe that the  
8 testimony of the individual will be rel-  
9 evant to the outcome of the workplace  
10 claim.”

11 (b) WHISTLE BLOWER PROTECTIONS; VICTIMS OF  
12 CRIMINAL ACTIVITY.—Section 101(a)(15)(U) of the Im-  
13 migration and Nationality Act (8 U.S.C. 1101(a)(15)(U))  
14 is amended—

15 (1) in clause (ii), by striking “and” at the end;

16 (2) in clause (iii)—

17 (A) by striking “or” before “attempt”; and

18 (B) by adding at the end the following: “a  
19 civil violation of Federal, State, or local employ-  
20 ment or labor laws; and”;

21 (3) by adding at the end the following:

22 “(iv) the Secretary may not grant a  
23 petition filed by an alien based on a civil  
24 violation of Federal employment or labor  
25 laws unless the alien has—

1                   “(I) a reasonable fear of retalia-  
2                   tion based on immigration status;

3                   “(II) has been threatened with  
4                   retaliation based on immigration; or

5                   “(III) has been retaliated against  
6                   based on immigration status for at-  
7                   tempting to remedy such violations;  
8                   or”.

9   **SEC. 182. MANDATORY ADDRESS REPORTING REQUIRE-**  
10                   **MENTS.**

11           (a) CLARIFYING ADDRESS REPORTING REQUIRE-  
12   MENTS.—Section 265 (8 U.S.C. 1305) is amended—

13                   (1) in subsection (a)—

14                           (A) by striking “notify the Attorney Gen-  
15                           eral in writing” and inserting “submit written  
16                           or electronic notification to the Secretary of  
17                           Homeland Security, in a manner approved by  
18                           the Secretary,”;

19                           (B) by striking “the Attorney General may  
20                           require” and inserting “the Secretary may re-  
21                           quire”; and

22                           (C) by adding at the end the following: “If  
23                           the alien is involved in proceedings before an  
24                           immigration judge or in an administrative ap-  
25                           peal of such proceedings, the alien shall submit

1 to the Attorney General the alien’s current ad-  
2 dress and a telephone number, if any, at which  
3 the alien may be contacted.”;

4 (2) in subsection (b), by striking “Attorney  
5 General” each place such term appears and inserting  
6 “Secretary of Homeland Security”;

7 (3) in subsection (c), by striking “given to such  
8 parent” and inserting “given by such parent”; and

9 (4) by adding at the end the following:

10 “(d) ADDRESS TO BE PROVIDED.—

11 “(1) IN GENERAL.—Except as otherwise pro-  
12 vided by the Secretary under paragraph (2), an ad-  
13 dress provided by an alien under this section shall  
14 be the alien’s current residential mailing address,  
15 and shall not be a post office box or other nonresi-  
16 dential mailing address or the address of an attor-  
17 ney, representative, labor organization, or employer.

18 “(2) SPECIFIC REQUIREMENTS.—The Secretary  
19 may provide specific requirements with respect to—

20 “(A) designated classes of aliens and spe-  
21 cial circumstances, including aliens who are em-  
22 ployed at a remote location; and

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

1           “(3) DETENTION.—An alien who is being de-  
2           tained by the Secretary under this Act is not re-  
3           quired to report the alien’s current address under  
4           this section during the time the alien remains in de-  
5           tention, but shall be required to notify the Secretary  
6           of the alien’s address under this section at the time  
7           of the alien’s release from detention.

8           “(e) USE OF MOST RECENT ADDRESS PROVIDED BY  
9           THE ALIEN.—

10           “(1) IN GENERAL.—Notwithstanding any other  
11           provision of law, the Secretary may provide for the  
12           appropriate coordination and cross referencing of  
13           address information provided by an alien under this  
14           section with other information relating to the alien’s  
15           address under other Federal programs, including—

16                   “(A) any information pertaining to the  
17                   alien, which is submitted in any application, pe-  
18                   tition, or motion filed under this Act with the  
19                   Secretary of Homeland Security, the Secretary  
20                   of State, or the Secretary of Labor;

21                   “(B) any information available to the At-  
22                   torney General with respect to an alien in a  
23                   proceeding before an immigration judge or an  
24                   administrative appeal or judicial review of such  
25                   proceeding;

1           “(C) any information collected with respect  
2           to nonimmigrant foreign students or exchange  
3           program participants under section 641 of the  
4           Illegal Immigration Reform and Immigrant Re-  
5           sponsibility Act of 1996 (8 U.S.C. 1372); and

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

9           “(2) RELIANCE.—The Secretary may rely on  
10          the most recent address provided by the alien under  
11          this section or section 264 to send to the alien any  
12          notice, form, document, or other matter pertaining  
13          to Federal immigration laws, including service of a  
14          notice to appear. The Attorney General and the Sec-  
15          retary may rely on the most recent address provided  
16          by the alien under section 239(a)(1)(F) to contact  
17          the alien about pending removal proceedings.

18          “(3) OBLIGATION.—The alien’s provision of an  
19          address for any other purpose under the Federal im-  
20          migration laws does not excuse the alien’s obligation  
21          to submit timely notice of the alien’s address to the  
22          Secretary under this section (or to the Attorney  
23          General under section 239(a)(1)(F) with respect to  
24          an alien in a proceeding before an immigration judge  
25          or an administrative appeal of such proceeding).

1       “(f) REQUIREMENT FOR DATABASE.—The Secretary  
2 of Homeland Security shall establish an electronic data-  
3 base to timely record and preserve addresses provided  
4 under this section.”.

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

8           (1) in section 262(c), by striking “Attorney  
9 General” and inserting “Secretary of Homeland Se-  
10 curity”;

11          (2) in section 263(a), by striking “Attorney  
12 General” and inserting “Secretary of Homeland Se-  
13 curity”; and

14          (3) in section 264—

15           (A) in subsections (a), (b), (c), and (d), by  
16 striking “Attorney General” each place it ap-  
17 pears and inserting “Secretary of Homeland  
18 Security”; and

19           (B) in subsection (f)—

20           (i) by striking “Attorney General is  
21 authorized” and inserting “Secretary of  
22 Homeland Security and Attorney General  
23 are authorized”; and

1                   (ii) by striking “Attorney General or  
2                   the Service” and inserting “Secretary or  
3                   the Attorney General”.

4           (c) EFFECT ON ELIGIBILITY FOR IMMIGRATION BEN-  
5 EFITS.—If an alien fails to comply with section 262, 263,  
6 or 265 of the Immigration and Nationality Act (8 U.S.C.  
7 1302, 1303, and 1305) or section 264.1 of title 8, Code  
8 of Federal Regulations, or removal orders or voluntary de-  
9 parture agreements based on any such section for acts  
10 committed prior to the enactment of this Act such failure  
11 shall not affect the eligibility of the alien to apply for a  
12 benefit under the Immigration and Nationality Act (8  
13 U.S.C. 1101 et seq.).

14           (d) TECHNICAL AMENDMENTS.—Section 266 (8  
15 U.S.C. 1306) is amended by striking “Attorney General”  
16 each place it appears and inserting “Secretary of Home-  
17 land Security”.

18           (e) EFFECTIVE DATES.—

19               (1) IN GENERAL.—Except as provided in para-  
20 graph (2), the amendments made by this section  
21 shall take effect on the date of the enactment of this  
22 Act.

23               (2) EXCEPTIONS.—The amendments made by  
24 paragraphs (1)(A), (1)(B), (2), and (3) of subsection  
25 (a) shall take effect as if enacted on March 1, 2003.



1 **SEC. 183. PREEMPTION OF STATE AND LOCAL LAW.**

2 (a) PREEMPTION.—This Act preempts any State or  
3 local law, contract, license, or other standard, require-  
4 ment, action or instrument—

5 (1) discriminating among persons on the basis  
6 of immigration status, except as specifically author-  
7 ized in Federal law; or

8 (2) imposing any sanction or liability—

9 (A) on any individual based on his or her  
10 immigration status;

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

14 (C) relating to a violation or alleged viola-  
15 tion of immigration law.

16 (b) DEFINITION.—For purposes of this section, “im-  
17 migration status” refers to a person’s present or previous:  
18 visa classification, refugee status, temporary protected  
19 status, status as an immigrant lawfully admitted for per-  
20 manent residence, lawful presence, work authorization, or  
21 other classification or category created by, or related to  
22 this, Act or the Immigration and Nationality Act.

23 **SEC. 184. DELEGATION OF IMMIGRATION AUTHORITY.**

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

1 “(g) Except as provided in section 103(a)(10), 242,  
2 or 274(c), the authority to investigate, identify, appre-  
3 hend, arrest, or detain persons for a violation of any sec-  
4 tion of this Act or regulation pursuant to this Act is re-  
5 stricted to immigration officers and employees of the De-  
6 partment. Any such authority is further subject to any  
7 specific limitations set forth in this Act.”.

8 **SEC. 185. IMMIGRATION AND CUSTOMS ENFORCEMENT OM-**  
9 **BUDSMAN.**

10 (a) ESTABLISHMENT.—Subtitle D of title III of the  
11 Homeland Security Act of 2002 (6 U.S.C. 251 et seq.)  
12 is amended by adding at the end the following:

13 **“SEC. 447. IMMIGRATION AND CUSTOMS ENFORCEMENT**  
14 **OMBUDSMAN.**

15 “(a) IN GENERAL.—There established in the Depart-  
16 ment of Homeland Security a position of Immigration and  
17 Customs Enforcement Ombudsman (referred to in this  
18 section as the ‘Ombudsman’).

19 “(b) REQUIREMENTS.—The Ombudsman shall—

20 “(1) report directly to the Assistant Secretary  
21 for Immigration and Customs Enforcement (referred  
22 to in this section as the ‘Assistant Secretary’); and

23 “(2) have a background in immigration law.

24 “(c) FUNCTIONS.—The Ombudsman shall—

1           “(1) undertake regular and unannounced in-  
2           spections of detention facilities and local offices of  
3           United States Immigration and Customs Enforce-  
4           ment to determine whether the facilities and offices  
5           comply with relevant policies, procedures, standards,  
6           laws, and regulations;

7           “(2) report all findings of compliance or non-  
8           compliance of the facilities and local offices de-  
9           scribed in paragraph (1) to the Secretary and the  
10          Assistant Secretary;

11          “(3) develop procedures for detainees or their  
12          representatives to submit confidential written com-  
13          plaints directly to the Ombudsman;

14          “(4) investigate and resolve all complaints, in-  
15          cluding confidential and anonymous complaints, re-  
16          lated to decisions, recommendations, acts, or omis-  
17          sions made by the Assistant Secretary or the Com-  
18          missioner of United States Customs and Border  
19          Protection in the course of custody and detention  
20          operations;

21          “(5) initiate investigations into allegations of  
22          systemic problems at detention facilities;

23          “(6) conduct any review or audit relating to de-  
24          tention, as directed by the Secretary or Assistant  
25          Secretary;

1           “(7) refer matters, as appropriate, to the Office  
2 of Inspector General of the Department of Justice,  
3 the Office of Civil Rights and Civil Liberties of the  
4 Department, or any other relevant office or agency;

5           “(8) propose changes in the policies or practices  
6 of United States Immigration and Customs Enforce-  
7 ment to improve the treatment of United States citi-  
8 zens and residents, immigrants, detainees, and oth-  
9 ers subject to immigration-related enforcement oper-  
10 ations;

11           “(9) establish a public advisory group con-  
12 sisting of nongovernmental organization representa-  
13 tives and Federal, State, and local government offi-  
14 cials with expertise in detention and vulnerable pop-  
15 ulations to provide the Ombudsman with input on—

16                   “(A) the priorities of the Ombudsman; and

17                   “(B) current practices of United States  
18 Immigration and Customs Enforcement; and

19           “(10) recommend to the Assistant Secretary  
20 personnel action based on any finding of noncompli-  
21 ance.

22           “(d) ANNUAL REPORT.—

23                   “(1) OBJECTIVES.—Not later than June 30 of  
24 each year, the Ombudsman shall prepare and submit  
25 a report to the Committee on the Judiciary of the

1 Senate and the Committee on the Judiciary of the  
2 House of Representatives on the objectives of the  
3 Office of the Ombudsman for the next fiscal year.

4 “(2) CONTENTS.—Each report submitted under  
5 paragraph (1) shall include—

6 “(A) full and substantive analysis of the  
7 objectives of the Office of the Ombudsman;

8 “(B) statistical information regarding such  
9 objectives;

10 “(C) a description of each detention facil-  
11 ity found to be in noncompliance with the de-  
12 tention standards of the Department of Home-  
13 land Security or other applicable regulations;

14 “(D) a description of the actions taken by  
15 the Department of Homeland Security to rem-  
16 edy any findings of noncompliance or other  
17 identified problems;

18 “(E) information regarding whether the  
19 actions described in subparagraph (D) resulted  
20 in compliance with detention standards;

21 “(F) a summary of the most pervasive and  
22 serious problems encountered by individuals  
23 subject to the enforcement operations of the  
24 Department of Homeland Security, including a  
25 description of the nature of such problems; and

1           “(G) such other information as the Om-  
2           budsman may consider advisable.”.

3           (b) AMENDMENT.—The table of contents in section  
4 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101  
5 et seq.) is amended by inserting after the item relating  
6 to section 446 the following:

“Sec. 447. Immigration and Customs Enforcement Ombudsman.”.

7 **SEC. 186. ELIMINATING ARBITRARY BAR TO ASYLUM.**

8           Section 208(a)(2) (8. U.S.C. 1158(a)(2)) is amend-  
9 ed—

10           (1) by striking subparagraph (B);

11           (2) in subparagraph (C), by striking “(D)” and  
12 inserting “(C)”;

13           (3) in subparagraph (D), by striking “subpara-  
14 graphs (B) and (C),” and inserting “subparagraph  
15 (B),”; and

16           (4) by redesignating subparagraphs (C) and  
17 (D) as subparagraphs (B) and (C), respectively.

18 **SEC. 187. RESTORATION OF JUDICIAL REVIEW.**

19           Section 242 (8 U.S.C. 1252) is amended—

20           (1) by striking subsection (a)(2) (matters not  
21 subject to judicial review);

22           (2) in subsection (b)(1), by striking “30 days”  
23 and inserting “60 days”;

24           (3) in subsection (b)(3)(B), by striking “does  
25 not” and inserting “shall”;

1           (4) in subsection (b)(3)(C), by striking “shall”  
2           and inserting “may”;

3           (5) in subsection (b)(4)(B), by striking “any  
4           reasonable adjudicator would be compelled to con-  
5           clude to the contrary” and inserting “the findings  
6           are not supported by substantial evidence”;

7           (6) in subsection (b)(8)(C), by inserting “unless  
8           a stay is automatically granted by any provision of  
9           law or any court of competent jurisdiction” after “to  
10          defer removal of the alien”;

11          (7) in subsection (b)(9), by striking “Except as  
12          otherwise provided in this section, no court shall  
13          have jurisdiction, by habeas corpus under section  
14          2241 of title 28 or any other habeas corpus provi-  
15          sion, by section 1361 or 1651 of such title, or by  
16          any other provision of law (statutory or nonstatu-  
17          tory), to review such an order or such questions of  
18          law or fact.”;

19          (8) by striking subsection (e)(1)(B);

20          (9) in subsection (e)(2)(B) by inserting “law-  
21          fully” after “was” and before “ordered”;

22          (10) by striking subsection (e)(3);

23          (11) by redesignating subsection (e)(4) as sub-  
24          section (e)(3);

1           (12) by redesignating subsection (e)(5) as sub-  
2           section (e)(4);

3           (13) by striking subsection (f);

4           (14) by redesignating subsection (g) as sub-  
5           section (f); and

6           (15) in subsection (g) (as so redesignated), by  
7           striking “and notwithstanding any other provision of  
8           law (statutory or nonstatutory), including section  
9           2241 of title 28, or any other habeas corpus provi-  
10          sion, and sections 1361 and 1651 of such title,”.

11                           **TITLE II—EMPLOYMENT**  
12                                   **VERIFICATION**

13   **SEC. 201. EMPLOYMENT VERIFICATION.**

14           (a) IN GENERAL.—Section 274A (8 U.S.C. 1324a)  
15   is amended to read as follows:

16   **“SEC. 274A. EMPLOYMENT VERIFICATION.**

17           “(a) MAKING EMPLOYMENT OF UNAUTHORIZED  
18   ALIENS UNLAWFUL.—

19                   “(1) IN GENERAL.—It is unlawful for an em-  
20   ployer—

21                           “(A) to hire, recruit, or refer for a fee an  
22           alien for employment in the United States  
23           knowing or with reckless disregard that the  
24           alien is an unauthorized alien with respect to  
25           such employment; or



1           “(B) to hire in the United States an indi-  
2           vidual unless such employer meets the require-  
3           ments of subsections (b) and (c).

4           “(2) CONTINUING EMPLOYMENT.—It is unlaw-  
5           ful for an employer, after lawfully hiring an alien for  
6           employment, to continue to employ the alien in the  
7           United States knowing that the alien is (or has be-  
8           come) an unauthorized alien with respect to such  
9           employment.

10          “(3) USE OF LABOR THROUGH CONTRACT.—An  
11          employer who uses a contract, subcontract, or ex-  
12          change entered into, renegotiated, or extended after  
13          the date of the enactment of this Act to obtain the  
14          labor of an alien in the United States knowing or  
15          with reckless disregard that the alien is an unau-  
16          thorized alien with respect to performing such labor,  
17          shall be considered to have hired the alien for em-  
18          ployment in the United States in violation of para-  
19          graph (1)(A).

20          “(4) TREATMENT OF DOCUMENTATION FOR  
21          CERTAIN EMPLOYEES.—

22                 “(A) IN GENERAL.—For purposes of this  
23                 section, if—

24                         “(i) an individual is a member of a  
25                         collective-bargaining unit and is employed,

1 under a collective bargaining agreement  
2 entered into between one or more employee  
3 organizations and an association of two or  
4 more employers, by an employer that is a  
5 member of such association; and

6 “(ii) within the period specified in  
7 subparagraph (B), another employer that  
8 is a member of the association (or an  
9 agent of such association on behalf of the  
10 employer) has complied with the require-  
11 ments of subsection (b) of this section with  
12 respect to the employment of the indi-  
13 vidual, the subsequent employer shall be  
14 deemed to have complied with the require-  
15 ments of subsection (b) of this section with  
16 respect to the hiring of the employee and  
17 shall not be liable for civil penalties de-  
18 scribed in subsection (d)(4) of this section.

19 “(B) PERIOD.—The period described in  
20 this subparagraph is 3 years, or, if less, the pe-  
21 riod of time that the individual is authorized to  
22 be employed in the United States.

23 “(C) LIABILITY.—

24 “(i) IN GENERAL.—If any employer  
25 that is a member of an association hires

1 for employment in the United States an in-  
2 dividual and relies upon the provisions of  
3 subparagraph (A) to comply with the re-  
4 quirements of subsection (b) of this section  
5 and the individual is an alien not author-  
6 ized to work in the United States, then for  
7 the purposes of paragraph (1)(A), subject  
8 to clause (ii), the employer shall be pre-  
9 sumed to have known at the time of hiring  
10 or afterward that the individual was an  
11 alien not authorized to work in the United  
12 States.

13 “(ii) REBUTTAL OF PRESUMPTION.—  
14 The presumption established by clause (i)  
15 may be rebutted by the employer only  
16 through the presentation of clear and con-  
17 vincing evidence that the employer did not  
18 know (and could not reasonably have  
19 known) that the individual at the time of  
20 hiring or afterward was an alien not au-  
21 thorized to work in the United States.

22 “(iii) EXCEPTION.—Clause (i) shall  
23 not apply in any prosecution under sub-  
24 section (e)(1) of this section.

1           “(5) ORDER OF INTERNAL REVIEW AND CER-  
2           TIFICATION OF COMPLIANCE.—

3           “(A) AUTHORITY TO REQUIRE CERTIFI-  
4           CATION.—If the Secretary has reasonable cause  
5           to believe that an employer has failed to comply  
6           with this section, the Secretary is authorized, at  
7           any time, to require that the employer certify  
8           that the employer is in compliance with this  
9           section or has instituted a program to come  
10          into compliance with the section.

11          “(B) CONTENT OF CERTIFICATION.—Not  
12          later than 60 days after the date an employer  
13          receives a request for a certification under sub-  
14          paragraph (A) the employer shall certify under  
15          penalty of perjury that—

16                 “(i) the employer is in compliance  
17                 with the requirements of subsections (b)  
18                 and (c); or

19                 “(ii) that the employer has instituted  
20                 a program to come into compliance with  
21                 such requirements.

22          “(C) EXTENSION.—The 60-day period re-  
23          ferred to in subparagraph (B), may be extended  
24          by the Secretary for good cause, at the request  
25          of the employer.

1           “(D) PUBLICATION.—The Secretary is au-  
2           thorized to publish in the Federal Register  
3           standards or methods for certification under  
4           subparagraph (A) and for specific record-  
5           keeping practices with respect to such certifi-  
6           cation, and procedures for the audit of any  
7           records related to such certification.

8           “(6) DEFENSE.—

9           “(A) IN GENERAL.—Subject to subpara-  
10          graph (B), an employer that establishes that  
11          the employer has complied in good faith, not-  
12          withstanding a technical or procedural failure,  
13          with the requirements of subsections (b) and (c)  
14          with respect to the hiring of an individual has  
15          established an affirmative defense that the em-  
16          ployer has not violated paragraph (1)(B) with  
17          respect to such hiring.

18          “(B) EXCEPTION.—Until the date that an  
19          employer is required to participate in the Elec-  
20          tronic Employment Verification System under  
21          subsection (c), the employer may establish an  
22          affirmative defense under subparagraph (A)  
23          without a showing of compliance with sub-  
24          section (c).

1           “(7) NO AUTHORIZATION OF NATIONAL IDENTI-  
2           FICATION CARDS.—Nothing in this title may be con-  
3           strued to authorize, directly or indirectly, the  
4           issuance, use, or establishment of a national identi-  
5           fication card or a national identification system.

6           “(b) DOCUMENT VERIFICATION REQUIREMENTS.—  
7           An employer hiring an individual for employment in the  
8           United States shall verify that the individual is eligible for  
9           such employment by meeting the following requirements:

10           “(1) ATTESTATION BY EMPLOYER.—

11           “(A) REQUIREMENTS.—

12           “(i) IN GENERAL.—The employer  
13           shall attest, under penalty of perjury and  
14           on a form prescribed by the Secretary, that  
15           the employer has verified the identity and  
16           eligibility for employment of the individual  
17           by examining an original, unexpired docu-  
18           ment or documents described in section  
19           274a.2(b)(1)(v) of title 8, Code of Federal  
20           Regulation as evidence of the individual’s  
21           employment authorization and identity.

22           “(ii) SIGNATURE REQUIREMENTS.—  
23           An attestation required by clause (i) may  
24           be manifested by a handwritten or elec-  
25           tronic signature.

1                   “(iii) STANDARDS FOR EXAMINA-  
2                   TION.—An employer has complied with the  
3                   requirement of this paragraph with respect  
4                   to examination of a document if the docu-  
5                   ment examined reasonably appears on its  
6                   face to be genuine and relates to the indi-  
7                   vidual whose identity and eligibility for em-  
8                   ployment in the United States is being  
9                   verified. Nothing in this paragraph may be  
10                  construed as requiring the employer to so-  
11                  licit the production of any other document  
12                  or as requiring the individual to produce  
13                  such other document.

14                  “(B) AUTHORITY TO PROHIBIT USE OF  
15                  CERTAIN DOCUMENTS.—

16                  “(i) AUTHORITY.—If the Secretary  
17                  finds that a document or class of docu-  
18                  ments described in subparagraph (A)(i) is  
19                  not reliable to establish identity or eligi-  
20                  bility for employment (as the case may be)  
21                  or is being used fraudulently to an unac-  
22                  ceptable degree, the Secretary is author-  
23                  ized to prohibit, or impose conditions on,  
24                  the use of such document or class of docu-  
25                  ments for purposes of this subsection.

1                   “(ii) REQUIREMENT FOR PUBLICA-  
2                   TION.—The Secretary shall publish notice  
3                   of any findings under clause (i) in the Fed-  
4                   eral Register.

5                   “(2) ATTESTATION OF INDIVIDUAL.—

6                   “(A) IN GENERAL.—The individual shall  
7                   attest, under penalty of perjury on a form pre-  
8                   scribed by the Secretary, that the individual  
9                   is—

10                   “(i) a national of the United States;

11                   “(ii) an alien lawfully admitted for  
12                   permanent residence; or

13                   “(iii) an alien who is authorized under  
14                   this Act or by the Secretary to be em-  
15                   ployed in the United States.

16                   “(B) SIGNATURE FOR EXAMINATION.—An  
17                   attestation required by subparagraph (A) may  
18                   be manifested by a handwritten or electronic  
19                   signature.

20                   “(C) PENALTIES.—An individual who  
21                   falsely attests that he or she is eligible for em-  
22                   ployment in the United States shall be subject  
23                   to the terms and penalties regarding document  
24                   fraud described in section 274C of the Immi-  
25                   gration and Nationality Act.



1 “(D) SCHEDULE.—

2 “(i) REPLACEMENT DOCUMENTS.—An  
3 employer shall accept a receipt for the ap-  
4 plication for a replacement document or a  
5 document described in subparagraph (B)  
6 of subsection (b)(1) in lieu of the required  
7 document in order to comply with any re-  
8 quirement to examine documentation im-  
9 posed by this section, in the following cir-  
10 cumstances:

11 “(I) The individual is unable to  
12 provide the required document within  
13 the time specified in this section be-  
14 cause the document was lost, stolen,  
15 or damaged.

16 “(II) The individual presents a  
17 receipt for the application for the doc-  
18 ument within the time specified in  
19 this section.

20 “(III) The individual presents  
21 the document within 90 days of the  
22 hire. If the actual document or re-  
23 placement document is to be issued by  
24 the United States Citizenship and Im-  
25 migration Services and the application

1 is still under review 60 days after re-  
2 ceipt of the application, United States  
3 Citizenship and Immigration Services  
4 shall, not later than the 60th day  
5 after receipt of the application, issue a  
6 letter for the applicant to take to the  
7 employer which shall automatically  
8 grant the individual an additional 90  
9 days from the original deadline in  
10 subsection (b)(6)(A)(i)(II) to present  
11 the document or replacement docu-  
12 ment; and

13 “(ii) PROHIBITION ON ACCEPTANCE  
14 OF A RECEIPT FOR SHORT-TERM EMPLOY-  
15 MENT.—An employer may not accept a re-  
16 ceipt in lieu of the required document if  
17 the individual is hired for a duration of  
18 less than 10 working days.

19 “(3) DOCUMENT RETENTION AND RECORD-  
20 KEEPING REQUIREMENTS.—The System described in  
21 subsection (c) shall include an auto-save feature al-  
22 lowing the employer to retain an electronic version  
23 of an attestation submitted under paragraph (1) or  
24 (2) for an individual and a record of any action  
25 taken, and copies of any correspondence written or

1 received, with respect to the verification of an indi-  
2 vidual’s identity or eligibility for employment in the  
3 United States, including records received through  
4 the Electronic Employment Verification System  
5 under subsection (c). The employer shall retain such  
6 records, either in electronic, paper, microfiche, or  
7 microfilm form, and make such attestations available  
8 for inspection by an officer of the Department of  
9 Homeland Security, any other person designated by  
10 the Secretary, the Special Counsel for Immigration-  
11 Related Unfair Employment Practices of the De-  
12 partment of Justice, or the Secretary of Labor—

13 “(A) during a period beginning on the date  
14 of the hiring of the individual and ending on  
15 the date that is the later of—

16 “(i) 3 years after the date of such hir-  
17 ing; or

18 “(ii) 1 year after the date the individ-  
19 ual’s employment is terminated; or

20 “(B) during a shorter period determined  
21 by the Secretary, if the Secretary reduces the  
22 period described in subparagraph (A) for the  
23 employer or a class of employers that includes  
24 the employer.

1           “(C) USE OF RETAINED DOCUMENTS.—An  
2           employer shall use copies retained under clause  
3           (i) or (ii) of subparagraph (A) only for the pur-  
4           poses of complying with the requirements of  
5           this subsection, except as otherwise permitted  
6           under law.

7           “(4) PENALTIES.—An employer that fails to  
8           comply with the requirement of this subsection shall  
9           be subject to the penalties described in subsection  
10          (d)(4)(B).

11          “(c) ELECTRONIC EMPLOYMENT VERIFICATION SYS-  
12          TEM.—

13           “(1) REQUIREMENT FOR SYSTEM.—The Sec-  
14           retary, in cooperation with the Commissioner of So-  
15           cial Security, shall implement an Electronic Employ-  
16           ment Verification System (referred to in this sub-  
17           section as the ‘System’) as described in this sub-  
18           section.

19           “(2) TECHNOLOGY STANDARD TO VERIFY EM-  
20           PLOYMENT ELIGIBILITY.—

21           “(A) IN GENERAL.—The Secretary, based  
22           upon recommendations from the Director of the  
23           National Institute of Standards and Tech-  
24           nology, shall not later than 180 days after the  
25           date of the enactment of the this Act develop

1 and certify a technology standard as described  
2 in this subparagraph. The Secretary shall have  
3 discretion to extend the 180-day period if the  
4 Secretary determines that such extension will  
5 result in substantial improvement of the Sys-  
6 tem.

7 “(B) INTEGRATED.—Notwithstanding any  
8 other provision of Federal law, the technology  
9 standard developed shall be the technological  
10 basis for a secure cross-agency, cross-platform  
11 electronic system that is a cost-effective, effi-  
12 cient, fully integrated means to share immigra-  
13 tion and Social Security information necessary  
14 to confirm the employment eligibility of all indi-  
15 viduals seeking employment while protecting in-  
16 dividual privacy.

17 “(C) REPORT.—Not later than 18 months  
18 after the date of the enactment of this Act, the  
19 Secretary and the Director of the National In-  
20 stitute of Standards and Technology shall joint-  
21 ly submit to Congress a report describing the  
22 development, implementation, efficacy, and pri-  
23 vacy implications of the technology standard  
24 and the System.

1           “(3) IDENTITY AND EMPLOYMENT ELIGIBILITY  
2 VERIFICATION.—An employer shall verify the iden-  
3 tity and eligibility for employment of an individual  
4 hired by the employer through the System as fol-  
5 lows:

6           “(A) INITIAL INQUIRY.—The employer  
7 shall submit through the Internet or other elec-  
8 tronic media, or over a telephone line an inquiry  
9 through the System to seek confirmation of the  
10 individual’s identity and eligibility for employ-  
11 ment in the United States not earlier than on  
12 the first day such employment actually com-  
13 mences and not later than 5 working days after  
14 the date such employment actually commences.

15           “(i) IN GENERAL.—The Secretary,  
16 through the System, shall confirm or ten-  
17 tatively nonconfirm an individual’s identity  
18 and eligibility for employment in the  
19 United States not later than 1 working day  
20 after an employer submits an inquiry re-  
21 garding the employee.

22           “(ii) MANUAL VERIFICATION.—If the  
23 System provides a tentative nonconfirma-  
24 tion with respect to an individual under  
25 clause (i), the Secretary and/or Commis-

1 sioner shall complete a secondary manual  
2 verification not later than 6 working days  
3 after such tentative nonconfirmation is  
4 made.

5 “(iii) DETERMINATION.—Not later  
6 than 10 days after the employer submits  
7 an inquiry under subparagraph (A) the  
8 Secretary, through the System, shall pro-  
9 vide to the employer the results of the  
10 verification required by clause (i) and (ii).  
11 Such results shall be a determination  
12 that—

13 “(I) confirms the individual’s  
14 identity and eligibility for employment  
15 in the United States; or

16 “(II) the System is tentatively  
17 unable to confirm the individual’s  
18 identity or eligibility for employment  
19 (referred to in this section as a ‘ten-  
20 tative nonconfirmation’).

21 “(B) SUBMISSION OF INFORMATION.—An  
22 individual who is the subject of a tentative non-  
23 confirmation may submit to the Secretary or  
24 Commissioner, through the System, information  
25 to confirm such individual’s identity or eligi-

1 bility for employment or to otherwise contest  
2 such tentative nonconfirmation not later than  
3 15 working days after the individual receives  
4 notice of such tentative nonconfirmation.

5 “(C) EXTENSION.—The 15-day period re-  
6 ferred to in subparagraph (B) may be extended  
7 by the Secretary for good cause at the request  
8 of the individual.

9 “(D) PROHIBITION ON TERMINATION FOR  
10 TENTATIVE NONCONFIRMATION.—An employer  
11 may not terminate the employment of an indi-  
12 vidual based on tentative nonconfirmation.

13 “(E) FINAL DETERMINATION.—Not later  
14 than 10 days after the individual contests such  
15 tentative nonconfirmation or, in the case of an  
16 individual who fails to contest such tentative  
17 nonconfirmation, not later than 25 days after  
18 the date of the initial tentative nonconfirma-  
19 tion, the Secretary shall provide, through the  
20 system to the employer the results of the  
21 verification. Such results shall be a determina-  
22 tion that—

23 “(i) confirms the individual’s identity  
24 and eligibility for employment in the  
25 United States; or



1           “(ii) the System is unable to confirm  
2           the individual’s identity or eligibility for  
3           employment (referred to in this section as  
4           a ‘final nonconfirmation’).

5           “(F) ADMINISTRATIVE AND JUDICIAL RE-  
6           VIEW.—If the Secretary, through the System,  
7           provides a final nonconfirmation with respect to  
8           an individual, the individual shall have the right  
9           to administrative review under paragraph (21)  
10          and judicial review under paragraph (22) of  
11          such final nonconfirmation.

12          “(G) TERMINATION OF EMPLOYEE.—If an  
13          employer receives a final nonconfirmation with  
14          respect to an individual under paragraph (E),  
15          the employer shall terminate the employment of  
16          such individual after the conclusion of the 30-  
17          day period for the individual to file an adminis-  
18          trative appeal as described in paragraph (21),  
19          unless the Secretary or the Commissioner stays  
20          the final nonconfirmation notice pending the  
21          resolution of the administrative appeal or judi-  
22          cial review.

23          “(H) RIGHT TO REVIEW AND CORRECT  
24          SYSTEM INFORMATION.—

1           “(i) The Secretary, in consultation  
2           with the Commissioner of Social Security,  
3           shall establish procedures to permit an in-  
4           dividual to verify the individual’s eligibility  
5           for employment in the United States prior  
6           to obtaining or changing employment, to  
7           view the individual’s own records in the  
8           System in order to ensure the accuracy of  
9           such records, and to correct or update the  
10          information used by the System regarding  
11          the individual. To the greatest practicable  
12          extent such procedures shall allow elec-  
13          tronic submission of such information.

14          “(ii) The Secretary, in consultation  
15          with the Commissioner of Social Security,  
16          shall establish procedures for an Enhanced  
17          Verification System under paragraph (25)  
18          through which an individual who has  
19          viewed the individual’s own record may  
20          electronically block the use of the individ-  
21          ual’s social security number and may reg-  
22          ister a phone number or e-mail address to  
23          be contacted upon removal of the block  
24          under the System and remove such block  
25          in order to prevent the fraudulent or other

1 misuse of a social security account num-  
2 ber, prevent employer misuse of the sys-  
3 tem, protect privacy, and limit erroneous  
4 non-confirmations during employment  
5 verification.

6 “(H) REVERIFICATION.—

7 “(i) IN GENERAL.—It is an unfair im-  
8 migration-related employment practice  
9 under section 274B for an employer to  
10 reverify an individual’s identity and em-  
11 ployment eligibility unless—

12 “(I) the individual’s work author-  
13 ization expires as described in section  
14 274a.2(b)(1)(vii) of title 8, Code of  
15 Federal Regulation or a subsequent  
16 similar regulation, in which case—

17 “(aa) not later than 30 days  
18 prior to the expiration of the in-  
19 dividual’s work authorization, the  
20 Secretary shall notify the em-  
21 ployer of such expiration and of  
22 the employer’s need to reverify  
23 the individual’s employment eligi-  
24 bility; and

1           “(bb) the individual may  
2 present, and the employer shall  
3 accept, a receipt for the applica-  
4 tion for a replacement document,  
5 extension of work authorization,  
6 or a document described in  
7 clause (i) through (v) of subpara-  
8 graph (B) of subsection (b)(1) in  
9 lieu of the required document by  
10 the expiration date in order to  
11 comply with any requirement to  
12 examine documentation imposed  
13 by this section, and the individual  
14 shall present the required docu-  
15 ment within 90 days from the  
16 date the employment authoriza-  
17 tion expires. If the actual docu-  
18 ment or replacement document is  
19 to be issued by United States  
20 Citizenship and Immigration  
21 Services and the application is  
22 still under review 60 days after  
23 the employment authorization ex-  
24 piration date, United States Citi-  
25 zenship and Immigration Services

1 shall by the 60th day after the  
2 expiration date of the employ-  
3 ment authorization, issue a letter  
4 for the applicant to take to the  
5 employer which shall automati-  
6 cally grant the individual an ad-  
7 ditional 90 days to present the  
8 document or replacement docu-  
9 ment; and

10 “(II) the employer has actual or  
11 constructive knowledge that the indi-  
12 vidual is not authorized to work in the  
13 United States; or

14 “(III) unless otherwise required  
15 by law.

16 “(ii) CONTINUING EMPLOYMENT.—An  
17 employer may not verify an individual’s  
18 employment eligibility if the individual is  
19 continuing in his or her employment as de-  
20 scribed in section 274a.2(b)(1)(viii) of title  
21 8, Code of Federal Regulation or any sub-  
22 sequent similar regulation.

23 “(4) DESIGN AND OPERATION OF SYSTEM.—

24 The Secretary, in consultation with the Commis-

1 sioner of Social Security, shall design and operate  
2 the System—

3 “(A) to maximize reliability and ease of  
4 use by employers and employees in a manner  
5 that protects and maintains the privacy and se-  
6 curity of the information maintained in the Sys-  
7 tem;

8 “(B) to permit an employer to submit an  
9 inquiry to the System through the Internet or  
10 other electronic media or over a telephone line;

11 “(C) to respond to each inquiry made by  
12 an employer;

13 “(D) to maintain a record of each such in-  
14 quiry and each such response;

15 “(E) to track and record any occurrence  
16 when the System is unable to receive such an  
17 inquiry;

18 “(F) to include appropriate administrative,  
19 technical, and physical safeguards to prevent  
20 unauthorized disclosure of personal information  
21 during use, transmission, storage, or disposal of  
22 that information, including the use of  
23 encryption, carrying out periodic testing of the  
24 System to detect, prevent, and respond to

1 vulnerabilities or other failures, and utilizing  
2 periodic security updates;

3 “(G) to allow for monitoring of the use of  
4 the System and provide an audit capability;

5 “(H) to have reasonable safeguards, devel-  
6 oped in consultation with the Attorney General,  
7 to prevent employers from engaging in unlawful  
8 discriminatory practices;

9 “(I) to permit an employer to submit the  
10 attestations required by subsection (b); and

11 “(J) to permit an employer to utilize any  
12 technology that is consistent with this section  
13 and with any regulation or guidance from the  
14 Secretary to streamline the procedures to com-  
15 ply with the attestation and employment eligi-  
16 bility verification requirements contained in this  
17 section.

18 “(5) LIMITATION ON DATA ELEMENTS  
19 STORED.—

20 “(A) The System and any databases cre-  
21 ated by the Commissioner of Social Security or  
22 the Secretary for use in the System shall store  
23 only the minimum data about each individual  
24 for whom an inquiry was made through the  
25 System to facilitate the successful operation of

1 the System, and in no case shall the data stored  
2 be other than—

3 “(i) the individual’s full legal name;

4 “(ii) the individual’s date of birth;

5 “(iii) the individual’s social security  
6 account number or employment authoriza-  
7 tion status identification number;

8 “(iv) the address of the employer  
9 making the inquiry and the dates of any  
10 prior inquiries concerning the identity and  
11 authorization of the individual by the em-  
12 ployer or any other employer and the ad-  
13 dress of such employer;

14 “(v) a record of each prior determina-  
15 tion regarding the individual’s identity and  
16 employment eligibility issued through the  
17 System; and

18 “(vi) in the case of the individual who  
19 successfully contested or appealed a ten-  
20 tative nonconfirmation or final noncon-  
21 firmation, explanatory information con-  
22 cerning the successful resolution of any er-  
23 roneous data or confusion regarding the  
24 identity or eligibility for employment of the



1 individual, including the source of that  
2 error.

3 “(B) Information provided pursuant to  
4 subsection (c)(5)(A)(i)–(v) shall be deleted from  
5 the System one year after the date of entry un-  
6 less the Secretary shall determine it is relevant  
7 to an ongoing determination or appeal, a review  
8 of errors or compensation for errors, or an on-  
9 going investigation of fraud or misuse of the  
10 system. The Secretary shall not retain any data  
11 pursuant to this subsection after the completion  
12 of an appeal or investigation except as de-  
13 scribed in subsection (c)(5)(A)(vi).

14 “(6) RESPONSIBILITIES OF THE COMMISSIONER  
15 OF SOCIAL SECURITY.—The Commissioner of Social  
16 Security shall establish a reliable, secure method to  
17 provide through the System, within the time periods  
18 required by subparagraphs (B) and (C) of para-  
19 graph (2)—

20 “(A) a confirmation of whether or not the  
21 individual is a United States citizen;

22 “(B) a determination of whether the name  
23 and social security account number provided,  
24 with respect to an individual, in an inquiry by  
25 an employer, match such information main-

1           tained by the Commissioner in order to confirm  
2           the validity of the information provided;

3           “(C) a determination of whether such so-  
4           cial security account number was issued to the  
5           individual; and

6           “(D) a determination described in subpara-  
7           graph (B) or (C) of paragraph (2), in a manner  
8           that ensures that other information maintained  
9           by the Commissioner is not disclosed or re-  
10          leased to employers through the System.

11          “(7) RESPONSIBILITIES OF THE SECRETARY.—  
12          The Secretary shall establish a reliable, secure meth-  
13          od to provide, through the System, within the time  
14          periods required by subparagraphs (B) and (C) of  
15          paragraph (2)—

16                 “(A) a determination of whether the name  
17                 and alien identification or authorization number  
18                 provided, with respect to an individual, in an in-  
19                 quiry by an employer match such information  
20                 maintained by the Secretary in order to confirm  
21                 the validity of the information provided;

22                 “(B) a determination of whether such  
23                 number was issued to the individual;

1           “(C) a determination of whether the indi-  
2           vidual is authorized to be employed in the  
3           United States; and

4           “(D) any other related information that  
5           the Secretary determines is appropriate.

6           “(8) PRIVACY IMPACT ASSESSMENT.—The  
7           Commissioner of Social Security and the Secretary  
8           shall each complete a privacy impact assessment as  
9           described in section 208 of the E-Government Act of  
10          2002 (Public Law 107–347; 44 U.S.C. 3501 note)  
11          with regard to the System.

12          “(9) TRAINING.—Not later than 6 months be-  
13          fore implementation of the EEVS, the Commissioner  
14          of Social Security and the Secretary shall institute  
15          a comprehensive program of outreach and training  
16          for employers regarding the operation of the  
17          verification system described in this section and in-  
18          forming them of ongoing assistance resources for the  
19          implementation and use of such systems.

20          “(10) PUBLIC EDUCATION.—Not later than 6  
21          months before implementation of the EEVS, the  
22          Commissioner of Social Security and the Secretary  
23          shall develop a public education campaign regarding  
24          the obligations imposed by this section as well as in-

1       structional materials provided without cost to the  
2       public regarding how to use the EEVS.

3           “(11) HOTLINE.—The Secretary shall establish  
4       a fully staffed 24-hour toll-free hotline that shall re-  
5       ceive inquiries from individuals or employers con-  
6       cerning determinations made by the System and  
7       shall identify for an individual, at the time of in-  
8       quiry, the particular data that resulted in a deter-  
9       mination that the System was unable to verify the  
10      individual’s identity or eligibility for employment.

11           “(12) PARTICIPATION.—

12           “(A) REQUIREMENTS FOR PARTICIPA-  
13      TION.—Except as provided in subparagraphs  
14      (D) and (E), the Secretary shall require em-  
15      ployers to participate in the System as follows:

16           “(i) CRITICAL EMPLOYERS.—Not later  
17      than 6 months after the date of enactment  
18      of this Act, the Secretary shall require all  
19      agencies and departments of the United  
20      States (including the Armed Forces), a  
21      State government (including a State em-  
22      ployment agency before making a referral),  
23      or any other employer if it employs individ-  
24      uals working in a location that is a Fed-  
25      eral, State, or local government building, a

1 military base, a nuclear energy site, a  
2 weapon site, or an airport, but only to the  
3 extent of such individuals, to participate in  
4 the System, with respect to all individuals  
5 hired after the date the Secretary requires  
6 such participation.

7 “(ii) LARGE EMPLOYERS.—Not later  
8 than 1 year after the date of enactment of  
9 this Act the Secretary shall require an em-  
10 ployer with 5,000 or more employees in the  
11 United States to participate in the System,  
12 with respect to all employees hired by the  
13 employer after the date the Secretary re-  
14 quires such participation.

15 “(iii) MIDSIZED EMPLOYERS.—Not  
16 later than 2 years after the date of enact-  
17 ment of this Act the Secretary shall re-  
18 quire an employer with less than 5,000  
19 employees and 1,000 or more employees in  
20 the United States to participate in the Sys-  
21 tem, with respect to all employees hired by  
22 the employer after the date the Secretary  
23 requires such participation.

24 “(iv) SMALL EMPLOYERS.—Not later  
25 than 3 years after the date of the enact-

1           ment of the this Act, the Secretary shall  
2           require all employers with less than 1,000  
3           employees in the United States to partici-  
4           pate in the System, with respect to all em-  
5           ployees hired by the employer after the  
6           date the Secretary requires such participa-  
7           tion.

8           “(B) REQUIREMENT TO PUBLISH.—The  
9           Secretary shall publish in the Federal Register  
10          the requirements for participation in the Sys-  
11          tem for employers described in clauses (i)  
12          through (iv) of subparagraph (A) prior to the  
13          effective date of such requirements.

14          “(C) OTHER PARTICIPATION IN SYSTEM.—  
15          Notwithstanding subparagraph (A), the Sec-  
16          retary has the authority to permit any employer  
17          that is not required to participate in the System  
18          under subparagraph (A) to participate in the  
19          System on a voluntary basis

20          “(D) WAIVER.—

21                  “(i) AUTHORITY TO PROVIDE A WAIV-  
22                  ER.—The Secretary is authorized to waive  
23                  or delay the participation requirements of  
24                  subparagraph (A) with respect to any em-  
25                  ployer or class of employers if the Sec-

1           retary provides notice to Congress of such  
2           waiver prior to the date such waiver is  
3           granted.

4           “(ii) REQUIREMENT TO PROVIDE A  
5           WAIVER.—The Secretary shall waive or  
6           delay the participation requirements of  
7           subparagraph (A) with respect to any em-  
8           ployer or class of employers until the date  
9           that the Comptroller General of the United  
10          States submits the initial certification de-  
11          scribed in paragraph (19)(E) and shall  
12          waive or delay such participation during a  
13          year if the Comptroller General fails to  
14          submit a certification of paragraph (19)(E)  
15          for such year.

16          “(E) CONSEQUENCE OF FAILURE TO PAR-  
17          TICIPATE.—If an employer is required to par-  
18          ticipate in the System and fails to comply with  
19          the requirements of the System with respect to  
20          an individual—

21                 “(i) such failure shall be treated as a  
22                 violation of subsection (a)(1)(B); and

23                 “(ii) a rebuttable presumption is cre-  
24                 ated that the employer has violated sub-  
25                 section (a)(1)(A), however, such presump-

1           tion may not apply to a prosecution under  
2           subsection (e)(1).

3           “(13) EMPLOYER REQUIREMENTS.—

4           “(A) IN GENERAL.—An employer that par-  
5           ticipates in the System, with respect to the hir-  
6           ing of an individual for employment in the  
7           United States, shall—

8                   “(i) notify the individual of the use of  
9                   the System and that the System may be  
10                  used for immigration enforcement pur-  
11                  poses;

12                  “(ii) obtain from the individual the  
13                  documents required by subsection (b)(1)  
14                  and record on the form designated by the  
15                  Secretary—

16                          “(I) the individual’s social secu-  
17                          rity account number; and

18                          “(II) in the case of an individual  
19                          who does not attest that the indi-  
20                          vidual is a national of the United  
21                          States under subsection (b)(2), such  
22                          identification or authorization number  
23                          that the Secretary shall require;

24                          “(iii) retain such form in electronic,  
25                          paper, microfilm, or microfiche form and



1 make such form available for inspection for  
2 the periods and in the manner described in  
3 subsection (b)(3); and

4 “(iv) safeguard any information col-  
5 lected for purposes of the System and pro-  
6 tect any means of access to such informa-  
7 tion to ensure that such information is not  
8 used for any purpose other than to deter-  
9 mine the identity and employment eligi-  
10 bility of the individual and to protect the  
11 confidentiality of such information, includ-  
12 ing ensuring that such information is not  
13 provided to any person other than a person  
14 who carries out the employer’s responsibil-  
15 ities under this subsection. Failure to safe-  
16 guard such information shall be a violation  
17 of subsection (c)(14).

18 “(B) CONFIRMATION, TENTATIVE NONCON-  
19 FIRMATION, OR FINAL NONCONFIRMATION.—

20 “(i) CONFIRMATION.—If an employer  
21 receives a determination through the Sys-  
22 tem under paragraph (3) for an individual,  
23 the employer shall retain either an elec-  
24 tronic, paper, or microfiche form record of

1 such confirmation for the period required  
2 by subsection (b)(4)(A).

3 “(ii) TENTATIVE NONCONFIRMATION  
4 AND VERIFICATION.—

5 “(I) NONCONFIRMATION.—If an  
6 employer receives a tentative noncon-  
7 firmation with respect to an indi-  
8 vidual, the employer shall retain either  
9 an electronic or paper record of such  
10 nonconfirmation for the period re-  
11 quired by subsection (b)(4)(A) and in-  
12 form such individual not later than 3  
13 working days after the issuance of  
14 such notice in the manner prescribed  
15 by the Secretary that includes infor-  
16 mation regarding the individual’s  
17 right to submit information to contest  
18 the tentative nonconfirmation and the  
19 address and telephone numbers estab-  
20 lished by the Commissioner and the  
21 Secretary to obtain information on  
22 how to submit such information. The  
23 individual must acknowledge in writ-  
24 ing whether or not the individual  
25 chooses to contest or not contest the

1 tentative nonconfirmation. The em-  
2 ployer shall submit to the System the  
3 individual's action.

4 “(II) NO CONTEST.—If the indi-  
5 vidual does not contest the tentative  
6 nonconfirmation notice within 15  
7 working days of receiving notice from  
8 the individual's employer, the notice  
9 shall become final and the employer  
10 shall retain either an electronic or  
11 paper record of such final noncon-  
12 firmation for the period required by  
13 subsection (b)(4)(A). An individual's  
14 failure to contest a tentative noncon-  
15 firmation may not be the basis for de-  
16 termining that the employer acted in  
17 a knowing (as defined in section  
18 274a.1 of title 8, Code of Federal  
19 Regulations, or any corresponding  
20 similar regulation) manner.

21 “(III) CONTEST.—If the indi-  
22 vidual contests the tentative noncon-  
23 firmation notice under subclause (I),  
24 the individual shall submit appro-  
25 priate information to contest such no-

1           tice to the Secretary or Commissioner  
2           of Social Security within 15 working  
3           days of receiving notice from the indi-  
4           vidual’s employer and shall utilize the  
5           verification process developed under  
6           paragraph (3)(B).

7           “(IV) EFFECTIVE PERIOD OF  
8           TENTATIVE NONCONFIRMATION.—A  
9           tentative nonconfirmation notice shall  
10          remain in effect until such notice be-  
11          comes final under clause (II) or a  
12          final confirmation notice or final non-  
13          confirmation notice is issued by the  
14          System.

15          “(V) PROHIBITION.—An em-  
16          ployer may not terminate the employ-  
17          ment of an individual based on a ten-  
18          tative nonconfirmation notice. Noth-  
19          ing in this clause shall apply to termi-  
20          nation of employment for any legiti-  
21          mate reason other than because of  
22          such a tentative nonconfirmation.

23          “(iii) FINAL NONCONFIRMATION.—

24                  “(I) If an employer has received  
25                  a final nonconfirmation with respect

1 to an individual, the employer shall  
2 terminate the employment of the indi-  
3 vidual after the expiration of the time  
4 period prescribed in paragraph (21)  
5 for the individual to file an adminis-  
6 trative appeal of a final nonconfirma-  
7 tion notice, unless the Secretary or  
8 the Commissioner stays the final non-  
9 confirmation notice pending the reso-  
10 lution of the administrative appeal, or  
11 a stay is issued pending judicial re-  
12 view.

13 “(II) CONTINUED EMPLOYMENT  
14 AFTER FINAL NONCONFIRMATION.—If  
15 the employer continues to employ (or  
16 to recruit or refer) an individual after  
17 the expiration of the period for the in-  
18 dividual to file an administrative ap-  
19 peal of a final nonconfirmation notice  
20 under paragraph (21) (unless the Sec-  
21 retary or the Commissioner stayed the  
22 final nonconfirmation notice pending  
23 the resolution of the administrative  
24 appeal or a stay is issued pending ju-  
25 dicial review), a rebuttable presump-

1                   tion is created that the employer has  
2                   violated     subsections     paragraphs  
3                   (1)(A) and (2) of subsection (a). Such  
4                   presumption may not apply to a pros-  
5                   ecution under subsection (e)(1).

6                   “(14) PROHIBITION OF UNLAWFUL ACCESSING  
7                   AND OBTAINING OF INFORMATION.—

8                   “(A) IN GENERAL.—It shall be unlawful  
9                   for any individual other than an employee of  
10                  the Social Security Administration or the De-  
11                  partment of Homeland Security specifically  
12                  charged with maintaining the System to inten-  
13                  tionally and knowingly—

14                  “(i) access the System or the data-  
15                  bases utilized to verify identity or employ-  
16                  ment eligibility for the System for any pur-  
17                  pose other than verifying identity or em-  
18                  ployment eligibility or modifying the Sys-  
19                  tem pursuant to law or regulation; or

20                  “(ii) obtain the information con-  
21                  cerning an individual stored in the System  
22                  or the databases utilized to verify identity  
23                  or employment eligibility for the System  
24                  for any purpose other than verifying iden-  
25                  tity or employment authorization or modi-

1           fying the System pursuant to law or regu-  
2           lation.

3           “(B) PENALTIES.—

4                 “(i) UNLAWFUL ACCESS.—Any indi-  
5           vidual who unlawfully accesses the System  
6           or the databases as described in subpara-  
7           graph (A)(i) shall be fined no more than  
8           \$1,000 per individual or sentenced to no  
9           more than 6 months imprisonment or both  
10          per individual whose file was compromised.

11                “(ii) UNLAWFUL USE.—Any indi-  
12          vidual who unlawfully obtains information  
13          stored in the System in the database uti-  
14          lized to verify identity or employment eligi-  
15          bility for the System and uses the informa-  
16          tion to commit identity theft for financial  
17          gain or to evade security or to assist an-  
18          other in gaining financially or evading se-  
19          curity, shall be fined no more than  
20          \$10,000 per individual or sentenced to no  
21          more than 1 year of imprisonment or both  
22          per individual whose information was ob-  
23          tained and misappropriated.

24                “(15) PROTECTION FROM LIABILITY.—No em-  
25          ployer that participates in the System and complies

1 in good faith with the attestation in subsection  
2 (b)(1) and the employer requirements of this section  
3 shall be liable under any law for any employment-re-  
4 lated action taken with respect to an individual in  
5 good faith reliance on information provided by the  
6 System regarding that individual.

7 “(16) LIMITATION ON USE OF THE SYSTEM.—  
8 Notwithstanding any other provision of law, nothing  
9 in this subsection shall be construed to permit or  
10 allow any department, bureau, or other agency of  
11 the United States to utilize any information, data-  
12 base, or other records used in the System for any  
13 purpose other than as provided for under this sub-  
14 section.

15 “(17) ACCESS TO DATABASE.—No officer or  
16 employee of any agency or department of the United  
17 States, other than such an officer or employee who  
18 is responsible for the verification of employment eli-  
19 gibility or for the evaluation of an employment eligi-  
20 bility verification program at the Social Security Ad-  
21 ministration, the Department of Homeland Security,  
22 and the Department of Labor, may have access to  
23 any information, database, or other records utilized  
24 by the System.



1           “(18) MODIFICATION AUTHORITY.—The Sec-  
2           retary, after notice is submitted to Congress and  
3           provided to the public in the Federal Register, is au-  
4           thorized to modify the requirements of this sub-  
5           section, including requirements with respect to com-  
6           pletion of forms, method of storage, attestations,  
7           copying of documents, signatures, methods of trans-  
8           mitting information, and other operational and tech-  
9           nical aspects to improve the efficiency, accuracy, and  
10          security of the System.

11          “(19) ANNUAL STUDY AND REPORT.—

12                 “(A) REQUIREMENT FOR STUDY.—The  
13                 Comptroller General of the United States shall  
14                 conduct an annual study of the System as de-  
15                 scribed in this paragraph.

16                 “(B) PURPOSE OF THE STUDY.—The  
17                 Comptroller General shall, for each year, under-  
18                 take a study to determine whether the System  
19                 meets the following requirements:

20                         “(i) DEMONSTRATED ACCURACY OF  
21                         THE DATABASES.—New information and  
22                         information changes submitted by an indi-  
23                         vidual to the System is updated in all of  
24                         the relevant databases not later than 3

1 working days after submission in at least  
2 99 percent of all cases.

3 “(ii) LOW ERROR RATES AND DELAYS  
4 IN VERIFICATION.—

5 “(I) RATES OF INCORRECT FINAL  
6 NONCONFIRMATION NOTICES.—That,  
7 during a year, not more than .5 per-  
8 cent of all final nonconfirmations pro-  
9 vided through the System during such  
10 year are incorrect.

11 “(II) RATES OF INCORRECT TEN-  
12 TATIVE NONCONFIRMATION NO-  
13 TICES.—

14 “(aa) That, during a year,  
15 not more than 1 percent of na-  
16 tive-born United States citizens  
17 whose identity and work eligi-  
18 bility are submitted to the system  
19 is the subject of a tentative non-  
20 confirmation.

21 “(bb) That, during a year,  
22 not more than 3 percent of for-  
23 eign-born, work authorized indi-  
24 viduals whose identity and work  
25 eligibility are submitted to the

1 System are the subject of a ten-  
2 tentative nonconfirmation.

3 “(iii) CONTAINMENT OF ERROR  
4 RATES.—That, during a year, the rate of  
5 incorrect final and incorrect tentative non-  
6 confirmations shall not have increased by  
7 more than 3 percent over the previous  
8 year.

9 “(iv) MEASURABLE EMPLOYER COM-  
10 PLIANCE WITH SYSTEM REQUIREMENTS.—

11 “(I) NO DISCRIMINATION BASED  
12 ON SYSTEM OPERATIONS.—The Sys-  
13 tem has not resulted in increased em-  
14 ployment discrimination on the basis  
15 of race or national origin.

16 “(II) REQUIREMENT FOR INDE-  
17 PENDENT STUDY.—The determination  
18 described in subclause (I) shall be  
19 based on an independent study com-  
20 missioned by the Comptroller General  
21 in each phase of expansion of the Sys-  
22 tem.

23 “(v) PROTECTION OF WORKERS’ PRI-  
24 VATE INFORMATION.—At least 97 percent  
25 of employers who participate in the System

1           are in full compliance with the privacy re-  
2           quirements described in this subsection.

3           “(vi) EFFECTIVE SECURITY.—An as-  
4           sessment of the privacy and confidentiality  
5           of the system and of the overall security of  
6           the system with respect to cybertheft and  
7           theft and misuse of private data.

8           “(vii) ADEQUATE AGENCY STAFFING  
9           AND FUNDING.—The Secretary and Com-  
10          missioner of Social Security have sufficient  
11          funding to meet all of the deadlines and re-  
12          quirements of this subsection.

13          “(C) CONSULTATION.—In conducting a  
14          study under this paragraph, the Comptroller  
15          General shall consult with representatives of  
16          business, labor, immigrant communities, State  
17          governments, privacy advocates, and appro-  
18          priate departments of the United States.

19          “(D) REQUIREMENT FOR REPORTS.—Not  
20          later than 21 months after the date of the en-  
21          actment of this Act and annually thereafter, the  
22          Comptroller General shall submit to the Sec-  
23          retary and to Congress a report containing the  
24          findings of the study carried out under this  
25          paragraph.

1           “(E) CERTIFICATION.—If the Comptroller  
2           General determines that the System meets the  
3           requirements set out in clauses (i) through (vii)  
4           of subparagraph (B) for a year, the Comptroller  
5           shall certify such determination and submit  
6           such certification to Congress with the report  
7           required by subparagraph (D).

8           “(20) ANNUAL AUDIT AND REPORT.—

9           “(A) PURPOSE OF THE AUDIT AND RE-  
10          PORT.—The Office for Civil Rights and Civil  
11          Liberties shall conduct annual audits of the sys-  
12          tem described in section 403(a) of the Illegal  
13          Immigration Reform and Responsibility Act of  
14          1996, Public Law 104–208, Div. C, 110 Stat.  
15          3009-546, to assess employer compliance with  
16          System requirements, including civil rights and  
17          civil liberties protections, and compliance with  
18          the System rules and procedures set forth in  
19          the Memorandum of Understanding between  
20          employers and the Social Security Administra-  
21          tion and the Department of Homeland Security.

22          “(B) REQUIREMENTS OF AUDIT.—Annual  
23          audits shall include, but are not limited to, the  
24          following activities:

1           “(i) Use of testers to check if employ-  
2           ers are using E-Verify as outlined in the  
3           Memorandum of Understanding between  
4           employers and the Department of Home-  
5           land Security and the Social Security Ad-  
6           ministration, including if employers are  
7           misusing the system to prescreen job appli-  
8           cants, if employers are giving proper notifi-  
9           cation to employees’ regarding tentative  
10          non-confirmations, and if employers are  
11          taking adverse actions against workers  
12          based upon tentative non-confirmations.

13           “(ii) Random audits of employers to  
14          confirm that employers are using the sys-  
15          tem as outlined in the Memorandum of  
16          Understanding and in a manner consistent  
17          with civil rights and civil liberties protec-  
18          tions.

19           “(iii) Periodic audits of employers for  
20          which the Special Counsel has received in-  
21          formation or complaints and/or actual  
22          charges of citizenship/national origin dis-  
23          crimination or document abuse.

24           “(C) AUTHORITY OF OFFICE FOR CIVIL  
25          RIGHTS AND CIVIL LIBERTIES.—The Office

1 shall have the authority to obtain from users of  
2 the E-Verify program relevant documents and  
3 testimony and answers to written interroga-  
4 tories. The Office shall also have the authority  
5 to conduct site visits, and interview employees.

6 “(D) FAILURE OF EMPLOYERS TO CO-  
7 OPERATE.—Employers that fail to cooperate  
8 with the Office for Civil Rights and Civil Lib-  
9 erties shall be noted in the annual report set  
10 forth below in subsection (E).

11 “(E) REQUIREMENT FOR REPORTS.—Not  
12 later than 18 months after the date of enact-  
13 ment of this Act, and annually thereafter, the  
14 Office for Civil Rights and Civil Liberties shall  
15 submit to the President of the Senate, the  
16 Speaker of the House of Representatives, and  
17 the appropriate committees and subcommittees  
18 of Congress a report containing the findings of  
19 the audit carried out under this paragraph.

20 “(21) ADMINISTRATIVE REVIEW.—

21 “(A) IN GENERAL.—An individual who re-  
22 ceives a final nonconfirmation may, not later  
23 than 30 days after the date of such notice, file  
24 an appeal of such final nonconfirmation. An in-  
25 dividual subject to a final nonconfirmation may

1 file an appeal thereof after the 30-day period if  
2 the appeal is accompanied by evidence that the  
3 individual did not receive timely notice of a ten-  
4 tative or final nonconfirmation, or that there  
5 was good cause for the failure to file an appeal  
6 within the 30-day period.

7 “(B) PROCEDURES.—

8 “(i) The Secretary and Commissioner  
9 of Social Security shall develop procedures  
10 to review appeals filed under subparagraph  
11 (A) and to make final determinations on  
12 such appeals. The review on appeal may  
13 include any additional or newly discovered  
14 evidence presented by the appellant during  
15 the time of the pending appeal or subse-  
16 quently by motion to reopen.

17 “(ii) The Secretary or the Commis-  
18 sioner shall stay the final nonconfirmation  
19 notice pending the resolution of the admin-  
20 istrative appeal unless the Secretary or the  
21 Commissioner determines that the admin-  
22 istrative appeal is frivolous, unlikely to  
23 succeed on the merits, or filed for purposes  
24 of delay.



1           “(C) REVIEW FOR ERRORS.—If a final de-  
2           termination on an appeal filed under subpara-  
3           graph (A) results in a confirmation of an indi-  
4           vidual’s eligibility for employment in the United  
5           States, the administrative review process shall  
6           require the Secretary to determine if the final  
7           nonconfirmation issued for the individual was  
8           the result of—

9                   “(i) an error or negligence on the part  
10                   of an employee or official operating or re-  
11                   sponsible for the System;

12                   “(ii) an error or negligence on the  
13                   part of an employer or entity acting on be-  
14                   half of the employer;

15                   “(iii) the decision rules, processes, or  
16                   procedures utilized by the System; or

17                   “(iv) erroneous system information  
18                   that was not the result of acts or omissions  
19                   of the individual.

20           “(D) COMPENSATION FOR ERROR.—

21                   “(i) IN GENERAL.—If the individual  
22                   was denied a stay under subparagraph  
23                   (B)(2) and Secretary makes a determina-  
24                   tion under subparagraph (C) that the final  
25                   nonconfirmation issued for an individual

1 was not caused by an act or omission of  
2 the individual or the employer, the Sec-  
3 retary shall compensate the individual for  
4 lost wages and for reasonable costs and at-  
5 torneys' fees not exceeding \$75,000, sub-  
6 ject to annual inflation adjustments per  
7 the US Consumer Price Index - All Urban  
8 Consumers (CPI-U) compiled by the Bu-  
9 reau of Labor Statistics.

10 “(ii) CALCULATION OF LOST  
11 WAGES.—Lost wages shall be calculated  
12 based on the wage rate and work schedule  
13 that prevailed prior to termination. The in-  
14 dividual shall be compensated for wages  
15 lost beginning on the first scheduled work  
16 day after employment was terminated and  
17 ending 180 days after completion of the  
18 administrative review process described in  
19 this paragraph, or judicial review if any, or  
20 the day after the individual is reinstated or  
21 obtains employment elsewhere, whichever  
22 occurs first. If the individual obtains em-  
23 ployment elsewhere at a lower wage rate,  
24 the individual shall be compensated for the  
25 difference in wages for the period ending

1 180 days after completion of the adminis-  
2 trative review process or judicial review, if  
3 any.

4 “(iii) LIMITATION ON COMPENSA-  
5 TION.—For purposes of determining an in-  
6 dividual’s compensation for the loss of em-  
7 ployment, such compensation shall not in-  
8 clude any period in which the individual  
9 was ineligible for employment in the  
10 United States.

11 “(iv) SOURCE OF FUNDS.—Compensa-  
12 tion or reimbursement provided under this  
13 paragraph shall not be provided from  
14 funds appropriated in annual appropria-  
15 tions Acts to the Secretary for the Depart-  
16 ment of Homeland Security.

17 “(E) TEMPORARY STAY OF FINAL ADMIN-  
18 ISTRATIVE DECISION DENYING APPEAL.—If the  
19 appeal is denied, the Secretary shall stay the  
20 decision for a period of 15 days to permit the  
21 individual to seek judicial review of the decision  
22 pursuant to paragraph (21).

23 “(22) JUDICIAL REVIEW.—

24 “(A) IN GENERAL.—After the Secretary  
25 makes a final determination on an appeal filed

1 by an individual under paragraph (19), the in-  
2 dividual may obtain judicial review of such de-  
3 termination in a civil action commenced not  
4 later than 90 days after notice of such decision,  
5 or such further time as the Secretary may  
6 allow.

7 “(B) JURISDICTION.—A civil action for  
8 such judicial review shall be brought in the dis-  
9 trict court of the United States for the judicial  
10 district in which the plaintiff resides, or has a  
11 principal place of business, or, if the plaintiff  
12 does not reside or have a principal place of  
13 business within any such judicial district, in the  
14 District Court of the United States for the Dis-  
15 trict of Columbia.

16 “(C) ANSWER.—As part of the Secretary’s  
17 answer to a complaint for such judicial review,  
18 the Secretary shall file a certified copy of the  
19 administrative record compiled during the ad-  
20 ministrative review under paragraph (21), in-  
21 cluding the evidence upon which the findings  
22 and decision complained of are based. The court  
23 shall have power to enter, upon the pleadings  
24 and transcript of the record, a judgment affirm-  
25 ing or reversing the result of that administra-

1           tive review, with or without remanding the  
2           cause for a rehearing.

3           “(D) COMPENSATION FOR ERROR.—

4                   “(i) IN GENERAL.—In cases in which  
5           the individual was denied a stay under  
6           subparagraph (19)(B)(2) and such judicial  
7           review reverses the final determination of  
8           the Secretary made under paragraph (21),  
9           the court shall compensate the individual  
10          for lost wages and for reasonable costs and  
11          attorneys’ fees not exceeding \$75,000, sub-  
12          ject to annual inflation adjustments per  
13          the US Consumer Price Index - All Urban  
14          Consumers (CPI-U) compiled by the Bu-  
15          reau of Labor Statistics.

16                   “(ii) CALCULATION OF LOST  
17          WAGES.—Lost wages shall be calculated  
18          based on the wage rate and work schedule  
19          that prevailed prior to termination. The in-  
20          dividual shall be compensated for wages  
21          lost beginning on the first scheduled work  
22          day after employment was terminated and  
23          ending 180 days after completion of the ju-  
24          dicial review described in this paragraph or  
25          the day after the individual is reinstated or

1            obtains employment elsewhere, whichever  
2            occurs first. If the individual obtains em-  
3            ployment elsewhere at a lower wage rate,  
4            the individual shall be compensated for the  
5            difference in wages for the period ending  
6            180 days after completion of the adminis-  
7            trative and judicial review process.

8            “(23) PRIVATE RIGHT OF ACTION.—If the Sec-  
9            retary makes a determination under paragraph (21)  
10          that the final nonconfirmation issued for an indi-  
11          vidual was caused by an act or negligence on the  
12          part of the employer, the individual may seek recov-  
13          ery of damages, reinstatement, back pay, and other  
14          appropriate remedies in a civil action against the  
15          employer. Such action must be commenced not later  
16          than 90 days after notice of the Secretary’s decision.  
17          The action shall be brought in the district court of  
18          the United States for the judicial district in which  
19          the plaintiff resides, or has a principal place of busi-  
20          ness, or, if the plaintiff does not reside or have a  
21          principal place of business within any such judicial  
22          district, in the District Court of the United States  
23          for the District of Columbia.

24          “(24) STATUTORY CONSTRUCTION.—Nothing in  
25          this subsection shall affect any existing rights and

1 obligations of employers or employees under other  
2 Federal, State, or local laws.

3 “(25) ENHANCED VERIFICATION SYSTEM.—The  
4 Secretary, in consultation with the Commissioner of  
5 Social Security, shall establish a voluntary self-  
6 verification system in order to prevent the fraudu-  
7 lent or other misuse of the individual’s Social Secu-  
8 rity number during employment verification, to pre-  
9 vent employer misuse of the system, to protect pri-  
10 vacy, and to limit erroneous nonconfirmation during  
11 employment verification. The voluntary system shall  
12 allow an individual to verify the individual’s own  
13 record, to block and unblock the use of the individ-  
14 ual’s Social Security number, and to register a  
15 phone number or e-mail address to be contacted  
16 upon removal of the block.

17 “(A) VOLUNTARY ENROLLMENT.—An indi-  
18 vidual may enroll in the Enhanced Verification  
19 System on a voluntary basis.

20 “(B) SELECT ENTITIES REQUIRED TO PAR-  
21 TICIPATE IN THE ENHANCED VERIFICATION  
22 SYSTEM.—

23 “(i) EXECUTIVE DEPARTMENTS.—  
24 Each Department of the Federal Govern-  
25 ment shall elect to participate in the En-

1           hanced Verification System and shall com-  
2           ply with the terms and conditions of such  
3           an election.

4           “(ii) LEGISLATIVE BRANCH.—Each  
5           Member of Congress, each officer of Con-  
6           gress, and the head of each agency of the  
7           legislative branch shall elect to participate  
8           in the Enhanced Verification System and  
9           shall comply with the terms and conditions  
10          of such an election.

11          “(C) ELECTRONIC ACCESS.—The Secretary  
12          shall establish procedures allowing individuals  
13          to use a Personal Identification Number (PIN)  
14          or other biographic information to authenticate  
15          the individual’s identity and to block and  
16          unblock the individual’s Social Security number  
17          electronically.

18          “(D) USE OF ENHANCED VERIFICATION  
19          SYSTEM RECEIPT FOR PURPOSE OF EMPLOY-  
20          MENT VERIFICATION.—

21          “(i) ENCRYPTED CODE.—The Sec-  
22          retary shall establish procedures to allow  
23          an individual who has authenticated the in-  
24          dividual’s identity and unblocked the indi-  
25          vidual’s Social Security number to receive



1 a single-use encrypted code which may be  
2 presented to the employer instead of the  
3 documents described in subsection (b) and  
4 for the employer to submit the encrypted  
5 single-use code to the system.

6 “(ii) CONFIRMATION.—An employer  
7 who submits a valid single-use encrypted  
8 code with respect to an individual shall im-  
9 mediately receive a confirmation through  
10 the system.

11 “(iii) EXPEDITED REVIEW PROC-  
12 ESS.—The Secretary shall establish an ex-  
13 pedited review process to allow an indi-  
14 vidual who has authenticated the individ-  
15 ual’s identity and unblocked the individ-  
16 ual’s Social Security number immediately  
17 to correct user or system errors which re-  
18 sult in an erroneous non-confirmation of  
19 work eligibility.

20 “(E) REPORTS.—

21 “(i) IN GENERAL.—The Secretary of  
22 Homeland Security shall submit to the  
23 Committees on the Judiciary of the House  
24 of Representatives and of the Senate re-  
25 ports on the Enhanced Verification System

1 within 3 months after the end of the third  
2 and fourth years in which the programs  
3 are in effect. Such reports shall—

4 “(I) assess the degree of fraudu-  
5 lent attesting of United States citizen-  
6 ship;

7 “(II) assess the benefits of the  
8 Enhanced Verification System to em-  
9 ployers and the degree to which it  
10 prevents fraudulent claims of United  
11 States citizenship or legal residence  
12 and strengthens the enforcement of  
13 section 274A;

14 “(III) assess the benefits of the  
15 Enhanced Verification System to indi-  
16 viduals and the degree to which they  
17 prevent misuse of the System and er-  
18 roneous non-confirmations during em-  
19 ployment verification;

20 “(IV) assess if the Enhanced  
21 Verification System aides in reducing  
22 discrimination during the employment  
23 verification process;

24 “(V) assess the degree to which  
25 the Enhanced Verification System

1 protects employee civil liberties and  
2 privacy; and

3 “(VI) include recommendations  
4 on whether or not Enhanced  
5 Verification System should be contin-  
6 ued or modified, and

7 “(ii) REPORT ON EXPANSION.—Not  
8 later than 6 months after the end of the  
9 fourth year in which the programs are in  
10 effect, the Secretary of Homeland Security  
11 shall submit to the Committees on the Ju-  
12 diciary of the House of Representatives  
13 and the Senate a report—

14 “(I) evaluating whether the prob-  
15 lems identified by the report sub-  
16 mitted under subsection (i) have been  
17 substantially resolved; and

18 “(II) describing what actions the  
19 Secretary of Homeland Security shall  
20 take before requiring any individuals  
21 to participate in the Enhanced  
22 Verification System.

23 “(F) LIMITATION ON USE OF THE CON-  
24 FIRMATION SYSTEM AND ANY RELATED SYS-  
25 TEMS.—Notwithstanding any other provision of

1 law, nothing in this subtitle shall be construed  
2 to permit or allow any department, bureau, or  
3 other agency of the United States Government  
4 to utilize any information, data base, or other  
5 records assembled under this subtitle for any  
6 other purpose other than as provided for under  
7 the Enhanced Verification System.

8 “(d) COMPLIANCE.—

9 “(1) COMPLAINTS AND INVESTIGATIONS.—The  
10 Secretary shall establish procedures—

11 “(A) for a person to file a complaint re-  
12 garding a potential violation of paragraph  
13 (1)(A), (1)(B), or (2) of subsection (a);

14 “(B) for the investigation of any such com-  
15 plaint that the Secretary determines is appro-  
16 priate to investigate; and

17 “(C) for the investigation of such other  
18 violation of paragraph (1)(A), (1)(B), or (2) of  
19 subsection (a) that the Secretary determines is  
20 appropriate.

21 “(2) AUTHORITY IN INVESTIGATIONS.—

22 “(A) IN GENERAL.—In conducting inves-  
23 tigation and hearings under this subsection, of-  
24 ficers and employees of the Department of  
25 Homeland Security, if designated by the Sec-

1           retary, may compel by subpoena the attendance  
2           of witnesses and the production of evidence at  
3           any designated place in an investigation or case  
4           under this subsection.

5           “(B) FAILURE TO COOPERATE.—In case of  
6           refusal to obey a subpoena lawfully issued  
7           under subparagraph (A), the Secretary may re-  
8           quest that the Attorney General apply in an ap-  
9           propriate district court of the United States for  
10          an order requiring compliance with such sub-  
11          poena, and any failure to obey such order may  
12          be punished by such court as contempt.

13          “(C) DEPARTMENT OF LABOR.—The Sec-  
14          retary of Labor shall have the investigative au-  
15          thority provided under section 11(a) of the Fair  
16          Labor Standards Act of 1938 (29 U.S.C.  
17          211(a)) to ensure compliance with the provi-  
18          sions of this section, or any regulation or order  
19          issued under this section.

20          “(D) AGENCY REPRESENTATION AND CO-  
21          ORDINATION.—United States Immigration and  
22          Customs Enforcement officials may not mis-  
23          represent to employees or employers that they  
24          are a member of any agency or organization  
25          that provides domestic violence services, en-

1 forces health and safety law or other labor laws,  
2 provides health care services, or any other serv-  
3 ices intended to protect life and safety.

4 “(3) COMPLIANCE PROCEDURES.—

5 “(A) PREPENALTY NOTICE.—If the Sec-  
6 retary has reasonable cause to believe that  
7 there has been a violation of a requirement of  
8 this section and determines that further pro-  
9 ceedings related to such violation are war-  
10 ranted, the Secretary shall issue to the em-  
11 ployer concerned a written notice of the Sec-  
12 retary’s intention to issue a claim for a fine or  
13 other penalty. Such notice shall—

14 “(i) describe the violation;

15 “(ii) specify the laws and regulations  
16 allegedly violated;

17 “(iii) disclose the material facts which  
18 establish the alleged violation; and

19 “(iv) inform such employer that the  
20 employer shall have a reasonable oppor-  
21 tunity to make representations as to why a  
22 claim for a monetary or other penalty  
23 should not be imposed.

24 “(B) REMISSION OR MITIGATION OF PEN-  
25 ALTIES.—

1           “(i) PETITION BY EMPLOYER.—If an  
2           employer receives written notice of a fine  
3           or other penalty in accordance with sub-  
4           paragraph (A), the employer may file with-  
5           in 45 days from receipt of such notice,  
6           with the Secretary a petition for the remis-  
7           sion or mitigation of such fine or penalty,  
8           or a petition for termination of the pro-  
9           ceedings. The petition may include any rel-  
10          evant evidence or proffer of evidence the  
11          employer wishes to present, and shall be  
12          filed and considered in accordance with  
13          procedures to be established by the Sec-  
14          retary.

15          “(ii) REVIEW BY SECRETARY.—If the  
16          Secretary finds that such fine or other  
17          penalty was incurred erroneously, or finds  
18          the existence of such mitigating cir-  
19          cumstances as to justify the remission or  
20          mitigation of such fine or penalty, the Sec-  
21          retary may remit or mitigate such fine or  
22          other penalty on the terms and conditions  
23          as the Secretary determines are reasonable  
24          and just, or order termination of any pro-  
25          ceedings related to the notice. Such miti-

1           gating circumstances may include good  
2           faith compliance and participation in, or  
3           agreement to participate in, the System, if  
4           not otherwise required.

5           “(iii) APPLICABILITY.—This subpara-  
6           graph may not apply to an employer that  
7           has or is engaged in a pattern or practice  
8           of violations of paragraph (1)(A), (1)(B),  
9           or (2) of subsection (a) or of any other re-  
10          quirements of this section.

11          “(C) PENALTY CLAIM.—After considering  
12          evidence and representations offered by the em-  
13          ployer pursuant to subparagraph (B), the Sec-  
14          retary shall determine whether there was a vio-  
15          lation and promptly issue a written final deter-  
16          mination setting forth the findings of fact and  
17          conclusions of law on which the determination  
18          is based and the appropriate penalty.

19          “(4) CIVIL PENALTIES.—

20          “(A) HIRING OR CONTINUING TO EMPLOY  
21          UNAUTHORIZED ALIENS.—Any employer that  
22          violates paragraph (1)(A) or (2) of subsection  
23          (a) shall pay civil penalties as follows:

24                  “(i) Pay a civil penalty of not less  
25                  than \$500 and not more than \$4,000 for



1 each unauthorized alien with respect to  
2 each such violation.

3 “(ii) If the employer has previously  
4 been fined 1 time within the preceding 12  
5 months under this subparagraph, pay a  
6 civil penalty of not less than \$4,000 and  
7 not more than \$10,000 for each unauthor-  
8 ized alien with respect to each such viola-  
9 tion.

10 “(iii) If the employer has previously  
11 been fined more than 1 time within the  
12 preceding 12 months under this subpara-  
13 graph or has failed to comply with a pre-  
14 viously issued and final order related to  
15 any such provision, pay a civil penalty of  
16 not less than \$6,000 and not more than  
17 \$20,000 for each unauthorized alien with  
18 respect to each such violation.

19 “(B) RECORDKEEPING OR VERIFICATION  
20 PRACTICES.—Any employer that violates or fails  
21 to comply with paragraph (1)(B) of subsection  
22 (a) shall pay a civil penalty as follows:

23 “(i) Pay a civil penalty of not less  
24 than \$200 and not more than \$2,000 for  
25 each such violation or failure.

1           “(ii) If the employer has previously  
2           been fined 1 time within the preceding 12  
3           months under this subparagraph, pay a  
4           civil penalty of not less than \$400 and not  
5           more than \$4,000 for each such violation  
6           of failure.

7           “(iii) If the employer has previously  
8           been fined more than 1 time within the  
9           preceding 12 months under this subpara-  
10          graph or has failed to comply with a pre-  
11          viously issued and final order related to  
12          such requirements, pay a civil penalty of  
13          \$6,000 for each such violation or failure.

14          “(iv) SPECIAL RULE GOVERNING PA-  
15          PERWORK VIOLATION.—In the case where  
16          an employer commits a violation of this  
17          section that is deemed to be purely a pa-  
18          perwork violation where the Secretary fails  
19          to establish any intent to hire an individual  
20          who is not unauthorized for employment in  
21          the United States, the Secretary shall per-  
22          mit the employer to correct such paper-  
23          work error within 30 days of receiving no-  
24          tice from the Secretary of such violation.

1           “(C) OTHER PENALTIES.—Notwith-  
2 standing subparagraphs (A) and (B), the Sec-  
3 retary may impose additional penalties for vio-  
4 lations, including cease and desist orders, spe-  
5 cially designed compliance plans to prevent fur-  
6 ther violations, suspended fines to take effect in  
7 the event of a further violation, and in appro-  
8 priate cases, the civil penalty described in sub-  
9 section (e)(2).

10           “(5) JUDICIAL REVIEW.—

11           “(A) IN GENERAL.—An employer adversely  
12 affected by a final determination may, within  
13 45 days after the date the final determination  
14 is issued, obtain judicial review of such deter-  
15 mination.

16           “(B) REPORT.—Not later than 180 days  
17 after the date of enactment of the this Act, the  
18 Director of the Federal Judicial Center shall  
19 submit to Congress a report on judicial review  
20 of a final determination. The report shall con-  
21 tain recommendations on jurisdiction and pro-  
22 cedures that shall be instituted to seek ade-  
23 quate and timely review of such decision.

24           “(6) ENFORCEMENT OF ORDERS.—If an em-  
25 ployer fails to comply with a final determination

1 issued against that employer under this subsection,  
2 and the final determination is not subject to review  
3 as provided in paragraph (5), the Attorney General  
4 may file suit to enforce compliance with the final de-  
5 termination, not earlier than 46 days and not later  
6 than 90 days, after the date the final determination  
7 is issued, in any appropriate district court of the  
8 United States. The burden shall remain on the em-  
9 ployer to show that the final determination was not  
10 supported by a preponderance of the evidence.

11 “(7) RECOVERY OF COSTS AND ATTORNEYS’  
12 FEES.—In any appeal brought under paragraph (5)  
13 or suit brought under paragraph (6), the employer  
14 shall be entitled to recover from the Secretary rea-  
15 sonable costs and attorneys’ fees if such employer  
16 prevails on the merits of the case. The award of at-  
17 torneys’ fees shall not exceed \$75,000. Such amount  
18 shall be subject to annual inflation adjustments per  
19 the United States Consumer Price Index - All Urban  
20 Consumers (CPI-U) compiled by the Bureau of  
21 Labor Statistics. Any costs and attorneys’ fees as-  
22 sessed against the Secretary shall be charged against  
23 the operating expenses of the Department of Home-  
24 land Security for the fiscal year in which the assess-

1       ment is made, and shall not be reimbursed from any  
2       other source.

3           “(8) COORDINATION.—An investigation under  
4       paragraph (1)(C) shall be coordinated with the ap-  
5       propriate regional office of the National Labor Rela-  
6       tions Board, the Department of Labor, and all rel-  
7       evant State and local agencies that are charged with  
8       enforcing workplace standards. Evidence gathered  
9       from such agencies shall be considered in deter-  
10      mining whether the entity under investigation has  
11      violated subsection (a).

12      “(e) CRIMINAL PENALTIES AND INJUNCTIONS FOR  
13      PATTERN OR PRACTICE VIOLATIONS.—

14           “(1) CRIMINAL PENALTY.—An employer that  
15      engages in a pattern or practice of knowing viola-  
16      tions of paragraph (1)(A) or (2) of subsection (a)  
17      shall be fined not more than \$20,000 for each unau-  
18      thorized alien with respect to whom such a violation  
19      occurs, imprisoned for not more than 3 years for the  
20      entire pattern or practice, or both.

21           “(2) ENJOINING OF PATTERN OR PRACTICE  
22      VIOLATIONS.—If the Secretary or the Attorney Gen-  
23      eral has reasonable cause to believe that an employer  
24      is engaged in a pattern or practice of employment in  
25      violation of paragraph (1)(A) or (2) of subsection

1 (a), the Attorney General may bring a civil action in  
2 the appropriate district court of the United States  
3 requesting such relief, including a permanent or  
4 temporary injunction, restraining order, or other  
5 order against the employer, as the Secretary deems  
6 necessary.

7 “(f) ADJUSTMENT FOR INFLATION.—All penalties  
8 and limitations on the recovery of costs and attorney’s fees  
9 in this section shall be increased every 4 years beginning  
10 January 2010 to reflect the percentage increase in the  
11 consumer price index for all urban consumers (all items;  
12 United States city average) for the 48 month period end-  
13 ing with September of the year preceding the year such  
14 adjustment is made. Any adjustment under this subpara-  
15 graph shall be rounded to the nearest dollar.

16 “(g) PROHIBITION OF INDEMNITY BONDS.—

17 “(1) PROHIBITION.—It is unlawful for an em-  
18 ployer, in the hiring of an individual, to require the  
19 individual to post a bond or security, to pay or agree  
20 to pay an amount, or otherwise to provide a finan-  
21 cial guaranty or indemnity, against any potential li-  
22 ability arising under this section relating to such hir-  
23 ing of the individual.

24 “(2) CIVIL PENALTY.—Any employer which is  
25 determined, after notice and opportunity for mitiga-

1       tion of the monetary penalty under subsection (d),  
2       to have violated paragraph (1) shall be subject to a  
3       civil penalty of \$10,000 for each violation and to an  
4       administrative order requiring the return of any  
5       amounts received in violation of such paragraph to  
6       the individual.

7       “(h) PROHIBITION ON AWARD OF GOVERNMENT  
8       CONTRACTS, GRANTS, AND AGREEMENTS.—

9               “(1) EMPLOYERS WITH NO CONTRACTS,  
10       GRANTS, OR AGREEMENTS.—

11               “(A) IN GENERAL.—If an employer who  
12       does not hold a Federal contract, grant, or co-  
13       operative agreement is determined by the Sec-  
14       retary to be a repeat violator of this section the  
15       employer shall be debarred from the receipt of  
16       a Federal contract, grant, or cooperative agree-  
17       ment for a period of 5 years. The Secretary or  
18       the Attorney General shall advise the Adminis-  
19       trator of General Services of such a debarment,  
20       and the Administrator of General Services shall  
21       list the employer on the List of Parties Ex-  
22       cluded from Federal Procurement and Non-  
23       procurement Programs for a period of 5 years.

24               “(B) WAIVER.—The Administrator of Gen-  
25       eral Services, in consultation with the Secretary

1 and the Attorney General, may waive operation  
2 of this subsection or may limit the duration or  
3 scope of the debarment.

4 “(2) EMPLOYERS WITH CONTRACTS, GRANTS,  
5 OR AGREEMENTS.—

6 “(A) IN GENERAL.—An employer who  
7 holds a Federal contract, grant, or cooperative  
8 agreement and is determined by the Secretary  
9 to be a repeat violator of this section or is con-  
10 victed of a crime under this section, shall be  
11 debarred from the receipt of new Federal con-  
12 tracts, grants, or cooperative agreements for a  
13 period of 5 years.

14 “(B) NOTICE TO AGENCIES.—Prior to de-  
15 barring the employer under subparagraph (A),  
16 the Secretary, in cooperation with the Adminis-  
17 trator of General Services, shall advise any  
18 agency or department holding a contract, grant,  
19 or cooperative agreement with the employer of  
20 the Government’s intention to debar the em-  
21 ployer from the receipt of new Federal con-  
22 tracts, grants, or cooperative agreements for a  
23 period of 5 years.

24 “(C) REVIEW.—The decision of whether to  
25 debar or take alternate action under this para-



1 graph shall be reviewable pursuant to section 9,  
2 Federal Acquisition Regulation.

3 “(3) SUSPENSION.—Indictments for violations  
4 of this section or adequate evidence of actions that  
5 could form the basis for debarment under this sub-  
6 section shall be considered a cause for suspension  
7 under the procedures and standards for suspension  
8 prescribed by the Federal Acquisition Regulation.

9 “(4) REPEAT VIOLATOR DEFINED.—In this  
10 subsection, the term ‘repeat violator’ means, with re-  
11 spect to an employer, that the employer has violated  
12 paragraph (1)(A), (1)(B), or (2) of subsection (a)  
13 more than 1 time and that such violations were dis-  
14 covered as a result of more than 1 separate inves-  
15 tigation of the employer. A violation of such para-  
16 graph (1)(B) that is inadvertent and unrelated to a  
17 violation of subsection (a)(1)(A) and (a)(2) may not  
18 be considered to be a violation of such paragraph  
19 (1)(B) for the purposes of this paragraph.

20 “(i) MISCELLANEOUS PROVISIONS.—

21 “(1) DOCUMENTATION.—In providing docu-  
22 mentation or endorsement of authorization of aliens  
23 (other than aliens lawfully admitted for permanent  
24 residence) eligible to be employed in the United  
25 States, the Secretary shall provide that any limita-

1 tions with respect to the period or type of employ-  
2 ment or employer shall be conspicuously stated on  
3 the documentation or endorsement.

4 “(2) PREEMPTION.—The provisions of this sec-  
5 tion preempt any State or local law, contract license,  
6 or other standard, requirement, action or instrument  
7 from—

8 “(A) imposing sanctions or liabilities for  
9 employing, or recruiting or referring for em-  
10 ployment, unauthorized aliens, or for working  
11 without employment authorization;

12 “(B) requiring those hiring, recruiting, or  
13 referring individuals for employment to ascer-  
14 tain or verify the individuals’ employment au-  
15 thorization or to participate in an employment  
16 authorization verification system, or requiring  
17 individuals to demonstrate employment author-  
18 ization; and

19 “(C) requiring, authorizing or permitting  
20 the use of an employment verification system,  
21 unless otherwise mandated by Federal law, for  
22 any other purpose including, but without limita-  
23 tion, such purposes as verifying the status of  
24 renters, determining eligibility for receipt of  
25 benefits, enrollment in school, obtaining or re-

1           taining a business license or other license, or  
2           conducting a background check.

3           “(j) BACKPAY REMEDIES.—Neither backpay nor any  
4 other monetary remedy for unlawful employment prac-  
5 tices, workplace injuries or other causes of action giving  
6 rise to liability shall be denied to a present or former em-  
7 ployee on account of: the employer’s or the employee’s fail-  
8 ure to comply with the requirements of this section in es-  
9 tablishing or maintaining the employment relationship; the  
10 employee’s violation of the provisions of federal law related  
11 to the employment verification system set forth in sub-  
12 section (a); or the employee’s continuing status as an un-  
13 authorized alien both during and after termination of em-  
14 ployment.

15           “(k) DEFINITIONS.—In this section—

16           “(1) EMPLOYER.—The term ‘employer’ means  
17 any person or entity, including any entity of the  
18 Government of the United States, hiring an indi-  
19 vidual for employment in the United States.

20           “(2) SECRETARY.—Except as otherwise pro-  
21 vided, the term ‘Secretary’ means the Secretary of  
22 Homeland Security.

23           “(3) UNAUTHORIZED ALIEN.—The term ‘unau-  
24 thorized alien’ means, with respect to the employ-

1       ment of an alien at a particular time, that the alien  
2       is not at that time either—

3               “(A) an alien lawfully admitted for perma-  
4               nent residence; or

5               “(B) authorized to be so employed by this  
6               Act or by the Secretary.”.

7       (b) CONFORMING AMENDMENTS.—

8               (1) AMENDMENTS.—

9               (A) REPEAL OF E-VERIFY.—Sections 401,  
10              402, 403, 404, and 405 of the Illegal Immigra-  
11              tion Reform and Immigrant Responsibility Act  
12              of 1996 (division C of Public Law 104–208; 8  
13              U.S.C. 1324a note) are repealed.

14              (B) REPEAL OF REPORTING REQUIRE-  
15              MENTS.—

16              (i) REPORT ON EARNINGS OF ALIENS  
17              NOT AUTHORIZED TO WORK.—Subsection  
18              (c) of section 290 (8 U.S.C. 1360) is re-  
19              pealed.

20              (ii) REPORT ON FRAUDULENT USE OF  
21              SOCIAL SECURITY ACCOUNT NUMBERS.—  
22              Subsection (b) of section 414 of the Illegal  
23              Immigration Reform and Immigrant Re-  
24              sponsibility Act of 1996 (division C of

1           Public Law 104–208; 8 U.S.C. 1360 note)  
2           is repealed.

3           (C) REPEAL OF DEFINITION.—Paragraph  
4           (1)(F) of section 1961 of title 18, United  
5           States Code, is repealed.

6           (2) CONSTRUCTION.—Nothing in this sub-  
7           section or in subsection (c) of section 274A, as  
8           amended by subsection (a), may be construed to  
9           limit the authority of the Secretary to allow or con-  
10          tinue to allow the participation of employers who  
11          participated in the E-Verify program under such  
12          sections 401, 402, 403, 404, and 405 of the Illegal  
13          Immigration Reform and Immigrant Responsibility  
14          Act of 1996 (division C of Public Law 104–208; 8  
15          U.S.C. 1324a note) in the Electronic Employment  
16          Verification System established pursuant to such  
17          subsection (d).

18          (c) TECHNICAL AMENDMENTS.—

19           (1) DEFINITION OF UNAUTHORIZED ALIEN.—  
20          Sections 218(i)(1) (8 U.S.C. 1188(i)(1)), 245(c)(8)  
21          (8 U.S.C. 1255(c)(8)), 274(a)(3)(B)(i) (8 U.S.C.  
22          1324(a)(3)(B)(i)), and 274B(a)(1) (8 U.S.C.  
23          1324b(a)(1)) are amended by striking “274A(h)(3)”  
24          and inserting “274A(h)”.

1           (2) DOCUMENT REQUIREMENTS.—Section 274B  
2           (8 U.S.C. 1324b) is amended—

3                   (A) in subsections (a)(6) and (g)(2)(B), by  
4                   striking “274A(b)” and inserting “274A(d)”;  
5                   and

6                   (B) in subsection (g)(2)(B)(ii), by striking  
7                   “274A(b)(5)” and inserting “274A(d)(9)”.

8           (d)   EMPLOYMENT   VERIFICATION   ADVISORY  
9   PANEL.—

10           (1) IN GENERAL.—Not later than 180 days  
11           after the date of enactment of this Act, the Sec-  
12           retary shall establish an Employment Verification  
13           Advisory Panel (hereinafter in the subsection re-  
14           ferred to as the “Advisory Panel”).

15           (2) MEMBERSHIP.—The Advisory Panel should  
16           consist of members appointed by the Secretary, after  
17           consulting with the Commissioner of Social Security,  
18           the Director of National Institutes of Standards and  
19           Technology, and other appropriate Federal agencies.  
20           Such members should include representatives from  
21           appropriate Federal agencies and private sector rep-  
22           resentatives of affected industries and groups, in-  
23           cluding immigration policy, human resource, em-  
24           ployer and employee organizations, experts in fields

1 including database security, employment verification,  
2 biometrics, and privacy.

3 (3) FUNCTIONS.—

4 (A) ADVICE ON IMPLEMENTATION AND DE-  
5 PLOYMENT.—The Advisory Panel shall advise  
6 the Secretary and the Commissioner of Social  
7 Security on the implementation and deployment  
8 of the verification systems established under the  
9 amendments made by this section, including—

10 (i) the best means of promoting effi-  
11 ciency, compliance responsiveness, accu-  
12 racy, public education, user support, inter-  
13 operability, and cost-effectiveness of the  
14 systems established under this section;

15 (ii) the best practices and procedures  
16 in order to protect the privacy and identi-  
17 ties of individuals enrolled in the systems  
18 established under this section;

19 (iii) standards of database accuracy,  
20 error rates, privacy, and measurable com-  
21 pliance with system rules that must be met  
22 before implementation begins and before  
23 each additional phase of implementation;  
24 and

1 (iv) the best means by which data ob-  
2 tained through such systems may be used  
3 to timely improve the accuracy of data-  
4 bases maintained by the Secretary and the  
5 Commissioner of Social Security.

6 (B) STUDY AND REPORT ON IDENTITY FRAUD  
7 AND ALTERNATIVES FOR STRENGTHENING IDENTITY  
8 AUTHENTICATION.—

9 (i) STUDY.—The Advisory Panel shall  
10 evaluate the vulnerability of the System to iden-  
11 tity fraud and the degree to which individuals  
12 not authorized for employment in the United  
13 States are able to be confirmed by the System.

14 (ii) REPORT.—Not later than 180 days  
15 after its establishment, the Advisory Panel shall  
16 issue a report to the Secretary on alternatives  
17 for strengthening identity authentication and  
18 preventing fraudulent confirmations by the Sys-  
19 tem. The report shall—

20 (I) survey available technologies for  
21 identity authentication, including but not  
22 limited to biometric and biographical iden-  
23 tity assurance systems;

24 (II) analyze alternatives to identity  
25 assurance technologies, including the en-



1 hanced verification system described in  
2 subsection (c)(25) of section 274A of the  
3 Immigration and Nationality Act, as  
4 amended by this section;

5 (III) analyze the technical feasibility  
6 of adding new identity authentication re-  
7 quirements to the System described in sub-  
8 section (c) of such section, including by  
9 considering:

10 (IV) process burdens (at the point of  
11 collection, information processing, etc.);

12 (V) performance burdens (anticipated  
13 system throughputs, scalability,  
14 reconfigurability, etc);

15 (VI) accuracy and realistic failure  
16 rates and projected increases in erroneous  
17 nonconfirmations of work authorized indi-  
18 viduals;

19 (VII) projected compliance and non-  
20 compliance rates,

21 (VIII) data Security, data storage re-  
22 quirements, and added risk to individuals'  
23 privacy;

24 (IX) estimate the costs and benefits of  
25 different strategies for strengthening iden-

1           tity authentication and evaluate their over-  
2           all strengths and weaknesses, including but  
3           not limited to requirements that employers  
4           collect biometric, biographical, or other  
5           data from new employees instead of or in  
6           addition to the data identified in sub-  
7           sections (b) and (c) of such section and re-  
8           quirements that individuals participate in  
9           the enhanced verification system described  
10          in subsection (c)(25) of such section.

11           (4) **TERMINATION.**—The Advisory Panel shall  
12          terminate 5 years after the date of the enactment of  
13          this Act.

14           (e) **EFFECTIVE DATE.**—The amendments made by  
15          subsections (a), (b), and (c) shall take effect on the date  
16          that is 180 days after the date of the enactment of this  
17          Act.

18          **SEC. 202. PARITY WITH CIVIL RIGHTS ACT OF 1964.**

19           (a) **PROHIBITION OF EMPLOYMENT DISCRIMINA-**  
20          **TION.**—Section 274B(a) (8 U.S.C. 1324b(a)) is amend-  
21          ed—

22                  (1) by amending paragraph (1) to read as fol-  
23          lows:

24                  “(1) **IN GENERAL.**—It is an unfair immigra-  
25          tion-related employment practice for a person or

1 other entity to discriminate against any individual  
2 (other than an unauthorized alien defined in section  
3 274A(h)(3)) with respect to—

4 “(A) the hiring, or recruitment or referral  
5 for a fee, of the individual for employment, the  
6 verification of the individual’s eligibility for em-  
7 ployment, or the discharging of the individual  
8 from employment—

9 “(i) because of such individual’s na-  
10 tional origin; or

11 “(ii) because of such individual’s citi-  
12 zenship status;

13 “(B) the compensation, terms, or condi-  
14 tions of the employment of the individual.”;

15 (2) by amending paragraph (2)(A) to read as  
16 follows:

17 “(A) a person or other entity that employs  
18 three or fewer employees, except for an ‘employ-  
19 ment agency,’ meaning any person regularly un-  
20 dertaking with or without compensation to pro-  
21 cure employees for an employer or to procure  
22 for employees opportunities to work for an em-  
23 ployer and includes an agent of such a per-  
24 son.”;

1           (3) by repealing section 274(a)(3) (8 U.S.C.  
2           1324(a)(3));

3           (4) in paragraph (6), by striking “if made for  
4           the purpose or with the intent of discriminating  
5           against an individual in violation of paragraph (1)”  
6           and inserting “in violation of paragraph (1). Addi-  
7           tional information and compliance assistance will be  
8           provided to employers to assist them in complying  
9           with the law”;

10          (5) by inserting a new paragraph (7) as follows:

11          “(7) ANTIDISCRIMINATION REQUIREMENTS OF  
12          THE ELECTRONIC EMPLOYMENT VERIFICATION SYS-  
13          TEM.—It is an unfair immigration-related employ-  
14          ment practice for a person or other entity, in the  
15          course of the Electronic Employment Verification  
16          System described in section 274A(c)—

17                 “(A) to terminate the employment of an  
18                 individual or take any adverse employment ac-  
19                 tion due to a tentative nonconfirmation issued  
20                 by such System, with respect to that individual;

21                 “(B) to use the System for screening of an  
22                 applicant for employment prior to making the  
23                 individual an offer of employment;

24                 “(C) to use the System for the  
25                 reverification of an employee after the employee

1 has satisfied the process described in (b)(1),  
2 unless otherwise required by Federal law.

3 “(D) to use the System selectively to ex-  
4 clude certain individuals from consideration for  
5 employment as a result of a perceived likelihood  
6 that additional verification will be required, be-  
7 yond what is required for most job applicants;  
8 or

9 “(E) to use the System to deny workers’  
10 employment benefits or otherwise interfere with  
11 their labor rights, or to engage in any other un-  
12 lawful employment practice.”;

13 (6) by inserting a new paragraph (8) as follows:

14 “(8) BURDEN OF PROOF IN DISPARATE IMPACT  
15 CASES.—

16 “(A) An unlawful immigration-related em-  
17 ployment practice or unfair labor practice case  
18 based on disparate impact is established under  
19 this general rule only if—

20 “(i) a complaining party demonstrates  
21 that a respondent uses a particular em-  
22 ployment practice that causes a disparate  
23 impact on the basis of national origin or  
24 citizenship status and the respondent fails  
25 to demonstrate that the challenged practice

1 is job related for the position in question  
2 and consistent with business necessity; or

3 “(ii) the complaining party makes the  
4 demonstration with respect to an alter-  
5 native employment practice and the re-  
6 spondent refuses to adopt such an alter-  
7 native employment practice. An alternative  
8 employment practice is defined as a policy  
9 that would satisfy the employer’s legiti-  
10 mate interests without having a disparate  
11 impact on a protected class.

12 “(B) With respect to demonstrating that a  
13 particular employment practice causes a dis-  
14 parate impact as described in subparagraph  
15 (8)(A), the complaining party shall demonstrate  
16 that each particular challenged employment  
17 practice causes a disparate impact, except that  
18 if the complaining party can demonstrate to the  
19 court that the elements of a respondent’s deci-  
20 sion-making process are not capable of separa-  
21 tion for analysis, the decisionmaking process  
22 may be analyzed as one employment practice.

23 “(C) If the respondent demonstrates that a  
24 specific employment practice does not cause the  
25 disparate impact, the respondent shall not be

1 required to demonstrate that such practice is  
2 required by business necessity.

3 “(D) A demonstration that an employment  
4 practice is required by business necessity may  
5 not be used as a defense against a claim of in-  
6 tentional discrimination under this statute.”;  
7 and

8 (7) by inserting a new paragraph (9) as follows:

9 “(9) Except as otherwise provided in this sub-  
10 chapter, an unlawful immigration-related unfair em-  
11 ployment practice is established when the charging  
12 party demonstrates that citizenship status or na-  
13 tional origin was a motivating factor for any employ-  
14 ment practice, even though other factors also moti-  
15 vated the practice.”

16 (b) CHARGES AND COMPLAINTS.—Section 274B(d)  
17 (8 U.S.C. 1324b(d)) is amended—

18 (1) in paragraph (1), by striking “within 120  
19 days of the date of the receipt of the charge” and  
20 “subject to paragraph (3)”;

21 (2) by striking “The Special Counsel’s failure  
22 to file such a complaint within such 120-day period  
23 shall not affect the right of the Special Counsel to  
24 investigate the charge or to bring a complaint before  
25 an administrative law judge during such 90-day pe-

1 riod.” and inserting at the end of paragraph (2)  
2 “Nothing contained in this Act shall relieve any Gov-  
3 ernment agency or official of his or her responsibility  
4 for unlawful electronic employment verification prac-  
5 tices.”;

6 (3) by striking paragraph (3).

7 (c) INCREASE IN CIVIL MONEY PENALTIES.—Section  
8 274B(g)(2)(B)(iv) (8 U.S.C. 1324b(g)(2)(B)(iv)) is  
9 amended—

10 (1) in subclause (I), by striking “\$250 and not  
11 more than \$1,000” and inserting “\$2,000 and not  
12 more than \$4,000”;

13 (2) in subclause (II), by striking “\$2,000 and  
14 not more than \$5,000” and inserting “\$4,000 and  
15 not more than \$10,000”;

16 (3) in subclause (III), by striking “\$3,000 and  
17 not more than \$10,000” and inserting “\$6,000 and  
18 not more than \$20,000”;

19 (4) in subclause (IV), by striking “\$100 and  
20 not more than \$1,000” and inserting “\$500 and not  
21 more than \$5,000.”

22 (d) ORDERS FINDING VIOLATIONS.—Section  
23 274B(g) (8 U.S.C. 1324b(g)) is amended—

24 (1) in paragraph (2)(B)(iii), by inserting “, and  
25 to provide such other relief as the administrative law



1 judge determines appropriate to make the individual  
2 whole” before the semicolon at the end; and

3 (2) by inserting the following at the end of  
4 paragraph (2)(B)(viii):

5 “(ix)(I) No order of the court shall re-  
6 quire the admission or reinstatement of an  
7 individual as a member of a union, or the  
8 hiring, reinstatement, or promotion of an  
9 individual as an employee, or the payment  
10 to him of any back pay, if such individual  
11 was refused admission, suspended, or ex-  
12 pelled, or was refused employment or ad-  
13 vancement or was suspended or discharged  
14 for any reason other than discrimination  
15 on account of citizenship status or national  
16 origin or in violation of this section.

17 “(II) On a claim in which an indi-  
18 vidual proves a violation under subsection  
19 (a)(7) and a respondent demonstrates that  
20 the respondent would have taken the same  
21 action in the absence of the impermissible  
22 motivating factor, the court may grant de-  
23 claratory relief, injunctive relief (except as  
24 provided in clause (b)), and attorney’s fees  
25 and costs demonstrated to be directly at-

1           tributable only to the pursuit of a claim  
2           under subsection (a)(7); and shall not  
3           award damages or issue an order requiring  
4           any admission, reinstatement, hiring, pro-  
5           motion, or payment, described in subpara-  
6           graph (I).”;

7           (3) by inserting at the end of paragraph (2) a  
8           new subparagraph (E) as follows:

9                   “(E) COMPENSATORY AND PUNITIVE DAM-  
10                   AGES.—

11                           “(i) DETERMINATION OF PUNITIVE  
12                           DAMAGES.—A complaining party may ac-  
13                           quire punitive damages against a respond-  
14                           ent (other than the federal government or  
15                           a federal government agency) if the com-  
16                           plaining party demonstrates that the re-  
17                           spondent engaged in discriminatory prac-  
18                           tice or practices with malice or reckless in-  
19                           difference to the federally protected rights  
20                           of an aggrieved individual under subsection  
21                           (a)(1).

22                           “(ii) COMPENSATORY DAMAGES  
23                           AWARDED UNDER THIS SECTION.—Com-  
24                           pensatory damages awarded under this  
25                           section shall not include backpay, interest

1 on backpay, or any other type of relief au-  
2 thorized under subparagraphs (B) and (C)  
3 of subsection (g)(2).

4 “(iii) LIMITATIONS.—The sum of  
5 compensatory damages awarded under this  
6 section for future pecuniary losses, emo-  
7 tional pain, suffering, inconvenience, men-  
8 tal anguish, loss of enjoyment of life, and  
9 other nonpecuniary losses on account of  
10 national origin discrimination shall not ex-  
11 ceed \$50,000 for each complaining party.  
12 In the case of citizenship status discrimi-  
13 nation, the limitations should be as follows:

14 “(I) In the case of a respondent  
15 who has more than 3 and fewer than  
16 101 employees in each of 20 or more  
17 calendar weeks in the current or pre-  
18 ceeding calendar year, \$50,000.

19 “(II) In the case of a respondent  
20 who has more than 100 and fewer  
21 than 201 employees in each of 20 or  
22 more calendar weeks in the current or  
23 preceding calendar year, \$100,000.

24 “(III) In the case of a respond-  
25 ent who has more than 200 and fewer

1 than 501 employees in each of 20 or  
2 more calendar weeks in the current or  
3 preceding calendar year, \$200,000.

4 “(IV) In the case of a respondent  
5 who has more than 500 employees in  
6 each of 20 or more calendar weeks in  
7 the current or preceding calendar  
8 year, \$300,000.”.

9 (e) DISSEMINATION OF INFORMATION.—Section  
10 274B is amended—

11 (1) in subparagraph (l)(3), by striking  
12 “\$10,000,000” and inserting “\$50,000,000”.

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

14 “(m) REPORTS.—The Secretary of Homeland Secu-  
15 rity shall make transactional data and citizenship status  
16 data available upon request by the Special Counsel (ap-  
17 pointed under subsection (c) of this section).”.

18 (f) EFFECTIVE DATE.—The amendments made by  
19 this section shall take effect on the date of the enactment  
20 of this Act and shall apply to violations occurring on or  
21 after such date.

22 **SEC. 203. AMENDMENTS TO THE SOCIAL SECURITY ACT.**

23 (a) SOCIAL SECURITY ACT.—Section 205(c)(2) of the  
24 Social Security Act (42 U.S.C. 405(c)(2)) is amended by  
25 adding at the end the following new subparagraphs:

1           “(I)(i) The Commissioner of Social Secu-  
2           rity shall, subject to the provisions of title III  
3           of the this Act, establish a reliable, secure  
4           method to provide through the employment  
5           verification systems established pursuant to sec-  
6           tion 274A of the Immigration and Nationality  
7           Act (referred to in this subparagraph as the  
8           ‘System’), within the time periods required by  
9           such section—

10                   “(I) a determination of whether the  
11                   name, date of birth, employer identification  
12                   number, and social security account num-  
13                   ber of an individual provided in an inquiry  
14                   made to the System by an employer is con-  
15                   sistent with such information maintained  
16                   by the Commissioner in order to confirm  
17                   the validity of the information provided;

18                   “(II) a determination of the citizen-  
19                   ship status associated with such name and  
20                   social security account number, according  
21                   to the records maintained by the Commis-  
22                   sioner;

23                   “(III) a determination of whether the  
24                   name and number belongs to an individual

1           who is deceased, according to the records  
2           maintained by the Commissioner;

3           “(IV) a determination of whether the  
4           name and number is blocked in accordance  
5           with clause (ii); and

6           “(V) a confirmation or a nonconfirma-  
7           tion described in such subsection (c), in a  
8           manner that ensures that other informa-  
9           tion maintained by the Commissioner is  
10          not disclosed or released to employers  
11          through the System.

12          “(ii) The Commissioner of Social Security  
13          shall prevent the fraudulent or other misuse of  
14          a social security account number by establishing  
15          procedures under which an individual who has  
16          been assigned a social security account number  
17          may block the use of such number under the  
18          System and remove such block.

19          “(J) In assigning social security account  
20          numbers to aliens who are authorized to work  
21          in the United States under section 218A of the  
22          Immigration and Nationality Act, the Commis-  
23          sioner of Social Security shall, to the maximum  
24          extent practicable, assign such numbers by em-  
25          ploying the enumeration procedure administered

1 jointly by the Commissioner, the Secretary of  
2 State, and the Secretary.”.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—

4 (1) IN GENERAL.—There are authorized to be  
5 appropriated to the Secretary such sums as are nec-  
6 essary to carry out the amendments made by this  
7 section.

8 (2) LIMITATION ON VERIFICATION RESPON-  
9 SIBILITIES OF COMMISSIONER OF SOCIAL SECU-  
10 RITY.—The Commissioner of Social Security is au-  
11 thorized to perform activities with respect to car-  
12 rying out the Commissioner’s responsibilities in this  
13 title or the amendments made by this title, but only  
14 to the extent the Secretary has provided, in advance,  
15 funds to cover the Commissioner’s full costs in car-  
16 rying out such responsibilities. In no case shall  
17 funds from the Federal Old-Age and Survivors In-  
18 surance Trust Fund or the Federal Disability Insur-  
19 ance Trust Fund be used to carry out such respon-  
20 sibilities.

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall take effect on the date that is 180 days  
23 after the date of the enactment of this Act.

# 1           **TITLE III—VISA REFORMS**

## 2   **SEC. 301. ELIMINATION OF EXISTING BACKLOGS.**

3           (a) WORLDWIDE LEVEL OF FAMILY-SPONSORED IM-  
4 MIGRANTS.—Section 201(c) of the Immigration and Na-  
5 tionality Act (8 U.S.C. 1151(c)) is amended to read as  
6 follows:

7           “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED  
8 IMMIGRANTS.—

9           “(1) IN GENERAL.—Subject to subparagraph  
10 (B), the worldwide level of family-sponsored immi-  
11 grants under this subsection for a fiscal year is  
12 equal to the sum of—

13                   “(A) 480,000; and

14                   “(B) the sum of—

15                           “(i) the number computed under  
16 paragraph (2); and

17                           “(ii) the number computed under  
18 paragraph (3).

19           “(2) UNUSED VISA NUMBERS FROM PREVIOUS  
20 FISCAL YEAR.—The number computed under this  
21 paragraph for a fiscal year is the difference, if any,  
22 between—

23                   “(A) the worldwide level of family-spon-  
24 sored immigrant visas established for the pre-  
25 vious fiscal year; and



1           “(B) the number of visas issued under sec-  
2           tion 203(a), subject to this subsection, during  
3           the previous fiscal year.

4           “(3) UNUSED VISA NUMBERS FROM FISCAL  
5           YEARS 1992 THROUGH 2009.—The number computed  
6           under this paragraph is the difference, if any, be-  
7           tween—

8           “(A) the difference, if any, between—

9           “(i) the sum of the worldwide levels of  
10           family-sponsored immigrant visas estab-  
11           lished for each of fiscal years 1992  
12           through 2008; and

13           “(ii) the number of visas issued under  
14           section 203(a), subject to this subsection,  
15           during such fiscal years; and

16           “(B) the number of unused visas from fis-  
17           cal years 1992 through 2008 that were issued  
18           after fiscal year 2007 under section 203(a),  
19           subject to this subsection.”.

20           (b) WORLDWIDE LEVEL OF EMPLOYMENT-BASED  
21           IMMIGRANTS.—Section 201(d) of the Immigration and  
22           Nationality Act (8 U.S.C. 1151(d)) is amended to read  
23           as follows:

24           “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED  
25           IMMIGRANTS.—

1           “(1) IN GENERAL.—The worldwide level of em-  
2           ployment-based immigrants under this subsection for  
3           a fiscal year is equal to the sum of—

4                   “(A) 290,000;

5                   “(B) the number computed under para-  
6           graph (2); and

7                   “(C) the number computed under para-  
8           graph (3).

9           “(2) UNUSED VISA NUMBERS FROM PREVIOUS  
10          FISCAL YEAR.—The number computed under this  
11          paragraph for a fiscal year is the difference, if any,  
12          between—

13                   “(A) the worldwide level established under  
14          paragraph (1) for the previous fiscal year; and

15                   “(B) the number of visas actually issued  
16          under section 203(b), subject to this subsection,  
17          during the previous fiscal year.

18          “(3) UNUSED VISA NUMBERS FROM FISCAL  
19          YEARS 1992 THROUGH 2009.—The number computed  
20          under this paragraph is the difference, if any, be-  
21          tween—

22                   “(A) the difference, if any, between—

23                           “(i) the sum of the worldwide levels  
24                           established under paragraph (1) for fiscal  
25                           years 1992 through 2009; and



1 or parent of a citizen of the United States  
2 or a child or spouse of a lawful permanent  
3 resident (and for each family member of a  
4 citizen or lawful permanent resident under  
5 this subparagraph, such individual's spouse  
6 or child who is accompanying or following  
7 to join the individual), except that, in the  
8 case of parents, such citizens shall be at  
9 least 21 years of age.

10 “(ii) PREVIOUSLY ISSUED VISA.—  
11 Aliens admitted under section 211(a) on  
12 the basis of a prior issuance of a visa  
13 under section 203(a) to their accom-  
14 panying parent who is an immediate rel-  
15 ative.

16 “(iii) PARENTS AND CHILDREN.—An  
17 alien who was the child or the parent of a  
18 citizen of the United States or a child of  
19 a lawful permanent resident at the time of  
20 the citizen's or resident's death if the alien  
21 files a petition under section  
22 204(a)(1)(A)(ii) within 2 years after such  
23 date or prior to reaching 21 years of age.

24 “(iv) SPOUSE.—In the case of an  
25 alien who was the spouse of a citizen of the

1 United States or spouse of a lawful perma-  
2 nent resident and was not legally separated  
3 from the citizen or resident at the time of  
4 the citizen's or resident's death, the alien  
5 (and each child of the alien) shall be con-  
6 sidered for purposes of this subsection, to  
7 remain an immediate relative after the  
8 date of the citizen's or resident's death if  
9 the spouse files a petition under section  
10 204(a)(1)(A)(ii) before the earlier of—

11 “(I) 2 years after such date; or

12 “(II) the date on which the  
13 spouse remarries.

14 “(v) SPECIAL RULE.—For purposes of  
15 this subparagraph, an alien who has filed  
16 a petition under clause (iii) or (iv) of sec-  
17 tion 204(a)(1)(A) remains an immediate  
18 relative if the United States citizen or law-  
19 ful permanent resident spouse or parent  
20 loses United States citizenship or residence  
21 on account of the abuse.

22 “(B) BIRTH DURING TEMPORARY VISIT  
23 ABROAD.—Aliens born to an alien lawfully ad-  
24 mitted for permanent residence during a tem-  
25 porary visit abroad.”.

1 (b) ALLOCATION OF IMMIGRANT VISAS.—Section  
2 203(a) of the Immigration and Nationality Act (8 U.S.C.  
3 1153(a)) is amended—

4 (1) in paragraph (1), by striking “23,400” and  
5 inserting “38,000”;

6 (2) by striking paragraph (2) and inserting the  
7 following:

8 “(2) UNMARRIED SONS AND UNMARRIED  
9 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—  
10 Qualified immigrants who are the unmarried sons or  
11 unmarried daughters (but are not the children) of  
12 an alien lawfully admitted for permanent residence  
13 shall be allocated visas in a number not to exceed  
14 60,000, plus any visas not required for the class  
15 specified in paragraph (1).”;

16 (3) in paragraph (3), by striking “23,400” and  
17 inserting “38,000”; and

18 (4) in paragraph (4), by striking “65,000” and  
19 inserting “90,000”.

20 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

21 (1) RULES FOR DETERMINING WHETHER CER-  
22 TAIN ALIENS ARE IMMEDIATE RELATIVES.—Section  
23 201(f) of the Immigration and Nationality Act (8  
24 U.S.C. 1151(f)) is amended—

1 (A) in paragraph (1), by striking “para-  
2 graphs (2) and (3),” and inserting “paragraph  
3 (2),”;

4 (B) by striking paragraph (2);

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

7 (D) in paragraph (3), as redesignated by  
8 subparagraph (C), by striking “through (3)”  
9 and inserting “and (2)”.

10 (2) NUMERICAL LIMITATION TO ANY SINGLE  
11 FOREIGN STATE.—Section 202 of the Immigration  
12 and Nationality Act (8 U.S.C. 1152) is amended—

13 (A) in subsection (a)(4)—

14 (i) by striking subparagraphs (A) and

15 (B);

16 (ii) by redesignating subparagraphs  
17 (C) and (D) as subparagraphs (A) and  
18 (B), respectively; and

19 (iii) in subparagraph (A), as redesign-  
20 dated by clause (ii) of this paragraph, by  
21 striking “section 203(a)(2)(B)” and insert-  
22 ing “section 203(a)(2)”; and

23 (B) in subsection (e), in the flush matter  
24 following paragraph (3), by striking “, or as  
25 limiting the number of visas that may be issued

1           under section 203(a)(2)(A) pursuant to sub-  
2           section (a)(4)(A)’’.

3           (3) ALLOCATION OF IMMIGRATION VISAS.—Sec-  
4           tion 203(h) of the Immigration and Nationality Act  
5           (8 U.S.C. 1153(h)) is amended—

6                   (A) in paragraph (1)—

7                           (i) in the matter preceding subpara-  
8                           graph (A), by striking “subsections  
9                           (a)(2)(A) and (d)” and inserting “sub-  
10                           section (d)”;

11                           (ii) in subparagraph (A), by striking  
12                           “becomes available for such alien (or, in  
13                           the case of subsection (d), the date on  
14                           which an immigrant visa number became  
15                           available for the alien’s parent),” and in-  
16                           serting “became available for the alien’s  
17                           parent,”; and

18                           (iii) in subparagraph (B), by striking  
19                           “applicable”;

20                   (B) by amending paragraph (2) to read as  
21           follows:

22                   “(2) PETITIONS DESCRIBED.—The petition de-  
23           scribed in this paragraph is a petition filed under  
24           section 204 for classification of the alien’s parent



1 under subsection (a), (b), or (c) of this section.”;  
2 and

3 (C) in paragraph (3), by striking “sub-  
4 sections (a)(2)(A) and (d)” and inserting “sub-  
5 section (d)”.

6 (4) PROCEDURE FOR GRANTING IMMIGRANT  
7 STATUS.—Section 204 of the Immigration and Na-  
8 tionality Act (8 U.S.C. 1154) is amended—

9 (A) in subsection (a)(1)—

10 (i) in subparagraph (A)—

11 (I) in clause (i), by inserting “or  
12 lawful permanent resident” after “cit-  
13 izen”;

14 (II) in clause (ii), by striking  
15 “described in the second sentence of  
16 section 201(b)(2)(A)(i) also” and in-  
17 serting “, alien child, or alien parent  
18 described in section 201(b)(2)(A)”;

19 (III) in clause (iii)—

20 (aa) in subclause (I)(aa), by  
21 inserting “or legal permanent  
22 resident” after “citizen”; and

23 (bb) in subclause (II)(aa)—

24 (AA) in subitems (AA)  
25 and (BB), by inserting “or

1 legal permanent resident;”  
2 after “citizen” each place  
3 that term appears;

4 (BB) in subitem (CC),  
5 by inserting “or legal per-  
6 manent resident” after “cit-  
7 izen” each place that term  
8 appears; and

9 (CC) in subitem  
10 (CC)(bbb), by inserting “or  
11 legal permanent resident”  
12 after “citizenship”;

13 (IV) in clause (iv), by inserting  
14 “or legal permanent resident” after  
15 “citizen” each place that term ap-  
16 pears;

17 (V) in clause (v)(I), by inserting  
18 “or legal permanent resident” after  
19 “citizen”; and

20 (VI) in clause (vi)—

21 (aa) by inserting “or legal  
22 permanent resident status” after  
23 “renunciation of citizenship”;  
24 and

1 (bb) by inserting “or legal  
2 permanent resident” after “abus-  
3 er’s citizenship”;

4 (ii) by striking subparagraph (B);

5 (iii) in subparagraph (C), by striking  
6 “subparagraph (A)(iii), (A)(iv), (B)(ii), or  
7 (B)(iii)” and inserting “clause (iii) or (iv)  
8 of subparagraph (A)”;

9 (iv) in subparagraph (J), by striking  
10 “or clause (ii) or (iii) of subparagraph  
11 (B)”;

12 (B) in subsection (a), by striking para-  
13 graph (2);

14 (C) in subsection (c)(1), by striking “or  
15 preference status”;

16 (D) in subsection (h), by striking “or a pe-  
17 tition filed under subsection (a)(1)(B)(ii)”.

18 **SEC. 303. COUNTRY LIMITS.**

19 Section 202(a) of the Immigration and Nationality  
20 Act (8 U.S.C. 1152(a)) is amended—

21 (1) in paragraph (2)—

22 (A) by striking “, (4), and (5)” and insert-  
23 ing “and (4)”;

24 (B) by striking “subsections (a) and (b) of  
25 section 203” and inserting “section 203(a)”;

1 (C) by striking “7 percent (in the case of  
2 a single foreign state) or 2 percent” and insert-  
3 ing “10 percent (in the case of a single foreign  
4 state) or 5 percent”; and

5 (D) by striking “such subsections” and in-  
6 serting “such section”; and

7 (2) by striking paragraph (5).

8 **SEC. 304. PROMOTING FAMILY UNITY.**

9 (a) WAIVERS OF INADMISSIBILITY.—Section  
10 212(a)(9) of the Immigration and Nationality Act (8  
11 U.S.C. 1182(a)(9)) is amended—

12 (1) in subparagraph (B)—

13 (A) in clause (iii)—

14 (i) in subclause (I), by striking “18  
15 years of age” and inserting “21 years of  
16 age”;

17 (ii) by moving subclause (V) 4 ems to  
18 the right; and

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

21 “(VI) Clause (i) shall not apply  
22 to an alien for whom an immigrant  
23 visa is available or was available on or  
24 before the date of the enactment of  
25 the CIR ASAP Act of 2009, and is

1 otherwise admissible to the United  
2 States for permanent residence; and”;

3 (B) in clause (v)—

4 (i) by striking “spouse or son or  
5 daughter” and inserting “spouse, son,  
6 daughter, or parent”;

7 (ii) by striking “extreme”;

8 (iii) by inserting “, son, daughter,”  
9 after “lawfully resident spouse”; and

10 (iv) by striking “alien.” and inserting  
11 “alien or, if the Attorney General deter-  
12 mines that a waiver is necessary for hu-  
13 manitarian purposes, to ensure family  
14 unity or is otherwise in the public inter-  
15 est.”; and

16 (2) in subparagraph (C), by amending clause  
17 (ii) to read as follows:

18 “(ii) EXCEPTIONS.—Clause (i) shall  
19 not apply to an alien—

20 “(I) seeking admission more than  
21 10 years after the date of the alien’s  
22 last departure from the United States  
23 if, prior to the alien’s reembarkation  
24 at a place outside the United States  
25 or attempt to be readmitted from a

1 foreign contiguous territory, the Sec-  
2 retary of Homeland Security has con-  
3 sented to the alien’s reapplication for  
4 admission; or

5 “(II) for whom an immigrant  
6 visa is available or was available on or  
7 before the date of the enactment of  
8 this Act, and is otherwise admissible  
9 to the United States for permanent  
10 residence.”.

11 (b) FALSE CLAIMS AND MISREPRESENTATIONS.—  
12 The Immigration and Nationality Act (8 U.S.C. 1101, et  
13 seq.) is amended—

14 (1) in section 237(a)(3)(D) (8 U.S.C.  
15 1227(a)(3)(D)), by inserting “and willfully” after  
16 “falsely” each place such term appears;

17 (2) in section 212(a)(6)(C)(ii) (8 U.S.C.  
18 1182(a)(6)(C)(ii)), by inserting “and willfully” after  
19 “falsely” each place such term appears;

20 (3) in section 212(a)(6)(C)(iii) (8 U.S.C.  
21 1182(a)(6)(C)(iii)), by striking “of clause (i)”; and

22 (4) by amending section 212(i)(1) (8 U.S.C.  
23 1182(i)(1)) to read as follows:

24 “(1) The Attorney General or the Secretary of  
25 Homeland Security may, in the discretion of the At-

1       torney General or the Secretary, waive the applica-  
2       tion of subsection (a)(6)(C) in the case of an immi-  
3       grant who is the parent, spouse, son, or daughter of  
4       a United States citizen or of an alien lawfully admit-  
5       ted for permanent residence, or an alien granted  
6       classification under clause (iii) or (iv) of section  
7       204(a)(1)(A), if it is established to the satisfaction  
8       of the Attorney General or the Secretary that the  
9       admission to the United States of such alien would  
10      not be contrary to the national welfare, safety, or se-  
11      curity of the United States.”.

12 **SEC. 305. SURVIVING RELATIVES.**

13       (a) CONTINUED WAIVER ELIGIBILITY FOR WIDOWS,  
14 WIDOWERS AND ORPHANS.—Section 212(a)(2)(F) is  
15 amended to read as follows:

16               “(F) CONTINUED WAIVER ELIGIBILITY  
17               FOR WIDOWS, WIDOWERS AND ORPHANS.—In  
18               the case of an alien who would have been statu-  
19               torily eligible for a waiver of inadmissibility  
20               under the Immigration and Nationality Act but  
21               for the death of the qualifying relative, the alien  
22               may be considered for any waiver under the Im-  
23               migration and Nationality Act notwithstanding  
24               the death of the qualifying relative upon a  
25               showing of hardship to the alien or a family

1 member, or that the granting of the waiver is  
2 in the public interest.”.

3 (b) NATURALIZATION OF SURVIVING RELATIVES.—  
4 Section 319(a) of the Immigration and Nationality Act (8  
5 U.S.C. 1430(a)) is amended by inserting “(or, if the  
6 spouse is deceased, the spouse was a citizen of the United  
7 States)” after “citizen of the United States”.

8 (c) PROTECTION FOR THE SURVIVING RELATIVES OF  
9 REFUGEES AND ASYLEES.—An alien described in section  
10 204(l)(2)(D) of the Immigration and Nationality Act may  
11 have such petition described in paragraph (2) of section  
12 204(l) or an application for adjustment of status to that  
13 of a person admitted for lawful permanent residence based  
14 upon the family relationship described in such paragraph,  
15 and any related applications, adjudicated notwithstanding  
16 the death of the qualifying relative, regardless of whether  
17 the alien is present inside or outside the United States  
18 at the time of the qualifying relative’s death or after the  
19 qualifying relative’s death.

20 **SEC. 306. EXTENSION OF WAIVER AUTHORITY.**

21 Section 217(c)(8)(A)(iii) of the Immigration and Na-  
22 tionality Act (8 U.S.C. 1187(c)(8)(A)(iii)) is amended—

23 (1) by striking “June 30, 2009” and inserting  
24 “June 30, 2011”; and



1           (2) by striking “July 1, 2009” and inserting  
2           “July 1, 2011”.

3 **SEC. 307. DISCRETIONARY WAIVER FOR LONG-TERM LAW-**  
4 **FUL PERMANENT RESIDENTS.**

5           Section 240A(a) is amended by inserting after para-  
6 graph (3) the following:

7           “The Attorney General may waive the application of sub-  
8 paragraph (C) to an individual only if the individual’s con-  
9 viction resulted in a sentence served of two years or less  
10 and the Attorney General determines in his or her sole  
11 discretion that the individual does not pose a danger to  
12 the community or a national security threat and that sub-  
13 paragraph (C) should be waived for compelling reasons  
14 such as to preserve family unity or because removal is oth-  
15 erwise not in the public interest.”.

16 **SEC. 308. CONTINUOUS PRESENCE.**

17           Section 240A(d) of the Immigration and Nationality  
18 Act (8 U.S.C. 1229b(d)) is amended by striking para-  
19 graph (1).

20 **SEC. 309. BAR ON THE REMOVAL OF CERTAIN REFUGEES,**  
21 **PAROLEES OR ASYLEES.**

22           (a) IN GENERAL.—Chapter 4 of title II of the Immi-  
23 gration and Nationality Act is amended by inserting after  
24 section 237 the following new section:

1 **“SEC. 237A. BAR ON REMOVAL OF CERTAIN REFUGEES, PA-**  
2 **ROLEES OR ASYLEES.**

3 “‘No individual who fled their homeland for fear of  
4 persecution while under the age of 12 years and was later  
5 admitted to the United States as a refugee or parolee or  
6 was granted asylum in the United States shall be removed  
7 from the United States.’”.

8 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
9 The table of sections for the Immigration and Nationality  
10 Act is amended by inserting after the item relating to sec-  
11 tion 237 the following new item:

“Sec. 237A. Bar on removal of certain refugees, parolees or asylees.”.

12 **SEC. 310. EXEMPTION FROM IMMIGRANT VISA LIMIT FOR**  
13 **CERTAIN VETERANS WHO ARE NATIVES OF**  
14 **PHILIPPINES.**

15 Section 201(b)(1) of the Immigration and Nationality  
16 Act (8 U.S.C. 1151(b)(1)) is amended by adding at the  
17 end the following:

18 “(F) Aliens who are eligible for an immi-  
19 grant visa under paragraph (1) or (3) of section  
20 203(a) and who have a parent who was natural-  
21 ized pursuant to section 405 of the Immigration  
22 Act of 1990 (8 U.S.C. 1440 note).”.

23 **SEC. 311. FIANCÉE OR FIANCÉ CHILD STATUS PROTECTION.**

24 (a) DEFINITION.—Section 101(a)(15)(K)(iii) of the  
25 Immigration and Nationality Act (8 U.S.C.

1 1101(a)(15)(K)(iii) is amended by inserting before the  
2 semicolon at the end the following: “if a determination of  
3 the age of such minor child is made using the age of the  
4 alien on the date on which the petition is filed with the  
5 Secretary of Homeland Security to classify the alien’s par-  
6 ent as the fiancée or fiancé of a United States citizen (in  
7 the case of an alien parent described in clause (i)) or as  
8 the spouse of a United States citizen under section  
9 201(b)(2)(A)(i) (in the case of an alien parent described  
10 in clause (ii))”.

11 (b) ADJUSTMENT OF STATUS AUTHORIZED.—Section  
12 214(d) of the Immigration and Nationality Act (8 U.S.C.  
13 1184(d)) is amended—

14 (1) by redesignating paragraphs (2) and (3) as  
15 paragraphs (3) and (4), respectively;

16 (2) in paragraph (1), by striking the last sen-  
17 tence; and

18 (3) by inserting after paragraph (1) the fol-  
19 lowing:

20 “(2)(A) If an alien does not marry the peti-  
21 tioner under paragraph (1) within 3 months after  
22 the alien and the alien’s minor children are admitted  
23 into the United States, such alien and children shall  
24 be required to depart from the United States. If  
25 such aliens fail to depart from the United States,

1 they shall be removed in accordance with sections  
2 240 and 241.

3 “(B) Subject to subparagraphs (C) and (D), if  
4 an alien marries the petitioner described in section  
5 101(a)(15)(K)(i) within 3 months after the alien is  
6 admitted into the United States, the Secretary of  
7 Homeland Security or the Attorney General, subject  
8 to the provisions of section 245(d), may adjust the  
9 status of the alien, and any minor children accom-  
10 panying or following to join the alien, to that of an  
11 alien lawfully admitted for permanent residence on  
12 a conditional basis under section 216 if the alien  
13 and any such minor children apply for such adjust-  
14 ment and are not determined to be inadmissible to  
15 the United States.

16 “(C) Paragraphs (5) and (7)(A) of section  
17 212(a) shall not apply to an alien who is eligible to  
18 apply for adjustment of his or her status to an alien  
19 lawfully admitted for permanent residence under this  
20 section.

21 “(D) An alien eligible for a waiver of inadmis-  
22 sibility as otherwise authorized under this Act shall  
23 be permitted to apply for adjustment of his or her  
24 status to that of an alien lawfully admitted for per-  
25 manent residence under this section.”.

1 (c) AGE DETERMINATION.—Section 245(d) of the  
2 Immigration and Nationality Act (8 U.S.C. 1155(d)) is  
3 amended—

4 (1) by striking “(d) The Attorney General” in-  
5 serting the following:

6 “(d)(1) The Attorney General”; and

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

8 “(2) A determination of the age of an alien ad-  
9 mitted to the United States under section  
10 101(a)(15)(K)(iii) shall be made, for purposes of ad-  
11 justment to the status of an alien lawfully admitted  
12 for permanent residence on a conditional basis under  
13 section 216, using the age of the alien on the date  
14 on which the petition is filed with the Secretary of  
15 Homeland Security to classify the alien’s parent as  
16 the fiancée or fiancé of a United States citizen (in  
17 the case of an alien parent admitted to the United  
18 States under section 101(a)(15)(K)(i)) or as the  
19 spouse of a United States citizen under section  
20 201(b)(2)(A)(i) (in the case of an alien parent ad-  
21 mitted to the United States under section  
22 101(a)(15)(K)(ii)).”.

23 (d) EFFECTIVE DATE.—

24 (1) IN GENERAL.—The amendments made by  
25 this section shall be effective as if included in the

1 Immigration Marriage Fraud Amendments of 1986  
2 (Public Law 99–639).

3 (2) APPLICABILITY.—The amendments made  
4 by this section shall apply to all petitions or applica-  
5 tions described in such amendments that—

6 (A) are pending as of the date of the en-  
7 actment of this Act; or

8 (B) have been denied, but would have been  
9 approved if such amendments had been in effect  
10 at the time of adjudication of the petition or  
11 application.

12 (3) MOTION TO REOPEN OR RECONSIDER.—A  
13 motion to reopen or reconsider a petition or applica-  
14 tion described in paragraph (2)(B) shall be granted  
15 if such motion is filed with the Secretary of Home-  
16 land Security or the Attorney General not later than  
17 2 years after the date of the enactment of this Act  
18 and the Secretary shall use parole authority to per-  
19 mit an alien outside the United States to pursue a  
20 petition or application that has been reopened.

21 **SEC. 312. EQUAL TREATMENT FOR ALL STEPCHILDREN.**

22 Section 101(b)(1)(B) of the Immigration and Nation-  
23 ality Act (8 U.S.C. 1101(b)(1)(B)) is amended by striking  
24 “, provided the child had not reached the age of eighteen

1 years at the time the marriage creating the status of step-  
2 child occurred”.

3 **SEC. 313. SONS AND DAUGHTERS OF FILIPINO WORLD WAR**  
4 **II VETERANS.**

5 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended  
6 by section 310 of this Act, is further amended by adding  
7 at the end the following:

8 “(G) Aliens who are eligible for a visa  
9 under paragraph (1) or (3) of section 203(a)  
10 and are the son or daughter of a citizen of the  
11 United States who was naturalized pursuant to  
12 section 405 of the Immigration Act of 1990 (8  
13 U.S.C. 1440 note).”.

14 **SEC. 314. DETERMINATIONS UNDER THE HAITIAN REFUGEE**  
15 **IMMIGRATION FAIRNESS ACT OF 1998.**

16 (a) IN GENERAL.—Section 902(d) of the Haitian  
17 Refugee Immigration Fairness Act of 1998 (8 U.S.C.  
18 1255 note) is amended by adding at the end the following:

19 “(3) DETERMINATIONS WITH RESPECT TO  
20 CHILDREN.—

21 “(A) USE OF APPLICATION FILING  
22 DATE.—Determinations made under this sub-  
23 section as to whether an individual is a child of  
24 a parent shall be made using the age and status  
25 of the individual on October 21, 1998.

1           “(B) APPLICATION SUBMISSION BY PAR-  
2           ENT.—Notwithstanding paragraph (1)(C), an  
3           application under this subsection filed based on  
4           status as a child may be filed for the benefit of  
5           such child by a parent or guardian of the child,  
6           if the child is physically present in the United  
7           States on such filing date.”.

8           (b) NEW APPLICATIONS AND MOTIONS TO RE-  
9           OPEN.—

10           (1) NEW APPLICATIONS.—Notwithstanding sec-  
11           tion 902(a)(1)(A) of the Haitian Refugee Immigra-  
12           tion Fairness Act of 1998, an alien who is eligible  
13           for adjustment of status under such Act may submit  
14           an application for adjustment of status under such  
15           Act not later than the later of—

16                   (A) 2 years after the date of the enactment  
17                   of this Act; or

18                   (B) 1 year after the date on which final  
19                   regulations are promulgated to implement this  
20                   section and the amendment made by subsection  
21                   (a).

22           (2) MOTIONS TO REOPEN.—The Secretary shall  
23           establish procedures for the reopening and reconsid-  
24           eration of applications for adjustment of status  
25           under the Haitian Refugee Immigration Fairness



1 Act of 1998 that are affected by the amendment  
2 made by subsection (a).

3 (3) RELATIONSHIP OF APPLICATION TO CER-  
4 TAIN ORDERS.—Section 902(a)(3) of the Haitian  
5 Refugee Immigration Fairness Act of 1998 shall  
6 apply to an alien present in the United States who  
7 has been ordered excluded, deported, removed, or or-  
8 dered to depart voluntarily, and who files an applica-  
9 tion under paragraph (1) or a motion under para-  
10 graph (2), in the same manner as such section  
11 902(a)(3) applied to aliens filing applications for ad-  
12 justment of status under such Act prior to April 1,  
13 2000.

14 (c) INADMISSIBILITY DETERMINATION.—Section 902  
15 of the Haitian Refugee Immigration Fairness Act of 1998  
16 (8 U.S.C. 1255 note) is amended—

17 (1) in subsection (a)(1)(B), by inserting  
18 “(6)(C)(i),” after “(6)(A),”; and

19 (2) in subsection (d)(1)(D), by inserting  
20 “(6)(C)(i),” after “(6)(A),”.

21 **SEC. 315. DISCRETIONARY AUTHORITY.**

22 Section 240(c)(4) of the Immigration and Nationality  
23 Act (8 U.S.C. 1229a(c)(4)) is amended by adding at the  
24 end the following:

1           “(D) DISCRETION OF JUDGE IN CASE OF  
2           CITIZEN CHILD.—In the case of an alien subject  
3           to removal, deportation, or exclusion who is the  
4           parent of a child who is a citizen of the United  
5           States, the immigration judge may exercise dis-  
6           cretion to decline to order the alien removed,  
7           deported, or excluded from the United States if  
8           the judge determines that such removal, depor-  
9           tation, or exclusion is clearly against the best  
10          interests of the child, except that this subpara-  
11          graph shall not apply to any alien who the  
12          judge determines—

13                   “(i) is described in section 212(a)(3)  
14                   or 237(a)(4); or

15                   “(ii) has engaged in conduct described  
16                   in paragraph (8) or (9) of section 103 of  
17                   the Trafficking Victims Protection Act of  
18                   2000 (22 U.S.C. 7102).”.

19 **SEC. 316. AFFIDAVIT OF SUPPORT.**

20          Section 213A of the Immigration and Nationality Act  
21 (8 U.S.C. 1183a) is amended—

22                   (1) in subsection (a)(1)(A) by striking “125”  
23                   and inserting “100”;

24                   (2) in subsection (f)(1)(E), by striking “125”  
25                   and inserting “100”;

1           (3) in subsection (f)(4)(B)(i), by striking “125”  
2           and inserting “100”; and

3           (4) in subsection (f)(5)(A), by striking “125”  
4           and inserting “100”.

5 **SEC. 317. VISA TO PREVENT UNAUTHORIZED MIGRATION.**

6           (a) **WORLDWIDE LEVEL OF TRANSITIONAL VISAS.**—

7 Section 201 of the Immigration and Nationality Act (8  
8 U.S.C. 1152) is amended by adding at the end the fol-  
9 lowing:

10           “(g) **WORLDWIDE LEVEL OF PUM IMMIGRANTS.**—

11 The worldwide level of PUM immigrants is equal to  
12 100,000 for each fiscal year the PUM visa is authorized.”.

13           (b) **TRANSITION TO SAFE AND LEGAL IMMIGRA-**

14 **TION.**—Section 203 of the Immigration and Nationality

15 Act is amended by adding at the end the following:

16           “(i) **PREVENT UNAUTHORIZED MIGRATION (PUM)**

17 **TRANSITIONAL VISA.**—

18           “(1) **IN GENERAL.**—Except as provided in para-

19 graph (2), aliens subject to the worldwide level speci-

20 fied in section 201(g) for PUM immigrants shall be

21 allotted visas during the first three fiscal years fol-

22 lowing 6 months after enactment of the CIR ASAP

23 Act of 2009 as follows:

24           “(A) **DETERMINATION OF ADMISSION**

25 **STATES.**—The Secretary shall determine for the

1 most recent previous 5-fiscal year period for  
2 which data are available—

3 “(i) each country (in this paragraph  
4 referred to as a ‘transitional visa admis-  
5 sion state’) whose nationals represented  
6 not less than 5 percent of the total number  
7 of unauthorized immigrants to the United  
8 States during the 5-fiscal year period; and

9 “(ii) the percentage of unauthorized  
10 immigrants that nationals of each transi-  
11 tional visa admission state represented of  
12 the total number of unauthorized immi-  
13 grants to all transitional visa admission  
14 states during the 5-year period.

15 “(B) DISTRIBUTION OF VISAS.—

16 “(i) FOR A TRANSITIONAL VISA AD-  
17 MISSION STATE.—Subject to clause (ii),  
18 the percentage of immigrant visas made  
19 available under this paragraph to nationals  
20 of any single transitional visa admission  
21 state shall not exceed the percentage deter-  
22 mined for that transitional visa admission  
23 state in subparagraph (A)(ii).

24 “(ii) REDISTRIBUTION OF UNUSED  
25 VISA NUMBERS.—If the Secretary of State

1 estimates that the number of immigrant  
2 visas to be issued to nationals in any state  
3 for a fiscal year under this paragraph is  
4 less than the number of immigrant visas  
5 made available to such nationals under this  
6 paragraph for the fiscal year, the excess  
7 visa numbers shall be made available to  
8 nationals of the other states in proportion  
9 to the percentages otherwise specified in  
10 subparagraph (A)(ii).

11 “(2) ELIGIBILITY.—An alien is not eligible for  
12 a visa under this subsection unless the alien—

13 “(A) at the time of application for such a  
14 visa, is not present in the United States and is  
15 not entitled to an immigrant status under any  
16 other provision of the Immigration and Nation-  
17 ality Act;

18 “(B) has no other employment-based or  
19 family-based visa application pending;

20 “(C) submits to a security and law en-  
21 forcement background check, according to pro-  
22 cedures established by the Secretary; and

23 “(D) with regard to education, has com-  
24 pleted less than a 4-year college degree pro-  
25 gram.

1           “(3) REQUIREMENT WITH REGARD TO PARTICI-  
2           PATION IN DATA COLLECTION AND STUDY.—Transi-  
3           tional visa holders shall be required to participate in  
4           data collection and study as described in section  
5           501(b)(1)(G) of this Act that the Labor Commission  
6           deems necessary or helpful to fulfill its purpose and  
7           mission.

8           “(4) MAINTENANCE OF INFORMATION.—The  
9           Secretary of State shall maintain information on the  
10          age, occupation, education level, and other relevant  
11          characteristics of immigrants issued visas under this  
12          subsection and share such information to the Labor  
13          Commission in Title V of this Act as needed.

14          “(5) ORDER OF CONSIDERATION.—Immigrant  
15          visas made available each fiscal year under this sub-  
16          section shall be issued to eligible qualified immi-  
17          grants in a random order established by the Sec-  
18          retary of State.”.

19 **SEC. 318. ADJUSTMENT OF STATUS.**

20          (a) **CONDITIONAL PERMANENT RESIDENT STA-**  
21 **TUS.—**

22                  (1) **IN GENERAL.—**

23                          (A) **CONDITIONAL BASIS FOR STATUS.—**

24                          Notwithstanding any other provision of law, an  
25                          alien whose status has been adjusted under sub-

1 section (b) to that of an alien lawfully admitted  
2 for permanent residence shall be considered to  
3 have obtained such status on a conditional basis  
4 subject to the provisions of this paragraph.  
5 Such conditional permanent resident status  
6 shall be valid for a period of 3 years, subject to  
7 termination under paragraph (2).

8 (B) NOTICE OF REQUIREMENTS.—At the  
9 time an alien obtains permanent resident status  
10 on a conditional basis under subsection (b), the  
11 Secretary of Homeland Security shall provide  
12 notice to the alien regarding the provisions of  
13 this section and the requirements of paragraph  
14 (3) to have the conditional basis of such status  
15 removed.

16 (2) TERMINATION OF STATUS.—

17 (A) IN GENERAL.—The Secretary shall ter-  
18minate the conditional permanent resident sta-  
19tus of any alien who obtained such status under  
20this Act, if the Secretary determines that the  
21alien ceases to meet the requirements of sub-  
22section (b)(1).

23 (B) RETURN TO COUNTRY OF ORIGIN.—  
24Any alien whose conditional permanent resident  
25status is terminated under subparagraph (A)

1 shall be required to return to their country of  
2 origin.

3 (3) REQUIREMENTS OF TIMELY PETITION FOR  
4 REMOVAL OF CONDITION.—

5 (A) IN GENERAL.—In order for the condi-  
6 tional basis of the permanent resident status  
7 obtained by an alien under subsection (b) to be  
8 removed, the alien must file with the Secretary  
9 of Homeland Security, in accordance with para-  
10 graph (4), a petition which requests the re-  
11 moval of such conditional basis and which pro-  
12 vides, under penalty of perjury, the facts and  
13 information so that the Secretary may make the  
14 determination described in subparagraph (B)(i).

15 (B) ADJUDICATION OF PETITION TO RE-  
16 MOVE CONDITION.—

17 (i) IN GENERAL.—If a petition is filed  
18 in accordance with clause (A) for an alien,  
19 the Secretary shall make a determination  
20 as to whether the alien meets the require-  
21 ments set out in subparagraphs (A) and  
22 (B) of paragraph (4).

23 (ii) REMOVAL OF CONDITIONAL BASIS  
24 IF FAVORABLE DETERMINATION.—If the  
25 Secretary determines that the alien meets



1           such requirements, the Secretary shall no-  
2           tify the alien of such determination and  
3           immediately remove the conditional basis  
4           of the status of the alien.

5           (iii) TERMINATION OF CONDITIONAL  
6           STATUS IF UNFAVORABLE DETERMINA-  
7           TION.—If the Secretary determines that  
8           the alien does not meet such requirements,  
9           the Secretary shall notify the alien of such  
10          determination and terminate conditional  
11          permanent resident status of the alien as  
12          of the date of the determination.

13          (C) TIME TO FILE PETITION.—An alien  
14          may petition to remove the conditional basis of  
15          lawful resident status during the period begin-  
16          ning 90 days before and ending 180 days after  
17          either the date that is 3 years after the date of  
18          granting conditional permanent resident status  
19          or any other expiration date of the conditional  
20          permanent resident status provided by the Sec-  
21          retary in accordance with this Act. The alien  
22          shall be deemed in conditional permanent resi-  
23          dent status in the United States during the pe-  
24          riod in which the petition is pending.

25          (4) DETAILS OF PETITION.—

1 (A) CONTENTS OF PETITION.—Each peti-  
2 tion for an alien under paragraph (3)(A) shall  
3 contain information to permit the Secretary to  
4 determine whether each of the following re-  
5 quirements is met:

6 (i) The alien has demonstrated good  
7 moral character during the entire period  
8 the alien has been a conditional permanent  
9 resident.

10 (ii) The alien is in compliance with  
11 subsection (b)(1).

12 (iii) The alien has not abandoned the  
13 alien's residence in the United States. The  
14 Secretary shall presume that the alien has  
15 abandoned such residence if the alien is  
16 absent from the United States for more  
17 than 365 days, in the aggregate, during  
18 the period of conditional residence, unless  
19 the alien demonstrates that the alien has  
20 not abandoned the alien's residence. An  
21 alien who is absent from the United States  
22 due to active service in the uniformed serv-  
23 ices has not abandoned the alien's resi-  
24 dence in the United States during the pe-  
25 riod of such service.

1 (iv) The alien has satisfied all Federal  
2 income tax liabilities and is in good stand-  
3 ing with the Internal Revenue Service as  
4 described in (B) of this paragraph.

5 (v) where applicable, can establish  
6 proof of registration under the Military Se-  
7 lective Service Act (50 U.S.C. App. 451 et  
8 seq.).

9 (B) PAYMENT OF INCOME TAXES.—

10 (i) IN GENERAL.—Not later than the  
11 date on which status is adjusted under this  
12 section, a conditional nonimmigrant or  
13 conditional nonimmigrant dependent shall  
14 satisfy any applicable Federal tax liability  
15 by establishing that—

16 (I) no such tax liability exists;

17 (II) all outstanding liabilities  
18 have been paid; or

19 (III) the conditional non-  
20 immigrant has entered into, and is in  
21 compliance with, an agreement for  
22 payment of all outstanding liabilities  
23 with the Internal Revenue Service.

24 (ii) APPLICABLE FEDERAL TAX LI-  
25 ABILITY.—For purposes of (i), the term

1 “applicable Federal tax liability” means li-  
2 ability for Federal taxes, including pen-  
3 alties and interest, owed for any year while  
4 classified as a conditional permanent resi-  
5 dent for which the statutory period for as-  
6 sessment of any deficiency for such taxes  
7 has not expired.

8 (iii) IRS COOPERATION.—The Sec-  
9 retary of the Treasury shall establish rules  
10 and procedures under which the Commis-  
11 sioner of Internal Revenue shall provide  
12 documentation to—

13 (I) a conditional permanent resi-  
14 dent, upon request, to establish the  
15 payment of all taxes required under  
16 this subsection; or

17 (II) the Secretary, upon request,  
18 regarding the payment of Federal  
19 taxes by an alien applying for a ben-  
20 efit under this section.

21 (iv) COMPLIANCE.—The alien may  
22 satisfy proof of compliance with this sub-  
23 section by submitting documentation that  
24 establishes that—

25 (I) no such tax liability exists;

1 (II) all outstanding liabilities  
2 have been met; or

3 (III) the alien has entered into,  
4 and is in compliance with, an agree-  
5 ment for payment of all outstanding  
6 liabilities with the Internal Revenue  
7 Service.

8 (b) ADJUSTMENT OF STATUS.—

9 (1) ADJUSTMENT OF STATUS.—Notwith-  
10 standing any other provision of law, and except as  
11 otherwise provided in this Act, the Secretary of  
12 Homeland Security may adjust the status of an alien  
13 granted a PUM visa, subject to the conditional basis  
14 described in subsection (a), if the alien demonstrates  
15 that the alien is not inadmissible under paragraph  
16 (2) (criminal grounds), (3) (security grounds), 4(A)  
17 and (B) (public charge), 6(E) (smugglers), or 10(C)  
18 (child abductors) of section 212(a) of the Immigra-  
19 tion and Nationality Act (8 U.S.C. 1182(a)),

20 (2) MANDATORY FEE.—Aliens granted a waiver  
21 of inadmissibility from 212(a) not listed in (1) shall  
22 pay a \$500 fee that shall be deposited into the Secu-  
23 rity and Prosperity Account as described in section  
24 502 of the Comprehensive Immigration Reform  
25 ASAP Act of 2009.

1           (3) ALIENS NOT SUBJECT TO DIRECT NUMER-  
2           ICAL LIMITATIONS.—Section 201(b)(1) (8 U.S.C.  
3           1151(b)(1)), as amended by sections 310, 313, and  
4           317(a) of this Act, is further amended by adding at  
5           the end the following:

6                     “(I) Aliens whose status is adjusted under  
7                     section 203(i).”.

8   **SEC. 319. RULEMAKING.**

9           The Secretary shall promulgate regulations regarding  
10          the timely filing and processing of applications for visas  
11          awarded under section 203(i) of the Immigration and Na-  
12          tionality Act, as added by section 317(b) of this Act.

13   **SEC. 320. UNITED STATES-EDUCATED IMMIGRANTS.**

14          (a) EXEMPTION FROM NUMERICAL LIMITATIONS.—

15                     (1) IN GENERAL.—Section 201(b)(1) (8 U.S.C.  
16                     1151(b)(1)), as amended by sections 310, 313,  
17                     317(a), and 318(b)(3) of this Act, is further amend-  
18                     ed by adding at the end the following:

19                     “(J) Aliens who have earned a master’s or  
20                     higher degree from an accredited university in  
21                     the United States.

22                     “(K) Aliens who have been awarded med-  
23                     ical specialty certification based on postdoctoral  
24                     training and experience in the United States

1 preceding their application for an immigrant  
2 visa under section 203(b).

3 “(L) Aliens who will perform labor in  
4 shortage occupations designated by the Sec-  
5 retary of Labor for blanket certification under  
6 section 212(a)(5)(A) as lacking sufficient  
7 United States workers able, willing, qualified,  
8 and available for such occupations and for  
9 which the employment of aliens will not ad-  
10 versely affect the terms and conditions of simi-  
11 larly employed United States workers.

12 “(M) Aliens who have earned a master’s  
13 degree or higher in science, technology, engi-  
14 neering, or mathematics and have been working  
15 in a related field in the United States in a non-  
16 immigrant status during the 3-year period pre-  
17 ceeding their application for an immigrant visa  
18 under section 203(b).

19 “(N) Aliens described in subparagraph (A)  
20 or (B) of section 203(b)(1) or who have re-  
21 ceived a national interest waiver under section  
22 203(b)(2)(B).

23 “(O) The spouse and minor children of an  
24 alien described in subparagraph (J), (K), (L),  
25 (M), or (N).”.

1           (2) APPLICABILITY.—The amendment made by  
2 paragraph (1) shall apply to any visa application—

3           (A) pending on the date of the enactment  
4 of this Act; or

5           (B) filed on or after such date of enact-  
6 ment.

7           (b)           LABOR           CERTIFICATIONS.—Section  
8 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amend-  
9 ed—

10           (1) in subclause (I), by striking “, or” and in-  
11 serting a semicolon;

12           (2) in subclause (II), by striking the period at  
13 the end and inserting “; or”; and

14           (3) by adding at the end the following:

15                           “(III) is a member of the profes-  
16                           sions and has a master’s degree or  
17                           higher from an accredited university  
18                           in the United States or has been  
19                           awarded medical specialty certification  
20                           based on postdoctoral training and ex-  
21                           perience in the United States.”.

22           (c) ATTESTATION BY HEALTH CARE WORKERS.—

23           (1) REQUIREMENT FOR ATTESTATION.—Section  
24 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended by add-  
25 ing at the end the following:



1           “(E) HEALTH CARE WORKERS WITH  
2 OTHER OBLIGATIONS.—

3           “(i) IN GENERAL.—An alien who  
4 seeks to enter the United States for the  
5 purpose of performing labor as a physician  
6 or other health care worker is inadmissible  
7 unless the alien submits to the Secretary of  
8 Homeland Security or the Secretary of  
9 State, as appropriate, an attestation that  
10 the alien is not seeking to enter the United  
11 States for such purpose during any period  
12 in which the alien has an outstanding obli-  
13 gation to the government of the alien’s  
14 country of origin or the alien’s country of  
15 residence.

16           “(ii) OBLIGATION DEFINED.—In this  
17 subparagraph, the term ‘obligation’ means  
18 an obligation incurred as part of a valid,  
19 voluntary individual agreement in which  
20 the alien received financial assistance to  
21 defray the costs of education or training to  
22 qualify as a physician or other health care  
23 worker in consideration for a commitment  
24 to work as a physician or other health care

1 worker in the alien's country of origin or  
2 the alien's country of residence.

3 “(iii) WAIVER.—The Secretary of  
4 Homeland Security may waive a finding of  
5 inadmissibility under clause (i) if the Sec-  
6 retary determines that—

7 “(I) the obligation was incurred  
8 by coercion or other improper means;

9 “(II) the alien and the govern-  
10 ment of the country to which the alien  
11 has an outstanding obligation have  
12 reached a valid, voluntary agreement,  
13 pursuant to which the alien's obliga-  
14 tion has been deemed satisfied, or the  
15 alien has shown to the satisfaction of  
16 the Secretary that the alien has been  
17 unable to reach such an agreement  
18 because of coercion or other improper  
19 means; or

20 “(III) the obligation should not  
21 be enforced due to other extraordinary  
22 circumstances, including undue hard-  
23 ship that would be suffered by the  
24 alien in the absence of a waiver.”.

25 (2) EFFECTIVE DATE AND APPLICATION.—

1           (A) EFFECTIVE DATE.—The amendment  
2           made by paragraph (1) shall become effective  
3           180 days after the date of the enactment of this  
4           Act.

5           (B) APPLICATION BY THE SECRETARY.—  
6           The Secretary shall begin to carry out section  
7           212(a)(5)(E) of the Immigration and Nation-  
8           ality Act, as added by paragraph (1), not later  
9           than the effective date described in subpara-  
10          graph (A), including the requirement for the at-  
11          testation and the granting of a waiver described  
12          in such section, regardless of whether regula-  
13          tions to implement such section have been pro-  
14          mulgated.

15 **SEC. 321. RETAINING WORKERS SUBJECT TO GREEN CARD**

16                                   **BACKLOG.**

17          (a) ADJUSTMENT OF STATUS.—Section 245 (8  
18 U.S.C. 1255), as amended by this title, is further amended  
19 by adding at the end the following:

20           “(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-  
21 BASED IMMIGRANTS.—

22           “(1) ELIGIBILITY.—The Secretary of Homeland  
23 Security shall promulgate regulations to provide for  
24 the filing of an application for adjustment of status  
25 by an alien (and any eligible dependents of such

1 alien), regardless of whether an immigrant visa is  
2 immediately available at the time the application is  
3 filed, if the alien—

4 “(A) has an approved petition under sub-  
5 paragraph (E) or (F) of section 204(a)(1); or

6 “(B) at the discretion of the Secretary, has  
7 a pending petition under subparagraph (E) or  
8 (F) of section 204(a)(1).

9 “(2) VISA AVAILABILITY.—An application filed  
10 pursuant to paragraph (1) may not be approved  
11 until an immigrant visa becomes available.

12 “(3) FEES.—If an application is filed pursuant  
13 to paragraph (1), the beneficiary of such application  
14 shall pay a supplemental fee of \$500. Such fee may  
15 not be charged to any dependent accompanying or  
16 following to join such beneficiary.

17 “(4) EXTENSION OF EMPLOYMENT AUTHORIZA-  
18 TION AND ADVANCED PAROLE DOCUMENT.—

19 “(A) IN GENERAL.—The Secretary of  
20 Homeland Security shall provide employment  
21 authorization and advanced parole documents,  
22 in 3-year increments, to beneficiaries of an ap-  
23 plication for adjustment of status based on a  
24 petition that is filed or, at the discretion of the

1 Secretary, pending, under subparagraph (E) or  
2 (F) of section 204(a)(1).

3 “(B) FEE ADJUSTMENTS.—Application  
4 fees under this subsection may be adjusted in  
5 accordance with the 3-year period of validity as-  
6 signed to the employment authorization or ad-  
7 vanced parole documents under subparagraph  
8 (A).”.

9 (b) USE OF FEES.—Section 286 (8 U.S.C. 1356) is  
10 amended—

11 (1) in subsection (m)—

12 (A) by striking “(m) Notwithstanding any  
13 other provisions of law,” and inserting the fol-  
14 lowing:

15 “(m) IMMIGRATION EXAMINATIONS FEE AC-  
16 COUNT.—

17 “(1) IN GENERAL.—Notwithstanding any other  
18 provision of law, all fees collected under section  
19 245(o)(3) and”;

20 (B) by striking “: *Provided, however, That*  
21 *all*” and inserting the following:

22 “(2) VIRGIN ISLANDS; GUAM.—All”; and

23 (C) by striking “: *Provided further, That*  
24 *fees*” and inserting the following:

25 “(3) COST RECOVERY.—Fees”;

1 (2) in subsection (n)—

2 (A) by striking “(n) All deposits” and in-  
3 serting the following:

4 “(4) USE OF FUNDS.—

5 “(A) IN GENERAL.—Except as provided  
6 under subparagraph (B), all deposits”; and

7 (B) adding at the end the following:

8 “(B) SUPPLEMENTAL FEE FOR ADJUST-  
9 MENT OF STATUS OF EMPLOYMENT-BASED IM-  
10 MIGRANTS.—Any amounts deposited into the  
11 Immigration Examinations Fee Account that  
12 were collected under section 245(o)(3) shall re-  
13 main available until expended by the Secretary  
14 of Homeland Security for backlog reduction and  
15 clearing security background check delays.”;

16 (3) in subsection (o), by striking “(o) The At-  
17 torney General” and inserting the following:

18 “(5) ANNUAL FINANCIAL REPORT TO CON-  
19 GRESS.—The Attorney General”; and

20 (4) in subsection (p), by striking “(p) The pro-  
21 visions set forth in subsections (m), (n), and (o) of  
22 this section” and inserting the following:

23 “(6) APPLICABILITY.—The provisions set forth  
24 in this subsection shall”.

1 **SEC. 322. RETURN OF TALENT PROGRAM.**

2 (a) SHORT TITLE.—This section may be cited as the  
3 “Return of Talent Act”.

4 (b) ESTABLISHMENT.—

5 (1) IN GENERAL.—Title III (8 U.S.C. 1401 et  
6 seq.) is amended by inserting after section 317 the  
7 following:

8 **“SEC. 317A. TEMPORARY ABSENCE OF PERSONS PARTICI-**  
9 **PATING IN THE RETURN OF TALENT PRO-**  
10 **GRAM.**

11 “(a) IN GENERAL.—The Secretary of Homeland Se-  
12 curity, in consultation with the Secretary of State, shall  
13 establish the Return of Talent Program to permit eligible  
14 aliens to temporarily return to the alien’s country of citi-  
15 zenship in order to make a material contribution to that  
16 country if the country is engaged in postconflict or natural  
17 disaster reconstruction activities, for a period not longer  
18 than 2 years, unless an exception is granted under sub-  
19 section (d).

20 “(b) ELIGIBLE ALIEN.—An alien is eligible to partici-  
21 pate in the Return of Talent Program established under  
22 subsection (a) if the alien meets the special immigrant de-  
23 scription under section 101(a)(27)(N).

24 “(c) FAMILY MEMBERS.—The spouse, parents, sib-  
25 lings, and any minor children of an alien who participates  
26 in the Return of Talent Program established under sub-

1 section (a) may return to such alien's country of citizen-  
2 ship with the alien and reenter the United States with the  
3 alien.

4 “(d) EXTENSION OF TIME.—The Secretary of Home-  
5 land Security may extend the 2-year period referred to in  
6 subsection (a) upon a showing that circumstances warrant  
7 that an extension is necessary for postconflict or natural  
8 disaster reconstruction efforts.

9 “(e) RESIDENCY REQUIREMENTS.—An immigrant  
10 described in section 101(a)(27)(N) who participates in the  
11 Return of Talent Program established under subsection  
12 (a), and the spouse, parents, siblings, and any minor chil-  
13 dren who accompany such immigrant to that immigrant's  
14 country of citizenship, shall be considered, during such pe-  
15 riod of participation in the program—

16 “(1) for purposes of section 316(a), physically  
17 present and residing in the United States for pur-  
18 poses of naturalization within the meaning of that  
19 section; and

20 “(2) for purposes of section 316(b), to meet the  
21 continuous residency requirements in that section.

22 “(f) OVERSIGHT AND ENFORCEMENT.—The Sec-  
23 retary of Homeland Security, in consultation with the Sec-  
24 retary of State, shall oversee and enforce the requirements  
25 of this section.”.



1           (2) TABLE OF CONTENTS.—The table of con-  
2           tents (8 U.S.C. 1101 et seq.) is amended by insert-  
3           ing after the item relating to section 317 the fol-  
4           lowing:

          “317A. Temporary absence of persons participating in the Return of Talent  
          Program”.”

5           (c) ELIGIBLE IMMIGRANTS.—Section 101(a)(27) (8  
6           U.S.C. 1101(a)(27)) is amended by adding at the end the  
7           following:

8                   “(N) an immigrant who—

9                           “(i) has been lawfully admitted to the  
10                           United States for permanent residence;

11                           “(ii) demonstrates an ability and will-  
12                           ingness to make a material contribution to  
13                           the postconflict or natural disaster recon-  
14                           struction in the alien’s country of citizen-  
15                           ship; and

16                           “(iii) as determined by the Secretary  
17                           of State in consultation with the Secretary  
18                           of Homeland Security—

19                                   “(I) is a citizen of a country in  
20                                   which Armed Forces of the United  
21                                   States are engaged, or have engaged  
22                                   in the 10 years preceding such deter-  
23                                   mination, in combat or peacekeeping  
24                                   operations;

1           “(II) is a citizen of a country  
2           where authorization for United Na-  
3           tions peacekeeping operations was ini-  
4           tiated by the United Nations Security  
5           Council during the 10 years preceding  
6           such determination; or

7           “(III) is a citizen of a country  
8           which received, during the preceding 2  
9           years, funding from the Office of For-  
10          eign Disaster Assistance of the United  
11          States Agency for International Devel-  
12          opment in response to a declared dis-  
13          aster in such country by the United  
14          States Ambassador, the Chief of the  
15          U.S. Mission, or the appropriate As-  
16          sistant Secretary of State, that is be-  
17          yond the ability of such country’s re-  
18          sponse capacity and warrants a re-  
19          sponse by the United States Govern-  
20          ment.”.

21          (d) REPORT TO CONGRESS.—Not later than 2 years  
22          after the date of the enactment of this Act, the Secretary,  
23          in consultation with the Secretary of State, shall submit  
24          a report to Congress that describes—

1           (1) the countries of citizenship of the partici-  
2 pants in the Return of Talent Program established  
3 under section 317A of the Immigration and Nation-  
4 ality Act, as added by subsection (b);

5           (2) the postconflict or natural disaster recon-  
6 struction efforts that benefitted, or were made pos-  
7 sible, through participation in the program; and

8           (3) any other information that the Secretary  
9 determines to be appropriate.

10       (e) REGULATIONS.—Not later than 6 months after  
11 the date of the enactment of this Act, the Secretary shall  
12 promulgate regulations to carry out this section and the  
13 amendments made by this section.

14       (f) AUTHORIZATION OF APPROPRIATIONS.—There  
15 are authorized to be appropriated to United States Citi-  
16 zenship and Immigration Services such sums as may be  
17 necessary to carry out this section and the amendments  
18 made by this section.

19 **TITLE IV—EARNED LEGALIZA-**  
20 **TION OF UNDOCUMENTED IN-**  
21 **DIVIDUALS**

22 **Subtitle A—Conditional**  
23 **Nonimmigrants**

24 **SEC. 401. CONDITIONAL NONIMMIGRANTS.**

25       (a) IN GENERAL.—

1           (1) REQUIRED REGISTRATION.—An alien as de-  
2           scribed in this section shall register with the Depart-  
3           ment of Homeland Security by submitting biometric  
4           identification pursuant to subsection (b) and filing  
5           an application with the Secretary that demonstrates  
6           the alien’s compliance with the requirements listed  
7           in subsections (b) through (e).

8           (2) CLASSIFICATION.—Notwithstanding any  
9           other provision of law, including section 244(h) of  
10          the Immigration and Nationality Act (8 U.S.C.  
11          1254a(h)), the Secretary shall classify an alien as a  
12          conditional nonimmigrant or conditional non-  
13          immigrant dependent if the alien registers pursuant  
14          to paragraph (1) and is determined to meet the re-  
15          quirements listed in this section.

16          (b) COMPLIANCE WITH SECURITY AND LAW EN-  
17          FORCEMENT BACKGROUND CHECKS.—Registration and  
18          classification as a conditional nonimmigrant or conditional  
19          nonimmigrant dependent under this section is contingent  
20          upon the submission of all required biometric data in ac-  
21          cordance with procedures established by the Secretary.

22          (c) PHYSICAL PRESENCE.—

23                  (1) PRESENCE IN THE UNITED STATES.—The  
24                  alien shall establish that the alien—

1 (A) was present in the United States on  
2 the date of the introduction of this Act in the  
3 United States House of Representatives;

4 (B) has been continuously present in the  
5 United States since the date described in sub-  
6 paragraph (A); and

7 (C) was not legally present in the United  
8 States on the date of the introduction of this  
9 Act in the United States House of Representa-  
10 tives under any classification described in sec-  
11 tion 101(a)(15) of the Immigration and Nation-  
12 ality Act (8 U.S.C. 1101(a)(15)) or has been in  
13 violation of status on or before such date.

14 (2) CONTINUOUS PRESENCE.—For purposes of  
15 this subsection, an absence from the United States  
16 without authorization for a continuous period of  
17 more than 180 days between the date of the enact-  
18 ment of this Act and the beginning of the applica-  
19 tion period for classification as a conditional non-  
20 immigrant or conditional nonimmigrant dependent  
21 shall constitute a break in continuous physical pres-  
22 ence. Individuals absent under advance parole shall  
23 not be considered as failing to meet the continuous  
24 physical presence requirement.

1 (d) OTHERWISE ADMISSIBLE TO THE UNITED  
2 STATES.—

3 (1) IN GENERAL.—An alien shall be eligible for  
4 classification as a conditional nonimmigrant or con-  
5 ditional nonimmigrant dependent if the Secretary  
6 determines that the alien—

7 (A) is not inadmissible to the United  
8 States under section 212(a) of the Immigration  
9 and Nationality Act (8 U.S.C. 1182(a)), except  
10 as provided in paragraph (2);

11 (B) has not ordered, incited, assisted, or  
12 otherwise participated in the persecution of any  
13 person on account of race, religion, nationality,  
14 membership in a particular social group, or po-  
15 litical opinion; and

16 (C) is not an alien—

17 (i) who has been convicted by final  
18 judgment of a particularly serious crime  
19 and constitutes a danger to the community  
20 of the United States;

21 (ii) for whom there are reasonable  
22 grounds for believing that the alien has  
23 committed a particularly serious crime out-  
24 side the United States before arriving in  
25 the United States; or

1 (iii) for whom there are reasonable  
2 grounds for regarding the alien as a dan-  
3 ger to the security of the United States;  
4 and

5 (iv) who has been convicted of a fel-  
6 ony or 3 or more misdemeanors for which  
7 the alien has served not less than 12  
8 months of imprisonment in the aggregate.

9 (2) GROUNDS OF INADMISSIBILITY.—In deter-  
10 mining an alien’s admissibility under paragraph  
11 (1)(A)—

12 (A) paragraphs (5), (6), (7), (9), and  
13 (10)(B) of section 212(a) of such Act shall not  
14 apply;

15 (B) the Secretary may not waive—

16 (i) subparagraph (A), (B), (C),  
17 (D)(ii), (E), (G), (H), or (I) of section  
18 212(a)(2) of such Act (relating to crimi-  
19 nals);

20 (ii) section 212(a)(3) of such Act (re-  
21 lating to security and related grounds); or

22 (iii) subparagraph (A), (C), or (D) of  
23 section 212(a)(10) of such Act (relating to  
24 polygamists and child abductors);

1 (C) the Secretary may waive the applica-  
2 tion of any provision of section 212(a) of such  
3 Act not listed in subparagraph (B) on behalf of  
4 an individual alien for humanitarian purposes,  
5 to ensure family unity, or if such waiver is oth-  
6 erwise in the public interest; and

7 (D) nothing in this paragraph shall be con-  
8 strued as affecting the authority of the Sec-  
9 retary other than under this paragraph to waive  
10 the provisions of section 212(a) of such Act.

11 (3) APPLICABILITY OF OTHER PROVISIONS.—

12 Sections 240B(d) and 241(a)(5) of the Immigration  
13 and Nationality Act (8 U.S.C. 1229c(d) and  
14 1231(a)(5)) shall not apply to an alien who is apply-  
15 ing for classification under this section for conduct  
16 that occurred before the date of enactment of this  
17 Act.

18 (e) CONTRIBUTIONS TO THE UNITED STATES  
19 THROUGH EMPLOYMENT, EDUCATION, MILITARY SERV-  
20 ICE OR OTHER COMMITMENT TO THE COMMUNITY.—

21 (1) IN GENERAL.—The Secretary shall not ac-  
22 cept the registration of an alien, or classify an alien  
23 as a conditional nonimmigrant or conditional non-  
24 immigrant dependent unless the alien attests, under  
25 penalty of perjury, that he or she is contributing to



1 the United States through one or more of the fol-  
2 lowing enterprises—

3 (A) the alien is employed full-time, part-  
4 time, or seasonally in the United States, is self-  
5 employed, or is actively seeking employment; or

6 (B) is enrolled full- or part-time in an ac-  
7 credited secondary or post-secondary school,  
8 university, or other institution of higher edu-  
9 cation, or an accredited vocational, technical, or  
10 other training program; or

11 (C) is a member of the active or reserve  
12 Armed Services, the National Guard, or other  
13 government sponsored civil service program; or

14 (D) otherwise establishes, to the satisfac-  
15 tion of the Secretary, that the alien is an active  
16 volunteer or community member.

17 (2) EXEMPTIONS.—The requirements in para-  
18 graph (1) shall not apply to any individual who, at  
19 the time of registration—

20 (A) is 65 years of age or older, has a phys-  
21 ical or mental disability, is pregnant, is the pri-  
22 mary caregiver to a child under the age of 16  
23 or to an elderly or disabled person, or is on offi-  
24 cial extended medical leave; or

1 (B) is the spouse of a United States citizen  
2 or lawful permanent resident;

3 (C) is a child 21 years of age or younger  
4 of a United States citizen or lawful permanent  
5 resident; or

6 (D) has been physically present in the  
7 United States for a continuous period of not  
8 less than 5 years immediately preceding the  
9 date of enactment of this Act, and had not yet  
10 reached the age of 16 years at the time of ini-  
11 tial entry and had not yet reached the age of  
12 35 years on the date of the enactment of this  
13 Act.

14 (3) DEFINITIONS.—In this subtitle:

15 (A) INSTITUTION OF HIGHER EDU-  
16 CATION.—The term “institution of higher edu-  
17 cation” has the meaning given that term in sec-  
18 tion 101 of the Higher Education Act of 1965  
19 (20 U.S.C. 1001).

20 (B) UNIFORMED SERVICES.—The term  
21 “uniformed services” has the meaning given  
22 that term in section 101(a) of title 10, United  
23 States Code.

24 (f) SPECIAL RULE FOR SPOUSES AND CHILDREN.—  
25 Notwithstanding any other provision of law, the Secretary

1 shall classify the spouse or child of a conditional non-  
2 immigrant as a conditional nonimmigrant dependent, or  
3 provide the spouse or child with a conditional non-  
4 immigrant dependent visa if—

5           (1) the spouse or child is not otherwise inadmis-  
6           sible to the United States as described in subsection  
7           (d);

8           (2) in the case of a child, was 21 years of age  
9           or younger on the date of enactment of this Act; or

10           (3) in the case of a spouse, was married to the  
11           conditional nonimmigrant on or before the date of  
12           enactment and is married at the time of the applica-  
13           tion;

14           (4) except that the spouse or child of an alien  
15           who was subsequently classified as a conditional  
16           nonimmigrant under this Act may apply for classi-  
17           fication as a conditional nonimmigrant if the spousal  
18           or parental relationship has terminated and—

19                   (A) the termination of the relationship  
20                   with such spouse or parent was connected to  
21                   domestic violence; and

22                   (B) the spouse or child has been battered  
23                   or subjected to extreme cruelty by the spouse or  
24                   parent who is a conditional nonimmigrant.

1 (g) APPLICATION PROCEDURES, FEE AND PEN-  
2 ALTY.—

3 (1) APPLICATION PROCEDURES.—For purposes  
4 of establishing enrollment in this program, an appli-  
5 cation shall be considered complete if it includes ap-  
6 propriate biometric data, applicable fees, penalties  
7 through fines, and answers fully and completely all  
8 questions attesting to eligibility as described in sub-  
9 sections (a) through (f). The Secretary may require  
10 evidence upon initial submission of the application  
11 sufficient to establish prima facie eligibility for con-  
12 ditional nonimmigrant or conditional nonimmigrant  
13 dependent status. The Secretary may, at his or her  
14 discretion, require additional evidence or an inter-  
15 view to make a final determination that an alien has  
16 established eligibility for classification.

17 (2) APPLICATION FEE AND PENALTY.—

18 (A) APPLICATION FEE.—The Secretary  
19 shall impose a fee for filing an application  
20 under this section. Such fee shall be sufficient  
21 to cover the administrative and other expenses  
22 incurred in connection with the review of such  
23 applications.

24 (B) PENALTY.—

1 (i) IN GENERAL.—Except as provided  
2 under clause (ii), an alien filing an applica-  
3 tion under this section shall submit to the  
4 Secretary, in addition to the fee required  
5 under subparagraph (A), a fine of \$500.

6 (ii) EXCEPTION.—An alien who is  
7 classified as a conditional nonimmigrant  
8 who qualifies for classification based on the  
9 exemption in subsection (e)(2)(D) or a  
10 conditional nonimmigrant dependent be-  
11 cause he or she was younger than 21 years  
12 of age on the date of enactment of this Act  
13 shall not be required to pay a fine under  
14 this paragraph.

15 (C) DISPOSITION OF FEES AND FINES.—

16 (i) FEES.—Fees collected under this  
17 paragraph shall be deposited into the Im-  
18 migration Examination Fee Account and  
19 remain available as provided under sub-  
20 sections (m) and (n) of section 286 of the  
21 Immigration and Nationality Act (8 U.S.C.  
22 1356).

23 (ii) FINES.—Fines collected under  
24 this paragraph shall be deposited into the

1 Security and Prosperity Account estab-  
2 lished under section 286(w) of such Act.

3 (h) TREATMENT OF APPLICANTS.—

4 (1) IN GENERAL.—An alien who files an appli-  
5 cation under this section to become a conditional  
6 nonimmigrant or a conditional nonimmigrant de-  
7 pendent shall be considered enrolled in the program  
8 pursuant to subsection (a)(2) until such time as a  
9 final determination is made on the application for  
10 classification. Following submission of biometric  
11 data pursuant to subsection (b) and successful clear-  
12 ance of the Secretary's security and criminal back-  
13 ground checks, a registered alien—

14 (A) shall be granted employment author-  
15 ization pending final adjudication of the alien's  
16 application;

17 (B) shall be granted permission to travel  
18 abroad;

19 (C) may not be detained for immigration  
20 purposes, determined inadmissible or deport-  
21 able, or removed pending final adjudication of  
22 the alien's application, unless the alien, due to  
23 subsequent conduct or criminal conviction, be-  
24 comes ineligible for conditional nonimmigrant  
25 classification; and

1           (D) may not be considered an unauthor-  
2           ized alien (as defined in section 274A(h)(3) of  
3           the Immigration and Nationality Act (8 U.S.C.  
4           1324a(h)(3))) until employment authorization  
5           under subparagraph (A) is denied.

6           (2) DOCUMENT OF AUTHORIZATION.—The Sec-  
7           retary shall provide each alien described in para-  
8           graph (1) with a counterfeit-resistant document of  
9           authorization that—

10           (A) meets all current requirements estab-  
11           lished by the Secretary for travel documents, in-  
12           cluding the requirements under section 403 of  
13           the Illegal Immigration Reform and Immigrant  
14           Responsibility Act of 1996 (8 U.S.C. 1324a  
15           note); and

16           (B) reflects the benefits and status set  
17           forth in paragraph (1).

18           (3) BEFORE APPLICATION PERIOD.—If an alien  
19           is apprehended between the date of the enactment of  
20           this Act and the date on which the alien files an ap-  
21           plication under this section, and the alien can estab-  
22           lish prima facie eligibility as a conditional non-  
23           immigrant or a conditional nonimmigrant dependent,  
24           the alien shall not be detained and the Secretary

1 shall provide the alien with a reasonable opportunity  
2 to file an application under this section.

3 (4) DURING CERTAIN PROCEEDINGS.—Notwith-  
4 standing any provision of the Immigration and Na-  
5 tionality Act, if an immigration judge determines  
6 that an alien who is in removal proceedings has  
7 made a prima facie case of eligibility for classifica-  
8 tion as a conditional nonimmigrant or a conditional  
9 nonimmigrant dependent, the judge shall adminis-  
10 tratively close such proceedings and permit the alien  
11 a reasonable opportunity to apply for such classifica-  
12 tion.

13 (5) RELATIONSHIPS OF APPLICATION TO CER-  
14 TAIN ORDERS.—

15 (A) IN GENERAL.—An alien who is present  
16 in the United States and has been ordered ex-  
17 cluded, deported, removed, or ordered to depart  
18 voluntarily from the United States under any  
19 provision of the Immigration and Nationality  
20 Act—

21 (i) notwithstanding such order, may  
22 apply for classification as a conditional  
23 nonimmigrant or conditional nonimmigrant  
24 dependent under this subtitle;



1           (ii) shall not be required to file a sep-  
2 arate motion to reopen, reconsider, or va-  
3 cate the exclusion, deportation, removal, or  
4 voluntary departure order; and

5           (iii) the filing of an application for  
6 conditional nonimmigrant or conditional  
7 nonimmigrant dependent status shall stay  
8 the removal of the alien pending final adju-  
9 dication of the application, unless the re-  
10 moval or detainment of the alien is based  
11 on criminal or national security-related  
12 grounds that would render the alien ineli-  
13 gible under this section.

14           (B) APPLICATION GRANTED.—If the Sec-  
15 retary grants the application described in sub-  
16 paragraph (A)(i), the Secretary shall cancel the  
17 order described in subparagraph (A).

18           (C) APPLICATION DENIED.—If the Sec-  
19 retary renders a final administrative decision to  
20 deny the application described in subparagraph  
21 (A)(i), the order described in subparagraph (A)  
22 shall be effective and enforceable to the same  
23 extent as if the application had not been made.

24           (i) CLASSIFICATION.—

1           (1) BENEFITS AND DOCUMENTATION.—If the  
2 Secretary determines that an alien is eligible for  
3 classification as a conditional nonimmigrant or con-  
4 ditional nonimmigrant dependent, the alien shall be  
5 entitled to all benefits described in subsection (h)(1).  
6 The Secretary may authorize the use of a document  
7 described in subsection (h)(2) as evidence of such  
8 classification or may issue additional documentation  
9 as evidence of classification as a conditional non-  
10 immigrant or conditional nonimmigrant dependent.

11           (2) PERIOD OF AUTHORIZED STAY.—

12           (A) IN GENERAL.—Except as provided  
13 under subparagraph (C), the period of author-  
14 ized stay for a conditional nonimmigrant or a  
15 conditional nonimmigrant dependent shall be 6  
16 years from the date on which such status is  
17 conferred.

18           (B) EXTENSION.—The Secretary may ex-  
19 tend the period described in subparagraph (A)  
20 in additional 5-year increments provided that  
21 the alien continues to meet the requirements of  
22 this section.

23           (j) TERMINATION OF BENEFITS.—

24           (1) IN GENERAL.—Any benefit provided to an  
25 alien seeking classification as a conditional non-

1 immigrant or conditional nonimmigrant dependent,  
2 or who is classified as such, under this section shall  
3 terminate if—

4 (A) the Secretary determines that the alien  
5 is ineligible for such classification and all review  
6 procedures under section 603 have been ex-  
7 hausted or waived by the alien;

8 (B) the alien has used documentation  
9 issued under this section for unlawful or fraud-  
10 ulent purposes; or

11 (C) in the case of the spouse or child of an  
12 alien applying for classification as a conditional  
13 nonimmigrant or classified as a conditional non-  
14 immigrant under this section, the benefits for  
15 the principal alien are terminated unless bene-  
16 fits are terminated due to the death of the prin-  
17 cipal applicant; provided that the spouse or  
18 child shall be given a reasonable opportunity to  
19 apply independently for classification under this  
20 section.

21 (k) DISSEMINATION OF INFORMATION ON CONDI-  
22 TIONAL NONIMMIGRANT PROGRAM.—During the 12-  
23 month period immediately following the issuance of regu-  
24 lations implementing this section, the Secretary, in co-  
25 operation with entities approved by the Secretary, shall

1 broadly disseminate information respecting conditional  
2 nonimmigrant or conditional nonimmigrant dependent  
3 classification under this section and the requirements to  
4 be satisfied to obtain such classification. The Secretary  
5 shall disseminate information to employers and labor  
6 unions to advise them of the rights and protections avail-  
7 able to them and to workers who file applications under  
8 this section. Such information shall be broadly dissemi-  
9 nated, in the principal languages, as determined by the  
10 Secretary, spoken by aliens who would qualify for classi-  
11 fication under this section, including to television, radio,  
12 and print media to which such aliens would have access.

13 (l) CONSTRUCTION CLAUSE.—Nothing in this sub-  
14 section shall be construed to prevent an alien described  
15 in this section from filing an application for an immigra-  
16 tion benefit in accordance with any other provision of law.

17 **SEC. 402. ADJUSTMENT OF STATUS FOR CONDITIONAL**  
18 **NONIMMIGRANTS.**

19 (a) REQUIREMENTS.—

20 (1) IN GENERAL.—Notwithstanding any other  
21 provision of law, including section 244(h) of the Im-  
22 migration and Nationality Act (8 U.S.C. 1254a(h)),  
23 the Secretary may adjust the status of a conditional  
24 nonimmigrant or a conditional nonimmigrant de-  
25 pendent to that of an alien lawfully admitted for

1 permanent residence if the conditional nonimmigrant  
2 or conditional nonimmigrant dependent satisfies the  
3 applicable requirements under this subsection.

4 (2) FULFILLMENT OF CONDITIONAL REQUIRE-  
5 MENTS.—A conditional nonimmigrant applying for  
6 adjustment of status under this section shall estab-  
7 lish that during the 5-year period immediately pre-  
8 ceding the application for adjustment of status, he  
9 or she has fulfilled the requirements of the alien’s  
10 conditional status by demonstrating that the alien—

11 (A) has not been convicted of any offenses  
12 that would render the alien inadmissible as de-  
13 scribed in subsection (b);

14 (B) has satisfied all past or current Fed-  
15 eral income tax liabilities and is in good stand-  
16 ing with the Internal Revenue Service as de-  
17 scribed in subsection (c);

18 (C) can establish that he or she has con-  
19 tributed to the community through employment,  
20 education, military service or other enterprise  
21 as described in subsection (d);

22 (D) has demonstrated sufficient mastery of  
23 basic English skills as described in subsection  
24 (e); and

1           (E) where applicable, can establish proof of  
2           registration under the Military Selective Service  
3           Act (50 U.S.C. App. 451 et seq.).

4           (b) ADMISSIBLE UNDER IMMIGRATION LAWS.—A  
5           conditional nonimmigrant or conditional nonimmigrant  
6           dependent applying for adjustment of status under this  
7           section shall establish that he or she is not inadmissible  
8           under section 212(a) of the Immigration and Nationality  
9           Act (8 U.S.C. 1182(a)), except for any provision under  
10          that section that is not applicable or waived under para-  
11          graph (2) or (3) of section 401(d). For purposes of an  
12          application filed under this section, any prior waiver of  
13          inadmissibility granted to an alien under section 401(d)(2)  
14          shall remain in effect with respect to the specific conduct  
15          considered by the Secretary at the time of classification  
16          under section 401.

17          (c) PAYMENT OF INCOME TAXES.—

18               (1) IN GENERAL.—Not later than the date on  
19               which status is adjusted under this section, a condi-  
20               tional nonimmigrant or conditional nonimmigrant  
21               dependent shall satisfy any applicable Federal tax li-  
22               ability by establishing that—

23                       (A) no such tax liability exists;

24                       (B) all outstanding liabilities have been  
25               paid; or

1           (C) the conditional nonimmigrant has en-  
2           tered into, and is in compliance with, an agree-  
3           ment for payment of all outstanding liabilities  
4           with the Internal Revenue Service.

5           (2) APPLICABLE FEDERAL TAX LIABILITY.—  
6           For purposes of paragraph (1), the term “applicable  
7           Federal tax liability” means liability for Federal  
8           taxes, including penalties and interest, owed for any  
9           year while classified as a conditional nonimmigrant  
10          or conditional nonimmigrant dependent for which  
11          the statutory period for assessment of any deficiency  
12          for such taxes has not expired.

13          (3) IRS COOPERATION.—The Secretary of the  
14          Treasury shall establish rules and procedures under  
15          which the Commissioner of Internal Revenue shall  
16          provide documentation to—

17                 (A) a conditional nonimmigrant or condi-  
18                 tional nonimmigrant dependent, upon request,  
19                 to establish the payment of all taxes required  
20                 under this subsection; or

21                 (B) the Secretary, upon request, regarding  
22                 the payment of Federal taxes by an alien apply-  
23                 ing for a benefit under this section.

1           (4) COMPLIANCE.—The alien may satisfy proof  
2 of compliance with this subsection by submitting  
3 documentation that establishes that—

4                   (A) no such tax liability exists;

5                   (B) all outstanding liabilities have been  
6 met; or

7                   (C) the alien has entered into, and is in  
8 compliance with, an agreement for payment of  
9 all outstanding liabilities with the Internal Rev-  
10 enue Service.

11       (d) CONTRIBUTIONS TO THE UNITED STATES  
12 THROUGH EMPLOYMENT, EDUCATION, MILITARY SERV-  
13 ICE OR OTHER COMMITMENT TO THE COMMUNITY.—

14           (1) An alien shall demonstrate contributions to  
15 the United States by submitting evidence that he or  
16 she—

17                   (A) is or has been engaged in full-time,  
18 part-time, self, or seasonal employment in the  
19 United States; or

20                   (B) has completed or is enrolled in an ac-  
21 credited education program as described under  
22 subsection (e)(1)(B) of section 401; or

23                   (C) is serving in the military or has com-  
24 pleted military service as described in sub-  
25 section (e)(1)(C) of section 401; or



1 (D) otherwise establishes, to the satisfac-  
2 tion of the Secretary, that the alien is an active  
3 volunteer or community member; or

4 (E) is exempt from these requirements, as  
5 described under subsection (e)(2) of section  
6 401; and

7 (F) is self-sufficient or self-supporting, in-  
8 cluding through the support of family, commu-  
9 nity members, or others, as determined by the  
10 Secretary, such that the alien is not a public  
11 charge or at risk of becoming a public charge.

12 (2) EVIDENCE OF EMPLOYMENT, EDUCATION,  
13 MILITARY SERVICE OR OTHER CONTRIBUTIONS.—

14 (A) CONCLUSIVE DOCUMENTS.—An alien  
15 may conclusively establish compliance with  
16 paragraph (1) by submitting records to the Sec-  
17 retary that demonstrate such employment, edu-  
18 cation, military service, or other contributions  
19 that have been maintained by the Social Secu-  
20 rity Administration, the Internal Revenue Serv-  
21 ice, the Armed Services or any other Federal,  
22 State, or local government agency or public or  
23 private educational institution.

24 (B) OTHER DOCUMENTS.—An alien who is  
25 unable to submit a document described in sub-

1 paragraph (A) may satisfy the requirement  
2 under paragraph (1) by submitting to the Sec-  
3 retary at least 2 other types of reliable docu-  
4 ments that provide evidence of contributions to  
5 the United States, including—

6 (i) bank records;

7 (ii) business records;

8 (iii) employer records;

9 (iv) records of a labor union, day  
10 labor center, or organization that assists  
11 workers in employment;

12 (v) records of a registered charitable,  
13 voluntary or 501(c)(3) nonprofit organiza-  
14 tion; and

15 (vi) sworn affidavits from nonrelatives  
16 who have direct knowledge of the alien's  
17 contribution, that contain—

18 (I) the name, address, and tele-  
19 phone number of the affiant;

20 (II) the nature and duration of  
21 the relationship between the affiant  
22 and the alien; and

23 (III) other verification or infor-  
24 mation; and

25 (vii) remittance records.

1 (C) ADDITIONAL DOCUMENTS AND RE-  
2 STRICTIONS.—The Secretary may—

3 (i) designate additional documents to  
4 evidence employment, education, military  
5 service or and other contributions to the  
6 United States; and

7 (ii) set such terms and conditions on  
8 the use of affidavits as is necessary to  
9 verify and confirm the identity of any affi-  
10 ant or otherwise prevent fraudulent sub-  
11 missions.

12 (4) BURDEN OF PROOF.—An alien described in  
13 paragraph (1) who is applying for adjustment of sta-  
14 tus under this section shall prove, by a preponder-  
15 ance of the evidence, that the alien has satisfied the  
16 requirements of this subsection. An alien may meet  
17 such burden of proof by producing sufficient evi-  
18 dence to demonstrate employment, education, mili-  
19 tary service, or other contribution to the United  
20 States as a matter of reasonable inference.

21 (e) BASIC CITIZENSHIP SKILLS.—

22 (1) IN GENERAL.—Except as provided under  
23 paragraph (2), a conditional nonimmigrant or condi-  
24 tional nonimmigrant dependent shall establish that  
25 he or she—

1 (A) meets the requirements under section  
2 312 of the Immigration and Nationality Act (8  
3 U.S.C. 1423);

4 (B) earned a high school diploma or ob-  
5 tained a general education development certifi-  
6 cate in the United States; or

7 (C) is satisfactorily pursuing a course of  
8 study to achieve such an understanding of  
9 English and knowledge and understanding of  
10 the history and Government of the United  
11 States.

12 (2) RELATION TO NATURALIZATION EXAMINA-  
13 TION.—A conditional nonimmigrant or conditional  
14 nonimmigrant dependent who demonstrates that he  
15 or she meets the requirements under such section  
16 312 may be considered to have satisfied the require-  
17 ments of that section for purposes of becoming natu-  
18 ralized as a citizen of the United States under title  
19 III of the Immigration and Nationality Act (8  
20 U.S.C. 1401 et seq.).

21 (3) EXCEPTIONS.—

22 (A) MANDATORY.—Paragraph (1) shall  
23 not apply to any person who is unable to com-  
24 ply with those requirements because of a phys-  
25 ical or developmental disability or mental im-

1           pairment (as described in section 312(b)(1) of  
2           the Immigration and Nationality Act (8 U.S.C.  
3           1423(b)(1))).

4                   (B) DISCRETIONARY.—The Secretary may  
5           waive all or part of paragraph (1) for a condi-  
6           tional nonimmigrant who is at least 65 years of  
7           age on the date on which an application is filed  
8           for adjustment of status under this section.

9           (f) APPLICATION PROCEDURE, FEES, AND FINES.—

10                   (1) COMPLIANCE WITH ALL REQUIREMENTS.—

11           A conditional nonimmigrant or conditional non-  
12           immigrant dependent seeking to adjust status to  
13           that of a lawful permanent resident shall submit to  
14           a full medical examination and all security and other  
15           law enforcement checks required of an applicant for  
16           adjustment under section 245 of the Immigration  
17           and Nationality Act.

18                   (2) APPLICATION AND FEE.—The Secretary  
19           shall promulgate regulations establishing procedures  
20           for submitting an application for adjustment of sta-  
21           tus under this section. The Secretary shall impose a  
22           fee for filing an application for adjustment of status  
23           under this section which shall be sufficient to cover  
24           the administrative and other expenses incurred in  
25           connection with the review of such applications.

1           (3) DEPOSIT OF FEES.—Fees collected under  
2 this paragraph shall be deposited into the Immigra-  
3 tion Examination Fee Account and shall remain  
4 available as provided under subsections (m) and (n)  
5 of section 286 of the Immigration and Nationality  
6 Act (8 U.S.C. 1356).

7           (g) TREATMENT OF CONDITIONAL NONIMMIGRANT  
8 DEPENDENTS.—

9           (1) ADJUSTMENT OF STATUS.—Notwith-  
10 standing any other provision of law, the Secretary  
11 may—

12                   (A) adjust the status of a conditional non-  
13 immigrant dependent to that of a person admit-  
14 ted for lawful permanent residence if the prin-  
15 cipal conditional nonimmigrant spouse or par-  
16 ent has been found eligible for adjustment of  
17 status under this section, provided that the de-  
18 pendent complies with subparagraphs (A), (B),  
19 and (E), where applicable, of subsection (a)(2)  
20 and completes the application requirements de-  
21 scribed in subsection (f);

22                   (B) adjust the status of a conditional non-  
23 immigrant dependent who was the spouse or  
24 child of an alien who was classified as a condi-  
25 tional nonimmigrant, or was eligible for such

1 classification under section 401, to that of a  
2 person admitted for permanent residence if—

3 (i) the termination of the relationship  
4 with such spouse or parent was connected  
5 to domestic violence; and

6 (ii) the spouse or child has been bat-  
7 tered or subjected to extreme cruelty by  
8 the spouse or parent; provided that the de-  
9 pendent complies with subparagraphs (A),  
10 (B), and (E), where applicable, of sub-  
11 section (a)(2) and completes the applica-  
12 tion requirements described in subsection  
13 (g).

14 (2) APPLICATION OF OTHER LAW.—In proc-  
15 essing applications under this subsection on behalf  
16 of aliens who have been battered or subjected to ex-  
17 treme cruelty, the Secretary shall apply—

18 (A) the provisions under section  
19 204(a)(1)(J) of the Immigration and Nation-  
20 ality Act (8 U.S.C. 1154(a)(1)(J)); and

21 (B) the protections, prohibitions, and pen-  
22 alties under section 384 of the Illegal Immigra-  
23 tion Reform and Immigrant Responsibility Act  
24 of 1996 (8 U.S.C. 1367).

25 (h) BACK OF THE LINE.—

1           (1) IN GENERAL.—An alien may not adjust sta-  
2           tus to that of a lawful permanent resident status  
3           under this Act until that earlier of—

4                   (A) 30 days after an immigrant visa be-  
5                   comes available for petitions filed under section  
6                   201, 202, or 203 of the Immigration and Na-  
7                   tionality Act (8 U.S.C. 1151, 1152, and 1153),  
8                   which were filed before the date of enactment of  
9                   this Act; or

10                   (B) 6 years after the date of the enact-  
11                   ment of this Act.

12           (2) SPECIAL RULE FOR CONDITIONAL IMMI-  
13           GRANTS QUALIFYING UNDER SUBSECTION (e)(2)(D)  
14           OF SECTION 401.—An alien who qualifies as a condi-  
15           tional nonimmigrant as described in subsection  
16           (e)(2)(D) of section 401 shall be eligible to apply for  
17           adjustment of status immediately upon the comple-  
18           tion of one of the following:

19                   (A) The alien has acquired a degree from  
20                   an institution of higher education in the United  
21                   States or has completed at least 2 years, in  
22                   good standing, in a program for a bachelor's  
23                   degree or higher degree in the United States.



1           (B) The alien has served in the uniformed  
2 services for at least 2 years and, if discharged,  
3 has received an honorable discharge.

4           (C) The alien has been employed full-time,  
5 part-time, or seasonally for at least 2 years  
6 prior to date of application.

7           (3) NATURALIZATION.—For purposes of natu-  
8 ralization only, aliens who adjust their status to that  
9 of a lawful permanent resident under the special rule  
10 described in paragraph (2) shall be eligible to apply  
11 for naturalization 3 years after the date on which  
12 adjustment of status is granted.

13          (i) INELIGIBILITY FOR PUBLIC BENEFITS.—For pur-  
14 poses of section 403 of the Personal Responsibility and  
15 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.  
16 1613), an alien whose status has been adjusted under this  
17 section shall not be eligible for any Federal means-tested  
18 public benefit unless the alien meets the alien eligibility  
19 criteria for such benefit under title IV of such Act (8  
20 U.S.C. 1601 et seq.).

21 **SEC. 403. ADMINISTRATIVE AND JUDICIAL REVIEW.**

22          (a) ADMINISTRATIVE REVIEW.—

23           (1) SINGLE LEVEL OF ADMINISTRATIVE APPEL-  
24 LATE REVIEW.—The Secretary of Homeland Secu-  
25 rity shall establish an independent appellate author-

1       ity within the Bureau of Citizenship and Immigra-  
2       tion Services to provide for a single level of adminis-  
3       trative appellate review of a determination respect-  
4       ing an application for classification or adjustment of  
5       status under this subtitle.

6           (2) STANDARD FOR REVIEW.—Administrative  
7       appellate review referred to in paragraph (1) shall be  
8       based solely upon the administrative record estab-  
9       lished at the time of the determination on the appli-  
10      cation and upon the presentation of additional or  
11      newly discovered evidence during the time of the  
12      pending appeal or subsequently on motion to reopen.

13      (b) JUDICIAL REVIEW.—

14           (1) DIRECT REVIEW.—A person whose applica-  
15      tion for classification or adjustment of status under  
16      this subtitle is denied after administrative appellate  
17      review under subsection (a) may seek review of such  
18      denial, in accordance with chapter 7 of title 5,  
19      United States Code, before the United States dis-  
20      trict court for the district in which the person re-  
21      sides.

22           (2) REVIEW AFTER REMOVAL PROCEEDINGS.—  
23      There shall be judicial review in the Federal courts  
24      of appeal of the denial of an application for classi-  
25      fication or adjustment of status under this subtitle

1 in conjunction with judicial review of an order of re-  
2 moval, deportation, or exclusion.

3 (3) STANDARD FOR JUDICIAL REVIEW.—Judicial  
4 review of a denial of an application under this  
5 subtitle shall be based upon the administrative  
6 record established at the time of the review, but the  
7 court may remand the case to the agency for consid-  
8 eration of additional evidence where the court finds  
9 that the evidence is material and there were reason-  
10 able grounds for failure to adduce the evidence be-  
11 fore the agency. Notwithstanding any other provi-  
12 sion of law, judicial review of all questions arising  
13 from a denial of an application under this subtitle  
14 shall be governed by the standard of review set forth  
15 in chapter 7 of title 5, United States Code.

16 (4) REMEDIAL POWERS.—Notwithstanding any  
17 other provision of law, the district courts of the  
18 United States shall have jurisdiction over any cause  
19 or claim arising from a pattern or practice of the  
20 Secretary of Homeland Security in the operation or  
21 implementation of this subtitle that is arbitrary, ca-  
22 pricious, or otherwise contrary to law, and may  
23 order any appropriate relief. The district courts may  
24 order any appropriate relief in accordance with the  
25 preceding sentence without regard to exhaustion,

1 ripeness, or other standing requirements (other than  
2 constitutionally-mandated requirements), if the court  
3 determines that resolution of such cause or claim  
4 will serve judicial and administrative efficiency or  
5 that a remedy would otherwise not be reasonably  
6 available or practicable.

7 (c) **STAY OF REMOVAL.**—Aliens seeking administra-  
8 tive or judicial review under this section shall not be re-  
9 moved from the United States until a final decision is ren-  
10 dered establishing ineligibility under this subtitle.

11 **SEC. 404. MANDATORY DISCLOSURE OF INFORMATION.**

12 (a) **MANDATORY DISCLOSURE.**—The Secretary and  
13 the Secretary of State shall provide a duly recognized law  
14 enforcement entity that submits a written request with the  
15 information furnished pursuant to an application filed  
16 under this subtitle, and any other information derived  
17 from such furnished information, in connection with a  
18 criminal investigation or prosecution, or a national secu-  
19 rity investigation or prosecution, of an individual suspect  
20 or group of suspects.

21 (b) **LIMITATIONS.**—Except as otherwise provided  
22 under this section, no Federal agency, or any officer, em-  
23 ployee, or agent of such agency, may—

24 (1) use the information furnished by the appli-  
25 cant pursuant to an application for benefits under

1 this subtitle for any purpose other than to make a  
2 determination on the application;

3 (2) make any publication through which the in-  
4 formation furnished by any particular applicant can  
5 be identified; or

6 (3) permit anyone other than the sworn officers  
7 and employees of such agency to examine individual  
8 applications.

9 (c) CONSTRUCTION.—Nothing under subsection (b)  
10 shall prevent an alien or an alien’s attorney access to his  
11 or her application, case file, or information related to such  
12 application or adjudication thereof.

13 (d) CRIMINAL PENALTY.—Any person who knowingly  
14 uses, publishes, or permits information to be examined in  
15 violation of this section shall be fined not more than  
16 \$10,000.

17 **SEC. 405. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**  
18 **TIONS.**

19 (a) CRIMINAL PENALTY.—

20 (1) VIOLATION.—It shall be unlawful for any  
21 person—

22 (A) to file, or assist in filing, an applica-  
23 tion for benefits under this subtitle; and

1 (i) to knowingly and willfully falsify,  
2 misrepresent, conceal, or cover up a mate-  
3 rial fact;

4 (ii) to make any false, fictitious, or  
5 fraudulent statements or representations;  
6 or

7 (iii) to make or use any false writing  
8 or document knowing the same to contain  
9 any false, fictitious, or fraudulent state-  
10 ment or entry; or

11 (B) to create or supply a false writing or  
12 document for use in making such an applica-  
13 tion.

14 (2) PENALTY.—Any person who violates para-  
15 graph (1) shall be fined in accordance with title 18,  
16 United States Code, imprisoned not more than 5  
17 years, or both.

18 (b) INADMISSIBILITY.—An alien who is convicted of  
19 violating subsection (a) shall be considered to be inadmis-  
20 sible to the United States on the ground described in sec-  
21 tion 212(a)(6)(C)(i) of the Immigration and Nationality  
22 Act (8 U.S.C. 1182(a)(6)(C)(i)).

23 (c) EXCEPTION.—Notwithstanding subsections (a)  
24 and (b), any alien or other entity (including an employer  
25 or union) that submits an employment record that con-

1 tains incorrect data used by the alien to obtain such em-  
2 ployment, shall not, on that ground, be determined to have  
3 violated this section.

4 **SEC. 406. ALIENS NOT SUBJECT TO DIRECT NUMERICAL**  
5 **LIMITATIONS.**

6 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended  
7 by title III, is further amended—

8 (1) in subparagraph (A), by striking “subpara-  
9 graph (A) or (B) of”; and

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

11 “(N) Aliens whose status is adjusted from  
12 that of a conditional nonimmigrant or condi-  
13 tional nonimmigrant dependent.”.

14 **SEC. 407. EMPLOYER PROTECTIONS.**

15 (a) IMMIGRATION STATUS OF ALIEN.—Employers of  
16 aliens applying for conditional nonimmigrant or condi-  
17 tional nonimmigrant dependent classification or adjust-  
18 ment of status under section 401 or 402 shall not be sub-  
19 ject to civil and criminal tax liability relating directly to  
20 the employment of such alien before receiving employment  
21 authorization under this subtitle.

22 (b) PROVISION OF EMPLOYMENT RECORDS.—Em-  
23 ployers that provide unauthorized aliens with copies of em-  
24 ployment records or other evidence of employment pursu-  
25 ant to an application for conditional nonimmigrant or con-

1 ditional nonimmigrant dependent classification or adjust-  
2 ment of status under section 401 or 402 or any other ap-  
3 plication or petition pursuant to any other immigration  
4 law, shall not be subject to civil and criminal liability  
5 under section 274A of the Immigration and Nationality  
6 Act (8 U.S.C. 1324a) for employing such unauthorized  
7 aliens.

8 (c) APPLICABILITY OF OTHER LAW.—Nothing in this  
9 section may be used to shield an employer from liability  
10 under section 274B of the Immigration and Nationality  
11 Act (8 U.S.C. 1324b) or any other labor or employment  
12 law.

13 **SEC. 408. LIMITATIONS ON ELIGIBILITY.**

14 (a) IN GENERAL.—An alien is not ineligible for any  
15 immigration benefit under any provision of this subtitle,  
16 or any amendment made by this subtitle, solely on the  
17 basis that the alien violated section 1543, 1544, or 1546  
18 of title 18, United States Code, or any amendment made  
19 by this Act, during the period beginning on the date of  
20 the enactment of this Act and ending on the date on which  
21 the alien applies for any benefits under this subtitle.

22 (b) PROSECUTION.—An alien who violates section  
23 1543, 1544, or 1546 of such title, or any amendment  
24 made by this Act, during the period beginning on the date  
25 of the enactment of this Act and ending on the date that



1 the alien applies for eligibility for such benefit may be  
2 prosecuted for the violation if the alien's application for  
3 such benefit is denied.

4 **SEC. 409. RULEMAKING.**

5 The Secretary shall promulgate regulations regarding  
6 the timely filing and processing of applications for benefits  
7 under this subtitle.

8 **SEC. 410. CORRECTION OF SOCIAL SECURITY RECORDS.**

9 (a) IN GENERAL.—Section 208(e)(1) of the Social  
10 Security Act (42 U.S.C. 408(e)(1)) is amended—

11 (1) in subparagraph (B)(ii), by striking “or” at  
12 the end;

13 (2) in subparagraph (C), by inserting “or” at  
14 the end;

15 (3) by inserting after subparagraph (C) the fol-  
16 lowing:

17 “(D) who is granted an adjustment of im-  
18 migration status pursuant to the CIR ASAP  
19 Act of 2009 or an amendment made by that  
20 Act,”; and

21 (4) by striking “1990.” and inserting “1990, or  
22 in the case of an alien described in subparagraph  
23 (D), if such conduct is alleged to have occurred be-  
24 fore the date on which the alien was granted an ad-  
25 justment of status described in such subparagraph.”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 subsection (a) shall take effect on the first day of the sev-  
3 enth month that begins after the date of the enactment  
4 of this Act.

5 **SEC. 411. RESTORATION OF STATE OPTION TO DETERMINE**  
6 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**  
7 **CATION BENEFITS.**

8 (a) IN GENERAL.—Section 505 of the Illegal Immi-  
9 gration Reform and Immigrant Responsibility Act of 1996  
10 (8 U.S.C. 1623) is repealed.

11 (b) EFFECTIVE DATE.—The repeal under subsection  
12 (a) shall take effect as if included in the enactment of the  
13 Illegal Immigration Reform and Immigrant Responsibility  
14 Act of 1996 (division C of Public Law 104–208; 110 Stat.  
15 3009–546).

16 **SEC. 412. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) IN GENERAL.—There are authorized to be appro-  
18 priated to the Secretary such sums as may be necessary  
19 to carry out this subtitle and the amendments made by  
20 this subtitle.

21 (b) AVAILABILITY OF FUNDS.—Funds appropriated  
22 pursuant to subsection (a) shall remain available until ex-  
23 pended.

24 (c) SENSE OF CONGRESS.—It is the sense of Con-  
25 gress that funds authorized to be appropriated under sub-

1 section (a) should be directly appropriated so as to facili-  
2 tate the orderly and timely commencement of the proc-  
3 essing of applications filed under sections 401 and 402.

4 **Subtitle B—Agricultural Job Op-**  
5 **portunities, Benefits, and Secu-**  
6 **urity**

7 **CHAPTER 1—TITLE AND DEFINITIONS**

8 **SEC. 421. SHORT TITLE.**

9 This subtitle may be cited as the “Agricultural Job  
10 Opportunities, Benefits, and Security Act of 2009” or the  
11 “AgJOBS Act of 2009”.

12 **SEC. 422. DEFINITIONS.**

13 In this Act:

14 (1) **AGRICULTURAL EMPLOYMENT.**—The term  
15 “agricultural employment” means any service or ac-  
16 tivity that is considered to be agricultural under sec-  
17 tion 3(f) of the Fair Labor Standards Act of 1938  
18 (29 U.S.C. 203(f)) or agricultural labor under sec-  
19 tion 3121(g) of the Internal Revenue Code of 1986  
20 or the performance of agricultural labor or services  
21 described in section 101(a)(15)(H)(ii)(a) of the Im-  
22 migration and Nationality Act (8 U.S.C.  
23 1101(a)(15)(H)(ii)(a)).

24 (2) **BLUE CARD STATUS.**—The term “blue card  
25 status” means the status of an alien who has been

1 lawfully admitted into the United States for tem-  
2 porary residence under section 101(a).

3 (3) DEPARTMENT.—The term “Department”  
4 means the Department of Homeland Security.

5 (4) EMPLOYER.—The term “employer” means  
6 any person or entity, including any farm labor con-  
7 tractor and any agricultural association, that em-  
8 ploys workers in agricultural employment.

9 (5) SECRETARY.—Except as otherwise provided,  
10 the term “Secretary” means the Secretary of Home-  
11 land Security.

12 (6) WORK DAY.—The term “work day” means  
13 any day in which the individual is employed 5.75 or  
14 more hours in agricultural employment.

15 **CHAPTER 2—PILOT PROGRAM FOR**  
16 **EARNED STATUS ADJUSTMENT OF AG-**  
17 **RICULTURAL WORKERS**

18 **Subchapter A—Blue Card Status**

19 **SEC. 431. REQUIREMENTS FOR BLUE CARD STATUS.**

20 (a) REQUIREMENT TO GRANT BLUE CARD STA-  
21 TUS.—Notwithstanding any other provision of law, the  
22 Secretary shall, pursuant to the requirements of this sec-  
23 tion, grant blue card status to an alien who qualifies under  
24 this section if the Secretary determines that the alien—

1           (1) during the 24-month period ending on De-  
2           cember 31, 2008—

3                   (A) performed agricultural employment in  
4           the United States for at least 863 hours or 150  
5           work days; or

6                   (B) earned at least \$7,500 from agricul-  
7           tural employment in the United States;

8           (2) applied for such status during the 18-month  
9           application period beginning on the first day of the  
10          seventh month that begins after the date of enact-  
11          ment of this Act;

12           (3) is otherwise admissible to the United States  
13          under section 212 of the Immigration and Nation-  
14          ality Act (8 U.S.C. 1182), except as otherwise pro-  
15          vided under section 105(b); and

16           (4) has not been convicted of any felony or a  
17          misdemeanor, an element of which involves bodily in-  
18          jury, threat of serious bodily injury, or harm to  
19          property in excess of \$500.

20          (b) AUTHORIZED TRAVEL.—An alien who is granted  
21          blue card status is authorized to travel outside the United  
22          States (including commuting to the United States from  
23          a residence in a foreign country) in the same manner as  
24          an alien lawfully admitted for permanent residence.

1           (c) AUTHORIZED EMPLOYMENT.—The Secretary  
2 shall provide an alien who is granted blue card status an  
3 employment authorized endorsement or other appropriate  
4 work permit, in the same manner as an alien lawfully ad-  
5 mitted for permanent residence.

6           (d) TERMINATION OF BLUE CARD STATUS.—

7                 (1) DEPORTABLE ALIENS.—The Secretary shall  
8 terminate blue card status granted to an alien if the  
9 Secretary determines that the alien is deportable.

10                (2) OTHER GROUNDS FOR TERMINATION.—The  
11 Secretary shall terminate blue card status granted to  
12 an alien if—

13                     (A) the Secretary finds, by a preponder-  
14 ance of the evidence, that the adjustment to  
15 blue card status was the result of fraud or will-  
16 ful misrepresentation, as described in section  
17 212(a)(6)(C)(i) of the Immigration and Nation-  
18 ality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

19                     (B) the alien—

20                             (i) commits an act that makes the  
21 alien inadmissible to the United States  
22 under section 212 of the Immigration and  
23 Nationality Act (8 U.S.C. 1182), except as  
24 provided under section 105(b);

1 (ii) is convicted of a felony or 3 or  
2 more misdemeanors committed in the  
3 United States;

4 (iii) is convicted of an offense, an ele-  
5 ment of which involves bodily injury, threat  
6 of serious bodily injury, or harm to prop-  
7 erty in excess of \$500; or

8 (iv) fails to perform the agricultural  
9 employment required under paragraph  
10 (1)(A) of section 103(a) unless the alien  
11 was unable to work in agricultural employ-  
12 ment due to the extraordinary cir-  
13 cumstances described in paragraph (3) of  
14 such section.

15 (e) RECORD OF EMPLOYMENT.—

16 (1) IN GENERAL.—Each employer of an alien  
17 granted blue card status shall annually—

18 (A) provide a written record of employ-  
19 ment to the alien; and

20 (B) provide a copy of such record to the  
21 Secretary.

22 (2) CIVIL PENALTIES.—

23 (A) IN GENERAL.—If the Secretary finds,  
24 after notice and opportunity for a hearing, that  
25 an employer of an alien granted blue card sta-

1           tus has failed to provide the record of employ-  
2           ment required under paragraph (1) or has pro-  
3           vided a false statement of material fact in such  
4           a record, the employer shall be subject to a civil  
5           penalty in an amount not to exceed \$1,000 per  
6           violation.

7                   (B) LIMITATION.—The penalty applicable  
8           under subparagraph (A) for failure to provide  
9           records shall not apply unless the alien has pro-  
10          vided the employer with evidence of employment  
11          authorization granted under this section.

12                   (3) SUNSET.—The obligation under paragraph  
13          (1) shall terminate on the date that is 6 years after  
14          the date of the enactment of this Act.

15                   (f) REQUIRED FEATURES OF IDENTITY CARD.—The  
16          Secretary shall provide each alien granted blue card sta-  
17          tus, and the spouse and any child of each such alien resid-  
18          ing in the United States, with a card that contains—

19                   (1) an encrypted, machine-readable, electronic  
20          identification strip that is unique to the alien to  
21          whom the card is issued;

22                   (2) biometric identifiers, including fingerprints  
23          and a digital photograph; and





1 alien is granted an adjustment of status under section  
2 103.

3 **SEC. 433. ADJUSTMENT TO PERMANENT RESIDENCE.**

4 (a) IN GENERAL.—Except as provided in subsection  
5 (b), the Secretary shall adjust the status of an alien grant-  
6 ed blue card status to that of an alien lawfully admitted  
7 for permanent residence if the Secretary determines that  
8 the following requirements are satisfied:

9 (1) QUALIFYING EMPLOYMENT.—

10 (A) IN GENERAL.—Subject to subpara-  
11 graph (B), the alien has performed at least—

12 (i) 5 years of agricultural employment  
13 in the United States for at least 100 work  
14 days per year, during the 5-year period be-  
15 ginning on the date of the enactment of  
16 this Act; or

17 (ii) 3 years of agricultural employ-  
18 ment in the United States for at least 150  
19 work days per year, during the 3-year pe-  
20 riod beginning on the date of the enact-  
21 ment of this Act.

22 (B) 4-YEAR PERIOD OF EMPLOYMENT.—

23 An alien shall be considered to meet the re-  
24 quirements of subparagraph (A) if the alien has  
25 performed 4 years of agricultural employment

1 in the United States for at least 150 work days  
2 during 3 years of those 4 years and at least  
3 100 work days during the remaining year, dur-  
4 ing the 4-year period beginning on the date of  
5 the enactment of this Act.

6 (2) PROOF.—An alien may demonstrate compli-  
7 ance with the requirement under paragraph (1) by  
8 submitting—

9 (A) the record of employment described in  
10 section 101(e); or

11 (B) documentation that may be submitted  
12 under section 104(c).

13 (3) EXTRAORDINARY CIRCUMSTANCES.—

14 (A) IN GENERAL.—In determining whether  
15 an alien has met the requirement of paragraph  
16 (1)(A), the Secretary may credit the alien with  
17 not more than 12 additional months of agricul-  
18 tural employment in the United States to meet  
19 such requirement if the alien was unable to  
20 work in agricultural employment due to—

21 (i) pregnancy, injury, or disease, if the  
22 alien can establish such pregnancy, dis-  
23 abling injury, or disease through medical  
24 records;

1 (ii) illness, disease, or other special  
2 needs of a minor child, if the alien can es-  
3 tablish such illness, disease, or special  
4 needs through medical records;

5 (iii) severe weather conditions that  
6 prevented the alien from engaging in agri-  
7 cultural employment for a significant pe-  
8 riod of time; or

9 (iv) termination from agricultural em-  
10 ployment, if the Secretary finds that the  
11 termination was without just cause and  
12 that the alien was unable to find alter-  
13 native agricultural employment after a rea-  
14 sonable job search.

15 (B) EFFECT OF FINDING.—A finding  
16 made under subparagraph (A)(iv), with respect  
17 to an alien, shall not—

18 (i) be conclusive, binding, or admis-  
19 sible in a separate or subsequent judicial  
20 or administrative action or proceeding be-  
21 tween the alien and a current or prior em-  
22 ployer of the alien or any other party; or

23 (ii) subject the alien's employer to the  
24 payment of attorney fees incurred by the

1 alien in seeking to obtain a finding under  
2 subparagraph (A)(iv).

3 (4) APPLICATION PERIOD.—The alien applies  
4 for adjustment of status not later than 7 years after  
5 the date of the enactment of this Act.

6 (5) FINE.—The alien pays a fine of \$400 to the  
7 Secretary.

8 (b) GROUNDS FOR DENIAL OF ADJUSTMENT OF STA-  
9 TUS.—The Secretary shall deny an alien granted blue card  
10 status an adjustment of status under this section if—

11 (1) the Secretary finds, by a preponderance of  
12 the evidence, that the adjustment to blue card status  
13 was the result of fraud or willful misrepresentation,  
14 as described in section 212(a)(6)(C)(i) of the Immi-  
15 gration and Nationality Act (8 U.S.C.  
16 1182(a)(6)(C)(i)); or

17 (2) the alien—

18 (A) commits an act that makes the alien  
19 inadmissible to the United States under section  
20 212 of the Immigration and Nationality Act (8  
21 U.S.C. 1182), except as provided under section  
22 105(b);

23 (B) is convicted of a felony or 3 or more  
24 misdemeanors committed in the United States;

1           (C) is convicted of an offense, an element  
2           of which involves bodily injury, threat of serious  
3           bodily injury, or harm to property in excess of  
4           \$500; or

5           (D) failed to perform the agricultural em-  
6           ployment required under paragraph (1)(A) of  
7           subsection (a) unless the alien was unable to  
8           work in agricultural employment due to the ex-  
9           traordinary circumstances described in para-  
10          graph (3) of such subsection.

11          (c) **GROUND FOR REMOVAL.**—Any alien granted  
12 blue card status who does not apply for adjustment of sta-  
13 tus under this section before the expiration of the applica-  
14 tion period described in subsection (a)(4) or who fails to  
15 meet the other requirements of subsection (a) by the end  
16 of the application period, is deportable and may be re-  
17 moved under section 240 of the Immigration and Nation-  
18 ality Act (8 U.S.C. 1229a).

19          (d) **PAYMENT OF TAXES.**—

20           (1) **IN GENERAL.**—Not later than the date on  
21 which an alien’s status is adjusted under this sec-  
22 tion, the alien shall establish that the alien does not  
23 owe any applicable Federal tax liability by estab-  
24 lishing that—

25           (A) no such tax liability exists;

1 (B) all such outstanding tax liabilities have  
2 been paid; or

3 (C) the alien has entered into an agree-  
4 ment for payment of all outstanding liabilities  
5 with the Internal Revenue Service.

6 (2) APPLICABLE FEDERAL TAX LIABILITY.—In  
7 paragraph (1) the term “applicable Federal tax li-  
8 ability” means liability for Federal taxes, including  
9 penalties and interest, owed for any year during the  
10 period of employment required under subsection  
11 (a)(1) for which the statutory period for assessment  
12 of any deficiency for such taxes has not expired.

13 (3) IRS COOPERATION.—The Secretary of the  
14 Treasury shall establish rules and procedures under  
15 which the Commissioner of Internal Revenue shall  
16 provide documentation to an alien upon request to  
17 establish the payment of all taxes required by this  
18 subsection.

19 (e) SPOUSES AND MINOR CHILDREN.—

20 (1) IN GENERAL.—Notwithstanding any other  
21 provision of law, the Secretary shall confer the sta-  
22 tus of lawful permanent resident on the spouse and  
23 minor child of an alien granted any adjustment of  
24 status under subsection (a), including any individual  
25 who was a minor child on the date such alien was

1 granted blue card status, if the spouse or minor  
2 child applies for such status, or if the principal alien  
3 includes the spouse or minor child in an application  
4 for adjustment of status to that of a lawful perma-  
5 nent resident.

6 (2) TREATMENT OF SPOUSES AND MINOR CHIL-  
7 DREN.—

8 (A) GRANTING OF STATUS AND RE-  
9 MOVAL.—The Secretary shall grant derivative  
10 status to the alien spouse and any minor child  
11 residing in the United States of an alien grant-  
12 ed blue card status and shall not remove such  
13 derivative spouse or child during the period that  
14 the alien granted blue card status maintains  
15 such status, except as provided in paragraph  
16 (3). A grant of derivative status to such a  
17 spouse or child under this subparagraph shall  
18 not decrease the number of aliens who may re-  
19 ceive blue card status under subsection (h) of  
20 section 101.

21 (B) TRAVEL.—The derivative spouse and  
22 any minor child of an alien granted blue card  
23 status may travel outside the United States in  
24 the same manner as an alien lawfully admitted  
25 for permanent residence.



1 (C) EMPLOYMENT.—The derivative spouse  
2 of an alien granted blue card status may apply  
3 to the Secretary for a work permit to authorize  
4 such spouse to engage in any lawful employ-  
5 ment in the United States while such alien  
6 maintains blue card status.

7 (3) GROUNDS FOR DENIAL OF ADJUSTMENT OF  
8 STATUS AND REMOVAL.—The Secretary shall deny  
9 an alien spouse or child adjustment of status under  
10 paragraph (1) and may remove such spouse or child  
11 under section 240 of the Immigration and Nation-  
12 ality Act (8 U.S.C. 1229a) if the spouse or child—

13 (A) commits an act that makes the alien  
14 spouse or child inadmissible to the United  
15 States under section 212 of such Act (8 U.S.C.  
16 1182), except as provided under section 105(b);

17 (B) is convicted of a felony or 3 or more  
18 misdemeanors committed in the United States;  
19 or

20 (C) is convicted of an offense, an element  
21 of which involves bodily injury, threat of serious  
22 bodily injury, or harm to property in excess of  
23 \$500.

24 **SEC. 434. APPLICATIONS.**

25 (a) SUBMISSION.—The Secretary shall provide that—

1           (1) applications for blue card status may be  
2 submitted—

3           (A) to the Secretary if the applicant is rep-  
4 resented by an attorney or a nonprofit religious,  
5 charitable, social service, or similar organization  
6 recognized by the Board of Immigration Ap-  
7 peals under section 292.2 of title 8, Code of  
8 Federal Regulations; or

9           (B) to a qualified designated entity if the  
10 applicant consents to the forwarding of the ap-  
11 plication to the Secretary; and

12           (2) applications for adjustment of status under  
13 section 103 shall be filed directly with the Secretary.

14       (b) QUALIFIED DESIGNATED ENTITY DEFINED.—In  
15 this section, the term “qualified designated entity”  
16 means—

17           (1) a qualified farm labor organization or an  
18 association of employers designated by the Sec-  
19 retary; or

20           (2) any such other person designated by the  
21 Secretary if that Secretary determines such person  
22 is qualified and has substantial experience, dem-  
23 onstrated competence, and has a history of long-  
24 term involvement in the preparation and submission  
25 of applications for adjustment of status under sec-

1       tion 209, 210, or 245 of the Immigration and Na-  
2       tionality Act (8 U.S.C. 1159, 1160, and 1255), the  
3       Act entitled “An Act to adjust the status of Cuban  
4       refugees to that of lawful permanent residents of the  
5       United States, and for other purposes”, approved  
6       November 2, 1966 (Public Law 89–732; 8 U.S.C.  
7       1255 note), Public Law 95–145 (8 U.S.C. 1255  
8       note), or the Immigration Reform and Control Act  
9       of 1986 (Public Law 99–603; 100 Stat. 3359) or  
10      any amendment made by that Act.

11      (c) PROOF OF ELIGIBILITY.—

12           (1) IN GENERAL.—An alien may establish that  
13      the alien meets the requirement of section 101(a)(1)  
14      or 103(a)(1) through government employment  
15      records or records supplied by employers or collec-  
16      tive bargaining organizations, and other reliable doc-  
17      umentation as the alien may provide. The Secretary  
18      shall establish special procedures to properly credit  
19      work in cases in which an alien was employed under  
20      an assumed name.

21           (2) DOCUMENTATION OF WORK HISTORY.—

22           (A) BURDEN OF PROOF.—An alien apply-  
23      ing for status under section 101(a) or 103(a)  
24      has the burden of proving by a preponderance  
25      of the evidence that the alien has worked the

1            requisite number of hours or days required  
2            under section 101(a)(1) or 103(a)(1), as appli-  
3            cable.

4            (B) TIMELY PRODUCTION OF RECORDS.—  
5            If an employer or farm labor contractor employ-  
6            ing such an alien has kept proper and adequate  
7            records respecting such employment, the alien’s  
8            burden of proof under subparagraph (A) may  
9            be met by securing timely production of those  
10           records under regulations to be promulgated by  
11           the Secretary.

12           (C) SUFFICIENT EVIDENCE.—An alien  
13           may meet the burden of proof under subpara-  
14           graph (A) to establish that the alien has per-  
15           formed the days or hours of work required by  
16           section 101(a)(1) or 103(a)(1) by producing  
17           sufficient evidence to show the extent of that  
18           employment as a matter of just and reasonable  
19           inference.

20           (d) APPLICATIONS SUBMITTED TO QUALIFIED DES-  
21           IGNATED ENTITIES.—

22           (1) REQUIREMENTS.—Each qualified des-  
23           ignated entity shall agree—

24           (A) to forward to the Secretary an applica-  
25           tion submitted to that entity pursuant to sub-

1 section (a)(1)(B) if the applicant has consented  
2 to such forwarding;

3 (B) not to forward to the Secretary any  
4 such application if the applicant has not con-  
5 sented to such forwarding; and

6 (C) to assist an alien in obtaining docu-  
7 mentation of the alien's work history, if the  
8 alien requests such assistance.

9 (2) NO AUTHORITY TO MAKE DETERMINA-  
10 TIONS.—No qualified designated entity may make a  
11 determination required by this subtitle to be made  
12 by the Secretary.

13 (e) LIMITATION ON ACCESS TO INFORMATION.—Files  
14 and records collected or compiled by a qualified designated  
15 entity for the purposes of this section are confidential and  
16 the Secretary shall not have access to such a file or record  
17 relating to an alien without the consent of the alien, except  
18 as allowed by a court order issued pursuant to subsection  
19 (f).

20 (f) CONFIDENTIALITY OF INFORMATION.—

21 (1) IN GENERAL.—Except as otherwise pro-  
22 vided in this section, the Secretary or any other offi-  
23 cial or employee of the Department or a bureau or  
24 agency of the Department is prohibited from—

1 (A) using information furnished by the ap-  
2 plicant pursuant to an application filed under  
3 this subtitle, the information provided by an ap-  
4 plicant to a qualified designated entity, or any  
5 information provided by an employer or former  
6 employer for any purpose other than to make a  
7 determination on the application or for impos-  
8 ing the penalties described in subsection (g);

9 (B) making any publication in which the  
10 information furnished by any particular indi-  
11 vidual can be identified; or

12 (C) permitting a person other than a  
13 sworn officer or employee of the Department or  
14 a bureau or agency of the Department or, with  
15 respect to applications filed with a qualified  
16 designated entity, that qualified designated en-  
17 tity, to examine individual applications.

18 (2) REQUIRED DISCLOSURES.—The Secretary  
19 shall provide the information furnished under this  
20 subtitle or any other information derived from such  
21 furnished information to—

22 (A) a duly recognized law enforcement en-  
23 tity in connection with a criminal investigation  
24 or prosecution, if such information is requested  
25 in writing by such entity; or

1 (B) an official coroner, for purposes of af-  
2 firmatively identifying a deceased individual,  
3 whether or not the death of such individual re-  
4 sulted from a crime.

5 (3) CONSTRUCTION.—

6 (A) IN GENERAL.—Nothing in this sub-  
7 section shall be construed to limit the use, or  
8 release, for immigration enforcement purposes  
9 or law enforcement purposes, of information  
10 contained in files or records of the Department  
11 pertaining to an application filed under this sec-  
12 tion, other than information furnished by an  
13 applicant pursuant to the application, or any  
14 other information derived from the application,  
15 that is not available from any other source.

16 (B) CRIMINAL CONVICTIONS.—Notwith-  
17 standing any other provision of this subsection,  
18 information concerning whether the alien apply-  
19 ing for blue card status or an adjustment of  
20 status under section 103 has been convicted of  
21 a crime at any time may be used or released for  
22 immigration enforcement or law enforcement  
23 purposes.

24 (4) CRIME.—Any person who knowingly uses,  
25 publishes, or permits information to be examined in

1 violation of this subsection shall be subject to a fine  
2 in an amount not to exceed \$10,000.

3 (g) PENALTIES FOR FALSE STATEMENTS IN APPLI-  
4 CATIONS.—

5 (1) CRIMINAL PENALTY.—Any person who—

6 (A) files an application for blue card status  
7 or an adjustment of status under section 103  
8 and knowingly and willfully falsifies, conceals,  
9 or covers up a material fact or makes any false,  
10 fictitious, or fraudulent statements or represen-  
11 tations, or makes or uses any false writing or  
12 document knowing the same to contain any  
13 false, fictitious, or fraudulent statement or  
14 entry; or

15 (B) creates or supplies a false writing or  
16 document for use in making such an applica-  
17 tion,

18 shall be fined in accordance with title 18, United  
19 States Code, imprisoned not more than 5 years, or  
20 both.

21 (2) INADMISSIBILITY.—An alien who is con-  
22 victed of a crime under paragraph (1) shall be con-  
23 sidered to be inadmissible to the United States on  
24 the ground described in section 212(a)(6)(C)(i) of



1 the Immigration and Nationality Act (8 U.S.C.  
2 1182(a)(6)(C)(i)).

3 (h) ELIGIBILITY FOR LEGAL SERVICES.—Section  
4 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53  
5 et seq.) shall not be construed to prevent a recipient of  
6 funds under the Legal Services Corporation Act (42  
7 U.S.C. 2996 et seq.) from providing legal assistance di-  
8 rectly related to an application for blue card status or an  
9 adjustment of status under section 103.

10 (i) APPLICATION FEES.—

11 (1) FEE SCHEDULE.—The Secretary shall pro-  
12 vide for a schedule of fees that—

13 (A) shall be charged for the filing of an  
14 application for blue card status or for an ad-  
15 justment of status under section 103; and

16 (B) may be charged by qualified des-  
17 ignated entities to help defray the costs of serv-  
18 ices provided to such applicants.

19 (2) PROHIBITION ON EXCESS FEES BY QUALI-  
20 FIED DESIGNATED ENTITIES.—A qualified des-  
21 ignated entity may not charge any fee in excess of,  
22 or in addition to, the fees authorized under para-  
23 graph (1)(B) for services provided to applicants.

24 (3) DISPOSITION OF FEES.—

1 (A) IN GENERAL.—There is established in  
2 the general fund of the Treasury a separate ac-  
3 count, which shall be known as the “Agricul-  
4 tural Worker Immigration Status Adjustment  
5 Account”. Notwithstanding any other provision  
6 of law, there shall be deposited as offsetting re-  
7 cepts into the account all fees collected under  
8 paragraph (1)(A).

9 (B) USE OF FEES FOR APPLICATION PROC-  
10 ESSING.—Amounts deposited in the “Agricul-  
11 tural Worker Immigration Status Adjustment  
12 Account” shall remain available to the Sec-  
13 retary until expended for processing applica-  
14 tions for blue card status or an adjustment of  
15 status under section 103.

16 **SEC. 435. WAIVER OF NUMERICAL LIMITATIONS AND CER-**  
17 **TAIN GROUNDS FOR INADMISSIBILITY.**

18 (a) NUMERICAL LIMITATIONS DO NOT APPLY.—The  
19 numerical limitations of sections 201 and 202 of the Im-  
20 migration and Nationality Act (8 U.S.C. 1151 and 1152)  
21 shall not apply to the adjustment of aliens to lawful per-  
22 manent resident status under section 103.

23 (b) WAIVER OF CERTAIN GROUNDS OF INADMIS-  
24 SIBILITY.—In the determination of an alien’s eligibility for  
25 status under section 101(a) or an alien’s eligibility for ad-

1 justment of status under section 103(b)(2)(A) the fol-  
2 lowing rules shall apply:

3 (1) GROUNDS OF EXCLUSION NOT APPLICA-  
4 BLE.—The provisions of paragraphs (5), (6)(A), (7),  
5 and (9) of section 212(a) of the Immigration and  
6 Nationality Act (8 U.S.C. 1182(a)) shall not apply.

7 (2) WAIVER OF OTHER GROUNDS.—

8 (A) IN GENERAL.—Except as provided in  
9 subparagraph (B), the Secretary may waive any  
10 other provision of such section 212(a) in the  
11 case of individual aliens for humanitarian pur-  
12 poses, to ensure family unity, or if otherwise in  
13 the public interest.

14 (B) GROUNDS THAT MAY NOT BE  
15 WAIVED.—Subparagraphs (A), (B), (C), (D),  
16 (G), (H), and (I) of paragraph (2) and para-  
17 graphs (3) and (4) of such section 212(a) may  
18 not be waived by the Secretary under subpara-  
19 graph (A).

20 (C) CONSTRUCTION.—Nothing in this  
21 paragraph shall be construed as affecting the  
22 authority of the Secretary other than under this  
23 subparagraph to waive provisions of such sec-  
24 tion 212(a).

1           (3) SPECIAL RULE FOR DETERMINATION OF  
2 PUBLIC CHARGE.—An alien is not ineligible for blue  
3 card status or an adjustment of status under section  
4 103 by reason of a ground of inadmissibility under  
5 section 212(a)(4) of the Immigration and Nation-  
6 ality Act (8 U.S.C. 1182(a)(4)) if the alien dem-  
7 onstrates a history of employment in the United  
8 States evidencing self-support without reliance on  
9 public cash assistance.

10          (c) TEMPORARY STAY OF REMOVAL AND WORK AU-  
11 THORIZATION FOR CERTAIN APPLICANTS.—

12           (1) BEFORE APPLICATION PERIOD.—Effective  
13 on the date of enactment of this Act, the Secretary  
14 shall provide that, in the case of an alien who is ap-  
15 prehended before the beginning of the application  
16 period described in section 101(a)(2) and who can  
17 establish a nonfrivolous case of eligibility for blue  
18 card status (but for the fact that the alien may not  
19 apply for such status until the beginning of such pe-  
20 riod), until the alien has had the opportunity during  
21 the first 30 days of the application period to com-  
22 plete the filing of an application for blue card status,  
23 the alien—

24                   (A) may not be removed; and

1 (B) shall be granted authorization to en-  
2 gage in employment in the United States and  
3 be provided an employment authorized endorse-  
4 ment or other appropriate work permit for such  
5 purpose.

6 (2) DURING APPLICATION PERIOD.—The Sec-  
7 retary shall provide that, in the case of an alien who  
8 presents a nonfrivolous application for blue card sta-  
9 tus during the application period described in section  
10 101(a)(2), including an alien who files such an ap-  
11 plication within 30 days of the alien’s apprehension,  
12 and until a final determination on the application  
13 has been made in accordance with this section, the  
14 alien—

15 (A) may not be removed; and

16 (B) shall be granted authorization to en-  
17 gage in employment in the United States and  
18 be provided an employment authorized endorse-  
19 ment or other appropriate work permit for such  
20 purpose.

21 **SEC. 436. ADMINISTRATIVE AND JUDICIAL REVIEW.**

22 (a) IN GENERAL.—There shall be no administrative  
23 or judicial review of a determination respecting an applica-  
24 tion for blue card status or adjustment of status under  
25 section 103 except in accordance with this section.

1 (b) ADMINISTRATIVE REVIEW.—

2 (1) SINGLE LEVEL OF ADMINISTRATIVE APPEL-  
3 LATE REVIEW.—The Secretary shall establish an ap-  
4 pellate authority to provide for a single level of ad-  
5 ministrative appellate review of such a determina-  
6 tion.

7 (2) STANDARD FOR REVIEW.—Such administra-  
8 tive appellate review shall be based solely upon the  
9 administrative record established at the time of the  
10 determination on the application and upon such ad-  
11 ditional or newly discovered evidence as may not  
12 have been available at the time of the determination.

13 (c) JUDICIAL REVIEW.—

14 (1) LIMITATION TO REVIEW OF REMOVAL.—  
15 There shall be judicial review of such a determina-  
16 tion only in the judicial review of an order of re-  
17 moval under section 242 of the Immigration and  
18 Nationality Act (8 U.S.C. 1252).

19 (2) STANDARD FOR JUDICIAL REVIEW.—Such  
20 judicial review shall be based solely upon the admin-  
21 istrative record established at the time of the review  
22 by the appellate authority and the findings of fact  
23 and determinations contained in such record shall be  
24 conclusive unless the applicant can establish abuse  
25 of discretion or that the findings are directly con-

1       trary to clear and convincing facts contained in the  
2       record considered as a whole.

3       **SEC. 437. USE OF INFORMATION.**

4       Beginning not later than the first day of the applica-  
5       tion period described in section 101(a)(2), the Secretary,  
6       in cooperation with qualified designated entities (as that  
7       term is defined in section 104(b)), shall broadly dissemi-  
8       nate information respecting the benefits that aliens may  
9       receive under this subtitle and the requirements that an  
10      alien is required to meet to receive such benefits.

11      **SEC. 438. REGULATIONS, EFFECTIVE DATE, AUTHORIZA-**  
12                                   **TION OF APPROPRIATIONS.**

13      (a) **REGULATIONS.**—The Secretary shall issue regula-  
14      tions to implement this subtitle not later than the first  
15      day of the seventh month that begins after the date of  
16      enactment of this Act.

17      (b) **EFFECTIVE DATE.**—This subtitle shall take effect  
18      on the date that regulations required by subsection (a) are  
19      issued, regardless of whether such regulations are issued  
20      on an interim basis or on any other basis.

21      (c) **AUTHORIZATION OF APPROPRIATIONS.**—There  
22      are authorized to be appropriated to the Secretary such  
23      sums as may be necessary to implement this subtitle, in-  
24      cluding any sums needed for costs associated with the ini-

1 tiation of such implementation, for fiscal years 2009 and  
2 2010.

3 **Subchapter B—Correction of Social Security**  
4 **Records**

5 **SEC. 441. CORRECTION OF SOCIAL SECURITY RECORDS.**

6 (a) IN GENERAL.—Section 208(e)(1) of the Social  
7 Security Act (42 U.S.C. 408(e)(1)) is amended—

8 (1) in subparagraph (B)(ii), by striking “or” at  
9 the end;

10 (2) in subparagraph (C), by inserting “or” at  
11 the end;

12 (3) by inserting after subparagraph (C) the fol-  
13 lowing:

14 “(D) who is granted blue card status under the  
15 Agricultural Job Opportunities, Benefits, and Secu-  
16 rity Act of 2009”; and

17 (4) by striking “1990.” and inserting “1990, or  
18 in the case of an alien described in subparagraph  
19 (D), if such conduct is alleged to have occurred be-  
20 fore the date on which the alien was granted blue  
21 card status.”.

22 (b) EFFECTIVE DATE.—The amendments made by  
23 subsection (a) shall take effect on the first day of the sev-  
24 enth month that begins after the date of the enactment  
25 of this Act.



1     **CHAPTER 3—REFORM OF H-2A WORKER**  
2                                     **PROGRAM**

3     **SEC. 451. AMENDMENTS TO THE IMMIGRATION AND NA-**  
4                                     **TIONALITY ACT.**

5             (a) IN GENERAL.—Title II of the Immigration and  
6     Nationality Act (8 U.S.C. 1151 et seq.) is amended by  
7     striking section 218 and inserting the following:

8     **“SEC. 218. H-2A EMPLOYER APPLICATIONS.**

9             “(a) APPLICATIONS TO THE SECRETARY OF  
10    LABOR.—

11             “(1) IN GENERAL.—No alien may be admitted  
12    to the United States as an H-2A worker, or other-  
13    wise provided status as an H-2A worker, unless the  
14    employer has filed with the Secretary of Labor an  
15    application containing—

16             “(A) the assurances described in sub-  
17    section (b);

18             “(B) a description of the nature and loca-  
19    tion of the work to be performed;

20             “(C) the anticipated period (expected be-  
21    ginning and ending dates) for which the work-  
22    ers will be needed; and

23             “(D) the number of job opportunities in  
24    which the employer seeks to employ the work-  
25    ers.

1           “(2) ACCOMPANIED BY JOB OFFER.—Each ap-  
2           plication filed under paragraph (1) shall be accom-  
3           panied by a copy of the job offer describing the  
4           wages and other terms and conditions of employ-  
5           ment and the bona fide occupational qualifications  
6           that shall be possessed by a worker to be employed  
7           in the job opportunity in question.

8           “(b) ASSURANCES FOR INCLUSION IN APPLICA-  
9           TIONS.—The assurances referred to in subsection (a)(1)  
10          are the following:

11           “(1) JOB OPPORTUNITIES COVERED BY COL-  
12          LECTIVE BARGAINING AGREEMENTS.—With respect  
13          to a job opportunity that is covered under a collec-  
14          tive bargaining agreement:

15           “(A) UNION CONTRACT DESCRIBED.—The  
16          job opportunity is covered by a union contract  
17          which was negotiated at arm’s length between a  
18          bona fide union and the employer.

19           “(B) STRIKE OR LOCKOUT.—The specific  
20          job opportunity for which the employer is re-  
21          questing an H-2A worker is not vacant because  
22          the former occupant is on strike or being locked  
23          out in the course of a labor dispute.

24           “(C) NOTIFICATION OF BARGAINING REP-  
25          RESENTATIVES.—The employer, at the time of

1 filing the application, has provided notice of the  
2 filing under this paragraph to the bargaining  
3 representative of the employer's employees in  
4 the occupational classification at the place or  
5 places of employment for which aliens are  
6 sought.

7 “(D) TEMPORARY OR SEASONAL JOB OP-  
8 PORTUNITIES.—The job opportunity is tem-  
9 porary or seasonal.

10 “(E) OFFERS TO UNITED STATES WORK-  
11 ERS.—The employer has offered or will offer  
12 the job to any eligible United States worker  
13 who applies and is equally or better qualified  
14 for the job for which the nonimmigrant is, or  
15 the nonimmigrants are, sought and who will be  
16 available at the time and place of need.

17 “(F) PROVISION OF INSURANCE.—If the  
18 job opportunity is not covered by the State  
19 workers' compensation law, the employer will  
20 provide, at no cost to the worker, insurance cov-  
21 ering injury and disease arising out of, and in  
22 the course of, the worker's employment which  
23 will provide benefits at least equal to those pro-  
24 vided under the State's workers' compensation  
25 law for comparable employment.

1           “(2) JOB OPPORTUNITIES NOT COVERED BY  
2 COLLECTIVE BARGAINING AGREEMENTS.—With re-  
3 spect to a job opportunity that is not covered under  
4 a collective bargaining agreement:

5           “(A) STRIKE OR LOCKOUT.—The specific  
6 job opportunity for which the employer has ap-  
7 plied for an H-2A worker is not vacant because  
8 the former occupant is on strike or being locked  
9 out in the course of a labor dispute.

10           “(B) TEMPORARY OR SEASONAL JOB OP-  
11 PORTUNITIES.—The job opportunity is tem-  
12 porary or seasonal.

13           “(C) BENEFIT, WAGE, AND WORKING CON-  
14 DITIONS.—The employer will provide, at a min-  
15 imum, the benefits, wages, and working condi-  
16 tions required by section 218A to all workers  
17 employed in the job opportunities for which the  
18 employer has applied for an H-2A worker  
19 under subsection (a) and to all other workers in  
20 the same occupation at the place of employ-  
21 ment.

22           “(D) NONDISPLACEMENT OF UNITED  
23 STATES WORKERS.—The employer did not dis-  
24 place and will not displace a United States  
25 worker employed by the employer during the

1 period of employment and for a period of 30  
2 days preceding the period of employment in the  
3 occupation at the place of employment for  
4 which the employer has applied for an H-2A  
5 worker.

6 “(E) REQUIREMENTS FOR PLACEMENT OF  
7 THE NONIMMIGRANT WITH OTHER EMPLOY-  
8 ERS.—The employer will not place the non-  
9 immigrant with another employer unless—

10 “(i) the nonimmigrant performs du-  
11 ties in whole or in part at 1 or more work-  
12 sites owned, operated, or controlled by  
13 such other employer;

14 “(ii) there are indicia of an employ-  
15 ment relationship between the non-  
16 immigrant and such other employer; and

17 “(iii) the employer has inquired of the  
18 other employer as to whether, and has no  
19 actual knowledge or notice that, during the  
20 period of employment and for a period of  
21 30 days preceding the period of employ-  
22 ment, the other employer has displaced or  
23 intends to displace a United States worker  
24 employed by the other employer in the oc-  
25 cupation at the place of employment for

1           which the employer seeks approval to em-  
2           ploy H-2A workers.

3           “(F) STATEMENT OF LIABILITY.—The ap-  
4           plication form shall include a clear statement  
5           explaining the liability under subparagraph (E)  
6           of an employer if the other employer described  
7           in such subparagraph displaces a United States  
8           worker as described in such subparagraph.

9           “(G) PROVISION OF INSURANCE.—If the  
10          job opportunity is not covered by the State  
11          workers’ compensation law, the employer will  
12          provide, at no cost to the worker, insurance cov-  
13          ering injury and disease arising out of and in  
14          the course of the worker’s employment which  
15          will provide benefits at least equal to those pro-  
16          vided under the State’s workers’ compensation  
17          law for comparable employment.

18          “(H) EMPLOYMENT OF UNITED STATES  
19          WORKERS.—

20                 “(i) RECRUITMENT.—The employer  
21                 has taken or will take the following steps  
22                 to recruit United States workers for the  
23                 job opportunities for which the H-2A non-  
24                 immigrant is, or H-2A nonimmigrants are,  
25                 sought:

1                   “(I)     CONTACTING     FORMER  
2                   WORKERS.—The employer shall make  
3                   reasonable efforts through the sending  
4                   of a letter by United States Postal  
5                   Service mail, or otherwise, to contact  
6                   any United States worker the em-  
7                   ployer employed during the previous  
8                   season in the occupation at the place  
9                   of intended employment for which the  
10                  employer is applying for workers and  
11                  has made the availability of the em-  
12                  ployer’s job opportunities in the occu-  
13                  pation at the place of intended em-  
14                  ployment known to such previous  
15                  workers, unless the worker was termi-  
16                  nated from employment by the em-  
17                  ployer for a lawful job-related reason  
18                  or abandoned the job before the work-  
19                  er completed the period of employ-  
20                  ment of the job opportunity for which  
21                  the worker was hired.

22                   “(II) FILING A JOB OFFER WITH  
23                   THE LOCAL OFFICE OF THE STATE  
24                   EMPLOYMENT SECURITY AGENCY.—  
25                   Not later than 28 days before the

1 date on which the employer desires to  
2 employ an H-2A worker in a tem-  
3 porary or seasonal agricultural job op-  
4 portunity, the employer shall submit a  
5 copy of the job offer described in sub-  
6 section (a)(2) to the local office of the  
7 State employment security agency  
8 which serves the area of intended em-  
9 ployment and authorize the posting of  
10 the job opportunity on ‘America’s Job  
11 Bank’ or other electronic job registry,  
12 except that nothing in this subclause  
13 shall require the employer to file an  
14 interstate job order under section 653  
15 of title 20, Code of Federal Regula-  
16 tions.

17 “(III) ADVERTISING OF JOB OP-  
18 PORTUNITIES.—Not later than 14  
19 days before the date on which the em-  
20 ployer desires to employ an H-2A  
21 worker in a temporary or seasonal ag-  
22 ricultural job opportunity, the em-  
23 ployer shall advertise the availability  
24 of the job opportunities for which the  
25 employer is seeking workers in a pub-



1           lication in the local labor market that  
2           is likely to be patronized by potential  
3           farm workers.

4           “(IV) EMERGENCY PROCEDURE.—The Secretary of Labor  
5           shall, by regulation, provide a procedure for acceptance and approval of  
6           applications in which the employer  
7           has not complied with the provisions  
8           of this subparagraph because the employer’s need for H–2A workers could  
9           not reasonably have been foreseen.

10           “(ii) JOB OFFERS.—The employer has  
11           offered or will offer the job to any eligible  
12           United States worker who applies and is  
13           equally or better qualified for the job for  
14           which the nonimmigrant is, or non-  
15           immigrants are, sought and who will be  
16           available at the time and place of need.

17           “(iii) PERIOD OF EMPLOYMENT.—The  
18           employer will provide employment to any  
19           qualified United States worker who applies  
20           to the employer during the period beginning  
21           on the date on which the H–2A worker  
22           departs for the employer’s place of em-  
23           ployment.  
24             
25

1           employment and ending on the date on which  
2           50 percent of the period of employment for  
3           which the H-2A worker who is in the job  
4           was hired has elapsed, subject to the fol-  
5           lowing requirements:

6                   “(I) PROHIBITION.—No person  
7                   or entity shall willfully and knowingly  
8                   withhold United States workers before  
9                   the arrival of H-2A workers in order  
10                  to force the hiring of United States  
11                  workers under this clause.

12                  “(II) COMPLAINTS.—Upon re-  
13                  ceipt of a complaint by an employer  
14                  that a violation of subclause (I) has  
15                  occurred, the Secretary of Labor shall  
16                  immediately investigate. The Sec-  
17                  retary of Labor shall, within 36 hours  
18                  of the receipt of the complaint, issue  
19                  findings concerning the alleged viola-  
20                  tion. If the Secretary of Labor finds  
21                  that a violation has occurred, the Sec-  
22                  retary of Labor shall immediately sus-  
23                  pend the application of this clause  
24                  with respect to that certification for  
25                  that date of need.

1                   “(III) PLACEMENT OF UNITED  
2 STATES WORKERS.—Before referring  
3 a United States worker to an em-  
4 ployer during the period described in  
5 the matter preceding subclause (I),  
6 the Secretary of Labor shall make all  
7 reasonable efforts to place the United  
8 States worker in an open job accept-  
9 able to the worker, if there are other  
10 job offers pending with the job service  
11 that offer similar job opportunities in  
12 the area of intended employment.

13                   “(iv) STATUTORY CONSTRUCTION.—  
14 Nothing in this subparagraph shall be con-  
15 strued to prohibit an employer from using  
16 such legitimate selection criteria relevant  
17 to the type of job that are normal or cus-  
18 tomary to the type of job involved so long  
19 as such criteria are not applied in a dis-  
20 criminatory manner.

21                   “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF  
22 OF EMPLOYER MEMBERS.—

23                   “(1) IN GENERAL.—An agricultural association  
24 may file an application under subsection (a) on be-  
25 half of 1 or more of its employer members that the

1 association certifies in its application has or have  
2 agreed in writing to comply with the requirements of  
3 this section and sections 218A, 218B, and 218C.

4 “(2) TREATMENT OF ASSOCIATIONS ACTING AS  
5 EMPLOYERS.—If an association filing an application  
6 under paragraph (1) is a joint or sole employer of  
7 the temporary or seasonal agricultural workers re-  
8 quested on the application, the certifications granted  
9 under subsection (e)(2)(B) to the association may be  
10 used for the certified job opportunities of any of its  
11 producer members named on the application, and  
12 such workers may be transferred among such pro-  
13 ducer members to perform the agricultural services  
14 of a temporary or seasonal nature for which the cer-  
15 tifications were granted.

16 “(d) WITHDRAWAL OF APPLICATIONS.—

17 “(1) IN GENERAL.—An employer may withdraw  
18 an application filed pursuant to subsection (a), ex-  
19 cept that if the employer is an agricultural associa-  
20 tion, the association may withdraw an application  
21 filed pursuant to subsection (a) with respect to 1 or  
22 more of its members. To withdraw an application,  
23 the employer or association shall notify the Sec-  
24 retary of Labor in writing, and the Secretary of  
25 Labor shall acknowledge in writing the receipt of

1 such withdrawal notice. An employer who withdraws  
2 an application under subsection (a), or on whose be-  
3 half an application is withdrawn, is relieved of the  
4 obligations undertaken in the application.

5 “(2) LIMITATION.—An application may not be  
6 withdrawn while any alien provided status under sec-  
7 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-  
8 tion is employed by the employer.

9 “(3) OBLIGATIONS UNDER OTHER STATUTES.—  
10 Any obligation incurred by an employer under any  
11 other law or regulation as a result of the recruit-  
12 ment of United States workers or H-2A workers  
13 under an offer of terms and conditions of employ-  
14 ment required as a result of making an application  
15 under subsection (a) is unaffected by withdrawal of  
16 such application.

17 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

18 “(1) RESPONSIBILITY OF EMPLOYERS.—The  
19 employer shall make available for public examina-  
20 tion, within 1 working day after the date on which  
21 an application under subsection (a) is filed, at the  
22 employer’s principal place of business or worksite, a  
23 copy of each such application (and such accom-  
24 panying documents as are necessary).

1           “(2) RESPONSIBILITY OF THE SECRETARY OF  
2 LABOR.—

3           “(A) COMPILATION OF LIST.—The Sec-  
4 retary of Labor shall compile, on a current  
5 basis, a list (by employer and by occupational  
6 classification) of the applications filed under  
7 subsection (a). Such list shall include the wage  
8 rate, number of workers sought, period of in-  
9 tended employment, and date of need. The Sec-  
10 retary of Labor shall make such list available  
11 for examination in the District of Columbia.

12           “(B) REVIEW OF APPLICATIONS.—The  
13 Secretary of Labor shall review such an applica-  
14 tion only for completeness and obvious inac-  
15 curacies. Unless the Secretary of Labor finds  
16 that the application is incomplete or obviously  
17 inaccurate, the Secretary of Labor shall certify  
18 that the intending employer has filed with the  
19 Secretary of Labor an application as described  
20 in subsection (a). Such certification shall be  
21 provided within 7 days of the filing of the appli-  
22 cation.”

23 **“SEC. 218A. H-2A EMPLOYMENT REQUIREMENTS.**

24           “(a) PREFERENTIAL TREATMENT OF ALIENS PRO-  
25 HIBITED.—Employers seeking to hire United States work-

1 ers shall offer the United States workers no less than the  
2 same benefits, wages, and working conditions that the em-  
3 ployer is offering, intends to offer, or will provide to H-  
4 2A workers. Conversely, no job offer may impose on  
5 United States workers any restrictions or obligations  
6 which will not be imposed on the employer's H-2A work-  
7 ers.

8       “(b) MINIMUM BENEFITS, WAGES, AND WORKING  
9 CONDITIONS.—Except in cases where higher benefits,  
10 wages, or working conditions are required by the provi-  
11 sions of subsection (a), in order to protect similarly em-  
12 ployed United States workers from adverse effects with  
13 respect to benefits, wages, and working conditions, every  
14 job offer which shall accompany an application under sec-  
15 tion 218(b)(2) shall include each of the following benefit,  
16 wage, and working condition provisions:

17               “(1) REQUIREMENT TO PROVIDE HOUSING OR A  
18 HOUSING ALLOWANCE.—

19               “(A) IN GENERAL.—An employer applying  
20 under section 218(a) for H-2A workers shall  
21 offer to provide housing at no cost to all work-  
22 ers in job opportunities for which the employer  
23 has applied under that section and to all other  
24 workers in the same occupation at the place of

1 employment, whose place of residence is beyond  
2 normal commuting distance.

3 “(B) TYPE OF HOUSING.—In complying  
4 with subparagraph (A), an employer may, at  
5 the employer’s election, provide housing that  
6 meets applicable Federal standards for tem-  
7 porary labor camps or secure housing that  
8 meets applicable local standards for rental or  
9 public accommodation housing or other sub-  
10 stantially similar class of habitation, or in the  
11 absence of applicable local standards, State  
12 standards for rental or public accommodation  
13 housing or other substantially similar class of  
14 habitation. In the absence of applicable local or  
15 State standards, Federal temporary labor camp  
16 standards shall apply.

17 “(C) FAMILY HOUSING.—If it is the pre-  
18 vailing practice in the occupation and area of  
19 intended employment to provide family housing,  
20 family housing shall be provided to workers  
21 with families who request it.

22 “(D) WORKERS ENGAGED IN THE RANGE  
23 PRODUCTION OF LIVESTOCK.—The Secretary of  
24 Labor shall issue regulations that address the  
25 specific requirements for the provision of hous-



1           ing to workers engaged in the range production  
2           of livestock.

3           “(E) LIMITATION.—Nothing in this para-  
4           graph shall be construed to require an employer  
5           to provide or secure housing for persons who  
6           were not entitled to such housing under the  
7           temporary labor certification regulations in ef-  
8           fect on June 1, 1986.

9           “(F) CHARGES FOR HOUSING.—

10           “(i) CHARGES FOR PUBLIC HOUS-  
11           ING.—If public housing provided for mi-  
12           grant agricultural workers under the aus-  
13           pices of a local, county, or State govern-  
14           ment is secured by an employer, and use of  
15           the public housing unit normally requires  
16           charges from migrant workers, such  
17           charges shall be paid by the employer di-  
18           rectly to the appropriate individual or enti-  
19           ty affiliated with the housing’s manage-  
20           ment.

21           “(ii) DEPOSIT CHARGES.—Charges in  
22           the form of deposits for bedding or other  
23           similar incidentals related to housing shall  
24           not be levied upon workers by employers  
25           who provide housing for their workers. An

1 employer may require a worker found to  
2 have been responsible for damage to such  
3 housing which is not the result of normal  
4 wear and tear related to habitation to re-  
5 imburse the employer for the reasonable  
6 cost of repair of such damage.

7 “(G) HOUSING ALLOWANCE AS ALTER-  
8 NATIVE.—

9 “(i) IN GENERAL.—If the requirement  
10 set out in clause (ii) is satisfied, the em-  
11 ployer may provide a reasonable housing  
12 allowance instead of offering housing  
13 under subparagraph (A). Upon the request  
14 of a worker seeking assistance in locating  
15 housing, the employer shall make a good  
16 faith effort to assist the worker in identi-  
17 fying and locating housing in the area of  
18 intended employment. An employer who of-  
19 fers a housing allowance to a worker, or  
20 assists a worker in locating housing which  
21 the worker occupies, pursuant to this  
22 clause shall not be deemed a housing pro-  
23 vider under section 203 of the Migrant and  
24 Seasonal Agricultural Worker Protection  
25 Act (29 U.S.C. 1823) solely by virtue of

1 providing such housing allowance. No  
2 housing allowance may be used for housing  
3 which is owned or controlled by the em-  
4 ployer.

5 “(ii) CERTIFICATION.—The require-  
6 ment of this clause is satisfied if the Gov-  
7 ernor of the State certifies to the Secretary  
8 of Labor that there is adequate housing  
9 available in the area of intended employ-  
10 ment for migrant farm workers and H-2A  
11 workers who are seeking temporary hous-  
12 ing while employed in agricultural work.  
13 Such certification shall expire after 3 years  
14 unless renewed by the Governor of the  
15 State.

16 “(iii) AMOUNT OF ALLOWANCE.—

17 “(I) NONMETROPOLITAN COUN-  
18 TIES.—If the place of employment of  
19 the workers provided an allowance  
20 under this subparagraph is a non-  
21 metropolitan county, the amount of  
22 the housing allowance under this sub-  
23 paragraph shall be equal to the state-  
24 wide average fair market rental for  
25 existing housing for nonmetropolitan

1 counties for the State, as established  
2 by the Secretary of Housing and  
3 Urban Development pursuant to sec-  
4 tion 8(c) of the United States Hous-  
5 ing Act of 1937 (42 U.S.C. 1437f(c)),  
6 based on a 2-bedroom dwelling unit  
7 and an assumption of 2 persons per  
8 bedroom.

9 “(II) METROPOLITAN COUN-  
10 TIES.—If the place of employment of  
11 the workers provided an allowance  
12 under this paragraph is in a metro-  
13 politan county, the amount of the  
14 housing allowance under this subpara-  
15 graph shall be equal to the statewide  
16 average fair market rental for existing  
17 housing for metropolitan counties for  
18 the State, as established by the Sec-  
19 retary of Housing and Urban Devel-  
20 opment pursuant to section 8(c) of  
21 the United States Housing Act of  
22 1937 (42 U.S.C. 1437f(c)), based on  
23 a 2-bedroom dwelling unit and an as-  
24 sumption of 2 persons per bedroom.

25 “(2) REIMBURSEMENT OF TRANSPORTATION.—

1           “(A) TO PLACE OF EMPLOYMENT.—A  
2 worker who completes 50 percent of the period  
3 of employment of the job opportunity for which  
4 the worker was hired shall be reimbursed by the  
5 employer for the cost of the worker’s transpor-  
6 tation and subsistence from the place from  
7 which the worker came to work for the em-  
8 ployer (or place of last employment, if the  
9 worker traveled from such place) to the place of  
10 employment.

11           “(B) FROM PLACE OF EMPLOYMENT.—A  
12 worker who completes the period of employment  
13 for the job opportunity involved shall be reim-  
14 bursed by the employer for the cost of the  
15 worker’s transportation and subsistence from  
16 the place of employment to the place from  
17 which the worker, disregarding intervening em-  
18 ployment, came to work for the employer, or to  
19 the place of next employment, if the worker has  
20 contracted with a subsequent employer who has  
21 not agreed to provide or pay for the worker’s  
22 transportation and subsistence to such subse-  
23 quent employer’s place of employment.

24           “(C) LIMITATION.—

1           “(i) AMOUNT OF REIMBURSEMENT.—  
2           Except as provided in clause (ii), the  
3           amount of reimbursement provided under  
4           subparagraph (A) or (B) to a worker or  
5           alien shall not exceed the lesser of—

6                       “(I) the actual cost to the worker  
7                       or alien of the transportation and sub-  
8                       sistence involved; or

9                       “(II) the most economical and  
10                      reasonable common carrier transpor-  
11                      tation charges and subsistence costs  
12                      for the distance involved.

13           “(ii) DISTANCE TRAVELED.—No reim-  
14           bursement under subparagraph (A) or (B)  
15           shall be required if the distance traveled is  
16           100 miles or less, or the worker is not re-  
17           siding in employer-provided housing or  
18           housing secured through an allowance as  
19           provided in paragraph (1)(G).

20           “(D) EARLY TERMINATION.—If the worker  
21           is laid off or employment is terminated for con-  
22           tract impossibility (as described in paragraph  
23           (4)(D)) before the anticipated ending date of  
24           employment, the employer shall provide the  
25           transportation and subsistence required by sub-

1 paragraph (B) and, notwithstanding whether  
2 the worker has completed 50 percent of the pe-  
3 riod of employment, shall provide the transpor-  
4 tation reimbursement required by subparagraph  
5 (A).

6 “(E) TRANSPORTATION BETWEEN LIVING  
7 QUARTERS AND WORKSITE.—The employer  
8 shall provide transportation between the work-  
9 er’s living quarters and the employer’s worksite  
10 without cost to the worker, and such transpor-  
11 tation will be in accordance with applicable laws  
12 and regulations.

13 “(3) REQUIRED WAGES.—

14 “(A) IN GENERAL.—An employer applying  
15 for workers under section 218(a) shall offer to  
16 pay, and shall pay, all workers in the occupa-  
17 tion for which the employer has applied for  
18 workers, not less (and is not required to pay  
19 more) than the greater of the prevailing wage  
20 in the occupation in the area of intended em-  
21 ployment or the adverse effect wage rate. No  
22 worker shall be paid less than the greater of the  
23 hourly wage prescribed under section 6(a)(1) of  
24 the Fair Labor Standards Act of 1938 (29

1 U.S.C. 206(a)(1)) or the applicable State min-  
2 imum wage.

3 “(B) LIMITATION.—Effective on the date  
4 of the enactment of the Agricultural Job Op-  
5 portunities, Benefits, and Security Act of 2009  
6 and continuing for 3 years thereafter, no ad-  
7 verse effect wage rate for a State may be more  
8 than the adverse effect wage rate for that State  
9 in effect on January 1, 2009, as established by  
10 section 655.107 of title 20, Code of Federal  
11 Regulations.

12 “(C) REQUIRED WAGES AFTER 3-YEAR  
13 FREEZE.—

14 “(i) FIRST ADJUSTMENT.—If Con-  
15 gress does not set a new wage standard  
16 applicable to this section before the first  
17 March 1 that is not less than 3 years after  
18 the date of enactment of this section, the  
19 adverse effect wage rate for each State be-  
20 ginning on such March 1 shall be the wage  
21 rate that would have resulted if the ad-  
22 verse effect wage rate in effect on January  
23 1, 2009, had been annually adjusted, be-  
24 ginning on March 1, 2012, by the lesser  
25 of—



1           “(I) the 12-month percentage  
2           change in the Consumer Price Index  
3           for All Urban Consumers between De-  
4           cember of the second preceding year  
5           and December of the preceding year;  
6           and

7           “(II) 4 percent.

8           “(ii) SUBSEQUENT ANNUAL ADJUST-  
9           MENTS.—Beginning on the first March 1  
10          that is not less than 4 years after the date  
11          of enactment of this section, and each  
12          March 1 thereafter, the adverse effect  
13          wage rate then in effect for each State  
14          shall be adjusted by the lesser of—

15               “(I) the 12-month percentage  
16               change in the Consumer Price Index  
17               for All Urban Consumers between De-  
18               cember of the second preceding year  
19               and December of the preceding year;  
20               and

21               “(II) 4 percent.

22           “(D) DEDUCTIONS.—The employer shall  
23           make only those deductions from the worker’s  
24           wages that are authorized by law or are reason-  
25           able and customary in the occupation and area

1 of employment. The job offer shall specify all  
2 deductions not required by law which the em-  
3 ployer will make from the worker's wages.

4 “(E) FREQUENCY OF PAY.—The employer  
5 shall pay the worker not less frequently than  
6 twice monthly, or in accordance with the pre-  
7 vailing practice in the area of employment,  
8 whichever is more frequent.

9 “(F) HOURS AND EARNINGS STATE-  
10 MENTS.—The employer shall furnish to the  
11 worker, on or before each payday, in 1 or more  
12 written statements—

13 “(i) the worker's total earnings for  
14 the pay period;

15 “(ii) the worker's hourly rate of pay,  
16 piece rate of pay, or both;

17 “(iii) the hours of employment which  
18 have been offered to the worker (broken  
19 out by hours offered in accordance with  
20 and over and above the  $\frac{3}{4}$  guarantee de-  
21 scribed in paragraph (4);

22 “(iv) the hours actually worked by the  
23 worker;

24 “(v) an itemization of the deductions  
25 made from the worker's wages; and

1                   “(vi) if piece rates of pay are used,  
2                   the units produced daily.

3                   “(G) REPORT ON WAGE PROTECTIONS.—  
4                   Not later than December 31, 2011, the Comp-  
5                   troller General of the United States shall pre-  
6                   pare and transmit to the Secretary of Labor,  
7                   the Committee on the Judiciary of the Senate,  
8                   and Committee on the Judiciary of the House  
9                   of Representatives, a report that addresses—

10                   “(i) whether the employment of H-2A  
11                   or unauthorized aliens in the United States  
12                   agricultural workforce has depressed  
13                   United States farm worker wages below  
14                   the levels that would otherwise have pre-  
15                   vailed if alien farm workers had not been  
16                   employed in the United States;

17                   “(ii) whether an adverse effect wage  
18                   rate is necessary to prevent wages of  
19                   United States farm workers in occupations  
20                   in which H-2A workers are employed from  
21                   falling below the wage levels that would  
22                   have prevailed in the absence of the em-  
23                   ployment of H-2A workers in those occu-  
24                   pations;

1           “(iii) whether alternative wage stand-  
2           ards, such as a prevailing wage standard,  
3           would be sufficient to prevent wages in oc-  
4           cupations in which H-2A workers are em-  
5           ployed from falling below the wage level  
6           that would have prevailed in the absence of  
7           H-2A employment;

8           “(iv) whether any changes are war-  
9           ranted in the current methodologies for  
10          calculating the adverse effect wage rate  
11          and the prevailing wage; and

12          “(v) recommendations for future wage  
13          protection under this section.

14          “(H) COMMISSION ON WAGE STAND-  
15          ARDS.—

16                 “(i) ESTABLISHMENT.—There is es-  
17                 tablished the Commission on Agricultural  
18                 Wage Standards under the H-2A program  
19                 (in this subparagraph referred to as the  
20                 ‘Commission’).

21                 “(ii) COMPOSITION.—The Commission  
22                 shall consist of 10 members as follows:

23                         “(I) Four representatives of agri-  
24                         cultural employers and 1 representa-  
25                         tive of the Department of Agriculture,

1 each appointed by the Secretary of  
2 Agriculture.

3 “(II) Four representatives of ag-  
4 ricultural workers and 1 representa-  
5 tive of the Department of Labor, each  
6 appointed by the Secretary of Labor.

7 “(iii) FUNCTIONS.—The Commission  
8 shall conduct a study that shall address—

9 “(I) whether the employment of  
10 H-2A or unauthorized aliens in the  
11 United States agricultural workforce  
12 has depressed United States farm  
13 worker wages below the levels that  
14 would otherwise have prevailed if alien  
15 farm workers had not been employed  
16 in the United States;

17 “(II) whether an adverse effect  
18 wage rate is necessary to prevent  
19 wages of United States farm workers  
20 in occupations in which H-2A work-  
21 ers are employed from falling below  
22 the wage levels that would have pre-  
23 vailed in the absence of the employ-  
24 ment of H-2A workers in those occu-  
25 pations;

1           “(III) whether alternative wage  
2 standards, such as a prevailing wage  
3 standard, would be sufficient to pre-  
4 vent wages in occupations in which  
5 H-2A workers are employed from fall-  
6 ing below the wage level that would  
7 have prevailed in the absence of H-2A  
8 employment;

9           “(IV) whether any changes are  
10 warranted in the current methodolo-  
11 gies for calculating the adverse effect  
12 wage rate and the prevailing wage  
13 rate; and

14           “(V) recommendations for future  
15 wage protection under this section.

16           “(iv) FINAL REPORT.—Not later than  
17 December 31, 2011, the Commission shall  
18 submit a report to the Congress setting  
19 forth the findings of the study conducted  
20 under clause (iii).

21           “(v) TERMINATION DATE.—The Com-  
22 mission shall terminate upon submitting  
23 its final report.

24           “(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 paragraph (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 218(a), or, if the employer will require  
13 the worker to enter into a separate employment contract  
14 covering the employment in question, such separate em-  
15 ployment contract.

16       “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing  
17 in this section, section 218, or section 218B shall preclude  
18 the Secretary of Labor and the Secretary from continuing  
19 to apply special procedures and requirements to the ad-  
20 mission and employment of aliens in occupations involving  
21 the range production of livestock.

22       **“SEC. 218B. PROCEDURE FOR ADMISSION AND EXTENSION**  
23                                   **OF STAY OF H-2A WORKERS.**

24       “(a) PETITIONING FOR ADMISSION.—An employer,  
25 or an association acting as an agent or joint employer for

1 its members, that seeks the admission into the United  
2 States of an H-2A worker may file a petition with the  
3 Secretary. The petition shall be accompanied by an accept-  
4 ed and currently valid certification provided by the Sec-  
5 retary of Labor under section 218(e)(2)(B) covering the  
6 petitioner.

7       “(b) EXPEDITED ADJUDICATION BY THE SEC-  
8 RETARY.—The Secretary shall establish a procedure for  
9 expedited adjudication of petitions filed under subsection  
10 (a) and within 7 working days shall, by fax, cable, or other  
11 means assuring expedited delivery, transmit a copy of no-  
12 tice of action on the petition to the petitioner and, in the  
13 case of approved petitions, to the appropriate immigration  
14 officer at the port of entry or United States consulate (as  
15 the case may be) where the petitioner has indicated that  
16 the alien beneficiary (or beneficiaries) will apply for a visa  
17 or admission to the United States.

18       “(c) CRITERIA FOR ADMISSIBILITY.—

19               “(1) IN GENERAL.—An H-2A worker shall be  
20 considered admissible to the United States if the  
21 alien is otherwise admissible under this section, sec-  
22 tion 218, and section 218A, and the alien is not in-  
23 eligible under paragraph (2).

24               “(2) DISQUALIFICATION.—An alien shall be  
25 considered inadmissible to the United States and in-

1 eligible for nonimmigrant status under section  
2 101(a)(15)(H)(ii)(a) if the alien has, at any time  
3 during the past 5 years—

4 “(A) violated a material provision of this  
5 section, including the requirement to promptly  
6 depart the United States when the alien’s au-  
7 thorized period of admission under this section  
8 has expired; or

9 “(B) otherwise violated a term or condition  
10 of admission into the United States as a non-  
11 immigrant, including overstaying the period of  
12 authorized admission as such a nonimmigrant.

13 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-  
14 FUL PRESENCE.—

15 “(A) IN GENERAL.—An alien who has not  
16 previously been admitted into the United States  
17 pursuant to this section, and who is otherwise  
18 eligible for admission in accordance with para-  
19 graphs (1) and (2), shall not be deemed inad-  
20 missible by virtue of section 212(a)(9)(B). If an  
21 alien described in the preceding sentence is  
22 present in the United States, the alien may  
23 apply from abroad for H-2A status, but may  
24 not be granted that status in the United States.



1           “(B) MAINTENANCE OF WAIVER.—An  
2           alien provided an initial waiver of ineligibility  
3           pursuant to subparagraph (A) shall remain eli-  
4           gible for such waiver unless the alien violates  
5           the terms of this section or again becomes ineli-  
6           gible under section 212(a)(9)(B) by virtue of  
7           unlawful presence in the United States after  
8           the date of the initial waiver of ineligibility pur-  
9           suant to subparagraph (A).

10          “(d) PERIOD OF ADMISSION.—

11           “(1) IN GENERAL.—The alien shall be admitted  
12           for the period of employment in the application cer-  
13           tified by the Secretary of Labor pursuant to section  
14           218(e)(2)(B), not to exceed 10 months, supple-  
15           mented by a period of not more than 1 week before  
16           the beginning of the period of employment for the  
17           purpose of travel to the worksite and a period of 14  
18           days following the period of employment for the pur-  
19           pose of departure or extension based on a subse-  
20           quent offer of employment, except that—

21           “(A) the alien is not authorized to be em-  
22           ployed during such 14-day period except in the  
23           employment for which the alien was previously  
24           authorized; and

1           “(B) the total period of employment, in-  
2           cluding such 14-day period, may not exceed 10  
3           months.

4           “(2) CONSTRUCTION.—Nothing in this sub-  
5           section shall limit the authority of the Secretary to  
6           extend the stay of the alien under any other provi-  
7           sion of this Act.

8           “(e) ABANDONMENT OF EMPLOYMENT.—

9           “(1) IN GENERAL.—An alien admitted or pro-  
10          vided status under section 101(a)(15)(H)(ii)(a) who  
11          abandons the employment which was the basis for  
12          such admission or status shall be considered to have  
13          failed to maintain nonimmigrant status as an H-2A  
14          worker and shall depart the United States or be sub-  
15          ject to removal under section 237(a)(1)(C)(i).

16          “(2) REPORT BY EMPLOYER.—The employer, or  
17          association acting as agent for the employer, shall  
18          notify the Secretary not later than 7 days after an  
19          H-2A worker prematurely abandons employment.

20          “(3) REMOVAL BY THE SECRETARY.—The Sec-  
21          retary shall promptly remove from the United States  
22          any H-2A worker who violates any term or condi-  
23          tion of the worker’s nonimmigrant status.

24          “(4) VOLUNTARY TERMINATION.—Notwith-  
25          standing paragraph (1), an alien may voluntarily

1 terminate his or her employment if the alien prompt-  
2 ly departs the United States upon termination of  
3 such employment.

4 “(f) REPLACEMENT OF ALIEN.—

5 “(1) IN GENERAL.—Upon presentation of the  
6 notice to the Secretary required by subsection (e)(2),  
7 the Secretary of State shall promptly issue a visa to,  
8 and the Secretary shall admit into the United  
9 States, an eligible alien designated by the employer  
10 to replace an H-2A worker—

11 “(A) who abandons or prematurely termi-  
12 nates employment; or

13 “(B) whose employment is terminated  
14 after a United States worker is employed pur-  
15 suant to section 218(b)(2)(H)(iii), if the United  
16 States worker voluntarily departs before the  
17 end of the period of intended employment or if  
18 the employment termination is for a lawful job-  
19 related reason.

20 “(2) CONSTRUCTION.—Nothing in this sub-  
21 section is intended to limit any preference required  
22 to be accorded United States workers under any  
23 other provision of this Act.

24 “(g) IDENTIFICATION DOCUMENT.—

1           “(1) IN GENERAL.—Each alien authorized to be  
2 admitted under section 101(a)(15)(H)(ii)(a) shall be  
3 provided an identification and employment eligibility  
4 document to verify eligibility for employment in the  
5 United States and verify the alien’s identity.

6           “(2) REQUIREMENTS.—No identification and  
7 employment eligibility document may be issued  
8 which does not meet the following requirements:

9           “(A) The document shall be capable of re-  
10 liably determining whether—

11                   “(i) the individual with the identifica-  
12 tion and employment eligibility document  
13 whose eligibility is being verified is in fact  
14 eligible for employment;

15                   “(ii) the individual whose eligibility is  
16 being verified is claiming the identity of  
17 another person; and

18                   “(iii) the individual whose eligibility is  
19 being verified is authorized to be admitted  
20 into, and employed in, the United States  
21 as an H-2A worker.

22           “(B) The document shall be in a form that  
23 is resistant to counterfeiting and to tampering.

24           “(C) The document shall—

1           “(i) be compatible with other data-  
2           bases of the Secretary for the purpose of  
3           excluding aliens from benefits for which  
4           they are not eligible and determining  
5           whether the alien is unlawfully present in  
6           the United States; and

7           “(ii) be compatible with law enforce-  
8           ment databases to determine if the alien  
9           has been convicted of criminal offenses.

10       “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE  
11       UNITED STATES.—

12           “(1) EXTENSION OF STAY.—If an employer  
13       seeks approval to employ an H-2A alien who is law-  
14       fully present in the United States, the petition filed  
15       by the employer or an association pursuant to sub-  
16       section (a), shall request an extension of the alien’s  
17       stay and a change in the alien’s employment.

18           “(2) LIMITATION ON FILING A PETITION FOR  
19       EXTENSION OF STAY.—A petition may not be filed  
20       for an extension of an alien’s stay—

21           “(A) for a period of more than 10 months;

22           or

23           “(B) to a date that is more than 3 years  
24       after the date of the alien’s last admission to  
25       the United States under this section.

1           “(3) WORK AUTHORIZATION UPON FILING A  
2           PETITION FOR EXTENSION OF STAY.—

3           “(A) IN GENERAL.—An alien who is law-  
4           fully present in the United States may com-  
5           mence the employment described in a petition  
6           under paragraph (1) on the date on which the  
7           petition is filed.

8           “(B) DEFINITION.—For purposes of sub-  
9           paragraph (A), the term ‘file’ means sending  
10          the petition by certified mail via the United  
11          States Postal Service, return receipt requested,  
12          or delivered by guaranteed commercial delivery  
13          which will provide the employer with a docu-  
14          mented acknowledgment of the date of receipt  
15          of the petition.

16          “(C) HANDLING OF PETITION.—The em-  
17          ployer shall provide a copy of the employer’s pe-  
18          tition to the alien, who shall keep the petition  
19          with the alien’s identification and employment  
20          eligibility document as evidence that the peti-  
21          tion has been filed and that the alien is author-  
22          ized to work in the United States.

23          “(D) APPROVAL OF PETITION.—Upon ap-  
24          proval of a petition for an extension of stay or  
25          change in the alien’s authorized employment,

1 the Secretary shall provide a new or updated  
2 employment eligibility document to the alien in-  
3 dicating the new validity date, after which the  
4 alien is not required to retain a copy of the pe-  
5 tition.

6 “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-  
7 TION OF ALIENS WITHOUT VALID IDENTIFICATION  
8 AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-  
9 pired identification and employment eligibility docu-  
10 ment, together with a copy of a petition for exten-  
11 sion of stay or change in the alien’s authorized em-  
12 ployment that complies with the requirements of  
13 paragraph (1), shall constitute a valid work author-  
14 ization document for a period of not more than 60  
15 days beginning on the date on which such petition  
16 is filed, after which time only a currently valid iden-  
17 tification and employment eligibility document shall  
18 be acceptable.

19 “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN  
20 STATUS.—

21 “(A) MAXIMUM PERIOD.—The maximum  
22 continuous period of authorized status as an  
23 H-2A worker (including any extensions) is 3  
24 years.

1           “(B) REQUIREMENT TO REMAIN OUTSIDE  
2           THE UNITED STATES.—

3           “(i) IN GENERAL.—Subject to clause  
4           (ii), in the case of an alien outside the  
5           United States whose period of authorized  
6           status as an H-2A worker (including any  
7           extensions) has expired, the alien may not  
8           again apply for admission to the United  
9           States as an H-2A worker unless the alien  
10          has remained outside the United States for  
11          a continuous period equal to at least  $\frac{1}{5}$   
12          the duration of the alien’s previous period  
13          of authorized status as an H-2A worker  
14          (including any extensions).

15          “(ii) EXCEPTION.—Clause (i) shall  
16          not apply in the case of an alien if the  
17          alien’s period of authorized status as an  
18          H-2A worker (including any extensions)  
19          was for a period of not more than 10  
20          months and such alien has been outside  
21          the United States for at least 2 months  
22          during the 12 months preceding the date  
23          the alien again is applying for admission to  
24          the United States as an H-2A worker.



1       “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS  
2 SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORK-  
3 ERS.—Notwithstanding any provision of the Agricultural  
4 Job Opportunities, Benefits, and Security Act of 2009, an  
5 alien admitted under section 101(a)(15)(H)(ii)(a) for em-  
6 ployment as a shepherd, goat herder, or dairy worker—

7           “(1) may be admitted for an initial period of 12  
8 months;

9           “(2) subject to subsection (j)(5), may have such  
10 initial period of admission extended for a period of  
11 up to 3 years; and

12           “(3) shall not be subject to the requirements of  
13 subsection (h)(5) (relating to periods of absence  
14 from the United States).

15       “(j) ADJUSTMENT TO LAWFUL PERMANENT RESI-  
16 DENT STATUS FOR ALIENS EMPLOYED AS SHEEP-  
17 HERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

18           “(1) ELIGIBLE ALIEN.—For purposes of this  
19 subsection, the term ‘eligible alien’ means an alien—

20           “(A) having nonimmigrant status under  
21 section 101(a)(15)(H)(ii)(a) based on employ-  
22 ment as a shepherd, goat herder, or dairy  
23 worker;

24           “(B) who has maintained such non-  
25 immigrant status in the United States for a cu-

1           mulative total of 36 months (excluding any pe-  
2           riod of absence from the United States); and

3           “(C) who is seeking to receive an immi-  
4           grant visa under section 203(b)(3)(A)(iii).

5           “(2) CLASSIFICATION PETITION.—In the case  
6           of an eligible alien, the petition under section 204  
7           for classification under section 203(b)(3)(A)(iii) may  
8           be filed by—

9           “(A) the alien’s employer on behalf of the  
10          eligible alien; or

11          “(B) the eligible alien.

12          “(3) NO LABOR CERTIFICATION REQUIRED.—  
13          Notwithstanding section 203(b)(3)(C), no deter-  
14          mination under section 212(a)(5)(A) is required with  
15          respect to an immigrant visa described in paragraph  
16          (1)(C) for an eligible alien.

17          “(4) EFFECT OF PETITION.—The filing of a pe-  
18          tition described in paragraph (2) or an application  
19          for adjustment of status based on the approval of  
20          such a petition shall not constitute evidence of an  
21          alien’s ineligibility for nonimmigrant status under  
22          section 101(a)(15)(H)(ii)(a).

23          “(5) EXTENSION OF STAY.—The Secretary  
24          shall extend the stay of an eligible alien having a  
25          pending or approved classification petition described

1 in paragraph (2) in 1-year increments until a final  
2 determination is made on the alien's eligibility for  
3 adjustment of status to that of an alien lawfully ad-  
4 mitted for permanent residence.

5 “(6) CONSTRUCTION.—Nothing in this sub-  
6 section shall be construed to prevent an eligible alien  
7 from seeking adjustment of status in accordance  
8 with any other provision of law.

9 **“SEC. 218C. WORKER PROTECTIONS AND LABOR STAND-**  
10 **ARDS ENFORCEMENT.**

11 “(a) ENFORCEMENT AUTHORITY.—

12 “(1) INVESTIGATION OF COMPLAINTS.—

13 “(A) AGGRIEVED PERSON OR THIRD-PARTY  
14 COMPLAINTS.—The Secretary of Labor shall es-  
15 tablish a process for the receipt, investigation,  
16 and disposition of complaints respecting a peti-  
17 tioner's failure to meet a condition specified in  
18 section 218(b), or an employer's misrepresenta-  
19 tion of material facts in an application under  
20 section 218(a). Complaints may be filed by any  
21 aggrieved person or organization (including bar-  
22 gaining representatives). No investigation or  
23 hearing shall be conducted on a complaint con-  
24 cerning such a failure or misrepresentation un-  
25 less the complaint was filed not later than 12

1 months after the date of the failure, or mis-  
2 representation, respectively. The Secretary of  
3 Labor shall conduct an investigation under this  
4 subparagraph if there is reasonable cause to be-  
5 lieve that such a failure or misrepresentation  
6 has occurred.

7 “(B) DETERMINATION ON COMPLAINT.—

8 Under such process, the Secretary of Labor  
9 shall provide, within 30 days after the date  
10 such a complaint is filed, for a determination as  
11 to whether or not a reasonable basis exists to  
12 make a finding described in subparagraph (C),  
13 (D), (E), or (G). If the Secretary of Labor de-  
14 termines that such a reasonable basis exists,  
15 the Secretary of Labor shall provide for notice  
16 of such determination to the interested parties  
17 and an opportunity for a hearing on the com-  
18 plaint, in accordance with section 556 of title 5,  
19 United States Code, within 60 days after the  
20 date of the determination. If such a hearing is  
21 requested, the Secretary of Labor shall make a  
22 finding concerning the matter not later than 60  
23 days after the date of the hearing. In the case  
24 of similar complaints respecting the same appli-  
25 cant, the Secretary of Labor may consolidate

1 the hearings under this subparagraph on such  
2 complaints.

3 “(C) FAILURES TO MEET CONDITIONS.—If  
4 the Secretary of Labor finds, after notice and  
5 opportunity for a hearing, a failure to meet a  
6 condition of paragraph (1)(A), (1)(B), (1)(D),  
7 (1)(F), (2)(A), (2)(B), or (2)(G) of section  
8 218(b), a substantial failure to meet a condition  
9 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),  
10 (2)(E), or (2)(H) of section 218(b), or a mate-  
11 rial misrepresentation of fact in an application  
12 under section 218(a)—

13 “(i) the Secretary of Labor shall no-  
14 tify the Secretary of such finding and may,  
15 in addition, impose such other administra-  
16 tive remedies (including civil money pen-  
17 alties in an amount not to exceed \$1,000  
18 per violation) as the Secretary of Labor  
19 determines to be appropriate; and

20 “(ii) the Secretary may disqualify the  
21 employer from the employment of aliens  
22 described in section 101(a)(15)(H)(ii)(a)  
23 for a period of 1 year.

24 “(D) WILLFUL FAILURES AND WILLFUL  
25 MISREPRESENTATIONS.—If the Secretary of

1 Labor finds, after notice and opportunity for  
2 hearing, a willful failure to meet a condition of  
3 section 218(b), a willful misrepresentation of a  
4 material fact in an application under section  
5 218(a), or a violation of subsection (d)(1)—

6 “(i) the Secretary of Labor shall no-  
7 tify the Secretary of such finding and may,  
8 in addition, impose such other administra-  
9 tive remedies (including civil money pen-  
10 alties in an amount not to exceed \$5,000  
11 per violation) as the Secretary of Labor  
12 determines to be appropriate;

13 “(ii) the Secretary of Labor may seek  
14 appropriate legal or equitable relief to ef-  
15 fectuate the purposes of subsection (d)(1);  
16 and

17 “(iii) the Secretary may disqualify the  
18 employer from the employment of H-2A  
19 workers for a period of 2 years.

20 “(E) DISPLACEMENT OF UNITED STATES  
21 WORKERS.—If the Secretary of Labor finds,  
22 after notice and opportunity for hearing, a will-  
23 ful failure to meet a condition of section 218(b)  
24 or a willful misrepresentation of a material fact  
25 in an application under section 218(a), in the

1 course of which failure or misrepresentation the  
2 employer displaced a United States worker em-  
3 ployed by the employer during the period of em-  
4 ployment on the employer's application under  
5 section 218(a) or during the period of 30 days  
6 preceding such period of employment—

7 “(i) the Secretary of Labor shall no-  
8 tify the Secretary of such finding and may,  
9 in addition, impose such other administra-  
10 tive remedies (including civil money pen-  
11 alties in an amount not to exceed \$15,000  
12 per violation) as the Secretary of Labor  
13 determines to be appropriate; and

14 “(ii) the Secretary may disqualify the  
15 employer from the employment of H-2A  
16 workers for a period of 3 years.

17 “(F) LIMITATIONS ON CIVIL MONEY PEN-  
18 ALTIES.—The Secretary of Labor shall not im-  
19 pose total civil money penalties with respect to  
20 an application under section 218(a) in excess of  
21 \$90,000.

22 “(G) FAILURES TO PAY WAGES OR RE-  
23 QUIRED BENEFITS.—If the Secretary of Labor  
24 finds, after notice and opportunity for a hear-  
25 ing, that the employer has failed to pay the

1 wages, or provide the housing allowance, trans-  
2 portation, subsistence reimbursement, or guar-  
3 antee of employment, required under section  
4 218A(b), the Secretary of Labor shall assess  
5 payment of back wages, or other required bene-  
6 fits, due any United States worker or H-2A  
7 worker employed by the employer in the specific  
8 employment in question. The back wages or  
9 other required benefits under section 218A(b)  
10 shall be equal to the difference between the  
11 amount that should have been paid and the  
12 amount that actually was paid to such worker.

13 “(2) STATUTORY CONSTRUCTION.—Nothing in  
14 this section shall be construed as limiting the au-  
15 thority of the Secretary of Labor to conduct any  
16 compliance investigation under any other labor law,  
17 including any law affecting migrant and seasonal ag-  
18 ricultural workers, or, in the absence of a complaint  
19 under this section, under section 218 or 218A.

20 “(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF  
21 ACTION.—H-2A workers may enforce the following rights  
22 through the private right of action provided in subsection  
23 (c), and no other right of action shall exist under Federal  
24 or State law to enforce such rights:



1           “(1) The providing of housing or a housing al-  
2           lowance as required under section 218A(b)(1).

3           “(2) The reimbursement of transportation as  
4           required under section 218A(b)(2).

5           “(3) The payment of wages required under sec-  
6           tion 218A(b)(3) when due.

7           “(4) The benefits and material terms and con-  
8           ditions of employment expressly provided in the job  
9           offer described in section 218(a)(2), not including  
10          the assurance to comply with other Federal, State,  
11          and local labor laws described in section 218A(c),  
12          compliance with which shall be governed by the pro-  
13          visions of such laws.

14          “(5) The guarantee of employment required  
15          under section 218A(b)(4).

16          “(6) The motor vehicle safety requirements  
17          under section 218A(b)(5).

18          “(7) The prohibition of discrimination under  
19          subsection (d)(2).

20          “(c) PRIVATE RIGHT OF ACTION.—

21                 “(1) MEDIATION.—Upon the filing of a com-  
22                 plaint by an H-2A worker aggrieved by a violation  
23                 of rights enforceable under subsection (b), and with-  
24                 in 60 days of the filing of proof of service of the  
25                 complaint, a party to the action may file a request

1 with the Federal Mediation and Conciliation Service  
2 to assist the parties in reaching a satisfactory reso-  
3 lution of all issues involving all parties to the dis-  
4 pute. Upon a filing of such request and giving of no-  
5 tice to the parties, the parties shall attempt medi-  
6 ation within the period specified in subparagraph  
7 (B).

8 “(A) MEDIATION SERVICES.—The Federal  
9 Mediation and Conciliation Service shall be  
10 available to assist in resolving disputes arising  
11 under subsection (b) between H-2A workers  
12 and agricultural employers without charge to  
13 the parties.

14 “(B) 90-DAY LIMIT.—The Federal Medi-  
15 ation and Conciliation Service may conduct me-  
16 diation or other nonbinding dispute resolution  
17 activities for a period not to exceed 90 days be-  
18 ginning on the date on which the Federal Medi-  
19 ation and Conciliation Service receives the re-  
20 quest for assistance unless the parties agree to  
21 an extension of this period of time.

22 “(C) AUTHORIZATION.—

23 “(i) IN GENERAL.—Subject to clause  
24 (ii), there are authorized to be appro-  
25 priated to the Federal Mediation and Con-

1           conciliation Service \$500,000 for each fiscal  
2           year to carry out this section.

3           “(ii)   MEDIATION.—Notwithstanding  
4           any other provision of law, the Director of  
5           the Federal Mediation and Conciliation  
6           Service is authorized to conduct the medi-  
7           ation or other dispute resolution activities  
8           from any other appropriated funds avail-  
9           able to the Director and to reimburse such  
10          appropriated funds when the funds are ap-  
11          propriated pursuant to this authorization,  
12          such reimbursement to be credited to ap-  
13          propriations currently available at the time  
14          of receipt.

15          “(2) MAINTENANCE OF CIVIL ACTION IN DIS-  
16          TRICT COURT BY AGGRIEVED PERSON.—An H-2A  
17          worker aggrieved by a violation of rights enforceable  
18          under subsection (b) by an agricultural employer or  
19          other person may file suit in any district court of the  
20          United States having jurisdiction over the parties,  
21          without regard to the amount in controversy, with-  
22          out regard to the citizenship of the parties, and  
23          without regard to the exhaustion of any alternative  
24          administrative remedies under this Act, not later  
25          than 3 years after the date the violation occurs.

1           “(3) ELECTION.—An H–2A worker who has  
2 filed an administrative complaint with the Secretary  
3 of Labor may not maintain a civil action under  
4 paragraph (2) unless a complaint based on the same  
5 violation filed with the Secretary of Labor under  
6 subsection (a)(1) is withdrawn before the filing of  
7 such action, in which case the rights and remedies  
8 available under this subsection shall be exclusive.

9           “(4) PREEMPTION OF STATE CONTRACT  
10 RIGHTS.—Nothing in this Act shall be construed to  
11 diminish the rights and remedies of an H–2A worker  
12 under any other Federal or State law or regulation  
13 or under any collective bargaining agreement, except  
14 that no court or administrative action shall be avail-  
15 able under any State contract law to enforce the  
16 rights created by this Act.

17           “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-  
18 ments by employees purporting to waive or modify  
19 their rights under this Act shall be void as contrary  
20 to public policy, except that a waiver or modification  
21 of the rights or obligations in favor of the Secretary  
22 of Labor shall be valid for purposes of the enforce-  
23 ment of this Act. The preceding sentence may not  
24 be construed to prohibit agreements to settle private  
25 disputes or litigation.

1           “(6) AWARD OF DAMAGES OR OTHER EQUI-  
2           TABLE RELIEF.—

3           “(A) If the court finds that the respondent  
4           has intentionally violated any of the rights en-  
5           forceable under subsection (b), it shall award  
6           actual damages, if any, or equitable relief.

7           “(B) Any civil action brought under this  
8           section shall be subject to appeal as provided in  
9           chapter 83 of title 28, United States Code.

10          “(7) WORKERS’ COMPENSATION BENEFITS; EX-  
11          CLUSIVE REMEDY.—

12          “(A) Notwithstanding any other provision  
13          of this section, where a State’s workers’ com-  
14          pensation law is applicable and coverage is pro-  
15          vided for an H-2A worker, the workers’ com-  
16          pensation benefits shall be the exclusive remedy  
17          for the loss of such worker under this section  
18          in the case of bodily injury or death in accord-  
19          ance with such State’s workers’ compensation  
20          law.

21          “(B) The exclusive remedy prescribed in  
22          subparagraph (A) precludes the recovery under  
23          paragraph (6) of actual damages for loss from  
24          an injury or death but does not preclude other  
25          equitable relief, except that such relief shall not

1 include back or front pay or in any manner, di-  
2 rectly or indirectly, expand or otherwise alter or  
3 affect—

4 “(i) a recovery under a State workers’  
5 compensation law; or

6 “(ii) rights conferred under a State  
7 workers’ compensation law.

8 “(8) TOLLING OF STATUTE OF LIMITATIONS.—

9 If it is determined under a State workers’ compensa-  
10 tion law that the workers’ compensation law is not  
11 applicable to a claim for bodily injury or death of an  
12 H-2A worker, the statute of limitations for bringing  
13 an action for actual damages for such injury or  
14 death under subsection (c) shall be tolled for the pe-  
15 riod during which the claim for such injury or death  
16 under such State workers’ compensation law was  
17 pending. The statute of limitations for an action for  
18 actual damages or other equitable relief arising out  
19 of the same transaction or occurrence as the injury  
20 or death of the H-2A worker shall be tolled for the  
21 period during which the claim for such injury or  
22 death was pending under the State workers’ com-  
23 pensation law.

24 “(9) PRECLUSIVE EFFECT.—Any settlement by  
25 an H-2A worker and an H-2A employer or any per-

1 son reached through the mediation process required  
2 under subsection (c)(1) shall preclude any right of  
3 action arising out of the same facts between the par-  
4 ties in any Federal or State court or administrative  
5 proceeding, unless specifically provided otherwise in  
6 the settlement agreement.

7 “(10) SETTLEMENTS.—Any settlement by the  
8 Secretary of Labor with an H-2A employer on be-  
9 half of an H-2A worker of a complaint filed with the  
10 Secretary of Labor under this section or any finding  
11 by the Secretary of Labor under subsection  
12 (a)(1)(B) shall preclude any right of action arising  
13 out of the same facts between the parties under any  
14 Federal or State court or administrative proceeding,  
15 unless specifically provided otherwise in the settle-  
16 ment agreement.

17 “(d) DISCRIMINATION PROHIBITED.—

18 “(1) IN GENERAL.—It is a violation of this sub-  
19 section for any person who has filed an application  
20 under section 218(a), to intimidate, threaten, re-  
21 strain, coerce, blacklist, discharge, or in any other  
22 manner discriminate against an employee (which  
23 term, for purposes of this subsection, includes a  
24 former employee and an applicant for employment)  
25 because the employee has disclosed information to

1 the employer, or to any other person, that the em-  
2 ployee reasonably believes evidences a violation of  
3 section 218 or 218A or any rule or regulation per-  
4 taining to section 218 or 218A, or because the em-  
5 ployee cooperates or seeks to cooperate in an inves-  
6 tigation or other proceeding concerning the employ-  
7 er's compliance with the requirements of section 218  
8 or 218A or any rule or regulation pertaining to ei-  
9 ther of such sections.

10 “(2) DISCRIMINATION AGAINST H-2A WORK-  
11 ERS.—It is a violation of this subsection for any per-  
12 son who has filed an application under section  
13 218(a), to intimidate, threaten, restrain, coerce,  
14 blacklist, discharge, or in any manner discriminate  
15 against an H-2A employee because such worker has,  
16 with just cause, filed a complaint with the Secretary  
17 of Labor regarding a denial of the rights enumer-  
18 ated and enforceable under subsection (b) or insti-  
19 tuted, or caused to be instituted, a private right of  
20 action under subsection (c) regarding the denial of  
21 the rights enumerated under subsection (b), or has  
22 testified or is about to testify in any court pro-  
23 ceeding brought under subsection (c).

24 “(e) AUTHORIZATION TO SEEK OTHER APPRO-  
25 PRIATE EMPLOYMENT.—The Secretary of Labor and the



1 Secretary shall establish a process under which an H-2A  
2 worker who files a complaint regarding a violation of sub-  
3 section (d) and is otherwise eligible to remain and work  
4 in the United States may be allowed to seek other appro-  
5 priate employment in the United States for a period not  
6 to exceed the maximum period of stay authorized for such  
7 nonimmigrant classification.

8 “(f) ROLE OF ASSOCIATIONS.—

9 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-  
10 TION.—An employer on whose behalf an application  
11 is filed by an association acting as its agent is fully  
12 responsible for such application, and for complying  
13 with the terms and conditions of sections 218 and  
14 218A, as though the employer had filed the applica-  
15 tion itself. If such an employer is determined, under  
16 this section, to have committed a violation, the pen-  
17 alty for such violation shall apply only to that mem-  
18 ber of the association unless the Secretary of Labor  
19 determines that the association or other member  
20 participated in, had knowledge, or reason to know,  
21 of the violation, in which case the penalty shall be  
22 invoked against the association or other association  
23 member as well.

24 “(2) VIOLATIONS BY AN ASSOCIATION ACTING  
25 AS AN EMPLOYER.—If an association filing an appli-

1 cation as a sole or joint employer is determined to  
2 have committed a violation under this section, the  
3 penalty for such violation shall apply only to the as-  
4 sociation unless the Secretary of Labor determines  
5 that an association member or members participated  
6 in or had knowledge, or reason to know of the viola-  
7 tion, in which case the penalty shall be invoked  
8 against the association member or members as well.

9 **“SEC. 218D. DEFINITIONS.**

10 “For purposes of this section and section 218, 218A,  
11 218B, and 218C:

12 “(1) AGRICULTURAL EMPLOYMENT.—The term  
13 ‘agricultural employment’ means any service or ac-  
14 tivity that is considered to be agricultural under sec-  
15 tion 3(f) of the Fair Labor Standards Act of 1938  
16 (29 U.S.C. 203(f)) or agricultural labor under sec-  
17 tion 3121(g) of the Internal Revenue Code of 1986  
18 or the performance of agricultural labor or services  
19 described in section 101(a)(15)(H)(ii)(a).

20 “(2) BONA FIDE UNION.—The term ‘bona fide  
21 union’ means any organization in which employees  
22 participate and which exists for the purpose of deal-  
23 ing with employers concerning grievances, labor dis-  
24 putes, wages, rates of pay, hours of employment, or  
25 other terms and conditions of work for agricultural

1 employees. Such term does not include an organiza-  
2 tion formed, created, administered, supported, domi-  
3 nated, financed, or controlled by an employer or em-  
4 ployer association or its agents or representatives.

5 “(3) DISPLACE.—The term ‘displace’, in the  
6 case of an application with respect to 1 or more H-  
7 2A workers by an employer, means laying off a  
8 United States worker from a job for which the H-  
9 2A worker or workers is or are sought.

10 “(4) ELIGIBLE.—The term ‘eligible’, when used  
11 with respect to an individual, means an individual  
12 who is not an unauthorized alien (as defined in sec-  
13 tion 274A).

14 “(5) EMPLOYER.—The term ‘employer’ means  
15 any person or entity, including any farm labor con-  
16 tractor and any agricultural association, that em-  
17 ploys workers in agricultural employment.

18 “(6) H-2A EMPLOYER.—The term ‘H-2A em-  
19 ployer’ means an employer who seeks to hire 1 or  
20 more nonimmigrant aliens described in section  
21 101(a)(15)(H)(ii)(a).

22 “(7) H-2A WORKER.—The term ‘H-2A worker’  
23 means a nonimmigrant described in section  
24 101(a)(15)(H)(ii)(a).

1           “(8) JOB OPPORTUNITY.—The term ‘job oppor-  
2           tunity’ means a job opening for temporary or sea-  
3           sonal full-time employment at a place in the United  
4           States to which United States workers can be re-  
5           ferred.

6           “(9) LAYING OFF.—

7           “(A) IN GENERAL.—The term ‘laying off’,  
8           with respect to a worker—

9                   “(i) means to cause the worker’s loss  
10                   of employment, other than through a dis-  
11                   charge for inadequate performance, viola-  
12                   tion of workplace rules, cause, voluntary  
13                   departure, voluntary retirement, contract  
14                   impossibility (as described in section  
15                   218A(b)(4)(D)), or temporary suspension  
16                   of employment due to weather, markets, or  
17                   other temporary conditions; but

18                   “(ii) does not include any situation in  
19                   which the worker is offered, as an alter-  
20                   native to such loss of employment, a simi-  
21                   lar employment opportunity with the same  
22                   employer (or, in the case of a placement of  
23                   a worker with another employer under sec-  
24                   tion 218(b)(2)(E), with either employer de-  
25                   scribed in such section) at equivalent or

1 higher compensation and benefits than the  
2 position from which the employee was dis-  
3 charged, regardless of whether or not the  
4 employee accepts the offer.

5 “(B) STATUTORY CONSTRUCTION.—Noth-  
6 ing in this paragraph is intended to limit an  
7 employee’s rights under a collective bargaining  
8 agreement or other employment contract.

9 “(10) REGULATORY DROUGHT.—The term ‘reg-  
10 ulatory drought’ means a decision subsequent to the  
11 filing of the application under section 218 by an en-  
12 tity not under the control of the employer making  
13 such filing which restricts the employer’s access to  
14 water for irrigation purposes and reduces or limits  
15 the employer’s ability to produce an agricultural  
16 commodity, thereby reducing the need for labor.

17 “(11) SEASONAL.—Labor is performed on a  
18 ‘seasonal’ basis if—

19 “(A) ordinarily, it pertains to or is of the  
20 kind exclusively performed at certain seasons or  
21 periods of the year; and

22 “(B) from its nature, it may not be contin-  
23 uous or carried on throughout the year.

1           “(12) SECRETARY.—Except as otherwise pro-  
2           vided, the term ‘Secretary’ means the Secretary of  
3           Homeland Security.

4           “(13) TEMPORARY.—A worker is employed on a  
5           ‘temporary’ basis where the employment is intended  
6           not to exceed 10 months.

7           “(14) UNITED STATES WORKER.—The term  
8           ‘United States worker’ means any worker, whether  
9           a national of the United States, an alien lawfully ad-  
10          mitted for permanent residence, or any other alien,  
11          who is authorized to work in the job opportunity  
12          within the United States, except an alien admitted  
13          or otherwise provided status under section  
14          101(a)(15)(H)(ii)(a).”.

15          (b) TABLE OF CONTENTS.—The table of contents of  
16          the Immigration and Nationality Act (8 U.S.C. 1101 et  
17          seq.) is amended by striking the item relating to section  
18          218 and inserting the following:

“Sec. 218. H-2A employer applications.

“Sec. 218A. H-2A employment requirements.

“Sec. 218B. Procedure for admission and extension of stay of H-2A workers.

“Sec. 218C. Worker protections and labor standards enforcement.

“Sec. 218D. Definitions.”.

19                   **CHAPTER 4—MISCELLANEOUS**  
20                   **PROVISIONS**

21           **SEC. 461. DETERMINATION AND USE OF USER FEES.**

22           (a) SCHEDULE OF FEES.—The Secretary shall estab-  
23          lish and periodically adjust a schedule of fees for the em-

1 ployment of aliens pursuant to the amendment made by  
2 section 451(a) of this Act and a collection process for such  
3 fees from employers. Such fees shall be the only fees  
4 chargeable to employers for services provided under such  
5 amendment.

6 (b) DETERMINATION OF SCHEDULE.—

7 (1) IN GENERAL.—The schedule under sub-  
8 section (a) shall reflect a fee rate based on the num-  
9 ber of job opportunities indicated in the employer's  
10 application under section 218 of the Immigration  
11 and Nationality Act, as amended by section 451 of  
12 this Act, and sufficient to provide for the direct  
13 costs of providing services related to an employer's  
14 authorization to employ aliens pursuant to the  
15 amendment made by section 451(a) of this Act, to  
16 include the certification of eligible employers, the  
17 issuance of documentation, and the admission of eli-  
18 gible aliens.

19 (2) PROCEDURE.—

20 (A) IN GENERAL.—In establishing and ad-  
21 justing such a schedule, the Secretary shall  
22 comply with Federal cost accounting and fee  
23 setting standards.

24 (B) PUBLICATION AND COMMENT.—The  
25 Secretary shall publish in the Federal Register

1 an initial fee schedule and associated collection  
2 process and the cost data or estimates upon  
3 which such fee schedule is based, and any sub-  
4 sequent amendments thereto, pursuant to which  
5 public comment shall be sought and a final rule  
6 issued.

7 (c) USE OF PROCEEDS.—Notwithstanding any other  
8 provision of law, all proceeds resulting from the payment  
9 of the fees pursuant to the amendment made by section  
10 451(a) of this Act shall be available without further appro-  
11 priation and shall remain available without fiscal year lim-  
12 itation to reimburse the Secretary, the Secretary of State,  
13 and the Secretary of Labor for the costs of carrying out—

14 (1) sections 218 and 218B of the Immigration  
15 and Nationality Act, as amended and added, respec-  
16 tively, by section 451 of this Act; and

17 (2) the provisions of this Act.

18 **SEC. 462. REGULATIONS.**

19 (a) REQUIREMENT FOR THE SECRETARY TO CON-  
20 SULT.—The Secretary shall consult with the Secretary of  
21 Labor and the Secretary of Agriculture during the promul-  
22 gation of all regulations to implement the duties of the  
23 Secretary under this Act and the amendments made by  
24 this Act.



1           (b) REQUIREMENT FOR THE SECRETARY OF STATE  
2 TO CONSULT.—The Secretary of State shall consult with  
3 the Secretary, the Secretary of Labor, and the Secretary  
4 of Agriculture on all regulations to implement the duties  
5 of the Secretary of State under this Act and the amend-  
6 ments made by this Act.

7           (c) REQUIREMENT FOR THE SECRETARY OF LABOR  
8 TO CONSULT.—The Secretary of Labor shall consult with  
9 the Secretary of Agriculture and the Secretary on all regu-  
10 lations to implement the duties of the Secretary of Labor  
11 under this Act and the amendments made by this Act.

12           (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—  
13 All regulations to implement the duties of the Secretary,  
14 the Secretary of State, and the Secretary of Labor created  
15 under sections 218, 218A, 218B, 218C, and 218D of the  
16 Immigration and Nationality Act, as amended or added  
17 by section 451 of this Act, shall take effect on the effective  
18 date of section 451 and shall be issued not later than 1  
19 year after the date of enactment of this Act.

20 **SEC. 463. REPORTS TO CONGRESS.**

21           (a) ANNUAL REPORT.—Not later than September 30  
22 of each year, the Secretary shall submit a report to Con-  
23 gress that identifies, for the previous year—

24                   (1) the number of job opportunities approved  
25                   for employment of aliens admitted under section

1 101(a)(15)(H)(ii)(a) of the Immigration and Nation-  
2 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the  
3 number of workers actually admitted, disaggregated  
4 by State and by occupation;

5 (2) the number of such aliens reported to have  
6 abandoned employment pursuant to subsection  
7 (e)(2) of section 218B of such Act, as added by sec-  
8 tion 451;

9 (3) the number of such aliens who departed the  
10 United States within the period specified in sub-  
11 section (d) of such section 218B;

12 (4) the number of aliens who applied for blue  
13 card status pursuant to section 431(a);

14 (5) the number of aliens who were granted such  
15 status pursuant section 431(a);

16 (6) the number of aliens who applied for an ad-  
17 justment of status pursuant to section 433(a); and

18 (7) the number of aliens who received an ad-  
19 justment of status pursuant section 433(a).

20 (b) IMPLEMENTATION REPORT.—Not later than 180  
21 days after the date of the enactment of this Act, the Sec-  
22 retary shall prepare and submit to Congress a report that  
23 describes the measures being taken and the progress made  
24 in implementing this Act.

1 **SEC. 464. EFFECTIVE DATE.**

2 The amendments made by section 451 and section  
3 461 shall take effect 1 year after the date of the enact-  
4 ment of this Act.

5 **TITLE V—STRENGTHENING THE**  
6 **U.S. ECONOMY AND WORKFORCE**  
7 **Subtitle A—Immigration and Labor**  
8 **CHAPTER 1—IMMIGRATION AND LABOR**  
9 **MARKETS**

10 **SEC. 501. COMMISSION ON IMMIGRATION AND LABOR MAR-**  
11 **KETS.**

12 (a) ESTABLISHMENT OF COMMISSION.—

13 (1) IN GENERAL.—There is established a per-  
14 manent, independent, Federal agency within the Ex-  
15 ecutive Branch of the United States to be known as  
16 the Commission on Immigration and Labor Markets  
17 (referred to in this section as “Commission”).

18 (2) PURPOSES.—Through objective, thorough,  
19 accurate and nonpartisan review and analysis, the  
20 purposes of the Commission are to—

21 (A) establish employment-based immigra-  
22 tion policies that promote America’s economic  
23 growth and competitiveness while minimizing  
24 job displacement, wage depression and unau-  
25 thorized employment in the United States;

1 (B) create and implement a policy-focused  
2 research agenda on the economic impacts of im-  
3 migration at the national, regional, state, indus-  
4 try and occupation levels;

5 (C) collect and analyze information about  
6 employment-based immigration and the labor  
7 market and share the data and analysis with  
8 lawmakers, researchers and the American pub-  
9 lic;

10 (D) recommend to the Congress and the  
11 President on a regular basis an evidence-based  
12 methodology for determining the level of em-  
13 ployment-based immigration; and

14 (E) recommend to Congress and the Presi-  
15 dent the numeric levels and characteristics of  
16 workers to be admitted in various employment-  
17 based visa categories.

18 (3) MEMBERSHIP.—The Commission shall be  
19 composed of—

20 (A) 7 voting members—

21 (i) who shall be appointed by the  
22 President, with the advice and consent of  
23 the Senate, no later than 6 months after  
24 the date of the enactment of this Act;

1 (ii) who shall serve for 5-year stag-  
2 gered terms;

3 (iii) one of whom the President shall  
4 appoint as Chair of the commission to  
5 serve a 6-year term, which can be extended  
6 for 1 additional 3-year term;

7 (iv) who shall have expertise in eco-  
8 nomics, demography, sociology, labor, busi-  
9 ness, civil rights, immigration or other per-  
10 tinent qualifications or experience; and

11 (v) not more than 4 of whom may be  
12 members of the same political party; and

13 (B) 8 ex-officio members, including—

14 (i) the Secretary;

15 (ii) the Secretary of State;

16 (iii) the Attorney General;

17 (iv) the Secretary of Labor;

18 (v) the Secretary of Commerce

19 (vi) the Secretary of Health and  
20 Human Services;

21 (vii) the Secretary of Agriculture; and

22 (viii) The Commissioner of Social Se-  
23 curity.

1           (4) VACANCIES.—Any vacancy in the Commis-  
2           sion shall be filled in the same manner as the origi-  
3           nal appointment.

4           (5) MEETINGS.—

5                 (A) INITIAL MEETING.—The Commission  
6                 shall meet and begin carrying out the duties de-  
7                 scribed in subsection (b) as soon as practicable.

8                 (B) SUBSEQUENT MEETINGS.—After its  
9                 initial meeting, the Commission shall meet upon  
10                the call of the Chair or a majority of its mem-  
11                bers.

12                (C) QUORUM.—Five voting members of the  
13                Commission shall constitute a quorum.

14           (b) DUTIES OF THE COMMISSION.—The Commission  
15           shall—

16                (1) collect, analyze and publish data regard-  
17                ing—

18                         (A) the historic migration patterns to and  
19                         from the United States and demographic  
20                         trends, including the birth rate, education lev-  
21                         els, and age profiles of the immigrant and na-  
22                         tive population of the United States;

23                         (B) the impact of employment-based immi-  
24                         gration—

1 (i) at the national, regional, state and  
2 local levels;

3 (ii) within industries and business sec-  
4 tors;

5 (iii) on occupations and occupational  
6 levels;

7 (iv) on small business; and

8 (v) on employment and unemployment  
9 levels;

10 (C) the current and anticipated needs of  
11 employers for skilled and unskilled labor;

12 (D) the current and anticipated supply of  
13 skilled and unskilled labor;

14 (E) the impact of employment-based immi-  
15 gration on the economic growth and competi-  
16 tiveness and labor standards, conditions, and  
17 wages;

18 (F) the extent and impact of unauthorized  
19 employment in the United States;

20 (G) the factors that determine the eco-  
21 nomic success of immigrants to the United  
22 States; and

23 (H) any other matters regarding the im-  
24 pact of employment-based immigration that the  
25 Commission considers appropriate;

1           (2) after soliciting and reviewing input from the  
2 public, develop and publish in the federal register a  
3 plan for the performance of its duties, including a  
4 description of the methodologies it will employ to  
5 measure the need for immigrant workers or non-  
6 immigrant foreign workers in different regions,  
7 states, industries and occupations;

8           (3) submit to the Congress, according to the  
9 procedures in subsection (c), the methodologies it  
10 proposes to use to determine the need for immigrant  
11 workers and nonimmigrant foreign workers;

12           (4) submit to the Congress, according to the  
13 procedures in subsection (c), any amendments which  
14 the Commission deems appropriate to the numeric  
15 levels of visas established by the Immigration and  
16 Nationality Act for temporary or permanent employ-  
17 ment;

18           (5) annually thereafter, submit a report to the  
19 President and Congress that—

20           (A) contains any amendments to the nu-  
21 meric levels set according to the procedures in  
22 subsection (c)(2), which shall take effect in the  
23 same manner described therein unless dis-  
24 approved by the passage of a resolution in Con-  
25 gress; and



1 (B) makes other recommendations regard-  
2 ing employment-based visas or immigration, in-  
3 cluding legislative or administrative action, that  
4 the Commission determines to be in the na-  
5 tional interest; and

6 (6) establish collaborative relationships with  
7 international organizations and agencies in countries  
8 of origin to encourage the deposit of remittances  
9 with financial institutions that will reinvest the re-  
10 mittances received from the United States to pro-  
11 mote job development in those countries of origin  
12 that have sent immigrants to the United States.

13 (c) PROCEDURES TO DETERMINE APPROPRIATE  
14 LEVEL OF EMPLOYMENT BASED IMMIGRATION FOR TEM-  
15 PORARY OR PERMANENT EMPLOYMENT.—

16 (1) METHODOLOGY.—Not later than 12 months  
17 after Congress appropriates funds for its operation,  
18 the Commission shall submit to Congress the meth-  
19 odologies it proposes to use to determine the need  
20 for immigrant workers and nonimmigrant foreign  
21 workers. Congress shall have 90 days to enact a res-  
22 olution of disapproval. In the absence of such action,  
23 the methodologies shall stand approved.

24 (2) INITIAL DETERMINATION OF NUMERIC LEV-  
25 ELS.—At the beginning of the first regular session

1 of Congress after the methodologies in paragraph  
2 (1) have been approved, but not later than the first  
3 day of April, the Commission shall submit to Con-  
4 gress the numeric levels of visas it recommends, by  
5 majority vote, to be made available for temporary or  
6 permanent employment under the Immigration and  
7 Nationality Act and a statement of the reasons  
8 therefore. Congress shall have 90 days to enact a  
9 resolution of disapproval. In absence of such action,  
10 the numeric levels shall stand approved and be im-  
11 plemented at the start of the next fiscal year.

12 (3) ANNUAL DETERMINATIONS.—Once the ini-  
13 tial determination of numeric levels is established,  
14 the Commission shall annually thereafter submit to  
15 Congress any increase or decrease in numeric levels  
16 of employment based immigration it recommends by  
17 majority vote, which shall be disapproved by Con-  
18 gress in the same manner as in clause (2), or stand  
19 approved for the next fiscal year.

20 (d) POWERS OF THE COMMISSION.—

21 (1) The Commission, by vote of a majority of  
22 the members present and voting, shall have the  
23 power to—

24 (A) establish general policies and promul-  
25 gate such rules and regulations for the Commis-

1           sion as are necessary to carry out the purposes  
2           of this section;

3           (B) appoint and fix the salary and duties  
4           of the Staff Director of the Commission, who  
5           shall serve at the discretion of the Commission  
6           and who shall be compensated at a rate not to  
7           exceed the highest rate now or hereafter pre-  
8           scribed for Level 6 of the Senior Executive  
9           Service Schedule (5 U.S.C. 5382), and such  
10          other personnel as may be necessary to enable  
11          the Commission to carry out its functions;

12          (C) deny, revise, or ratify any request for  
13          regular, supplemental, or deficiency appropria-  
14          tions prior to any submission of such request to  
15          the Office of Management and Budget by the  
16          Chair;

17          (D) utilize, with their consent, the services,  
18          equipment, personnel, information, and facilities  
19          of other Federal, State, local, and private agen-  
20          cies and instrumentalities with or without reim-  
21          bursement therefor;

22          (E) without regard to section 3324 of title  
23          31, United States Code, enter into and perform  
24          such contracts, leases, cooperative agreements,  
25          and other transactions as may be necessary in

1 the conduct of the functions of the Commission,  
2 with any public agency, or with any person,  
3 firm, association, corporation, educational insti-  
4 tution, or nonprofit organization;

5 (F) accept and employ, in carrying out the  
6 provisions of this title, voluntary and uncom-  
7 pensated services, notwithstanding the provi-  
8 sions of section 1342 of title 31, United States  
9 Code, however, individuals providing such serv-  
10 ices shall not be considered Federal employees  
11 except for purposes of chapter 81 of title 5,  
12 United States Code, with respect to job-in-  
13 curred disability and title 28, United States  
14 Code, with respect to tort claims;

15 (G) request such information, data, and re-  
16 ports from any Federal agency as the Commis-  
17 sion may from time to time require and as may  
18 be produced consistent with other law;

19 (H) arrange with the head of any other  
20 Federal agency for the performance by such  
21 agency of any function of the Commission, with  
22 or without reimbursement;

23 (I) establish a research and development  
24 program within the Commission for the purpose  
25 of understanding and documenting the effects

1 of immigration and the temporary admission of  
2 foreign workers on the labor market and na-  
3 tional competitiveness;

4 (J) collect systematically the data obtained  
5 from studies, research, and the empirical expe-  
6 rience of public and private agencies concerning  
7 the need for and effects of employment-based  
8 immigration and the admission of non-  
9 immigrant workers;

10 (K) interview and confer with state and  
11 local officials, representatives of labor and in-  
12 dustry, and experts in academia to obtain infor-  
13 mation about the need for or benefit of addi-  
14 tional immigrant or nonimmigrant workers;

15 (L) make recommendations to Congress  
16 concerning modification or enactment of stat-  
17 utes relating to matters that the Commission  
18 finds to be necessary and advisable to carry out  
19 an effective employment-based immigration pol-  
20 icy;

21 (M) hold hearings and call witnesses to as-  
22 sist the Commission in the exercise of its pow-  
23 ers or duties;

1 (N) retain and, in its discretion pay rea-  
2 sonable attorneys' fees out of its appropriated  
3 funds to, private attorneys who—

4 (i) shall provide legal advice to the  
5 Commission in the conduct of its work, or  
6 to appear for or represent the Commission  
7 in any case in which the Commission is au-  
8 thorized by law to represent itself, or in  
9 which the Commission is representing itself  
10 with the consent of the Department of  
11 Justice; and

12 (ii) when serving as officers or em-  
13 ployees of the United States, shall be con-  
14 sidered special government employees as  
15 defined in section 202(a) of title 18; and

16 (O) grant incentive awards to its employ-  
17 ees pursuant to chapter 45 of title 5, United  
18 States Code.

19 (2) The Commission shall have such other pow-  
20 ers and duties and shall perform such other func-  
21 tions as may be necessary to carry out the purposes  
22 of this section, and may delegate to any member or  
23 designated person such powers as may be appro-  
24 priate.

1 (e) INFORMATION AND ASSISTANCE FROM FEDERAL  
2 AGENCIES.—

3 (1) INFORMATION.—The head of any Federal  
4 department or agency that receives a request from  
5 the Commission for information, including sugges-  
6 tions, estimates, and statistics, as the Commission  
7 considers necessary to carry out the provisions of  
8 this section, shall furnish such information to the  
9 Commission, to the extent allowed by law.

10 (2) ASSISTANCE.—

11 (A) GENERAL SERVICES ADMINISTRA-  
12 TION.—The Administrator of General Services  
13 shall, on a reimbursable basis, provide the Com-  
14 mission with administrative support and other  
15 services for the performance of the Commis-  
16 sion's functions.

17 (B) OTHER FEDERAL AGENCIES.—The de-  
18 partments and agencies of the United States  
19 may provide the Commission with such services,  
20 funds, facilities, staff, and other support serv-  
21 ices as heads of such departments and agencies  
22 determine advisable and authorized by law.

23 (f) PERSONNEL MATTERS.—

24 (1) STAFF.—

1           (A) Except as provided under subpara-  
2           graph (B), any personnel of the Commission  
3           who are employees shall be considered to be em-  
4           ployees under section 2105 of title 5, United  
5           States Code, for purposes of chapters 63, 81,  
6           83, 84, 85, 87, 89 and 90 of such title.

7           (B) Subparagraph (A) shall not apply to  
8           members of the Commission.

9           (2) DETAILEES.—Any employee of the Federal  
10          Government may be detailed to the Commission  
11          without reimbursement from the Commission. Such  
12          detailee shall retain the rights, status, and privileges  
13          of his or her regular employment without interrup-  
14          tion.

15          (3) CONSULTANT SERVICES.—The Commission  
16          may procure the services of experts and consultants  
17          in accordance with section 3109 of title 5, United  
18          States Code, at rates not to exceed the daily rate  
19          paid a person occupying a position at level IV of Ex-  
20          ecutive Schedule under section 5315 of such title 5.

21          (g) COMPENSATION AND TRAVEL EXPENSES.—

22               (1) COMPENSATION.—Each voting member of  
23               the Commission may be compensated at a rate not  
24               to exceed the daily equivalent of the annual rate of  
25               basic pay in effect for a position at level IV of the



1 Executive Schedule under section 5315 of title 5,  
2 United States Code, for each day during which that  
3 member is engaged in the actual performance of the  
4 duties of the Commission.

5 (2) TRAVEL EXPENSES.—Members of the Com-  
6 mission shall be allowed travel expenses, including  
7 per diem in lieu of subsistence, in the same manner  
8 as persons employed intermittently in Government  
9 service are allowed expenses under section 5703(b)  
10 of title 5, United States Code, while away from their  
11 homes or regular places of business in performance  
12 of services for the Commission.

13 (h) AUTHORIZATION OF APPROPRIATIONS.—There  
14 are authorized to carry out the purposes of this section  
15 such sums as may be necessary.

16 **SEC. 502. SECURITY AND PROSPERITY ACCOUNT.**

17 Section 286 (8 U.S.C. 1356) is amended by adding  
18 at the end the following new subsection:

19 “(w) PROSPERITY ACCOUNT.—

20 “(1) ESTABLISHMENT.—There is established in  
21 the general fund of the Treasury an account, which  
22 shall be known as the ‘Security and Prosperity Ac-  
23 count’.

24 “(2) DEPOSITS.—Notwithstanding any other  
25 provision of this Act, there shall be deposited as off-

1 setting receipts into the Security and Prosperity Ac-  
2 count—

3 “(A) all fines collected under section  
4 401(g)(2)(B) of the CIR ASAP Act of 2009;  
5 and

6 “(B) all fees collected under section  
7 401(g)(2)(A) of such Act.

8 “(3) USE OF FUNDS.—The fees and fines de-  
9 posited into the Security and Prosperity Fund shall  
10 be allocated as follows:

11 “(A) 25 percent shall be allocated for  
12 ‘Training and Employment Services’ for activi-  
13 ties under the Workforce Investment Act (WIA)  
14 of 1998 which shall distributed as follows:

15 “(i) 25 percent for grants to the  
16 States for adult employment and training  
17 activities.

18 “(ii) 20 percent for grants to the  
19 States for dislocated worker employment  
20 and training activities.

21 “(iii) 10 percent shall be allocated for  
22 the dislocated workers assistance national  
23 reserve, except that—

24 “(I) such funds shall be made  
25 available for grants only to eligible en-

1                   tities that serve areas of high unem-  
2                   ployment or high poverty and only for  
3                   purposes described in subsection  
4                   173(a)(1) of the WIA; and

5                   “(II) the Secretary of Labor shall  
6                   ensure that applicants for such funds  
7                   demonstrate how income support,  
8                   child care and other supportive serv-  
9                   ices necessary for an individual’s par-  
10                  ticipation in job training will be pro-  
11                  vided; and

12                  “(iv) 45 percent for a program of  
13                  competitive grants for worker training and  
14                  placement in high growth and emerging in-  
15                  dustry sectors.

16                  “(B) 5 percent shall be allocated for the  
17                  American Worker Recruit and Match System  
18                  described in section 503 of the CIR ASAP Act  
19                  of 2009.

20                  “(C) 10 percent shall be allocated to the  
21                  Secretary of Homeland Security for the proc-  
22                  essing of immigration benefits applications and  
23                  to subsidize the costs of immigration benefits  
24                  applications described in section 321.

1           “(D) 3 percent shall be allocated to imple-  
2           ment title VI of the CIR ASAP Act of 2009.

3           “(E) 2 percent shall be allocated for the  
4           establishment and operations of the Commis-  
5           sion on Labor Markets and Immigration as de-  
6           scribed in section 501 of such Act.

7           “(F) 30 percent shall be allocated to im-  
8           plement the amendments made by title II of the  
9           CIR ASAP Act of 2009, and enforcement ef-  
10          forts mandated in such amendments to ensure  
11          compliance with the employment practices de-  
12          scribed in such amendments.

13          “(G) 25 percent distributed equally among  
14          the programs established in title I of the CIR  
15          ASAP Act of 2009 for border security, deten-  
16          tion, and enforcement.”.

17 **SEC. 503. AMERICAN RECRUIT AND MATCH SYSTEM.**

18          (a) ESTABLISHMENT OF PROGRAM.—Each State  
19          Workforce Agency (SWA) shall establish an Internet-  
20          based program entitled “American Worker Recruit and  
21          Match” program, to be incorporated with existing SWA  
22          Web-based job search engines, if any—

23                  (1) whereby employers may electronically post  
24          employment opportunities in fields and occupations  
25          that have traditionally relied on unauthorized labor,

1 such as hospitality, agriculture, construction, domes-  
2 tic services, food services and as determined by the  
3 Secretary of Labor;

4 (2) whereby individuals may electronically post  
5 employment profiles; and

6 (3) that shall be searchable and shall match  
7 employers with qualified individuals.

8 (b) SINGLE INTERNET LINK.—The Secretary of  
9 Labor shall establish a publicly accessible Web page on  
10 the Internet website of the Department of Labor that pro-  
11 vides a single internet link to each State workforce agen-  
12 cy's American Worker Recruit and Match program.

13 (c) EDUCATION.—Each State workforce agency shall  
14 conduct monthly seminars that shall be publicly noticed,  
15 to educate employers and individuals regarding use of the  
16 American Recruit and Match System.

17 (d) FUNDING.—Fees and fines deposited in the Pros-  
18 perity Fund under section 286(w)(3)(B) of the Immigra-  
19 tion and Nationality Act may be used to carry out this  
20 section.

1     **CHAPTER 2—PROTECTION OF WORKERS**  
2                     **RECRUITED ABROAD**

3     **SEC. 511. PROTECTIONS FOR WORKERS RECRUITED**  
4                     **ABROAD.**

5             (a) BASIC REQUIREMENTS.—(1) Each employer and  
6 foreign labor contractor who engages in foreign labor con-  
7 tracting activity shall ascertain and disclose to each such  
8 worker who is recruited for employment the following in-  
9 formation at the time of the worker’s recruitment:

10                 (A) The place of employment.

11                 (B) The compensation for the employment.

12                 (C) A description of employment activities.

13                 (D) The period of employment.

14                 (E) The transportation, housing, and any other  
15 employee benefit to be provided and any costs to be  
16 charged for each benefit.

17                 (F) The existence of any labor organizing ef-  
18 fort, strike, lockout, or other labor dispute at the  
19 place of employment.

20                 (G) The existence of any arrangements with  
21 any owner or agent of any establishment in the area  
22 of employment under which the contractor or em-  
23 ployer is to receive a commission or any other ben-  
24 efit resulting from any sales (including the provision  
25 of services) by such establishment to the workers.

1           (H) Whether and the extent to which workers  
2           will be compensated through workers' compensation,  
3           private insurance, or otherwise for injuries or death,  
4           including work related injuries and death, during the  
5           period of employment and, if so, the name of the  
6           State workers' compensation insurance carrier or the  
7           name of the policyholder of the private insurance,  
8           the name and the telephone number of each person  
9           who must be notified of an injury or death, and the  
10          time period within which such notice must be given.

11          (I) Any education or training to be provided or  
12          made available, including the nature and cost of  
13          such training, who will pay such costs, and whether  
14          the training is a condition of employment, continued  
15          employment, or future employment.

16          (J) A statement, approved by the Secretary of  
17          Labor, describing the protections of this part for  
18          workers recruited abroad.

19          (2) No foreign labor contractor or employer shall  
20          knowingly provide false or misleading information to any  
21          worker concerning any matter required to be disclosed in  
22          paragraph (1).

23          (3) The information required to be disclosed by para-  
24          graph (1) to workers shall be provided in written form.  
25          Such information shall be provided in English or, as nec-

1 essary and reasonable, in the language of the worker being  
2 recruited. The Department of Labor shall make forms  
3 available in English, Spanish, and other languages, as nec-  
4 essary, which may be used in providing workers with infor-  
5 mation required under this section.

6 (4) No fees may be charged to a worker for recruit-  
7 ment.

8 (5) No employer or foreign labor contractor shall,  
9 without justification, violate the terms of any working ar-  
10 rangement made by that contractor or employer.

11 (6) The employer shall pay the transportation costs,  
12 including subsistence costs during the period of travel, for  
13 the worker from the place of recruitment to the place of  
14 employment and from the place of employment to such  
15 worker's place of permanent residence.

16 (7)(A) It shall be unlawful for an employer or a for-  
17 eign labor contractor to fail or refuse to hire or to dis-  
18 charge any individual, or otherwise discriminate against  
19 an individual with respect to compensation, terms, condi-  
20 tions, or privileges of employment because such individ-  
21 ual's race, color, creed, sex, national origin, religion, age,  
22 or disability.

23 (B) For the purposes of determining the existence of  
24 unlawful discrimination under subelause (A)—



1 (i) in the case of a claim of discrimination  
2 based on race, color, creed, sex, national origin, or  
3 religion, the same legal standards shall apply as are  
4 applicable under title VII of the Civil Rights Act of  
5 1964 (42 U.S.C. 2000e et seq.);

6 (ii) in the case of a claim of discrimination  
7 based on unlawful discrimination based on age, the  
8 same legal standards shall apply as are applicable  
9 under the Age Discrimination in Employment Act of  
10 1967 (29 U.S.C. 621 et seq.); and

11 (iii) in the case of a claim of discrimination  
12 based on disability, the same legal standards shall  
13 apply as are applicable under title I of the Ameri-  
14 cans With Disabilities Act (42 U.S.C. 12101 et  
15 seq.).

16 (b) OTHER WORKER PROTECTIONS.—(1) Each em-  
17 ployer shall notify the Secretary of the identity of any for-  
18 eign labor contractor involved in any foreign labor con-  
19 tractor activity for or on behalf of the employer. The em-  
20 ployer shall be subject to the civil remedies of this chapter  
21 for violations committed by such foreign labor contractor  
22 to the same extent as if the employer had committed the  
23 violation. The employer shall notify the Secretary of the  
24 identity of such a foreign labor contractor whose activities  
25 do not comply with this chapter.

1           (2) The Secretary shall maintain a list of all foreign  
2 labor contractors whom the Secretary knows or believes  
3 have been involved in violations of this chapter, and make  
4 that list publicly available. The Secretary shall provide a  
5 procedure by which an employer, a foreign labor con-  
6 tractor, or someone acting on behalf of such contractor  
7 may seek to have a foreign labor contractor's name re-  
8 moved from such list by demonstrating to the Secretary's  
9 satisfaction that the foreign labor contractor has not vio-  
10 lated this chapter in the previous five years.

11           (3) No foreign labor contractor shall violate, without  
12 justification, the terms of any written agreements made  
13 with an employer pertaining to any contracting activity or  
14 worker protection under this chapter.

15           (c) DISCRIMINATION PROHIBITED AGAINST WORK-  
16 ERS SEEKING RELIEF UNDER THIS CHAPTER.—No per-  
17 son shall intimidate, threaten, restrain, coerce, blacklist,  
18 discharge, or in any manner discriminate against any  
19 worker because such worker has, with just cause, filed any  
20 complaint or instituted, or caused to be instituted, any  
21 proceeding under or related to this chapter, or has testi-  
22 fied or is about to testify in any such proceedings, or be-  
23 cause of the exercise, with just cause, by such worker on  
24 behalf of himself or others of any right or protection af-  
25 forded by this chapter.

1 **SEC. 512. ENFORCEMENT PROVISIONS.**

2 (a) **CRIMINAL SANCTIONS.**—Whoever knowingly vio-  
3 lates this chapter shall be fined under title 18, United  
4 States Code, or imprisoned not more than one year, or  
5 both. Upon conviction, after a first conviction under this  
6 section, for a second or subsequent violation of this chap-  
7 ter, the defendant shall be fined under title 18, United  
8 States Code, or imprisoned not more than three years, or  
9 both.

10 (b) **ADMINISTRATIVE SANCTIONS.**—(1)(A) Subject to  
11 subparagraph (B), the Secretary may assess a civil money  
12 penalty of not more than \$5,000 on any person who vio-  
13 lates this chapter.

14 (B) In determining the amount of any penalty to be  
15 assessed under subparagraph (A), the Secretary shall take  
16 into account (i) the previous record of the person in terms  
17 of compliance with this chapter and with comparable re-  
18 quirements of the Fair Labor Standards Act of 1938, and  
19 with regulations promulgated under such Acts, and (ii) the  
20 gravity of the violation.

21 (2) Any employer who uses the services of a foreign  
22 labor contractor who is on the list maintained by the Sec-  
23 retary pursuant to section 2(b)(2), shall, if the actions of  
24 such foreign labor contractor have contributed to a viola-  
25 tion of this chapter by the employer, be fined \$10,000 per

1 violation in addition to any other fines or penalties for  
2 which the employer may be liable for the violation.

3 (c) ACTIONS BY SECRETARY.—The Secretary may  
4 take such actions, including seeking appropriate injunctive  
5 relief and specific performance of contractual obligations,  
6 as may be necessary to assure employer compliance with  
7 terms and conditions of employment under this chapter  
8 and with this chapter.

9 (d) WAIVER OF RIGHTS.—Agreements by employees  
10 purporting to waive or to modify their rights under this  
11 chapter shall be void as contrary to public policy.

12 (e) REPRESENTATION IN COURT.—Except as pro-  
13 vided in section 518(a) of title 28, United States Code,  
14 relating to litigation before the Supreme Court, the Solic-  
15 itor of Labor may appear for and represent the Secretary  
16 in any civil litigation brought under this chapter, but all  
17 such litigation shall be subject to the direction and control  
18 of the Attorney General.

19 **SEC. 513. PROCEDURES IN ADDITION TO OTHER RIGHTS OF**  
20 **EMPLOYEES.**

21 The rights and remedies provided to workers by this  
22 chapter are in addition to, and not in lieu of, any other  
23 contractual or statutory rights and remedies of the work-  
24 ers, and are not intended to alter or affect such rights  
25 and remedies.

1 **SEC. 514. AUTHORITY TO PRESCRIBE REGULATIONS.**

2 The Secretary of Labor shall prescribe such regula-  
3 tions as may be necessary to carry out this chapter.

4 **SEC. 515. DEFINITIONS.**

5 (a) IN GENERAL.—Except as otherwise provided by  
6 this chapter, for purposes of this chapter the terms used  
7 in this chapter shall have the same meanings, respectively,  
8 as are given those terms in section 3 of the Fair Labor  
9 Standards Act of 1938.

10 (b) OTHER DEFINITIONS.—As used in this chapter:

11 (1) The term “State” means any State of the  
12 United States and includes the District of Columbia,  
13 Puerto Rico, Guam, American Samoa, the Common-  
14 wealth of the Northern Mariana Islands, and the  
15 Virgin Islands of the United States.

16 (2) The term “foreign labor contractor” means  
17 any person who for any money or other valuable  
18 consideration paid or promised to be paid, performs  
19 any foreign labor contracting activity.

20 (3) The term “foreign labor contracting activ-  
21 ity” means recruiting, soliciting, hiring, employing,  
22 or furnishing, an individual who resides outside of  
23 the United States to be employed in the United  
24 States.

25 (4) The term “Secretary” means the Secretary  
26 of Labor.

1           (5) The term “worker” means an individual  
2           who is the subject of foreign labor contracting activ-  
3           ity.

#### 4       **CHAPTER 3—TECHNICAL CORRECTION**

##### 5       **SEC. 521. TECHNICAL CORRECTION.**

6           Section 212 of the Immigration and Nationality Act  
7           is amended by redesignating the second subsection (t), as  
8           added by section 1(b)(2)(B) of the Act entitled “An Act  
9           to amend and extend the Irish Peace Process Cultural and  
10          Training Program Act of 1998” (Public Law 108–449  
11          (118 Stat. 3470)), as subsection (u).

### 12       **Subtitle B—Reforms of Certain** 13       **Classes of Employment-based Visas**

#### 14       **CHAPTER 1—H-1B VISA FRAUD AND** 15       **ABUSE PROTECTIONS**

##### 16       **Subchapter A—H-1B Employer Application** 17       **Requirements**

##### 18       **SEC. 531. MODIFICATION OF APPLICATION REQUIRE-** 19       **MENTS.**

20           (a) GENERAL APPLICATION REQUIREMENTS.—Sub-  
21          paragraph (A) of section 212(n)(1) of the Immigration  
22          and Nationality Act (8 U.S.C. 1182(n)(1)) is amended to  
23          read as follows:

24                   “(A) The employer—

1           “(i) is offering and will offer to H–1B non-  
2 immigrants, during the period of authorized  
3 employment for each H–1B nonimmigrant,  
4 wages that are determined based on the best in-  
5 formation available at the time the application  
6 is filed and which are not less than the highest  
7 of—

8                   “(I) the locally determined prevailing  
9 wage level for the occupational classifica-  
10 tion in the area of employment;

11                   “(II) the median average wage for all  
12 workers in the occupational classification  
13 in the area of employment; and

14                   “(III) the median wage for skill level  
15 2 in the occupational classification found  
16 in the most recent Occupational Employ-  
17 ment Statistics survey; and

18           “(ii) will provide working conditions for  
19 such H–1B nonimmigrant that will not ad-  
20 versely affect the working conditions of other  
21 workers similarly employed.”.

22           (b) INTERNET POSTING REQUIREMENT.—Subpara-  
23 graph (C) of such section 212(n)(1) is amended—

24                   (1) by redesignating clause (ii) as subclause

25                   (II);

1           (2) by striking “(i) has provided” and inserting  
2           the following:

3                     “(ii)(I) has provided”; and

4           (3) by inserting before clause (ii), as redesignated by paragraph (2) of this subsection, the following:  
5  
6

7                     “(i) has posted on the Internet website described in paragraph (3), for at least 30 calendar days, a detailed description of each position for which a nonimmigrant is sought that  
8  
9  
10                    includes a description of—

11                             “(I) the wages and other terms and  
12                             conditions of employment;

13                             “(II) the minimum education, training, experience, and other requirements for  
14                             the position; and  
15  
16

17                             “(III) the process for applying for the  
18                             position; and”.

19           (c) WAGE DETERMINATION INFORMATION.—Sub-  
20           paragraph (D) of such section 212(n)(1) is amended by  
21           inserting “the wage determination methodology used  
22           under subparagraph (A)(i),” after “shall contain”.

23           (d) APPLICATION OF REQUIREMENTS TO ALL EMPLOYERS.—  
24



1           (1) NONDISPLACEMENT.—Subparagraph (E) of  
2 such section 212(n)(1) is amended—

3           (A) in clause (i)—

4                 (i) by striking “90 days” both places  
5 it appears and inserting “180 days”; and

6                 (ii) by striking “(i) In the case of an  
7 application described in clause (ii), the”  
8 and inserting “The”; and

9           (B) by striking clause (ii).

10          (2) RECRUITMENT.—Subparagraph (G)(i) of  
11 such section 212(n)(1) is amended by striking “In  
12 the case of an application described in subparagraph  
13 (E)(ii), subject” and inserting “Subject”.

14          (e) REQUIREMENT FOR WAIVER.—Subparagraph (F)  
15 of such section 212(n)(1) is amended to read as follows:

16                 “(F) The employer shall not place, outsource,  
17 lease, or otherwise contract for the services or place-  
18 ment of H–1B nonimmigrants with another em-  
19 ployer unless the employer of the alien has been  
20 granted a waiver under paragraph (2)(E).”.

21 **SEC. 532. NEW APPLICATION REQUIREMENTS.**

22          Section 212(n)(1) of the Immigration and Nationality  
23 Act (8 U.S.C. 1182(n)(1)) is amended by inserting after  
24 clause (ii) of subparagraph (G) the following:

1           “(H)(i) The employer has not advertised any  
2 available position specified in the application in an  
3 advertisement that states or indicates that—

4           “(I) such position is only available to an  
5 individual who is or will be an H–1B non-  
6 immigrant; or

7           “(II) an individual who is or will be an H–  
8 1B nonimmigrant shall receive priority or a  
9 preference in the hiring process for such posi-  
10 tion.

11           “(ii) The employer has not solely recruited indi-  
12 viduals who are or who will be H–1B nonimmigrants  
13 to fill such position.

14           “(I) If the employer employs 50 or more em-  
15 ployees in the United States, the sum of the number  
16 of such employees who are H–1B nonimmigrants  
17 plus the number of such employees who are non-  
18 immigrants described in section 101(a)(15)(L) may  
19 not exceed 50 percent of the total number of em-  
20 ployees.

21           “(J) If the employer, in such previous period as  
22 the Secretary shall specify, employed 1 or more H–  
23 1B nonimmigrants, the employer shall submit to the  
24 Secretary the Internal Revenue Service Form W–2  
25 Wage and Tax Statement filed by the employer with

1       respect to the H-1B nonimmigrants for such pe-  
2       riod.”.

3       **SEC. 533. APPLICATION REVIEW REQUIREMENTS.**

4       (a) **TECHNICAL AMENDMENT.**—Section 212(n)(1) of  
5       the Immigration and Nationality Act (8 U.S.C.  
6       1182(n)(1)), as amended by section 102, is further  
7       amended in the undesignated paragraph at the end, by  
8       striking “The employer” and inserting the following:

9               “(K) The employer.”.

10       (b) **APPLICATION REVIEW REQUIREMENTS.**—Sub-  
11       paragraph (K) of such section 212(n)(1), as designated  
12       by subsection (a), is amended—

13               (1) by inserting “and through the Department  
14       of Labor’s website, without charge.” after “D.C.”;

15               (2) by striking “only for completeness” and in-  
16       serting “for completeness and clear indicators of  
17       fraud or misrepresentation of material fact,”;

18               (3) by striking “or obviously inaccurate” and  
19       inserting “, presents clear indicators of fraud or  
20       misrepresentation of material fact, or is obviously in-  
21       accurate”;

22               (4) by striking “within 7 days of” and inserting  
23       “not later than 14 days after”; and

24               (5) by adding at the end the following: “If the  
25       Secretary’s review of an application identifies clear

1 indicators of fraud or misrepresentation of material  
2 fact, the Secretary may conduct an investigation and  
3 hearing in accordance with paragraph (2).”.

4 **Subchapter B—Investigation and Disposition**  
5 **of Complaints Against H-1B**

6 **SEC. 541. GENERAL MODIFICATION OF PROCEDURES FOR**  
7 **INVESTIGATION AND DISPOSITION.**

8 Subparagraph (A) of section 212(n)(2) of the Immi-  
9 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is  
10 amended—

11 (1) by striking “(A) Subject” and inserting  
12 “(A)(i) Subject”;

13 (2) by striking “12 months” and inserting “24  
14 months”;

15 (3) by striking the last sentence; and

16 (4) by adding at the end the following:

17 “(ii)(I) Upon the receipt of such a com-  
18 plaint, the Secretary may initiate an investiga-  
19 tion to determine if such a failure or misrepre-  
20 sentation has occurred.

21 “(II) The Secretary may conduct surveys  
22 of the degree to which employers comply with  
23 the requirements of this subsection and may  
24 conduct annual compliance audits of employers  
25 that employ H-1B nonimmigrants.

1 “(III) The Secretary shall—

2 “(aa) conduct annual compliance au-  
3 dits of not less than 1 percent of the em-  
4 ployers that employ H–1B nonimmigrants  
5 during the applicable calendar year;

6 “(bb) conduct annual compliance au-  
7 dits of each employer with more than 100  
8 employees who work in the United States  
9 if more than 15 percent of such employees  
10 are H–1B nonimmigrants; and

11 “(cc) make available to the public an  
12 executive summary or report describing the  
13 general findings of the audits carried out  
14 pursuant to this subclause.”.

15 **SEC. 542. INVESTIGATION, WORKING CONDITIONS, AND**  
16 **PENALTIES.**

17 Subparagraph (C) of section 212(n)(2) of the Immi-  
18 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is  
19 amended—

20 (1) in clause (i)—

21 (A) in the matter preceding subclause

22 (I)—

23 (i) by striking “a condition of para-  
24 graph (1)(B), (1)(E), or (1)(F)” and in-  
25 serting “a condition under subparagraph

- 1 (A), (B), (C)(i), (E), (F), (G)(i)(I), (H),  
2 (I), or (J) of paragraph (1)”; and  
3 (ii) by striking “(1)(C)” and inserting  
4 “(1)(C)(ii)”; and  
5 (B) in subclause (I)—  
6 (i) by striking “\$1,000” and inserting  
7 “\$2,000”; and  
8 (ii) by striking “and” at the end;  
9 (C) in subclause (II), by striking the pe-  
10 riod at the end and inserting a semicolon and  
11 “and”;  
12 (D) by adding at the end the following:  
13 “(III) an employer that violates such subpara-  
14 graph (A) shall be liable to the employees harmed by  
15 such violations for lost wages and benefits.”; and  
16 (2) in clause (ii)—  
17 (A) in subclause (I)—  
18 (i) by striking “may” and inserting  
19 “shall”; and  
20 (ii) by striking “\$5,000” and insert-  
21 ing “\$10,000”; and  
22 (B) in subclause (II), by striking the pe-  
23 riod at the end and inserting a semicolon and  
24 “and”;  
25 (C) by adding at the end the following:

1           “(III) an employer that violates such subpara-  
2           graph (A) shall be liable to the employees harmed by  
3           such violations for lost wages and benefits.”; and

4           (3) in clause (iii)—

5           (A) in the matter preceding subclause (I),  
6           by striking “90 days” both places it appears  
7           and inserting “180 days”;

8           (B) in subclause (I)—

9           (i) by striking “may” and inserting  
10           “shall”; and

11           (ii) by striking “and” at the end;

12           (C) in subclause (II), by striking the pe-  
13           riod at the end and inserting a semicolon and  
14           “and”; and

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

16           “(III) an employer that violates subparagraph  
17           (A) of such paragraph shall be liable to the employ-  
18           ees harmed by such violations for lost wages and  
19           benefits.”;

20           (4) in clause (iv)—

21           (A) by inserting “to take, fail to take, or  
22           threaten to take or fail to take, a personnel ac-  
23           tion, or” before “to intimidate”;

24           (B) by inserting “(I)” after “(iv)”;

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

1           “(II) An employer that violates this clause shall  
2           be liable to the employees harmed by such violation  
3           for lost wages and benefits.”; and

4           (5) in clause (vi)—

5           (A) by amending subclause (I) to read as  
6           follows:

7           “(I) It is a violation of this clause for an em-  
8           ployer who has filed an application under this sub-  
9           section—

10           “(aa) to require an H–1B nonimmigrant to  
11           pay a penalty for ceasing employment with the  
12           employer prior to a date agreed to by the non-  
13           immigrant and the employer (the Secretary  
14           shall determine whether a required payment is  
15           a penalty, and not liquidated damages, pursu-  
16           ant to relevant State law); and

17           “(bb) to fail to offer to an H–1B non-  
18           immigrant, during the nonimmigrant’s period of  
19           authorized employment, on the same basis, and  
20           in accordance with the same criteria, as the em-  
21           ployer offers to United States workers, benefits  
22           and eligibility for benefits, including—

23           “(AA) the opportunity to participate  
24           in health, life, disability, and other insur-  
25           ance plans;



1 “(BB) the opportunity to participate  
2 in retirement and savings plans; and

3 “(CC) cash bonuses and noncash com-  
4 pensation, such as stock options (whether  
5 or not based on performance).”; and

6 (B) in subclause (III), by striking  
7 “\$1,000” and inserting “\$2,000”.

8 **SEC. 543. WAIVER REQUIREMENTS.**

9 (a) IN GENERAL.—Subparagraph (E) of section  
10 212(n)(2) of the Immigration and Nationality Act (8  
11 U.S.C. 1182(n)(2)) is amended to read as follows:

12 “(E)(i) The Secretary of Labor may waive the prohi-  
13 bition in paragraph (1)(F) if the Secretary determines  
14 that the employer seeking the waiver has established  
15 that—

16 “(I) the employer with whom the H–1B non-  
17 immigrant would be placed has not displaced, and  
18 does not intend to displace, a United States worker  
19 employed by the employer within the period begin-  
20 ning 180 days before and ending 180 days after the  
21 date of the placement of the nonimmigrant with the  
22 employer;

23 “(II) the H–1B nonimmigrant will not be con-  
24 trolled and supervised principally by the employer

1 with whom the H-1B nonimmigrant would be  
2 placed; and

3 “(III) the placement of the H-1B non-  
4 immigrant is not essentially an arrangement to pro-  
5 vide labor for hire for the employer with whom the  
6 H-1B nonimmigrant will be placed.

7 “(ii) The Secretary shall grant or deny a waiver  
8 under this subparagraph not later than 7 days after the  
9 Secretary receives the application for such waiver.”.

10 (b) REQUIREMENT FOR RULES.—

11 (1) RULES FOR WAIVERS.—The Secretary of  
12 Labor shall promulgate rules, after notice and a pe-  
13 riod for comment, for an employer to apply for a  
14 waiver under subparagraph (E) of section 212(n)(2)  
15 of such Act, as amended by subsection (a).

16 (2) REQUIREMENT FOR PUBLICATION.—The  
17 Secretary of Labor shall submit to Congress and  
18 publish in the Federal Register and other appro-  
19 priate media a notice of the date that rules required  
20 by paragraph (1) are published.

21 **SEC. 544. INITIATION OF INVESTIGATIONS.**

22 Subparagraph (G) of section 212(n)(2) of the Immi-  
23 gration and Nationality Act (8 U.S.C. 1182(n)(2)) is  
24 amended—

1           (1) in clause (i), by striking “if the Secretary”  
2           and all that follows and inserting “with regard to  
3           the employer’s compliance with the requirements of  
4           this subsection.”;

5           (2) in clause (ii), by striking “and whose iden-  
6           tity” and all that follows through “failure or fail-  
7           ures.” and inserting “the Secretary of Labor may  
8           conduct an investigation into the employer’s compli-  
9           ance with the requirements of this subsection.”;

10          (3) in clause (iii), by striking the last sentence;

11          (4) by striking clauses (iv) and (v);

12          (5) by redesignating clauses (vi), (vii), and (viii)  
13          as clauses (iv), (v), and (vi), respectively;

14          (6) in clause (iv), as so redesignated, by strik-  
15          ing “meet a condition described in clause (ii), unless  
16          the Secretary of Labor receives the information not  
17          later than 12 months” and inserting “comply with  
18          the requirements under this subsection, unless the  
19          Secretary of Labor receives the information not later  
20          than 24 months”;

21          (7) by amending clause (v), as so redesignated,  
22          to read as follows:

23                 “(v) The Secretary of Labor shall provide no-  
24                 tice to an employer of the intent to conduct an in-  
25                 vestigation. The notice shall be provided in such a

1 manner, and shall contain sufficient detail, to permit  
2 the employer to respond to the allegations before an  
3 investigation is commenced. The Secretary is not re-  
4 quired to comply with this clause if the Secretary de-  
5 termines that such compliance would interfere with  
6 an effort by the Secretary to investigate or secure  
7 compliance by the employer with the requirements of  
8 this subsection. A determination by the Secretary  
9 under this clause shall not be subject to judicial re-  
10 view.”;

11 (8) in clause (vi), as so redesignated, by strik-  
12 ing “An investigation” and all that follows through  
13 “the determination.” and inserting “If the Secretary  
14 of Labor, after an investigation under clause (i) or  
15 (ii), determines that a reasonable basis exists to  
16 make a finding that the employer has failed to com-  
17 ply with the requirements under this subsection, the  
18 Secretary shall provide interested parties with notice  
19 of such determination and an opportunity for a  
20 hearing in accordance with section 556 of title 5,  
21 United States Code, not later than 120 days after  
22 the date of such determination.”; and

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

24 “(vii) If the Secretary of Labor, after a hear-  
25 ing, finds a reasonable basis to believe that the em-

1        employer has violated the requirements under this sub-  
2        section, the Secretary shall impose a penalty under  
3        subparagraph (C).”.

4        **SEC. 545. INFORMATION SHARING.**

5        Subparagraph (H) of section 212(n)(2) of the Immi-  
6        gration and Nationality Act (8 U.S.C. 1182(n)(2)) is  
7        amended to read as follows:

8        “(H) The Director of United States Citizenship and  
9        Immigration Services shall provide the Secretary of Labor  
10       with any information contained in the materials submitted  
11       by employers of H–1B nonimmigrants as part of the adju-  
12       dication process that indicates that the employer is not  
13       complying with visa program requirements for H–1B non-  
14       immigrants. The Secretary may initiate and conduct an  
15       investigation and hearing under this paragraph after re-  
16       ceiving information of noncompliance under this subpara-  
17       graph.”.

18       **SEC. 546. CONFORMING AMENDMENT.**

19       Subparagraph (F) of section 212(n)(2) of the Immi-  
20       gration and Nationality Act (8 U.S.C. 1182) is amended  
21       by striking “The preceding sentence shall apply to an em-  
22       ployer regardless of whether or not the employer is an H–  
23       1B-dependent employer.”.

1       **Subchapter C—Other H-1B Provisions**

2       **SEC. 551. POSTING AVAILABLE H-1B POSITIONS THROUGH**  
3                                   **THE DEPARTMENT OF LABOR.**

4           (a) DEPARTMENT OF LABOR WEBSITE.—Paragraph  
5 (3) of section 212(n) of the Immigration and Nationality  
6 Act (8 U.S.C. 1182(n)) is amended to read as follows:

7                   “(3)(A) Not later than 90 days after the date  
8                   of the enactment of the H-1B and L-1 Visa Reform  
9                   Act of 2009, the Secretary of Labor shall establish  
10                  a searchable Internet website for posting positions  
11                  as required by paragraph (1)(C). Such website shall  
12                  be available to the public without charge.

13                   “(B) The Secretary may work with private com-  
14                   panies or nonprofit organizations to develop and op-  
15                   erate the Internet website described in subparagraph  
16                   (A).

17                   “(C) The Secretary may promulgate rules, after  
18                   notice and a period for comment, to carry out the  
19                   requirements of this paragraph.”.

20           (b) REQUIREMENT FOR PUBLICATION.—The Sec-  
21           retary of Labor shall submit to Congress and publish in  
22           the Federal Register and other appropriate media a notice  
23           of the date that the Internet website required by para-  
24           graph (3) of section 212(n) of such Act, as amended by  
25           subsection (a), will be operational.

1 (c) APPLICATION.—The amendments made by sub-  
2 section (a) shall apply to an application filed on or after  
3 the date that is 30 days after the date described in sub-  
4 section (b).

5 **SEC. 552. H-1B GOVERNMENT AUTHORITY AND REQUIRE-**  
6 **MENTS.**

7 (a) IMMIGRATION DOCUMENTS.—Section 204 of the  
8 Immigration and Nationality Act (8 U.S.C. 1154) is  
9 amended by adding at the end the following:

10 “(1) EMPLOYER TO PROVIDE IMMIGRATION PAPER-  
11 WORK EXCHANGED WITH FEDERAL AGENCIES.—Not  
12 later than 21 business days after receiving a written re-  
13 quest from a former, current, or future employee or bene-  
14 ficiary, an employer shall provide such employee or bene-  
15 ficiary with the original (or a certified copy of the original)  
16 of all petitions, notices, and other written communication  
17 exchanged between the employer and the Department of  
18 Labor, the Department of Homeland Security, or any  
19 other Federal agency or department that is related to an  
20 immigrant or nonimmigrant petition filed by the employer  
21 for such employee or beneficiary.”.

22 (b) REPORT ON JOB CLASSIFICATION AND WAGE  
23 DETERMINATIONS.—Not later than 1 year after the date  
24 of the enactment of this Act, the Comptroller General of  
25 the United States shall prepare a report analyzing the ac-

1 curacy and effectiveness of the Secretary of Labor's cur-  
2 rent job classification and wage determination system. The  
3 report shall—

4 (1) specifically address whether the systems in  
5 place accurately reflect the complexity of current job  
6 types as well as geographic wage differences; and

7 (2) make recommendations concerning nec-  
8 essary updates and modifications.

9 **SEC. 553. ADDITIONAL DEPARTMENT OF LABOR EMPLOY-**  
10 **EES.**

11 (a) IN GENERAL.—The Secretary of Labor is author-  
12 ized to hire 200 additional employees to administer, over-  
13 see, investigate, and enforce programs involving non-  
14 immigrant employees described in section  
15 101(a)(15)(H)(i)(B).

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

19 **CHAPTER 2—L-1 NONIMMIGRANTS**

20 **SEC. 561. PROHIBITION ON OUTPLACEMENT OF L-1 NON-**  
21 **IMMIGRANTS.**

22 (a) IN GENERAL.—Subparagraph (F) of section  
23 214(c)(2) of the Immigration and Nationality Act (8  
24 U.S.C. 1184(c)(2)) is amended to read as follows:



1           “(F)(i) Unless an employer receives a  
2 waiver under clause (ii), an employer may not  
3 employ an alien, for a cumulative period of  
4 more than 1 year, who—

5           “(I) will serve in a capacity involving  
6 specialized knowledge with respect to an  
7 employer for purposes of section  
8 101(a)(15)(L); and

9           “(II) will be stationed primarily at the  
10 worksite of an employer other than the pe-  
11 titioning employer or its affiliate, sub-  
12 sidiary, or parent, including pursuant to  
13 an outsourcing, leasing, or other con-  
14 tracting agreement.

15           “(ii) The Secretary of Homeland Security  
16 may grant a waiver of the requirements of  
17 clause (i) for an employer if the Secretary de-  
18 termines that the employer has established  
19 that—

20           “(I) the employer with whom the alien  
21 referred to in clause (i) would be placed  
22 has not displaced and does not intend to  
23 displace a United States worker employed  
24 by the employer within the period begin-

1           ning 180 days after the date of the place-  
2           ment of such alien with the employer;

3           “(II) such alien will not be controlled  
4           and supervised principally by the employer  
5           with whom the nonimmigrant would be  
6           placed; and

7           “(III) the placement of the non-  
8           immigrant is not essentially an arrange-  
9           ment to provide labor for hire for an unaf-  
10          filiated employer with whom the non-  
11          immigrant will be placed, rather than a  
12          placement in connection with the provision  
13          or a product or service for which special-  
14          ized knowledge specific to the petitioning  
15          employer is necessary.

16          “(iii) The Secretary shall grant or deny a  
17          waiver under clause (ii) not later than 7 days  
18          after the date that the Secretary receives the  
19          application for the waiver.”.

20          (b) REGULATIONS.—The Secretary of Homeland Se-  
21          curity shall promulgate rules, after notice and a period  
22          for comment, for an employer to apply for a waiver under  
23          subparagraph (F)(ii) of section 214(c)(2), as added by  
24          subsection (a).

1 **SEC. 562. L-1 EMPLOYER PETITION REQUIREMENTS FOR**  
2 **EMPLOYMENT AT NEW OFFICES.**

3 Section 214(c)(2) of the Immigration and Nationality  
4 Act (8 U.S.C. 1184(c)(2)) is amended by adding at the  
5 end the following:

6 “(G)(i) If the beneficiary of a petition  
7 under this paragraph is coming to the United  
8 States to open, or be employed in, a new office,  
9 the petition may be approved for up to 12  
10 months only if—

11 “(I) the alien has not been the bene-  
12 ficiary of 2 or more petitions under this  
13 subparagraph during the immediately pre-  
14 ceding 2 years; and

15 “(II) the employer operating the new  
16 office has—

17 “(aa) an adequate business plan;

18 “(bb) sufficient physical premises  
19 to carry out the proposed business ac-  
20 tivities; and

21 “(cc) the financial ability to com-  
22 mence doing business immediately  
23 upon the approval of the petition.

24 “(ii) An extension of the approval period  
25 under clause (i) may not be granted until the  
26 importing employer submits an application to

1 the Secretary of Homeland Security that con-  
2 tains—

3 “(I) evidence that the importing em-  
4 ployer meets the requirements of this sub-  
5 section;

6 “(II) evidence that the beneficiary of  
7 the petition is eligible for nonimmigrant  
8 status under section 101(a)(15)(L);

9 “(III) a statement summarizing the  
10 original petition;

11 “(IV) evidence that the importing em-  
12 ployer has fully complied with the business  
13 plan submitted under clause (i)(I);

14 “(V) evidence of the truthfulness of  
15 any representations made in connection  
16 with the filing of the original petition;

17 “(VI) evidence that the importing em-  
18 ployer, for the entire period beginning on  
19 the date on which the petition was ap-  
20 proved under clause (i), has been doing  
21 business at the new office through regular,  
22 systematic, and continuous provision of  
23 goods and 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 granted 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;

11 “(X) evidence of the financial status  
12 of the new office; and

13 “(XI) any other evidence or data pre-  
14 scribed by the Secretary.

15 “(iii) A NEW OFFICE EMPLOYING THE  
16 BENEFICIARY OF AN L.—1 petition approved  
17 under this paragraph shall do business only  
18 through regular, systematic, and continuous  
19 provision of goods and services for the entire  
20 period for which the petition is sought.

21 “(iv) Notwithstanding clause (ii), and sub-  
22 ject to the maximum period of authorized ad-  
23 mission set forth in subparagraph (D), the Sec-  
24 retary of Homeland Security, in the Secretary’s  
25 discretion, may approve a subsequently filed pe-

1           tition on behalf of the beneficiary to continue  
2           employment at the office described in this sub-  
3           paragraph for a period beyond the initially  
4           granted 12-month period if the importing em-  
5           ployer has been doing business at the new office  
6           through regular, systematic, and continuous  
7           provision of goods and services for the 6  
8           months immediately preceding the date of ex-  
9           tension petition filing and demonstrates that  
10          the failure to satisfy any of the requirements  
11          described in those subclauses was directly  
12          caused by extraordinary circumstances, as de-  
13          termined by the Secretary in the Secretary's  
14          discretion.”.

15 **SEC. 563. COOPERATION WITH SECRETARY OF STATE.**

16          Section 214(c)(2) of the Immigration and Nationality  
17          Act (8 U.S.C. 1184(c)(2)), as amended by section 202,  
18          is further amended by adding at the end the following:

19                 “(H) For purposes of approving petitions  
20                 under this paragraph, the Secretary of Home-  
21                 land Security shall work cooperatively with the  
22                 Secretary of State to verify the existence or  
23                 continued existence of a company or office in  
24                 the United States or in a foreign country.”.

1 **SEC. 564. INVESTIGATION AND DISPOSITION OF COM-**  
2 **PLAINTS AGAINST L-1 EMPLOYERS.**

3 Section 214(c)(2) of the Immigration and Nationality  
4 Act (8 U.S.C. 1184(c)(2)), as amended by sections 202  
5 and 203, is further amended by adding at the end the  
6 following:

7 “(I)(i) The Secretary of Homeland Secu-  
8 rity may initiate an investigation of any em-  
9 ployer that employs nonimmigrants described in  
10 section 101(a)(15)(L) with regard to the em-  
11 ployer’s compliance with the requirements of  
12 this subsection.

13 “(ii) If the Secretary receives specific cred-  
14 ible information from a source who is likely to  
15 have knowledge of an employer’s practices, em-  
16 ployment conditions, or compliance with the re-  
17 quirements under this subsection, the Secretary  
18 may conduct an investigation into the employ-  
19 er’s compliance with the requirements of this  
20 subsection. The Secretary may withhold the  
21 identity of the source from the employer, and  
22 the source’s identity shall not be subject to dis-  
23 closure under section 552 of title 5, United  
24 States Code.

25 “(iii) The Secretary shall establish a proce-  
26 dure for any person desiring to provide to the

1 Secretary information described in clause (ii)  
2 that may be used, in whole or in part, as the  
3 basis for the commencement of an investigation  
4 described in such clause, to provide the infor-  
5 mation in writing on a form developed and pro-  
6 vided by the Secretary and completed by or on  
7 behalf of the person.

8 “(iv) No investigation described in clause  
9 (ii) (or hearing described in clause (vi) based on  
10 such investigation) may be conducted with re-  
11 spect to information about a failure to comply  
12 with the requirements under this subsection,  
13 unless the Secretary receives the information  
14 not later than 24 months after the date of the  
15 alleged failure.

16 “(v) Before commencing an investigation  
17 of an employer under clause (i) or (ii), the Sec-  
18 retary shall provide notice to the employer of  
19 the intent to conduct such investigation. The  
20 notice shall be provided in such a manner, and  
21 shall contain sufficient detail, to permit the em-  
22 ployer to respond to the allegations before an  
23 investigation is commenced. The Secretary is  
24 not required to comply with this clause if the  
25 Secretary determines that to do so would inter-



1           fere with an effort by the Secretary to inves-  
2           tigate or secure compliance by the employer  
3           with the requirements of this subsection. There  
4           shall be no judicial review of a determination by  
5           the Secretary under this clause.

6           “(vi) If the Secretary, after an investiga-  
7           tion under clause (i) or (ii), determines that a  
8           reasonable basis exists to make a finding that  
9           the employer has failed to comply with the re-  
10          quirements under this subsection, the Secretary  
11          shall provide the interested parties with notice  
12          of such determination and an opportunity for a  
13          hearing in accordance with section 556 of title  
14          5, United States Code, not later than 120 days  
15          after the date of such determination. If such a  
16          hearing is requested, the Secretary shall make  
17          a finding concerning the matter by not later  
18          than 120 days after the date of the hearing.

19          “(vii) If the Secretary, after a hearing,  
20          finds a reasonable basis to believe that the em-  
21          ployer has violated the requirements under this  
22          subsection, the Secretary shall impose a penalty  
23          under subparagraph (L).

1           “(viii)(I) The Secretary may conduct sur-  
2           veys of the degree to which employers comply  
3           with the requirements under this section.

4           “(II) The Secretary shall—

5           “(aa) conduct annual compliance au-  
6           dits of not less than 1 percent of the em-  
7           ployers that employ nonimmigrants de-  
8           scribed in section 101(a)(15)(L) during the  
9           applicable fiscal year;

10          “(bb) conduct annual compliance au-  
11          dits of each employer with more than 100  
12          employees who work in the United States  
13          if more than 15 percent of such employees  
14          are nonimmigrants described in  
15          101(a)(15)(L); and

16          “(cc) make available to the public an  
17          executive summary or report describing the  
18          general findings of the audits carried out  
19          pursuant to this subclause.”.

20 **SEC. 565. WAGE RATE AND WORKING CONDITIONS FOR L-**  
21 **1 NONIMMIGRANT.**

22          (a) IN GENERAL.—Section 214(c)(2) of the Immigra-  
23          tion and Nationality Act (8 U.S.C. 1184(c)(2)), as amend-  
24          ed by section 202, 203, and 204, is further amended by  
25          adding at the end the following:

1       “(J)(i) An employer that employs a nonimmigrant  
2 described in section 101(a)(15)(L) for a cumulative period  
3 of time in excess of 1 year shall—

4               “(I) offer such nonimmigrant, during the period  
5 of authorized employment, wages, based on the best  
6 information available at the time the application is  
7 filed, which are not less than the highest of—

8                       “(aa) the locally determined prevailing  
9 wage level for the occupational classification in  
10 the area of employment;

11                      “(bb) the median average wage for all  
12 workers in the occupational classification in the  
13 area of employment; and

14                      “(cc) the median wage for skill level 2 in  
15 the occupational classification found in the  
16 most recent Occupational Employment Statis-  
17 tics survey; and

18               “(II) provide working conditions for such non-  
19 immigrant that will not adversely affect the working  
20 conditions of workers similarly employed.

21       “(ii) If an employer, in such previous period specified  
22 by the Secretary of Homeland Security, employed 1 or  
23 more such nonimmigrants, the employer shall provide to  
24 the Secretary of Homeland Security the Internal Revenue  
25 Service Form W-2 Wage and Tax Statement filed by the

1 employer with respect to such nonimmigrants for such pe-  
2 riod.

3 “(iii) It is a failure to meet a condition under this  
4 subparagraph for an employer who has filed a petition to  
5 import 1 or more aliens as nonimmigrants described in  
6 section 101(a)(15)(L)—

7 “(I) to require such a nonimmigrant to pay a  
8 penalty for ceasing employment with the employer  
9 before a date mutually agreed to by the non-  
10 immigrant and the employer; or

11 “(II) to fail to offer to such a nonimmigrant,  
12 during the nonimmigrant’s period of authorized em-  
13 ployment, on the same basis, and in accordance with  
14 the same criteria, as the employer offers to United  
15 States workers, benefits and eligibility for benefits,  
16 including—

17 “(aa) the opportunity to participate in  
18 health, life, disability, and other insurance  
19 plans;

20 “(bb) the opportunity to participate in re-  
21 tirement and savings plans; and

22 “(cc) cash bonuses and noncash compensa-  
23 tion, such as stock options (whether or not  
24 based on performance).

1           “(iv) The Secretary of Homeland Security shall de-  
2 termine whether a required payment under clause (iii)(I)  
3 is a penalty (and not liquidated damages) pursuant to rel-  
4 evant State law.”.

5           (b) REGULATIONS.—The Secretary of Homeland Se-  
6 curity shall promulgate rules, after notice and a period  
7 of comment, to implement the requirements of subpara-  
8 graph (J) of section 214(c)(2) of the Immigration and Na-  
9 tionality Act (8 U.S.C. 1184(c)(2)), as added by sub-  
10 section (a). In promulgating these rules, the Secretary  
11 shall take into consideration any special circumstances re-  
12 lating to intracompany transfers.

13 **SEC. 566. PENALTIES.**

14           Section 214(c)(2) of the Immigration and Nationality  
15 Act (8 U.S.C. 1184(c)(2)), as amended by sections 202,  
16 203, 204, and 205, is further amended by adding at the  
17 end the following:

18           “(K)(i) If the Secretary of Homeland Security finds,  
19 after notice and an opportunity for a hearing, a failure  
20 by an employer to meet a condition under subparagraph  
21 (F), (G), (J), or (L) or a misrepresentation of material  
22 fact in a petition to employ 1 or more aliens as non-  
23 immigrants described in section 101(a)(15)(L)—

24                   “(I) the Secretary shall impose such adminis-  
25 trative remedies (including civil monetary penalties

1 in an amount not to exceed \$2,000 per violation) as  
2 the Secretary determines to be appropriate;

3 “(II) the Secretary may not, during a period of  
4 at least 1 year, approve a petition for that employer  
5 to employ 1 or more aliens as such nonimmigrants;  
6 and

7 “(III) in the case of a violation of subparagraph  
8 (J) or (L), the employer shall be liable to the em-  
9 ployees harmed by such violation for lost wages and  
10 benefits.

11 “(ii) If the Secretary finds, after notice and an oppor-  
12 tunity for a hearing, a willful failure by an employer to  
13 meet a condition under subparagraph (F), (G), (J), or (L)  
14 or a willful misrepresentation of material fact in a petition  
15 to employ 1 or more aliens as nonimmigrants described  
16 in section 101(a)(15)(L)—

17 “(I) the Secretary shall impose such adminis-  
18 trative remedies (including civil monetary penalties  
19 in an amount not to exceed \$10,000 per violation)  
20 as the Secretary determines to be appropriate;

21 “(II) the Secretary may not, during a period of  
22 at least 2 years, approve a petition filed for that em-  
23 ployer to employ 1 or more aliens as such non-  
24 immigrants; and

1           “(III) in the case of a violation of subparagraph  
2           (J) or (L), the employer shall be liable to the em-  
3           ployees harmed by such violation for lost wages and  
4           benefits.”.

5 **SEC. 567. PROHIBITION ON RETALIATION AGAINST L-1**  
6 **NONIMMIGRANTS.**

7           Section 214(c)(2) of the Immigration and Nationality  
8 Act (8 U.S.C. 1184(c)(2)), as amended by section 202,  
9 203, 204, 205, and 206, is further amended by adding  
10 at the end the following:

11           “(L)(i) It is a violation of this subparagraph for an  
12 employer who has filed a petition to import 1 or more  
13 aliens as nonimmigrants described in section  
14 101(a)(15)(L) to take, fail to take, or threaten to take  
15 or fail to take, a personnel action, or to intimidate, threat-  
16 en, restrain, coerce, blacklist, discharge, or discriminate  
17 in any other manner against an employee because the em-  
18 ployee—

19           “(I) has disclosed information that the em-  
20 ployee reasonably believes evidences a violation of  
21 this subsection, or any rule or regulation pertaining  
22 to this subsection; or

23           “(II) cooperates or seeks to cooperate with the  
24 requirements of this subsection, or any rule or regu-  
25 lation pertaining to this subsection.

1       “(ii) In this subparagraph, the term ‘employee’ in-  
2 cludes—

3               “(I) a current employee;

4               “(II) a former employee; and

5               “(III) an applicant for employment.”.

6 **SEC. 568. TECHNICAL AMENDMENTS.**

7       Section 214(c)(2) of the Immigration and Nationality  
8 Act (8 U.S.C. 1184(c)(2)) is amended by striking “Attor-  
9 ney General” each place it appears and inserting “Sec-  
10 retary of Homeland Security”.

11 **SEC. 569. REPORTS ON L-1 NONIMMIGRANTS.**

12       Section 214(c)(8) of the Immigration and Nationality  
13 Act (8 U.S.C. 1184(c)(8)) is amended by inserting “(L),”  
14 after “(H),”.

15 **SEC. 570. APPLICATION.**

16       The amendments made by sections 201 through 207  
17 shall apply to applications filed on or after the date of  
18 the enactment of this Act.

19 **SEC. 571. REPORT ON L-1 BLANKET PETITION PROCESS.**

20       (a) REQUIREMENT FOR REPORT.—Not later than 6  
21 months after the date of the enactment of this Act, the  
22 Inspector General of the Department of Homeland Secu-  
23 rity shall submit to the appropriate committees of Con-  
24 gress a report regarding the use of blanket petitions under  
25 section 214(c)(2)(A) of the Immigration and Nationality



1 Act (8 U.S.C. 1184(c)(2)(A)). Such report shall assess the  
2 efficiency and reliability of the process for reviewing such  
3 blanket petitions, including whether the process includes  
4 adequate safeguards against fraud and abuse.

5 (b) APPROPRIATE COMMITTEES OF CONGRESS.—In  
6 this section the term “appropriate committees of Con-  
7 gress” means—

8 (1) the Committee on Homeland Security and  
9 Governmental Affairs of the Senate;

10 (2) the Committee on the Judiciary of the Sen-  
11 ate;

12 (3) the Committee on Homeland Security of the  
13 House of Representatives; and

14 (4) the Committee on the Judiciary of the  
15 House of Representatives.

16 **SEC. 572. REQUIREMENTS FOR INFORMATION FOR H-1B**  
17 **AND L-1 NONIMMIGRANTS.**

18 Section 214 of the Immigration and Nationality Act  
19 (8 U.S.C. 1184) is amended by adding at the end the fol-  
20 lowing:

21 “(s) REQUIREMENTS FOR INFORMATION FOR H-1B  
22 AND L-1 NONIMMIGRANTS.—

23 “(1) IN GENERAL.—Upon issuing a visa to an  
24 applicant for nonimmigrant status pursuant to sub-  
25 paragraph (H)(i)(b) or (L) of section 101(a)(15)

1 who is outside the United States, the issuing office  
2 shall provide the applicant with—

3 “(A) a brochure outlining the obligations  
4 of the applicant’s employer and the rights of  
5 the applicant with regard to employment under  
6 Federal law, including labor and wage protec-  
7 tions;

8 “(B) the contact information for appro-  
9 priate Federal agencies or departments that  
10 offer additional information or assistance in  
11 clarifying such obligations and rights; and

12 “(C) a copy of the application submitted  
13 for the nonimmigrant under section 212(n) or  
14 the petition submitted for the nonimmigrant  
15 under subsection (c)(2)(A), as appropriate.

16 “(2) Upon the issuance of a visa to an appli-  
17 cant referred to in paragraph (1) who is inside the  
18 United States, the issuing officer of the Department  
19 of Homeland Security shall provide the applicant  
20 with the material described in clauses (i), (ii), and  
21 (iii) of subparagraph (A).”

1           **CHAPTER 3—PROTECTION OF H-2B**  
2                           **NONIMMIGRANTS**

3 **SEC. 581. ENFORCEMENT OF FEDERAL LABOR LAWS RE-**  
4                           **LATING TO H-2B NONAGRICULTURAL GUEST**  
5                           **WORKERS.**

6           (a) IN GENERAL.—Section 214(c)(14) of the Immi-  
7 gration and Nationality Act (8 U.S.C. 1184(c)(14)) is  
8 amended—

9           (1) in subparagraph (A), by striking “of Home-  
10 land Security” each place it appears and inserting  
11 “of Labor”;

12           (2) by striking subparagraph (B);

13           (3) by redesignating subparagraphs (C) and  
14 (D) as subparagraphs (B) and (C), respectively; and

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

16           “(D) The Secretary of Labor is authorized  
17 to take such actions, including imposing appro-  
18 priate penalties and seeking appropriate injunc-  
19 tive relief and specific performance of contrac-  
20 tual obligations, as may be necessary to assure  
21 employer compliance with the terms and condi-  
22 tions required under this Act for employing  
23 nonimmigrant workers described in section  
24 101(a)(15)(H)(ii)(b), and as required under the  
25 Increasing American Wages and Benefits Act of

1           2007. The authority of the Secretary of Labor  
2           under this subparagraph shall not preempt any  
3           other rights which affected persons may have  
4           under Federal or State law.

5           “(E) Any aggrieved person whose wages or  
6           working conditions have been directly and ad-  
7           versely affected by an employer in violation of  
8           applicable laws and regulations governing the  
9           employment of nonimmigrant workers described  
10          in section 101(a)(15)(H)(ii)(b), or by a viola-  
11          tion of the terms and conditions of employment,  
12          may bring a civil action against such employer  
13          in the appropriate district court of the United  
14          States. Such cause of action shall not be subject  
15          to exhaustion of administrative remedies and  
16          shall be in addition to any other causes of ac-  
17          tion and remedies that may exist.

18          “(F) Notwithstanding any other provision  
19          of law, the Legal Services Corporation may pro-  
20          vide legal services on behalf of nonimmigrant  
21          workers           described           in           section  
22          101(a)(15)(H)(ii)(b) regarding the terms and  
23          conditions of employment, transportation, and  
24          housing and other provisions of law applicable  
25          to the employment of such nonimmigrants.”.

1 (b) REPORT.—Section 214(g)(10) of the Immigration  
2 and Nationality Act (8 U.S.C. 1184(g)(10)) is amended—

3 (1) by inserting “(A)” after “(10)”; and

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

5 “(B) Each employer that hires a non-  
6 immigrant worker described in section  
7 101(a)(15)(H)(ii)(b) shall—

8 “(i) notify the Secretary of Labor not  
9 later than 30 days after the conclusion of  
10 each such nonimmigrant’s term of employ-  
11 ment; and

12 “(ii) submit to the Secretary of Labor  
13 employment payroll records and similar  
14 documentation showing that the employer  
15 paid the required prevailing wage and  
16 transportation, and other expenses re-  
17 quired under this section and section  
18 212.”.

19 **SEC. 582. RECRUITMENT OF UNITED STATES WORKERS.**

20 Section 212 of the Immigration and Nationality Act  
21 (8 U.S.C. 1182) is amended—

22 (1) in subsection (p)(3), by striking “(a)(5)(A),  
23 (n)(1)(A)(i)(II),” and inserting “(n)(1)(A)(i)(II)”;

1           (2) by redesignating subsection (t) (as added by  
2           section 1(b)(2)(B) of Public Law 108-449) as sub-  
3           section (u); and

4           (3) by adding at the end the following:

5           “(v)(1) Except as provided under paragraph (5), an  
6           employer that seeks to employ an alien described in section  
7           101(a)(15)(H)(ii)(b) (referred to in this subsection as an  
8           ‘H-2B nonimmigrant’) shall take the following steps to re-  
9           cruit United States workers for the position for which the  
10          alien is sought not later than 14 days before filing an ap-  
11          plication under paragraph (3):

12           “(A) The employer shall submit a copy of the  
13          job offer, including a description of the wages and  
14          other terms and conditions of employment, to the  
15          State Workforce Agency that serves the area of em-  
16          ployment in the State in which the employer is lo-  
17          cated (referred to in this subsection as the ‘SWA’).  
18          The SWA shall provide the employer with an ac-  
19          knowledgment of receipt of such documentation in  
20          accordance with this paragraph.

21           “(B) The employer shall authorize the SWA to  
22          post the job opportunity on the Internet through the  
23          web site for ‘America’s Job Bank’, with local job  
24          banks, and with unemployment agencies and other

1 labor referral and recruitment sources pertinent to  
2 such job opportunity.

3 “(C) The employer shall authorize the SWA to  
4 provide notification of the job opportunity, and the  
5 SWA shall designate that these are job opportunities  
6 for which H-2B visas have been requested, to—

7 “(i) the central office of the State Federa-  
8 tion of Labor in the State in which the job is  
9 located; and

10 “(ii) the office of the local union which  
11 represents the employees in the same or sub-  
12 stantially equivalent job classification, if appli-  
13 cable.

14 “(D) The employer shall post the availability of  
15 the job opportunity for which the employer is seek-  
16 ing a worker in conspicuous locations at the place of  
17 employment for all employees to see.

18 “(E) The employer shall advertise the avail-  
19 ability of the job opportunity for which the employer  
20 is seeking a worker in a publication with the highest  
21 circulation in the labor market that is likely to be  
22 patronized by a potential worker for at least 5 con-  
23 secutive days.

24 “(F) Based on recommendations by the local  
25 job service, the employer shall advertise the avail-

1 ability of the job opportunity in professional, trade,  
2 or local minority and ethnic publications that are  
3 likely to be patronized by a potential worker.

4 “(2) An employer that seeks to employ an H-2B non-  
5 immigrant shall—

6 “(A) first offer the job to any eligible United  
7 States worker who—

8 “(i) applies;

9 “(ii) is qualified for the job; and

10 “(iii) is available at the time of need; and

11 “(B) maintain, for at least 3 years after the  
12 employment relation is terminated, documentation of  
13 recruitment efforts and responses conducted and re-  
14 ceived before filing an application with the Depart-  
15 ment of Labor, including—

16 “(i) resumes;

17 “(ii) applications; and

18 “(iii) tests of United States workers who  
19 applied and were not hired for the job the em-  
20 ployer seeks to fill with a nonimmigrant worker,  
21 if applicable.

22 “(3) An employer that seeks to hire an H-2B non-  
23 immigrant shall submit an application to the Secretary of  
24 Labor that includes a certification, under penalty of per-  
25 jury, that—



1           “(A) the employer has not made a job offer to  
2 a United States worker, which imposed restrictions  
3 or obligations that will not be imposed on an H-2B  
4 nonimmigrant;

5           “(B) the employer has complied with the re-  
6 cruitment requirements under paragraph (1);

7           “(C) the employer will offer an H-2B non-  
8 immigrant not less than the same benefits and work-  
9 ing conditions provided to United States workers  
10 similarly employed in the same occupational classi-  
11 fication at the same actual place of employment in  
12 addition to paying an H-2B nonimmigrant a pre-  
13 vailing wage rate not less than the wage rate offered  
14 to United States workers;

15           “(D) there is currently no strike, lockout, or  
16 labor dispute (as defined in section 2(9) of the  
17 Labor-Management Relations Act (29 U.S.C.  
18 152(9)), at the same place of employment, which af-  
19 fects employees in the same occupational classifica-  
20 tion in which an H-2B nonimmigrant will be em-  
21 ployed;

22           “(E) the employer will comply with all applica-  
23 ble laws and regulations relating to the right of  
24 workers to join or organize a union (including rights

1 protected under section 7 of the Labor-Management  
2 Relations Act (29 U.S.C. 157));

3 “(F) the employer has—

4 “(i) provided notice of the filing of an ap-  
5 plication to the bargaining representative of em-  
6 ployees, if any, working in the same occupa-  
7 tional classification at the place of employment  
8 as an H-2B nonimmigrant who the employer in-  
9 tends to employ; or

10 “(ii) if there is no such bargaining rep-  
11 resentative, posted notice of filing such applica-  
12 tion in conspicuous locations at the place of em-  
13 ployment for all employees to see for not fewer  
14 than 14 business days; and

15 “(G) the requirements applicable to the job,  
16 which the employer intends to hire an H-2B non-  
17 immigrant to perform, represent the actual min-  
18 imum requirements applicable to that job and the  
19 employer will not hire an H-2B nonimmigrant to  
20 perform the job who has less training or experience  
21 than the employer’s other employees.

22 “(4)(A) An employer that applies to hire an H-2B  
23 nonimmigrant shall hire any qualified United States work-  
24 er who applies for the job for which such nonimmigrant  
25 was intended to be employed if such United States worker

1 applies before the date that is 30 days before the date  
2 on which the last such H-2B nonimmigrant is scheduled  
3 to begin work for such employer.

4 “(B) The Secretary of Labor, through the workforce  
5 agency of a State, as appropriate, shall provide informa-  
6 tion about applications for H-2B nonimmigrants, includ-  
7 ing information about domestic workers who apply for jobs  
8 but are not hired, to a United States worker, nonprofit  
9 organization, or union not later than 48 hours after such  
10 worker, organization, or union requests such informa-  
11 tion.”.

12 **SEC. 583. PREVAILING WAGES FOR UNITED STATES WORK-**  
13 **ERS AND H-2B WORKERS.**

14 Section 212 of the Immigration and Nationality Act  
15 (8 U.S.C. 1182), as amended by section 102, is further  
16 amended by adding at the end the following:

17 “(w)(1) No alien may be admitted or provided status  
18 as a nonimmigrant under section 101(a)(15)(H)(ii)(b) in  
19 an occupational classification unless the Secretary of  
20 Labor certifies that the employer—

21 “(A) is offering and will offer during the period  
22 of authorized employment to aliens admitted or pro-  
23 vided such status the wage rate set forth in the col-  
24 lective bargaining agreement, if the job opportunity  
25 is covered by a collective bargaining agreement;

1           “(B) if the job opportunity is not covered by a  
2 collective bargaining agreement, the wage the em-  
3 ployer is offering and will offer, to any alien or  
4 United States worker employed by or offered em-  
5 ployment by the employer, during the period of au-  
6 thorized employment for aliens admitted or provided  
7 such status, wages that are not less than the higher  
8 of—

9           “(i) the wage determination, if any, issued  
10 pursuant to subchapter IV of chapter 31 of title  
11 40, United States Code (commonly known as  
12 the ‘Davis-Bacon Act’);

13           “(ii) the wage determination, if any, issued  
14 pursuant to the Service Contract Act of 1965  
15 (41 U.S.C. 351 et seq.);

16           “(iii) the median rate of the highest 66  
17 percent of the wage data applicable to such oc-  
18 cupational classification under the most recently  
19 published Occupational Employment Statistics  
20 Survey, compiled by the Bureau of Labor Sta-  
21 tistics; or

22           “(iv) a wage that is not less than 150 per-  
23 cent of the Federal minimum wage in effect  
24 under the Fair Labor Standards Act (29 U.S.C.  
25 201 et seq.); and

1           “(C) will provide working conditions for such  
2           alien that will not adversely affect the working con-  
3           ditions of workers similarly employed.

4           “(2) An employer may not appeal a decision of the  
5           Secretary of Labor concerning the wages required to be  
6           paid under paragraph (1)(A) unless United States workers  
7           and their labor representatives are given the opportunity  
8           to submit contrary evidence or appeal that such required  
9           wages are too low.

10          “(3) An employer may not hire a nonimmigrant de-  
11          scribed in section 101(a)(15)(H)(ii)(b) unless—

12                 “(A) real prevailing wages in the occupational  
13                 classification in which such nonimmigrant is to be  
14                 hired are at least 3 percent higher than such wages  
15                 during the preceding year under the Occupational  
16                 Employment Statistics Survey compiled by the Bu-  
17                 reau of Labor Statistics; or

18                 “(B) the employer offers to pay the H-2B  
19                 worker or a United States worker a wage in the oc-  
20                 cupational classification in which such worker is to  
21                 be hired that is at least 3 percent higher during the  
22                 preceding year, after adjusting for inflation under  
23                 the Occupational Employment Survey.”.

1 **SEC. 584. CERTIFICATION REQUIREMENT.**

2 Section 214(c)(14) of the Immigration and Nation-  
3 ality Act, as amended by section 101, is further amended  
4 by adding at the end the following:

5 “(G) A petition by an employer seeking to hire an  
6 alien described in section 101(a)(15)(H)(ii)(b) shall not  
7 be approved until the employer has provided written cer-  
8 tification, under penalty of perjury, to the Secretary of  
9 Labor that—

10 “(i) the employer has not been required under  
11 law to provide a notice of a mass layoff pursuant to  
12 the Worker Adjustment and Retraining Notification  
13 Act (29 U.S.C. 2101 et seq.) during the 12-month  
14 period immediately preceding the date on which the  
15 alien is to be hired; and

16 “(ii) the employer does not intend to provide a  
17 notice of a mass layoff pursuant to such Act.

18 “(H) If an employer is required under law to provide  
19 a notice of a mass layoff pursuant to such Act after hiring  
20 nonimmigrants granted status under section  
21 101(a)(15)(H)(ii)(b), the status of such nonimmigrants  
22 shall expire on the date that is 60 days after the date  
23 on which such notice is provided.

24 “(I) An employer shall be exempt from the require-  
25 ments under subparagraphs (G) and (H) if the employer  
26 provides written certification, under penalty of perjury,

1 that the total number of the employer’s employees in the  
2 United States will not be reduced as a result of a mass  
3 layoff.”.

4 **SEC. 585. PROTECTIONS FOR WORKERS.**

5 Section 214(c)(14) of the Immigration and Nation-  
6 ality Act, as amended by section 104, is further amended  
7 by adding at the end the following:

8 “(J) Employers who hire nonimmigrants  
9 described in section 101(a)(15)(H)(ii)(b) shall  
10 reimburse the nonimmigrants for the reasonable  
11 transportation costs incurred by such non-  
12 immigrants and United States workers to ini-  
13 tially reach the job site and, once the period of  
14 employment for the job opportunity is com-  
15 pleted, to return to their countries of origin or  
16 to the next place of employment, if the worker  
17 has contracted with a subsequent employer who  
18 has not agreed to provide or pay for the work-  
19 er’s transportation to such subsequent employ-  
20 er’s place of employment. The amount of reim-  
21 bursement for such transportation expenses  
22 shall not exceed the lesser of—

23 “(i) the actual cost to the worker or  
24 alien of the transportation and subsistence  
25 involved; or

1                   “(ii) the most economical and reason-  
2                   able common carrier transportation  
3                   charges and subsistence costs for the dis-  
4                   tance involved.

5                   “(K)(i) Employers who hire non-  
6                   immigrants described in section  
7                   101(a)(15)(H)(ii)(b) shall guarantee to offer  
8                   the worker employment for at least 75 percent  
9                   of the workdays of the total periods during  
10                  which the work contract and all extensions of  
11                  such contract are in effect, beginning with the  
12                  first workday after the arrival of the worker at  
13                  the place of employment and ending on the ex-  
14                  piration date specified in the work contract or  
15                  in its extensions, if any.

16                  “(ii) If the employer affords a worker dur-  
17                  ing the total work contract period less employ-  
18                  ment than that required under this subpara-  
19                  graph, the employer shall pay the worker the  
20                  amount which the worker would have earned  
21                  had the worker worked for the guaranteed num-  
22                  ber of days.

23                  “(iii) In this subparagraph, the term  
24                  ‘workday’—



1           “(I) means a day in which the worker  
2           is offered the number of hours stated in  
3           the job order; and

4           “(II) excludes the worker’s Sabbath  
5           and Federal holidays.

6           “(iv) A work guarantee does not meet the  
7           requirements under this subparagraph unless  
8           the number of hours of work offered by the em-  
9           ployer is equal to not less than the product of—

10           “(I) 75 percent of the workdays; mul-  
11           tiplied by

12           “(II) the average number of hours per  
13           day stated in the job order.

14           “(v) A worker may be offered more than  
15           the specified hours of work on a single workday.

16           “(vi) The employer may not require, for  
17           purposes of meeting the work guarantee, that  
18           the worker work longer than the number of  
19           hours specified in the job order on a workday,  
20           the worker’s Sabbath, or a Federal holiday.

21           “(L) If the job opportunity is not covered  
22           by the State workers’ compensation law, the  
23           employer will provide, at no cost to the worker,  
24           insurance covering injury and disease arising  
25           out of, and in the course of, the worker’s em-

1           employment which will provide benefits at least  
2           equal to those provided under the State’s work-  
3           ers’ compensation law for comparable employ-  
4           ment.”.

5 **SEC. 586. PETITIONS BY EMPLOYERS THAT HAVE SIGNED**  
6                   **LABOR AGREEMENTS WITH UNIONS THAT OP-**  
7                   **ERATE HIRING HALLS.**

8           Section 212(v) of the Immigration and Nationality  
9 Act, as added by section 102, is amended by adding at  
10 the end the following:

11                   “(5) An employer that seeks to hire an H-2B  
12           nonimmigrant may file an application with the Sec-  
13           retary of Labor in accordance with this paragraph,  
14           instead of complying with paragraphs (1) through  
15           (4), if—

16                           “(A) the employer has signed a labor  
17                           agreement with a labor organization (as defined  
18                           in section 2(5) of the Labor-Management Rela-  
19                           tions Act (29 U.S.C. 152(5)) under which the  
20                           labor organization is responsible for referring  
21                           applicants for employment to the employer  
22                           under a procedure commonly known as a ‘hiring  
23                           hall’ or ‘referral hall’; and

1           “(B) the application is accompanied by a  
2 written statement prepared by the labor organi-  
3 zation attesting that—

4           “(i) the labor organization operates a  
5 hiring hall that, pursuant to contractual  
6 agreement and actual practice, is a source  
7 of employees in the same or substantially  
8 equivalent occupational classification in  
9 which the employer seeks to employ an H-  
10 2B nonimmigrant;

11           “(ii) the labor organization does not  
12 have a sufficient number of qualified appli-  
13 cants available for referral in the same or  
14 substantially equivalent occupational classi-  
15 fication in which the employer seeks to em-  
16 ploy an H-2B nonimmigrant;

17           “(iii) the labor organization has ad-  
18 vertised, for at least 5 consecutive days,  
19 the availability of the job opportunity for  
20 which the employer is seeking to employ an  
21 H-2B nonimmigrant in the publication  
22 with the highest circulation in the labor  
23 market that is likely to be patronized by  
24 potential applicants;

1           “(iv) the employer is contractually ob-  
 2           ligated to pay all employees, in the same or  
 3           substantially equivalent occupational classi-  
 4           fication in which the employer seeks to em-  
 5           ploy an H-2B nonimmigrant, wages and  
 6           benefits set forth in a labor agreement  
 7           with the labor organization, which equals  
 8           or exceeds the prevailing wage rate the em-  
 9           ployer would be obligated to pay; and

10           “(v) the H-2B nonimmigrants who  
 11           the employer seeks to employ will be paid  
 12           not less than the same wages and benefits  
 13           and be subject to the same terms and con-  
 14           ditions of employment set forth in the em-  
 15           ployer’s labor agreement with the labor or-  
 16           ganization.”.

17 **SEC. 587. H-2B NONIMMIGRANT LABOR CERTIFICATION AP-**  
 18 **PLICATION FEES.**

19           (a) ESTABLISHMENT OF FEES.—Section  
 20 212(a)(5)(A) of the Immigration and Nationality Act (8  
 21 U.S.C. 1182(a)(5)(A)) is amended by adding the fol-  
 22 lowing:

23           “(v) ESTABLISHMENT OF H-2B EM-  
 24           PLOYMENT CERTIFICATION APPLICATION  
 25           FEE.—

1           “(I) IN GENERAL.—The Sec-  
2           retary of Labor shall impose a fee on  
3           an employer that submits an applica-  
4           tion for an employment certification  
5           for aliens granted nonimmigrant sta-  
6           tus under section 101(a)(15)(H)(ii)(b)  
7           to the Secretary of Labor under this  
8           subparagraph on or after the date  
9           that is 30 days after the date of en-  
10          actment of the Increasing American  
11          Wages and Benefits Act of 2007.

12          “(II) FEE DURING INITIAL  
13          YEAR.—During the period beginning  
14          30 days after the date of enactment of  
15          the Increasing American Wages and  
16          Benefits Act of 2007 and ending 1  
17          year after such date, the fee imposed  
18          under subclause (I) shall be \$800 for  
19          each application.

20          “(III) FEE AFTER INITIAL  
21          YEAR.—After the date that is one  
22          year after the date of enactment of  
23          the Increasing American Wages and  
24          Benefits Act of 2007, the fee imposed  
25          under subclause (I) shall be set at a

1 level the Secretary of Labor deter-  
2 mines will ensure recovery of the full  
3 costs of carrying out labor certifi-  
4 cation activities under this subpara-  
5 graph and will recover any additional  
6 costs associated with the administra-  
7 tion of the fees collected.

8 “(IV) PROHIBITION ON EM-  
9 PLOYER ACCEPTING REIMBURSEMENT  
10 OF FEE.—

11 “(aa) IN GENERAL.—An em-  
12 ployer subject to a fee under this  
13 clause shall not require or accept  
14 reimbursement, directly or indi-  
15 rectly, of or other compensation  
16 for all or part of the cost of such  
17 fee.

18 “(bb) CIVIL PENALTY.—If  
19 the Secretary of Labor deter-  
20 mines, after notice and oppor-  
21 tunity for a hearing, that a viola-  
22 tion of item (aa) has occurred,  
23 the Secretary of Labor may im-  
24 pose a civil penalty in an amount

1 not to exceed \$5,000 per viola-  
2 tion.

3 “(V) DEPOSIT OF FEES AND  
4 PENALTIES.—Fees and civil penalties  
5 collected under this clause shall be de-  
6 posited in the ‘H-2B Employment  
7 Certification Application Fee Account’  
8 established under section 286(x).”.

9 (b) ESTABLISHMENT OF ACCOUNT AND USE OF  
10 FUND.—Section 286 of the Immigration and Nationality  
11 Act (8 U.S.C. 1356) is amended by adding at the end the  
12 following:

13 “(x) H-2B EMPLOYMENT CERTIFICATION APPLICA-  
14 TION FEE ACCOUNT.—

15 “(1) ESTABLISHMENT OF ACCOUNT.—There is  
16 established in the general fund of the Treasury a  
17 separate account, which shall be known as the ‘H-  
18 2B Employment Certification Application Fee Ac-  
19 count’. Notwithstanding any other provision of this  
20 title, there shall be deposited as offsetting receipts  
21 into the account all amounts from the fees and civil  
22 penalties collected under section 212(a)(5)(A)(v).

23 “(2) USE OF FEES.—Of the amounts deposited  
24 into the H-2B Employment Certification Application  
25 Fee Account under this subsection in each fiscal

1 year, the Secretary of Labor shall use such amounts  
2 as the Secretary of Labor determines are necessary  
3 for the costs of Federal administration, including  
4 personnel, in carrying out labor certification activi-  
5 ties under section 212(a)(5)(A), and to assist the  
6 States, as appropriate, in the determination of pre-  
7 vailing wages for purposes of carrying out such sec-  
8 tion.

9 “(3) AVAILABILITY OF FUNDS.—The fees de-  
10 posited into the H-2B Employment Certification Ap-  
11 plication Fee Account under this subsection shall re-  
12 main available until expended for the activities de-  
13 scribed in paragraph (2).”.

14 (c) PROGRAM INTEGRITY.—Section 212(a)(5)(A) of  
15 the Immigration and Nationality Act (8 U.S.C.  
16 1182(a)(5)(A)), as amended by subsection (a), is further  
17 amended by adding at the end the following:

18 “(vi) PROGRAM INTEGRITY REGULA-  
19 TIONS.—The Secretary of Labor may pre-  
20 scribe such regulations as may be nec-  
21 essary to ensure the integrity of the labor  
22 certification process carried out under this  
23 subparagraph. Such regulations may in-  
24 clude standards and procedures under  
25 which employers and their representatives



1           are excluded from participation in the  
2           labor certification process under this sub-  
3           paragraph.”.

4    **CHAPTER 4—ADJUSTMENTS TO THE EB-5**  
5                           **VISA PROGRAM**

6    **SEC. 591. PERMANENT REAUTHORIZATION OF EB-5 RE-**  
7                           **REGIONAL CENTER PROGRAM; APPLICATION**  
8                           **FEE.**

9           (a) IN GENERAL.—Section 610 of the Departments  
10 of Commerce, Justice, and State, the Judiciary, and Re-  
11 lated Agencies Appropriations Act, 1993 (8 U.S.C. 1153  
12 note) is amended—

13           (1) by striking “pilot” each place it appears;

14           (2) in subsection (b), by striking “for 15  
15       years”; and

16           (3) by adding at the end the following:

17       “(e) In addition to any other fees authorized by law,  
18 the Secretary of Homeland Security shall impose a fee of  
19 \$2,500 to apply for designation as a regional center under  
20 this section. Fees collected under this subsection shall be  
21 deposited in the Treasury in accordance with section  
22 286(y) of the Immigration and Nationality Act (8 U.S.C.  
23 1356(y)).”.

24           (b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—  
25 Section 286 of the Immigration and Nationality Act (8

1 U.S.C. 1356) is amended by adding at the end the fol-  
2 lowing:

3 “(y) IMMIGRANT ENTREPRENEUR REGIONAL CEN-  
4 TER ACCOUNT.—

5 “(1) IN GENERAL.—There is established in the  
6 general fund of the Treasury a separate account,  
7 which shall be known as the ‘Immigrant Entre-  
8 preneur Regional Center Account’. Notwithstanding  
9 any other provision of law, there shall be deposited  
10 as offsetting receipts into the account all fees col-  
11 lected under section 610(b) of the Departments of  
12 Commerce, Justice, and State, the Judiciary, and  
13 Related Agencies Appropriations Act, 1993 (8  
14 U.S.C. 1153 note) and any fees collected in connec-  
15 tion with forms I-526 or I-829.

16 “(2) USE OF FEES.—Fees collected under this  
17 section may only be used by the Secretary of Home-  
18 land Security to administer and operate the employ-  
19 ment creation program described in section  
20 203(b)(5).”.

21 (c) RULEMAKING.—Not later than 120 days after the  
22 date of the enactment of this Act, the Secretary of Home-  
23 land Security shall prescribe regulations to implement the  
24 amendments made by this section.

1 (d) EFFECTIVE DATE.—The amendments made by  
2 subsections (a)(3) and (b) shall take effect on the effective  
3 date of the regulations prescribed pursuant to subsection  
4 (c). The remaining amendments made by this section shall  
5 take effect on the date of the enactment of this Act.

6 **SEC. 592. PREMIUM PROCESSING FEE FOR EB-5 IMMI-**  
7 **GRANT INVESTORS.**

8 Section 286(u) of the Immigration and Nationality  
9 Act (8 U.S.C. 1356(u)) is amended by adding at the end  
10 the following: “In the case of a petition filed under section  
11 204(a)(1)(H) for classification under section 203(b)(5), if  
12 the petitioner desires a guarantee of a decision on the peti-  
13 tion in 60 days or less, the premium fee under this sub-  
14 section shall be set at \$2,500 and shall be deposited as  
15 offsetting receipts in the Immigrant Entrepreneur Re-  
16 gional Center Account established under subsection (y).”.

17 **SEC. 593. CONCURRENT FILING OF EB-5 PETITIONS AND**  
18 **APPLICATIONS FOR ADJUSTMENT OF STA-**  
19 **TUS.**

20 Section 245 of the Immigration and Nationality Act  
21 (8 U.S.C. 1255) is amended by adding at the end the fol-  
22 lowing:

23 “(n) If, at the time a petition is filed for classification  
24 through a regional center under section 203(b)(5), ap-  
25 proval of the petition would make a visa immediately avail-

1 able to the alien beneficiary, the alien beneficiary’s adjust-  
2 ment application under this section shall be considered to  
3 be properly filed whether the application is submitted con-  
4 currently with, or subsequent to, the visa petition.”.

5 **SEC. 594. IMPROVED SET-ASIDE FOR TARGETED EMPLOY-**  
6 **MENT AREAS.**

7 Section 203(b)(5)(B) of the Immigration and Nation-  
8 ality Act (8 U.S.C. 1153(b)(5)(B)) is amended as follows:

9 (1) **TARGETED EMPLOYMENT AREA DEFINED.**—

10 Clause (ii) is amended to read as follows:

11 “(ii) **TARGETED EMPLOYMENT AREA**  
12 **DEFINED.**—In this paragraph, the term  
13 ‘targeted employment area’ means, at the  
14 time a petition for classification under this  
15 paragraph is filed, any of the following:

16 “(I) A rural area.

17 “(II) An area that has experi-  
18 enced high unemployment (of at least  
19 150 percent of the national average  
20 rate).

21 “(III) A county that has had a  
22 20 percent or more decrease in popu-  
23 lation since 1970.

24 “(IV) An area that is within the  
25 boundaries established for purposes of

1 a State or Federal economic develop-  
2 ment incentive program, including  
3 areas defined as Enterprise Zones,  
4 Renewal Communities and Empower-  
5 ment Zones.

6 “(V) An area designated by a  
7 State agency to which the Governor  
8 has delegated the authority to des-  
9 ignate targeted employment areas  
10 within the State.”.

11 (2) RURAL AREA DEFINED.—Clause (iii) is  
12 amended by striking “other than an area within a  
13 metropolitan statistical area or”.

14 (3) EFFECT OF PRIOR DETERMINATION.—Such  
15 section is amended by adding at the end the fol-  
16 lowing:

17 “(iv) EFFECT OF PRIOR DETERMINA-  
18 TION.—In a case in which a geographic  
19 area is determined under clause (ii) to be  
20 a targeted employment area, such deter-  
21 mination shall remain in effect during the  
22 2-year period beginning on the date of the  
23 determination for purposes of any alien  
24 seeking a visa reserved under this subpara-  
25 graph.”.

1 **SEC. 595. SET-ASIDE OF VISAS FOR REGIONAL CENTER**  
2 **PROGRAM.**

3 Section 610(b) of the Departments of Commerce,  
4 Justice, and State, the Judiciary, and Related Agencies  
5 Appropriations Act, 1993 (8 U.S.C. 1153 note) is amend-  
6 ed by striking “3,000” and inserting “10,000”.

7 **SEC. 596. EXTENSION.**

8 Subparagraph (A) of section 216A(d)(2) of the Immi-  
9 gration and Nationality Act (8 U.S.C. 1186b(d)(2)(A)) is  
10 amended by adding at the end the following: “A date spec-  
11 ified by the applicant (but not later than the fourth anni-  
12 versary) shall be substituted for the second anniversary  
13 in applying the preceding sentence if the applicant dem-  
14 onstrates that the applicant has attempted to follow his  
15 business model in good faith, provides an explanation for  
16 the delay in filing the petition that is based on cir-  
17 cumstances outside of the applicant’s control, and dem-  
18 onstrates that such circumstances will be able to be re-  
19 solved within the specified period.”.

20 **SEC. 597. STUDY.**

21 (a) IN GENERAL.—The Secretary of the Department  
22 of Homeland Security, in appropriate consultation with  
23 the Secretary of Commerce and other interested parties,  
24 shall conduct a study concerning the following:

25 (1) Current job creation counting methodology  
26 and initial projections under section 203(b)(5) of the

1 Immigration and Nationality Act (8 U.S.C.  
2 1153(b)(5)).

3 (2) How best to promote the employment cre-  
4 ation program described in such section overseas to  
5 potential immigrant investors.

6 (b) REPORT.—The Secretary of Homeland Security  
7 shall submit a report to the Congress not later than 1  
8 year after the date of the enactment of this Act containing  
9 the results of the study conducted under subsection (a).

10 **SEC. 598. FULL-TIME EQUIVALENTS.**

11 (a) IN GENERAL.—Section 203(b)(5)(A)(ii) of the  
12 Immigration and Nationality Act (8 U.S.C.  
13 1153(b)(5)(A)(ii)) is amended by inserting “(or full-time  
14 equivalent)” after “full-time”.

15 (b) DEFINITION.—Section 203(b)(5)(D) of such Act  
16 (8 U.S.C. 1153(b)(5)(D)) is amended to read as follows:

17 “(D) EMPLOYMENT-RELATED DEFINI-  
18 TIONS.—

19 “(i) FULL-TIME EMPLOYMENT DE-  
20 FINED.—In this paragraph, the term ‘full-  
21 time employment’ means employment in a  
22 position that requires at least 35 hours of  
23 service per week at any time, regardless of  
24 who fills the position.

1                   “(ii) FULL-TIME EQUIVALENT EM-  
2                   PLOYMENT DEFINED.—In this paragraph,  
3                   the term ‘full-time equivalent employment’  
4                   means employment representing the num-  
5                   ber of full-time employees that could have  
6                   been employed if the reported number of  
7                   hours worked by part-time employees had  
8                   been worked by full-time employees. This  
9                   shall be calculated by dividing the part-  
10                  time hours paid by the standard number of  
11                  hours for full-time employees.”.

12 **SEC. 599. ELIGIBILITY FOR ADJUSTMENT OF STATUS.**

13                  Section 245(k) of the Immigration and Nationality  
14 Act (8 U.S.C. 1255(k)) is amended, in the matter pre-  
15 ceding paragraph (1), by striking “(1), (2), or (3)” and  
16 inserting “(1), (2), (3), or (5)”.

17 **SEC. 599A. EXPANSION OF EB-5 ELIGIBILITY TO INCLUDE**

18                                   **QUALIFIED IMMIGRANTS WHO COMPLETE IN-**

19                                   **VESTMENT AGREEMENTS.**

20                  (a) CHANGES TO INVESTMENT CRITERIA.—Section  
21 203(b)(5)(A) of the Immigration and Nationality Act (8  
22 U.S.C. 1153(b)(5)(A)) is amended—

23                   (1) in the matter preceding clause (i), by strik-  
24                   ing “partnership)—” and inserting “partnership) as  
25                   follows:”



1 (2) in clause (i)—

2 (A) by striking “(i) in which” and insert-  
3 ing the following:

4 “(i) A new commercial enterprise—  
5 “(I) in which”;

6 (B) by striking “, and” at the end and in-  
7 serting a semicolon; and

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

9 “(II) with respect to which such  
10 alien has completed an investment  
11 agreement with a qualified venture  
12 capital operating company for an in-  
13 vestment in the enterprise of an  
14 amount not less than the amount  
15 specified in subparagraph (C); or

16 “(III) with respect to which such  
17 alien has completed an investment  
18 agreement with 1 or more angel inves-  
19 tors for an investment in the enter-  
20 prise of an amount not less than the  
21 amount specified in subparagraph  
22 (C).”; and

23 (3) in clause (ii)—

24 (A) by striking “(ii) which will” and insert-  
25 ing the following:

1 “(ii) In the case of an enterprise—

2 “(I) described in clause (i)(I),  
3 which will”;

4 (B) by striking the period at the end and  
5 inserting “; or”; and

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

7 “(II) described in subparagraph  
8 (II) or (III) of clause (i), which will  
9 benefit the United States economy  
10 and create full-time employment for  
11 not fewer than 5 United States citi-  
12 zens or aliens lawfully admitted for  
13 permanent residence or other immi-  
14 grants lawfully authorized to be em-  
15 ployed in the United States (other  
16 than the immigrant and the immi-  
17 grant’s spouse, sons, or daughters).”.

18 (b) CHANGES TO CAPITAL REQUIREMENTS.—Section  
19 203(b)(5)(C)(i) of such Act (8 U.S.C. 1153(b)(5)(C)(i))  
20 is amended by inserting after “\$1,000,000” the following:  
21 “in the case of an enterprise described in subparagraph  
22 (A)(i)(I), \$500,000 in the case of an enterprise described  
23 in subparagraph (A)(i)(II), and \$500,000 in the case of  
24 an enterprise described in subparagraph (A)(i)(III)”.

1 (c) DEFINITIONS.—Section 203(b)(5) of such Act (8  
2 U.S.C. 1153(b)(5)) is amended by adding at the end the  
3 following:

4 “(E) QUALIFIED VENTURE CAPITAL OPER-  
5 ATING COMPANY DEFINED.—In this paragraph,  
6 the term ‘qualified venture capital operating  
7 company’ means an entity that—

8 “(i) is registered under the Invest-  
9 ment Company Act of 1940 (15 U.S.C.  
10 80a-1 et seq.); or

11 “(ii) is an investment company, as de-  
12 fined in subsection (a)(1) of section 3 of  
13 such Act (15 U.S.C. 80a-3), that is exempt  
14 from registration under subsection (c)(1)  
15 or (c)(7) of such section, is not registered,  
16 and—

17 “(I) is organized or incorporated,  
18 and domiciled, in the United States,  
19 and the majority ownership of which  
20 is composed of United States citizens  
21 or aliens lawfully admitted to the  
22 United States for permanent resi-  
23 dence; or

24 “(II) is owned or controlled by an  
25 entity that is organized or incor-

1                   porated, and domiciled, in the United  
2                   States, and the majority ownership of  
3                   that entity is composed of United  
4                   States citizens or aliens lawfully ad-  
5                   mitted to the United States for per-  
6                   manent residence.

7                   “(F) ANGEL INVESTOR DEFINED.—In this  
8                   paragraph, the term ‘angel investor’ means—

9                   “(i) any individual who is a United  
10                  States citizen or an alien lawfully admitted  
11                  to the United States for permanent resi-  
12                  dence, or any entity wholly owned and con-  
13                  trolled by United States citizens or aliens  
14                  lawfully admitted to the United States for  
15                  permanent residence; or

16                  “(ii) any entity that has made at least  
17                  5 angel investments totaling at least  
18                  \$500,000 during the 3 years preceding the  
19                  completion of an investment agreement de-  
20                  scribed in subparagraph (A)(i)(III).

21                  “(G) ANGEL INVESTMENT.—In this para-  
22                  graph, the term ‘angel investment’ means an in-  
23                  vestment made in a commercial enterprise that,  
24                  prior to such investment, was not owned or con-  
25                  trolled by—

1 “(i) the investor;

2 “(ii) any member of the immediate  
3 family of the investor; or

4 “(iii) any entity owned or controlled  
5 by any member of the immediate family of  
6 the investor.”.

7 (d) CONFORMING AMENDMENTS TO CONDITIONAL  
8 PERMANENT STATUS PROVISIONS.—

9 (1) TERMINATION OF STATUS IF FINDING THAT  
10 QUALIFYING ENTREPRENEURSHIP IMPROPER.—Sec-  
11 tion 216A(b)(1)(B) of such Act (8 U.S.C.  
12 1186b(b)(1)(B)) is amended to read as follows:

13 “(B)(i) the alien—

14 “(I) did not invest, or was not actively  
15 in the process of investing, the requisite  
16 capital described in section  
17 203(b)(5)(A)(i)(I), or was not sustaining  
18 such actions throughout the period of the  
19 alien’s residence in the United States; or

20 “(II) did not complete an investment  
21 agreement described in subclause (II) or  
22 (III) of section 203(b)(5)(A)(i), or such  
23 agreement was not carried out or was not  
24 actively in the process of being carried out;  
25 or

1 “(ii) the commercial enterprise did not—

2 “(I) create the minimum number of  
3 jobs required to be created under section  
4 203(b)(5)(A)(ii); or

5 “(II) generate a profit and at least  
6 \$1,000,000 in revenue; or”.

7 (2) CONTENTS OF PETITION.—Section  
8 216A(d)(1) of such Act (8 U.S.C. 1186b(d)(1)) is  
9 amended—

10 (A) in the matter preceding subparagraph  
11 (A), by striking “that the alien—” and insert-  
12 ing “that—”;

13 (B) by amending subparagraph (A) to read  
14 as follows:

15 “(A)(i) the alien—

16 “(I) invested, or was actively in the  
17 process of investing, the requisite capital  
18 described in section 203(b)(5)(A)(i)(I), and  
19 sustained such actions throughout the pe-  
20 riod of the alien’s residence in the United  
21 States; or

22 “(II) completed an investment agree-  
23 ment described in subclause (II) or (III) of  
24 section 203(b)(5)(A)(i), and such agree-

1                   ment was carried out or was actively in the  
2                   process of being carried out; and  
3                   “(ii) the commercial enterprise—  
4                    “(I) created the minimum number of  
5                   jobs required to be created under section  
6                   203(b)(5)(A)(ii); or  
7                    “(II) generated a profit and at least  
8                   \$1,000,000 in revenue; and”; and  
9                   (C) in subparagraph (B), by inserting “the  
10                  alien” before “is otherwise”.

## 11                   **CHAPTER 5—EFFECTIVE DATE**

### 12                  **SEC. 599B. APPLICATION.**

13                  Except as specifically otherwise provided, the amend-  
14                  ments made by this title shall apply to applications filed  
15                  on or after the date of the enactment of this Act.

## 16                   **TITLE VI—INTEGRATION OF** 17                   **NEW AMERICANS**

### 18                  **Subtitle A—Citizenship Promotion**

#### 19                  **SEC. 601. IMMIGRATION SERVICE FEES.**

20                  (a) **IN GENERAL.**—Subsection (m) of section 286 of  
21                  the Immigration and Nationality Act (8 U.S.C. 1356(m))  
22                  is amended to read as follows:

23                  “(m) **IMMIGRATION SERVICE FEES.**—

24                    “(1) **IN GENERAL.**—Except as provided in para-  
25                  graph (2) and notwithstanding any other provision

1 of law, all adjudication fees as are designated by the  
2 Secretary of Homeland Security in regulations shall  
3 be deposited as offsetting receipts into a separate ac-  
4 count entitled ‘Immigration Examinations Fee Ac-  
5 count’ in the Treasury of the United States, whether  
6 collected directly by the Secretary or through clerks  
7 of courts.

8 “(2) VIRGIN ISLANDS AND GUAM.—All fees re-  
9 ceived by the Secretary of Homeland Security from  
10 applicants residing in the Virgin Islands of the  
11 United States, or in Guam, under this subsection  
12 shall be paid over to the treasury of the Virgin Is-  
13 lands or to the treasury of Guam, respectively.

14 “(3) FEES FOR IMMIGRATION SERVICES.—

15 “(A) IN GENERAL.—Subject to subpara-  
16 graph (B), the Secretary of Homeland Security  
17 may set fees for providing immigration services  
18 at a level that will—

19 “(i) ensure recovery of the full costs  
20 of providing such services, or a portion  
21 thereof, including the costs of similar serv-  
22 ices provided without charge to asylum ap-  
23 plicants or other immigrants; and



1           “(ii) recover the full cost of admin-  
2           istering the collection of fees under this  
3           paragraph, or a portion thereof.

4           “(B) REPORT REQUIREMENT.—The Sec-  
5           retary of Homeland Security may not increase  
6           any fee under this paragraph above the level of  
7           such fee on the day before the date of the intro-  
8           duction of the Citizenship Promotion Act of  
9           2009, until—

10           “(i) the Secretary submits to the  
11           Committee on the Judiciary of the Senate  
12           and the Committee on the Judiciary of the  
13           House of Representatives a report that—

14           “(I) identifies the direct and  
15           overhead costs associated with pro-  
16           viding immigration services, and dis-  
17           tinguishes such costs from immigra-  
18           tion enforcement and national security  
19           costs;

20           “(II) identifies the costs allocable  
21           to providing the premium processing  
22           services to business customers pre-  
23           scribed by section 286(u) of this Act;  
24           describes the extent to which the fee  
25           prescribed in that section is set at a

1 level that ensures recovery of those  
2 costs; and identifies the amount of  
3 funding that is being allocated for the  
4 infrastructure improvements in the  
5 adjudications and customer-service  
6 processes as prescribed by that sec-  
7 tion; and

8 “(III) contains information re-  
9 garding the amount the fee will be in-  
10 creased; and

11 “(ii) a period of 45 days has expired  
12 beginning on the date that the report in  
13 clause (i) is received by the committees de-  
14 scribed in such clause.

15 “(4) WAIVERS OF FEES FOR IMMIGRATION  
16 SERVICES.—

17 “(A) Except as otherwise provided in this  
18 paragraph, any of the fees for immigration  
19 services described in paragraph (3)(A) of this  
20 section may be waived by the Department of  
21 Homeland Security in any case under its juris-  
22 diction in which the alien or other party af-  
23 fected is able to substantiate that he or she is  
24 unable to pay the prescribed fee. The person  
25 seeking a fee waiver must file his or her affi-

1           davit, or unsworn declaration made pursuant to  
2           section 1746 of title 28, United States Code,  
3           asking for permission to prosecute without pay-  
4           ment of fee of the application, petition, appeal,  
5           motion, or request, and stating his or her belief  
6           that he or she is entitled to or deserving of the  
7           benefit requested and the reasons for his or her  
8           inability to pay. The officer of the Department  
9           of Homeland Security having jurisdiction to  
10          render a decision on the application, petition,  
11          appeal, motion, or request may, in his or her  
12          discretion, grant the waiver of fee. The payment  
13          of the additional sum prescribed by section  
14          245(i) of the Act when applying for adjustment  
15          of status under section 245 of the Act may not  
16          be waived. The fee for the employment-based  
17          petitions and applications prescribed by section  
18          286(u) of the Act may not be waived.

19                 “(B) The Secretary of Homeland Security  
20                 shall prescribe by regulations the criteria that  
21                 applicants must meet for the approval of the  
22                 waivers of fees in subparagraph (A), and the  
23                 documentation that applicants must submit to  
24                 substantiate that they meet such criteria. The  
25                 regulations shall include a form for the affidavit

1 or declaration described in subparagraph (A)  
2 that must be completed by applicants for the  
3 waivers of fees. An applicant shall be deemed to  
4 have substantiated that he or she is unable to  
5 pay the prescribed fee if—

6 “(i) the individual has demonstrated  
7 that within 180 days of the receipt of the  
8 application, he or she qualified for or re-  
9 ceived any public benefit funded in whole  
10 or in part by funds provided by the Fed-  
11 eral Government that the Federal agency  
12 administering the Federal funds has deter-  
13 mined to be a Federal ‘means-tested public  
14 benefit’ under the Personal Responsibility  
15 and Work Opportunity Reconciliation Act  
16 of 1996, Public Law 104–193; or

17 “(ii) the individual has demonstrated  
18 that his or her annual household income is  
19 at or below 125 percent of the poverty  
20 level, as indicated in the most recent Fed-  
21 eral poverty guidelines set by the Secretary  
22 of Health and Human Services.”.

23 (b) SENSE OF CONGRESS.—It is the sense of Con-  
24 gress that—

1           (1) the Secretary of Homeland Security should  
2 set fees under section 286(m)(3) of the Immigration  
3 and Nationality Act (8 U.S.C. 1356(m)(3)), as  
4 amended by subsection (a) of this section, at a level  
5 that ensures recovery of only the direct costs associ-  
6 ated with the services described in such section  
7 286(m)(3); and

8           (2) Congress should appropriate to the Sec-  
9 retary of Homeland Security such funds as may be  
10 necessary to cover the indirect costs associated with  
11 the services described in such section 286(m)(3).

12       (c) TECHNICAL AMENDMENT.—Section 286 of the  
13 Immigration and Nationality Act (8 U.S.C. 1356) is  
14 amended—

15           (1) in subsections (d), (e), (f), (h), (i), (j), (k),  
16 (l), (n), (o), (q), (t), and (u), by striking “Attorney  
17 General” each place it appears and inserting “Sec-  
18 retary of Homeland Security”;

19           (2) in subsection (i) of such section, by striking  
20 “Attorney General’s” and inserting “Secretary’s”;  
21 and

22           (3) in subsection (r)—

23               (A) in paragraph (2), by striking “Depart-  
24 ment of Justice” and inserting “Department of  
25 Homeland Security”; and

1 (B) in paragraphs (3) and (4), by striking  
2 “Attorney General” each place it appears and  
3 inserting “Secretary of Homeland Security”.

4 (d) FUNDING.—Fees and fines deposited in the Secu-  
5 rity and Prosperity Account under section 286(w)(3)(B)  
6 of the Immigration and Nationality Act may be used to  
7 carry out this section.

8 **SEC. 602. ADMINISTRATION OF TESTS FOR NATURALIZA-**  
9 **TION; FULFILLMENT BY ELDERLY PERSONS**  
10 **OF REQUIREMENT FOR NATURALIZATION RE-**  
11 **LATING TO KNOWLEDGE OF ENGLISH LAN-**  
12 **GUAGE.**

13 (a) IN GENERAL.—Subsection (a) of section 312 of  
14 the Immigration and Nationality Act (8 U.S.C. 1423) is  
15 amended to read as follows:

16 “(a) NATURALIZATION TEST.—

17 “(1) REQUIREMENTS.—Except as otherwise  
18 provided in this title, a person may not be natural-  
19 ized as a citizen of the United States upon the appli-  
20 cation of such person if such person cannot dem-  
21 onstrate the following:

22 “(A) An understanding of the English lan-  
23 guage, including an ability to read, write, and  
24 speak words in the ordinary usage in the  
25 English language.

1           “(B) A knowledge and understanding of—

2                   “(i) the fundamentals of the history of  
3           the United States; and

4                   “(ii) the principles and form of gov-  
5           ernment of the United States.

6           “(2) TESTING.—

7                   “(A) UNIFORMITY OF TEST ADMINISTRA-  
8           TION.—The Secretary of Homeland Security, in  
9           administering any test that the Secretary uses  
10          to determine whether an applicant for natu-  
11          ralization as a citizen of the United States has  
12          the proficiency and knowledge sufficient to meet  
13          the requirements of paragraph (1), shall admin-  
14          ister such test uniformly throughout the United  
15          States, including the application of the criteria  
16          set forth in subparagraph (B).

17                  “(B) CONSIDERATION.—In selecting and  
18          phrasing items in the administration of a test  
19          described in subparagraph (A) and in evalu-  
20          ating the performance of an applicant on such  
21          test, the Secretary shall consider the following:

22                          “(i) The age of the applicant.

23                          “(ii) The education level of the appli-  
24          cant.

1           “(iii) The amount of time the appli-  
2           cant has resided in the United States.

3           “(iv) The efforts made by the appli-  
4           cant, and the opportunities available to the  
5           applicant, to acquire the knowledge and  
6           proficiencies required by paragraph (1).

7           “(v) Such other factors as the Sec-  
8           retary considers appropriate.

9           “(C) ENGLISH LANGUAGE TESTING.—The  
10          requirement in paragraph (1)(A) shall be satis-  
11          factorily met if an applicant can—

12                 “(i) speak words in ordinary usage in  
13                 the English language; and

14                 “(ii) read or write simple words and  
15                 phrases in ordinary usage in the English  
16                 language.

17           “(D) PROHIBITION ON EXTRAORDINARY  
18          AND UNREASONABLE CONDITIONS.—The Sec-  
19          retary may not impose any extraordinary or un-  
20          reasonable condition on any applicant seeking  
21          to meet the requirements of paragraph (1).”.

22          (b) PROMOTING CITIZENSHIP AMONG THE ELDER-  
23          LY.—Subsection (b) of such section is amended—

24                 (1) in paragraph (1), by striking “subsection  
25                 (a)” and inserting “subsection (a)(1)”;



1           (2) by amending paragraph (2) to read as fol-  
2           lows:

3           “(2) The requirement of subsection (a)(1)(A)  
4           shall not apply to any person who, on the date of the  
5           filing of the person’s application for naturalization  
6           as provided in section 334—

7                   “(A) is over 50 years of age and has been  
8                   living in the United States for periods totaling  
9                   at least twenty years subsequent to a lawful ad-  
10                  mission for permanent residence,

11                   “(B) is over 55 years of age and has been  
12                   living in the United States for periods totaling  
13                   at least 15 years subsequent to a lawful admis-  
14                  sion for permanent residence; or

15                   “(C) is over 60 years of age and has been  
16                   living in the United States for periods totaling  
17                   at least 5 years subsequent to a lawful admis-  
18                  sion for permanent residence.”.

19 **SEC. 603. VOLUNTARY ELECTRONIC FILING OF APPLICA-**  
20 **TIONS.**

21           The Secretary of Homeland Security may not require  
22           that an applicant or petitioner for permanent residence or  
23           citizenship of the United States use an electronic method  
24           to file any application to, or access a customer account.

1 **SEC. 604. TIMELY BACKGROUND CHECKS.**

2 (a) STUDY.—

3 (1) IN GENERAL.—The Comptroller General of  
4 the United States shall conduct a study on the pro-  
5 cess used by the Department of Justice or the De-  
6 partment of Homeland Security on the day before  
7 the date of the enactment of this Act to conduct a  
8 background check on an applicant for citizenship of  
9 the United States.

10 (2) REPORT.—Not later than 1 year after the  
11 date of the enactment of this Act and annually  
12 thereafter, the Comptroller General of the United  
13 States shall report to Congress on the findings of  
14 the study required by paragraph (1).

15 (3) CONTENTS OF REPORT.—The report re-  
16 quired by paragraph (2) shall include the following  
17 information with respect to the calendar year pre-  
18 ceding the date on which the report is filed:

19 (A) The number of background checks con-  
20 ducted by the Department of Justice or the De-  
21 partment of Homeland Security on applicants  
22 for citizenship of the United States.

23 (B) The types of such background checks  
24 conducted.

25 (C) The average time spent on each such  
26 type of background check.

1 (D) A description of the obstacles that im-  
2 pede the timely completion of such background  
3 checks.

4 (4) EXAMINATION OF NAME CHECK CON-  
5 DUCTED BY THE DEPARTMENT OF JUSTICE.—The  
6 first report required by paragraph (2) shall also in-  
7 clude an examination of the name check conducted  
8 by the Department of Justice to assess the extent to  
9 which the name check provides information relating  
10 to the eligibility of applicants for citizenship of the  
11 United States that is not otherwise provided by  
12 other background checks conducted by the Depart-  
13 ment of Justice or the Department of Homeland Se-  
14 curity.

15 (b) TIMELY COMPLETION OF BACKGROUND  
16 CHECKS.—

17 (1) ATTORNEY GENERAL BACKGROUND  
18 CHECKS.—With respect to a request submitted to  
19 the Attorney General by the Secretary of Homeland  
20 Security for a background check on an applicant for  
21 temporary or permanent residence or citizenship of  
22 the United States, the Attorney General shall make  
23 a reasonable effort to complete a background check  
24 on such applicant not later than 90 days after the

1 Attorney General receives such request from the  
2 Secretary of Homeland Security.

3 (2) DEPARTMENT OF HOMELAND SECURITY  
4 BACKGROUND CHECKS.—With respect to background  
5 checks on an applicant for temporary or permanent  
6 residence or citizenship of the United States, the  
7 Secretary of Homeland Security shall make a rea-  
8 sonable effort to complete the background check on  
9 such applicant not later than 90 days after the date  
10 the application is received by the Department of  
11 Homeland Security.

12 (3) DELAYS ON ATTORNEY GENERAL BACK-  
13 GROUND CHECKS.—If a background check described  
14 in paragraph (1) is not completed by the Attorney  
15 General before the date that is 91 days after the  
16 date that the Attorney General receives a request de-  
17 scribed in paragraph (1)—

18 (A) the Attorney General shall document  
19 the reason why such background check was not  
20 completed before such date; and

21 (B) if such background check is not com-  
22 pleted before the date that is 181 days after the  
23 date of such receipt, then the Attorney General  
24 shall, not later than 210 days after the date of  
25 such receipt, submit to the appropriate congres-

1           sional committees and the Secretary of Home-  
2           land Security a report that describes—

3                   (i) the reason that such background  
4                   check was not completed within 180 days;  
5                   and

6                   (ii) the earliest date on which the At-  
7                   torney General is certain the background  
8                   check will be completed.

9           (4) DELAYS ON DEPARTMENT OF HOMELAND  
10          SECURITY BACKGROUND CHECKS.—If a background  
11          check described in paragraph (2) is not completed by  
12          the Secretary of Homeland Security before the date  
13          that is 91 days after the date that the Department  
14          of Homeland Security receives the application de-  
15          scribed in paragraph (2)—

16                   (A) the Secretary of Homeland Security  
17                   shall document the reason why such back-  
18                   ground check was not completed before such  
19                   date; and

20                   (B) if such background check is not com-  
21                   pleted before the date that is 181 days after the  
22                   date of such receipt, then the Secretary of  
23                   Homeland Security shall, not later than 210  
24                   days after the date of such receipt, submit to

1 the appropriate congressional committees a re-  
2 port that describes—

3 (i) the reason that such background  
4 check was not completed within 180 days;  
5 and

6 (ii) the earliest date on which the Sec-  
7 retary of Homeland Security is certain the  
8 background check will be completed.

9 (5) ANNUAL REPORT ON DELAYED ATTORNEY  
10 GENERAL BACKGROUND CHECKS.—Not later than  
11 the end of each fiscal year, the Attorney General  
12 shall submit to the appropriate congressional com-  
13 mittees a report containing, with respect to that fis-  
14 cal year—

15 (A) the number of background checks de-  
16 scribed in subparagraph (B) of paragraph (3);

17 (B) the time taken to complete each such  
18 background check;

19 (C) a statistical analysis of the causes of  
20 the delays in completing such background  
21 checks; and

22 (D) a description of the efforts being made  
23 by the Attorney General to address each such  
24 cause.

1           (6) NOTIFICATION TO APPLICANT.—If, with re-  
2       spect to a background check on an applicant de-  
3       scribed in paragraph (2), the Secretary of Homeland  
4       Security is required to furnish a report under para-  
5       graph (3)(B), then the Secretary shall provide to  
6       such applicant a copy of such report, redacted to re-  
7       move any classified information contained therein.

8           (7) ANNUAL REPORT ON DELAYED HOMELAND  
9       SECURITY BACKGROUND CHECKS.—Not later than  
10      the end of each fiscal year, the Secretary of Home-  
11      land Security shall submit to the appropriate con-  
12      gressional committees a report containing, with re-  
13      spect to that fiscal year—

14           (A) the number of background checks de-  
15      scribed in subparagraph (B) of paragraph (4);

16           (B) the time taken to complete each such  
17      background check;

18           (C) a statistical analysis of the causes of  
19      the delays in completing such background  
20      checks; and

21           (D) a description of the efforts being made  
22      by the Secretary of Homeland Security to ad-  
23      dress each such cause.

24           (8) NOTIFICATION TO APPLICANT.—If, with re-  
25      spect to a background check on an applicant de-

1 scribed in paragraph (2), the Secretary of Homeland  
2 Security is required to furnish a report to the appro-  
3 priate congressional committees under subsection  
4 (b)(4)(B), then the Secretary shall provide to such  
5 applicant a copy of such report, redacted to remove  
6 any classified information contained therein.

7 (9) APPROPRIATE CONGRESSIONAL COMMIT-  
8 TEES.—In this subsection, the term “appropriate  
9 congressional committees” means the following:

10 (A) The Committee on the Judiciary of the  
11 Senate.

12 (B) The Committee on Homeland Security  
13 and Governmental Affairs of the Senate.

14 (C) The Committee on the Judiciary of the  
15 House of Representatives.

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

18 (10) FUNDING.—Fees and fines deposited in  
19 the Security and Prosperity Account under section  
20 286(w)(3)(B) of the Immigration and Nationality  
21 Act may be used to carry out this section.

22 **SEC. 605. NATIONAL CITIZENSHIP PROMOTION PROGRAM.**

23 (a) ESTABLISHMENT.—

24 (1) IN GENERAL.—Not later than 6 months fol-  
25 lowing the date of enactment of this Act, the Sec-



1       retary of Homeland Security shall establish a pro-  
2       gram to assist aliens who have been lawfully admit-  
3       ted for permanent residence in becoming citizens of  
4       the United States.

5               (2) DESIGNATION.—The program required by  
6       paragraph (1) shall be known as the “New Ameri-  
7       cans Initiative” (in this section referred to as the  
8       “Program”).

9               (b) PROGRAM ACTIVITIES.—As part of the Program  
10      required by subsection (a), the Secretary of Homeland Se-  
11      curity shall—

12              (1) award grants in accordance with subsection  
13      (c); and

14              (2) carry out outreach activities in accordance  
15      with subsection (d).

16              (c) GRANTS TO SUPPORT NATURALIZATION EF-  
17      FORTS.—

18              (1) IN GENERAL.—The Secretary of Homeland  
19      Security shall award grants to eligible entities to as-  
20      sist aliens who have been lawfully admitted for per-  
21      manent residence in becoming citizens of the United  
22      States.

23              (2) ELIGIBLE ENTITY DEFINED.—In this sub-  
24      section, the term “eligible entity” means a not-for-

1 profit organization that has experience working with  
2 immigrant communities.

3 (3) USE OF FUNDS.—Grants awarded under  
4 this subsection shall be used for activities to assist  
5 aliens who have been lawfully admitted for perma-  
6 nent residence in becoming citizens of the United  
7 States, including—

8 (A) conducting English language and citi-  
9 zenship classes for such aliens;

10 (B) providing legal assistance, by attorneys  
11 or entities recognized by the Board of Immigra-  
12 tion Appeals, to such aliens to assist such aliens  
13 in becoming citizens of the United States;

14 (C) carrying out outreach activities and  
15 providing education to immigrant communities  
16 to assist such aliens in becoming citizens of the  
17 United States; and

18 (D) assisting such aliens with applications  
19 to become citizens of the United States, as al-  
20 lowed by Federal and State law.

21 (4) APPLICATION FOR GRANT.—

22 (A) IN GENERAL.—Each eligible entity  
23 seeking a grant under this subsection shall sub-  
24 mit an application to the Secretary of Home-  
25 land Security at such time, in such manner,

1 and accompanied by such information as the  
2 Secretary shall require.

3 (B) CONTENTS.—Each application sub-  
4 mitted pursuant to subparagraph (A) shall in-  
5 clude a description of—

6 (i) the activities for which a grant  
7 under this section is sought;

8 (ii) the manner in which the entity  
9 plans to leverage available private and  
10 State and local government resources to  
11 assist aliens who have been lawfully admit-  
12 ted for permanent residence in becoming  
13 citizens of the United States;

14 (iii) the experience of the entity in  
15 carrying out the activities for which a  
16 grant under this section is sought, includ-  
17 ing the number of aliens and geographic  
18 regions served by such entity; and

19 (iv) the manner in which the entity  
20 plans to employ best practices developed by  
21 adult educators, State and local govern-  
22 ments, and community organizations—

23 (I) to promote citizenship and  
24 civic participation by such aliens; and

1 (II) to provide assistance to such  
2 aliens with the process of becoming  
3 citizens of the United States.

4 (d) OUTREACH.—The Secretary of Homeland Secu-  
5 rity shall—

6 (1) develop outreach materials targeted to  
7 aliens who have been lawfully admitted for perma-  
8 nent residence to encourage such aliens to apply to  
9 become citizens of the United States; and

10 (2) make such outreach materials available  
11 through—

12 (A) public service announcements;

13 (B) advertisements; and

14 (C) such other media as the Secretary de-  
15 termines is appropriate.

16 (e) FUNDING.—Fees and fines deposited in the Secu-  
17 rity and Prosperity Account under section 286(w)(3)(B)  
18 of the Immigration and Nationality Act may be used to  
19 carry out this section.

20 **SEC. 606. EFFECTIVE DATE.**

21 The amendments made by this title shall take effect  
22 on the date of the enactment of this Act and shall apply  
23 to applications for naturalization pending on or after such  
24 date.

## 1                   **Subtitle B—Miscellaneous**

### 2   **SEC. 611. GRANTS TO SUPPORT PUBLIC EDUCATION AND** 3                   **COMMUNITY TRAINING.**

4           (a) GRANTS AUTHORIZED.—The Assistant Attorney  
5 General, Office of Justice Programs, may award grants  
6 to qualified nonprofit community organizations to educate,  
7 train, and support non-profit agencies, immigrant commu-  
8 nities, and other interested entities regarding the provi-  
9 sions of this Act and the amendments made by this Act.

10          (b) USE OF FUNDS.—

11               (1) IN GENERAL.—Grants awarded under this  
12 section shall be used—

13                   (A) for public education, training, technical  
14 assistance, government liaison, and all related  
15 costs (including personnel and equipment) in-  
16 curred by the grantee in providing services re-  
17 lated to this Act; and

18                   (B) to educate, train, and support non-  
19 profit organizations, immigrant communities,  
20 and other interested parties regarding this Act  
21 and the amendments made by this Act and on  
22 matters related to its implementation.

23               (2) EDUCATION.—In addition to the purposes  
24 described in paragraph (1), grants awarded under  
25 this section shall be used to—

1 (A) educate immigrant communities and  
2 other interested entities regarding—

3 (i) the individuals and organizations  
4 that can provide authorized legal represen-  
5 tation in immigration matters under regu-  
6 lations prescribed by the Secretary; and

7 (ii) the dangers of securing legal ad-  
8 vice and assistance from those who are not  
9 authorized to provide legal representation  
10 in immigration matters;

11 (B) educate interested entities regarding  
12 the requirements for obtaining nonprofit rec-  
13 ognition and accreditation to represent immi-  
14 grants under regulations prescribed by the Sec-  
15 retary;

16 (C) provide nonprofit agencies with train-  
17 ing and technical assistance on the recognition  
18 and accreditation process; and

19 (D) educate nonprofit community organi-  
20 zations, immigrant communities, and other in-  
21 terested entities regarding—

22 (i) the process for obtaining benefits  
23 under this Act or under an amendment  
24 made by this Act; and

1 (ii) the availability of authorized legal  
2 representation for low-income persons who  
3 may qualify for benefits under this Act or  
4 under an amendment made by this Act.

5 (c) DIVERSITY.—The Assistant Attorney General  
6 shall ensure, to the extent possible, that the nonprofit  
7 community organizations receiving grants under this sec-  
8 tion serve geographically diverse locations and ethnically  
9 diverse populations who may qualify for benefits under the  
10 Act.

11 (d) FUNDING.—Fees and fines deposited in the Secu-  
12 rity and Prosperity Account under section 286(w)(3)(B)  
13 of the Immigration and Nationality Act may be used to  
14 carry out this section.

15 **SEC. 612. GRANT PROGRAM TO ASSIST APPLICANTS FOR**  
16 **NATURALIZATION.**

17 (a) PURPOSE.—The purpose of this section is to es-  
18 tablish a grant program within United States Citizenship  
19 and Immigration Services that provides funding to com-  
20 munity-based organizations, including community-based  
21 legal service organizations, as appropriate, to develop and  
22 implement programs to assist eligible applicants for natu-  
23 ralization.

24 (b) DEFINITIONS.—In this section:

1           (1) COMMUNITY-BASED ORGANIZATION.—The  
2 term “community-based organization” means a non-  
3 profit, tax-exempt organization, including a faith-  
4 based organization, whose staff has experience and  
5 expertise in meeting the legal, social, educational,  
6 cultural educational, or cultural needs of immi-  
7 grants, refugees, persons granted asylum, or persons  
8 applying for such statuses.

9           (2) IEACA GRANT.—The term “IEACA grant”  
10 means an Initial Entry, Adjustment, and Citizenship  
11 Assistance Grant authorized under subsection (c).

12       (c) ESTABLISHMENT OF INITIAL ENTRY, ADJUST-  
13 MENT, AND CITIZENSHIP ASSISTANCE GRANT PRO-  
14 GRAM.—

15           (1) GRANTS AUTHORIZED.—The Secretary,  
16 working through the Director of United States Citi-  
17 zenship and Immigration Services, may award  
18 IEACA grants to community-based organizations.

19           (2) USE OF FUNDS.—Grants awarded under  
20 this section may be used for the design and imple-  
21 mentation of programs to provide the following serv-  
22 ices:

23           (A) INITIAL APPLICATION.—Assistance  
24 and instruction, including legal assistance, to  
25 aliens making initial application for conditional



1 nonimmigrant or conditional nonimmigrant de-  
2 pendent classification under section 401. Such  
3 assistance may include assisting applicants in—

4 (i) screening to assess prospective ap-  
5 plicants' potential eligibility for partici-  
6 pating in such program;

7 (ii) filling out applications for such  
8 program;

9 (iii) gathering proof of identification,  
10 employment, residence, and tax payment;

11 (iv) gathering proof of relationships of  
12 eligible family members;

13 (v) applying for any waivers for which  
14 applicants and qualifying family members  
15 may be eligible; and

16 (vi) any other assistance that the Sec-  
17 retary or grantee considers useful to aliens  
18 who are interested in filing applications for  
19 treatment under section 401.

20 (B) ADJUSTMENT OF STATUS.—Assistance  
21 and instruction, including legal assistance, to  
22 aliens seeking to adjust their status in accord-  
23 ance with section 402 of this Act or section 245  
24 of the Immigration and Nationality Act (8  
25 U.S.C. 1255).

1 (C) CITIZENSHIP.—Assistance and instruc-  
2 tion to applicants on—

3 (i) the rights and responsibilities of  
4 United States citizenship;

5 (ii) English as a second language;

6 (iii) civics; or

7 (iv) applying for United States citi-  
8 zenship.

9 (3) DURATION AND RENEWAL.—

10 (A) DURATION.—Subject to subparagraph  
11 (B), each grant awarded under this section  
12 shall be awarded for a period of not more than  
13 3 years.

14 (B) RENEWAL.—The Secretary may renew  
15 any grant awarded under this section in 1-year  
16 increments.

17 (4) APPLICATION FOR GRANTS.—Each entity  
18 desiring an IEACA grant under this section shall  
19 submit an application to the Secretary at such time,  
20 in such manner, and accompanied by such informa-  
21 tion as the Secretary may require.

22 (5) ELIGIBLE ORGANIZATIONS.—A community-  
23 based organization applying for a grant under this  
24 section to provide services described in subparagraph

1 (A), (B), or (C)(iv) of paragraph (2) may not receive  
2 such a grant unless the organization is—

3 (A) recognized by the Board of Immigra-  
4 tion Appeals under section 292.2 of title 8,  
5 Code of Federal Regulations; or

6 (B) otherwise directed by an attorney.

7 (6) SELECTION OF GRANTEES.—Grants award-  
8 ed under this section shall be awarded on a competi-  
9 tive basis.

10 (7) GEOGRAPHIC DISTRIBUTION OF GRANTS.—  
11 The Secretary shall approve applications under this  
12 section in a manner that ensures, to the greatest ex-  
13 tent practicable, that—

14 (A) not less than 50 percent of the funding  
15 for grants under this section are awarded to  
16 programs located in the 10 States with the  
17 highest percentage of residents who were born  
18 in foreign countries; and

19 (B) not less than 20 percent of the funding  
20 for grants under this section are awarded to  
21 programs located in States that are not de-  
22 scribed in subparagraph (A).

23 (8) ETHNIC DIVERSITY.—The Secretary shall  
24 ensure that community-based organizations receiving  
25 grants under this section provide services to an eth-

1 nically diverse population, to the greatest extent pos-  
2 sible.

3 (d) LIAISON BETWEEN USCIS AND GRANTEEES.—

4 The Secretary shall establish a liaison between United  
5 States Citizenship and Immigration Services and the com-  
6 munity of providers of services under this section to assure  
7 quality control, efficiency, and greater client willingness  
8 to come forward.

9 (e) REPORTS TO CONGRESS.—Not later than 180  
10 days after the date of enactment of this Act, and July  
11 1 of each subsequent year, the Secretary shall submit a  
12 report to Congress that includes information regarding—

13 (1) the status of the implementation of this sec-  
14 tion;

15 (2) the grants issued pursuant to this section;  
16 and

17 (3) the activities carried out with such grants.

18 (f) SOURCE OF GRANT FUNDS.—

19 (1) APPLICATION FEES.—The Secretary may  
20 use funds made available under section 401(g)(2)(A)  
21 of this Act and section 218A(b)(3) of the Immigra-  
22 tion and Nationality Act, as added by this Act, to  
23 carry out this section.

24 (2) FUNDING.—Fees and fines deposited in the  
25 Security and Prosperity Account under section

1       286(w)(3)(B) of the Immigration and Nationality  
2       Act may be used to carry out this section.

3       (g) DISTRIBUTION OF CONDITIONAL NONIMMIGRANT  
4 VISA FEES AND FINES.—Notwithstanding section  
5 401(g)(2)(B), 2 percent of the fees and fines collected  
6 under section 401 shall be made available for grants under  
7 the Initial Entry, Adjustment, and Citizenship Assistance  
8 Grant Program established under this section.

9       **SEC. 613. NATURALIZATION FOR CERTAIN U.S. HIGH**  
10                                   **SCHOOL GRADUATES.**

11       (a) IN GENERAL.—Title III of the Immigration and  
12 Nationality Act (8 U.S.C. 1401 et seq.) is amended by  
13 inserting after section 320 the following:

14       **“SEC. 321. CITIZENSHIP FOR CERTAIN U.S. HIGH SCHOOL**  
15                                   **GRADUATES.**

16       “(a) REQUIREMENTS DEEMED SATISFIED.—In the  
17 case of an alien described in subsection (b), the alien shall  
18 be deemed to have satisfied the requirements of section  
19 312(a).

20       “(b) ALIENS DESCRIBED.—An alien is described in  
21 this subsection if the alien is under 25 years of age on  
22 the date on which the alien submits an application for nat-  
23 uralization under section 334 that contains the following:

24                   “(1) Transcripts from public or private schools  
25       in the United States that demonstrate the following:

1           “(A) The alien completed grades 6 through  
2           12 in the United States and was graduated  
3           with a high school diploma.

4           “(B) The alien completed a curriculum  
5           that reflects knowledge of United States his-  
6           tory, Government, and civics.

7           “(2) A copy of the alien’s high school diploma.

8           “(c) **REDUCED FEE.**—The Secretary of Homeland  
9           Security shall reduce the naturalization application fee for  
10          an alien described in subsection (b) by 50 percent.”.

11          (b) **CLERICAL AMENDMENT.**—The table of contents  
12          for the Immigration and Nationality Act is amended by  
13          inserting after the item relating to section 320 the fol-  
14          lowing:

          “Sec. 321. Citizenship for certain U.S. high school graduates.”.

15          (c) **APPLICABILITY.**—The amendments made by this  
16          Section shall take effect on the date of the enactment of  
17          this Act and shall apply to applicants for naturalization  
18          who apply for naturalization on or after such date.

19          (d) **REGULATIONS.**—The Secretary of Homeland Se-  
20          curity shall promulgate regulations to carry out this Sec-  
21          tion and the amendments made by this Section not later  
22          than 180 days after the date of the enactment of this Act.

23          **SEC. 614. FAMILY INTEGRATION.**

24          Section 201 of the Immigration and Nationality Act  
25          (8 U.S.C. 1151) is amended by striking in subsection

1 (b)(2)(A)(i) the number “21” and inserting the number  
2 “18”.

3 **SEC. 615. CONSIDERATION FOR DOMESTIC RESETTLEMENT**  
4 **OF REFUGEES.**

5 Section 412 is amended as follows:

6 (1) In subsection (a)(2)(C)(i) strike “insure”  
7 and insert “ensure”.

8 (2) At the end, add the following:

9 “(V) the geography, climate and  
10 environmental composition of the pro-  
11 posed resettlement area compared  
12 with that of the geography, climate  
13 and environmental composition of  
14 their country of origin.”.

15 **SEC. 616. CREDITS FOR TEACHERS OF ENGLISH LANGUAGE**  
16 **LEARNERS.**

17 (a) IN GENERAL.—Subpart A of part IV of sub-  
18 chapter A of chapter 1 of the Internal Revenue Code of  
19 1986 (relating to nonrefundable personal credits) is  
20 amended by inserting after section 25D the following new  
21 section:

22 **“SEC. 25E. TEACHERS OF ENGLISH LANGUAGE LEARNERS.**

23 “(a) IN GENERAL.—In the case of an eligible teacher,  
24 there shall be allowed a credit against the tax imposed  
25 by this chapter for the taxable year an amount equal to—

1           “(1) \$1,500, for each of the first 5 taxable  
2           years for which the taxpayer is allowed a credit  
3           under this section; and

4           “(2) \$1,000, for any other taxable year.

5           “(b) CREDIT ALLOWED ONLY FOR 10 TAXABLE  
6           YEARS.—No credit shall be allowed under this section  
7           with respect to a taxpayer for any taxable year after the  
8           10th taxable year for which such taxpayer is allowed a  
9           credit under this section.

10          “(c) ELIGIBLE TEACHER.—For purposes of this sec-  
11          tion—

12           “(1) IN GENERAL.—Except as provided in para-  
13           graph (2), the term ‘eligible teacher’ means, with re-  
14           spect to a taxable year, any individual who is—

15           “(A) a full-time teacher of English as a  
16           second language or bilingual instruction for the  
17           academic year ending in such taxable year, or

18           “(B) an eligible part-time teacher of  
19           English as a second language or bilingual in-  
20           struction for the academic year ending in such  
21           taxable year.

22           “(2) ELIGIBLE PART-TIME TEACHER.—The  
23           term ‘eligible part-time teacher’ means, with respect  
24           to a taxable year, an individual who teaches at least  
25           20 hours per week during the academic year ending



1 in such taxable year. Such term does not include any  
 2 individual who is a full-time teacher of English as a  
 3 second language during such academic year.

4 “(3) SPECIAL RULE.—In the case of an eligible  
 5 part-time teacher, subsection (a) shall be applied by  
 6 substituting ‘\$375’ for ‘\$750’ and by substituting  
 7 ‘\$250’ for ‘\$500.’”.

8 (b) CLERICAL AMENDMENT.—The table of sections  
 9 for such subpart is amended by inserting after the item  
 10 relating to section 25D the following new item:

“Sec. 25E. Teachers of English language learners.”.

11 (c) TEACHER CERTIFICATION EXPENSES.—Part VII  
 12 of subchapter B of chapter 1 of the Internal Revenue Code  
 13 of 1986 (relating to additional itemized deductions for in-  
 14 dividuals) is amended by redesignating section 224 as sec-  
 15 tion 225 and by inserting after section 223 the following  
 16 new section:

17 **“SEC. 224. CERTIFICATION EXPENSES FOR TEACHERS OF**  
 18 **ENGLISH LANGUAGE LEARNERS.**

19 “(a) IN GENERAL.—In the case of an individual,  
 20 there shall be allowed a deduction for eligible teacher cer-  
 21 tification expenses paid or incurred by the taxpayer for  
 22 the taxable year.

23 “(b) ELIGIBLE TEACHER CERTIFICATION EX-  
 24 PENSES.—The term ‘eligible teacher certification ex-  
 25 penses’—

1           “(1) means the tuition and fees required for the  
2 enrollment or attendance of the taxpayer at an eligi-  
3 ble educational institution (as defined in section  
4 25A) for a course which is required for certification  
5 or licensure of such individual as qualified to provide  
6 English as a second language or bilingual instruction  
7 to elementary or secondary school students who are  
8 limited English proficient (as defined in section  
9 9901 of the Elementary and Secondary Education  
10 Act of 1965); and

11           “(2) shall not include any amounts that are—

12                   “(A) used for a course that is part of the  
13 individual’s degree program; or

14                   “(B) funded by another person or any gov-  
15 ernmental entity.

16           “(c) DENIAL OF DOUBLE BENEFIT.—No deduction  
17 shall be allowed under this section for any expense for  
18 which a deduction or credit is allowed under any other  
19 provision of this chapter.

20           “(d) TERMINATION.—This section shall not apply to  
21 expenses paid or incurred after December 31, 2014.”.

22           (d) CERTIFICATION DEDUCTION ALLOWED WHETH-  
23 ER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—  
24 Subsection (a) of section 62 of such Code is amended by

1 inserting after paragraph (21) the following new para-  
2 graph:

3           “(22) **TEACHER CERTIFICATION EXPENSES.**—  
4           The deduction allowed by section 224.”.

5           (e) **CLERICAL AMENDMENT.**—The table of sections  
6 for part VII of subchapter B of chapter 1 of such Code  
7 is amended by striking the last item and inserting the fol-  
8 lowing new item:

          “Sec. 224. Certification expenses for teachers of English language learners.”.

9           (f) **REGULATIONS.**—Not later than 180 days after  
10 the date of the enactment of this Act, the Secretary of  
11 the Treasury shall promulgate regulations implementing  
12 the provisions of this section.

13          (g) **EFFECTIVE DATE.**—The amendments made by  
14 this section shall apply to taxable years beginning after  
15 December 31, 2009.

16 **SEC. 617. CREDITS FOR EMPLOYER-PROVIDED ADULT**  
17                           **ENGLISH LITERACY AND BASIC EDUCATION**  
18                           **PROGRAMS.**

19          (a) **IN GENERAL.**—Subpart D of part IV of sub-  
20 chapter A of chapter 1 of the Internal Revenue Code of  
21 1986 (relating to business related credits) is amended by  
22 adding at the end the following:

1 **“SEC. 45R. EMPLOYER-PROVIDED ADULT ENGLISH LIT-**  
2 **ERACY AND BASIC EDUCATION PROGRAMS.**

3 “(a) IN GENERAL.—For the purposes of section 38,  
4 the credit determined under this section with respect to  
5 any employer for the taxable year is an amount equal to  
6 20 percent of qualified education program expenses, but  
7 in no case shall the employer receive a credit in an amount  
8 of more than \$1,000 per full-time employee participating  
9 in the qualified education program.

10 “(b) QUALIFIED EDUCATION PROGRAM EX-  
11 PENSES.—For purposes of this section—

12 “(1) IN GENERAL.—The term ‘qualified edu-  
13 cation program expenses’ means expenses paid or in-  
14 curred by an employer to make available qualified  
15 education to employees of the employer, who—

16 “(A) are English language learners; and

17 “(B)(i) have not received a secondary  
18 school diploma, or its recognized equivalent; or

19 “(ii) lack sufficient mastery of basic edu-  
20 cational skills, including financial literacy, to  
21 enable the individuals to function effectively in  
22 society.

23 “(2) QUALIFIED EDUCATION.—The term ‘quali-  
24 fied education’ means adult education and literacy  
25 activities provided—

1           “(A) by an eligible provider which for the  
2           fiscal year ending during the employer’s taxable  
3           year receives or is eligible to receive Federal  
4           funds under section 231 of the Adult Education  
5           and Family Literacy Act for adult education  
6           and literacy activities; or

7           “(B) in curriculum approved by the De-  
8           partment of Education, the Employment and  
9           Training Administration of the Department of  
10          Labor, or in current use by a Federal agency.

11          “(3) ELIGIBLE PROVIDER; ADULT EDUCATION  
12          AND LITERACY ACTIVITIES.—The terms ‘eligible pro-  
13          vider’ and ‘adult education and literacy activities’  
14          shall have the respective meanings given to such  
15          terms in section 203 of the Adult Education and  
16          Family Literacy Act.

17          “(4) ENGLISH LANGUAGE LEARNER.—The term  
18          ‘English language learner’ shall have the same  
19          meaning given to such term in section 9101(25) of  
20          the Elementary and Secondary Education Act of  
21          1965.

22          “(c) SPECIAL RULES.—For purposes of this sec-  
23          tion—

24          “(1) FULL-TIME EMPLOYMENT.—An employee  
25          shall be considered full-time if such employee is em-

1       employed at least 30 hours per week for 25 or more  
2       calendar weeks in the taxable year.

3               “(2) AGGREGATION RULE.—All persons treated  
4       as a single employer under subsection (a) or (b) or  
5       section 52, or subsection (m) or (o) of section 414,  
6       shall be treated as 1 person.

7               “(d) DENIAL OF DOUBLE BENEFIT.—No deduction  
8       or credit shall be allowed under any other provision of this  
9       chapter for any amount taken into account in determining  
10      the credit under this section.

11              “(e) TERMINATION.—This section shall not apply to  
12      expenses paid or incurred after December 31, 2014.”.

13              (b) CREDIT TO BE PART OF GENERAL BUSINESS  
14      CREDIT.—Subsection (b) of section 38 of such Code (re-  
15      lating to the current year business credit) is amended—

16              (1) by striking “plus” at the end of paragraph  
17      (34);

18              (2) by striking the period at the end of para-  
19      graph (35) and inserting “, plus”; and

20              (3) by adding at the end the following new  
21      paragraph:

22              “(36) the adult English literacy and basic edu-  
23      cation programs credit determined under section  
24      45R.”.

1 (c) CLERICAL AMENDMENT.—The table of sections  
2 for subpart D of part IV of subchapter A of chapter 1  
3 of the such Code is amended by adding at the end the  
4 following new item:

“Sec. 45R. Employer-provided adult English literacy and basic education programs.”.

5 (d) REGULATIONS.—Not later than 180 days after  
6 the date of the enactment of this Act, the Secretary of  
7 the Treasury shall promulgate regulations implementing  
8 the provisions of this section.

9 (e) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to taxable years beginning after  
11 December 31, 2009.

12 **SEC. 618. GRANTS TO STATES TO FORM NEW AMERICAN**  
13 **COUNCILS.**

14 (a) AUTHORITY TO PROVIDE GRANTS.—Subject to  
15 subsections (c) and (d), the Chief of the Office of Citizen-  
16 ship and Immigrant Integration is authorized to provide  
17 competitive grants to States to form State New American  
18 Councils as described in subsection (b) to carry out activi-  
19 ties described in section 303.

20 (b) STATE NEW AMERICAN COUNCILS.—A State  
21 New American Council shall consist of not less than 15  
22 and not more than 19 individuals from the State and shall  
23 include, to the extent practicable, representatives from the  
24 following sectors:

1 (1) Business.

2 (2) Faith-based organizations.

3 (3) Civic organizations.

4 (4) Philanthropic leaders.

5 (5) Nonprofit organizations, including those  
6 with experience working with immigrant commu-  
7 nities.

8 (6) Representatives from key education stake-  
9 holders, such as State educational agencies, local  
10 educational agencies, community colleges, teachers,  
11 or organizations representing teachers and other em-  
12 ployees.

13 (7) Representatives of State adult education of-  
14 fices.

15 (8) Representatives of State or local public li-  
16 braries.

17 (9) Representatives of statewide or local govern-  
18 ment officials.

19 (c) WAIVER OF REQUIREMENT.—

20 (1) AUTHORITY TO GRANT.—The Chief of the  
21 Office of Citizenship and Immigrant Integration  
22 may award a grant under subsection (a) to a State  
23 without requiring the State to form a State New  
24 American Council if the Chief determines that the  
25 State is carrying out similar statewide initiatives to



1 introduce immigrants into the State and into the  
2 United States.

3 (2) GUIDELINES.—The Chief shall establish  
4 guidelines for awarding grants to States described in  
5 paragraph (1).

6 (d) GRANTS TO LOCAL GOVERNMENTS.—The Chief  
7 of the Office of Citizenship and Immigrant Integration  
8 may provide a grant under subsection (a) to a local gov-  
9 ernment at the discretion of the Chief.

10 (e) APPLICATION.—To be eligible to receive a grant  
11 under this section, an applicant shall submit an applica-  
12 tion to the Chief of the Office of Citizenship and Immi-  
13 grant Integration at such time, in such manner, and con-  
14 taining such information as the Chief may reasonably re-  
15 quire. Such application shall include—

16 (1) if the applicant is a State seeking to form  
17 a State New American Council, an assurance that  
18 such State New American Council will meet the re-  
19 quirements of subsection (b);

20 (2) the number of immigrants in the State in  
21 which the applicant is located;

22 (3) a description of the challenges in intro-  
23 ducing new Americans in the State and local com-  
24 munity; and

1           (4) any other information that the Chief may  
2 reasonably require.

3           (f) DURATION.—A grant awarded under subsection  
4 (a) shall be for a period of 5 years.

5           (g) PRIORITY.—Priority shall be given to grant appli-  
6 cations that—

7           (1) use matching funds, from non-Federal  
8 sources, which may include in-kind contributions;  
9 and

10           (2) demonstrate collaboration with private enti-  
11 ties to achieve the goals of their comprehensive plan.

12           (h) ADDITIONAL CONSIDERATION.—Additional con-  
13 sideration shall be given to grant applications submitted  
14 by States with a large increase in the population of immi-  
15 grants over the previous 10 years relative to past migra-  
16 tion patterns, based on data compiled by the Office of Im-  
17 migration Statistics of the Department of Homeland Secu-  
18 rity.

19           (i) GRANT AMOUNT.—The amount of a grant award-  
20 ed under subsection (a) shall be not less than \$500,000  
21 and not more than \$5,000,000 for each fiscal year.

22           (j) RESERVATIONS.—

23           (1) NATIONAL.—The Chief of the Office of Citi-  
24 zenship and Immigrant Integration shall reserve not  
25 more than 1 percent of the amount appropriated to

1 carry out this section for such Office, including the  
2 evaluation of funds distributed.

3 (2) STATES.—A State awarded a grant under  
4 subsection (a) may reserve not more than 10 percent  
5 of such grant amount for the creation and operation  
6 of the State New American Council.

7 (k) FUNDING.—Fees and fines deposited in the Secu-  
8 rity and Prosperity Account under section 286(w)(3)(B)  
9 of the Immigration and Nationality Act may be used to  
10 carry out this section.

11 **SEC. 619. INDEPENDENCE DAY CEREMONIES FOR OATHS**  
12 **OF ALLEGIANCE.**

13 (a) IN GENERAL.—The Secretary of Homeland Secu-  
14 rity shall make available funds each fiscal year to the Di-  
15 rector of U.S. Citizenship and Immigration Services or to  
16 public or private nonprofit entities to support public cere-  
17 monies for administering oaths of allegiance under section  
18 337(a) of the Immigration and Nationality Act (8 U.S.C.  
19 1448(a)) to legal immigrants whose applications for natu-  
20 ralization have been approved.

21 (b) CEREMONIES.—A ceremony conducted with funds  
22 under this section—

23 (1) shall be held on a date that is on or near  
24 Independence Day; and

1           (2) shall include appropriate outreach, ceremo-  
2           nial, and celebratory activities.

3           (c) SELECTION OF SITES.—

4           (1) IN GENERAL.—The Secretary of Homeland  
5           Security shall select the site for each ceremony con-  
6           ducted with funds under this section.

7           (2) SELECTION PROCESS.—In selecting a site  
8           under paragraph (1), the Secretary of Homeland Se-  
9           curity should consider—

10           (A) the number of naturalization appli-  
11           cants living in proximity to the site; and

12           (B) the degree of participation in and sup-  
13           port for the ceremony by the local community  
14           at the site.

15           (d) AMOUNTS AVAILABLE; USE OF FUNDS.—

16           (1) AMOUNTS AVAILABLE.—Amounts made  
17           available under this section for each ceremony shall  
18           not exceed \$5,000.

19           (2) USE OF FUNDS.—Funds made available  
20           under this section may be used only for the fol-  
21           lowing:

22           (A) Costs of personnel of the Department  
23           of Homeland Security and the Federal judiciary  
24           (including travel and overtime expenses).

1           (B) Site rental, including audio equipment  
2           rental.

3           (C) Logistical requirements, including  
4           sanitation.

5           (D) Costs for printing brochures about the  
6           naturalization participants and the naturaliza-  
7           tion process.

8           (3) FUNDING.—Fees and fines deposited in the  
9           Security and Prosperity Account under section  
10          286(w)(3)(B) of the Immigration and Nationality  
11          Act may be used to carry out this section.

12          (e) APPLICATION.—No amount may be made avail-  
13          able under this section to an entity that is not part of  
14          the Department of Homeland Security, for supporting a  
15          ceremony described in subsection (b), unless—

16                (1) the entity submits an application to the Sec-  
17                retary of Homeland Security, in a form and manner  
18                specified by the Secretary of Homeland Security;  
19                and

20                (2) the Secretary of Homeland Security ap-  
21                proves the application.

○