

.....
(Original Signature of Member)

110TH CONGRESS
1ST SESSION

H. R.

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

IN THE HOUSE OF REPRESENTATIVES

Mr. GUTIERREZ introduced the following bill; which was referred to the
Committee on _____

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 “Security Through Regularized Immigration and a Vi-
6 brant Economy Act of 2007” or as the “STRIVE Act of
7 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Reference to the Immigration and Nationality Act.
- Sec. 3. Definitions.
- Sec. 4. Severability.
- Sec. 5. Certification requirements prior to implementation of the New Worker Program and the conditional nonimmigrant classification.

TITLE I—BORDER ENFORCEMENT

Subtitle A—Assets for Controlling United States Borders

- Sec. 101. Enforcement personnel.
- Sec. 102. Technological assets.
- Sec. 103. Infrastructure.
- Sec. 104. Ports of entry.
- Sec. 105. Secure communication.
- Sec. 106. Unmanned aerial vehicles.
- Sec. 107. Surveillance technologies programs.

Subtitle B—Border Security Plans, Strategies, and Reports

- Sec. 111. Surveillance plan.
- Sec. 112. National Strategy for Border Security.
- Sec. 113. Reports on improving the exchange of information on North American security.
- Sec. 114. Border Patrol training capacity review.
- Sec. 115. Secure Border Initiative financial accountability.

Subtitle C—Southern Border Security

- Sec. 121. Improving the security of Mexico's southern border.
- Sec. 122. Report on deaths at the United States-Mexico border.
- Sec. 123. Cooperation with the Government of Mexico.
- Sec. 124. Temporary National Guard support for securing the southern land border of the United States.
- Sec. 125. United States-Mexico Border Enforcement Review Commission.

Subtitle D—Secure Entry Initiatives

- Sec. 131. Biometric data enhancements.
- Sec. 132. US-VISIT System.
- Sec. 133. Document fraud detection.
- Sec. 134. Improved document integrity.
- Sec. 135. Biometric entry-exit system.
- Sec. 136. Evasion of inspection or violation of arrival, reporting, entry, or clearance requirements.

Subtitle E—Law Enforcement Relief for States

- Sec. 141. Border relief grant program.
- Sec. 142. Northern and southern border prosecution initiative.

Subtitle F—Rapid Response Measures

- Sec. 151. Deployment of Border Patrol agents.
- Sec. 152. Border Patrol major assets.
- Sec. 153. Electronic equipment.
- Sec. 154. Personal equipment.

3

Sec. 155. Authorization of appropriations.

Subtitle G—Border Infrastructure and Technology Modernization

Sec. 161. Definitions.

Sec. 162. Port of Entry Infrastructure Assessment Study.

Sec. 163. National Land Border Security Plan.

Sec. 164. Expansion of commerce security programs.

Sec. 165. Port of entry technology demonstration program.

Sec. 166. Authorization of appropriations.

Subtitle H—Safe and Secure Detention

Sec. 171. Definitions.

Sec. 172. Recording secondary inspection interviews.

Sec. 173. Procedures governing detention decisions.

Sec. 174. Legal orientation program.

Sec. 175. Conditions of detention.

Sec. 176. Office of Detention Oversight.

Sec. 177. Secure alternatives program.

Sec. 178. Less restrictive detention facilities.

Sec. 179. Authorization of appropriations; effective date.

Subtitle I—Other Border Security Initiatives

Sec. 181. Combating human smuggling.

Sec. 182. Screening of municipal solid waste.

Sec. 183. Border security on certain Federal land.

TITLE II—INTERIOR ENFORCEMENT

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

Sec. 201. Incarceration of criminal aliens.

Sec. 202. Encouraging aliens to depart voluntarily.

Sec. 203. Deterring aliens ordered removed from remaining in the United States unlawfully.

Sec. 204. Prohibition of the sale of firearms to, or the possession of firearms by certain aliens.

Sec. 205. Uniform statute of limitations for certain Immigration, naturalization, and peonage offenses.

Sec. 206. Expedited removal.

Sec. 207. Field agent allocation.

Sec. 208. Streamlined processing of background checks conducted for immigration benefit applications and petitions.

Sec. 209. State criminal alien assistance program.

Sec. 210. Transportation and processing of illegal aliens apprehended by State and local law enforcement officers.

Sec. 211. Reducing illegal immigration and alien smuggling on tribal lands.

Sec. 212. Mandatory address reporting requirements.

Sec. 213. State and local Enforcement of Federal Immigration laws.

Sec. 214. Increased criminal penalties related to drunk driving.

Sec. 215. Law enforcement authority of States and political subdivisions and transfer to Federal custody.

Sec. 216. Laundering of monetary instruments.

4

- Sec. 217. Increase of Federal detention space and the utilization of facilities identified for closures as a result of the Defense Base Closure Realignment Act of 1990.
- Sec. 218. Determination of immigration status of individuals charged with Federal offenses.
- Sec. 219. Expansion of the Justice Prisoner and Alien Transfer System.
- Sec. 220. Cancellation of visas.

Subtitle B—Passport and Visa Security

- Sec. 221. Reform of passport fraud offenses.
- Sec. 222. Other immigration reforms.

Subtitle C—Detention and Removal of Aliens Who Illegally Enter or Remain in the United States

- Sec. 231. Detention and removal of aliens ordered removed.
- Sec. 232. Increased criminal penalties for immigration violations.
- Sec. 233. Aggravated felony.
- Sec. 234. Increased criminal penalties related to gang violence, removal, and alien smuggling.
- Sec. 235. Illegal entry.
- Sec. 236. Illegal reentry.

TITLE III—EMPLOYMENT VERIFICATION

- Sec. 301. Employment verification.
- Sec. 302. Clarification of ineligibility for misrepresentation.
- Sec. 303. Antidiscrimination protections.
- Sec. 304. Additional protections.
- Sec. 305. Additional worksite enforcement and fraud detection agents.
- Sec. 306. Amendments to the Social Security Act and the Internal Revenue Code.

TITLE IV—NEW WORKER PROGRAM

- Sec. 401. Nonimmigrant worker.
- Sec. 402. Admission of nonimmigrant workers.
- Sec. 403. Employer obligations.
- Sec. 404. Alien employment management system.
- Sec. 405. Recruitment of United States workers.
- Sec. 406. Numerical limitations.
- Sec. 407. Adjustment to lawful permanent resident status.
- Sec. 408. Requirements for participating countries.
- Sec. 409. Compliance investigators.
- Sec. 410. Standing commission on immigration and labor markets.
- Sec. 411. Admission of nonimmigrants.
- Sec. 412. Agency representation and coordination.
- Sec. 413. Sense of Congress regarding personal protective equipment.
- Sec. 414. Rulemaking; effective date.
- Sec. 415. Authorization of appropriations.

TITLE V—VISA REFORMS

Subtitle A—Backlog Reduction

- Sec. 501. Elimination of existing backlogs.

- Sec. 502. Increasing country limits and exempting family-sponsored and employment-based immigrants.
- Sec. 503. Allocation of immigrant visas.
- Sec. 504. Nursing shortage.
- Sec. 505. Expedited adjudication of employer petitions for aliens of extraordinary artistic ability.
- Sec. 506. Powerline workers and boilermakers.
- Sec. 507. H-1B visas.
- Sec. 508. United States educated immigrants.
- Sec. 509. Student visa reform.
- Sec. 510. L-1 visa holders subject to visa backlog.
- Sec. 511. Retaining workers subject to green card backlog.
- Sec. 512. Streamlining the adjudication process for established employers.
- Sec. 513. Providing premium processing of Employment-Based visa petitions.
- Sec. 514. Eliminating procedural delays in labor certification process.
- Sec. 515. Visa revalidation.
- Sec. 516. Relief for minor children and widows.
- Sec. 517. Relief for widows and orphans.
- Sec. 518. Sons and daughters of Filipino World War II veterans.
- Sec. 519. Determinations under the Haitian Refugee Immigration Fairness Act of 1998.
- Sec. 520. S visas.
- Sec. 521. L visa limitations.
- Sec. 522. Establishment of new fashion model nonimmigrant classification.
- Sec. 523. EB-5 regional center program.
- Sec. 524. Return of Talent Program.

Subtitle B—Preservation of Immigration Benefits for Victims of a Major
Disaster or Emergency

- Sec. 531. Short title.
- Sec. 532. Definitions.
- Sec. 533. Special immigrant status.
- Sec. 534. Extension of filing or reentry deadlines.
- Sec. 535. Humanitarian relief for certain surviving spouses and children.
- Sec. 536. Recipient of public benefits.
- Sec. 537. Age-out protection.
- Sec. 538. Employment eligibility verification.
- Sec. 539. Naturalization.
- Sec. 540. Discretionary authority.
- Sec. 541. Evidentiary standards and regulations.
- Sec. 542. Identification documents.
- Sec. 543. Waiver of regulations.
- Sec. 544. Notices of change of address.
- Sec. 545. Foreign students and exchange program participants.

TITLE VI—LEGALIZATION OF UNDOCUMENTED INDIVIDUALS

Subtitle A—Conditional Nonimmigrants

- Sec. 601. Conditional nonimmigrants.
- Sec. 602. Adjustment of status for conditional nonimmigrants.
- Sec. 603. Administrative and judicial review.
- Sec. 604. Mandatory disclosure of information.
- Sec. 605. Penalties for false statements in applications.
- Sec. 606. Aliens not subject to direct numerical limitations.

6

- Sec. 607. Employer protections.
- Sec. 608. Limitations on eligibility.
- Sec. 609. Rulemaking.
- Sec. 610. Authorization of appropriations.

Subtitle B—DREAM Act of 2007

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

Subtitle C—AgJOBS Act of 2007

- Sec. 641. Short title.
- Sec. 642. Definitions.

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

SUBCHAPTER A—BLUE CARD STATUS

- Sec. 643. Requirements for blue card status.
- Sec. 644. Treatment of aliens granted blue card status.
- Sec. 645. Adjustment to permanent residence.
- Sec. 646. Applications.
- Sec. 647. Waiver of numerical limitations and certain grounds for inadmissibility.
- Sec. 648. Administrative and judicial review.
- Sec. 649. Use of information.
- Sec. 650. Regulations, effective date, authorization of appropriations.

SUBCHAPTER B—CORRECTION OF SOCIAL SECURITY RECORDS

- Sec. 651. Correction of Social Security records.

CHAPTER 2—REFORM OF H-2A WORKER PROGRAM

- Sec. 652. Amendment to the Immigration and Nationality Act.

CHAPTER 3—MISCELLANEOUS PROVISIONS

- Sec. 653. Determination and use of user fees.
- Sec. 654. Regulations.
- Sec. 655. Reports to Congress.
- Sec. 656. Effective date.

Subtitle D—Programs to Assist Nonimmigrant Workers

- Sec. 661. Grants to support public education and community training.
- Sec. 662. Grant program to assist applicants for naturalization.
- Sec. 663. Strengthening American citizenship.
- Sec. 664. Addressing poverty in Mexico.

TITLE VII—MISCELLANEOUS

Subtitle A—Increasing Court Personnel

- Sec. 701. Additional immigration personnel.
- Sec. 702. Senior judge participation in the selection of magistrates.
- Sec. 703. Study on the appellate process for immigration appeals.
- Sec. 704. Sense of Congress regarding the establishment of an immigration court system.

Subtitle B—Citizenship Assistance for Members of the Armed Services

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

Subtitle C—Family Humanitarian Relief

- Sec. 721. Adjustment of status for certain nonimmigrant victims of terrorism.
- Sec. 722. Cancellation of removal for certain immigrant victims of terrorism.
- Sec. 723. Exceptions.
- Sec. 724. Evidence of death.
- Sec. 725. Definitions.

Subtitle D—Other Matters

- Sec. 731. Office of Internal Corruption Investigation.
- Sec. 732. Adjustment of status for certain persecuted religious minorities.
- Sec. 733. Eligibility of agricultural and forestry workers for certain legal assistance.
- Sec. 734. State court interpreter grants.
- Sec. 735. Adequate notice for alternate country of removal.
- Sec. 736. Standards for biometric documents.
- Sec. 737. State Impact Assistance Account.
- Sec. 738. New Worker Program and Conditional Nonimmigrant Fee Account.

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

3 Except as otherwise expressly provided, whenever in
4 this Act an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a

1 section or other provision of the Immigration and Nation-
2 ality Act (8 U.S.C. 1101 et seq.).

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

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

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

11 **SEC. 4. SEVERABILITY.**

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

19 **SEC. 5. CERTIFICATION REQUIREMENTS PRIOR TO IMPLE-
20 MENTATION OF THE NEW WORKER PROGRAM
21 AND THE CONDITIONAL NONIMMIGRANT
22 CLASSIFICATION.**

23 Notwithstanding any other provision of this Act, the
24 Secretary may not implement the New Worker Program
25 established in the amendments made by title IV or grant

1 conditional nonimmigrant classification under the amend-
2 ments made by title VI prior to the date that the Secretary
3 submits to the President and Congress a certification that
4 the following conditions have been met:

5 (1) SECURE BORDER.—The Secretary has sub-
6 mitted to Congress a report on the status of the im-
7 plementation of the border surveillance technology
8 improvements described in the Secure Border Initia-
9 tive, including target dates for the completion of
10 such improvements.

11 (2) SECURE DOCUMENTS.—That the systems
12 and infrastructure necessary to carry out the im-
13 provements to immigration document security re-
14 quired by this Act and the amendments made by
15 this Act, including documents that will be issued
16 under the New Worker Program and to aliens grant-
17 ed conditional nonimmigrant classification, have
18 been developed, tested for reliability and accuracy,
19 and are ready for use, including systems and infra-
20 structure necessary to permit the Director of the
21 Federal Bureau of Investigation to conduct required
22 background checks.

23 (3) FIRST PHASE IMPLEMENTATION OF THE
24 ELECTRONIC EMPLOYMENT ELIGIBILITY
25 VERIFICATION SYSTEM.—The first phase of the

1 Electronic Employment Verification System de-
2 scribed in section 274A of the Immigration and Na-
3 tionality Act, as amended by section 301 of this Act,
4 for critical infrastructure employers described in
5 subsection (e)(10)(i) of such section 274A has been
6 implemented.

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

11 **SEC. 101. ENFORCEMENT PERSONNEL.**

12 (a) PORT OF ENTRY INSPECTORS.—

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

20 (2) AUTHORIZATION OF APPROPRIATIONS.—

21 There are authorized to be appropriated to the Sec-
22 retary such sums as may be necessary for each of
23 the fiscal years 2008 through 2012 to carry out
24 paragraph (1).

1 (b) BORDER PATROL AGENTS.—Section 5202 of the
2 Intelligence Reform and Terrorism Prevention Act of
3 2004 (Public Law 108–458; 118 Stat. 3734) is amended
4 to read as follows:

5 **“SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL**
6 **AGENTS.**

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

14 “(1) 2,000 in fiscal year 2008;

15 “(2) 2,400 in fiscal year 2009;

16 “(3) 2,400 in fiscal year 2010;

17 “(4) 2,400 in fiscal year 2011; and

18 “(5) 2,400 in fiscal year 2012.

19 “(b) NORTHERN BORDER.—In each of the fiscal
20 years 2008 through 2012, in addition to the Border Patrol
21 agents assigned along the northern border of the United
22 States during the previous fiscal year, the Secretary shall
23 assign a number of Border Patrol agents equal to not less
24 than 20 percent of the net increase in Border Patrol
25 agents during each such fiscal year.

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

5 (c) INVESTIGATIVE PERSONNEL.—

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

11 (2) ADDITIONAL PERSONNEL.—In addition to
12 the positions authorized under section 5203 of the
13 Intelligence Reform and Terrorism Prevention Act
14 of 2004, as amended by paragraph (1), during each
15 of the fiscal years 2008 through 2012, the Secretary
16 shall, subject to the availability of appropriations, in-
17 crease by not less than 200 the number of positions
18 for personnel within the Department assigned to in-
19 vestigate alien smuggling.

20 (3) AUTHORIZATION OF APPROPRIATIONS.—
21 There are authorized to be appropriated to the Sec-
22 retary such sums as may be necessary for each of
23 the fiscal years 2008 through 2012 to carry out this
24 section.

25 (d) DEPUTY UNITED STATES MARSHALS.—

1 (1) ADDITIONAL UNITED STATES MARSHALS.—

2 In each of the fiscal years 2008 through 2012, the
3 Attorney General shall, subject to the availability of
4 appropriations, increase by not less than 50 the
5 number of positions for full-time active duty Deputy
6 United States Marshals that investigate criminal
7 matters related to immigration.

8 (2) AUTHORIZATION OF APPROPRIATIONS.—

9 There are authorized to be appropriated to the At-
10 torney General such sums as may be necessary for
11 each of the fiscal years 2008 through 2012 to carry
12 out paragraph (1).

13 (e) RECRUITMENT OF FORMER MEMBERS OF THE
14 ARMED FORCES AND MEMBERS OF RESERVE COMPO-
15 NENTS OF THE ARMED FORCES.—

16 (1) REQUIREMENT FOR PROGRAM.—The Sec-
17 retary, in conjunction with the Secretary of Defense,
18 shall establish a program to actively recruit covered
19 members or former members of the Armed Forces to
20 serve in United States Customs and Border Protec-
21 tion.

22 (2) REPORT ON RECRUITMENT INCENTIVES.—

23 (A) REQUIREMENT.—Not later than 60
24 days after the date of enactment of this Act,
25 the Secretary and the Secretary of Defense

1 shall jointly submit to the appropriate commit-
2 tees of Congress a report assessing the desir-
3 ability and feasibility of offering an incentive to
4 a covered member or former member of the
5 Armed Forces for the purpose of encouraging
6 such member to serve in United States Customs
7 and Border Protection. The Secretary and the
8 Secretary of Defense shall assume that the cost
9 of any such incentive shall be borne by the Sec-
10 retary.

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

13 (i) an assessment of the desirability
14 and feasibility of offering any incentive, in-
15 cluding a monetary incentive, that the Sec-
16 retary and the Secretary of Defense jointly
17 consider appropriate, regardless of whether
18 such incentive is authorized by law or reg-
19 ulations on the date of enactment of this
20 Act;

21 (ii) a detailed assessment of the desir-
22 ability and feasibility of such an incentive
23 that would—

24 (I) encourage service in United
25 States Customs and Border Protec-

1 tion by a covered member or a former
2 member of the Armed Forces who
3 provided border patrol or border secu-
4 rity assistance to United States Cus-
5 toms and Border Protection as part of
6 the member's duties as a member of
7 the Armed Forces; and

8 (ii) leverage military training
9 and experience by accelerating train-
10 ing, or allowing credit to be applied to
11 related areas of training, required for
12 service with United States Customs
13 and Border Protection;

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

17 (iv) an assessment of the desirability
18 and feasibility of utilizing any such incen-
19 tive for the purpose described in subpara-
20 graph (A); and

21 (v) any other matter that the Sec-
22 retary and the Secretary of Defense jointly
23 consider appropriate.

24 (3) DEFINITIONS.—In this subsection:

1 (A) APPROPRIATE COMMITTEES OF CON-
2 GRESS.—The term “appropriate committees of
3 Congress” means—

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

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

12 (B) COVERED MEMBER OR FORMER MEM-
13 BER OF THE ARMED FORCES.—The term “cov-
14 ered member or former member of the Armed
15 Forces” means an individual—

16 (i) who is a member of a reserve com-
17 ponent of the Armed Forces; or

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

21 **SEC. 102. TECHNOLOGICAL ASSETS.**

22 (a) INCREASED AVAILABILITY OF EQUIPMENT.—The
23 Secretary and the Secretary of Defense shall develop and
24 implement a plan to use authorities provided to the Sec-
25 retary of Defense under chapter 18 of title 10, United

1 States Code, to increase the availability and use of Depart-
2 ment of Defense equipment, including unmanned aerial
3 vehicles, tethered aerostat radars, and other surveillance
4 equipment, to assist the Secretary in carrying out surveil-
5 lance activities conducted at or near the international land
6 borders of the United States to prevent illegal immigra-
7 tion.

8 (b) REPORT.—Not later than 6 months after the date
9 of enactment of this Act, the Secretary and the Secretary
10 of Defense shall submit to Congress a report that con-
11 tains—

12 (1) a description of the current use of Depart-
13 ment of Defense equipment to assist the Secretary
14 in carrying out surveillance of the international land
15 borders of the United States and assessment of the
16 risks to citizens of the United States and foreign
17 policy interests associated with the use of such
18 equipment;

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

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

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

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

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

16 **SEC. 103. INFRASTRUCTURE.**

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

23 (b) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated to the Secretary such

1 sums as may be necessary for each of the fiscal years 2008
2 through 2012 to carry out subsection (a).

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

4 The Secretary is authorized to—

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

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

11 **SEC. 105. SECURE COMMUNICATION.**

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

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

18 (2) between Border Patrol agents and their re-
19 spective Border Patrol stations;

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

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

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

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

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

12 (b) AUTHORIZATION OF APPROPRIATIONS.—

13 (1) IN GENERAL.—There are authorized to be
14 appropriated to the Secretary for each of the fiscal
15 years 2008 and 2009 such sums as may be nec-
16 essary to carry out subsection (a).

17 (2) AVAILABILITY OF FUNDS.—Amounts appro-
18 priated pursuant to the authorization of appropria-
19 tions in paragraph (1) are authorized to remain
20 available until expended.

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

22 (a) AERIAL SURVEILLANCE PROGRAM.—

23 (1) IN GENERAL.—In conjunction with the bor-
24 der surveillance plan developed under section 5201
25 of the Intelligence Reform and Terrorism Prevention
26 Act of 2004 (Public Law 108–458; 8 U.S.C. 1701

1 note), the Secretary, not later than 90 days after the
2 date of enactment of this Act, shall develop and im-
3 plement a program to fully integrate and utilize aer-
4 ial surveillance technologies, including unmanned
5 aerial vehicles, to enhance the security of the inter-
6 national border between the United States and Can-
7 ada and the international border between the United
8 States and Mexico. The goal of the program shall be
9 to ensure continuous monitoring of each mile of each
10 such border.

11 (2) ASSESSMENT AND CONSULTATION REQUIRE-
12 MENTS.—In developing the program under this sub-
13 section, the Secretary shall—

14 (A) consider current and proposed aerial
15 surveillance technologies;

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

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

1 (D) consult with the Administrator of the
2 Federal Aviation Administration regarding safe-
3 ty, airspace coordination and regulation, and
4 any other issues necessary for implementation
5 of the program.

6 (3) ADDITIONAL REQUIREMENTS.—

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

15 (i) the significance of previous experi-
16 ences with such technologies in border se-
17 curity or critical infrastructure protection;

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

22 (iii) liability, safety, and privacy con-
23 cerns relating to the utilization of such
24 technologies for border security.

1 (4) CONTINUED USE OF AERIAL SURVEILLANCE
2 TECHNOLOGIES.—The Secretary may continue the
3 operation of aerial surveillance technologies while as-
4 sessing the effectiveness of the utilization of such
5 technologies.

6 (5) REPORT TO CONGRESS.—Not later than
7 180 days after implementing the program under this
8 subsection, the Secretary shall submit to Congress a
9 report regarding such program. The Secretary shall
10 include in the report a description of such program
11 together with any recommendations that the Sec-
12 retary finds appropriate for enhancing the program.

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

16 (b) INTEGRATED AND AUTOMATED SURVEILLANCE
17 PROGRAM.—

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

1 international borders to provide a barrier to illegal
2 immigration. Such program shall be known as the
3 Integrated and Automated Surveillance Program.

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

6 (A) the technologies utilized in the Inte-
7 grated and Automated Surveillance Program
8 are integrated and function cohesively in an
9 automated fashion, including the integration of
10 motion sensor alerts and cameras in a manner
11 where a sensor alert automatically activates a
12 corresponding camera to pan and tilt in the di-
13 rection of the triggered sensor;

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

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

18 (D) surveillance video taken by such cam-
19 eras is able to be viewed at multiple designated
20 communications centers;

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

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

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

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

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

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

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

9 (4) EVALUATION OF CONTRACTORS.—

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

15 (B) REVIEW BY THE INSPECTOR GEN-
16 ERAL.—

17 (i) IN GENERAL.—The Inspector Gen-
18 eral of the Department shall review each
19 new contract related to the Program that
20 has a value of more than \$5,000,000 in a
21 timely manner, to determine whether such
22 contract fully complies with applicable cost
23 requirements, performance objectives, pro-
24 gram milestones, and schedules.

1 (ii) REPORTS.—The Inspector General
2 shall report the findings of each review
3 carried out under clause (i) to the Sec-
4 retary in a timely manner. Not later than
5 30 days after the date the Secretary re-
6 ceives a report of findings from the Inspec-
7 tor General, the Secretary shall submit to
8 the Committee on Homeland Security and
9 Governmental Affairs of the Senate and
10 the Committee on Homeland Security of
11 the House of Representatives a report of
12 such findings and a description of any the
13 steps that the Secretary has taken or plans
14 to take in response to such findings.

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

18 **Subtitle B—Border Security Plans,**
19 **Strategies, and Reports**

20 **SEC. 111. SURVEILLANCE PLAN.**

21 (a) REQUIREMENT FOR PLAN.—The Secretary shall
22 develop a comprehensive plan for the systematic surveil-
23 lance of the international land and maritime borders of
24 the United States.

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

3 (1) An assessment of existing technologies em-
4 ployed on the international land and maritime bor-
5 ders of the United States.

6 (2) A description of the compatibility of new
7 surveillance technologies with surveillance tech-
8 nologies in use by the Secretary on the date of en-
9 actment of this Act.

10 (3) A description of how the Commissioner of
11 the United States Customs and Border Protection is
12 working, or is expected to work, with the Under Sec-
13 retary for Science and Technology of the Depart-
14 ment to identify and test surveillance technology.

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

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

19 (6) A detailed estimate of all costs associated
20 with such deployment and with continued mainte-
21 nance of such technologies.

22 (7) A description of how the Secretary is work-
23 ing with the Administrator of the Federal Aviation
24 Administration on safety and airspace control issues
25 associated with the use of unmanned aerial vehicles.

1 (8) A description of the program to fully inte-
2 grate and utilize aerial surveillance technologies de-
3 veloped pursuant to section 107(a).

4 (9) A description of the Integrated and Auto-
5 mated Surveillance Program established pursuant to
6 section 107(b).

7 (c) SUBMISSION TO CONGRESS.—Not later than 6
8 months after the date of enactment of this Act, the Sec-
9 retary shall submit to Congress the plan required by this
10 section.

11 **SEC. 112. 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 achieve
16 operational control over all ports of entry into the United
17 States and the international land and maritime borders
18 of the United States.

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

21 (1) The implementation schedule for the com-
22 prehensive plan for systematic surveillance described
23 in section 111.

24 (2) An assessment of the threat posed by ter-
25 rorists and terrorist groups that may try to infiltrate

1 the United States at locations along the inter-
2 national land and maritime borders of the United
3 States.

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

9 (A) to prevent the entry of terrorists, other
10 unlawful aliens, instruments of terrorism, nar-
11 cotics, and other contraband into the United
12 States; and

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

15 (4) An assessment of the legal requirements
16 that prevent achieving and maintaining operational
17 control over the entire international land and mari-
18 time borders of the United States.

19 (5) An assessment of the most appropriate,
20 practical, and cost-effective means of defending the
21 international land and maritime borders of the
22 United States against threats to security and illegal
23 transit, including intelligence capacities, technology,
24 equipment, personnel, and training needed to ad-
25 dress security vulnerabilities.

1 (6) An assessment of staffing needs for all bor-
2 der security functions, taking into account threat
3 and vulnerability information pertaining to the bor-
4 ders and the impact of new security programs, poli-
5 cies, and technologies.

6 (7) A description of the border security roles
7 and missions of Federal, State, regional, local, and
8 tribal authorities, and recommendations regarding
9 actions the Secretary can carry out to improve co-
10 ordination with such authorities to enable border se-
11 curity and enforcement activities to be carried out in
12 a more efficient and effective manner.

13 (8) An assessment of existing efforts and tech-
14 nologies used for border security and the effect of
15 the use of such efforts and technologies on civil
16 rights, private property rights, privacy rights, and
17 civil liberties, including an assessment of efforts to
18 take into account asylum seekers, trafficking vic-
19 tims, unaccompanied minor aliens, and other vulner-
20 able populations.

21 (9) A prioritized list of research and develop-
22 ment objectives to enhance the security of the inter-
23 national land and maritime borders of the United
24 States.

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

6 (11) An assessment of additional detention fa-
7 cilities and beds that are needed to detain unlawful
8 aliens apprehended at United States ports of entry
9 or along the international land borders of the United
10 States.

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

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

21 (c) CONSULTATION.—In developing the National
22 Strategy for Border Security, the Secretary shall consult
23 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 security.

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 update of such Strategy that the Sec-
20 retary determines is necessary, not later than 30
21 days after such update is developed.

22 (f) IMMEDIATE ACTION.—Nothing in this section or
23 section 111 may be construed to relieve the Secretary of
24 the responsibility to take all actions necessary and appro-
25 priate to achieve and maintain operational control over the

1 entire international land and maritime borders of the
2 United States.

3 **SEC. 113. REPORTS ON IMPROVING THE EXCHANGE OF IN-**
4 **FORMATION ON NORTH AMERICAN SECU-**
5 **RITY.**

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

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

15 (1) **SECURITY CLEARANCES AND DOCUMENT IN-**
16 **TEGRITY.**—The progress made toward the develop-
17 ment of common enrollment, security, technical, and
18 biometric standards for the issuance, authentication,
19 validation, and repudiation of secure documents, in-
20 cluding—

21 (A) technical and biometric standards
22 based on best practices and consistent with
23 international standards for the issuance, au-
24 thentication, validation, and repudiation of trav-
25 el documents, including—

1 (i) passports;

2 (ii) visas; and

3 (iii) permanent resident cards;

4 (B) working with Canada and Mexico to
5 encourage foreign governments to enact laws to
6 combat alien smuggling and trafficking, and
7 laws to forbid the use and manufacture of
8 fraudulent travel documents and to promote in-
9 formation sharing;

10 (C) applying the necessary pressures and
11 support to ensure that other countries meet
12 proper travel document standards and are com-
13 mitted to travel document verification before
14 the citizens of such countries travel internation-
15 ally, including travel by such citizens to the
16 United States; and

17 (D) providing technical assistance for the
18 development and maintenance of a national
19 database built upon identified best practices for
20 biometrics associated with visa and travel docu-
21 ments.

22 (2) IMMIGRATION AND VISA MANAGEMENT.—

23 The progress of efforts to share information regard-
24 ing high-risk individuals who may attempt to enter

1 Canada, Mexico, or the United States, including the
2 progress made—

3 (A) in implementing the Statement of Mu-
4 tual Understanding on Information Sharing,
5 signed by Canada and the United States in
6 February 2003; and

7 (B) in identifying trends related to immi-
8 gration fraud, including asylum and document
9 fraud, and to analyze such trends.

10 (3) VISA POLICY COORDINATION AND IMMIGRA-
11 TION SECURITY.—The progress made by Canada,
12 Mexico, and the United States to enhance the secu-
13 rity of North America by cooperating on visa policy
14 and identifying best practices regarding immigration
15 security, including the progress made—

16 (A) in enhancing consultation among offi-
17 cials who issue visas at the consulates or em-
18 bassies of Canada, Mexico, or the United States
19 throughout the world to share information,
20 trends, and best practices on visa flows;

21 (B) in comparing the procedures and poli-
22 cies of Canada and the United States related to
23 visitor visa processing, including—

24 (i) application process;

25 (ii) interview policy;

1 (iii) general screening procedures;

2 (iv) visa validity;

3 (v) quality control measures; and

4 (vi) access to appeal or review;

5 (C) in exploring methods for Canada, Mex-
6 ico, and the United States to waive visa re-
7 quirements for nationals and citizens of the
8 same foreign countries;

9 (D) in providing technical assistance for
10 the development and maintenance of a national
11 database built upon identified best practices for
12 biometrics associated with immigration viola-
13 tors;

14 (E) in developing and implementing an im-
15 migration security strategy for North America
16 that works toward the development of a com-
17 mon security perimeter by enhancing technical
18 assistance for programs and systems to support
19 advance automated reporting and risk targeting
20 of international passengers;

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

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

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

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

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

23 (B) in establishing appropriate linkages
24 among Canada, Mexico, and the United States
25 Terrorist Screening Center; and

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

10 (6) MONEY LAUNDERING, CURRENCY SMUG-
11 GLING, AND ALIEN SMUGGLING.—The progress made
12 in improving information sharing and law enforce-
13 ment cooperation in combating organized crime, in-
14 cluding the progress made—

15 (A) in combating currency smuggling,
16 money laundering, alien smuggling, and traf-
17 ficking in alcohol, firearms, and explosives;

18 (B) in determining the feasibility of formu-
19 lating a firearms trafficking action plan be-
20 tween Mexico and the United States;

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

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

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

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

11 (7) LAW ENFORCEMENT COOPERATION.—The
12 progress made in enhancing law enforcement co-
13 operation among Canada, Mexico, and the United
14 States through enhanced technical assistance for the
15 development and maintenance of a national database
16 built upon identified best practices for biometrics as-
17 sociated with known and suspected criminals or ter-
18 rorists, including exploring the formation of law en-
19 forcement teams that include personnel from the
20 United States and Mexico, and appropriate proce-
21 dures for such teams.

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

23 (a) IN GENERAL.—The Comptroller General of the
24 United States shall conduct a review of the basic training
25 provided to Border Patrol agents by the Secretary to en-

1 sure that such training is provided as efficiently and cost-
2 effectively as possible.

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

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

12 (2) A review and a detailed breakdown of the
13 costs incurred by United States Customs and Border
14 Protection and the Federal Law Enforcement Train-
15 ing Center to train 1 new Border Patrol agent.

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

22 (4) An evaluation of whether utilizing com-
23 parable non-Federal training programs, proficiency
24 testing, and long-distance learning programs may af-
25 fect—

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

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

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

9 **SEC. 115. SECURE BORDER INITIATIVE FINANCIAL AC-**
10 **COUNTABILITY.**

11 (a) IN GENERAL.—The Inspector General of the De-
12 partment shall review each contract action relating to the
13 Secure Border Initiative having a value of more than
14 \$20,000,000, to determine whether each such action fully
15 complies with applicable cost requirements, performance
16 objectives, program milestones, inclusion of small, minor-
17 ity, and women-owned business, and time lines. The In-
18 spector General shall complete a review under this sub-
19 section with respect to each contract action—

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

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

24 (b) INSPECTOR GENERAL.—

1 (1) ACTION.—If the Inspector General becomes
2 aware of any improper conduct or wrongdoing in the
3 course of conducting a contract review under sub-
4 section (a), the Inspector General shall, as expedi-
5 tiously as practicable, refer information relating to
6 such improper conduct or wrongdoing to the Sec-
7 retary, or to another appropriate official of the De-
8 partment, who shall determine whether to tempo-
9 rarily suspend the contractor from further participa-
10 tion in the Secure Border Initiative.

11 (2) REPORT.—Upon the completion of each re-
12 view described in subsection (a), the Inspector Gen-
13 eral shall submit to the Secretary a report con-
14 taining the findings of the review, including findings
15 regarding—

16 (A) cost overruns;

17 (B) significant delays in contract execu-
18 tion;

19 (C) lack of rigorous departmental contract
20 management;

21 (D) insufficient departmental financial
22 oversight;

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

25 (F) other high-risk business practices.

1 (c) REPORTS BY THE SECRETARY.—

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

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

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

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

21 (d) REPORTS ON UNITED STATES PORTS.—Not later
22 that 30 days after receiving information regarding a pro-
23 posed purchase of a contract to manage the operations of
24 a United States port by a foreign entity, the Committee

1 on Foreign Investment in the United States shall submit
2 a report to Congress that describes—

3 (1) the proposed purchase;

4 (2) any security concerns related to the pro-
5 posed purchase; and

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

8 (e) AUTHORIZATION OF APPROPRIATIONS.—In addi-
9 tion to amounts that are otherwise authorized to be appro-
10 priated to the Office of the Inspector General of the De-
11 partment, there are authorized to be appropriated to the
12 Office, to enable the Office to carry out this section—

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

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

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

1 **Subtitle C—Southern Border**
2 **Security**

3 **SEC. 121. IMPROVING THE SECURITY OF MEXICO'S SOUTH-**
4 **ERN BORDER.**

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

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

13 (2) to use the assessment made under para-
14 graph (1) to determine the financial and technical
15 support needed by the countries of Central America
16 from Canada, Mexico, and the United States to meet
17 such needs;

18 (3) to provide technical assistance to the coun-
19 tries of Central America to promote issuance of se-
20 cure passports and travel documents by such coun-
21 tries; and

22 (4) to encourage the countries of Central Amer-
23 ica—

24 (A) to control alien smuggling and traf-
25 ficking;

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

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

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

8 (1) with the appropriate officials of the govern-
9 ments of the countries of Central America to provide
10 law enforcement assistance to such countries to spe-
11 cifically address immigration issues to increase the
12 ability of such governments to dismantle human
13 smuggling organizations and gain additional control
14 over the international borders between the countries
15 of Central America; and

16 (2) with the appropriate officials of the govern-
17 ments of the countries of Central America to estab-
18 lish a program to provide needed equipment, tech-
19 nical assistance, and vehicles to manage, regulate,
20 and patrol such international borders.

21 (c) TRACKING CENTRAL AMERICAN GANGS.—The
22 Secretary of State, in coordination with the Secretary and
23 the Director of the Federal Bureau of Investigation, shall
24 work to cooperate with the appropriate officials of the gov-
25 ernments of other countries of Central America—

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

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

7 (3) to develop a mechanism that is acceptable
8 to the governments of the countries of Central
9 America and of the United States to notify such a
10 government if an individual suspected of gang activ-
11 ity will be deported to that country prior to the de-
12 portation and to provide support for the reintegra-
13 tion of such deportees into that country; and

14 (4) to develop an agreement to share all rel-
15 evant information related to individuals connected
16 with Central American gangs.

17 (d) LIMITATIONS ON ASSISTANCE.—Any funds made
18 available to carry out this section shall be subject to the
19 limitations contained in section 551 of the Foreign Oper-
20 ations, Export Financing, and Related Programs Appro-
21 priations Act, 2006 (Public Law 109–102; 119 Stat.
22 2218).

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

3 (a) COLLECTION OF STATISTICS.—The Commis-
4 sioner of the United States Customs and Border Protec-
5 tion shall collect statistics relating to deaths occurring at
6 the border between the United States and Mexico, includ-
7 ing—

8 (1) the causes of the deaths; and

9 (2) the total number of deaths.

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

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

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

19 **SEC. 123. COOPERATION WITH THE GOVERNMENT OF MEX-**
20 **ICO.**

21 (a) COOPERATION REGARDING BORDER SECUR-
22 ITY.—The Secretary of State, in cooperation with the
23 Secretary and representatives of Federal, State, and local
24 law enforcement agencies that are involved in border secu-
25 rity and immigration enforcement efforts, shall work with
26 the appropriate officials from the Government of Mexico

1 to improve coordination between the United States and
2 Mexico regarding—

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

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

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

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

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

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

16 (b) COOPERATION REGARDING EDUCATION ON IMMIGRATION LAWS.—The Secretary of State, in cooperation
17 with other appropriate Federal officials, shall work with
18 the appropriate officials from the Government of Mexico
19 to carry out activities to educate citizens and nationals
20 of Mexico regarding eligibility for status as a non-
21 immigrant under Federal law to ensure that the citizens
22 and nationals are not exploited while working in the
23 United States.
24

1 (c) COOPERATION REGARDING CIRCULAR MIGRA-
2 TION.—The Secretary of State, in cooperation with the
3 Secretary of Labor and other appropriate Federal offi-
4 cials, shall work with the appropriate officials from the
5 Government of Mexico to improve coordination between
6 the United States and Mexico to encourage circular migra-
7 tion, including assisting in the development of economic
8 opportunities and providing job training for citizens and
9 nationals in Mexico.

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

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

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

1 **SEC. 124. TEMPORARY NATIONAL GUARD SUPPORT FOR SE-**
2 **CURING THE SOUTHERN LAND BORDER OF**
3 **THE UNITED STATES.**

4 (a) **AUTHORITY TO PROVIDE ASSISTANCE.**—

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

14 (2) **SUPPORT.**—With the approval of the Sec-
15 retary of Defense, the Governor of a State may
16 order any units or personnel of the National Guard
17 of such State to perform duty under section 502(f)
18 of title 32, United States Code, to provide command,
19 control, and continuity of support for units or per-
20 sonnel performing annual training duty under para-
21 graph (1).

22 (b) **AUTHORIZED ACTIVITIES.**—The activities author-
23 ized by this subsection are any of the following:

- 24 (1) Ground reconnaissance activities.
25 (2) Airborne reconnaissance activities.
26 (3) Logistical support.

1 (4) Provision of translation services and train-
2 ing.

3 (5) Administrative support services.

4 (6) Technical training services.

5 (7) Emergency medical assistance and services.

6 (8) Communications services.

7 (9) Rescue of aliens in peril.

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

11 (11) Ground and air transportation.

12 (c) COOPERATIVE AGREEMENTS.—Units and per-
13 sonnel of the National Guard of a State may perform ac-
14 tivities in another State under subsection (a) only pursu-
15 ant to the terms of an emergency management assistance
16 compact or other cooperative arrangement entered into be-
17 tween Governors of such States for purposes of this sec-
18 tion, and only with the approval of the Secretary of De-
19 fense.

20 (d) COORDINATION OF ASSISTANCE.—The Secretary
21 of Homeland Security shall, in consultation with the Sec-
22 retary of Defense and the Governors of the States con-
23 cerned, coordinate the performance of activities under this
24 section by units and personnel of the National Guard.

1 (e) ANNUAL TRAINING.—Annual training duty per-
2 formed by members of the National Guard under sub-
3 section (a) shall be appropriate for the units and indi-
4 vidual members concerned, taking into account the types
5 of units and military occupational specialties of individual
6 members performing such duty.

7 (f) DEFINITIONS.—In this section:

8 (1) The term “Governor of a State” means, in
9 the case of the District of Columbia, the Com-
10 manding General of the National Guard of the Dis-
11 trict of Columbia.

12 (2) The term “State” means each of the several
13 States, the District of Columbia, the Commonwealth
14 of Puerto Rico, Guam, and the Virgin Islands.

15 (3) The term “State along the southern border
16 of the United States” means each of the following:

17 (A) The State of Arizona.

18 (B) The State of California.

19 (C) The State of New Mexico.

20 (D) The State of Texas.

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

23 (h) PROHIBITION ON DIRECT PARTICIPATION IN LAW
24 ENFORCEMENT.—Activities carried out under the author-
25 ity of this section shall not include the direct participation

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

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

5 (a) ESTABLISHMENT OF COMMISSION.—

6 (1) IN GENERAL.—There is established an inde-
7 pendent commission to be known as the United
8 States-Mexico Border Enforcement Review Commis-
9 sion (referred to in this section as the “Commis-
10 sion”).

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

13 (A) to study the overall enforcement and
14 detention strategies, programs and policies of
15 Federal agencies along the United States-Mex-
16 ico border; and

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

20 (3) MEMBERSHIP.—The Commission shall be
21 composed of 16 voting members, who shall be ap-
22 pointed as follows:

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

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

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

5 (iii) 2 shall be from the State's com-
6 munities of academia, religious leaders,
7 civic leaders or community leaders.

8 (B) 2 nonvoting members, of whom—

9 (i) 1 shall be appointed by the Sec-
10 retary; and

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

13 (4) QUALIFICATIONS.—

14 (A) IN GENERAL.—Members of the Com-
15 mission shall be—

16 (i) individuals with expertise in migra-
17 tion, border enforcement and protection,
18 civil and human rights, community rela-
19 tions, cross-border trade and commerce or
20 other pertinent qualifications or experience;
21 and

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

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

5 (C) NONGOVERNMENTAL APPOINTEES.—
6 An individual appointed as a voting member to
7 the Commission may not be an officer or em-
8 ployee of the Federal Government.

9 (5) DEADLINE FOR APPOINTMENT.—All mem-
10 bers of the Commission shall be appointed not later
11 than 6 months after the enactment of this Act. If
12 any member of the Commission described in para-
13 graph (3)(A) is not appointed by such date, the
14 Commission shall carry out its duties under this sec-
15 tion without the participation of such member.

16 (6) TERM OF SERVICE.—The term of office for
17 members shall be for the life of the Commission, or
18 3 years, whichever is sooner.

19 (7) VACANCIES.—Any vacancy in the Commis-
20 sion shall not affect its powers, but shall be filled in
21 the same manner in which the original appointment
22 was made.

23 (8) MEETINGS.—

1 (A) INITIAL MEETING.—The Commission
2 shall meet and begin the operations of the Com-
3 mission as soon as practicable.

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

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

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

14 (b) DUTIES.—The Commission shall review, examine,
15 and make recommendations regarding border enforcement
16 policies, strategies, and programs, including recommenda-
17 tions regarding—

18 (1) the protection of human and civil rights of
19 community residents and migrants along the inter-
20 national border between the United States and Mex-
21 ico;

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

1 (3) the adequacy of the complaint process with-
2 in the agencies and programs of the Department
3 that are employed when an individual files a griev-
4 ance;

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

8 (A) environment;

9 (B) cross border traffic and commerce; and

10 (C) the quality of life of border commu-
11 nities;

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

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

17 (7) any other matters regarding border enforce-
18 ment policies, strategies, and programs the Commis-
19 sion determines appropriate.

20 (c) INFORMATION AND ASSISTANCE FROM FEDERAL
21 AGENCIES.—

22 (1) INFORMATION FROM FEDERAL AGENCIES.—
23 The Commission may seek directly from any depart-
24 ment or agency of the United States such informa-
25 tion, including suggestions, estimates, and statistics,

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

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

15 (d) COMPENSATION.—

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

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

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

1 mission shall submit a report to the President and Con-
2 gress that contains—

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

5 (2) recommendations regarding border enforce-
6 ment policies, strategies, and programs;

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

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

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

17 (g) SUNSET.—Unless the Commission is re-author-
18 ized by Congress, the Commission shall terminate on the
19 date that is 90 days after the date the Commission sub-
20 mits the report described in subsection (e).

21 **Subtitle D—Secure Entry** 22 **Initiatives**

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

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

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

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

15 **SEC. 132. US-VISIT SYSTEM.**

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

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

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

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

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

7 (a) TRAINING.—Subject to the availability of appro-
8 priations, the Secretary shall provide all officers of the
9 United States Customs and Border Protection with train-
10 ing in identifying and detecting fraudulent travel docu-
11 ments. Such training shall be developed in consultation
12 with the head of the Forensic Document Laboratory of
13 United States Immigration and Customs Enforcement.

14 (b) FORENSIC DOCUMENT LABORATORY.—The Sec-
15 retary shall provide all United States Customs and Border
16 Protection officers with access to the Forensic Document
17 Laboratory.

18 (c) ASSESSMENT.—

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

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

1 Inspector General shall submit to Congress the find-
2 ings of the assessment required by paragraph (1).

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

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

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

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

14 (2) in the heading, by striking “**ENTRY AND**
15 **EXIT DOCUMENTS**” and inserting “**TRAVEL AND**
16 **ENTRY DOCUMENTS AND EVIDENCE OF STA-**
17 **TUS**”;

18 (3) in subsection (b)(1)—

19 (A) by striking “Not later than October
20 26, 2004, the” and inserting “The”; and

21 (B) by striking “visas and” both places it
22 appears and inserting “visas, evidence of status,
23 and”;

24 (4) by redesignating subsection (d) as sub-
25 section (e); and

1 (5) by inserting after subsection (c) the fol-
2 lowing:

3 “(d) OTHER DOCUMENTS.—Not later than December
4 31, 2008, every document, other than an interim docu-
5 ment, issued by the Secretary of Homeland Security which
6 may be used as evidence of an alien’s authorization to
7 travel shall be machine-readable and tamper-resistant, and
8 shall incorporate a biometric identifier to allow the Sec-
9 retary of Homeland Security to verify electronically the
10 identity and status of the alien.”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ply with a lawful request for biometric data
2 under section 215(e) or 235(d) is inadmis-
3 sible.”; and

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

6 “(2) The Secretary of Homeland Security shall
7 determine whether a ground for inadmissibility ex-
8 ists with respect to an alien described in subpara-
9 graph (C) of subsection (a)(7) and may waive the
10 application of such subparagraph for an individual
11 alien or a class of aliens, at the discretion of the
12 Secretary.”.

13 (e) IMPLEMENTATION.—Section 7208 of the 9/11
14 Commission Implementation Act of 2004 (8 U.S.C.
15 1365b) is amended—

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

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

1 (2) in subsection (l)—

2 (A) by striking “There are authorized”
3 and inserting the following:

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

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

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

12 **SEC. 136. EVASION OF INSPECTION OR VIOLATION OF AR-**
13 **RIVAL, REPORTING, ENTRY, OR CLEARANCE**
14 **REQUIREMENTS.**

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

18 **“§ 556. Evasion of inspection or violation of arrival,**
19 **reporting, entry, or clearance require-**
20 **ments**

21 “(a) PROHIBITION.—A person at a port of entry or
22 customs or immigration checkpoint shall be punished as
23 described in subsection (b) if such person attempts to
24 elude or eludes customs, immigration, or agriculture in-
25 spection or fails to stop at the command of an officer or

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

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

6 “(1) fined under this title;

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

9 “(B) imprisoned for not more than 10 years, or
10 both, if in commission of this violation, such person
11 attempts to inflict or inflicts bodily injury (as de-
12 fined in section 1365(h) of this title); or

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

16 “(3) both fined and imprisoned under this sub-
17 section.

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

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

1 of this offense, or in the case of disregarding or disobeying
2 the lawful authority or command of any officer or em-
3 ployee of the United States under section 111(b) of this
4 title, such conduct shall constitute prima facie evidence of
5 smuggling aliens or merchandise.”.

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

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

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

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

20 (d) TECHNICAL AMENDMENTS.—

21 (1) IN GENERAL.—Chapter 27 of title 18,
22 United States Code, is amended by redesignating the
23 section 554 added by section 551(a) of the Depart-
24 ment of Homeland Security Appropriations Act,

1 2007 (Public Law 109–295; 120 Stat. 1389) (relat-
2 ing to border tunnels and passages) as section 555.

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

6 (A) by striking the following:

“554. Border tunnels and passages.”; and

7 (B) inserting the following:

“555. Border tunnels and passages.”.

8 (3) CRIMINAL FORFEITURE.—Section
9 982(a)(6)(A) of title 18, United States Code, is
10 amended by striking “554” and inserting “555”.

11 (4) DIRECTIVE TO THE UNITED STATES SEN-
12 TENCING COMMISSION.—Section 551(d) of the De-
13 partment of Homeland Security Appropriations Act,
14 2007 (Public Law 109–295; 120 Stat. 1390) is
15 amended in paragraphs (1) and (2)(A) by striking
16 “554” and inserting “555”.

17 **Subtitle E—Law Enforcement** 18 **Relief for States**

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

20 (a) GRANTS AUTHORIZED.—

21 (1) IN GENERAL.—The Secretary is authorized
22 to award grants, subject to the availability of appro-
23 priations, to an eligible law enforcement agency to
24 provide assistance to such agency to address—

1 (A) criminal activity that occurs in the ju-
2 rsdiction of such agency by virtue of such
3 agency's proximity to the United States border;
4 and

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

7 (2) DURATION.—Grants may be awarded under
8 this subsection during fiscal years 2008 through
9 2012.

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

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

21 (1) to obtain equipment;

22 (2) to hire additional personnel;

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

1 (4) to cover operational costs, including over-
2 time and transportation costs; and

3 (5) such other resources as are available to as-
4 sist that agency.

5 (c) APPLICATION.—

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

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

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

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

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

20 (1) ELIGIBLE LAW ENFORCEMENT AGENCY.—

21 The term “eligible law enforcement agency” means
22 a tribal, State, or local law enforcement agency—

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

1 (i) Canada; or

2 (ii) Mexico; or

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

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

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

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

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

21 (e) AUTHORIZATION OF APPROPRIATIONS.—

22 (1) IN GENERAL.—There are authorized to be
23 appropriated \$50,000,000 for each of fiscal years
24 2008 through 2012 to carry out the provisions of
25 this section.

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

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

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

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

14 (g) ENFORCEMENT OF FEDERAL IMMIGRATION
15 LAW.—Nothing in this section shall be construed to au-
16 thorize State or local law enforcement agencies or their
17 officers to exercise Federal immigration law enforcement
18 authority.

19 **SEC. 142. NORTHERN AND SOUTHERN BORDER PROSECU-**
20 **TION INITIATIVE.**

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

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

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated \$50,000,000 for each
5 of the fiscal years 2008 through 2013 to carry out sub-
6 section (a).

7 **Subtitle F—Rapid Response** 8 **Measures**

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

10 (a) EMERGENCY DEPLOYMENT OF BORDER PATROL
11 AGENTS.—

12 (1) IN GENERAL.—If the Governor of a State
13 on an international border of the United States de-
14 clares an international border security emergency
15 and requests additional agents of the Border Patrol
16 (referred to in this subtitle as “agents”) from the
17 Secretary, the Secretary, subject to paragraphs (2)
18 and (3), may provide the State with not more than
19 1,000 additional agents for the purpose of patrolling
20 and defending the international border, in order to
21 prevent individuals from crossing the international
22 border into the United States at any location other
23 than an authorized port of entry.

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

1 consultation with the President, shall grant such re-
2 quest to the extent that providing such agents will
3 not significantly impair the Department's ability to
4 provide border security for any other State.

5 (3) COLLECTIVE BARGAINING.—Emergency de-
6 ployments under this subsection shall be made in ac-
7 cordance with all applicable collective bargaining
8 agreements and obligations.

9 (b) ELIMINATION OF FIXED DEPLOYMENT OF BOR-
10 DER PATROL AGENTS.—The Secretary shall ensure that
11 agents are not precluded from performing patrol duties
12 and apprehending violators of law, except in unusual cir-
13 cumstances if the temporary use of fixed deployment posi-
14 tions is necessary.

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

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

22 (b) HELICOPTERS AND POWER BOATS.—

23 (1) HELICOPTERS.—The Secretary shall in-
24 crease, by not less than 100, the number of heli-
25 copters under the control of the Border Patrol. The

1 Secretary shall ensure that appropriate types of heli-
2 copters are procured for the various missions being
3 performed.

4 (2) POWER BOATS.—The Secretary shall in-
5 crease, by not less than 250, the number of power
6 boats under the control of the Border Patrol. The
7 Secretary shall ensure that the types of power boats
8 that are procured are appropriate for both the wa-
9 terways in which they are used and the mission re-
10 quirements.

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

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

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

18 (c) MOTOR VEHICLES.—

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

1 motor vehicles to support the mission of the Border
2 Patrol.

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

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

7 (B) have a panic button and a global posi-
8 tioning system device that is activated solely in
9 emergency situations to track the location of
10 agents in distress.

11 **SEC. 153. ELECTRONIC EQUIPMENT.**

12 (a) PORTABLE COMPUTERS.—The Secretary shall en-
13 sure that each police-type motor vehicle in the fleet of the
14 Border Patrol is equipped with a portable computer with
15 access to all necessary law enforcement databases and oth-
16 erwise suited to the unique operational requirements of
17 the Border Patrol.

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

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

3 (c) **HANDHELD GLOBAL POSITIONING SYSTEM DE-**
4 **VICES.**—The Secretary shall ensure that each Border Pa-
5 trol agent is issued a state-of-the-art handheld global posi-
6 tioning system device for navigational purposes.

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

13 **SEC. 154. PERSONAL EQUIPMENT.**

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

22 (b) **WEAPONS.**—The Secretary shall ensure that
23 agents are equipped with weapons that are reliable and
24 effective to protect themselves, their fellow agents, and in-
25 nocent third parties from the threats posed by armed

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

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

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

12 There are authorized to be appropriated to the Sec-
13 retary such sums as may be necessary for each of the fis-
14 cal years 2008 through 2012 to carry out this subtitle.

15 **Subtitle G—Border Infrastructure**
16 **and Technology Modernization**

17 **SEC. 161. DEFINITIONS.**

18 In this subtitle:

19 (1) COMMISSIONER.—The term “Commis-
20 sioner” means the Commissioner of United States
21 Customs and Border Protection.

22 (2) NORTHERN BORDER.—The term “northern
23 border” means the international border between the
24 United States and Canada.

1 (3) SOUTHERN BORDER.—The term “southern
2 border” means the international border between the
3 United States and Mexico.

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

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

16 (b) CONSULTATION.—In preparing the updated stud-
17 ies required in subsection (a), the Administrator of Gen-
18 eral Services shall consult with the Director of the Office
19 of Management and Budget, the Secretary, and the Com-
20 missioner.

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

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

1 border security and facilitate the flow of legitimate
2 commerce if implemented;

3 (2) include the projects identified in the Na-
4 tional Land Border Security Plan required by sec-
5 tion 164; and

6 (3) prioritize the projects described in para-
7 graphs (1) and (2) based on the ability of a project
8 to—

9 (A) fulfill immediate security requirements;

10 and

11 (B) facilitate trade across the borders of
12 the United States.

13 (d) PROJECT IMPLEMENTATION.—The Commissioner
14 shall implement the infrastructure and technology im-
15 provement projects described in subsection (c) in the order
16 of priority assigned to each project under paragraph (3)
17 of such subsection.

18 (e) DIVERGENCE FROM PRIORITIES.—The Commis-
19 sioner may diverge from the priority order if the Commis-
20 sioner determines that significantly changed cir-
21 cumstances, such as immediate security needs or changes
22 in infrastructure in Mexico or Canada, compellingly alter
23 the need for a project in the United States.

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

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

9 (b) VULNERABILITY ASSESSMENT.—

10 (1) IN GENERAL.—The plan required in sub-
11 section (a) shall include a vulnerability assessment
12 of each port of entry located on the northern border
13 or the southern border.

14 (2) PORT SECURITY COORDINATORS.—The Sec-
15 retary may establish 1 or more port security coordi-
16 nators at each port of entry located on the northern
17 border or the southern border—

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

20 (B) to provide other assistance with the
21 preparation of the plan required in subsection

22 (a).

23 **SEC. 164. EXPANSION OF COMMERCE SECURITY PRO-**
24 **GRAMS.**

25 (a) CUSTOMS-TRADE PARTNERSHIP AGAINST TER-
26 RORISM.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of this Act, the Commis-
3 sioner, in consultation with the Secretary, shall de-
4 velop a plan to expand the programs of the Cus-
5 toms–Trade Partnership Against Terrorism estab-
6 lished pursuant to section 211 of the SAFE Port
7 Act (6 U.S.C. 961), including adding additional per-
8 sonnel for such programs, along the northern border
9 and southern border, including the following pro-
10 grams:

11 (A) The Business Anti-Smuggling Coali-
12 tion.

13 (B) The Carrier Initiative Program.

14 (C) The Americas Counter Smuggling Ini-
15 tiative.

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

19 (E) The Free and Secure Trade Initiative.

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

22 (2) SOUTHERN BORDER DEMONSTRATION PRO-
23 GRAM.—Not later than 180 days after the date of
24 enactment of this Act, the Commissioner shall imple-
25 ment, on a demonstration basis, at least 1 Customs–

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

4 (b) DEMONSTRATION PROGRAM.—Not later than 180
5 days after the date of enactment of this Act, the Commis-
6 sioner shall establish a demonstration program to develop
7 a cooperative trade security system to improve supply
8 chain security.

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

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

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

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

17 (3) train personnel under realistic conditions.

18 (b) TECHNOLOGY AND FACILITIES.—

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

23 (A) inspections;

24 (B) communications;

25 (C) port tracking;

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

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

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

17 (c) DEMONSTRATION SITES.—

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

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

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

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

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

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

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

22 (e) REPORT.—

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

1 report on the activities carried out at each dem-
2 onstration site under the technology demonstration
3 program established under this section.

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

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

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

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

1 **Subtitle H—Safe and Secure**
2 **Detention**

3 **SEC. 171. DEFINITIONS.**

4 In this subtitle:

5 (1) **ASYLUM SEEKER.**—The term “asylum seek-
6 er” means an applicant for asylum under section
7 208 of the Immigration and Nationality Act (8
8 U.S.C. 1158) or for withholding of removal under
9 section 241(b)(3) of that Act (8 U.S.C. 1231(b)(3))
10 or an alien who indicates an intention to apply for
11 relief under either such section and does not include
12 a person with respect to whom a final adjudication
13 denying an application made under either such sec-
14 tion has been entered.

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

20 (3) **DETAINEE.**—The term “detainee” means
21 an alien in the Department’s custody held in a de-
22 tention facility.

23 (4) **DETENTION FACILITY.**—The term “deten-
24 tion facility” means any Federal facility in which an
25 asylum seeker, an alien detained pending the out-

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

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

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

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

22 Vulnerable populations include the following:

23 (A) Asylum seekers.

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

1 U.S.C. 1157) and individuals seeking such ad-
2 mission.

3 (C) Aliens whose deportation is being with-
4 held under section 243(h) of the Immigration
5 and Nationality Act (as in effect immediately
6 before the effective date of section 307 of the
7 Illegal Immigration Reform and Immigrant Re-
8 sponsibility Act of 1996 (Public Law 104–208;
9 110 Stat. 3009–612)) or section 241(b)(3) of
10 the Immigration and Nationality Act (8 U.S.C.
11 1231(b)(3)).

12 (D) Aliens granted or seeking protection
13 under article 3 of the Convention Against Tor-
14 ture and other Cruel, Inhumane, or Degrading
15 Treatment or Punishment, done at New York,
16 December 10, 1994.

17 (E) Applicants for relief and benefits
18 under the Immigration and Nationality Act
19 pursuant to the amendments made by the Traf-
20 ficking Victims Protection Act of 2000 (division
21 A of Public Law 106–386; 114 Stat. 1464), in-
22 cluding applicants for nonimmigrant status
23 under subparagraph (T) or (U) of section
24 101(a)(15) of the Immigration and Nationality
25 Act (8 U.S.C. 1101(a)(15)).

1 (F) Applicants for relief and benefits
2 under the Immigration and Nationality Act
3 pursuant to the amendments made by the Vio-
4 lence Against Women Act of 2000 (division B
5 of Public Law 106–386; 114 Stat. 1491).

6 (G) Unaccompanied alien children (as de-
7 fined by 462(g) of the Homeland Security Act
8 of 2002 (6 U.S.C. 279(g)).

9 **SEC. 172. RECORDING SECONDARY INSPECTION INTER-**
10 **VIEWS.**

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

17 (b) FACTORS RELATING TO SWORN STATEMENTS.—
18 Where practicable, as determined by the sole and
19 unreviewable discretion of the Secretary, the quality assur-
20 ance procedures established pursuant to this section shall
21 include taped interviews to ensure the accuracy and
22 verifiability of signed or sworn statements taken by em-
23 ployees of the Department.

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

1 viewing officer does not speak a language understood by
2 the alien and there is no other Federal, State, or local
3 government employee available who is able to interpret ef-
4 fectively, accurately, and impartially.

5 **SEC. 173. PROCEDURES GOVERNING DETENTION DECI-**
6 **SIONS.**

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

8 (1) in subsection (a)—

9 (A) in the matter preceding paragraph

10 (1)—

11 (i) in the first sentence by striking
12 “Attorney General” and inserting “Sec-
13 retary of Homeland Security”;

14 (ii) by striking “(c)” and inserting
15 “(d)”;

16 (iii) in the second sentence by striking
17 “Attorney General” and inserting “Sec-
18 retary”;

19 (B) in paragraph (2)—

20 (i) in subparagraph (A)—

21 (I) by striking “Attorney Gen-
22 eral” and inserting “Secretary”; and

23 (II) by striking “or” at the end;

24 (ii) in subparagraph (B), by striking

25 “but” at the end; and

1 (iii) by inserting after subparagraph

2 (B) the following:

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

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

6 (2) by redesignating subsections (b), (c), (d),
7 and (e) as subsections (d), (e), (f), and (h), respec-
8 tively;

9 (3) by inserting after subsection (a) the fol-
10 lowing new subsections:

11 “(b) CUSTODY DECISIONS.—

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

15 “(A) The decision shall be made in writing
16 and shall be served upon the alien. A decision
17 to continue detention without bond or parole
18 shall specify in writing the reasons for that de-
19 cision.

20 “(B) The decision shall be served upon the
21 alien within 72 hours of the alien’s detention
22 or, in the case of an alien subject to section 235
23 or 241(a)(5) who must establish a credible fear
24 of persecution or a reasonable fear of persecu-
25 tion or torture in order to proceed in immigra-

1 tion court, within 72 hours of a positive credible
2 fear of persecution or reasonable fear of perse-
3 cution or torture determination.

4 “(2) CRITERIA TO BE CONSIDERED.—The cri-
5 teria to be considered by the Secretary and the At-
6 torney General in making a custody decision shall
7 include—

8 “(A) whether the alien poses a risk to pub-
9 lic safety or national security;

10 “(B) whether the alien is likely to appear
11 for immigration proceedings; and

12 “(C) any other relevant factors.

13 “(3) CUSTODY REDETERMINATION.—An alien
14 subject to this section may at any time after being
15 served with the Secretary’s decision under sub-
16 sections (a) or (d) request a redetermination of that
17 decision by an immigration judge. All decisions by
18 the Secretary to detain without bond or parole shall
19 be subject to redetermination by an immigration
20 judge within 2 weeks from the time the alien was
21 served with the decision, unless waived by the alien.
22 The alien may request a further redetermination
23 upon a showing of a material change in cir-
24 cumstances since the last redetermination hearing.

1 “(c) EXCEPTION FOR MANDATORY DETENTION.—
2 Subsection (b) shall not apply to any alien who is subject
3 to mandatory detention under section
4 235(b)(1)(B)(iii)(IV), 236(c), or 236A or who has a final
5 order of removal and has no proceedings pending before
6 the Executive Office for Immigration Review.”;

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

8 (A) by striking “Attorney General” and in-
9 serting “Secretary”; and

10 (B) by striking “or parole” and inserting
11 “, parole, or decision to release;”;

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

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

15 (B) in paragraph (2), by inserting “or for
16 humanitarian reasons,” after “such an inves-
17 tigation,”;

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

19 (A) in the matter preceding paragraph (1),
20 by striking “Attorney General” and inserting
21 “Secretary”;

22 (B) in paragraph (1), in subparagraphs
23 (A) and (B), by striking “Service” and insert-
24 ing “Department of Homeland Security”; and

1 (C) in paragraph (3), by striking “Service”
2 and inserting “Secretary of Homeland Secu-
3 rity”;

4 (7) by inserting after subsection (f), as redesign-
5 nated, the following new subparagraph:

6 “(g) ADMINISTRATIVE REVIEW.—If an immigration
7 judge’s custody decision has been stayed by the action of
8 an officer or employee of the Department of Homeland
9 Security, the stay shall expire in 30 days, unless the Board
10 of Immigration Appeals before that time, and upon mo-
11 tion, enters an order continuing the stay.”; and

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

13 (A) by striking “Attorney General’s” and
14 inserting “Secretary of Homeland Security’s”;
15 and

16 (B) by striking “Attorney General” and in-
17 serting “Secretary”.

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

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

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

6 (c) EXPANSION OF LEGAL ASSISTANCE.—The Sec-
7 retary shall ensure the expansion through the United
8 States Citizenship and Immigration Service of public-pri-
9 vate partnerships that facilitate pro bono counseling and
10 legal assistance for asylum seekers awaiting a credible fear
11 of persecution interview. The pro bono counseling and
12 legal assistance programs developed pursuant to this sub-
13 section shall be based on the pilot program developed in
14 Arlington, Virginia by the United States Citizenship and
15 Immigration Service.

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

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

21 (b) PROCEDURES AND STANDARDS.—The Secretary
22 shall promulgate new standards, or modify existing deten-
23 tion standards, to improve conditions in detention facili-
24 ties. The improvements shall address at a minimum the
25 following policies and procedures:

1 (1) FAIR AND HUMANE TREATMENT.—Proce-
2 dures to ensure that detainees are not subject to de-
3 grading or inhumane treatment such as verbal or
4 physical abuse or harassment, sexual abuse or har-
5 assment, or arbitrary punishment.

6 (2) LIMITATIONS ON SHACKLING.—Procedures
7 limiting the use of shackling, handcuffing, solitary
8 confinement, and strip searches of detainees to situ-
9 ations where the use of such techniques is neces-
10 sitated by security interests or other extraordinary
11 circumstances.

12 (3) INVESTIGATION OF GRIEVANCES.—Proce-
13 dures for the prompt and effective investigation of
14 grievances raised by detainees, including review of
15 grievances by officials of the Department who do not
16 work at the same detention facility where the de-
17 tainee filing the grievance is detained.

18 (4) ACCESS TO TELEPHONES.—Procedures per-
19 mitting detainees sufficient access to telephones, and
20 the ability to contact, free of charge, legal represent-
21 atives, the immigration courts, the Board of Immi-
22 gration Appeals, and the Federal courts through
23 confidential toll-free numbers.

24 (5) LOCATION OF FACILITIES.—Location of de-
25 tention facilities, to the extent practicable, near

1 sources of free or low-cost legal representation with
2 expertise in asylum or immigration law.

3 (6) PROCEDURES GOVERNING TRANSFERS OF
4 DETAINEES.—Procedures governing the transfer of a
5 detainee that take into account—

6 (A) the detainee’s access to legal rep-
7 resentatives; and

8 (B) the proximity of the facility to the
9 venue of the asylum or removal proceeding.

10 (7) QUALITY OF MEDICAL CARE.—Prompt and
11 adequate medical care provided at no cost to the de-
12 tainee, including dental care, eye care, mental health
13 care, individual and group counseling, medical die-
14 tary needs, and other medically necessary specialized
15 care. Medical facilities in all detention facilities used
16 by the Department shall maintain current accredita-
17 tion by the National Commission on Correctional
18 Health Care (NCCHC). Requirements that each
19 medical facility that is not accredited by the Joint
20 Commission on the Accreditation of Health Care Or-
21 ganizations (JCAHO) will seek to obtain such ac-
22 creditation. Maintenance of complete medical records
23 for every detainee which shall be made available
24 upon request to a detainee, his legal representative,
25 or other authorized individuals.

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

7 (9) RECREATIONAL PROGRAMS AND ACTIVI-
8 TIES.—Daily access to indoor and outdoor rec-
9 reational programs and activities.

10 (c) SPECIAL STANDARDS FOR NONCRIMINAL DE-
11 TAINES.—The Secretary shall promulgate new stand-
12 ards, or modifications to existing standards, that—

13 (1) recognize the special characteristics of non-
14 criminal, nonviolent detainees, and ensure that pro-
15 cedures and conditions of detention are appropriate
16 for a noncriminal population; and

17 (2) ensure that noncriminal detainees are sepa-
18 rated from inmates with criminal convictions, pre-
19 trial inmates facing criminal prosecution, and those
20 inmates exhibiting violent behavior while in deten-
21 tion.

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

1 (1) recognize the unique needs of asylum seek-
2 ers, victims of torture and trafficking, families with
3 children, detainees who do not speak English, de-
4 tainees with special religious, cultural or spiritual
5 considerations, and other vulnerable populations;
6 and

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

10 (e) TRAINING OF PERSONNEL.—

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

17 (A) asylum seekers;

18 (B) victims of torture or other trauma; and

19 (C) other vulnerable populations.

20 (2) SPECIALIZED TRAINING.—The training re-
21 quired by this subsection shall be designed to better
22 enable personnel to work with detainees from dif-
23 ferent countries, and detainees who cannot speak
24 English. The training shall emphasize that many de-

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

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

4 (a) ESTABLISHMENT OF THE OFFICE.—

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

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

11 (3) SCHEDULE.—The Office shall be estab-
12 lished and the Administrator of the Office appointed
13 not later than 6 months after the date of enactment
14 of this Act.

15 (b) RESPONSIBILITIES OF THE OFFICE.—

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

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

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

23 (C) report to the Secretary and to the As-
24 sistant Secretary of Homeland Security for
25 United States Immigration and Customs En-

1 forcement all findings of a detention facility's
2 noncompliance with detention standards.

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

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

9 (B) report to the Secretary and the Assist-
10 ant Secretary of Homeland Security for United
11 States Immigration and Customs Enforcement
12 the results of all investigations; and

13 (C) refer matters, where appropriate, for
14 further action to—

15 (i) the Department of Justice;

16 (ii) the Office of the Inspector Gen-
17 eral of the Department;

18 (iii) the Office of Civil Rights and
19 Civil Liberties of the Department; or

20 (iv) any other relevant office of agen-
21 cy.

22 (3) REPORT TO CONGRESS.—

23 (A) IN GENERAL.—The Administrator of
24 the Office shall submit to the Secretary, the
25 Committee on the Judiciary and the Committee

1 on Homeland Security and Governmental Af-
2 fairs of the Senate, and the Committee on the
3 Judiciary and the Committee on Homeland Se-
4 curity of the House of Representatives an an-
5 nual report on the Administrator's findings on
6 detention conditions and the results of the in-
7 vestigations carried out by the Administrator.

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

10 (i) a description of the actions to rem-
11 edy findings of noncompliance or other
12 problems that are taken by the Secretary
13 or the Assistant Secretary of Homeland
14 Security for United States Immigration
15 and Customs Enforcement, and each de-
16 tention facility found to be in noncompli-
17 ance; and

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

21 (4) REVIEW OF COMPLAINTS BY DETAINEES.—

22 The Administrator of the Office shall establish pro-
23 cedures to receive and review complaints of viola-
24 tions of the detention standards promulgated by the
25 Secretary. The procedures shall protect the anonym-

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

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

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

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

11 (3) the Privacy Officer of the Department;

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

14 (5) any other relevant office or agency.

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

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

22 (b) PROGRAM REQUIREMENTS.—

23 (1) NATIONWIDE IMPLEMENTATION.—The Sec-
24 retary shall facilitate the development of the secure
25 alternatives program on a nationwide basis, as a

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

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

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

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

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

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

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

3 (A) consult with relevant experts; and

4 (B) consider programs that have proven
5 successful in the past, including the Appearance
6 Assistance Program developed by the Vera In-
7 stitute and the Intensive Supervision Appear-
8 ance Program (ISAP) developed by the Depart-
9 ment.

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

11 (a) CONSTRUCTION.—The Secretary shall facilitate
12 the construction or use of secure but less restrictive deten-
13 tion facilities.

14 (b) CRITERIA.—In developing detention facilities pur-
15 suant to this section, the Secretary shall—

16 (1) consider the design, operation, and condi-
17 tions of existing secure but less restrictive detention
18 facilities, such as the Department's detention facili-
19 ties in Broward County, Florida, and Berks County,
20 Pennsylvania;

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

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

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

3 (C) detainees with special needs, including
4 those who have experienced trauma or torture,
5 have ready access to services and treatment ad-
6 dressing their needs;

7 (D) detainees have ready access to mean-
8 ingful programmatic and recreational activities;

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

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

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

16 (H) special facilities are provided to fami-
17 lies with children.

18 (c) FACILITIES FOR FAMILIES WITH CHILDREN.—
19 For situations where release or secure alternatives pro-
20 grams are not an option, the Secretary shall ensure that
21 special detention facilities are specifically designed to
22 house parents with their minor children, including ensur-
23 ing that—

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

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

3 (d) PLACEMENT IN NONPUNITIVE FACILITIES.—Pri-
 4 ority for placement in less restrictive facilities shall be
 5 given to asylum seekers, families with minor children,
 6 other vulnerable populations, and nonviolent criminal de-
 7 tainees.

8 (e) PROCEDURES AND STANDARDS.—Where nec-
 9 essary, the Secretary shall promulgate new standards, or
 10 modify existing detention standards, to promote the devel-
 11 opment of less restrictive detention facilities.

12 **SEC. 179. AUTHORIZATION OF APPROPRIATIONS; EFFEC-**
 13 **TIVE DATE.**

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

17 (b) EFFECTIVE DATE.—This subtitle and the amend-
 18 ments made by this subtitle shall take effect on the date
 19 that is 6 months after the date of enactment of this Act.

20 **Subtitle I—Other Border Security**
 21 **Initiatives**

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

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

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

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

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

9 (2) adequate and effective personnel training;

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

12 (4) effective utilization of—

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

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

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

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

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

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

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

10 (a) DEFINITIONS.—In this section:

11 (1) COMMERCIAL MOTOR VEHICLE.—The term
12 “commercial motor vehicle” has the meaning given
13 the term in section 31101 of title 49, United States
14 Code.

15 (2) COMMISSIONER.—The term “Commis-
16 sioner” means the Commissioner of United States
17 Customs and Border Protection.

18 (3) MUNICIPAL SOLID WASTE.—The term “mu-
19 nicipal solid waste” includes sludge (as defined in
20 section 1004 of the Solid Waste Disposal Act (42
21 U.S.C. 6903)).

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

1 (1) indicates whether the methodologies and
2 technologies used by United States Customs and
3 Border Protection to screen for and detect the pres-
4 ence of chemical, nuclear, biological, and radiological
5 weapons in municipal solid waste are as effective as
6 the methodologies and technologies used by United
7 States Customs and Border Protection to screen for
8 such weapons in other items of commerce entering
9 the United States through commercial motor vehicle
10 transport; and

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

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

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

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

14 (a) DEFINITIONS.—In this section:

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

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

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

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

1 (b) SUPPORT FOR BORDER SECURITY NEEDS.—

2 (1) IN GENERAL.—To gain operational control
3 over the international land borders of the United
4 States and to prevent the entry of terrorists, unlaw-
5 ful aliens, narcotics, and other contraband into the
6 United States, the Secretary, in cooperation with the
7 Secretary concerned, shall provide—

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

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

15 (C) unmanned aerial vehicles, aerial assets,
16 remote video surveillance camera systems, and
17 sensors on protected land that is directly adja-
18 cent to the international land border of the
19 United States, with priority given to units of
20 the National Park System.

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

1 National Park Service, the United States Fish and
2 Wildlife Service, the Forest Service, or the relevant
3 agency of the Department of the Interior or the De-
4 partment of Agriculture to minimize the adverse im-
5 pact on natural and cultural resources from border
6 protection activities.

7 (c) INVENTORY OF COSTS AND ACTIVITIES.—The
8 Secretary concerned shall develop and submit to the Sec-
9 retary an inventory of costs incurred by the Secretary con-
10 cerned relating to illegal border activity, including the cost
11 of equipment, training, recurring maintenance, construc-
12 tion of facilities, restoration of natural and cultural re-
13 sources, recapitalization of facilities, and operations.

14 (d) RECOMMENDATIONS.—The Secretary shall—

15 (1) develop joint recommendations with the Na-
16 tional Park Service, the United States Fish and
17 Wildlife Service, and the Forest Service for an ap-
18 propriate cost recovery mechanism relating to items
19 identified in subsection (c); and

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

1 tives the recommendations developed under para-
2 graph (1).

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

8 (1) units of the National Park System;

9 (2) National Forest System land;

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

12 (4) other relevant land under the jurisdiction of
13 the Secretary of the Interior or the Secretary of Ag-
14 riculture.

15 **TITLE II—INTERIOR**

16 **ENFORCEMENT**

17 **Subtitle A—Reducing the Number** 18 **of Illegal Aliens in the United** 19 **States**

20 **SEC. 201. INCARCERATION OF CRIMINAL ALIENS.**

21 (a) INSTITUTIONAL REMOVAL PROGRAM.—

22 (1) CONTINUATION.—The Secretary shall con-
23 tinue to operate the Institutional Removal Program
24 (referred to in this section as the “Program”) or
25 shall develop and implement another program to—

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

3 (B) ensure that such aliens are not re-
4 leased into the community; and

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

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

12 (b) TECHNOLOGY USAGE.—Technology, such as
13 videoconferencing, shall be used to the maximum extent
14 practicable to make the Program available in remote loca-
15 tions. Mobile access to Federal databases of aliens, such
16 as the Automated Biometric Fingerprint Identification
17 System (IDENT), and live scan technology shall be used
18 to the maximum extent practicable to make these re-
19 sources available to State and local law enforcement agen-
20 cies in remote locations.

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

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

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

7 **SEC. 202. ENCOURAGING ALIENS TO DEPART VOLUN-**
8 **TARILY.**

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

11 (1) in subsection (a)—

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

14 “(1) **IN GENERAL.**—If an alien is not removable
15 under paragraph (2)(A)(iii) or (4) of section
16 237(a)—

17 “(A) the Secretary of Homeland Security
18 may permit the alien to voluntarily depart the
19 United States at the alien’s own expense under
20 this subsection instead of being subject to pro-
21 ceedings under section 240; or

22 “(B) the Attorney General may permit the
23 alien to voluntarily depart the United States at
24 the alien’s own expense under this subsection
25 after the initiation of removal proceedings

1 under section 240 and before the conclusion of
2 such proceedings before an immigration
3 judge.”;

4 (B) in paragraph (2), by amending sub-
5 paragraph (A) to read as follows:

6 “(A) IN GENERAL.—

7 “(i) INSTEAD OF REMOVAL.—Subject
8 to subparagraph (B), permission to volun-
9 tarily depart under paragraph (1)(A) shall
10 not be valid for any period in excess of 120
11 days. The Secretary may require an alien
12 permitted to voluntarily depart under para-
13 graph (1)(A) to post a voluntary departure
14 bond, to be surrendered upon proof that
15 the alien has departed the United States
16 within the time specified.”;

17 “(ii) BEFORE THE CONCLUSION OF
18 REMOVAL PROCEEDINGS.—Permission to
19 voluntarily depart under paragraph (1)(B)
20 shall not be valid for any period longer
21 than 60 days, and may be granted only
22 after a finding that the alien has the
23 means to depart the United States and in-
24 tends to do so. An immigration judge may
25 require an alien to voluntarily depart

1 under paragraph (1)(B) to post a vol-
2 untary departure bond, in an amount nec-
3 essary to ensure that the alien will depart,
4 to be surrendered upon proof that the alien
5 has departed the United States within the
6 time specified. An immigration judge may
7 waive the requirement to post a voluntary
8 departure bond in individual cases upon a
9 finding that the alien has presented com-
10 pelling evidence that the posting of a bond
11 will pose a serious financial hardship and
12 the alien has presented credible evidence
13 that such a bond is unnecessary to guar-
14 antee timely departure.”; and

15 (C) by striking paragraph (3);

16 (2) by amending subsection (c) to read as fol-
17 lows:

18 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

19 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

20 Voluntary departure under this section may only be
21 granted as part of an affirmative agreement by the
22 alien.

23 “(2) CONCESSIONS BY THE SECRETARY.—In
24 connection with the alien’s agreement to depart vol-
25 untarily under paragraph (1)(A), the Secretary of

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

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

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

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

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

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

1 “(5) VOLUNTARY DEPARTURE PERIOD NOT AF-
2 FECTED.—Except as expressly agreed to by the Sec-
3 retary in writing in the exercise of the Secretary’s
4 discretion before the expiration of the period allowed
5 for voluntary departure, no motion, appeal, applica-
6 tion, petition, or petition for review shall affect, rein-
7 state, enjoin, delay, stay, or toll the alien’s obligation
8 to depart from the United States during the period
9 agreed to by the alien and the Secretary.”; and

10 (3) by amending subsection (d) to read as fol-
11 lows:

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

18 “(1) CIVIL PENALTY.—The alien shall be liable
19 for a civil penalty of \$3,000. The order allowing vol-
20 untary departure shall specify the amount of the
21 penalty, which shall be acknowledged by the alien on
22 the record. If the Secretary thereafter establishes
23 that the alien failed to depart voluntarily within the
24 time allowed, no further procedure will be necessary
25 to establish the amount of the penalty, and the Sec-

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

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

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

15 “(e) ELIGIBILITY.—

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

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

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

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply with respect to all orders granting
5 voluntary departure under section 240B of the Immigra-
6 tion and Nationality Act (8 U.S.C. 1229e) made on or
7 after the date that is 180 days after the date of enactment
8 of this Act.

9 **SEC. 203. DETERRING ALIENS ORDERED REMOVED FROM**
10 **REMAINING IN THE UNITED STATES UNLAW-**
11 **FULLY.**

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

14 (1) in clause (i), by striking “seeks admission
15 within 5 years of the date of such removal (or within
16 20 years” and inserting “seeks admission not later
17 than 5 years after the date of the alien’s removal (or
18 not later than 20 years after the alien’s removal”;
19 and

20 (2) in clause (ii), by striking “seeks admission
21 within 10 years of the date of such alien’s departure
22 or removal (or within 20 years of” and inserting
23 “seeks admission not later than 10 years after the
24 date of the alien’s departure or removal (or not later
25 than 20 years after”.

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

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

6 (1) in subsection (d)(5)—

7 (A) in subparagraph (A), by striking “or”
8 at the end;

9 (B) in subparagraph (B), by striking
10 “(y)(2)” and all that follows and inserting “(y),
11 is in a nonimmigrant classification; or”; and

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

13 “(C) has been paroled into the United
14 States under section 212(d)(5) of the Immigra-
15 tion and Nationality Act (8 U.S.C.
16 1182(d)(5));”;

17 (2) in subsection (g)(5)—

18 (A) in subparagraph (A), by striking “or”
19 at the end;

20 (B) in subparagraph (B), by striking
21 “(y)(2)” and all that follows and inserting “(y),
22 is in a nonimmigrant classification; or”; and

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

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

1 tion and Nationality Act (8 U.S.C.
2 1182(d)(5));” and
3 (3) in subsection (y)—

4 (A) in the heading, by striking “ADMITTED
5 UNDER NONIMMIGRANT VISAS” and inserting
6 “IN A NONIMMIGRANT CLASSIFICATION”;

7 (B) in paragraph (1), by amending sub-
8 paragraph (B) to read as follows:

9 “(B) the term ‘nonimmigrant classifica-
10 tion’ includes all classes of nonimmigrant aliens
11 described in section 101(a)(15) of the Immigra-
12 tion and Nationality Act (8 U.S.C.
13 1101(a)(15)), or otherwise described in the im-
14 migration laws (as defined in section
15 101(a)(17) of such Act).”;

16 (C) in paragraph (2), by striking “has
17 been lawfully admitted to the United States
18 under a nonimmigrant visa” and inserting “is
19 in a nonimmigrant classification”; and

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

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

3 **SEC. 205. UNIFORM STATUTE OF LIMITATIONS FOR CER-**
4 **TAIN IMMIGRATION, NATURALIZATION, AND**
5 **PEONAGE OFFENSES.**

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

8 **“§ 3291. Immigration, naturalization, and peonage of-**
9 **fenses**

10 “No person shall be prosecuted, tried, or punished
11 for a violation of any section of chapters 69 (relating to
12 nationality and citizenship offenses), 75 (relating to pass-
13 port, visa, and immigration offenses), or 77 (relating to
14 peonage, slavery, and trafficking in persons), for an at-
15 tempt or conspiracy to violate any such section, for a viola-
16 tion of any criminal provision under section 243, 266, 274,
17 275, 276, 277, or 278 of the Immigration and Nationality
18 Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and
19 1328), or for an attempt or conspiracy to violate any such
20 section, unless the indictment is returned or the informa-
21 tion filed not later than 10 years after the commission
22 of the offense.”.

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

1 ed by striking the item relating to section 3291 and insert-
2 ing the following:

“3291. Immigration, naturalization, and peonage offenses.”.

3 **SEC. 206. EXPEDITED REMOVAL.**

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

6 (1) by striking the section heading and insert-
7 ing “**EXPEDITED REMOVAL OF CRIMINAL**
8 **ALIENS**”;

9 (2) in subsection (a), by striking the subsection
10 heading and inserting: “**EXPEDITED REMOVAL**
11 **FROM CORRECTIONAL FACILITIES.—**”;

12 (3) in subsection (b), by striking the subsection
13 heading and inserting: “**REMOVAL OF CRIMINAL**
14 **ALIENS.—**”;

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

17 “(1) IN GENERAL.—The Secretary of Homeland
18 Security may, in the case of an alien described in
19 paragraph (2), determine the deportability of such
20 alien and issue an order of removal pursuant to the
21 procedures set forth in this subsection or section
22 240.

23 “(2) ALIENS DESCRIBED.—An alien is de-
24 scribed in this paragraph if the alien—

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

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

6 (5) by redesignating the subsection (c) that re-
7 lates to judicial removal as subsection (d).

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 this section shall take effect on the date of enactment of
10 this Act and shall apply to all aliens apprehended or con-
11 victed on or after such date.

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

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

15 “(f) **MINIMUM NUMBER OF AGENTS IN STATES.**—

16 “(1) **IN GENERAL.**—The Secretary of Homeland
17 Security shall allocate to each State—

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

21 “(i) investigate immigration viola-
22 tions; and

23 “(ii) ensure the departure of all re-
24 movable aliens; and

1 been delayed due to an outstanding background
2 check investigation for more than 2 years after the
3 date on which such application or petition was ini-
4 tially filed.

5 “(2) MEMBERSHIP.—The interagency task
6 force established under paragraph (1) shall include
7 representatives from Federal agencies with immigra-
8 tion, law enforcement, or national security respon-
9 sibilities under this Act.”.

10 (b) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to the Director of the
12 Federal Bureau of Investigation such sums as are nec-
13 essary for each fiscal year, 2008 through 2012 for en-
14 hancements to existing systems for conducting background
15 and security checks necessary to support immigration se-
16 curity and orderly processing of applications.

17 (c) REPORT ON BACKGROUND AND SECURITY
18 CHECKS.—

19 (1) IN GENERAL.—Not later than 180 days
20 after the date of the enactment of this Act, the Di-
21 rector of the Federal Bureau of Investigation shall
22 submit to the Committee on the Judiciary of the
23 Senate and the Committee on the Judiciary of the
24 House of Representatives a report on the back-
25 ground and security checks conducted by the Fed-

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

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

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

7 (B) a statistical breakdown of the back-
8 ground and security check delays associated
9 with different types of immigration applications;

10 (C) a statistical breakdown of the back-
11 ground and security check delays by applicant
12 country of origin; and

13 (D) the steps that the Director of the Fed-
14 eral Bureau of Investigations is taking to expe-
15 dite background and security checks that have
16 been pending for more than 180 days.

17 (d) ENSURING ACCOUNTABILITY IN BACKGROUND
18 CHECK DETERMINATIONS.—

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

22 **“SEC. 362. CONSTRUCTION.**

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

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

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

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

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

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

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

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

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

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

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

3 (D) statistics on interim employment au-
4 thorizations issued under this section.

5 (e) CLERICAL AMENDMENT.—The table of contents
6 is amended by inserting after the item relating to section
7 361 the following:

“Sec. 362. Construction.”.

8 (f) ENHANCED TRANSPARENCY OF CLEARANCE
9 PROCESS.—

10 (1) ESTABLISHMENT.—The Secretary and the
11 Attorney General shall each establish an Office of
12 the Public Advocate for Immigration Clearances
13 within the Department and the Department of Jus-
14 tice, respectively. Each Office shall be headed by a
15 Public Advocate.

16 (2) DUTIES.—Each Public Advocate shall—

17 (A) serve as a public liaison for their re-
18 spective Department for identifying and resolv-
19 ing delays in immigration processing caused by
20 background check investigations; and

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

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

2 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
3 241(i)(5)(C) (8 U.S.C. 1231(i)(5)(C)) is amended by
4 striking “2011” and inserting “2012”.

5 (b) REIMBURSEMENT OF STATES FOR
6 PRECONVICTION COSTS RELATING TO THE INCARCER-
7 ATION OF ILLEGAL ALIENS.—Section 241(i)(3)(A) (8
8 U.S.C. 1231(i)(3)(A)) is amended by inserting “charged
9 with or” before “convicted”.

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

14 (1) by amending subsection (a) to read as fol-
15 lows:

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

20 “(1) the costs incurred by the State for the im-
21 prisonment of any illegal alien or Cuban national
22 who is convicted of a felony by such State; and

23 “(2) the indirect costs related to the imprison-
24 ment described in paragraph (1).”; and

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

1 “(c) MANNER OF ALLOTMENT OF REIMBURSE-
2 MENTS.—Reimbursements under this section shall be al-
3 lotted in a manner that gives special consideration for any
4 State that—

5 “(1) shares a border with Mexico or Canada; or

6 “(2) includes within the State an area in which
7 a large number of undocumented aliens reside rel-
8 ative to the general population of that area.

9 “(d) DEFINITIONS.—In this section:

10 “(1) INDIRECT COSTS.—The term ‘indirect
11 costs’ includes—

12 “(A) court costs, county attorney costs, de-
13 tention costs, and criminal proceedings expendi-
14 tures that do not involve going to trial;

15 “(B) indigent defense costs; and

16 “(C) unsupervised probation costs.

17 “(2) STATE.—The term ‘State’ has the mean-
18 ing given such term in section 101(a)(36) of the Im-
19 migration and Nationality Act (8 U.S.C.
20 1101(a)(36)).

21 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated \$200,000,000 for each
23 of the fiscal years 2008 through 2012 to carry out sub-
24 section (a)(2).”.

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

4 (a) **IN GENERAL.**—The Secretary shall provide suffi-
5 cient transportation and officers to take illegal aliens ap-
6 prehended by State and local law enforcement officers into
7 custody for processing at a detention facility operated by
8 the Department.

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

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

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

19 (b) **USE OF FUNDS.**—Grants awarded under sub-
20 section (a) may be used for—

- 21 (1) law enforcement activities;
- 22 (2) health care services;
- 23 (3) environmental restoration; and
- 24 (4) the preservation of cultural resources.

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

1 a report to the Committee on the Judiciary of the Senate
2 and the Committee on the Judiciary of the House of Rep-
3 resentatives that—

4 (1) describes the level of access of Border Pa-
5 trol agents on tribal lands;

6 (2) describes the extent to which enforcement of
7 immigration laws may be improved by enhanced ac-
8 cess to tribal lands;

9 (3) contains a strategy for improving such ac-
10 cess through cooperation with tribal authorities; and

11 (4) identifies grants provided by the Depart-
12 ment for Indian tribes, either directly or through
13 State or local grants, relating to border security ex-
14 penses.

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

19 **SEC. 212. MANDATORY ADDRESS REPORTING REQUIRE-**
20 **MENTS.**

21 (a) **CLARIFYING ADDRESS REPORTING REQUIRE-**
22 **MENTS.**—Section 265 (8 U.S.C. 1305) is amended—

23 (1) in subsection (a)—

24 (A) by striking “notify the Attorney Gen-
25 eral in writing” and inserting “submit written

1 or electronic notification to the Secretary of
2 Homeland Security, in a manner approved by
3 the Secretary,”;

4 (B) by striking “the Attorney General may
5 require” and inserting “the Secretary may re-
6 quire”; and

7 (C) by adding at the end the following: “If
8 the alien is involved in proceedings before an
9 immigration judge or in an administrative ap-
10 peal of such proceedings, the alien shall submit
11 to the Attorney General the alien’s current ad-
12 dress and a telephone number, if any, at which
13 the alien may be contacted.”;

14 (2) in subsection (b), by striking “Attorney
15 General” each place such term appears and inserting
16 “Secretary of Homeland Security”;

17 (3) in subsection (c), by striking “given to such
18 parent” and inserting “given by such parent”; and

19 (4) by adding at the end the following:
20 “(d) ADDRESS TO BE PROVIDED.—

21 “(1) IN GENERAL.—Except as otherwise pro-
22 vided by the Secretary under paragraph (2), an ad-
23 dress provided by an alien under this section shall
24 be the alien’s current residential mailing address,
25 and shall not be a post office box or other nonresi-

1 dential mailing address or the address of an attor-
2 ney, representative, labor organization, or employer.

3 “(2) SPECIFIC REQUIREMENTS.—The Secretary
4 may provide specific requirements with respect to—

5 “(A) designated classes of aliens and spe-
6 cial circumstances, including aliens who are em-
7 ployed at a remote location; and

8 “(B) the reporting of address information
9 by aliens who are incarcerated in a Federal,
10 State, or local correctional facility.

11 “(3) DETENTION.—An alien who is being de-
12 tained by the Secretary under this Act is not re-
13 quired to report the alien’s current address under
14 this section during the time the alien remains in de-
15 tention, but shall be required to notify the Secretary
16 of the alien’s address under this section at the time
17 of the alien’s release from detention.

18 “(e) USE OF MOST RECENT ADDRESS PROVIDED BY
19 THE ALIEN.—

20 “(1) IN GENERAL.—Notwithstanding any other
21 provision of law, the Secretary may provide for the
22 appropriate coordination and cross referencing of
23 address information provided by an alien under this
24 section with other information relating to the alien’s
25 address under other Federal programs, including—

1 “(A) any information pertaining to the
2 alien, which is submitted in any application, pe-
3 tition, or motion filed under this Act with the
4 Secretary of Homeland Security, the Secretary
5 of State, or the Secretary of Labor;

6 “(B) any information available to the At-
7 torney General with respect to an alien in a
8 proceeding before an immigration judge or an
9 administrative appeal or judicial review of such
10 proceeding;

11 “(C) any information collected with respect
12 to nonimmigrant foreign students or exchange
13 program participants under section 641 of the
14 Illegal Immigration Reform and Immigrant Re-
15 sponsibility Act of 1996 (8 U.S.C. 1372); and

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

19 “(2) RELIANCE.—The Secretary may rely on
20 the most recent address provided by the alien under
21 this section or section 264 to send to the alien any
22 notice, form, document, or other matter pertaining
23 to Federal immigration laws, including service of a
24 notice to appear. The Attorney General and the Sec-
25 retary may rely on the most recent address provided

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

3 “(3) OBLIGATION.—The alien’s provision of an
4 address for any other purpose under the Federal im-
5 migration laws does not excuse the alien’s obligation
6 to submit timely notice of the alien’s address to the
7 Secretary under this section (or to the Attorney
8 General under section 239(a)(1)(F) with respect to
9 an alien in a proceeding before an immigration judge
10 or an administrative appeal of such proceeding).

11 “(f) REQUIREMENT FOR DATABASE.—The Secretary
12 of Homeland Security shall establish an electronic data-
13 base to timely record and preserve addresses provided
14 under this section.”.

15 (b) CONFORMING CHANGES WITH RESPECT TO REG-
16 ISTRATION REQUIREMENTS.—Chapter 7 of title II (8
17 U.S.C. 1301 et seq.) is amended—

18 (1) in section 262(c), by striking “Attorney
19 General” and inserting “Secretary of Homeland Se-
20 curity”;

21 (2) in section 263(a), by striking “Attorney
22 General” and inserting “Secretary of Homeland Se-
23 curity”; and

24 (3) in section 264—

1 (A) in subsections (a), (b), (c), and (d), by
2 striking “Attorney General” each place it ap-
3 pears and inserting “Secretary of Homeland
4 Security”; and

5 (B) in subsection (f)—

6 (i) by striking “Attorney General is
7 authorized” and inserting “Secretary of
8 Homeland Security and Attorney General
9 are authorized”; and

10 (ii) by striking “Attorney General or
11 the Service” and inserting “Secretary or
12 the Attorney General”.

13 (c) EFFECT ON ELIGIBILITY FOR IMMIGRATION BEN-
14 EFITS.—If an alien fails to comply with section 262, 263,
15 or 265 of the Immigration and Nationality Act (8 U.S.C.
16 1302, 1303, and 1305) or section 264.1 of title 8, Code
17 of Federal Regulations, or removal orders or voluntary de-
18 parture agreements based on any such section for acts
19 committed prior to the enactment of this Act such failure
20 shall not affect the eligibility of the alien to apply for a
21 benefit under the Immigration and Nationality Act (8
22 U.S.C. 1101 et seq.).

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

1 each place it appears and inserting “Secretary of Home-
2 land Security”.

3 (e) EFFECTIVE DATES.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), the amendments made by this section
6 shall take effect on the date of the enactment of this
7 Act.

8 (2) EXCEPTIONS.—The amendments made by
9 paragraphs (1)(A), (1)(B), (2), and (3) of subsection
10 (a) shall take effect as if enacted on March 1, 2003.

11 **SEC. 213. STATE AND LOCAL ENFORCEMENT OF FEDERAL**
12 **IMMIGRATION LAWS.**

13 (a) IN GENERAL.—Section 287(g) (8 U.S.C.
14 1357(g)) is amended—

15 (1) in paragraph (2), by adding at the end “If
16 such training is provided by a State or political sub-
17 division of a State to an officer or employee of such
18 State or political subdivision of a State, the cost of
19 such training (including applicable overtime costs)
20 shall be reimbursed by the Secretary of Homeland
21 Security.”; and

22 (2) in paragraph (4), by adding at the end
23 “The cost of any equipment required to be pur-
24 chased under such written agreement and necessary
25 to perform the functions under this subsection shall

1 be reimbursed by the Secretary of Homeland Security.”
2

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to the Secretary such
5 sums as may be necessary to carry out this section and
6 the amendments made by this section.

7 **SEC. 214. INCREASED CRIMINAL PENALTIES RELATED TO**
8 **DRUNK DRIVING.**

9 (a) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C.
10 1182(a)(2)) is amended—

11 (1) by redesignating subparagraph (F) as sub-
12 paragraph (J); and

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

15 “(F) DRUNK DRIVERS.—Any alien who
16 has been convicted of 3 offenses for driving
17 under the influence and at least 1 of the of-
18 fenses is a felony under Federal or State law,
19 for which the alien was sentenced to more than
20 1 year imprisonment, is inadmissible.”.

21 (b) DEPORTABILITY.—Section 237(a)(2) (8 U.S.C.
22 1227(a)(2)) is amended by adding at the end the fol-
23 lowing:

24 “(F) DRUNK DRIVERS.—Unless the Sec-
25 retary of Homeland Security or the Attorney

1 General waives the application of this subpara-
2 graph, any alien who has been convicted of 3
3 offenses for driving under the influence and at
4 least 1 of the offenses is a felony under Federal
5 or State law, for which the alien was sentenced
6 to more than 1 year imprisonment, is deport-
7 able.”.

8 (c) JUDICIAL ADVISAL.—

9 (1) IN GENERAL.—A court shall not accept a
10 guilty plea for driving under the influence unless the
11 court has administered to the defendant, on the
12 record, the following advisal:

13 “If you are not a citizen of the United States, you
14 are advised that conviction for driving under the in-
15 fluence, including conviction by entry of any plea,
16 even if the conviction is later expunged, may result
17 in deportation, exclusion from admission to the
18 United States, or denial of naturalization pursuant
19 to the laws of the United States.”.

20 (2) FAILURE TO ADVISE.—Upon request, the
21 court shall allow the defendant a reasonable amount
22 of additional time to consider the appropriateness of
23 the plea in light of the advisement set out in para-
24 graph (1). If the court fails to advise the defendant
25 in accordance with paragraph (1) and the defendant

1 shows that conviction of the offense to which the de-
2 fendant pleaded guilty may result in the defendant's
3 deportation, exclusion from the United States, or de-
4 nial of naturalization pursuant to the laws of the
5 United States, the court, upon a motion by the de-
6 fendant, shall vacate the judgment and permit the
7 defendant to withdraw the plea and enter a plea of
8 not guilty. If the record does not show that the court
9 provided the required advisement, it shall be pre-
10 sumed that the defendant did not receive the advise-
11 ment. The defendant shall not be required to dis-
12 close his or her immigration status at any time.

13 (d) CONFORMING AMENDMENT.—Section 212(h) (8
14 U.S.C. 1182(h)) is amended—

15 (1) in the subsection heading, by striking “SUB-
16 SECTION (a)(2)(A)(i)(I), (II), (B), (D), AND (E)” and
17 inserting “CERTAIN PROVISIONS IN SUBSECTION
18 (a)(2)”; and

19 (2) in the matter preceding paragraph (1), by
20 striking “and (E)” and inserting “(E), and (F)”.

21 (e) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date of the enactment
23 of this Act and shall apply to convictions entered on or
24 after such date.

1 **SEC. 215. LAW ENFORCEMENT AUTHORITY OF STATES AND**
2 **POLITICAL SUBDIVISIONS AND TRANSFER TO**
3 **FEDERAL CUSTODY.**

4 Title II (8 U.S.C. 1151 et seq.) is amended by adding
5 after section 240C the following:

6 **“SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES**
7 **AND POLITICAL SUBDIVISIONS AND TRANS-**
8 **FER OF ALIENS TO FEDERAL CUSTODY.**

9 “(a) **AUTHORITY.**—Notwithstanding any other provi-
10 sion of law, law enforcement personnel of a State, or a
11 political subdivision of a State, have the inherent authority
12 of a sovereign entity to investigate, apprehend, arrest, de-
13 tain, or transfer to Federal custody (including the trans-
14 portation across State lines to detention centers) an alien
15 for the purpose of assisting in the enforcement of the
16 criminal provisions of the immigration laws of the United
17 States in the normal course of carrying out the law en-
18 forcement duties of such personnel. This State authority
19 has never been displaced or preempted by a Federal law.

20 “(b) **TRANSFER.**—If the head of a law enforcement
21 entity of a State (or a political subdivision of the State),
22 exercising authority with respect to the detention of an
23 alien convicted of a criminal offense, submits a request
24 to the Secretary of Homeland Security, the Secretary
25 shall—

1 “(1) determine the immigration status of the
2 offender; and

3 “(2) report to the requesting agency whether
4 the Department of Homeland Security intends to
5 take custody of the offender for violations of Federal
6 immigration laws, with an approximate timeframe
7 for the transfer of custody.

8 “(c) REIMBURSEMENT.—The Secretary of Homeland
9 Security is authorized to use funds appropriated pursuant
10 to the authorization of appropriations in section 241(i)(5)
11 to reimburse a State, or a political subdivision of a State
12 for activities described in subparagraph (a) or (b).

13 “(d) REQUIREMENT FOR APPROPRIATE SECURITY.—
14 The Secretary of Homeland Security shall ensure that—

15 “(1) aliens incarcerated in a Federal facility
16 pursuant to this section are held in facilities which
17 provide an appropriate level of security; and

18 “(2) if practicable, aliens detained solely for
19 civil violations of Federal immigration law are sepa-
20 rated within a facility or facilities.

21 “(e) REQUIREMENT FOR SCHEDULE.—In carrying
22 out this section, the Secretary of Homeland Security shall
23 establish a regular circuit and schedule for the prompt
24 transportation of apprehended aliens from the custody of
25 those States, and political subdivisions of States, which

1 routinely submit requests described in subsection (b), into
2 Federal custody.

3 “(f) AUTHORITY FOR CONTRACTS.—

4 “(1) IN GENERAL.—The Secretary of Homeland
5 Security may enter into contracts or cooperative
6 agreements with appropriate State and local law en-
7 forcement and detention agencies to implement this
8 section.

9 “(2) DETERMINATION BY SECRETARY.—Before
10 entering into a contract or cooperative agreement
11 with a State or political subdivision of a State under
12 paragraph (1), the Secretary shall determine wheth-
13 er the State, or if appropriate, the political subdivi-
14 sion in which the agencies are located, has in place
15 any formal or informal policy that violates section
16 642 of the Illegal Immigration Reform and Immig-
17 rant Responsibility Act of 1996 (8 U.S.C. 1373).
18 The Secretary shall not allocate any of the funds
19 made available under this section to any State or po-
20 litical subdivision that has in place a policy that vio-
21 lates such section.

22 “(g) CONSTRUCTION.—Nothing in this section shall
23 be construed to require law enforcement personnel of a
24 State or a political subdivision to assist in the enforcement
25 of the immigration laws of the United States.

1 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out this section.”.

4 **SEC. 216. LAUNDERING OF MONETARY INSTRUMENTS.**

5 Section 1956(c)(7)(D) of title 18, United States
6 Code, is amended—

7 (1) by inserting “section 1590 (relating to traf-
8 ficking with respect to peonage, slavery, involuntary
9 servitude, or forced labor),” after “section 1363 (re-
10 lating to destruction of property within the special
11 maritime and territorial jurisdiction),”; and

12 (2) by inserting “section 274(a) of the Immi-
13 gration and Nationality Act (8 U.S.C.1324(a)) (re-
14 lating to bringing in and harboring certain aliens),”
15 after “section 590 of the Tariff Act of 1930 (19
16 U.S.C. 1590) (relating to aviation smuggling),”.

17 **SEC. 217. INCREASE OF FEDERAL DETENTION SPACE AND**
18 **THE UTILIZATION OF FACILITIES IDENTIFIED**
19 **FOR CLOSURES AS A RESULT OF THE DE-**
20 **FENSE BASE CLOSURE REALIGNMENT ACT**
21 **OF 1990.**

22 (a) CONSTRUCTION OR ACQUISITION OF DETENTION
23 FACILITIES.—

24 (1) IN GENERAL.—Subject to the availability of
25 appropriations, the Secretary shall construct or ac-

1 quire, in addition to existing facilities for the deten-
2 tion of aliens, at least 20 detention facilities in the
3 United States that have the capacity to detain a
4 combined total of not less than 20,000 individuals at
5 any time for aliens detained pending removal or a
6 decision on removal of such aliens from the United
7 States.

8 (2) REQUIREMENT TO CONSTRUCT OR AC-
9 QUIRE.—Subject to the availability of appropria-
10 tions, the Secretary shall construct or acquire addi-
11 tional detention facilities in the United States to ac-
12 commodate the detention beds required by section
13 5204(a) of the Intelligence Reform and Terrorism
14 Protection Act of 2004 (Public Law 108–458; 118
15 Stat. 3734).

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

23 (4) USE OF INSTALLATIONS UNDER BASE CLO-
24 SURE LAWS.—In acquiring additional detention fa-
25 cilities under this subsection, the Secretary shall

1 consider the transfer of appropriate portions of mili-
2 tary installations approved for closure or realign-
3 ment under the Defense Base Closure and Realign-
4 ment Act of 1990 (part A of title XXIX of Public
5 Law 101–510; 10 U.S.C. 2687 note) for use in ac-
6 cordance with this subsection.

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

17 (b) ANNUAL REPORT TO CONGRESS.—Not later than
18 1 year after the date of the enactment of this Act, and
19 annually thereafter, in consultation with the heads of
20 other appropriate Federal agencies, the Secretary shall
21 submit to Congress an assessment of the additional deten-
22 tion facilities and bed space needed to detain unlawful
23 aliens apprehended at the United States ports of entry or
24 along the international land borders of the United States.

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

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

7 **SEC. 218. DETERMINATION OF IMMIGRATION STATUS OF**
8 **INDIVIDUALS CHARGED WITH FEDERAL OF-**
9 **FENSES.**

10 (a) RESPONSIBILITY OF UNITED STATES ATTOR-
11 NEYS.—Beginning not later than 2 years after the date
12 of enactment of this Act, the office of the United States
13 Attorney that is prosecuting a criminal case in a Federal
14 court—

15 (1) shall determine, not later than 30 days
16 after filing the initial pleadings in the case, whether
17 each defendant in the case is lawfully present in the
18 United States (subject to subsequent legal pro-
19 ceedings to determine otherwise);

20 (2)(A) if the defendant is determined to be an
21 alien lawfully present in the United States, shall no-
22 tify the court in writing of the determination and
23 the current status of the alien under the Immigra-
24 tion and Nationality Act (8 U.S.C. 1101 et seq.);
25 and

1 (B) if the defendant is determined not to be
2 lawfully present in the United States, shall notify
3 the court in writing of the determination, the de-
4 fendant's alien status, and, to the extent possible,
5 the country of origin or legal residence of the de-
6 fendant;

7 (3) ensure that the information described in
8 paragraph (2) is included in the case file and the
9 criminal records system of the office of the United
10 States attorney; and

11 (4) provide notice to the alien and the counsel
12 for the alien of any such determination and any such
13 submission to the court.

14 (b) GUIDELINES.—A determination made under sub-
15 section (a)(1) shall be made in accordance with guidelines
16 of the Executive Office for Immigration Review of the De-
17 partment of Justice.

18 (c) RESPONSIBILITIES OF FEDERAL COURTS.—

19 (1) MODIFICATIONS OF RECORDS AND CASE
20 MANAGERMENTS SYSTEMS.—Not later than 2 years
21 after the date of enactment of this Act, all Federal
22 courts that hear criminal cases, or appeals of crimi-
23 nal cases, shall modify their criminal records and
24 case management systems, in accordance with guide-
25 lines which the Director of the Administrative Office

1 of the United States Courts shall establish, so as to
2 enable accurate reporting of information described in
3 subsection (a)(2).

4 (2) DATA ENTRIES.—Beginning not later than
5 2 years after the date of enactment of this Act, each
6 Federal court described in paragraph (1) shall enter
7 into its electronic records the information contained
8 in each notification to the court under subsection
9 (a)(2).

10 (d) CONSTRUCTION.—Nothing in this section may be
11 construed to provide a basis for admitting evidence to a
12 jury or releasing information to the public regarding an
13 alien’s immigration status.

14 (e) ANNUAL REPORT TO CONGRESS.—The Director
15 of the Administrative Office of the United States Courts
16 shall include, in the annual report filed with Congress
17 under section 604 of title 28, United States Code—

18 (1) statistical information on criminal trials of
19 aliens in the courts and criminal convictions of
20 aliens in the lower courts and upheld on appeal, in-
21 cluding the type of crime in each case and including
22 information on the legal status of the aliens; and

23 (2) recommendations on whether additional
24 court resources are needed to accommodate the vol-

1 ume of criminal cases brought against aliens in the
2 Federal courts.

3 (f) AUTHORIZATION OF APPROPRIATIONS.—

4 (1) IN GENERAL.—There are authorized to be
5 appropriated for each of fiscal years 2008 through
6 2012, such sums as may be necessary to carry out
7 this section.

8 (2) AVAILABILITY OF FUNDS.—Funds appro-
9 priated pursuant to the authorization of appropria-
10 tions in this subsection in any fiscal year shall re-
11 main available until expended.

12 **SEC. 219. EXPANSION OF THE JUSTICE PRISONER AND**
13 **ALIEN TRANSFER SYSTEM.**

14 Not later than 60 days after the date of enactment
15 of this Act, the Attorney General shall issue a directive
16 to expand the Justice Prisoner and Alien Transfer System
17 so that such System provides additional services with re-
18 spect to aliens who are illegally present in the United
19 States. Such expansion should include—

20 (1) increasing the daily operations of such Sys-
21 tem with buses and air hubs in 3 geographic regions;

22 (2) allocating a set number of seats for such
23 aliens for each metropolitan area;

24 (3) allowing metropolitan areas to trade or give
25 some of the seats allocated to the area under such

1 System for such aliens to other areas in their region
2 based on the transportation needs of each area; and
3 (4) requiring an annual report that analyzes the
4 number of seats that each metropolitan area is allo-
5 cated under such System for such aliens and modi-
6 fies such allocation if necessary.

7 **SEC. 220. CANCELLATION OF VISAS.**

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

9 (1) in paragraph (1)—

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

12 (B) by inserting “and any other non-
13 immigrant visa issued by the United States that
14 is in the possession of the alien” after “such
15 visa”; and

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

1 **Subtitle B—Passport and Visa**
2 **Security**

3 **SEC. 221. REFORM OF PASSPORT FRAUD OFFENSES.**

4 (a) **TRAFFICKING IN PASSPORTS.**—Section 1541 of
5 title 18, United States Code, is amended to read as fol-
6 lows:

7 **“§ 1541. Trafficking in passports**

8 “(a) **MULTIPLE PASSPORTS.**—Any person who, dur-
9 ing any period of 3 years or less, knowingly—

10 “(1) and without lawful authority produces,
11 issues, or transfers 10 or more passports;

12 “(2) forges, counterfeits, alters, or falsely
13 makes 10 or more passports;

14 “(3) secures, possesses, uses, receives, buys,
15 sells, or distributes 10 or more passports, knowing
16 the passports to be forged, counterfeited, altered,
17 falsely made, stolen, procured by fraud, or produced
18 or issued without lawful authority; or

19 “(4) completes, mails, prepares, presents, signs,
20 or submits 10 or more applications for a United
21 States passport, knowing the applications to contain
22 any false statement or representation,

23 shall be fined under this title, imprisoned not more than
24 20 years, or both.

1 “(b) PASSPORT MATERIALS.—Any person who know-
2 ingly and without lawful authority produces, buys, sells,
3 possesses, or uses any official material (or counterfeit of
4 any official material) used to make a passport, including
5 any distinctive paper, seal, hologram, image, text, symbol,
6 stamp, engraving, or plate, shall be fined under this title,
7 imprisoned not more than 20 years, or both.”.

8 (b) FALSE STATEMENT IN AN APPLICATION FOR A
9 PASSPORT.—Section 1542 of title 18, United States Code,
10 is amended to read as follows:

11 **“§ 1542. False statement in an application for a pass-**
12 **port**

13 “(a) IN GENERAL.—Whoever knowingly makes any
14 false statement or representation in an application for a
15 United States passport, or mails, prepares, presents, or
16 signs an application for a United States passport knowing
17 the application to contain any false statement or represen-
18 tation, shall be fined under this title, imprisoned not more
19 than 15 years, or both.

20 “(b) VENUE.—

21 “(1) IN GENERAL.—An offense under sub-
22 section (a) may be prosecuted in any district—

23 “(A) in which the false statement or rep-
24 resentation was made or the application for a

1 United States passport was prepared or signed;
2 or

3 “(B) in which or to which the application
4 was mailed or presented.

5 “(2) ACTS OCCURRING OUTSIDE THE UNITED
6 STATES.—An offense under subsection (a) involving
7 an application for a United States passport prepared
8 and adjudicated outside the United States may be
9 prosecuted in the district in which the resultant
10 passport was or would have been produced.

11 “(c) SAVINGS CLAUSE.—Nothing in this section may
12 be construed to limit the venue otherwise available under
13 sections 3237 and 3238 of this title.”

14 (c) FORGERY AND UNLAWFUL PRODUCTION OF A
15 PASSPORT.—Section 1543 of title 18, United States Code,
16 is amended to read as follows:

17 “§ 1543. **Forgery and unlawful production of a pass-**
18 **port**

19 “(a) FORGERY.—Any person who knowingly—

20 “(1) forges, counterfeits, alters, or falsely
21 makes any passport; or

22 “(2) transfers any passport knowing it to be
23 forged, counterfeited, altered, falsely made, stolen,
24 or to have been produced or issued without lawful
25 authority,

1 shall be fined under this title, imprisoned not more than
2 15 years, or both.

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

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

8 “(2) produces, issues, authorizes, or verifies a
9 United States passport for or to any person knowing
10 or in reckless disregard of the fact that such person
11 is not entitled to receive a passport; or

12 “(3) transfers or furnishes a passport to any
13 person for use by any person other than the person
14 for whom the passport was issued or designed,

15 shall be fined under this title, imprisoned not more than
16 15 years, or both.”.

17 (d) MISUSE OF A PASSPORT.—Section 1544 of title
18 18, United States Code, is amended to read as follows:

19 “§ 1544. **Misuse of a passport**

20 “Any person who knowingly—

21 “(1) uses any passport issued or designed for
22 the use of another;

23 “(2) uses any passport in violation of the condi-
24 tions or restrictions therein contained, or in violation

1 of the laws, regulations, or rules governing the
2 issuance and use of the passport;

3 “(3) secures, possesses, uses, receives, buys,
4 sells, or distributes any passport knowing it to be
5 forged, counterfeited, altered, falsely made, procured
6 by fraud, or produced or issued without lawful au-
7 thority; or

8 “(4) violates the terms and conditions of any
9 safe conduct duly obtained and issued under the au-
10 thority of the United States,

11 shall be fined under this title, imprisoned not more than
12 15 years, or both.”.

13 (e) SCHEMES TO DEFRAUD ALIENS.—Section 1545
14 of title 18, United States Code, is amended to read as
15 follows:

16 “§ 1545. Schemes to defraud aliens

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

23 “(1) defraud any person; or

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

6 “(b) MISREPRESENTATION.—Any person who know-
7 ingly and falsely represents that such person is an attor-
8 ney or an accredited representative (as that term is de-
9 fined in section 1292.1 of title 8, Code of Federal Regula-
10 tions (or any successor regulation to such section)) in any
11 matter arising under Federal immigration laws shall be
12 fined under this title, imprisoned not more than 15 years,
13 or both.”.

14 (f) IMMIGRATION AND VISA FRAUD.—Section 1546
15 of title 18, United States Code, is amended—

16 (1) by amending the section heading to read as
17 follows:

18 “§ 1546. Immigration and visa fraud”;

19 and

20 (2) by striking subsections (b) and (c) and in-
21 serting the following:

22 “(b) IN GENERAL.—Any person who knowingly—

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

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

3 “(3) completes, mails, prepares, presents, signs,
4 or submits any immigration document knowing it to
5 contain any materially false statement or representa-
6 tion;

7 “(4) secures, possesses, uses, transfers, re-
8 ceives, buys, sells, or distributes any immigration
9 document knowing it to be forged, counterfeited, al-
10 tered, falsely made, stolen, procured by fraud, or
11 produced or issued without lawful authority;

12 “(5) adopts or uses a false or fictitious name
13 to evade or to attempt to evade the immigration
14 laws; or

15 “(6) transfers or furnishes, without lawful au-
16 thority, an immigration document to another person
17 for use by a person other than the person for whom
18 the passport was issued or disgned,

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

21 “(c) TRAFFICKING.—Any person who, during any pe-
22 riod of 3 years or less, knowingly—

23 “(1) and without lawful authority produces,
24 issues, or transfers 10 or more immigration docu-
25 ments;

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

3 “(3) secures, possesses, uses, buys, sells, or dis-
4 tributes 10 or more immigration documents, know-
5 ing the immigration documents to be forged, coun-
6 terfeited, altered, stolen, falsely made, procured by
7 fraud, or produced or issued without lawful author-
8 ity; or

9 “(4) completes, mails, prepares, presents, signs,
10 or submits 10 or more immigration documents
11 knowing the documents to contain any materially
12 false statement or representation,

13 shall be fined under this title, imprisoned not more than
14 20 years, or both.

15 “(d) IMMIGRATION DOCUMENT MATERIALS.—Any
16 person who knowingly and without lawful authority pro-
17 duces, buys, sells, possesses, or uses any official material
18 (or counterfeit of any official material) used to make im-
19 migration documents, including any distinctive paper, seal,
20 hologram, image, text, symbol, stamp, engraving, or plate,
21 shall be fined under this title, imprisoned not more than
22 20 years, or both.

23 “(e) EMPLOYMENT DOCUMENTS.—Any person who
24 uses—

1 “(1) an identification document, knowing (or
2 having reason to know) that the document was not
3 issued lawfully for the use of the possessor;

4 “(2) an identification document knowing (or
5 having reason to know) that the document is false;
6 or

7 “(3) a false attestation,
8 for the purpose of satisfying a requirement of section
9 274A(b) of the Immigration and Nationality Act (8 U.S.C.
10 1324a(b)), shall be fined under this title, imprisoned not
11 more than 5 years, or both.”.

12 (g) ALTERNATIVE IMPRISONMENT MAXIMUM FOR
13 CERTAIN OFFENSES.—Section 1547 of title 18, United
14 States Code, is amended—

15 (1) in the matter preceding paragraph (1), by
16 striking “(other than an offense under section
17 1545)”;

18 (2) in paragraph (1), by striking “15” and in-
19 serting “20”; and

20 (3) in paragraph (2), by striking “20” and in-
21 serting “25”.

22 (h) ATTEMPTS, CONSPIRACIES, JURISDICTION, AND
23 DEFINITIONS.—Chapter 75 of title 18, United States
24 Code, is amended by adding after section 1547 the fol-
25 lowing:

1 **“§ 1548. Attempts and conspiracies**

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

5 **“§ 1549. Additional jurisdiction**

6 “(a) IN GENERAL.—Any person who commits an of-
7 fense under this chapter within the special maritime and
8 territorial jurisdiction of the United States shall be pun-
9 ished as provided under this chapter.

10 “(b) EXTRATERRITORIAL JURISDICTION.—Any per-
11 son who commits an offense under this chapter outside
12 the United States shall be punished as provided under this
13 chapter if—

14 “(1) the offense involves a United States pass-
15 port or immigration document (or any document
16 purporting to be such a document) or any matter,
17 right, or benefit arising under or authorized by Fed-
18 eral immigration laws;

19 “(2) the offense is in or affects foreign com-
20 merce;

21 “(3) the offense affects, jeopardizes, or poses a
22 significant risk to the lawful administration of Fed-
23 eral immigration laws, or the national security of the
24 United States;

25 “(4) the offense is committed to facilitate an
26 act of international terrorism (as defined in section

1 2331) or a drug trafficking crime (as defined in sec-
2 tion 929(a)(2)) that affects or would affect the na-
3 tional security of the United States;

4 “(5) the offender is a national of the United
5 States or an alien lawfully admitted for permanent
6 residence (as those terms are defined in section
7 101(a) of the Immigration and Nationality Act (8
8 U.S.C. 1101(a)); or

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

11 **“§ 1550. Authorized law enforcement activities**

12 “Nothing in this chapter shall prohibit any lawfully
13 authorized investigative, protective, or intelligence activity
14 of a law enforcement agency of the United States, a State,
15 or a political subdivision of a State, or an intelligence
16 agency of the United States, or any activity authorized
17 under title V of the Organized Crime Control Act of 1970
18 (Public Law 91–452; 84 Stat. 933).

19 **“§ 1551. Definitions**

20 “As used in this chapter:

21 “(1) The term ‘application for a United States
22 passport’ includes any document, photograph, or
23 other piece of evidence submitted in support of an
24 application for a United States passport.

25 “(2) The term ‘immigration document’—

1 “(A) means any application, petition, affi-
2 davit, declaration, attestation, form, visa, iden-
3 tification card, alien registration document, em-
4 ployment authorization document, border cross-
5 ing card, certificate, permit, order, license,
6 stamp, authorization, grant of authority, or
7 other official document, arising under or au-
8 thorized by the immigration laws of the United
9 States; and

10 “(B) includes any document, photograph,
11 or other piece of material evidence attached or
12 submitted in support of an immigration docu-
13 ment described in subparagraph (A).

14 “(3) The term ‘immigration laws’ includes—

15 “(A) the laws described in section
16 101(a)(17) of the Immigration and Nationality
17 Act (8 U.S.C. 1101(a)(17));

18 “(B) the laws relating to the issuance and
19 use of passports; and

20 “(C) the regulations prescribed under the
21 authority of any law described in subparagraph
22 (A) or (B).

23 “(4) A person does not exercise ‘lawful author-
24 ity’ if the person abuses or improperly exercises law-
25 ful authority the person otherwise holds.

1 “(5) The term ‘passport’ means—

2 “(A) a travel document attesting to the
3 identity and nationality of the bearer that is
4 issued under the authority of the Secretary of
5 State, a foreign government, or an international
6 organization; or

7 “(B) any instrument purporting to be a
8 document described in subparagraph (A).

9 “(6) The term ‘produce’ means to make, pre-
10 pare, assemble, issue, print, authenticate, or alter.

11 “(7) The term ‘to present’ means to offer or
12 submit for official processing, examination, or adju-
13 dication. Any such presentation continues until the
14 official processing, examination, or adjudication is
15 complete.

16 “(8) The ‘use’ of a passport or an immigration
17 document referred to in section 1541(a), 1543(b),
18 1544, 1546(a), and 1546(b) of this chapter in-
19 cludes—

20 “(A) any officially authorized use;

21 “(B) use to travel;

22 “(C) use to demonstrate identity, resi-
23 dence, nationality, citizenship, or immigration
24 status;

1 “(D) use to seek or maintain employment;
2 or
3 “(E) use in any matter within the jurisdic-
4 tion of the Federal government or of a State
5 government.”.

6 (i) **CLERICAL AMENDMENT.**—The table of sections
7 for chapter 75 of title 18, United States Code, is amended
8 to read as follows:

“Sec.

“1541. Trafficking in passports.

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

“1543. Forgery and unlawful production of a passport.

“1544. Misuse of a passport.

“1545. Schemes to defraud aliens.

“1546. Immigration and visa fraud.

“1547. Alternative imprisonment maximum for certain offenses.

“1548. Attempts and conspiracies.

“1549. Additional jurisdiction.

“1550. Authorized law enforcement activities.

“1551. Definitions.”.

9 **SEC. 222. OTHER IMMIGRATION REFORMS.**

10 (a) **DIRECTIVE TO THE UNITED STATES SEN-**
11 **TENCING COMMISSION.**—

12 (1) **IN GENERAL.**—Pursuant to the authority
13 under section 994 of title 28, United States Code,
14 the United States Sentencing Commission shall pro-
15 mulgate or amend the sentencing guidelines, policy
16 statements, and official commentaries related to
17 passport fraud offenses, including the offenses de-
18 scribed in chapter 75 of title 18, United States
19 Code, as amended by section 221, to reflect the seri-
20 ous nature of such offenses.

1 (2) REPORT.—Not later than 1 year after the
2 date of the enactment of this Act, the United States
3 Sentencing Commission shall submit to the Com-
4 mittee on the Judiciary of the Senate and the Com-
5 mittee on the Judiciary of the House of Representa-
6 tives a report on the implementation of this sub-
7 section.

8 (b) RELEASE AND DETENTION PRIOR TO DISPOSI-
9 TION.—

10 (1) DETENTION.—Section 3142(e) of title 18,
11 United States Code, is amended to read as follows:

12 “(e) DETENTION.— (1) If, after a hearing pursuant
13 to the provisions of subsection (f) of this section, the judi-
14 cial officer finds that no condition or combination of condi-
15 tions will reasonably assure the appearance of the person
16 as required and the safety of any other person and the
17 community, such judicial officer shall order the detention
18 of the person before trial.

19 “(2) In a case described in subsection (f)(1) of this
20 section, a rebuttable presumption arises that no condition
21 or combination of conditions will reasonably assure the
22 safety of any other person and the community if such judi-
23 cial officer finds that—

24 “(A) the person has been convicted of a Federal
25 offense that is described in subsection (f)(1) of this

1 section, or of a State or local offense that would
2 have been an offense described in subsection (f)(1)
3 of this section if a circumstance giving rise to Fed-
4 eral jurisdiction had existed;

5 “(B) the offense described in subparagraph (A)
6 of this paragraph was committed while the person
7 was on release pending trial for a Federal, State, or
8 local offense; and

9 “(C) a period of not more than five years has
10 elapsed since the date of conviction, or the release
11 of the person from imprisonment, for the offense de-
12 scribed in subparagraph (A) of this paragraph,
13 whichever is later.

14 “(3) Subject to rebuttal by the person, it shall be pre-
15 sumed that no condition or combination of conditions will
16 reasonably assure the appearance of the person as re-
17 quired and the safety of the community if the judicial offi-
18 cer finds that there is probable cause to believe that the
19 person committed an offense for which a maximum term
20 of imprisonment of ten years or more is prescribed in the
21 Controlled Substances Act (21 U.S.C. 801 et seq.), the
22 Controlled Substances Import and Export Act (21 U.S.C.
23 951 et seq.), or chapter 705 of title 46, an offense under
24 section 924(c), 956(a), or 2332b of this title, or an offense
25 listed in section 2332b(g)(5)(B) of this title for which a

1 maximum term of imprisonment of 10 years or more is
2 prescribed, or an offense involving a minor victim under
3 section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251,
4 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1),
5 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421,
6 2422, 2423, or 2425 of this title.”.

7 (c) PROTECTION FOR LEGITIMATE REFUGEES AND
8 ASYLUM SEEKERS.—

9 (1) PROTECTION FOR LEGITIMATE REFUGEES
10 AND ASYLUM SEEKERS.—The Attorney General, in
11 consultation with the Secretary of Homeland Secu-
12 rity, shall develop binding prosecution guidelines for
13 Federal prosecutors to ensure that any prosecution
14 of an alien seeking entry into the United States by
15 fraud is consistent with the United States treaty ob-
16 ligations under Article 31(1) of the Convention Re-
17 lating to the Status of Refugees, done at Geneva
18 July 28, 1951 (as made applicable by the Protocol
19 Relating to the Status of Refugees, done at New
20 York January 31, 1967 (19 UST 6223)).

21 (2) NO PRIVATE RIGHT OF ACTION.—The
22 guidelines developed pursuant to paragraph (1), and
23 any internal office procedures related to such guide-
24 lines, are intended solely for the guidance of attor-
25 neys of the United States. This subsection, such

1 guidelines, and the process for developing such
2 guidelines are not intended to, do not, and may not
3 be relied upon to create any right or benefit, sub-
4 stantive or procedural, enforceable at law by any
5 party in any administrative, civil, or criminal matter.

6 (3) WAIVER.—The Secretary may grant a waiv-
7 er from prosecution under chapter 75 of title 18,
8 United States Code, as amended by section 211 of
9 this Act, to a person—

10 (A) seeking protection, classification, or
11 status under section 208 or 241(b)(3) of the
12 Immigration and Nationality Act, or relief
13 under the Convention against Torture and
14 Other Cruel, Inhuman or Degrading Treatment
15 or Punishment done at New York, December
16 10, 1994, pursuant to title 8, Code of Federal
17 Regulations;

18 (B) referred for a credible fear interview,
19 a reasonable fear interview, or an asylum-only
20 hearing under section 235 of the Immigration
21 and Nationality Act or title 8, Code of Federal
22 Regulations; or

23 (C) has filed an application for classifica-
24 tion or status under paragraph (15)(T),
25 (15)(U), (27)(J), or (51) of section 101(a) of

1 the Immigration and Nationality Act, section
2 216(c)(4)(C), 240A(b)(2), or section 244(a)(3)
3 of such Act.

4 (d) DIPLOMATIC SECURITY SERVICE.—Section
5 37(a)(1) of the State Department Basic Authorities Act
6 of 1956 (22 U.S.C. 2709(a)(1)) is amended to read as
7 follows:

8 “(1) conduct investigations concerning—

9 “(A) illegal passport or visa issuance or
10 use;

11 “(B) identity theft or document fraud af-
12 fecting or relating to the programs, functions,
13 and authorities of the Department of State;

14 “(C) violations of chapter 77 of title 18,
15 United States Code; and

16 “(D) Federal offenses committed within
17 the special maritime and territorial jurisdiction
18 defined in paragraph (9) of section 7 of title
19 18, United States Code;”.

1 **Subtitle C—Detention and Removal**
2 **of Aliens Who Illegally Enter or**
3 **Remain in the United States**

4 **SEC. 231. DETENTION AND REMOVAL OF ALIENS ORDERED**
5 **REMOVED.**

6 (a) IN GENERAL.—Section 241(a) (8 U.S.C.
7 1231(a)) is amended—

8 (1) in paragraph (1)(A), by striking “Attorney
9 General” and inserting “Secretary of Homeland Se-
10 curity”;

11 (2) in paragraphs (3), (4), (5), (6), and (7), by
12 striking “Attorney General” each place it appears
13 and inserting “Secretary”;

14 (3) in paragraph (1)—

15 (A) by amending subparagraph (C) to read
16 as follows:

17 “(C) EXTENSION OF REMOVAL PERIOD.—

18 “(i) IN GENERAL.—The Secretary
19 shall extend the removal period for more
20 than a period of 90 days and the alien may
21 remain in detention during such extended
22 period if, during the removal period—

23 “(I) the alien—

24 “(aa) fails or refuses to
25 make timely application in good

1 faith for travel or other docu-
2 ments necessary for the alien to
3 depart the United States; or

4 “(bb) conspires or acts to
5 prevent the removal of the alien
6 subject to an order of removal;
7 and

8 “(II) the Secretary makes a cer-
9 tification described in paragraph
10 (8)(B) for such alien.

11 “(ii) STAY OF REMOVAL.—An alien
12 seeking a stay of removal from an immi-
13 gration judge, a Federal judge, or the
14 Board of Immigration Appeals shall not be
15 deemed under any provision of law to be
16 conspiring or acting to prevent the removal
17 of the alien.

18 “(iii) REVIEW.—The procedures de-
19 scribed in paragraph (8)(E) shall apply to
20 actions taken under this subparagraph.”;
21 and

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

23 “(D) TOLLING OF PERIOD.—If, at the
24 time described in clause (i), (ii), or (iii) of sub-
25 paragraph (B), the alien is not in the custody

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

11 (4) by amending paragraph (2) to read as fol-
12 lows:

13 “(2) DETENTION.—During the removal period,
14 the Secretary shall detain the alien. Under no cir-
15 cumstances during the removal period shall the Sec-
16 retary release an alien who has been found inadmis-
17 sible under section 212(a)(2) or 212(a)(3)(B) or de-
18 portable under section 237(a)(2) or 1227(a)(4)(B).
19 If a court, the Board of Immigration Appeals, or an
20 immigration judge orders a stay of removal of an
21 alien who is subject to an administratively final
22 order of removal, the Secretary, in the exercise of
23 discretion, may detain or supervise the alien during
24 the pendency of such stay of removal, subject to the

1 limitations set forth in subparagraphs (3), (6), and
2 (8).”;

3 (5) in paragraph (3)—

4 (A) in the matter preceding subparagraph
5 (A), by striking “If” and inserting “Subject to
6 the requirements of paragraphs (6) and (8), if”;
7 and

8 (B) by striking subparagraph (D) and in-
9 serting the following:

10 “(D) to obey reasonable restrictions on the
11 alien’s conduct or activities, or to perform af-
12 firmative acts prescribed by the Secretary—

13 “(i) to prevent the alien from ab-
14 scending; or

15 “(ii) to protect the community;

16 “(E) if appropriate—

17 “(i) to utilize an electronic monitoring
18 device;

19 “(ii) to complete parole and probation
20 requirements for aliens with outstanding
21 obligations under Federal or State law;
22 and

23 “(F) to comply with any other conditions
24 of such supervision that the Secretary deter-
25 mines is appropriate.”;

1 (6) in paragraph (6), by inserting “, subject to
2 the provisions of paragraph (8)” after “beyond the
3 removal period”;

4 (7) by redesignating paragraph (7) as para-
5 graph (11);

6 (8) by inserting after paragraph (6) the fol-
7 lowing:

8 “(7) PAROLE.—

9 “(A) IN GENERAL.—If an alien detained
10 pursuant to paragraph (6) is an applicant for
11 admission and is released from detention, such
12 release shall be considered to be made as an ex-
13 ercise of the Secretary’s parole authority under
14 212(d)(5). Notwithstanding section 212(d)(5),
15 the Secretary may provide that the alien shall
16 not be returned to custody unless—

17 “(i) the alien violates the conditions of
18 the alien’s parole under this section;

19 “(ii) the alien’s removal becomes rea-
20 sonably foreseeable; or

21 “(iii) the alien violates the conditions
22 set out in paragraph (3).

23 “(B) NOT AN ADMISSION.—Under no cir-
24 cumstance shall an alien paroled under this sec-

1 tion be considered admitted to the United
2 States.

3 “(8) ADDITIONAL RULES FOR DETENTION OR
4 RELEASE OF ALIENS BEYOND REMOVAL PERIOD.—

5 “(A) DETENTION AFTER REMOVAL PE-
6 RIOD.—The Secretary is authorized to detain
7 an alien who has effected an entry into the
8 United States—

9 “(i) for not more than 90 days beyond
10 the removal period if the Secretary is seek-
11 ing to make a certification described in
12 subparagraph (B) for the alien; or

13 “(ii) for more than 90 days beyond
14 the removal period if the Secretary has
15 made a certification described in subpara-
16 graph (B) for the alien, subject to the con-
17 ditions set out in this paragraph.

18 “(B) CERTIFICATION.—A certification de-
19 scribed in this subparagraph is a written certifi-
20 cation made by the Secretary in which the Sec-
21 retary determines—

22 “(i) that the alien is significantly like-
23 ly to be removed in the reasonably foresee-
24 able future;

1 “(ii) that the alien has failed to make
2 a timely application, in good faith, for
3 travel documents or has otherwise con-
4 spired or acted to prevent the removal of
5 the alien;

6 “(iii) that the alien would have been
7 removed if the alien had not—

8 “(I) failed or refused to make all
9 reasonable efforts to comply with the
10 removal order;

11 “(II) failed or refused to fully co-
12 operate with the efforts of the Sec-
13 retary to establish the alien’s identity
14 and carry out the removal order, in-
15 cluding failing to submit a timely ap-
16 plication, in good faith, for travel or
17 other documents necessary for the
18 alien’s departure from the United
19 States; or

20 “(III) conspired or acted to pre-
21 vent such removal;

22 “(iv) in consultation with the Sec-
23 retary of Health and Human Services, that
24 the alien has a highly contagious disease
25 that poses a threat to public safety, in

1 which case the alien may be quarantined in
2 a civil medical facility;

3 “*(v)* on the basis of information avail-
4 able to the Secretary (including classified
5 and national security information), regard-
6 less of the grounds upon which the alien
7 was ordered removed and pursuant to a
8 written certification under section 236A,
9 that there is reason to believe that the re-
10 lease of the alien would threaten the na-
11 tional security of the United States; or

12 “*(vi)* that the release of the alien
13 would threaten the safety of the commu-
14 nity, notwithstanding conditions of release
15 designed to ensure the safety of the com-
16 munity or any person and the alien—

17 “*(I)* has been convicted of 1 or
18 more aggravated felonies (as defined
19 in section 101(a)(43)(A)), or of 1 or
20 more attempts or conspiracies to com-
21 mit any such aggravated felonies for
22 which the alien served an aggregate
23 term of imprisonment of at least 5
24 years and the alien is likely to engage
25 in acts of violence in the future; or

1 “(II) because of a mental condi-
2 tion or personality disorder (certified
3 under section 232(b)) and behavior
4 associated with that condition or dis-
5 order, is likely to engage in acts of vi-
6 olence in the future, in which case the
7 alien may be referred for review and
8 evaluation for civil commitment pur-
9 suant to the civil commitment statute
10 of the State in which the alien resides.

11 “(C) DELEGATION.—Notwithstanding any
12 other provision of law, the Secretary may not
13 delegate the authority to make a certification
14 described in subparagraph (B) to any official
15 lower than the Assistant Secretary for Immi-
16 gration and Customs Enforcement.

17 “(D) ADMINISTRATIVE REVIEW.—

18 “(i) IN GENERAL.—The Secretary
19 shall establish an administrative review
20 process to permit an alien to appeal a deci-
21 sion by the Secretary to detain the alien
22 after the removal period under subpara-
23 graph (A) or to extend the removal period
24 for the alien under paragraph (1)(C).

1 “(ii) REVIEW.—An immigration judge
2 shall review a determination by the Sec-
3 retary to detain an alien under subpara-
4 graph (A) or paragraph (1)(C). An immi-
5 gration judge shall uphold such determina-
6 tion of the Secretary if the Secretary es-
7 tablishes at a hearing, by clear and con-
8 vincing evidence, that such detention is au-
9 thorized under subparagraph (A) or para-
10 graph (1)(C). In making this determina-
11 tion, the court shall disclose, if otherwise
12 discoverable, to the alien, the counsel of
13 the alien, or both, under procedures and
14 standards set forth in the Classified Infor-
15 mation Procedures Act (18 U.S.C. App.),
16 any evidence that the Secretary relied on
17 in making a determination under this sec-
18 tion unless the court finds that such disclo-
19 sure would not assist in determining any
20 legal or factual issue pertinent to the case.
21 The decision of the immigration judge
22 shall not be subject to appeal, but shall be
23 reviewable in a habeas corpus proceeding
24 under section 2241 of title 28, United
25 States Code.

1 “(E) RENEWAL OF EXTENDED DETEN-
2 TION.—

3 “(i) RENEWAL OF DETENTION.—The
4 Secretary may renew a certification under
5 subparagraph (B) every 180 days after
6 providing the alien with an opportunity to
7 submit documents or other evidence in
8 support of release. Unless the Secretary
9 determines that continued detention under
10 subparagraph (A) or paragraph (1)(C) is
11 warranted, the Secretary shall release the
12 alien subject to the conditions of super-
13 vision described in paragraph (3).

14 “(ii) REVIEW.—Any renewal of a cer-
15 tification under clause (i) shall be subject
16 to review as described in subparagraph (E)
17 and any such review shall be completed be-
18 fore the date that is 180 days after the
19 date the alien’s detention was continued
20 under subparagraph (A) or paragraph
21 (1)(C) or the date of the previous renewal
22 of such detention under clause (i).

23 “(F) APPLICABILITY.—This paragraph
24 and paragraphs (6) and (7) shall apply to any
25 alien returned to custody under paragraph (9)

1 as if the removal period terminated on the day
2 of the redetention.

3 “(9) REDETENTION.—The Secretary may not
4 detain any alien subject to a final removal order who
5 has previously been released from custody unless—

6 “(A) the alien fails to comply with the con-
7 ditions of departure applicable to the alien;

8 “(B) the alien fails to continue to satisfy
9 the conditions of supervision under paragraph
10 (3); or

11 “(C) upon reconsideration, the Secretary
12 makes a certification for the alien described in
13 paragraph (8)(B).

14 “(10) JUDICIAL REVIEW.—Without regard to
15 the place of confinement, judicial review of any ac-
16 tion or decision made pursuant to paragraph (6),
17 (7), or (8) shall be available exclusively in a habeas
18 corpus proceeding brought in a United States dis-
19 trict court in the judicial district in which the alien
20 is detained or in which the alien’s removal pro-
21 ceeding was initiated.”

22 (b) EFFECTIVE DATE.—The amendments made by
23 this section—

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

1 (2) shall apply to—

2 (A) any alien subject to a final administra-
3 tive removal, deportation, or exclusion order
4 that was issued before, on, or after the date of
5 the enactment of this Act; and

6 (B) any act or condition occurring or exist-
7 ing before, on, or after the date of the enact-
8 ment of this Act.

9 **SEC. 232. INCREASED CRIMINAL PENALTIES FOR IMMIGRA-**
10 **TION VIOLATIONS.**

11 (a) PENDING PROCEEDINGS.—Section 204(b) (8
12 U.S.C. 1154(b)) is amended by adding at the end “A peti-
13 tion may not be approved under this section if the peti-
14 tioner has been found removable from the United States.”.

15 (b) CONDITIONAL PERMANENT RESIDENT STA-
16 TUS.—

17 (1) IN GENERAL.—Section 216(e) (8 U.S.C.
18 1186a(e)) is amended by inserting “if the alien ap-
19 plied for the removal of condition not less than 90
20 days before applying for naturalization” before the
21 period at the end.

22 (2) CERTAIN ALIEN ENTREPRENEURS.—Section
23 216A(e) (8 U.S.C. 1186b(e)) is amended by insert-
24 ing “if the alien applied for the removal of condition

1 not less than 90 days before applying for naturaliza-
2 tion” before the period at the end.

3 (c) CONCURRENT NATURALIZATION AND REMOVAL
4 PROCEEDINGS.—Section 318 (8 U.S.C. 1429) is amended
5 to read as follows:

6 **“SEC. 318. PREREQUISITE TO NATURALIZATION; BURDEN**
7 **OF PROOF.**

8 “(a) IN GENERAL.—Except as otherwise provided in
9 this title, no person shall be naturalized unless the person
10 has been lawfully admitted to the United States for per-
11 manent residence in accordance with all applicable provi-
12 sions of this Act. The burden of proof shall be upon such
13 person to show that the person entered the United States
14 lawfully, and the time, place, and manner of such entry
15 into the United States, but in presenting such proof the
16 person shall be entitled to the production of the person’s’s
17 immigrant visa, if any, or of other entry document, if any,
18 and of any other documents and records, not considered
19 by the Secretary of Homeland Security to be confidential,
20 pertaining to such entry, in the custody of the Department
21 of Homeland Security.

22 “(b) OTHER PROCEEDINGS.—Notwithstanding the
23 provisions of section 405(b), and except as provided in sec-
24 tions 328 and 329, no person shall be naturalized against
25 whom there is outstanding a final finding of deportability

1 pursuant to a warrant of arrest issued under the provi-
2 sions of this or any other Act and no application for natu-
3 ralization shall be considered by the Secretary of Home-
4 land Security or any court if there is pending against the
5 applicant any removal proceeding or other proceeding to
6 determine the applicant's inadmissibility or deportability,
7 or to determine whether the applicant's lawful permanent
8 resident status should be rescinded, if the removal pro-
9 ceeding or other proceeding was commenced before a final
10 agency decision on naturalization made pursuant to a
11 hearing requested under section 336(a). The findings of
12 the Secretary in terminating removal proceedings or can-
13 celing the removal of an alien under this Act shall not
14 be binding upon the Secretary in determining whether
15 such person has established eligibility for naturalization
16 under this title.”.

17 (d) DISTRICT COURT JURISDICTION.—Section
18 336(b) (8 U.S.C. 1447(b)) is amended to read as follows:

19 “(b) REQUEST FOR HEARING BEFORE DISTRICT
20 COURT.—If a final administrative decision is not rendered
21 under section 335 before the end of the 180-day period
22 beginning on the date on which the examination is con-
23 ducted under such section, the applicant may apply to the
24 United States district court for the district in which the

1 applicant resides for a hearing on the matter. Such court
2 has jurisdiction over the matter and may—

3 “(1) determine the matter; or

4 “(2) remand the matter, with appropriate in-
5 structions, to the Secretary of Homeland Security,
6 to determine the matter.”.

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section—

9 (1) shall apply to any act that occurred on or
10 after the date of enactment of this Act; and

11 (2) shall apply to any application for natu-
12 ralization or any case or matter under the immigra-
13 tion laws filed on or after such date of enactment.

14 **SEC. 233. AGGRAVATED FELONY.**

15 (a) DEFINITION OF AGGRAVATED FELONY.—Section
16 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

17 (1) in the matter preceding subparagraph (A),
18 by striking “The term ‘aggravated felony’ means—
19 ” and inserting “Notwithstanding any other provi-
20 sion of law, the term ‘aggravated felony’ applies to
21 an offense described in this paragraph, whether in
22 violation of Federal or State law, and to such an of-
23 fense in violation of the law of a foreign country for
24 which the term of imprisonment was completed with-
25 in the previous 15 years, and regardless of whether

1 the conviction was entered before, on, or after Sep-
2 tember 30, 1996 and means—”;

3 (2) in subparagraph (N), by striking “para-
4 graph (1)(A) or (2) of” and inserting “paragraph
5 (1)(A), (2), or (4) of”; and

6 (3) by striking the undesignated matter fol-
7 lowing subparagraph (U).

8 (b) EFFECTIVE DATE AND APPLICATION.—

9 (1) IN GENERAL.—The amendments made by
10 subsection (a) shall—

11 (A) take effect on the date of enactment of
12 this Act; and

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

15 (2) APPLICATION OF HIRAIRA AMENDMENTS.—

16 The amendments to section 101 (a)(43) of the Im-
17 migration and Nationality Act made by section 321
18 of the Illegal Immigration Reform and Immigrant
19 Responsibility Act of 1996 (division C of Public Law
20 104–208; 110 Stat. 3009–627) shall continue to
21 apply, whether the conviction was entered before, on,
22 or after September 30, 1996.

1 **SEC. 234. INCREASED CRIMINAL PENALTIES RELATED TO**
2 **GANG VIOLENCE, REMOVAL, AND ALIEN**
3 **SMUGGLING.**

4 (a) CRIMINAL STREET GANGS.—

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

7 (A) by redesignating subparagraph (F) as
8 subparagraph (J); and

9 (B) by inserting after subparagraph (E)
10 the following:

11 “(F) MEMBERS OF CRIMINAL STREET
12 GANGS.—Unless the Secretary of Homeland Se-
13 curity or the Attorney General waives the appli-
14 cation of this subparagraph, any alien who has
15 been convicted of a crime under section 521 of
16 title 18, United States Code, is inadmissible.”.

17 (2) DEPORTABILITY.—Section 237(a)(2) (8
18 U.S.C. 1227(a)(2)) is amended by adding at the end
19 the following:

20 “(F) MEMBERS OF CRIMINAL STREET
21 GANGS.—Unless the Secretary of Homeland Se-
22 curity or the Attorney General waives the appli-
23 cation of this subparagraph, any alien who has
24 been convicted of a crime under section 521 of
25 title 18, United States Code, is deportable.”.

1 (3) TEMPORARY PROTECTED STATUS.—Section
2 244 (8 U.S.C. 1254a) is amended—

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

6 (B) in subsection (c)(2)(B)—

7 (i) in clause (i), by striking “, or” at
8 the end;

9 (ii) in clause (ii), by striking the pe-
10 riod at the end and inserting “; or”; and

11 (iii) by adding at the end the fol-
12 lowing:

13 “(iii) the alien has been convicted of
14 a crime under section 521 of title 18,
15 United States Code.”; and

16 (C) in subsection (d)—

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

18 (ii) in paragraph (4), by adding at the
19 end the following: “The Secretary of
20 Homeland Security shall detain an alien
21 provided temporary protected status under
22 this section if the alien is subject to deten-
23 tion under section 236(c)(1).”.

24 (b) PENALTIES RELATED TO REMOVAL.—Section
25 243 (8 U.S.C. 1253) is amended—

1 (1) in subsection (a)(1)—

2 (A) in the matter preceding subparagraph

3 (A), by inserting “212(a) or” after “section”;

4 and

5 (B) in the matter following subparagraph

6 (D)—

7 (i) by striking “or imprisoned not

8 more than four years” and inserting “and

9 imprisoned for not more than 5 years”;

10 and

11 (ii) by striking “, or both”; and

12 (2) in subsection (b), by striking “not more

13 than \$1000 or imprisoned for not more than one

14 year, or both” and inserting “under title 18, United

15 States Code, and imprisoned for not more than 5

16 years (or for not more than 10 years if the alien is

17 removable under paragraph (1)(E), (2), or (4) of

18 section 237(a)).”.

19 (c) ALIEN SMUGGLING AND RELATED OFFENSES.—

20 (1) IN GENERAL.—Section 274 (8 U.S.C. 1324)

21 is amended—

22 (A) by striking the section heading and all

23 that follows through subsection (a)(1)(B)(iii);

24 (B) by striking subsection (a)(1)(C) and

25 all that follows through the end;

1 (C) by redesignating subsection
2 (a)(1)(B)(iv) as subparagraph (G) and indent-
3 ing such subparagraph (G) four ems from the
4 left margin;

5 (D) by amending subparagraph (G), as re-
6 designated by subparagraph (C), by striking “in
7 the case of a violation of subparagraph (A) (i),
8 (ii), (iii), (iv), or (v) resulting” and inserting “if
9 the offense resulted”;

10 (E) by inserting before subparagraph (G),
11 as redesignated by subparagraph (C), the fol-
12 lowing:

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

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

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

18 **“(A)** encourages, directs, or induces a per-
19 son to come to or enter the United States, or
20 to cross the border to the United States, know-
21 ing or in reckless disregard of the fact that
22 such person is an alien who lacks lawful author-
23 ity to come to, enter, or cross the border to the
24 United States;

1 “(B) encourages, directs, or induces a per-
2 son to come to or enter the United States, or
3 to cross the border to the United States, at a
4 place other than a designated port of entry or
5 place other than as designated by the Secretary
6 of Homeland Security, knowing or in reckless
7 disregard of the fact that such person is an
8 alien and regardless of whether such alien has
9 official permission or lawful authority to be in
10 the United States;

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

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

1 “(E) transports or moves a person in the
2 United States, knowing or in reckless disregard
3 of the fact that such person is an alien who
4 lacks lawful authority to enter or be in the
5 United States, if the transportation or move-
6 ment will further the alien’s illegal entry into or
7 illegal presence in the United States;

8 “(F) harbors, conceals, or shields from de-
9 tection a person in the United States, knowing
10 or in reckless disregard of the fact that such
11 person is an alien who lacks lawful authority to
12 be in the United States; or

13 “(G) conspires or attempts to commit any
14 of the acts described in subparagraphs (A)
15 through (F).

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

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

24 “(B) except as provided in subparagraphs
25 (C) through (G), if the offense was committed

1 for commercial advantage, profit, or private fi-
2 nancial gain—

3 “(i) if the violation is the offender’s
4 first violation under this subparagraph,
5 shall be fined under such title, imprisoned
6 for not more than 15 years, or both; or

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

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

18 “(D) shall be fined under such title, im-
19 prisoned not more than 20 years, or both, if the
20 offense created a substantial and foreseeable
21 risk of death, a substantial and foreseeable risk
22 of serious bodily injury (as defined in section
23 2119(2) of title 18, United States Code), or in-
24 humane conditions to another person, includ-
25 ing—

1 “(i) transporting the person in an en-
2 gine compartment, storage compartment,
3 or other confined space;

4 “(ii) transporting the person at an ex-
5 cessive speed or in excess of the rated ca-
6 pacity of the means of transportation; or

7 “(iii) transporting the person in, har-
8 boring the person in, or otherwise sub-
9 jecting the person to crowded or dangerous
10 conditions;

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

16 “(F) shall be fined under such title and
17 imprisoned for not more than 30 years if the
18 offense involved an alien who the offender knew
19 was—

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

22 “(ii) intending to engage in terrorist
23 activity; and”

1 (F) by inserting after subparagraph (G),
2 as redesignated by subparagraph (C), the fol-
3 lowing:

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

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

20 “(B) for an individual or organization act-
21 ing without compensation or expectation of
22 compensation and not previously convicted of a
23 violation of this section, to—

24 “(i) provide, or attempt to provide, an
25 alien who is present in the United States

1 with humanitarian assistance, including
2 medical care, housing, counseling, victim
3 services, and food; or

4 “(ii) transport the alien to a location
5 where such assistance can be rendered.

6 “(5) EXTRATERRITORIAL JURISDICTION.—

7 There is extraterritorial Federal jurisdiction over the
8 offenses described in this subsection.”; and

9 (G) by striking subsections (b) through (e)
10 and inserting the following:

11 “(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

12 “(1) CRIMINAL OFFENSE AND PENALTIES.—

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

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

21 “(A) is an unauthorized alien (as defined
22 in section 274A);

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

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

3 “(c) SEIZURE AND FORFEITURE.—

4 “(1) IN GENERAL.—Any conveyance used to
5 commit or facilitate the commission of a violation of
6 this section, the gross proceeds of such violation,
7 and any property traceable to such property or pro-
8 ceeds, shall be subject to forfeiture.

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

18 “(3) PRIMA FACIE EVIDENCE IN DETERMINA-
19 TIONS OF VIOLATIONS.—In determining whether a
20 violation of subsection (a) has occurred, prima facie
21 evidence that an alien involved in the alleged viola-
22 tion lacks lawful authority to come to, enter, or re-
23 side in the United States, or that such alien had
24 come to, entered, or resided in the United States in
25 violation of law shall include—

1 “(A) any order, finding, or determination
2 concerning the alien’s status or lack of status
3 made by a Federal judge or administrative ad-
4 judicator (including an immigration judge or
5 immigration officer) during any judicial or ad-
6 ministrative proceeding authorized under Fed-
7 eral immigration law;

8 “(B) official records of the Department of
9 Homeland Security, the Department of Justice,
10 or the Department of State concerning the
11 alien’s status or lack of status; and

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

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

18 “(1) officers and employees designated by the
19 Secretary of Homeland Security, either individually
20 or as a member of a class; and

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

23 “(e) **ADMISSIBILITY OF VIDEOTAPED WITNESS TES-**
24 **TIMONY.**—Notwithstanding any provision of the Federal
25 Rules of Evidence, the videotaped or otherwise audio-

1 visually preserved deposition of a witness to a violation
2 of subsection (a) who has been deported or otherwise ex-
3 pelled from the United States, or is otherwise unavailable
4 to testify, may be admitted into evidence in an action
5 brought for that violation if—

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

9 “(2) the deposition otherwise complies with the
10 Federal Rules of Evidence.

11 “(f) OUTREACH PROGRAM.—

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

15 “(A) develop and implement an outreach
16 program to educate people in and out of the
17 United States about the penalties for bringing
18 in and harboring aliens in violation of this sec-
19 tion; and

20 “(B) establish the American Local and In-
21 terior Enforcement Needs (ALIEN) Task Force
22 to identify and respond to the use of Federal,
23 State, and local transportation infrastructure to
24 further the trafficking of unlawful aliens within
25 the United States.

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

5 “(3) AUTHORIZATION OF APPROPRIATIONS.—
6 There are authorized to be appropriated such sums
7 are necessary for the fiscal years 2008 through 2012
8 to carry out this subsection.”.

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

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

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

16 (1) in paragraph (1)—

17 (A) in subparagraph (A), by inserting “,
18 alien smuggling crime,” after “any crime of vio-
19 lence”;

20 (B) in subparagraph (A), by inserting “,
21 alien smuggling crime,” after “such crime of vi-
22 olence”;

23 (C) in subparagraph (D)(ii), by inserting
24 “, alien smuggling crime,” after “crime of vio-
25 lence”; and

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

2 “(6) For purposes of this subsection, the term ‘alien
3 smuggling crime’ means any felony punishable under sec-
4 tion 274(a), 277, or 278 of the Immigration and Nation-
5 ality Act (8 U.S.C. 1324(a), 1327, and 1328).”.

6 **SEC. 235. ILLEGAL ENTRY.**

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

9 **“SEC. 275. ILLEGAL ENTRY.**

10 “(a) IN GENERAL.—

11 “(1) CRIMINAL OFFENSES.—An alien shall be
12 subject to the penalties set forth in paragraph (2) if
13 the alien—

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

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

23 “(C) knowingly enters or crosses the bor-
24 der to the United States by means of a willfully
25 false or misleading representation or the know-

1 ing concealment of a material fact (including
2 such representation or concealment in the con-
3 text of arrival, reporting, entry, or clearance re-
4 quirements of the customs laws, immigration
5 laws, agriculture laws, or shipping laws).

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

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

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

15 “(C) if the violation occurred after the
16 alien had been convicted of 3 or more mis-
17 demeanors or for a felony, shall be fined under
18 such title, imprisoned not more than 5 years, or
19 both;

20 “(D) if the violation occurred after the
21 alien had been convicted of a felony for which
22 the alien received a term of imprisonment of
23 not less than 30 months, shall be fined under
24 such title, imprisoned not more than 10 years,
25 or both; and

1 “(E) if the violation occurred after the
2 alien had been convicted of a felony for which
3 the alien received a term of imprisonment of
4 not less than 60 months, such alien shall be
5 fined under such title, imprisoned not more
6 than 15 years, or both.

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

14 “(A) alleged in the indictment or informa-
15 tion; and

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

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

22 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
23 ALTIES.—Any alien who is apprehended while entering, at-
24 tempting to enter, or knowingly crossing or attempting to
25 cross the border to the United States at a time or place

1 other than as designated by immigration officers shall be
2 subject to a civil penalty, in addition to any criminal or
3 other civil penalties that may be imposed under any other
4 provision of law, in an amount equal to—

5 “(1) not less than \$50 or more than \$250 for
6 each such entry, crossing, attempted entry, or at-
7 tempted crossing; or

8 “(2) twice the amount specified in paragraph
9 (1) if the alien had previously been subject to a civil
10 penalty under this subsection.”.

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

“Sec. 275. Illegal entry”.

14 **SEC. 236. ILLEGAL REENTRY.**

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

17 **“SEC. 276. REENTRY OF REMOVED ALIENS.**

18 “(a) REENTRY AFTER REMOVAL.—Any alien who
19 has been denied admission, excluded, deported, or re-
20 moved, or who has departed the United States while an
21 order of exclusion, deportation, or removal is outstanding,
22 and subsequently enters, attempts to enter, crosses the
23 border to, attempts to cross the border to, or is at any
24 time found in the United States, shall be fined under title

1 18, United States Code, imprisoned not more than 2
2 years, or both.

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

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

10 “(2) was convicted for a felony before such re-
11 moval or departure for which the alien was sen-
12 tenced to a term of imprisonment of not less than
13 30 months, the alien shall be fined under such title,
14 imprisoned not more than 15 years, or both;

15 “(3) was convicted for a felony before such re-
16 moval or departure for which the alien was sen-
17 tenced to a term of imprisonment of not less than
18 60 months, the alien shall be fined under such title,
19 imprisoned not more than 20 years, or both;

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

24 “(5) was convicted, before such removal or de-
25 parture, for murder, rape, kidnaping, or a felony of-

1 fense described in chapter 77 (relating to peonage
2 and slavery) or 113B (relating to terrorism) of such
3 title, the alien shall be fined under such title, impris-
4 oned not more than 20 years, or both.

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

12 “(d) PROOF OF PRIOR CONVICTIONS.—The prior
13 convictions described in subsection (b) are elements of the
14 crimes described in that subsection, and the penalties in
15 that subsection shall apply only in cases in which the con-
16 viction or convictions that form the basis for the additional
17 penalty are—

18 “(1) alleged in the indictment or information;

19 and

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

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

24 “(1) prior to the alleged violation, the alien had
25 sought and received the express consent of the Sec-

1 retary of Homeland Security to reapply for admis-
2 sion into the United States;

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

5 “(A) was not required to obtain such ad-
6 vance consent under this Act or any prior Act;
7 and

8 “(B) had complied with all other laws and
9 regulations governing the alien’s admission into
10 the United States;

11 “(3) the prior order of removal was based on
12 charges filed against the alien before the alien
13 reached 18 years of age; or

14 “(4) the alien has been found eligible for pro-
15 tection from removal pursuant to section 208.

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

22 “(1) the alien exhausted all administrative rem-
23 edies that may have been available to seek relief
24 against the order;

1 “(2) the removal proceedings at which the order
2 was issued improperly deprived the alien of the op-
3 portunity for judicial review; and

4 “(3) the entry of the order was fundamentally
5 unfair.

6 “(g) REENTRY OF ALIEN REMOVED PRIOR TO COM-
7 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
8 moved pursuant to section 241(a)(4) who enters, attempts
9 to enter, crosses the border to, attempts to cross the bor-
10 der to, or is at any time found in, the United States shall
11 be incarcerated for the remainder of the sentence of im-
12 prisonment which was pending at the time of deportation
13 without any reduction for parole or supervised release un-
14 less the alien affirmatively demonstrates that the Sec-
15 retary of Homeland Security has expressly consented to
16 the alien’s reentry. Such alien shall be subject to such
17 other penalties relating to the reentry of removed aliens
18 as may be available under this section or any other provi-
19 sion of law.

20 “(h) LIMITATION.—It is not aiding and abetting a
21 violation of this section for an individual, acting without
22 compensation or the expectation of compensation, to—

23 “(1) provide, or attempt to provide, an alien
24 with humanitarian assistance, including emergency
25 medical care, food; or

1 “(2) transport the alien to a location where
2 such assistance can be rendered.”.

3 **TITLE III—EMPLOYMENT**
4 **VERIFICATION**

5 **SEC. 301. EMPLOYMENT VERIFICATION.**

6 (a) IN GENERAL.—Section 274A (8 U.S.C. 1324a)
7 is amended to read as follows:

8 **“SEC. 274A. EMPLOYMENT VERIFICATION.**

9 “(a) MAKING EMPLOYMENT OF UNAUTHORIZED
10 ALIENS UNLAWFUL.—

11 “(1) IN GENERAL.—It is unlawful for an em-
12 ployer—

13 “(A) to hire, recruit, or refer for a fee an
14 alien for employment in the United States
15 knowing or with reckless disregard that the
16 alien is an unauthorized alien with respect to
17 such employment; or

18 “(B) to hire in the United States an indi-
19 vidual unless such employer meets the require-
20 ments of subsections (b) and (c).

21 “(2) CONTINUING EMPLOYMENT.—It is unlaw-
22 ful for an employer, after lawfully hiring an alien for
23 employment, to continue to employ the alien in the
24 United States knowing that the alien is (or has be-

1 come) an unauthorized alien with respect to such
2 employment.

3 “(3) USE OF LABOR THROUGH CONTRACT.—An
4 employer who uses a contract, subcontract, or ex-
5 change entered into, renegotiated, or extended after
6 the date of the enactment of the STRIVE Act of
7 2007, to obtain the labor of an alien in the United
8 States knowing or with reckless disregard that the
9 alien is an unauthorized alien with respect to per-
10 forming such labor, shall be considered to have hired
11 the alien for employment in the United States in vio-
12 lation of paragraph (1)(A).

13 “(4) ORDER OF INTERNAL REVIEW AND CER-
14 TIFICATION OF COMPLIANCE.—

15 “(A) AUTHORITY TO REQUIRE CERTIFI-
16 CATION.—If the Secretary has reasonable cause
17 to believe that an employer has failed to comply
18 with this section, the Secretary is authorized, at
19 any time, to require that the employer certify
20 that the employer is in compliance with this
21 section or has instituted a program to come
22 into compliance with the section.

23 “(B) CONTENT OF CERTIFICATION.—Not
24 later than 60 days after the date an employer
25 receives a request for a certification under sub-

1 paragraph (A) the employer shall certify under
2 penalty of perjury that—

3 “(i) the employer is in compliance
4 with the requirements of subsections (b)
5 and (c); or

6 “(ii) that the employer has instituted
7 a program to come into compliance with
8 such requirements.

9 “(C) EXTENSION.—The 60-day period re-
10ferred to in subparagraph (B), may be extended
11 by the Secretary for good cause, at the request
12 of the employer.

13 “(D) PUBLICATION.—The Secretary is au-
14thorized to publish in the Federal Register
15 standards or methods for certification under
16 subparagraph (A) and for specific record-
17 keeping practices with respect to such certifi-
18 cation, and procedures for the audit of any
19 records related to such certification.

20 “(5) DEFENSE.—

21 “(A) IN GENERAL.—Subject to subpara-
22 graph (B), an employer that establishes that
23 the employer has complied in good faith, not-
24 withstanding a technical or procedural failure,
25 with the requirements of subsections (b) and (c)

1 with respect to the hiring of an individual has
2 established an affirmative defense that the em-
3 ployer has not violated paragraph (1)(B) with
4 respect to such hiring.

5 “(B) EXCEPTION.—Until the date that an
6 employer is required to participate in the Elec-
7 tronic Employment Verification System under
8 subsection (c), the employer may establish an
9 affirmative defense under subparagraph (A)
10 without a showing of compliance with sub-
11 section (c).

12 “(6) NO AUTHORIZATION OF NATIONAL IDENTI-
13 FICATION CARDS.—Nothing in this title may be con-
14 strued to authorize, directly or indirectly, the
15 issuance, use, or establishment of a national identi-
16 fication card or a national identification system.

17 “(b) DOCUMENT VERIFICATION REQUIREMENTS.—
18 An employer hiring an individual for employment in the
19 United States shall verify that the individual is eligible for
20 such employment by meeting the following requirements:

21 “(1) ATTESTATION BY EMPLOYER.—

22 “(A) REQUIREMENTS.—

23 “(i) IN GENERAL.—The employer
24 shall attest, under penalty of perjury and
25 on a form prescribed by the Secretary, that

1 the employer has verified the identity and
2 eligibility for employment of the individual
3 by examining a document described in sub-
4 paragraph (B).

5 “(ii) SIGNATURE REQUIREMENTS.—
6 An attestation required by clause (i) may
7 be manifested by a handwritten or elec-
8 tronic signature.

9 “(iii) STANDARDS FOR EXAMINA-
10 TION.—An employer has complied with the
11 requirement of this paragraph with respect
12 to examination of a document if the docu-
13 ment examined reasonably appears on its
14 face to be genuine and relates to the indi-
15 vidual whose identity and eligibility for em-
16 ployment in the United States is being
17 verified. Nothing in this paragraph may be
18 construed as requiring the employer to so-
19 licit the production of any other document
20 or as requiring the individual to produce
21 such other document.

22 “(B) EMPLOYMENT AND IDENTIFICATION
23 DOCUMENTS.—A document described in this
24 subparagraph is—

1 “(i) in the case of an individual who
2 is a national of the United States—

3 “(I) a United States passport;

4 “(II) a biometric, machine read-
5 able, tamper-resistant Social Security
6 card, as described in section
7 205(c)(2)(G) of the Social Security
8 Act (42 U.S.C. 405(c)(2)(G)); or

9 “(III) a driver’s license or iden-
10 tity card issued by a State, the Com-
11 monwealth of the Northern Mariana
12 Islands, or an outlying possession of
13 the United States that satisfies the
14 requirements of Division B of Public
15 Law 109–13 (119 Stat. 302);

16 “(ii) in the case of an alien who is
17 lawfully admitted for permanent residence
18 in the United States—

19 “(I) a permanent resident card,
20 as specified by the Secretary; or

21 “(II) a biometric, machine read-
22 able, tamper-resistant Social Security
23 card, as described in section
24 205(c)(2)(G) of the Social Security
25 Act (42 U.S.C. 405(c)(2)(G));

1 “(iii) in the case of an alien who is
2 not lawfully admitted for permanent resi-
3 dence and who is authorized under this Act
4 or by the Secretary to be employed in the
5 United States—

6 “(I) an employment authorization
7 card, as specified by the Secretary,
8 that—

9 “(aa) contains a photograph
10 of the individual or other identi-
11 fying information, including
12 name, date of birth, gender, and
13 address; and

14 “(bb) contains security fea-
15 tures to make the document re-
16 sistant to tampering, counter-
17 feiting, and fraudulent use; or

18 “(II) a biometric, machine read-
19 able, tamper-resistant Social Security
20 card, as described in section
21 205(c)(2)(G) of the Social Security
22 Act (42 U.S.C. 405(c)(2)(G));

23 “(iv) in the case of an individual who
24 is unable to obtain a document described

1 in clause (i), (ii), or (iii), a document des-
2 ignated by the Secretary that—

3 “(I) contains a photograph of the
4 individual or other identifying infor-
5 mation, including name, date of birth,
6 gender, and address; and

7 “(II) contains security features
8 to make the document resistant to
9 tampering, counterfeiting, and fraudu-
10 lent use; or

11 “(v) until the date that an employer is
12 required to participate in the Electronic
13 Employment Verification System under
14 subsection (c) or is participating in such
15 System on a voluntary basis, a document,
16 or a combination of documents, of such
17 type that, as of the date of the enactment
18 of the STRIVE Act of 2007, the Secretary
19 had established by regulation were suffi-
20 cient for purposes of this section.

21 “(C) SPECIAL RULE FOR MINORS.—Not-
22 withstanding subparagraph (B), a minor who is
23 under the age of 18 and who is unable to
24 produce an identity document described in

1 clause (i) through (v) of subparagraph (B) is
2 exempt from producing such a document if—

3 “(i) a parent or legal guardian of the
4 minor completes a form prescribed by the
5 Secretary, and in the space for the minor’s
6 signature, the parent or legal guardian
7 writes the words, ‘minor under age 18’;

8 “(ii) a parent or legal guardian of the
9 minor completes a form prescribed by the
10 Secretary, the ‘Preparer/Translator certifi-
11 cation’; and

12 “(iii) the employer of the minor writes
13 in a form prescribed by the Secretary, in
14 the space after the words ‘Document Iden-
15 tification #’ the words, ‘minor under age
16 18’.

17 “(D) SPECIAL RULE FOR INDIVIDUALS
18 WITH DISABILITIES.—Notwithstanding subpara-
19 graph (B), an individual with a disability (as
20 defined in section 3 of the Americans with Dis-
21 abilities Act of 1990 (42 U.S.C. 12102)) who is
22 unable to produce an identity document de-
23 scribed in clause (i) through (v) of subpara-
24 graph (B), and who is being placed into em-
25 ployment by a nonprofit organization or asso-

1 ciation or as part of a rehabilitation program,
2 and an individual who demonstrates mental re-
3 tardation whether or not the individual partici-
4 pates in an employment placement program
5 through a nonprofit organization or association
6 or as part of a rehabilitation program, is ex-
7 empt from producing such a document if—

8 “(i) a parent or legal guardian of the
9 individual, or a representative from the
10 nonprofit organization, association, or re-
11 habilitation program placing the individual
12 into a position of employment completes a
13 form prescribed by the Secretary, and in
14 the space for the covered individual’s sig-
15 nature, writes the words, ‘special place-
16 ment’;

17 “(ii) a parent or legal guardian of the
18 individual or the program representative,
19 completes a form prescribed by the Sec-
20 retary, the ‘Preparer/Translator certifi-
21 cation’; and

22 “(iii) the employer of the covered indi-
23 vidual writes in a form prescribed by the
24 Secretary, in the space after the words

1 ‘Document Identification #’ the words,
2 ‘special placement’.

3 “(E) AUTHORITY TO PROHIBIT USE OF
4 CERTAIN DOCUMENTS.—

5 “(i) AUTHORITY.—If the Secretary
6 finds that a document or class of docu-
7 ments described in clause (i) through (v) of
8 subparagraph (B) is not reliable to estab-
9 lish identity or eligibility for employment
10 (as the case may be) or is being used
11 fraudulently to an unacceptable degree, the
12 Secretary is authorized to prohibit, or im-
13 pose conditions on, the use of such docu-
14 ment or class of documents for purposes of
15 this subsection.

16 “(ii) REQUIREMENT FOR PUBLICA-
17 TION.—The Secretary shall publish notice
18 of any findings under clause (i) in the Fed-
19 eral Register.

20 “(2) ATTESTATION OF INDIVIDUAL.—

21 “(A) IN GENERAL.—The individual shall
22 attest, under penalty of perjury on a form pre-
23 scribed by the Secretary, that the individual
24 is—

25 “(i) a national of the United States;

1 “(ii) an alien lawfully admitted for
2 permanent residence; or

3 “(iii) an alien who is authorized under
4 this Act or by the Secretary to be em-
5 ployed in the United States.

6 “(B) SIGNATURE FOR EXAMINATION.—An
7 attestation required by subparagraph (A) may
8 be manifested by a handwritten or electronic
9 signature.

10 “(C) PENALTIES.—An individual who
11 falsely represents that the individual is eligible
12 for employment in the United States in an at-
13 testation required by subparagraph (A) shall,
14 for each such violation, be subject to a fine of
15 not more than \$5,000, a term of imprisonment
16 not to exceed 3 years, or both.

17 “(3) RETENTION OF ATTESTATION.—The em-
18 ployer shall retain an attestation described in para-
19 graph (1) or (2) for an individual, either in elec-
20 tronic, paper, microfiche, or microfilm form, and
21 make such attestations available for inspection by an
22 officer of the Department of Homeland Security,
23 any other person designated by the Secretary, the
24 Special Counsel for Immigration-Related Unfair

1 Employment Practices of the Department of Justice,
2 or the Secretary of Labor—

3 “(A) during a period beginning on the date
4 of the hiring of the individual and ending on
5 the date that is the later of—

6 “(i) 3 years after the date of such hir-
7 ing; or

8 “(ii) 1 year after the date the individ-
9 ual’s employment is terminated; or

10 “(B) during a shorter period determined
11 by the Secretary, if the Secretary reduces the
12 period described in subparagraph (A) for the
13 employer or a class of employers that includes
14 the employer.

15 “(4) DOCUMENT RETENTION AND RECORD-
16 KEEPING REQUIREMENTS.—

17 “(A) RETENTION OF DOCUMENTS.—Not-
18 withstanding any other provision of law, an em-
19 ployer shall retain, for the applicable period de-
20 scribed in paragraph (3), the following docu-
21 ments:

22 “(i) IN GENERAL.—A paper, micro-
23 fiche, microfilm, or electronic copy of each
24 document described in paragraph (1)(B)

1 presented by an individual that is des-
2 ignated as a copied document.

3 “(ii) OTHER DOCUMENTS.—A record
4 of any action taken, and copies of any cor-
5 respondence written or received, with re-
6 spect to the verification of an individual’s
7 identity or eligibility for employment in the
8 United States, including records received
9 through the Electronic Employment
10 Verification System under subsection (c).

11 “(B) USE OF RETAINED DOCUMENTS.—An
12 employer shall use copies retained under clause
13 (i) or (ii) of subparagraph (A) only for the pur-
14 poses of complying with the requirements of
15 this subsection, except as otherwise permitted
16 under law.

17 “(5) PENALTIES.—An employer that fails to
18 comply with the requirement of this subsection shall
19 be subject to the penalties described in subsection
20 (d)(4)(B).

21 “(c) ELECTRONIC EMPLOYMENT VERIFICATION SYS-
22 TEM.—

23 “(1) REQUIREMENT FOR SYSTEM.—The Sec-
24 retary, in cooperation with the Commissioner of So-
25 cial Security, shall implement an Electronic Employ-

1 ment Verification System (referred to in this sub-
2 section as the ‘System’) as described in this sub-
3 section.

4 “(2) TECHNOLOGY STANDARD TO VERIFY EM-
5 PLOYMENT ELIGIBILITY.—

6 “(A) IN GENERAL.—The Secretary based
7 upon recommendations from the Director of the
8 National Institute of Standards and Tech-
9 nology, shall not later than 180 days after the
10 date of the enactment of the STRIVE Act of
11 2007 develop and certify a technology standard
12 as described in this subparagraph. The Sec-
13 retary shall have discretion to extend the 180-
14 day period if the Secretary determines that
15 such extension will result in substantial im-
16 provement of the System.

17 “(B) INTEGRATED.—Notwithstanding any
18 other provision of Federal law, the technology
19 standard developed shall be the technological
20 basis for a cross-agency, cross-platform elec-
21 tronic system that is a cost-effective, efficient,
22 fully integrated means to share immigration
23 and Social Security information necessary to
24 confirm the employment eligibility of all individ-
25 uals seeking employment.

1 “(C) REPORT.—Not later than 18 months
2 after the date of the enactment of the STRIVE
3 Act of 2007, the Secretary and the Director of
4 the National Institute of Standards and Tech-
5 nology shall jointly submit to Congress a report
6 describing the development, implementation, ef-
7 ficacy, and privacy implications of the tech-
8 nology standard and the System.

9 “(3) IDENTITY AND EMPLOYMENT ELIGIBILITY
10 VERIFICATION.—An employer shall verify the iden-
11 tity and eligibility for employment of an individual
12 hired by the employer through the System as fol-
13 lows:

14 “(A) INITIAL INQUIRY.—The employer
15 shall submit an inquiry through the System to
16 seek confirmation of the individual’s identity
17 and eligibility for employment in the United
18 States not later than 5 working days after the
19 date such employment actually commences.

20 “(B) INITIAL DETERMINATION.—The Sec-
21 retary, through the System, shall respond to an
22 inquiry described in subparagraph (A) not later
23 than 1 working day after such inquiry is sub-
24 mitted. Such response shall be a determination
25 that—

1 “(i) confirms the individual’s identity
2 and eligibility for employment in the
3 United States; or

4 “(ii) the System is tentatively unable
5 to confirm the individual’s identity or eligi-
6 bility for employment (referred to in this
7 section as a ‘tentative nonconfirmation’).

8 “(C) MANUAL VERIFICATION.—

9 “(i) REQUIREMENT.—If the System
10 provides a tentative nonconfirmation with
11 respect to an individual, the Secretary
12 shall—

13 “(I) provide the individual an op-
14 portunity to submit information to
15 verify the individual’s identity and eli-
16 gibility for employment as described
17 in subparagraph (D); and

18 “(II) conduct a manual
19 verification to determine the individ-
20 ual’s identity and eligibility for em-
21 ployment.

22 “(ii) DETERMINATION.—Not later
23 than 30 days after the last day that an in-
24 dividual may submit information under
25 subparagraph (D) the Secretary, through

1 the System, shall provide to the employer
2 the results of the manual verification re-
3 quired by clause (i). Such results shall be
4 a determination that—

5 “(I) confirms the individual’s
6 identity and eligibility for employment
7 in the United States; or

8 “(II) the System is unable to
9 confirm the individual’s identity or eli-
10 gibility for employment (referred to in
11 this section as a ‘final nonconfirma-
12 tion’).

13 “(D) SUBMISSION OF INFORMATION.—An
14 individual who is the subject of a tentative non-
15 confirmation may submit to the Secretary,
16 through the System, information to confirm
17 such individual’s identity or eligibility for em-
18 ployment or to otherwise contest such tentative
19 nonconfirmation not later than 15 days after
20 the individual receives notice of such tentative
21 nonconfirmation.

22 “(E) EXTENSION.—The 15-day period re-
23 ferred to in subparagraph (D) may be extended
24 by the Secretary for good cause at the request
25 of the individual.

1 “(F) DEFAULT CONFIRMATION AND REV-
2 OCATION.—If the Secretary, through the Sys-
3 tem, fails to provide a determination described
4 in clause (i) or (ii) of subparagraph (B) or sub-
5 clause (I) or (II) of subparagraph (C)(ii) for an
6 individual within the period described in such
7 subparagraph, the Secretary shall, through the
8 System, deem that the individual’s identity and
9 eligibility for employment are confirmed
10 through the System and provide notice of such
11 confirmation to the employer.

12 “(G) REVOCATION.—In the case of a de-
13 fault confirmation in subclause (F), the Sec-
14 retary reserves the right to revoke such default
15 confirmation if the Secretary later determines
16 the individual is, in fact, not eligible to work.
17 The Secretary shall provide notice of such rev-
18 ocation and final nonconfirmation to the em-
19 ployer. The individual shall have the right to
20 administrative review under paragraph (19) and
21 judicial review under paragraph (20) of such
22 final nonconfirmation.

23 “(H) PROHIBITION ON TERMINATION FOR
24 TENTATIVE NONCONFIRMATION.—An employer

1 may not terminate the employment of an indi-
2 vidual based on tentative nonconfirmation.

3 “(I) TERMINATION OF EMPLOYEE.—If an
4 employer receives a final nonconfirmation with
5 respect to an individual, the employer shall ter-
6 minate the employment of such individual.

7 “(J) ADMINISTRATIVE AND JUDICIAL RE-
8 VIEW.—If the Secretary, through the System,
9 provides a final nonconfirmation with respect to
10 an individual, the individual shall have the right
11 to administrative review under paragraph (19)
12 and judicial review under paragraph (20) of
13 such final nonconfirmation.

14 “(K) RIGHT TO REVIEW AND CORRECT
15 SYSTEM INFORMATION.—The Secretary, in con-
16 sultation with the Commissioner of Social Secu-
17 rity, shall establish procedures to permit an in-
18 dividual to verify the individual’s eligibility for
19 employment in the United States prior to ob-
20 taining or changing employment, to view the in-
21 dividual’s own records in the System in order to
22 ensure the accuracy of such records, and to cor-
23 rect or update the information used by the Sys-
24 tem regarding the individual.

25 “(L) REVERIFICATION.—

1 “(i) IN GENERAL.—It is an unfair im-
2 migration-related employment practice
3 under section 274B for an employer to
4 reverify an individual’s identity and em-
5 ployment eligibility unless—

6 “(I) the individual’s work author-
7 ization expires as described in section
8 274a.2(b)(1)(vii) of title 8, Code of
9 Federal Regulation or a subsequent
10 similar regulation, in which case—

11 “(aa) not later than 30 days
12 prior to the expiration of the in-
13 dividual’s work authorization, the
14 Secretary shall notify the em-
15 ployer of such expiration and of
16 the employer’s need to reverify
17 the individual’s employment eligi-
18 bility; and

19 “(bb) the individual may
20 present, and the employer shall
21 accept, a receipt for the applica-
22 tion for a replacement document,
23 extension of work authorization,
24 or a document described in
25 clause (i) through (v) of subpara-

1 graph (B) of subsection (b)(1) in
2 lieu of the required document by
3 the expiration date in order to
4 comply with any requirement to
5 examine documentation imposed
6 by this section, and the individual
7 shall present the required docu-
8 ment within 90 days from the
9 date the employment authoriza-
10 tion expires. If the actual docu-
11 ment or replacement document is
12 to be issued by United States
13 Citizenship and Immigration
14 Services and the application is
15 still under review 60 days after
16 the employment authorization ex-
17 piration date, United States Citi-
18 zenship and Immigration Services
19 shall by the 60th day after the
20 expiration date of the employ-
21 ment authorization, issue a letter
22 for the applicant to take to the
23 employer which shall automati-
24 cally grant the individual an ad-
25 ditional 90 days to present the

1 document or replacement docu-
2 ment; and

3 “(II) the employer has actual or
4 constructive knowledge that the indi-
5 vidual is not authorized to work in the
6 United States; or

7 “(III) unless otherwise required
8 by law.

9 “(ii) CONTINUING EMPLOYMENT.—An
10 employer may not verify an individual’s
11 employment eligibility if the individual is
12 continuing in his or her employment as de-
13 scribed in section 274a.2(b)(1)(viii) of title
14 8, Code of Federal Regulation or any sub-
15 sequent similar regulation.

16 “(iii) SPECIAL RULE FOR CRITICAL
17 INFRASTRUCTURE.—Upon the implementa-
18 tion of the System, the Secretary shall re-
19 quire all agencies and departments of the
20 United States (including the Armed
21 Forces), a State government (including a
22 State employment agency before making a
23 referral), or any other employer if it em-
24 ploys individuals working in a location that
25 is a Federal, State, or local government

1 building, a military base, a nuclear energy
2 site, a weapon site, or an airport, to com-
3 plete a one time reverification of all indi-
4 viduals current employed at these facilities.

5 “(4) DESIGN AND OPERATION OF SYSTEM.—
6 The Secretary, in consultation with the Commis-
7 sioner of Social Security, shall design and operate
8 the System—

9 “(A) to maximize reliability and ease of
10 use by employers in a manner that protects and
11 maintains the privacy and security of the infor-
12 mation maintained in the System;

13 “(B) to permit an employer to submit an
14 inquiry to the System through the Internet or
15 other electronic media or over a telephone line;

16 “(C) to respond to each inquiry made by
17 an employer;

18 “(D) to maintain a record of each such in-
19 quiry and each such response;

20 “(E) to track and record any occurrence
21 when the System is unable to receive such an
22 inquiry;

23 “(F) to include appropriate administrative,
24 technical, and physical safeguards to prevent
25 unauthorized disclosure of personal information

1 during use, transmission, storage, or disposal of
2 that information, including the use of
3 encryption, carrying out periodic testing of the
4 System to detect, prevent, and respond to
5 vulnerabilities or other failures, and utilizing
6 periodic security updates;

7 “(G) to allow for monitoring of the use of
8 the System and provide an audit capability;

9 “(H) to have reasonable safeguards, devel-
10 oped in consultation with the Attorney General,
11 to prevent employers from engaging in unlawful
12 discriminatory practices;

13 “(I) to permit an employer to submit the
14 attestations required by subsection (b); and

15 “(J) to permit an employer to utilize any
16 technology that is consistent with this section
17 and with any regulation or guidance from the
18 Secretary to streamline the procedures to com-
19 ply with the attestation and employment eligi-
20 bility verification requirements contained in this
21 section.

22 “(5) LIMITATION ON DATA ELEMENTS
23 STORED.—The System and any databases created by
24 the Commissioner of Social Security or the Secretary
25 for use in the System shall store only the minimum

1 data about each individual for whom an inquiry was
2 made through the System to facilitate the successful
3 operation of the System, and in no case shall the
4 data stored be other than—

5 “(A) the individual’s full legal name;

6 “(B) the individual’s date of birth;

7 “(C) the individual’s social security ac-
8 count number or employment authorization sta-
9 tus identification number;

10 “(D) the address of the employer making
11 the inquiry and the dates of any prior inquiries
12 concerning the identity and authorization of the
13 individual by the employer or any other em-
14 ployer and the address of such employer;

15 “(E) a record of each prior determination
16 regarding the individual’s identity and employ-
17 ment eligibility issued through the System; and

18 “(F) in the case of the individual who suc-
19 cessfully contested or appealed a tentative non-
20 confirmation or final nonconfirmation, explana-
21 tory information concerning the successful reso-
22 lution of any erroneous data or confusion re-
23 garding the identity or eligibility for employ-
24 ment of the individual, including the source of
25 that error.

1 “(6) RESPONSIBILITIES OF THE COMMISSIONER
2 OF SOCIAL SECURITY.—The Commissioner of Social
3 Security shall establish a reliable, secure method to
4 provide through the System, within the time periods
5 required by subparagraphs (B) and (C) of para-
6 graph (2)—

7 “(A) a determination of whether the name
8 and social security account number provided,
9 with respect to an individual, in an inquiry by
10 an employer, match such information main-
11 tained by the Commissioner in order to confirm
12 the validity of the information provided;

13 “(B) a determination of whether such so-
14 cial security account number was issued to the
15 individual;

16 “(C) a determination of whether such so-
17 cial security account number is valid for em-
18 ployment in the United States; and

19 “(D) a determination described in subpara-
20 graph (B) or (C) of paragraph (2), in a manner
21 that ensures that other information maintained
22 by the Commissioner is not disclosed or re-
23 leased to employers through the System.

24 “(7) RESPONSIBILITIES OF THE SECRETARY.—
25 The Secretary shall establish a reliable, secure meth-

1 od to provide, through the System, within the time
2 periods required by subparagraphs (B) and (C) of
3 paragraph (2)—

4 “(A) a determination of whether the name
5 and alien identification or authorization number
6 provided, with respect to an individual, in an in-
7 quiry by an employer match such information
8 maintained by the Secretary in order to confirm
9 the validity of the information provided;

10 “(B) a determination of whether such
11 number was issued to the individual;

12 “(C) a determination of whether the indi-
13 vidual is authorized to be employed in the
14 United States; and

15 “(D) any other related information that
16 the Secretary determines is appropriate.

17 “(8) PRIVACY IMPACT ASSESSMENT.—The
18 Commissioner of Social Security and the Secretary
19 shall each complete a privacy impact assessment as
20 described in section 208 of the E-Government Act of
21 2002 (Public Law 107–347; 44 U.S.C. 3501 note)
22 with regard to the System.

23 “(9) TRAINING.—The Commissioner of Social
24 Security and the Secretary shall provide appropriate
25 training materials to employers participating in the

1 System to ensure that such employers are able to
2 utilize the System in compliance with the require-
3 ments of this section.

4 “(10) HOTLINE.—The Secretary shall establish
5 a fully staffed 24-hour hotline that shall receive in-
6 quires from individuals or employers concerning de-
7 terminations made by the System and shall identify
8 for an individual, at the time of inquiry, the par-
9 ticular data that resulted in a determination that the
10 System was unable to verify the individual’s identity
11 or eligibility for employment.

12 “(11) PARTICIPATION.—

13 “(A) REQUIREMENTS FOR PARTICIPA-
14 TION.—Except as provided in subparagraphs
15 (D) and (E), the Secretary shall require em-
16 ployers to participate in the System as follows:

17 “(i) CRITICAL EMPLOYERS.—Not later
18 than 1 year after the date of enactment of
19 the STRIVE Act of 2007, the Secretary
20 shall require all agencies and departments
21 of the United States (including the Armed
22 Forces), a State government (including a
23 State employment agency before making a
24 referral), or any other employer if it em-
25 ploys individuals working in a location that

1 is a Federal, State, or local government
2 building, a military base, a nuclear energy
3 site, a weapon site, or an airport, but only
4 to the extent of such individuals, to partici-
5 pate in the System, with respect to all indi-
6 viduals hired after the date the Secretary
7 requires such participation.

8 “(ii) LARGE EMPLOYERS.—Not later
9 than 2 years after the date of enactment
10 of the STRIVE Act of 2007 the Secretary
11 shall require an employer with 5,000 or
12 more employees in the United States to
13 participate in the System, with respect to
14 all employees hired by the employer after
15 the date the Secretary requires such par-
16 ticipation.

17 “(iii) MID-SIZED EMPLOYERS.—Not
18 later than 3 years after the date of enact-
19 ment of the STRIVE Act of 2007 the Sec-
20 retary shall require an employer with less
21 than 5,000 employees and 1,000 or more
22 employees in the United States to partici-
23 pate in the System, with respect to all em-
24 ployees hired by the employer after the

1 date the Secretary requires such participa-
2 tion.

3 “(iv) SMALL EMPLOYERS.—Not later
4 than 4 years after the date of the enact-
5 ment of the STRIVE Act of 2007, the Sec-
6 retary shall require all employers with less
7 than 1,000 employees in the United States
8 to participate in the System, with respect
9 to all employees hired by the employer
10 after the date the Secretary requires such
11 participation.

12 “(B) REQUIREMENT TO PUBLISH.—The
13 Secretary shall publish in the Federal Register
14 the requirements for participation in the Sys-
15 tem for employers described in clauses (i)
16 through (iv) of subparagraph (A) prior to the
17 effective date of such requirements.

18 “(C) OTHER PARTICIPATION IN SYSTEM.—

19 “(i) VOLUNTARY PARTICIPATION.—
20 Notwithstanding subparagraph (A), the
21 Secretary has the authority to permit any
22 employer that is not required to participate
23 in the System under subparagraph (A) to
24 participate in the System on a voluntary
25 basis.

1 “(ii) EMPLOYERS NOT REQUIRED TO
2 PARTICIPATE.—Notwithstanding subpara-
3 graph (A) employers are not required to
4 verify the identify or employment eligibility
5 through the System for—

6 “(I) an individual performing
7 casual employment for the employer
8 and who provides domestic service in
9 a private home that is sporadic, irreg-
10 ular, or intermittent;

11 “(II) a worker provided to the
12 employer by a person providing con-
13 tract services, such as a temporary
14 agency; or

15 “(III) an independent contractor,
16 performing services for the employer.

17 “(iii) RELATIONSHIP TO OTHER RE-
18 QUIREMENTS.—Nothing in clause (ii) may
19 be construed to effect the requirements for
20 the contracting party who employs a work-
21 er referred to in subclause (II) of such
22 clause or an employer of an independent
23 contractor referred to in subclause (III) of
24 such clause to participate in the System

1 with respect to such worker or independent
2 contractor under this subsection.

3 “(D) WAIVER.—

4 “(i) AUTHORITY TO PROVIDE A WAIV-
5 ER.—The Secretary is authorized to waive
6 or delay the participation requirements of
7 subparagraph (A) with respect to any em-
8 ployer or class of employers if the Sec-
9 retary provides notice to Congress of such
10 waiver prior to the date such waiver is
11 granted.

12 “(ii) REQUIREMENT TO PROVIDE A
13 WAIVER.—The Secretary shall waive or
14 delay the participation requirements of
15 subparagraph (A) with respect to any em-
16 ployer or class of employers until the date
17 that the Comptroller General of the United
18 States submits the initial certification de-
19 scribed in paragraph (17)(E) and shall
20 waive or delay such participation during a
21 year if the Comptroller General fails to
22 submit a certification of paragraph (17)(E)
23 for such year.

24 “(E) CONSEQUENCE OF FAILURE TO PAR-
25 TICIPATE.—If an employer is required to par-

1 participate in the System and fails to comply with
2 the requirements of the System with respect to
3 an individual—

4 “(i) such failure shall be treated as a
5 violation of subsection (a)(1)(B); and

6 “(ii) a rebuttable presumption is cre-
7 ated that the employer has violated sub-
8 section (a)(1)(A), however, such presump-
9 tion may not apply to a prosecution under
10 subsection (e)(1).

11 “(12) EMPLOYER REQUIREMENTS.—

12 “(A) IN GENERAL.—An employer that par-
13 ticipates in the System, with respect to the hir-
14 ing of an individual for employment in the
15 United States, shall—

16 “(i) notify the individual of the use of
17 the System and that the System may be
18 used for immigration enforcement pur-
19 poses;

20 “(ii) obtain from the individual the
21 documents required by subsection (b)(1)
22 and record on the form designated by the
23 Secretary—

24 “(I) the individual’s social secu-
25 rity account number; and

1 “(II) in the case of an individual
2 who does not attest that the indi-
3 vidual is a national of the United
4 States under subsection (b)(2), such
5 identification or authorization number
6 that the Secretary shall require;

7 “(iii) retain such form in electronic,
8 paper, microfilm, or microfiche form and
9 make such form available for inspection for
10 the periods and in the manner described in
11 subsection (b)(3); and

12 “(iv) safeguard any information col-
13 lected for purposes of the System and pro-
14 tect any means of access to such informa-
15 tion to ensure that such information is not
16 used for any purpose other than to deter-
17 mine the identity and employment eligi-
18 bility of the individual and to protect the
19 confidentiality of such information, includ-
20 ing ensuring that such information is not
21 provided to any person other than a person
22 that carries out the employer’s responsibil-
23 ities under this subsection.

24 “(B) SCHEDULE.—

1 “(i) REPLACEMENT DOCUMENTS.—An
2 employer shall accept a receipt for the ap-
3 plication for a replacement document or a
4 document described in subparagraph (B)
5 of subsection (b)(1) in lieu of the required
6 document in order to comply with any re-
7 quirement to examine documentation im-
8 posed by this section, in the following cir-
9 cumstances:

10 “(I) The individual is unable to
11 provide the required document within
12 the time specified in this section be-
13 cause the document was lost, stolen,
14 or damaged.

15 “(II) The individual presents a
16 receipt for the application for the doc-
17 ument within the time specified in
18 this section.

19 “(III) The individual presents
20 the document within 90 days of the
21 hire. If the actual document or re-
22 placement document is to be issued by
23 the United States Citizenship and Im-
24 migration Services and the application
25 is still under review 60 days after re-

1 ceipt of the application, United States
2 Citizenship and Immigration Services
3 shall, not later than the 60th day
4 after receipt of the application, issue a
5 letter for the applicant to take to the
6 employer which shall automatically
7 grant the individual an additional 90
8 days from the original deadline in
9 subsection (b)(6)(A)(i)(II) to present
10 the document or replacement docu-
11 ment; and

12 “(ii) PROHIBITION ON ACCEPTANCE
13 OF A RECEIPT FOR SHORT-TERM EMPLOY-
14 MENT.—An employer may not accept a re-
15 ceipt in lieu of the required document if
16 the individual is hired for a duration of
17 less than 10 working days.

18 “(C) CONFIRMATION OR NONCONFIRMA-
19 TION.—

20 “(i) RETENTION.—If an employer re-
21 ceives a determination through the System
22 under paragraph (3) for an individual, the
23 employer shall retain either an electronic,
24 paper, or microfiche form record of such

1 confirmation for the period required by
2 subsection (b)(4)(A).

3 “(ii) NONCONFIRMATION AND
4 VERIFICATION.—

5 “(I) NONCONFIRMATION.—If an
6 employer receives a tentative noncon-
7 firmation with respect to an indi-
8 vidual, the employer shall retain either
9 an electronic or paper record of such
10 nonconfirmation for the period re-
11 quired by subsection (b)(4)(A) and in-
12 form such individual not later than 10
13 working days after the issuance of
14 such notice in the manner prescribed
15 by the Secretary that includes infor-
16 mation regarding the individual’s
17 right to submit information to contest
18 the tentative nonconfirmation under
19 paragraph (2)(D) and the address and
20 telephone numbers established by the
21 Commissioner and the Secretary to
22 obtain information on how to submit
23 such information.

24 “(II) NO CONTEST.—If the indi-
25 vidual does not contest the tentative

1 nonconfirmation notice within 15
2 working days of receiving notice from
3 the individual's employer, the notice
4 shall become final and the employer
5 shall retain either an electronic or
6 paper record of such final noncon-
7 firmation for the period required by
8 subsection (b)(4)(A). An individual's
9 failure to contest a tentative noncon-
10 firmation may not be the basis for de-
11 termining that the employer acted in
12 a knowing (as defined in section
13 274a.1 of title 8, Code of Federal
14 Regulations, or any corresponding
15 similar regulation) manner.

16 “(III) CONTEST.—If the indi-
17 vidual contests the tentative noncon-
18 firmation notice under subclause (I),
19 the individual shall submit appro-
20 priate information to contest such no-
21 tice to the System within 15 working
22 days of receiving notice from the indi-
23 vidual's employer and shall utilize the
24 verification process developed under
25 paragraph (2)(C)(ii). Such individual

1 shall acknowledge receipt of such no-
2 tice in writing.

3 “(IV) EFFECTIVE PERIOD OF
4 TENTATIVE NONCONFIRMATION.—A
5 tentative nonconfirmation notice shall
6 remain in effect until such notice be-
7 comes final under clause (II) or a
8 final confirmation notice or final non-
9 confirmation notice is issued by the
10 System.

11 “(V) PROHIBITION.—An em-
12 ployer may not terminate the employ-
13 ment of an individual based on a ten-
14 tative nonconfirmation notice until
15 such notice becomes final under clause
16 (II) or a final nonconfirmation notice
17 is issued for the individual by the Sys-
18 tem. Nothing in this clause shall
19 apply to termination of employment
20 for any reason other than because of
21 such a tentative nonconfirmation.

22 “(VI) RECORDING OF CONCLU-
23 SION ON FORM.—If a final confirma-
24 tion or nonconfirmation is provided by
25 the System regarding an individual,

1 the employer shall record on the form
2 designated by the Secretary the ap-
3 propriate code that is provided under
4 the System to indicate a confirmation
5 or nonconfirmation of the identity and
6 employment eligibility of the indi-
7 vidual.

8 “(D) CONSEQUENCES OF NONCONFIRMA-
9 TION.—If an employer has received a final non-
10 confirmation with respect to an individual, the
11 employer shall terminate the employment of the
12 individual. If the employer continues to employ
13 the individual after receiving final nonconfirma-
14 tion, a rebuttable presumption is created that
15 the employer has violated paragraphs (1)(A)
16 and (2) of subsection (a). Such presumption
17 may not apply to a prosecution under sub-
18 section (e)(1).

19 “(13) PROHIBITION OF UNLAWFUL ACCESSING
20 AND OBTAINING OF INFORMATION.—

21 “(A) IN GENERAL.—It shall be unlawful
22 for any individual other than an employee of
23 the Social Security Administration or the De-
24 partment of Homeland Security specifically

1 charged with maintaining the System to inten-
2 tionally and knowingly—

3 “(i) access the System or the data-
4 bases utilized to verify identity or employ-
5 ment eligibility for the System for any pur-
6 pose other than verifying identity or em-
7 ployment eligibility or modifying the Sys-
8 tem pursuant to law or regulation; or

9 “(ii) obtain the information con-
10 cerning an individual stored in the System
11 or the databases utilized to verify identity
12 or employment eligibility for the System
13 for any purpose other than verifying iden-
14 tity or employment authorization or modi-
15 fying the System pursuant to law or regu-
16 lation.

17 “(B) PENALTIES.—

18 “(i) UNLAWFUL ACCESS.—Any indi-
19 vidual who unlawfully accesses the System
20 or the databases as described in subpara-
21 graph (A)(i) shall be fined no more than
22 \$1,000 per individual or sentenced to no
23 more than 6 months imprisonment or both
24 per individual whose file was compromised.

1 “(ii) UNLAWFUL USE.—Any indi-
2 vidual who unlawfully obtains information
3 stored in the System in the database uti-
4 lized to verify identity or employment eligi-
5 bility for the System and uses the informa-
6 tion to commit identity theft for financial
7 gain or to evade security or to assist an-
8 other in gaining financially or evading se-
9 curity, shall be fined no more than
10 \$10,000 per individual or sentenced to no
11 more than 1 year of imprisonment or both
12 per individual whose information was ob-
13 tained and misappropriated.

14 “(14) PROTECTION FROM LIABILITY.—No em-
15 ployer that participates in the System and complies
16 in good faith with the attestation in subsection
17 (b)(1) shall be liable under any law for any employ-
18 ment-related action taken with respect to an indi-
19 vidual in good faith reliance on information provided
20 by the System regarding that individual.

21 “(15) LIMITATION ON USE OF THE SYSTEM.—
22 Notwithstanding any other provision of law, nothing
23 in this subsection shall be construed to permit or
24 allow any department, bureau, or other agency of
25 the United States to utilize any information, data-

1 base, or other records used in the System for any
2 purpose other than as provided for under this sub-
3 section.

4 “(16) ACCESS TO DATABASE.—No officer or
5 employee of any agency or department of the United
6 States, other than such an officer or employee who
7 is responsible for the verification of employment eli-
8 gibility or for the evaluation of an employment eligi-
9 bility verification program at the Social Security Ad-
10 ministration, the Department of Homeland Security,
11 and the Department of Labor, may have access to
12 any information, database, or other records utilized
13 by the System.

14 “(17) MODIFICATION AUTHORITY.—The Sec-
15 retary, after notice is submitted to Congress and
16 provided to the public in the Federal Register, is au-
17 thorized to modify the requirements of this sub-
18 section, including requirements with respect to com-
19 pletion of forms, method of storage, attestations,
20 copying of documents, signatures, methods of trans-
21 mitting information, and other operational and tech-
22 nical aspects to improve the efficiency, accuracy, and
23 security of the System.

24 “(18) ANNUAL STUDY AND REPORT.—

1 “(A) REQUIREMENT FOR STUDY.—The
2 Comptroller General of the United States shall
3 conduct an annual study of the System as de-
4 scribed in this paragraph.

5 “(B) PURPOSE OF THE STUDY.—The
6 Comptroller General shall, for each year, under-
7 take a study to determine whether the System
8 meets the following requirements:

9 “(i) DEMONSTRATED ACCURACY OF
10 THE DATABASES.—New information and
11 information changes submitted by an indi-
12 vidual to the System is updated in all of
13 the relevant databases not later than 3
14 working days after submission in at least
15 99 percent of all cases.

16 “(ii) LOW ERROR RATES AND DELAYS
17 IN VERIFICATION.—

18 “(I) INCORRECT TENTATIVE
19 NONCONFIRMATION NOTICES.—That,
20 during a year, not more than 1 per-
21 cent of all tentative nonconfirmations
22 provided through the System during
23 such year are incorrect.

24 “(II) INCORRECT FINAL NONCON-
25 FIRMATION NOTICES.—That, during a

1 year, not more than 3 percent of all
2 final nonconfirmations provided
3 through the System during such year
4 are incorrect.

5 “(III) RATES OF INCORRECT
6 TENTATIVE NONCONFIRMATION NO-
7 TICES.—That, during a year, the
8 number of incorrect tentative noncon-
9 firmations provided through the Sys-
10 tem for individuals who are not na-
11 tionals of the United States is not
12 more than 300 percent more than the
13 number of such incorrect notices pro-
14 vided for nationals of the United
15 States.

16 “(IV) RATES OF INCORRECT
17 FINAL NONCONFIRMATION NOTICES.—
18 That, during a year, the number of
19 incorrect final nonconfirmations pro-
20 vided through the System for individ-
21 uals who are not nationals of the
22 United States is not more than 300
23 percent more than the number of such
24 incorrect notices provided for nation-

1 als of the United States during such
2 year.

3 “(iii) MEASURABLE EMPLOYER COM-
4 PLIANCE WITH SYSTEM REQUIREMENTS.—

5 “(I) NO DISCRIMINATION BASED
6 ON SYSTEM OPERATIONS.—The Sys-
7 tem has not and will not result in in-
8 creased discrimination or cause rea-
9 sonable employers to conclude that in-
10 dividuals of certain races or ethnicities
11 are more likely to have difficulties
12 when offered employment caused by
13 the operation of the System.

14 “(II) REQUIREMENT FOR INDE-
15 PENDENT STUDY.—The determination
16 described in subclause (I) shall be
17 based on an independent study com-
18 missioned by the Comptroller General
19 in each phase of expansion of the Sys-
20 tem.

21 “(iv) PROTECTION OF WORKERS’ PRI-
22 VATE INFORMATION.—At least 97 percent
23 of employers who participate in the System
24 are in full compliance with the privacy re-
25 quirements described in this subsection.

1 “(v) ADEQUATE AGENCY STAFFING
2 AND FUNDING.—The Secretary and Com-
3 missioner of Social Security have sufficient
4 funding to meet all of the deadlines and re-
5 quirements of this subsection.

6 “(C) CONSULTATION.—In conducting a
7 study under this paragraph, the Comptroller
8 General shall consult with representatives of
9 business, labor, immigrant communities, State
10 governments, privacy advocates, and appro-
11 priate departments of the United States.

12 “(D) REQUIREMENT FOR REPORTS.—Not
13 later than 21 months after the date of the en-
14 actment of the STRIVE Act of 2007, and an-
15 nually thereafter, the Comptroller General shall
16 submit to the Secretary and to Congress a re-
17 port containing the findings of the study car-
18 ried out under this paragraph.

19 “(E) CERTIFICATION.—If the Comptroller
20 General determines that the System meets the
21 requirements set out in clauses (i) through (v)
22 of subparagraph (B) for a year, the Comptroller
23 shall certify such determination and submit
24 such certification to Congress with the report
25 required by subparagraph (D).

1 “(19) ADMINISTRATIVE REVIEW.—

2 “(A) IN GENERAL.—An individual who is
3 terminated from employment as a result of a
4 final nonconfirmation may, not later than 60
5 days after the date of such termination, file an
6 appeal of such final nonconfirmation.

7 “(B) PROCEDURES.—The Secretary and
8 Commissioner of Social Security shall develop
9 procedures to review appeals filed under sub-
10 paragraph (A) and to make final determina-
11 tions on such appeals.

12 “(C) REVIEW FOR ERRORS.—If a final de-
13 termination on an appeal filed under subpara-
14 graph (A) results in a confirmation of an indi-
15 vidual’s eligibility for employment in the United
16 States, the administrative review process shall
17 require the Secretary to determine if the final
18 nonconfirmation issued for the individual was
19 the result of—

20 “(i) an error or negligence on the part
21 of an employee or official operating or re-
22 sponsible for the System;

23 “(ii) the decision rules, processes, or
24 procedures utilized by the System; or

1 “(iii) erroneous system information
2 that was not the result of acts or omissions
3 of the individual.

4 “(D) COMPENSATION FOR ERROR.—

5 “(i) IN GENERAL.—If the Secretary
6 makes a determination under subpara-
7 graph (C) that the final nonconfirmation
8 issued for an individual was not caused by
9 an act or omission of the individual, the
10 Secretary shall compensate the individual
11 for lost wages.

12 “(ii) CALCULATION OF LOST
13 WAGES.—Lost wages shall be calculated
14 based on the wage rate and work schedule
15 that prevailed prior to termination. The in-
16 dividual shall be compensated for wages
17 lost beginning on the first scheduled work
18 day after employment was terminated and
19 ending 180 days after completion of the
20 administrative review process described in
21 this paragraph or the day after the indi-
22 vidual is reinstated or obtains employment
23 elsewhere, whichever occurs first.

24 “(E) LIMITATION ON COMPENSATION.—

25 For purposes of determining an individual’s

1 compensation for the loss of employment, such
2 compensation shall not include any period in
3 which the individual was ineligible for employ-
4 ment in the United States.

5 “(F) SOURCE OF FUNDS.—Compensation
6 or reimbursement provided under this para-
7 graph shall not be provided from funds appro-
8 priated in annual appropriations Acts to the
9 Secretary for the Department of Homeland Se-
10 curity.

11 “(20) JUDICIAL REVIEW.—

12 “(A) IN GENERAL.—After the Secretary
13 makes a final determination on an appeal filed
14 by an individual under paragraph (19), the in-
15 dividual may obtain judicial review of such de-
16 termination in a civil action commenced not
17 later than 90 days after notice of such decision,
18 or such further time as the Secretary may
19 allow.

20 “(B) REPORT.—Not later than 180 days
21 after the date of enactment of the STRIVE Act
22 of 2007, the Director of the Federal Judicial
23 Center shall submit to Congress a report on ju-
24 dicial review of an administrative decision on a
25 final nonconfirmation. The report shall contain

1 recommendations on jurisdiction and proce-
2 dures that shall be instituted to seek adequate
3 and timely review of such decision.

4 “(C) COMPENSATION FOR ERROR.—

5 “(i) IN GENERAL.—In cases in which
6 such judicial review reverses the final de-
7 termination of the Secretary made under
8 paragraph (19), the court shall compensate
9 the individual for lost wages.

10 “(ii) CALCULATION OF LOST
11 WAGES.—Lost wages shall be calculated
12 based on the wage rate and work schedule
13 that prevailed prior to termination. The in-
14 dividual shall be compensated for wages
15 lost beginning on the first scheduled work
16 day after employment was terminated and
17 ending 180 days after completion of the ju-
18 dicial review described in this paragraph or
19 the day after the individual is reinstated or
20 obtains employment elsewhere, whichever
21 occurs first.

22 “(21) ENFORCEMENT OF VIOLATIONS.—No pri-
23 vate right of action shall exist for any claim based
24 on a violation of this section. The Government of the
25 United States shall have exclusive enforcement au-

1 thority over violations of this section and shall use
2 only the powers, penalties, and mechanisms found in
3 this section. This paragraph shall apply to all cases
4 in which a final judgment has not been entered prior
5 to or on the date of enactment of the STRIVE Act
6 of 2007.

7 “(22) SAFE HARBOR FOR CONTRACTORS.—A
8 person shall not be liable for a violation of para-
9 graph (1)(A), (1)(B), or (2) of subsection (a) with
10 respect to the hiring or continuation of employment
11 of an unauthorized alien by a subcontractor of that
12 person unless the person knew that the subcon-
13 tractor hired or continued to employ such alien in
14 violation of such a paragraph.

15 “(23) STATUTORY CONSTRUCTION.—Nothing in
16 this subsection shall affect any existing rights and
17 obligations of employers or employees under other
18 Federal, State, or local laws.

19 “(d) COMPLIANCE.—

20 “(1) COMPLAINTS AND INVESTIGATIONS.—The
21 Secretary shall establish procedures—

22 “(A) for a person to file a complaint re-
23 garding a potential violation of paragraph
24 (1)(A), (1)(B), or (2) of subsection (a);

1 “(B) for the investigation of any such com-
2 plaint that the Secretary determines is appro-
3 priate to investigate; and

4 “(C) for the investigation of such other
5 violation of paragraph (1)(A), (1)(B), or (2) of
6 subsection (a) that the Secretary determines is
7 appropriate.

8 “(2) AUTHORITY IN INVESTIGATIONS.—

9 “(A) IN GENERAL.—In conducting inves-
10 tigations and hearings under this subsection, of-
11 ficers and employees of the Department of
12 Homeland Security, if designated by the Sec-
13 retary, may compel by subpoena the attendance
14 of witnesses and the production of evidence at
15 any designated place in an investigation or case
16 under this subsection.

17 “(B) FAILURE TO COOPERATE.—In case of
18 refusal to obey a subpoena lawfully issued
19 under subparagraph (A), the Secretary may re-
20 quest that the Attorney General apply in an ap-
21 propriate district court of the United States for
22 an order requiring compliance with such sub-
23 poena, and any failure to obey such order may
24 be punished by such court as contempt.

1 “(C) DEPARTMENT OF LABOR.—The Sec-
2 retary of Labor shall have the investigative au-
3 thority provided under section 11(a) of the Fair
4 Labor Standards Act of 1938 (29 U.S.C.
5 211(a)) to ensure compliance with the provi-
6 sions of this section, or any regulation or order
7 issued under this section.

8 “(3) COMPLIANCE PROCEDURES.—

9 “(A) PREPENALTY NOTICE.—If the Sec-
10 retary has reasonable cause to believe that
11 there has been a violation of a requirement of
12 this section and determines that further pro-
13 ceedings related to such violation are war-
14 ranted, the Secretary shall issue to the em-
15 ployer concerned a written notice of the Sec-
16 retary’s intention to issue a claim for a fine or
17 other penalty. Such notice shall—

18 “(i) describe the violation;

19 “(ii) specify the laws and regulations
20 allegedly violated;

21 “(iii) disclose the material facts which
22 establish the alleged violation; and

23 “(iv) inform such employer that the
24 employer shall have a reasonable oppor-
25 tunity to make representations as to why a

1 claim for a monetary or other penalty
2 should not be imposed.

3 “(B) REMISSION OR MITIGATION OF PEN-
4 ALTIES.—

5 “(i) PETITION BY EMPLOYER.—If an
6 employer receives written notice of a fine
7 or other penalty in accordance with sub-
8 paragraph (A), the employer may file with-
9 in 45 days from receipt of such notice,
10 with the Secretary a petition for the remis-
11 sion or mitigation of such fine or penalty,
12 or a petition for termination of the pro-
13 ceedings. The petition may include any rel-
14 evant evidence or proffer of evidence the
15 employer wishes to present, and shall be
16 filed and considered in accordance with
17 procedures to be established by the Sec-
18 retary.

19 “(ii) REVIEW BY SECRETARY.—If the
20 Secretary finds that such fine or other
21 penalty was incurred erroneously, or finds
22 the existence of such mitigating cir-
23 cumstances as to justify the remission or
24 mitigation of such fine or penalty, the Sec-
25 retary may remit or mitigate such fine or

1 other penalty on the terms and conditions
2 as the Secretary determines are reasonable
3 and just, or order termination of any pro-
4 ceedings related to the notice. Such miti-
5 gating circumstances may include good
6 faith compliance and participation in, or
7 agreement to participate in, the System, if
8 not otherwise required.

9 “(iii) APPLICABILITY.—This subpara-
10 graph may not apply to an employer that
11 has or is engaged in a pattern or practice
12 of violations of paragraph (1)(A), (1)(B),
13 or (2) of subsection (a) or of any other re-
14 quirements of this section.

15 “(C) PENALTY CLAIM.—After considering
16 evidence and representations offered by the em-
17 ployer pursuant to subparagraph (B), the Sec-
18 retary shall determine whether there was a vio-
19 lation and promptly issue a written final deter-
20 mination setting forth the findings of fact and
21 conclusions of law on which the determination
22 is based and the appropriate penalty.

23 “(4) CIVIL PENALTIES.—

24 “(A) HIRING OR CONTINUING TO EMPLOY
25 UNAUTHORIZED ALIENS.—Any employer that

1 violates paragraph (1)(A) or (2) of subsection
2 (a) shall pay civil penalties as follows:

3 “(i) Pay a civil penalty of not less
4 than \$500 and not more than \$4,000 for
5 each unauthorized alien with respect to
6 each such violation.

7 “(ii) If the employer has previously
8 been fined 1 time within the preceding 12
9 months under this subparagraph, pay a
10 civil penalty of not less than \$4,000 and
11 not more than \$10,000 for each unauthor-
12 ized alien with respect to each such viola-
13 tion.

14 “(iii) If the employer has previously
15 been fined more than 1 time within the
16 preceding 12 months under this subpara-
17 graph or has failed to comply with a pre-
18 viously issued and final order related to
19 any such provision, pay a civil penalty of
20 not less than \$6,000 and not more than
21 \$20,000 for each unauthorized alien with
22 respect to each such violation.

23 “(B) RECORD KEEPING OR VERIFICATION
24 PRACTICES.—Any employer that violates or fails

1 to comply with paragraph (1)(B) of subsection
2 (a) shall pay a civil penalty as follows:

3 “(i) Pay a civil penalty of not less
4 than \$200 and not more than \$2,000 for
5 each such violation or failure.

6 “(ii) If the employer has previously
7 been fined 1 time within the preceding 12
8 months under this subparagraph, pay a
9 civil penalty of not less than \$400 and not
10 more than \$4,000 for each such violation
11 of failure.

12 “(iii) If the employer has previously
13 been fined more than 1 time within the
14 preceding 12 months under this subpara-
15 graph or has failed to comply with a pre-
16 viously issued and final order related to
17 such requirements, pay a civil penalty of
18 \$6,000 for each such violation or failure.

19 “(iv) SPECIAL RULE GOVERNING PA-
20 PERWORK VIOLATION.—In the case where
21 an employer commits a violation of this
22 section that is deemed to be purely a pa-
23 perwork violation where the Secretary fails
24 to establish any intent to hire an individual
25 who is not unauthorized for employment in

1 the United States, the Secretary shall per-
2 mit the employer to correct such paper-
3 work error within 30 days of receiving no-
4 tice from the Secretary of such violation.

5 “(C) OTHER PENALTIES.—Notwith-
6 standing subparagraphs (A) and (B), the Sec-
7 retary may impose additional penalties for vio-
8 lations, including cease and desist orders, spe-
9 cially designed compliance plans to prevent fur-
10 ther violations, suspended fines to take effect in
11 the event of a further violation, and in appro-
12 priate cases, the civil penalty described in sub-
13 section (f)(2).

14 “(D) REDUCTION OF PENALTIES.—Not-
15 withstanding subparagraphs (A), (B), and (C),
16 the Secretary is authorized to reduce or miti-
17 gate penalties imposed upon employers, based
18 upon factors including the employer’s hiring
19 volume, compliance history, good-faith imple-
20 mentation of a compliance program, participa-
21 tion in a temporary worker program, and vol-
22 untary disclosure of violations of this subsection
23 to the Secretary.

24 “(5) JUDICIAL REVIEW.—

1 “(A) IN GENERAL.—An employer adversely
2 affected by a final determination may, within
3 45 days after the date the final determination
4 is issued, obtain judicial review of such deter-
5 mination.

6 “(B) REPORT.—Not later than 180 days
7 after the date of enactment of the STRIVE Act
8 of 2007, the Director of the Federal Judicial
9 Center shall submit to Congress a report on ju-
10 dicial review of a final determination. The re-
11 port shall contain recommendations on jurisdic-
12 tion and procedures that shall be instituted to
13 seek adequate and timely review of such deci-
14 sion.

15 “(6) ENFORCEMENT OF ORDERS.—If an em-
16 ployer fails to comply with a final determination
17 issued against that employer under this subsection,
18 and the final determination is not subject to review
19 as provided in paragraph (5), the Attorney General
20 may file suit to enforce compliance with the final de-
21 termination, not earlier than 46 days and not later
22 than 90 days, after the date the final determination
23 is issued, in any appropriate district court of the
24 United States. The burden shall remain on the em-

1 ployer to show that the final determination was not
2 supported by a preponderance of the evidence.

3 “(7) RECOVERY OF COSTS AND ATTORNEYS’
4 FEES.—In any appeal brought under paragraph (5)
5 or suit brought under paragraph (6), the employer
6 shall be entitled to recover from the Secretary rea-
7 sonable costs and attorneys’ fees if such employer
8 prevails on the merits of the case. The award of at-
9 torneys’ fees shall not exceed \$50,000. Such amount
10 shall be subject to annual inflation adjustments per
11 the United States Consumer Price Index - All Urban
12 Consumers (CPI-U) compiled by the Bureau of
13 Labor Statistics. Any costs and attorneys’ fees as-
14 sessed against the Secretary shall be charged against
15 the operating expenses of the Department of Home-
16 land Security for the fiscal year in which the assess-
17 ment is made, and shall not be reimbursed from any
18 other source.

19 “(e) CRIMINAL PENALTIES AND INJUNCTIONS FOR
20 PATTERN OR PRACTICE VIOLATIONS.—

21 “(1) CRIMINAL PENALTY.—An employer that
22 engages in a pattern or practice of knowing viola-
23 tions of paragraph (1)(A) or (2) of subsection (a)
24 shall be fined not more than \$20,000 for each unau-
25 thorized alien with respect to whom such a violation

1 occurs, imprisoned for not more than 3 years for the
2 entire pattern or practice, or both.

3 “(2) ENJOINING OF PATTERN OR PRACTICE
4 VIOLATIONS.—If the Secretary or the Attorney Gen-
5 eral has reasonable cause to believe that an employer
6 is engaged in a pattern or practice of employment in
7 violation of paragraph (1)(A) or (2) of subsection
8 (a), the Attorney General may bring a civil action in
9 the appropriate district court of the United States
10 requesting such relief, including a permanent or
11 temporary injunction, restraining order, or other
12 order against the employer, as the Secretary deems
13 necessary.

14 “(f) ADJUSTMENT FOR INFLATION.—All penalties
15 and limitations on the recovery of costs and attorney’s fees
16 in this section shall be increased every 4 years beginning
17 January 2010 to reflect the percentage increase in the
18 consumer price index for all urban consumers (all items;
19 United States city average) for the 48 month period end-
20 ing with September of the year preceding the year such
21 adjustment is made. Any adjustment under this subpara-
22 graph shall be rounded to the nearest dollar.

23 “(g) PROHIBITION OF INDEMNITY BONDS.—

24 “(1) PROHIBITION.—It is unlawful for an em-
25 ployer, in the hiring of an individual, to require the

1 individual to post a bond or security, to pay or agree
2 to pay an amount, or otherwise to provide a finan-
3 cial guaranty or indemnity, against any potential li-
4 ability arising under this section relating to such hir-
5 ing of the individual.

6 “(2) CIVIL PENALTY.—Any employer which is
7 determined, after notice and opportunity for mitiga-
8 tion of the monetary penalty under subsection (d),
9 to have violated paragraph (1) shall be subject to a
10 civil penalty of \$10,000 for each violation and to an
11 administrative order requiring the return of any
12 amounts received in violation of such paragraph to
13 the individual.

14 “(h) PROHIBITION ON AWARD OF GOVERNMENT
15 CONTRACTS, GRANTS, AND AGREEMENTS.—

16 “(1) EMPLOYERS WITH NO CONTRACTS,
17 GRANTS, OR AGREEMENTS.—

18 “(A) IN GENERAL.—If an employer who
19 does not hold a Federal contract, grant, or co-
20 operative agreement is determined by the Sec-
21 retary to be a repeat violator of this section the
22 employer shall be debarred from the receipt of
23 a Federal contract, grant, or cooperative agree-
24 ment for a period of 5 years. The Secretary or
25 the Attorney General shall advise the Adminis-

1 trator of General Services of such a debarment,
2 and the Administrator of General Services shall
3 list the employer on the List of Parties Ex-
4 cluded from Federal Procurement and Non-
5 procurement Programs for a period of 5 years.

6 “(B) WAIVER.—The Administrator of Gen-
7 eral Services, in consultation with the Secretary
8 and the Attorney General, may waive operation
9 of this subsection or may limit the duration or
10 scope of the debarment.

11 “(2) EMPLOYERS WITH CONTRACTS, GRANTS,
12 OR AGREEMENTS.—

13 “(A) IN GENERAL.—An employer who
14 holds a Federal contract, grant, or cooperative
15 agreement and is determined by the Secretary
16 to be a repeat violator of this section or is con-
17 victed of a crime under this section, shall be
18 debarred from the receipt of new Federal con-
19 tracts, grants, or cooperative agreements for a
20 period of 5 years.

21 “(B) NOTICE TO AGENCIES.—Prior to de-
22 barring the employer under subparagraph (A),
23 the Secretary, in cooperation with the Adminis-
24 trator of General Services, shall advise any
25 agency or department holding a contract, grant,

1 or cooperative agreement with the employer of
2 the Government's intention to debar the em-
3 ployer from the receipt of new Federal con-
4 tracts, grants, or cooperative agreements for a
5 period of 5 years.

6 “(C) WAIVER.—After consideration of the
7 views of any agency or department that holds
8 a contract, grant, or cooperative agreement
9 with the employer, the Secretary may, in lieu of
10 debarring the employer from the receipt of new
11 Federal contracts, grants, or cooperative agree-
12 ments for a period of 5 years, waive operation
13 of this subsection, limit the duration or scope of
14 the debarment, or may refer to an appropriate
15 lead agency the decision of whether to debar the
16 employer, for what duration, and under what
17 scope in accordance with the procedures and
18 standards prescribed by the Federal Acquisition
19 Regulation. However, any proposed debarment
20 predicated on an administrative determination
21 of liability for civil penalty by the Secretary or
22 the Attorney General shall not be reviewable in
23 any debarment proceeding.

24 “(D) REVIEW.—The decision of whether to
25 debar or take alternate action under this para-

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 from—

6 “(A) imposing civil or criminal sanctions
7 upon employers who employ or otherwise do
8 business with unauthorized aliens;

9 “(B) requiring, authorizing, or permitting
10 the use of a federally mandated employment
11 verification system for any other purpose other
12 than the one mandated in Federal law, includ-
13 ing verifying status of renters, determining eli-
14 gibility for receipt of benefits, enrollment in
15 school, obtaining or retaining a business license
16 or other license provided by the unit of govern-
17 ment, or conducting a background check; and

18 “(C) requiring employers to use an em-
19 ployment verification system, unless otherwise
20 mandated by Federal law, for purposes such
21 as—

22 “(i) as a condition of receiving a gov-
23 ernment contract;

24 “(ii) as a condition of receiving a
25 business license; or

1 “(iii) as a penalty.

2 “(j) DEFINITIONS.—In this section—

3 “(1) EMPLOYER.—The term ‘employer’ means
4 any person or entity, including any entity of the
5 Government of the United States, hiring an indi-
6 vidual for employment in the United States.

7 “(2) INDEPENDENT CONTRACTOR.—The term
8 ‘independent contractor’ includes a person who car-
9 ries on independent business, contracts to do a piece
10 of work according to the person’s own means and
11 methods, and are subject to control only as to re-
12 sults. Whether a person is an independent con-
13 tractor, regardless of any self-designation, will be de-
14 termined on a case-by-case basis. Factors to be con-
15 sidered in that determination include whether the
16 person—

17 “(A) supplies the tools or materials;

18 “(B) makes services available to the gen-
19 eral public;

20 “(C) works for a number of clients at the
21 same time;

22 “(D) has an opportunity for profit or loss
23 as a result of labor or services provided;

24 “(E) invests in facilities to carry out the
25 work;

1 “(F) directs the order or sequence in which
2 the work is to be done; and

3 “(G) determines the hours during which
4 the work is to be done.

5 “(3) SECRETARY.—Except as otherwise pro-
6 vided, the term ‘Secretary’ means the Secretary of
7 Homeland Security.

8 “(4) UNAUTHORIZED ALIEN.—The term ‘unau-
9 thorized alien’ means, with respect to the employ-
10 ment of an alien at a particular time, that the alien
11 is not at that time either—

12 “(A) an alien lawfully admitted for perma-
13 nent residence; or

14 “(B) authorized to be so employed by this
15 Act or by the Secretary.”.

16 (b) ANTIFRAUD MEASURES FOR SOCIAL SECURITY
17 CARDS.—

18 (1) IN GENERAL.—Section 205(c)(2)(G) of the
19 Social Security Act (42 U.S.C. 405(c)(2)(G)) is
20 amended—

21 (A) by inserting “(i)” after “(G)”;

22 (B) by striking “banknote paper” and in-
23 serting “durable plastic or similar material”;

24 and

1 (C) by adding at the end the following new
2 clauses:

3 “(ii) Each social security card issued
4 under this subparagraph shall include an
5 encrypted machine-readable electronic
6 identification strip which shall be unique to
7 the individual to whom the card is issued.
8 The Commissioner shall develop such elec-
9 tronic identification strip in consultation
10 with the Secretary of Homeland Security,
11 so as to enable employers to use such strip
12 in accordance with section 274A(a)(1)(B)
13 of the Immigration and Nationality Act (8
14 U.S.C. 1324a(a)(1)(B)) to obtain access to
15 the Electronic Employment Verification
16 System established by subsection (c) of
17 this title.

18 “(iii) Each social security card issued
19 under this subparagraph shall—

20 “(I) contain physical security fea-
21 tures designed to prevent tampering,
22 counterfeiting, or duplication of the
23 card for fraudulent purposes;

1 “(II) be consistent with the bio-
2 metric standards for documents de-
3 scribed in section 737 of this Act; and

4 “(III) contain a disclaimer stat-
5 ing the following: ‘This card shall not
6 be used for the purpose of identifica-
7 tion.

8 “(iv) The Commissioner shall provide
9 for the issuance (or reissuance) to each in-
10 dividual who—

11 “(I) has been assigned a Social
12 Security account number under sub-
13 paragraph (B),

14 “(II) has attained the minimum
15 age applicable, in the jurisdiction in
16 which such individual engages in em-
17 ployment, for legally engaging in such
18 employment, and

19 “(III) files application for such
20 card under this clause in such form
21 and manner as shall be prescribed by
22 the Commissioner, a Social Security
23 card which meets the preceding re-
24 quirements of this subparagraph and
25 which includes a recent digitized pho-

1 tograph of the individual to whom the
2 card is issued.

3 “(v) The Commissioner shall maintain
4 an ongoing effort to develop measures in
5 relation to the Social Security card and the
6 issuance thereof to preclude fraudulent use
7 thereof.”.

8 (2) SHARING OF INFORMATION WITH THE SEC-
9 RETARY OF HOMELAND SECURITY.—Section
10 205(c)(2) of such Act is amended by adding at the
11 end the following new subparagraph:

12 “(I) Upon the issuance of a Social Security
13 account number under subparagraph (B) to any
14 individual or the issuance of a Social Security
15 card under subparagraph (G) to any individual,
16 the Commissioner of Social Security shall trans-
17 mit to the Secretary of Homeland Security such
18 information received by the Commissioner in
19 the individual’s application for such number or
20 such card as such Secretary determines nec-
21 essary and appropriate for administration of
22 the STRIVE Act of 2007. Such information
23 shall be used solely for inclusion in the Elec-
24 tronic Employment Eligibility Verification Sys-

1 tem established pursuant to title III of such
2 Act.”.

3 (3) EFFECTIVE DATES.—The amendment made
4 by paragraph (1) shall apply with respect to Social
5 Security cards issued 2 years after the date of the
6 enactment of this Act. The amendment made by
7 paragraph (2) shall apply with respect to the
8 issuance of Social Security account numbers and So-
9 cial Security cards after 2 years after the date of the
10 enactment of this Act.

11 (c) CONFORMING AMENDMENTS.—

12 (1) AMENDMENTS.—

13 (A) REPEAL OF BASIC PILOT.—Sections
14 401, 402, 403, 404, and 405 of the Illegal Im-
15 migration Reform and Immigrant Responsibility
16 Act of 1996 (division C of Public Law 104–
17 208; 8 U.S.C. 1324a note) are repealed.

18 (B) REPEAL OF REPORTING REQUIRE-
19 MENTS.—

20 (i) REPORT ON EARNINGS OF ALIENS
21 NOT AUTHORIZED TO WORK.—Subsection
22 (c) of section 290 (8 U.S.C. 1360) is re-
23 pealed.

24 (ii) REPORT ON FRAUDULENT USE OF
25 SOCIAL SECURITY ACCOUNT NUMBERS.—

1 Subsection (b) of section 414 of the Illegal
2 Immigration Reform and Immigrant Re-
3 sponsibility Act of 1996 (division C of
4 Public Law 104–208; 8 U.S.C. 1360 note)
5 is repealed.

6 (C) REPEAL OF DEFINITION.—Paragraph
7 (1)(F) of section 1961 of title 18, United
8 States Code, is repealed.

9 (2) CONSTRUCTION.—Nothing in this sub-
10 section or in subsection (c) of section 274A, as
11 amended by subsection (a), may be construed to
12 limit the authority of the Secretary to allow or con-
13 tinue to allow the participation of employers who
14 participated in the basic pilot program under such
15 sections 401, 402, 403, 404, and 405 of the Illegal
16 Immigration Reform and Immigrant Responsibility
17 Act of 1996 (division C of Public Law 104–208; 8
18 U.S.C. 1324a note) in the Electronic Employment
19 Verification System established pursuant to such
20 subsection (d).

21 (d) TECHNICAL AMENDMENTS.—

22 (1) DEFINITION OF UNAUTHORIZED ALIEN.—
23 Sections 218(i)(1) (8 U.S.C. 1188(i)(1)), 245(c)(8)
24 (8 U.S.C. 1255(c)(8)), 274(a)(3)(B)(i) (8 U.S.C.
25 1324(a)(3)(B)(i)), and 274B(a)(1) (8 U.S.C.

1 1324b(a)(1)) are amended by striking “274A(h)(3)”
2 and inserting “274A(h)”.

3 (2) DOCUMENT REQUIREMENTS.—Section 274B
4 (8 U.S.C. 1324b) is amended—

5 (A) in subsections (a)(6) and (g)(2)(B), by
6 striking “274A(b)” and inserting “274A(d)”;
7 and

8 (B) in subsection (g)(2)(B)(ii), by striking
9 “274A(b)(5)” and inserting “274A(d)(9)”.

10 (e) OFFICE OF ELECTRONIC VERIFICATION.—

11 (1) IN GENERAL.—The Secretary shall establish
12 the Office of Electronic Verification within the Of-
13 fice of Screening Coordination of the Department.

14 (2) RESPONSIBILITIES.—The head of the Office
15 of Electronic Verification shall work with the Com-
16 missioner of Social Security—

17 (A) to ensure the information maintained
18 in the Electronic Employment Verification Sys-
19 tem established in subsection (c) of section
20 274A of the Immigration and Nationality Act,
21 as amended by subsection (a), is updated in a
22 manner that promotes maximum accuracy;

23 (B) to ensure a process is provided for cor-
24 recting erroneous information contained in such
25 System;

1 (C) to ensure that the data received from
2 field offices of United States Customs and Bor-
3 der Protection or from other points of contact
4 between aliens and the Department of Home-
5 land Security is registered in all relevant data-
6 bases;

7 (D) to ensure that the data received from
8 field offices of the Social Security Administra-
9 tion and other points of contact between nation-
10 als of the United States and the Social Security
11 Administration is registered within all relevant
12 databases;

13 (E) to ensure that the Department has a
14 sufficient number of personnel to conduct man-
15 ual verifications described in paragraph (2)(ii)
16 of such subsection (c);

17 (F) to establish and promote telephone
18 help lines accessible to employers and individ-
19 uals 24-hours a day that provide information
20 regarding the functioning of such System or
21 specific issues related to the issuance of a ten-
22 tative nonconfirmations issued by the System;

23 (G) to establish an outreach and education
24 program to ensure that all new employers are

1 fully informed of their responsibilities under
2 such System;

3 (H) to conduct random audits of individ-
4 ual's files in the Government's database each
5 year to determine accuracy rates and require
6 corrections of errors in a timely manner; and

7 (I) to provide to the employer anti-dis-
8 crimination notices issued by the Office of Spe-
9 cial Counsel for Immigration-Related Unfair
10 Employment Practices of the Civil Rights Divi-
11 sion of the Department of Justice.

12 (f) REQUIREMENT FOR REPORTS.—Not later than 2
13 years after the date of enactment of this Act, and annually
14 thereafter, the Comptroller General of the United States
15 shall submit to the Secretary and to Congress a report
16 on the impact of the Electronic Employment Verification
17 System described in section 274A(e) of the Immigration
18 and Nationality Act, as amended by subsection (a), on em-
19 ployers and employees in the United States. Each such
20 report shall include the following:

21 (1) An assessment of the impact of the System
22 on the employment of aliens who are not eligible for
23 employment in the United States, including whether
24 the System has indirectly caused an increase in ex-
25 ploitation of unauthorized workers.

1 (2) An assessment of the accuracy of the data-
2 bases utilized by the System and of the timeliness
3 and accuracy of the responses provided through the
4 System to employers.

5 (3) An assessment of the privacy and confiden-
6 tiality of the System and of the overall security of
7 the System with respect to cybertheft and theft or
8 misuse of private data.

9 (4) An assessment of whether the System is
10 being implemented in a nondiscriminatory and non-
11 retaliatory manner.

12 (5) An assessment of the most common causes
13 for the erroneous issuance of nonconfirmations by
14 the System and recommendations to correct such
15 causes.

16 (6) Recommendations regarding a funding
17 scheme for the maintenance of the System which
18 may include minimal costs to employers or individ-
19 uals.

20 (7) The recommendations of the Comptroller
21 General regarding whether or not the System should
22 be modified prior to further expansion.

23 (g) **EFFECTIVE DATE.**—The amendments made by
24 subsections (a), (b), and (c) shall take effect on the date

1 that is 180 days after the date of the enactment of this
2 Act.

3 **SEC. 302. CLARIFICATION OF INELIGIBILITY FOR MIS-**
4 **REPRESENTATION.**

5 Section 212(a)(6)(C)(ii)(I) (8 U.S.C.
6 1182(a)(6)(C)(ii)(I)), is amended by striking “citizen”
7 and inserting “national”.

8 **SEC. 303. ANTIDISCRIMINATION PROTECTIONS.**

9 (a) APPLICATION OF PROHIBITION OF DISCRIMINA-
10 TION TO VERIFICATION SYSTEM.—Section 274B(a)(1) (8
11 U.S.C. 1324b(a)(1)) is amended by inserting “, the
12 verification of the individual’s eligibility for employment
13 through the Electronic Employment Verification System
14 described in section 274A(c),” after “the individual for
15 employment”.

16 (b) CLASSES OF ALIENS AS PROTECTED INDIVID-
17 UALS.—Section 274B(a)(3)(B) (8 U.S.C. 1324b(a)(3)(B))
18 is amended to read as follows—

19 “(B) is an alien who is—

20 “(i) lawfully admitted for permanent
21 residence;

22 “(ii) granted the status of an alien
23 lawfully admitted for temporary residence
24 under section 210(a) or 245A(a);

1 “(iii) admitted as a refugee under sec-
2 tion 207;

3 “(iv) granted asylum under section
4 208;

5 “(v) granted the nonimmigrant status
6 under section 101(a)(15)(H)(ii)(c);

7 “(vi) granted temporary protected sta-
8 tus under section 244; or

9 “(vii) granted parole under section
10 212(d)(5).”.

11 (c) REQUIREMENTS FOR ELECTRONIC EMPLOYMENT
12 VERIFICATION.—Section 274B(a) (8 U.S.C. 1324b(a)) is
13 amended by adding at the end the following:

14 “(7) ANTIDISCRIMINATION REQUIREMENTS OF
15 THE ELECTRONIC EMPLOYMENT VERIFICATION SYS-
16 TEM.—It is an unfair immigration-related employ-
17 ment practice for a person or other entity, in the
18 course of the Electronic Employment Verification
19 System described in section 274A(c)—

20 “(A) to terminate the employment of an
21 individual due to a tentative nonconfirmation
22 issued by such System, with respect to that in-
23 dividual;

1 “(B) to use the System for screening of an
2 applicant for employment prior to making the
3 individual an offer of employment;

4 “(C) to reverify the employment authoriza-
5 tion of current employees beyond the time pe-
6 riod set out in 274A(c)(2); or

7 “(D) to use the System selectively to ex-
8 clude certain individuals from consideration for
9 employment as a result of a perceived likelihood
10 that additional verification will be required, be-
11 yond what is required for most job applicants.”.

12 (d) INCREASE IN CIVIL MONEY PENALTIES.—Section
13 274B(g)(2) (8 U.S.C. 1324b(g)(2)) is amended—

14 (1) in subparagraph (B)(iv)—

15 (A) in subclause (I), by striking “\$250 and
16 not more than \$1,000” and inserting “\$2,000
17 and not more than \$4,000”;

18 (B) in subclause (II), by striking “\$2,000
19 and not more than \$5,000” and inserting
20 “\$4,000 and not more than \$10,000”;

21 (C) in subclause (III), by striking “\$3,000
22 and not more than \$10,000” and inserting
23 “\$6,000 and not more than \$20,000”;

1 (D) in subclause (IV), by striking “\$100
2 and not more than \$1,000” and inserting
3 “\$500 and not more than \$5,000.”

4 (e) INCREASED FUNDING OF INFORMATION CAM-
5 PAIGN.—Section 274B(1)(3) (8 U.S.C. 1324b(1)(3)) is
6 amended by inserting “and an additional \$40,000,000 for
7 each of fiscal years 2008 through 2010” before the period
8 at the end.

9 (f) EFFECTIVE DATE.—The amendments made by
10 this title shall take effect on the date of the enactment
11 of this Act and shall apply to violations occurring on or
12 after such date.

13 **SEC. 304. ADDITIONAL PROTECTIONS.**

14 Section 274B (8 U.S.C. 1324b) is amended—

15 (1) in subsection (a), by amending paragraph
16 (1) to read as follows:

17 “(1) IN GENERAL.—It is an unfair immigra-
18 tion-related employment practice for a person or
19 other entity to discriminate against any individual
20 (other than an unauthorized alien defined in section
21 274A(h)(3)) with respect to—

22 “(A) the hiring, or recruitment or referral
23 for a fee, of the individual for employment or
24 the discharging of the individual from employ-
25 ment—

1 “(i) because of such individual’s na-
2 tional origin; or

3 “(ii) in the case of a protected indi-
4 vidual, because of such individual’s citizen-
5 ship status; or

6 “(B) the compensation, terms, or condi-
7 tions of the employment of the individual.”;

8 (2) in subsection (a)(6), by striking “if made
9 for the purpose or with the intent of discriminating
10 against an individual in violation of paragraph (1)”
11 and inserting “in violation of paragraph (1), subject
12 to additional information and compliance assistance
13 being provided to employers to assist them in com-
14 plying with the law”;

15 (3) in subsection (d)—

16 (A) in paragraph (1), by striking “and,
17 based on such an investigation and subject to
18 paragraph (3), file a complaint before such a
19 judge” and inserting “Any such investigation
20 shall begin not later than 180 days after the al-
21 leged discriminatory act. Any such complaint
22 filed with an administrative law judge shall be
23 filed not later than 1 year after the commence-
24 ment of the independent investigation.”; and

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

1 (4) in subsection (g)(2)(B)(iii), by inserting “,
2 and to provide such other relief as the administra-
3 tive law judge determines appropriate to make the
4 individual whole” before the semicolon at the end.

5 **SEC. 305. ADDITIONAL WORKSITE ENFORCEMENT AND**
6 **FRAUD DETECTION AGENTS.**

7 (a) INCREASE IN NUMBER OF PERSONNEL.—The
8 Secretary shall, subject to the availability of appropria-
9 tions for such purpose, annually increase, by not less than
10 2,200, the number of personnel of the Bureau of Immigra-
11 tion and Customs Enforcement during the 5-year period
12 beginning on the date of the enactment of this Act.

13 (b) USE OF PERSONNEL.—The Secretary shall en-
14 sure that not less than 25 percent of all the hours ex-
15 pended by personnel of the Bureau of Immigration and
16 Customs Enforcement shall be used to enforce compliance
17 with sections 274A and 274C of the Immigration and Na-
18 tionality Act (8 U.S.C. 1324a and 1324c).

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

1 **SEC. 306. AMENDMENTS TO THE SOCIAL SECURITY ACT**
2 **AND THE INTERNAL REVENUE CODE.**

3 (a) SOCIAL SECURITY ACT.—Section 205(c)(2) of the
4 Social Security Act (42 U.S.C. 405(c)(2)) is amended by
5 adding at the end the following new subparagraphs:

6 “(I)(i) The Commissioner of Social Secu-
7 rity shall, subject to the provisions of title III
8 of the STRIVE Act of 2007, establish a reli-
9 able, secure method to provide through the
10 Electronic Employment Verification System es-
11 tablished pursuant to section 274A(c) of the
12 Immigration and Nationality Act (referred to in
13 this subparagraph as the ‘System’), within the
14 time periods required by such subsection—

15 “(I) a determination of whether the
16 name, date of birth, employer identification
17 number, and social security account num-
18 ber of an individual provided in an inquiry
19 made to the System by an employer is con-
20 sistent with such information maintained
21 by the Commissioner in order to confirm
22 the validity of the information provided;

23 “(II) a determination of the citizen-
24 ship status associated with such name and
25 social security account number, according

1 to the records maintained by the Commis-
2 sioner;

3 “(III) a determination of whether the
4 name and number belongs to an individual
5 who is deceased, according to the records
6 maintained by the Commissioner;

7 “(IV) a determination of whether the
8 name and number is blocked in accordance
9 with clause (ii); and

10 “(V) a confirmation or a nonconfirma-
11 tion described in such subsection (c), in a
12 manner that ensures that other informa-
13 tion maintained by the Commissioner is
14 not disclosed or released to employers
15 through the System.

16 “(ii) The Commissioner of Social Security
17 shall prevent the fraudulent or other misuse of
18 a social security account number by establishing
19 procedures under which an individual who has
20 been assigned a social security account number
21 may block the use of such number under the
22 System and remove such block.

23 “(J) In assigning social security account
24 numbers to aliens who are authorized to work
25 in the United States under section 218A of the

1 Immigration and Nationality Act, the Commis-
2 sioner of Social Security shall, to the maximum
3 extent practicable, assign such numbers by em-
4 ploying the enumeration procedure administered
5 jointly by the Commissioner, the Secretary of
6 State, and the Secretary.”.

7 (b) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY
8 INFORMATION.—

9 (1) IN GENERAL.—Section 6103(l) of the Inter-
10 nal Revenue Code of 1986 is amended by adding at
11 the end the following new paragraph:

12 “(21) DISCLOSURE OF CERTAIN TAXPAYER
13 IDENTITY INFORMATION BY SOCIAL SECURITY AD-
14 MINISTRATION TO DEPARTMENT OF HOMELAND SE-
15 CURITY.—

16 “(A) IN GENERAL.—From taxpayer iden-
17 tity information which has been disclosed to the
18 Social Security Administration and upon writ-
19 ten request by the Secretary of Homeland Secu-
20 rity, the Commissioner of Social Security shall
21 disclose directly to officers, employees, and con-
22 tractors of the Department of Homeland Secu-
23 rity the following information:

24 “(i) DISCLOSURE OF EMPLOYER NO-
25 MATCH NOTICES.—Taxpayer identity infor-

1 mation of each person who has filed an in-
2 formation return required by reason of sec-
3 tion 6051 during calendar year 2006,
4 2007, or 2008 which contains—

5 “(I) more than 100 names and
6 taxpayer identifying numbers of em-
7 ployees (within the meaning of such
8 section) that did not match the
9 records maintained by the Commis-
10 sioner of Social Security; or

11 “(II) more than 10 names of em-
12 ployees (within the meaning of such
13 section) with the same taxpayer iden-
14 tifying number.

15 “(ii) DISCLOSURE OF INFORMATION
16 REGARDING USE OF DUPLICATE EMPLOYEE
17 TAXPAYER IDENTIFYING INFORMATION.—
18 Taxpayer identity information of each per-
19 son who has filed an information return re-
20 quired by reason of section 6051 which the
21 Commissioner of Social Security has rea-
22 son to believe, based on a comparison with
23 information submitted by the Secretary of
24 Homeland Security, contains evidence of
25 identity fraud due to the multiple use of

1 the same taxpayer identifying number (as-
2 signed under section 6109) of an employee
3 (within the meaning of section 6051).

4 “(iii) DISCLOSURE OF INFORMATION
5 REGARDING NONPARTICIPATING EMPLOY-
6 ERS.—Taxpayer identity information of
7 each person who has filed an information
8 return required by reason of section 6051
9 which the Commissioner of Social Security
10 has reason to believe, based on a compari-
11 son with information submitted by the Sec-
12 retary of Homeland Security, contains evi-
13 dence of such person’s failure to register
14 and participate in the Electronic Employ-
15 ment Verification System authorized under
16 section 274A(c) of the Immigration and
17 Nationality Act (hereafter in this para-
18 graph referred to as the ‘System’).

19 “(iv) DISCLOSURE OF INFORMATION
20 REGARDING NEW EMPLOYEES OF NON-
21 PARTICIPATING EMPLOYERS.—Taxpayer
22 identity information of all employees (with-
23 in the meaning of section 6051) hired after
24 the date a person identified in clause (iii)
25 is required to participate in the System

1 under section 274A(c)(10) of the Immigra-
2 tion and Nationality Act.

3 “(v) DISCLOSURE OF INFORMATION
4 REGARDING EMPLOYEES OF CERTAIN DES-
5 IGNATED EMPLOYERS.—Taxpayer identity
6 information of all employees (within the
7 meaning of section 6051) of each person
8 who is required to participate in the Sys-
9 tem under such section 274A(c)(10) of the
10 Immigration and Nationality Act.

11 “(vi) DISCLOSURE OF NEW HIRE TAX-
12 PAYER IDENTITY INFORMATION.—Tax-
13 payer identity information of each person
14 participating in the System and taxpayer
15 identity information of all employees (with-
16 in the meaning of section 6051) of such
17 person hired during the period beginning
18 with the later of—

19 “(I) the date such person begins
20 to participate in the System; or

21 “(II) the date of the request im-
22 mediately preceding the most recent
23 request under this clause,

24 ending with the date of the most recent re-
25 quest under this clause.

1 “(B) RESTRICTION ON DISCLOSURE.—The
2 Commissioner of Social Security shall disclose
3 taxpayer identity information under subpara-
4 graph (A) only for purposes of, and to the ex-
5 tent necessary in—

6 “(i) establishing and enforcing em-
7 ployer participation in the System;

8 “(ii) carrying out, including through
9 civil administrative and civil judicial pro-
10 ceedings, of sections 212, 217, 235, 237,
11 238, 274A, 274B, and 274C of the Immi-
12 gration and Nationality Act; and

13 “(iii) the civil operation of the Alien
14 Terrorist Removal Court.

15 “(C) REIMBURSEMENT.—The Commis-
16 sioner of Social Security shall prescribe a rea-
17 sonable fee schedule for furnishing taxpayer
18 identity information under this paragraph and
19 collect such fees in advance from the Secretary
20 of Homeland Security.

21 “(D) TERMINATION.—This paragraph
22 shall not apply to any request made after the
23 date which is 3 years after the date of the en-
24 actment of this paragraph.”.

1 (2) COMPLIANCE BY DHS CONTRACTORS WITH
2 CONFIDENTIALITY SAFEGUARDS.—

3 (A) IN GENERAL.—Section 6103(p) of
4 such Code is amended by adding at the end the
5 following new paragraph:

6 “(9) DISCLOSURE TO DHS CONTRACTORS.—
7 Notwithstanding any other provision of this section,
8 no return or return information shall be disclosed to
9 any contractor of the Department of Homeland Se-
10 curity unless the Secretary of Homeland Security, to
11 the satisfaction of the Secretary—

12 “(A) has requirements in effect which re-
13 quire each such contractor which would have
14 access to returns or return information to pro-
15 vide safeguards (within the meaning of para-
16 graph (4)) to protect the confidentiality of such
17 returns or return information;

18 “(B) agrees to conduct an on-site review
19 every 3 years (mid-point review in the case of
20 contracts or agreements of less than 1 year in
21 duration) of each contractor to determine com-
22 pliance with such requirements;

23 “(C) submits the findings of the most re-
24 cent review conducted under subparagraph (B)

1 to the Secretary as part of the report required
2 by paragraph (4)(E); and

3 “(D) certifies to the Secretary for the most
4 recent annual period that such contractor is in
5 compliance with all such requirements.

6 The certification required by subparagraph (D) shall
7 include the name and address of each contractor, a
8 description of the contract or agreement with such
9 contractor, and the duration of such contract or
10 agreement.”.

11 (3) CONFORMING AMENDMENTS.—

12 (A) Section 6103(a)(3) of such Code is
13 amended by striking “or (20)” and inserting
14 “(20), or (21)”.

15 (B) Section 6103(p)(3)(A) of such Code is
16 amended by adding at the end the following
17 new sentence: “The Commissioner of Social Se-
18 curity shall provide to the Secretary such infor-
19 mation as the Secretary may require in carrying
20 out this paragraph with respect to return infor-
21 mation inspected or disclosed under the author-
22 ity of subsection (l)(21).”.

23 (C) Section 6103(p)(4) of such Code is
24 amended—

1 (i) by striking “or (17)” both places it
2 appears and inserting “(17), or (21)”; and

3 (ii) by striking “or (20)” each place it
4 appears and inserting “(20), or (21)”.

5 (D) Section 6103(p)(8)(B) of such Code is
6 amended by inserting “or paragraph (9)” after
7 “subparagraph (A)”.

8 (E) Section 7213(a)(2) of such Code is
9 amended by striking “or (20)” and inserting
10 “(20), or (21)”.

11 (c) AUTHORIZATION OF APPROPRIATIONS.—

12 (1) IN GENERAL.—There are authorized to be
13 appropriated to the Secretary such sums as are nec-
14 essary to carry out the amendments made by this
15 section.

16 (2) LIMITATION ON VERIFICATION RESPON-
17 SIBILITIES OF COMMISSIONER OF SOCIAL SECU-
18 RITY.—The Commissioner of Social Security is au-
19 thorized to perform activities with respect to car-
20 rying out the Commissioner’s responsibilities in this
21 title or the amendments made by this title, but only
22 to the extent the Secretary has provided, in advance,
23 funds to cover the Commissioner’s full costs in car-
24 rying out such responsibilities. In no case shall
25 funds from the Federal Old-Age and Survivors In-

1 surance Trust Fund or the Federal Disability Insur-
2 ance Trust Fund be used to carry out such respon-
3 sibilities.

4 (d) EFFECTIVE DATES.—

5 (1) SOCIAL SECURITY ACT.—The amendments
6 made by subsection (a) shall take effect on the date
7 that is 180 days after the date of the enactment of
8 this Act.

9 (2) INTERNAL REVENUE CODE.—

10 (A) IN GENERAL.—The amendments made
11 by subsection (b) shall apply to disclosures
12 made after the date of the enactment of this
13 Act.

14 (B) CERTIFICATIONS.—The first certifi-
15 cation under section 6103(p)(9)(D) of the In-
16 ternal Revenue Code of 1986, as added by sub-
17 section (b)(2), shall be made with respect to
18 calendar year 2007.

19 **TITLE IV—NEW WORKER** 20 **PROGRAM**

21 **SEC. 401. NONIMMIGRANT WORKER.**

22 Section 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is
23 amended to read as follows:

24 “(H) an alien—

25 “(i)(b) subject to section 212(j)(2)—

1 “(aa) who is coming temporarily
2 to the United States to perform serv-
3 ices (other than services described in
4 clause (ii)(a) or subparagraph (O) or
5 (P)) in a specialty occupation de-
6 scribed in section 214(i)(1) or as a
7 fashion model;

8 “(bb) who meets the require-
9 ments for the occupation specified in
10 section 214(i)(2) or, in the case of a
11 fashion model, is of distinguished
12 merit and ability; and

13 “(cc) with respect to whom the
14 Secretary of Labor determines and
15 certifies to the Secretary of Homeland
16 Security that the intending employer
17 has filed an application with the Sec-
18 retary in accordance with section
19 212(n)(1);

20 “(b1)(aa) who is entitled to enter the
21 United States under the provisions of an
22 agreement listed in section 214(g)(8)(A);

23 “(bb) who is engaged in a specialty
24 occupation described in section 214(i)(3);
25 and

1 “(cc) with respect to whom the Sec-
2 retary of Labor determines and certifies to
3 the Secretary of Homeland Security and
4 the Secretary of State that the intending
5 employer has filed an attestation with the
6 Secretary of Labor in accordance with sec-
7 tion 212(t)(1); or

8 “(c)(aa) who is coming temporarily to
9 the United States to perform services as a
10 registered nurse;

11 “(bb) who meets the qualifications de-
12 scribed in section 212(m)(1); and

13 “(cc) with respect to whom the Sec-
14 retary of Labor determines and certifies to
15 the Secretary of Homeland Security that
16 an unexpired attestation is on file and in
17 effect under section 212(m)(2) for the fa-
18 cility (as defined in section 212(m)(6)) for
19 which the alien will perform the services;
20 or

21 “(ii)(a) who—

22 “(aa) has a residence in a foreign
23 country which the alien has no intention of
24 abandoning; and

1 “(bb) is coming temporarily to the
2 United States to perform agricultural labor
3 or services (as defined by the Secretary of
4 Labor), including agricultural labor (as de-
5 fined in section 3121(g) of the Internal
6 Revenue Code of 1986), agriculture (as de-
7 fined in section 3(f) of the Fair Labor
8 Standards Act of 1938 (29 U.S.C.
9 203(f))), and the pressing of apples for
10 cider on a farm, of a temporary or sea-
11 sonal nature;

12 “(b) who—

13 “(aa) has a residence in a foreign
14 country which the alien has no inten-
15 tion of abandoning;

16 “(bb) is coming temporarily to
17 the United States to perform non-
18 agricultural work or services of a tem-
19 porary or seasonal nature (if unem-
20 ployed persons capable of performing
21 such work or services cannot be found
22 in the United States), excluding med-
23 ical school graduates coming to the
24 United States to perform services as
25 members of the medical profession; or

1 “(c) who—

2 “(aa) is coming temporarily to
3 the United States to initially perform
4 temporary labor or services other than
5 the labor or services described in
6 clause (i)(b), (i)(b1), (i)(c), (ii)(a), or
7 (iii), subparagraph (D), (E), (I), (L),
8 (O), (P), or (R), or section 214(e) (if
9 United States workers who are able,
10 willing, and qualified to perform such
11 labor or services cannot be found in
12 the United States); and

13 “(bb) meets the requirements of
14 section 218A, including the filing of a
15 petition under such section on behalf
16 of the alien;

17 “(iii) who—

18 “(a) has a residence in a foreign
19 country which the alien has no inten-
20 tion of abandoning; and

21 “(b) is coming temporarily to the
22 United States as a trainee (other than
23 to receive graduate medical education
24 or training) in a training program

1 that is not designed primarily to pro-
2 vide productive employment; or
3 “(iv) who—
4 “(a) is the spouse or a minor
5 child of an alien described in this sub-
6 paragraph; and
7 “(b) is accompanying or following
8 to join such alien.”.

9 **SEC. 402. ADMISSION OF NONIMMIGRANT WORKERS.**

10 (a) **NEW WORKERS.**—Chapter 2 of title II (8 U.S.C.
11 1181 et seq.) is amended by inserting after section 218
12 the following:

13 **“SEC. 218A. ADMISSION OF H-2C NONIMMIGRANTS.**

14 “(a) **AUTHORIZATION.**—The Secretary of State may
15 grant a temporary visa to an H-2C nonimmigrant who
16 demonstrates an intent to perform labor or services in the
17 United States (other than the labor or services described
18 in clause (i)(b), (i)(b1), (i)(c), (ii)(a), or (iii) of section
19 101(a)(15)(H), subparagraph (D), (E), (I), (L), (O), (P),
20 or (R) of section 101(a)(15), or section 214(e) (if United
21 States workers who are able, willing, and qualified to per-
22 form such labor or services cannot be found in the United
23 States).

1 “(b) REQUIREMENTS FOR ADMISSION.—An alien
2 shall be eligible for H-2C nonimmigrant status if the alien
3 meets the following requirements:

4 “(1) ELIGIBILITY TO WORK.—The alien shall
5 establish that the alien is capable of performing the
6 labor or services required for an occupation de-
7 scribed in section 101(a)(15)(H)(ii)(c).

8 “(2) EVIDENCE OF EMPLOYMENT OFFER.—The
9 alien’s evidence of employment shall be provided in
10 accordance with the requirements issued by the Sec-
11 retary of State, in consultation with the Secretary of
12 Labor. In carrying out this paragraph, the Secretary
13 may consider evidence from employers, employer as-
14 sociations, and labor representatives.

15 “(3) FEE.—The alien shall pay a \$500 visa
16 issuance fee in addition to the cost of processing and
17 adjudicating such application. Nothing in this para-
18 graph shall be construed to affect consular proce-
19 dures for charging reciprocal fees.

20 “(4) MEDICAL EXAMINATION.—The alien shall
21 undergo a medical examination (including a deter-
22 mination of immunization status), at the alien’s ex-
23 pense, that conforms to generally accepted standards
24 of medical practice.

25 “(5) APPLICATION CONTENT AND WAIVER.—

1 “(A) APPLICATION FORM.—The alien shall
2 submit to the Secretary of State a completed
3 application, which contains evidence that the re-
4 quirements under paragraphs (1) and (2) have
5 been met.

6 “(B) CONTENT.—In addition to any other
7 information that the Secretary requires to de-
8 termine an alien’s eligibility for H-2C non-
9 immigrant status, the Secretary of State shall
10 require an alien to provide information con-
11 cerning the alien’s—

12 “(i) physical and mental health;

13 “(ii) criminal history and gang mem-
14 bership;

15 “(iii) immigration history; and

16 “(iv) involvement with groups or indi-
17 viduals that have engaged in terrorism,
18 genocide, persecution, or who seek the
19 overthrow of the United States Govern-
20 ment.

21 “(C) KNOWLEDGE.—The alien shall in-
22 clude with the application submitted under this
23 paragraph a signed certification in which the
24 alien certifies that—

1 “(i) the alien has read and under-
2 stands all of the questions and statements
3 on the application form;

4 “(ii) the alien certifies under penalty
5 of perjury under the laws of the United
6 States that the application, and any evi-
7 dence submitted with it, are all true and
8 correct; and

9 “(iii) the applicant authorizes the re-
10 lease of any information contained in the
11 application and any attached evidence for
12 law enforcement purposes.

13 “(c) GROUNDS OF INADMISSIBILITY.—

14 “(1) IN GENERAL.—In determining an alien’s
15 admissibility as an H-2C nonimmigrant—

16 “(A) paragraphs (5), (6) (except subpara-
17 graph (E)), (7), (9), and (10)(B) of section
18 212(a) may not apply with respect to conduct
19 that occurred before the effective date of the
20 STRIVE Act;

21 “(B) the Secretary of Homeland Security
22 may not waive the application of—

23 “(i) subparagraph (A), (B), (C),
24 (D)(ii), (E), (G), (H), or (I) of section
25 212(a)(2);

1 “(ii) section 212(a)(3); or

2 “(iii) subparagraph (A), (C) or (D) of
3 section 212(a)(10);

4 “(C) the Secretary of State may waive the
5 application of any provision of section 212(a)
6 not listed in subparagraph (B) on behalf of an
7 individual alien—

8 “(i) for humanitarian purposes;

9 “(ii) to ensure family unity; or

10 “(iii) if such a waiver is otherwise in
11 the public interest;

12 “(D) nothing in this paragraph shall be
13 construed as affecting the authority of the Sec-
14 retary other than under this paragraph to waive
15 the provisions of section 212(a).

16 “(2) RENEWAL OF AUTHORIZED ADMISSION
17 AND SUBSEQUENT ADMISSIONS.—An alien seeking
18 renewal of authorized admission or subsequent ad-
19 mission as an H-2C nonimmigrant shall establish
20 that the alien is not inadmissible under section
21 212(a).

22 “(3) BACKGROUND CHECKS.—The Secretary of
23 Homeland Security shall not admit, and the Sec-
24 retary of State shall not issue a visa to, an alien

1 seeking H-2C nonimmigrant status unless all appro-
2 priate background checks have been completed.

3 “(d) PERIOD OF AUTHORIZED ADMISSION.—

4 “(1) AUTHORIZED PERIOD.—The initial period
5 of authorized admission as an H-2C nonimmigrant
6 shall be 3 years.

7 “(2) RENEWAL.—Before the expiration of the
8 initial period under paragraph (1), an H-2C non-
9 immigrant may submit an application to the Sec-
10 retary of Homeland Security to extend H-2C non-
11 immigrant status for 1 additional 3-year period. The
12 Secretary may not require an applicant under this
13 paragraph to depart the United States as a condi-
14 tion for granting such extension.

15 “(3) INTERNATIONAL COMMUTERS.—An alien
16 who maintains actual residence and place of abode
17 outside the United States and commutes into the
18 United States to work as an H-2C nonimmigrant,
19 is not subject to the time limitations under para-
20 graphs (1) and (2).

21 “(4) LOSS OF EMPLOYMENT.—

22 “(A) IN GENERAL.—

23 “(i) PERIOD OF UNEMPLOYMENT.—

24 Subject to clause (ii) and subsection (c),
25 the period of authorized admission of an

1 H-2C nonimmigrant shall terminate if the
2 alien is unemployed for 60 or more con-
3 secutive days.

4 “(ii) EXCEPTION.—The period of au-
5 thorized admission of an H-2C non-
6 immigrant shall not terminate if the alien
7 is unemployed for 60 or more consecutive
8 days if the alien submits documentation to
9 the Secretary of Homeland Security that
10 establishes that such unemployment was
11 caused by—

12 “(I) a period of physical or men-
13 tal disability of the alien or the
14 spouse, son, daughter, or parent (as
15 defined in section 101 of the Family
16 and Medical Leave Act of 1993 (29
17 U.S.C. 2611)) of the alien;

18 “(II) a period of vacation, med-
19 ical leave, maternity leave, or similar
20 leave from employment authorized by
21 employer policy, State law, or Federal
22 law; or

23 “(III) any other period of tem-
24 porary unemployment that is the di-
25 rect result of a major disaster or

1 emergency (as defined under section
2 532 of the STRIVE Act.

3 “(B) RETURN TO FOREIGN RESIDENCE.—
4 Any alien whose period of authorized admission
5 terminates under subparagraph (A) shall be re-
6 quired to leave the United States.

7 “(C) PERIOD OF VISA VALIDITY.—Any
8 alien, whose period of authorized admission ter-
9 minates under subparagraph (A), who leaves
10 the United States under subparagraph (B),
11 may reenter the United States as an H-2C
12 nonimmigrant to work for an employer, if the
13 alien has complied with the requirements of
14 subsection (b).

15 “(5) VISITS OUTSIDE THE UNITED STATES.—

16 “(A) IN GENERAL.—Under regulations es-
17 tablished by the Secretary of Homeland Secu-
18 rity, an H-2C nonimmigrant—

19 “(i) may travel outside of the United
20 States; and

21 “(ii) may be readmitted without hav-
22 ing to obtain a new visa if the period of
23 authorized admission has not expired.

24 “(B) EFFECT ON PERIOD OF AUTHORIZED
25 ADMISSION.—Time spent outside the United

1 States under subparagraph (A) shall not extend
2 the period of authorized admission in the
3 United States.

4 “(6) BARS TO EXTENSION OR ADMISSION.—An
5 alien may not be granted H–2C nonimmigrant sta-
6 tus, or an extension of such status, if—

7 “(A) the alien has violated any material
8 term or condition of such status granted pre-
9 viously, including failure to comply with the
10 change of address reporting requirements under
11 section 265;

12 “(B) the alien is inadmissible as a non-
13 immigrant; or

14 “(C) the granting of such status or exten-
15 sion of such status would allow the alien to ex-
16 ceed 6 years as an H–2C nonimmigrant, unless
17 the alien has resided and been physically
18 present outside the United States for at least 1
19 year after the expiration of such H–2C non-
20 immigrant status.

21 “(e) EVIDENCE OF NONIMMIGRANT STATUS.—Each
22 H–2C nonimmigrant shall be issued documentary evidence
23 of nonimmigrant status, which—

24 “(1) shall be machine-readable, tamper-resist-
25 ant, and allow for biometric authentication;

1 “(2) shall, during the alien’s authorized period
2 of admission under subsection (f), serve as a valid
3 entry document for the purpose of applying for ad-
4 mission to the United States—

5 “(A) instead of a passport and visa if the
6 alien—

7 “(i) is a national of a foreign territory
8 contiguous to the United States; and

9 “(ii) is applying for admission at a
10 land border port of entry; and

11 “(B) in conjunction with a valid passport,
12 if the alien is applying for admission at an air
13 or sea port of entry;

14 “(3) may be accepted during the period of its
15 validity by an employer as evidence of employment
16 authorization and identity under section
17 274A(b)(1)(B); and

18 “(4) shall be issued to the H-2C nonimmigrant
19 by the Secretary of Homeland Security promptly
20 after final adjudication of such status or, at the dis-
21 cretion of the Secretary of Homeland Security, may
22 be issued by the Secretary of State at a consulate
23 instead of a visa.

24 “(f) PENALTIES FOR FAILURE TO DEPART.—If an
25 H-2C nonimmigrant fails to depart the United States by

1 the date that the alien's authorized admission as an H-
2 2C nonimmigrant concludes, the visa of the alien shall be
3 void under section 222(g)(1) and the alien shall be ineli-
4 gible to be readmitted to the United States under section
5 222(g)(2). The alien may be removed if found to be within
6 1 or more of the classes of deportable aliens described in
7 section 237.

8 “(g) PENALTY FOR ILLEGAL ENTRY OR OVER-
9 STAY.—Any alien who unlawfully enters, attempts to
10 enter, or crosses the border after the date of the enact-
11 ment of this section, and is physically present in the
12 United States after such date in violation of the immigra-
13 tion laws of the United States, may not receive, for a pe-
14 riod of 10 years—

15 “(1) any relief under section 240A(a),
16 240A(b)(1), or 240B; or

17 “(2) nonimmigrant status under section
18 101(a)(15) (except subparagraphs (T) and (U)).

19 “(h) PORTABILITY.—A nonimmigrant alien described
20 in this section, who was previously issued a visa or other-
21 wise provided H-2C nonimmigrant status, may accept a
22 new offer of employment with a subsequent employer, if—

23 “(1) the employer complies with section 218B;
24 and

1 “(2) the alien, after lawful admission to the
2 United States, did not work without authorization.

3 “(i) CHANGE OF ADDRESS.—An H-2C non-
4 immigrant shall comply with the change of address report-
5 ing requirements under section 265 through electronic or
6 paper notification.

7 “(j) COLLECTION OF FEES.—All fees other than the
8 application filing fee collected under this section shall be
9 deposited in the Treasury in accordance with section
10 286(w).”.

11 (b) CLERICAL AMENDMENT.—The table of contents
12 Immigration and Nationality Act (8 U.S.C. 1101 et seq.)
13 is amended by inserting after the item relating to section
14 218 the following:

 “Sec. 218A. Admission of H-2C nonimmigrants”.

15 **SEC. 403. EMPLOYER OBLIGATIONS.**

16 (a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.)
17 is amended by inserting after section 218A, as added by
18 section 402, the following:

19 **“SEC. 218B. EMPLOYER OBLIGATIONS.**

20 “(a) GENERAL REQUIREMENTS.—Each employer
21 who employs an H-2C nonimmigrant shall—

22 “(1) file a petition in accordance with sub-
23 section (b); and

24 “(2) be required to pay—

1 “(A) an application filing fee for each
2 alien, based on the cost of carrying out the
3 processing duties under this subsection; and

4 “(B) a secondary fee, to be deposited in
5 the Treasury in accordance with section
6 286(w), of—

7 “(i) \$250, in the case of an employer
8 employing 25 employees or less;

9 “(ii) \$500, in the case of an employer
10 employing between 26 and 150 employees;

11 “(iii) \$750, in the case of an employer
12 employing between 151 and 500 employ-
13 ees; or

14 “(iv) \$1,000, in the case of an em-
15 ployer employing more than 500 employ-
16 ees. pay the appropriate fee.

17 “(b) REQUIRED PROCEDURE.—Except where the
18 Secretary of Labor has determined that there is a shortage
19 of United States workers in the occupation and area of
20 intended employment to which the H-2C nonimmigrant
21 is sought, each employer of H-2C nonimmigrants shall
22 comply with the following requirements:

23 “(1) EFFORTS TO RECRUIT UNITED STATES
24 WORKERS.—During the period beginning not later
25 than 90 days before the date on which a petition is

1 filed under subsection (a)(1), and ending on the date
2 that is 14 days before to such filing date, the em-
3 ployer involved shall recruit United States workers
4 for the position for which the H-2C nonimmigrant
5 is sought under the petition, by—

6 “(A) submitting a copy of the job oppor-
7 tunity, including a description of the wages and
8 other terms and conditions of employment and
9 the minimum education, training, experience
10 and other requirements of the job, to the State
11 Employment Service Agency that serves the
12 area of employment in the State in which the
13 employer is located;

14 “(B) authorizing the employment service
15 agency of the State to post the job opportunity
16 on the Internet website established under sec-
17 tion 405 of the STRIVE Act, with local job
18 banks, and with unemployment agencies and
19 other labor referral and recruitment sources
20 pertinent to the job involved;

21 “(C) authorizing the employment service
22 agency of the State to notify—

23 “(i) labor organizations in the State
24 in which the job is located; and

1 “(ii) if applicable, the office of the
2 local union which represents the employees
3 in the same or substantially equivalent job
4 classification of the job opportunity;

5 “(D) posting the availability of the job op-
6 portunity for which the employer is seeking a
7 worker in conspicuous locations at the place of
8 employment for all employees to see;

9 “(E) advertising the availability of the job
10 opportunity for which the employer is seeking a
11 worker in a publication with the highest circula-
12 tion in the labor market that is likely to be pa-
13 tronized by a potential worker for not fewer
14 than 10 consecutive days; and

15 “(F) based on recommendations by the
16 local job service, advertising the availability of
17 the job opportunity in professional, trade, or
18 ethnic publications that are likely to be patron-
19 ized by a potential worker.

20 “(2) EFFORTS TO EMPLOY UNITED STATES
21 WORKERS.—An employer that seeks to employ an
22 H-2C nonimmigrant shall first offer the job to any
23 eligible United States worker who applies, is quali-
24 fied for the job and is available at the time of need,
25 notwithstanding any other valid employment criteria.

1 “(c) PETITION.—A petition to hire an H-2C non-
2 immigrant under this section shall be filed with the Sec-
3 retary of Labor and shall include an attestation by the
4 employer of the following:

5 “(1) PROTECTION OF UNITED STATES WORK-
6 ERS.—The employment of an H-2C non-
7 immigrant—

8 “(A) will not adversely affect the wages
9 and working conditions of workers in the
10 United States similarly employed; and

11 “(B) did not and will not cause the separa-
12 tion from employment of a United States work-
13 er employed by the employer within the 180-day
14 period beginning 90 days before the date on
15 which the petition is filed.

16 “(2) WAGES.—

17 “(A) IN GENERAL.—The H-2C non-
18 immigrant will be paid not less than the greater
19 of—

20 “(i) the actual wage level paid by the
21 employer to all other individuals with simi-
22 lar experience and qualifications for the
23 specific employment in question; or

24 “(ii) the prevailing wage level for the
25 occupational classification in the area of

1 employment, taking into account experi-
2 ence and skill levels of employees.

3 “(B) CALCULATION.—The wage levels
4 under subparagraph (A) shall be calculated
5 based on the best information available at the
6 time of the filing of the application.

7 “(C) PREVAILING WAGE LEVEL.—For pur-
8 poses of subparagraph (A)(ii), the prevailing
9 wage level shall be determined in accordance as
10 follows:

11 “(i) If the job opportunity is covered
12 by a collective bargaining agreement be-
13 tween a union and the employer, the pre-
14 vailing wage shall be the wage rate set
15 forth in the collective bargaining agree-
16 ment.

17 “(ii) If the job opportunity is not cov-
18 ered by such an agreement and it is on a
19 project that is covered by a wage deter-
20 mination under a provision of subchapter
21 IV of chapter 31 of title 40, United States
22 Code, or the Service Contract Act of 1965
23 (41 U.S.C. 351 et seq.), the prevailing
24 wage level shall be the appropriate statu-
25 tory wage.

1 “(iii)(I) If the job opportunity is not
2 covered by such an agreement and it is not
3 on a project that is covered by a wage de-
4 termination under a provision of sub-
5 chapter IV of chapter 31 of title 40,
6 United States Code, or the Service Con-
7 tract Act of 1965 (41 U.S.C. 351 et seq.),
8 the prevailing wage level shall be based on
9 published wage data for the occupation
10 from the Bureau of Labor Statistics, in-
11 cluding the Occupational Employment Sta-
12 tistics survey, Current Employment Statis-
13 tics data, National Compensation Survey,
14 and Occupational Employment Projections
15 program. If the Bureau of Labor Statistics
16 does not have wage data applicable to such
17 occupation, the employer may base the pre-
18 vailing wage level on another wage survey
19 approved by the Secretary of Labor.

20 “(II) The Secretary shall promulgate
21 regulations applicable to approval of such
22 other wage surveys that require, among
23 other things, that the Bureau of Labor
24 Statistics determine such surveys are sta-
25 tistically viable.

1 “(3) WORKING CONDITIONS.—All workers in
2 the occupation at the place of employment at which
3 the H–2C nonimmigrant will be employed will be
4 provided the working conditions and benefits that
5 are normal to workers similarly employed in the area
6 of intended employment.

7 “(4) LABOR DISPUTE.—There is not a strike,
8 lockout, or work stoppage in the course of a labor
9 dispute in the occupation at the place of employment
10 at which the H–2C nonimmigrant will be employed.
11 If such strike, lockout, or work stoppage occurs fol-
12 lowing submission of the petition, the employer will
13 provide notification in accordance with regulations
14 promulgated by the Secretary of Labor.

15 “(5) PROVISION OF INSURANCE.—If the posi-
16 tion for which the H–2C nonimmigrant is sought is
17 not covered by the State workers’ compensation law,
18 the employer will provide, at no cost to the H–2C
19 nonimmigrant, insurance covering injury and disease
20 arising out of, and in the course of, the worker’s em-
21 ployment, which will provide benefits at least equal
22 to those provided under the State workers’ com-
23 pensation law for comparable employment.

24 “(6) NOTICE TO EMPLOYEES.—

1 “(A) IN GENERAL.—The employer has pro-
2 vided notice of the filing of the petition to the
3 bargaining representative of the employer’s em-
4 ployees in the occupational classification and
5 area of employment for which the H–2C non-
6 immigrant is sought.

7 “(B) NO BARGAINING REPRESENTATIVE.—
8 If there is no such bargaining representative,
9 the employer has—

10 “(i) posted a notice of the filing of the
11 petition in a conspicuous location at the
12 place or places of employment for which
13 the H–2C nonimmigrant is sought; or

14 “(ii) electronically disseminated such
15 a notice to the employer’s employees in the
16 occupational classification for which the
17 H–2C nonimmigrant is sought.

18 “(7) RECRUITMENT.—Except where the Sec-
19 retary of Labor has determined that there is a
20 shortage of United States workers in the occupation
21 and area of intended employment for which the H–
22 2C nonimmigrant is sought—

23 “(A) there are not sufficient workers who
24 are able, willing, and qualified, and who will be
25 available at the time and place needed, to per-

1 form the labor or services involved in the peti-
2 tion; and

3 “(B) good faith efforts have been taken to
4 recruit United States workers, in accordance
5 with regulations promulgated by the Secretary
6 of Labor, which efforts included—

7 “(i) the completion of recruitment
8 during the period beginning on the date
9 that is 90 days before the date on which
10 the petition was filed with the Department
11 of Homeland Security and ending on the
12 date that is 14 days before such filing
13 date; and

14 “(ii) the actual wage paid by the em-
15 ployer for the occupation in the areas of
16 intended employment was used in con-
17 ducting recruitment.

18 “(8) INELIGIBILITY.—The employer is not cur-
19 rently ineligible from using the H-2C nonimmigrant
20 program described in this section.

21 “(9) BONAFIDE OFFER OF EMPLOYMENT.—The
22 job for which the H-2C nonimmigrant is sought is
23 a bona fide job—

24 “(A) for which the employer needs labor or
25 services;

1 “(B) which has been and is clearly open to
2 any United States worker; and

3 “(C) for which the employer will be able to
4 place the H-2C nonimmigrant on the payroll.

5 “(10) PUBLIC AVAILABILITY AND RECORDS RE-
6 TENTION.—A copy of each petition filed under this
7 section and documentation supporting each attesta-
8 tion, in accordance with regulations promulgated by
9 the Secretary of Labor, will—

10 “(A) be provided to every H-2C non-
11 immigrant employed under the petition;

12 “(B) be made available for public examina-
13 tion at the employer’s place of business or work
14 site;

15 “(C) be made available to the Secretary of
16 Labor during any audit; and

17 “(D) remain available for examination for
18 5 years after the date on which the petition is
19 filed.

20 “(11) NOTIFICATION UPON SEPARATION FROM
21 OR TRANSFER OF EMPLOYMENT.—The employer will
22 notify the Secretary of Labor and the Secretary of
23 Homeland Security of an H-2C nonimmigrant’s sep-
24 aration from employment or transfer to another em-
25 ployer not more than 3 business days after the date

1 of such separation or transfer, in accordance with
2 regulations promulgated by the Secretary of Home-
3 land Security.

4 “(12) ACTUAL NEED FOR LABOR OR SERV-
5 ICES.—The petition was filed not more than 60 days
6 before the date on which the employer needed labor
7 or services for which the H–2C nonimmigrant is
8 sought.

9 “(d) AUDIT OF ATTESTATIONS.—

10 “(1) REFERRALS BY SECRETARY OF HOMELAND
11 SECURITY.—The Secretary of Homeland Security
12 shall refer all approved petitions for H–2C non-
13 immigrants to the Secretary of Labor for potential
14 audit.

15 “(2) AUDITS AUTHORIZED.—The Secretary of
16 Labor may audit any approved petition referred pur-
17 suant to paragraph (1), in accordance with regula-
18 tions promulgated by the Secretary of Labor.

19 “(e) INELIGIBLE EMPLOYERS.—

20 “(1) IN GENERAL.—The Secretary of Labor
21 shall not approve an employer’s petitions, applica-
22 tions, certifications, or attestations under any immi-
23 grant or nonimmigrant program if the Secretary of
24 Labor determines, after notice and an opportunity

1 for a hearing, that the employer submitting such
2 documents—

3 “(A) has, with respect to the attestations
4 required under subsection (b)—

5 “(i) misrepresented a material fact;

6 “(ii) made a fraudulent statement; or

7 “(iii) failed to comply with the terms
8 of such attestations; or

9 “(B) failed to cooperate in the audit pro-
10 cess in accordance with regulations promulgated
11 by the Secretary of Labor.

12 “(2) LENGTH OF INELIGIBILITY.—An employer
13 described in paragraph (1) shall be ineligible to par-
14 ticipate in the labor certification programs of the
15 Secretary of Labor for not less than the time period
16 determined by the Secretary, not to exceed 3 years.

17 “(3) EMPLOYERS IN HIGH UNEMPLOYMENT
18 AREAS.—The Secretary of Labor may not approve
19 any employer’s petition under subsection (b) if the
20 work to be performed by the H-2C nonimmigrant is
21 not agriculture based and is located in a metropoli-
22 tan or micropolitan statistical area (as defined by
23 the Office of Management and Budget) in which the
24 unemployment rate for workers who have not com-
25 pleted any education beyond a high school diploma

1 during the most recently completed 6-month period
2 averaged more than 9.0 percent.

3 “(f) REGULATION OF FOREIGN LABOR CONTRAC-
4 TORS.—

5 “(1) COVERAGE.—Notwithstanding any other
6 provision of law—

7 “(A) an H-2C nonimmigrant is prohibited
8 from being treated as an independent con-
9 tractor; and

10 “(B) no person may treat an H-2C non-
11 immigrant as an independent contractor.

12 “(2) APPLICABILITY OF LAWS.—An H-2C non-
13 immigrant shall not be denied any right or any rem-
14 edy under Federal, State, or local labor or employ-
15 ment law that would be applicable to a United
16 States worker employed in a similar position with
17 the employer because of the alien’s status as a non-
18 immigrant worker.

19 “(3) TAX RESPONSIBILITIES.—With respect to
20 each employed H-2C nonimmigrant, an employer
21 shall comply with all applicable Federal, State, and
22 local tax and revenue laws.

23 “(g) WHISTLEBLOWER PROTECTION.—

24 “(1) PROHIBITED ACTIVITIES.—It shall be un-
25 lawful for an employer or a labor contractor of an

1 H-2C nonimmigrant to intimidate, threaten, re-
2 strain, coerce, retaliate, discharge, or in any other
3 manner, discriminate against an employee or former
4 employee because the employee or former em-
5 ployee—

6 “(A) discloses information to the employer
7 or any other person that the employee or
8 former employee reasonably believes dem-
9 onstrates a violation of this Act, the STRIVE
10 Act, or any other Federal labor or employment
11 law; or

12 “(B) cooperates or seeks to cooperate in an
13 investigation or other proceeding concerning
14 compliance with the requirements of this Act,
15 the STRIVE Act, or any other Federal labor or
16 employment law.

17 “(2) RULEMAKING.—The Secretary of Labor
18 and the Secretary of Homeland Security shall jointly
19 promulgate regulations that establish a process by
20 which a nonimmigrant alien described in section
21 101(a)(15)(H) who files a nonfrivolous complaint (as
22 defined by the Federal Rules of Civil Rules) regard-
23 ing a violation of this Act, the STRIVE Act, or any
24 other Federal labor or employment law, or any other
25 rule or regulation pertaining to such laws and is oth-

1 erwise eligible to remain and work in the United
2 States may be allowed to seek other appropriate em-
3 ployment in the United States—

4 “(A) for a period not to exceed the max-
5 imum period of stay authorized for that non-
6 immigrant classification; or

7 “(B) until the conclusion of the pro-
8 ceedings governing the complaint.

9 “(h) LABOR RECRUITERS.—

10 “(1) IN GENERAL.—Each employer that en-
11 gages in foreign labor contracting activity and each
12 foreign labor contractor shall ascertain and disclose,
13 to each such worker who is recruited for employment
14 at the time of the worker’s recruitment—

15 “(A) the place of employment;

16 “(B) the compensation for the employ-
17 ment;

18 “(C) a description of employment activi-
19 ties;

20 “(D) the period of employment;

21 “(E) any other employee benefit to be pro-
22 vided and any costs to be charged for each ben-
23 efit;

24 “(F) any travel or transportation expenses
25 to be assessed;

1 “(G) the existence of any labor organizing
2 effort, strike, lockout, or other labor dispute at
3 the place of employment;

4 “(H) the existence of any arrangement
5 with any owner, employer, foreign contractor,
6 or its agent where such person receives a com-
7 mission from the provision of items or services
8 to workers;

9 “(I) the extent to which workers will be
10 compensated through workers’ compensation,
11 private insurance, or otherwise for injuries or
12 death, including—

13 “(i) work related injuries and death
14 during the period of employment;

15 “(ii) the name of the State workers’
16 compensation insurance carrier or the
17 name of the policyholder of the private in-
18 surance;

19 “(iii) the name and the telephone
20 number of each person who must be noti-
21 fied of an injury or death; and

22 “(iv) the time period within which
23 such notice must be given;

24 “(J) any education or training to be pro-
25 vided or required, including—

1 “(i) the nature and cost of such train-
2 ing;

3 “(ii) the entity that will pay such
4 costs; and

5 “(iii) whether the training is a condi-
6 tion of employment, continued employ-
7 ment, or future employment; and

8 “(K) a statement, in a form specified by
9 the Secretary of Labor, describing the protec-
10 tions of this Act for workers recruited abroad.

11 “(2) FALSE OR MISLEADING INFORMATION.—
12 No foreign labor contractor or employer who en-
13 gages in foreign labor contracting activity shall
14 knowingly provide materially false or misleading in-
15 formation to any worker concerning any matter re-
16 quired to be disclosed in paragraph (1).

17 “(3) LANGUAGES.—The information required to
18 be disclosed under paragraph (1) shall be provided
19 in writing in English or, as necessary and reason-
20 able, in the language of the worker being recruited.
21 The Secretary of Labor shall make forms available
22 in English, Spanish, and other languages, as nec-
23 essary, which may be used in providing workers with
24 information required under this section.

1 “(4) FEES.—A person conducting a foreign
2 labor contracting activity shall not assess any fee to
3 a worker for such foreign labor contracting activity.

4 “(5) TERMS.—No employer or foreign labor
5 contractor shall, without justification, violate the
6 terms of any agreement made by that contractor or
7 employer regarding employment under this program.

8 “(6) TRAVEL COSTS.—If the foreign labor con-
9 tractor or employer charges the employee for trans-
10 portation such transportation costs shall be reason-
11 able.

12 “(7) OTHER WORKER PROTECTIONS.—

13 “(A) NOTIFICATION.—Not less frequently
14 than once every 2 years, each employer shall
15 notify the Secretary of Labor of the identity of
16 any foreign labor contractor engaged by the em-
17 ployer in any foreign labor contractor activity
18 for, or on behalf of, the employer.

19 “(B) REGISTRATION OF FOREIGN LABOR
20 CONTRACTORS.—

21 “(i) IN GENERAL.—No person shall
22 engage in foreign labor recruiting activity
23 unless such person has a certificate of reg-
24 istration from the Secretary of Labor
25 specifying the activities that such person is

1 authorized to perform. An employer who
2 retains the services of a foreign labor con-
3 tractor shall only use those foreign labor
4 contractors who are registered under this
5 subparagraph.

6 “(ii) ISSUANCE.—The Secretary shall
7 promulgate regulations to establish an effi-
8 cient electronic process for the investiga-
9 tion and approval of an application for a
10 certificate of registration of foreign labor
11 contractors not later than 14 days after
12 such application is filed, including—

13 “(I) requirements under para-
14 graphs (1), (4), and (5) of section 102
15 of the Migrant and Seasonal Agricul-
16 tural Worker Protection Act (29
17 U.S.C. 1812);

18 “(II) an expeditious means to up-
19 date registrations and renew certifi-
20 cates; and

21 “(III) any other requirements
22 that the Secretary may prescribe.

23 “(iii) TERM.—Unless suspended or re-
24 voked, a certificate under this subpara-
25 graph shall be valid for 2 years.

1 “(iv) REFUSAL TO ISSUE; REVOCA-
2 TION; SUSPENSION.—In accordance with
3 regulations promulgated by the Secretary
4 of Labor, the Secretary may refuse to issue
5 or renew, or may suspend or revoke, a cer-
6 tificate of registration under this subpara-
7 graph if—

8 “(I) the application or holder of
9 the certification has knowingly made a
10 material misrepresentation in the ap-
11 plication for such certificate;

12 “(II) the applicant for, or holder
13 of, the certification is not the real
14 party in interest in the application or
15 certificate of registration and the real
16 party in interest—

17 “(aa) is a person who has
18 been refused issuance or renewal
19 of a certificate;

20 “(bb) has had a certificate
21 suspended or revoked; or

22 “(cc) does not qualify for a
23 certificate under this paragraph;
24 or

1 “(III) the applicant for or holder
2 of the certification has failed to com-
3 ply with this Act.

4 “(C) REMEDY FOR VIOLATIONS.—An em-
5 ployer engaging in foreign labor contracting ac-
6 tivity and a foreign labor contractor that vio-
7 lates the provisions of this subsection shall be
8 subject to remedies for foreign labor contractor
9 violations under subsections (k) and (l). If a
10 foreign labor contractor acting as an agent of
11 an employer violates any provision of this sub-
12 section, the employer shall be subject to rem-
13 edies under subsections (k) and (l). An em-
14 ployer that violates a provision of this sub-
15 section relating to employer obligations shall be
16 subject to remedies under subsections (k) and
17 (l).

18 “(D) EMPLOYER NOTIFICATION.—An em-
19 ployer shall notify the Secretary of Labor if the
20 employer becomes aware of a violation of this
21 subsection by a foreign labor recruiter.

22 “(E) WRITTEN AGREEMENTS.—A foreign
23 labor contractor may not violate the terms of
24 any written agreements made with an employer

1 relating to any contracting activity or worker
2 protection under this subsection.

3 “(F) BONDING REQUIREMENT.—The Sec-
4 retary of Labor may require a foreign labor
5 contractor to post a bond in an amount suffi-
6 cient to ensure the protection of individuals re-
7 cruited by the foreign labor contractor. The
8 Secretary may consider the extent to which the
9 foreign labor contractor has sufficient ties to
10 the United States to adequately enforce this
11 subsection.

12 “(i) WAIVER OF RIGHTS PROHIBITED.—An H-2C
13 nonimmigrant may not be required to waive any rights or
14 protections under this Act. Nothing under this subsection
15 shall be construed to affect the interpretation of other
16 laws.

17 “(j) NO THREATENING OF EMPLOYEES.—It shall be
18 a violation of this section for an employer who has filed
19 an attestation with the Department of Labor as part of
20 the petition process under this section to threaten the
21 alien beneficiary of such a petition with the withdrawal
22 of such a petition in retaliation for the beneficiary’s exer-
23 cise of a right protected by this Act.

24 “(k) ENFORCEMENT.—

1 “(1) IN GENERAL.—The Secretary of Labor
2 shall promulgate regulations for the receipt, inves-
3 tigation, and disposition of complaints by an ag-
4 grievied person respecting a violation of this section.

5 “(2) FILING DEADLINE.—No investigation or
6 hearing shall be conducted on a complaint con-
7 cerning a violation under this section unless the
8 complaint was filed not later than 12 months after
9 the date of such violation.

10 “(3) REASONABLE BASIS.—The Secretary of
11 Labor shall conduct an investigation under this sub-
12 section if there is reasonable basis to believe that a
13 violation of this section has occurred. The process
14 established under this subsection shall provide that,
15 not later than 30 days after a complaint is filed, the
16 Secretary shall determine if there is reasonable
17 cause to find such a violation.

18 “(4) NOTICE AND HEARING.—

19 “(A) IN GENERAL.—Not later than 60
20 days after the Secretary of Labor makes a de-
21 termination of reasonable basis under para-
22 graph (3), the Secretary shall issue a notice to
23 the interested parties and offer an opportunity
24 for a hearing on the complaint, in accordance
25 with section 556 of title 5, United States Code.

1 “(B) COMPLAINT.—If the Secretary of
2 Labor, after receiving a complaint under this
3 subsection, does not offer the aggrieved person
4 or organization an opportunity for a hearing
5 under subparagraph (A), the Secretary shall no-
6 tify the aggrieved person or organization of
7 such determination and the aggrieved person or
8 organization may seek a hearing on the com-
9 plaint under procedures established by the Sec-
10 retary which comply with the requirements of
11 section 556.

12 “(C) HEARING DEADLINE.—Not later than
13 60 days after the date of a hearing under this
14 paragraph, the Secretary of Labor shall make a
15 finding on the matter in accordance with para-
16 graph (5).

17 “(5) ATTORNEYS’ FEES.—A complainant who
18 prevails with respect to a claim under this sub-
19 section shall be entitled to an award of reasonable
20 attorneys’ fees and costs.

21 “(6) POWER OF THE SECRETARY.—The Sec-
22 retary may bring an action in any court of com-
23 petent jurisdiction—

24 “(A) to seek remedial action, including in-
25 junctive relief;

1 “(B) to recover the damages described in
2 subsection (i); or

3 “(C) to ensure compliance with terms and
4 conditions described in subsection (g).

5 “(7) SOLICITOR OF LABOR.—Except as pro-
6 vided in section 518(a) of title 28, United States
7 Code, the Solicitor of Labor may appear for and rep-
8 resent the Secretary of Labor in any civil litigation
9 brought under this subsection. All such litigation
10 shall be subject to the direction and control of the
11 Attorney General.

12 “(8) PROCEDURES IN ADDITION TO OTHER
13 RIGHTS OF EMPLOYEES.—The rights and remedies
14 provided to workers under this section are in addi-
15 tion to any other contractual or statutory rights and
16 remedies of the workers, and are not intended to
17 alter or affect such rights and remedies.

18 “(l) PENALTIES.—

19 “(1) IN GENERAL.—If, after notice and an op-
20 portunity for a hearing, the Secretary of Labor finds
21 a violation of subsection (b), (e), (f), or (g), the Sec-
22 retary may impose administrative remedies and pen-
23 alties, including—

24 “(A) back wages;

25 “(B) benefits; and

1 “(C) civil monetary penalties.

2 “(2) CIVIL PENALTIES.—The Secretary of
3 Labor may impose, as a civil penalty—

4 “(A) for a violation of any of subsections
5 (b) through (g)—

6 “(i) a fine in an amount not to exceed
7 \$2,000 per violation per affected worker;

8 “(ii) if the violation was willful, a fine
9 in an amount not to exceed \$5,000 per vio-
10 lation per affected worker;

11 “(iii) if the violation was willful and if
12 in the course of such violation a United
13 States worker was harmed, a fine in an
14 amount not to exceed \$25,000 per viola-
15 tion per affected worker; and

16 “(B) for a violation of subsection (h)—

17 “(i) a fine in an amount not less than
18 \$500 and not more than \$4,000 per viola-
19 tion per affected worker;

20 “(ii) if the violation was willful, a fine
21 in an amount not less than \$2,000 and not
22 more than \$5,000 per violation per af-
23 fected worker; and

24 “(iii) if the violation was willful and if
25 in the course of such violation a United

1 States worker was harmed, a fine in an
2 amount not less than \$6,000 and not more
3 than \$35,000 per violation per affected
4 worker.

5 “(3) USE OF CIVIL PENALTIES.—All penalties
6 collected under this subsection shall be deposited in
7 the Treasury in accordance with section 286(w).

8 “(4) CRIMINAL PENALTIES.—If a willful and
9 knowing violation of subsection (g) causes extreme
10 physical or financial harm to an individual, the per-
11 son in violation of such subsection may be impris-
12 oned for not more than 6 months, fined in an
13 amount not more than \$35,000, or both.

14 “(m) INCREASED PENALTIES.—Any employer of an
15 H-2C nonimmigrant that is subject to a fine under section
16 16 of the Fair Labor Standards Act of 1938 (29 U.S.C.
17 216) or the Occupational Safety and Health Act of 1970
18 (29 U.S.C. 666) for a violation affecting such alien, shall
19 be required to pay a fine equal to twice the fine that would
20 otherwise be assessed under such sections.

21 “(n) DEFINITIONS.—In this section and in sections
22 218A, 218C, and 218D:

23 “(1) AGGRIEVED PERSON.—term ‘aggrieved
24 person’ means a person adversely affected by an al-
25 leged violation of this section, including—

1 “(A) a worker whose job, wages, or work-
2 ing conditions are adversely affected by the vio-
3 lation; and

4 “(B) a representative for workers whose
5 jobs, wages, or working conditions are adversely
6 affected by the violation who brings a complaint
7 on behalf of such worker.

8 “(2) AREA OF EMPLOYMENT.—The terms ‘area
9 of employment’ and ‘area of intended employment’
10 mean the area within normal commuting distance of
11 the worksite or physical location at which the work
12 of the H-2C worker is or will be performed. If such
13 worksite or location is within a Metropolitan Statis-
14 tical Area, any place within such area is deemed to
15 be within the area of employment.

16 “(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible
17 individual’ means, with respect to employment, an
18 individual who is not an unauthorized alien (as de-
19 fined in section 274A) with respect to that employ-
20 ment.

21 “(4) EMPLOY; EMPLOYEE; EMPLOYER.—The
22 terms ‘employ’, ‘employee’, and ‘employer’ have the
23 meanings given such terms in section 3 of the Fair
24 Labor Standards Act of 1938 (29 U.S.C. 203).

1 “(5) FOREIGN LABOR CONTRACTOR.—The term
2 ‘foreign labor contractor’ means any person who for
3 any compensation or other valuable consideration
4 paid or promised to be paid, performs any foreign
5 labor contracting activity.

6 “(6) FOREIGN LABOR CONTRACTING ACTIV-
7 ITY.—The term ‘foreign labor contracting activity’
8 means recruiting, soliciting, hiring, employing, or
9 furnishing, an individual who resides outside of the
10 United States for employment in the United States
11 as a nonimmigrant alien described in section
12 101(a)(15)(H)(ii)(c).

13 “(7) H-2C NONIMMIGRANT.—The term ‘H-2C
14 nonimmigrant’ means a nonimmigrant described in
15 section 101(a)(15)(H)(ii)(c).

16 “(8) SEPARATION FROM EMPLOYMENT.—The
17 term ‘separation from employment’ means the work-
18 er’s loss of employment, other than through a dis-
19 charge for inadequate performance, violation of
20 workplace rules, cause, voluntary departure, vol-
21 untary retirement, or the expiration of a grant or
22 contract. The term does not include any situation in
23 which the worker is offered, as an alternative to
24 such loss of employment, a similar employment op-
25 portunity with the same employer at equivalent or

1 higher compensation and benefits than the position
2 from which the employee was discharged, regardless
3 of whether the employee accepts the offer. Nothing
4 in this paragraph shall limit an employee's rights
5 under a collective bargaining agreement or other em-
6 ployment contract.

7 “(9) UNITED STATES WORKER.—The term
8 ‘United States worker’ means an employee who is—

9 “(A) a citizen or national of the United
10 States; or

11 “(B) an alien who is—

12 “(i) lawfully admitted for permanent
13 residence;

14 “(ii) admitted as a refugee under sec-
15 tion 207;

16 “(iii) granted asylum under section
17 208; or

18 “(iv) otherwise authorized, under this
19 Act or by the Secretary of Homeland Secu-
20 rity, to be employed in the United States.”.

21 (b) CLERICAL AMENDMENT.—The table of contents
22 is amended by inserting after the item relating to section
23 218A, as added by section 402, the following:

“Sec. 218B. Employer obligations”.

1 **SEC. 404. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

2 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)
3 is amended by inserting after section 218B, as added by
4 section 403, the following:

5 **“SEC. 218C. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

6 “(a) ESTABLISHMENT.—The Secretary of Homeland
7 Security, in consultation with the Secretary of Labor, the
8 Secretary of State, and the Commissioner of Social Secu-
9 rity, shall develop and implement a program (referred to
10 in this section as the ‘alien employment management sys-
11 tem’) to manage and track the employment of aliens de-
12 scribed in sections 218A and 218D.

13 “(b) REQUIREMENTS.—The alien employment man-
14 agement system shall—

15 “(1) collect sufficient information from employ-
16 ers to enable the Secretary of Homeland Security to
17 determine—

18 “(A) if the nonimmigrant is employed;

19 “(B) which employers have hired an H-2C
20 nonimmigrant;

21 “(C) the number of H-2C nonimmigrants
22 that an employer is authorized to hire and is
23 currently employing;

24 “(D) the occupation, industry, and length
25 of time that an H-2C nonimmigrant has been
26 employed in the United States;

1 “(2) allow employers to request approval of
2 multiple H–2C nonimmigrant workers; and

3 “(3) permit employers to submit applications
4 under this section in an electronic form.”.

5 (b) CLERICAL AMENDMENT.—The table of contents
6 for the Immigration and Nationality Act (8 U.S.C. 1101
7 et seq.) is amended by inserting after the item relating
8 to section 218B, as added by section 403, the following:
“Sec. 218C. Alien employment management system”.

9 **SEC. 405. RECRUITMENT OF UNITED STATES WORKERS.**

10 (a) ELECTRONIC JOB REGISTRY.—The Secretary of
11 Labor shall establish a publicly accessible Web page on
12 the Internet website of the Department of Labor that pro-
13 vides a single Internet link to each State workforce agen-
14 cy’s statewide electronic registry of jobs available through-
15 out the United States to United States workers.

16 (b) RECRUITMENT OF UNITED STATES WORKERS.—

17 (1) POSTING.—An employer shall attest that
18 the employer has posted an employment opportunity
19 at a prevailing wage level (as described in section
20 218B(b)(2)(C) of the Immigration and Nationality
21 Act).

22 (2) RECORDS.—An employer shall maintain
23 records for not less than 1 year after the date on
24 which an H–2C nonimmigrant is hired that describe

1 the reasons for not hiring any of the United States
2 workers who may have applied for such position.

3 (c) OVERSIGHT AND MAINTENANCE OF RECORDS.—

4 The Secretary of Labor shall promulgate regulations re-
5 garding the maintenance of electronic job registry records
6 for the purpose of audit or investigation.

7 (d) ACCESS TO ELECTRONIC JOB REGISTRY.—The
8 Secretary of Labor shall ensure that job opportunities ad-
9 vertised on an electronic job registry established under
10 this section are accessible—

11 (1) by the State workforce agencies, which may
12 further disseminate job opportunity information to
13 other interested parties; and

14 (2) through the Internet, for access by workers,
15 employers, labor organizations, and other interested
16 parties.

17 **SEC. 406. NUMERICAL LIMITATIONS.**

18 Section 214(g)(1) (8 U.S.C. 1184(g)) is amended—

19 (1) by striking “(beginning with fiscal year
20 1992)”;

21 (2) in subparagraph (B), by striking the period
22 at the end and inserting “; and”; and

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

24 “(C) under section 101(a)(15)(H)(ii)(c),
25 may not exceed—

1 “(i) 400,000 for the first fiscal year
2 in which the program is implemented;

3 “(ii) in any subsequent fiscal year,
4 subject to clause (iii)—

5 “(I) if the total number of visas
6 allocated for that fiscal year are allot-
7 ted within the first quarter of that fis-
8 cal year, then an additional 20 per-
9 cent of the allocated number shall be
10 made available immediately and the
11 allocated amount for the following fis-
12 cal year shall increase by 20 percent
13 of the original allocated amount in the
14 prior fiscal year;

15 “(II) if the total number of visas
16 allocated for that fiscal year are allot-
17 ted within the second quarter of that
18 fiscal year, then an additional 15 per-
19 cent of the allocated number shall be
20 made available immediately and the
21 allocated amount for the following fis-
22 cal year shall increase by 15 percent
23 of the original allocated amount in the
24 prior fiscal year;

1 “(III) if the total number of visas
2 allocated for that fiscal year are allot-
3 ted within the third quarter of that
4 fiscal year, then an additional 10 per-
5 cent of the allocated number shall be
6 made available immediately and the
7 allocated amount for the following fis-
8 cal year shall increase by 10 percent
9 of the original allocated amount in the
10 prior fiscal year;

11 “(IV) if the total number of visas
12 allocated for that fiscal year are allot-
13 ted within the last quarter of that fis-
14 cal year, the allocated amount for the
15 following fiscal year shall increase by
16 10 percent of the original allocated
17 amount in the prior fiscal year; and

18 “(V) with the exception of the
19 first subsequent fiscal year to the fis-
20 cal year in which the program is im-
21 plemented, if fewer visas were allotted
22 the previous fiscal year than the num-
23 ber of visas allocated for that year
24 and the reason was not due to proc-
25 essing delays or delays in promul-

1 gating regulations, then the allocated
2 amount for the following fiscal year
3 shall decrease by 10 percent of the al-
4 located amount in the prior fiscal
5 year; and
6 “(iii) 600,000 for any fiscal year.”.

7 **SEC. 407. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT**
8 **STATUS.**

9 Section 245 of the Immigration and Nationality Act
10 (8 U.S.C. 1255) is amended by adding at the end the fol-
11 lowing:

12 “(n)(1) For purposes of adjustment of status under
13 subsection (a), employment-based immigrant visas shall be
14 made available to an alien having nonimmigrant status de-
15 scribed in section 101(a)(15)(H)(ii)(c) upon the filing of
16 a petition for such a visa—

17 “(A) by the alien’s employer; or

18 “(B) by the alien, if the alien has been em-
19 ployed as an H-2C nonimmigrant in the United
20 States for a cumulative total of 5 years.

21 “(2) An alien applying for adjustment of status under
22 paragraph (1)(B) shall—

23 “(A) pay an application fee of \$500 which shall
24 be credited to the State Impact Assistance Account
25 established under section 286(x), in addition to the

1 fee established by the Secretary of Homeland Secu-
2 rity to process an application for adjustment of sta-
3 tus;

4 “(B) be physically present in the United States;

5 “(C) establish evidence of employment; and

6 “(D)(i) meet the requirements under section
7 312; or

8 “(ii) be satisfactorily pursuing a course of study
9 to achieve such an understanding of English and
10 knowledge and understanding of the history and
11 government of the United States.

12 “(3)(A) Notwithstanding any other provision of this
13 section, an alien described in paragraph (1)(B) shall be
14 considered, at the time of obtaining the status of an alien
15 lawfully admitted for permanent residence, to have ob-
16 tained such status on a conditional basis for a period not
17 to exceed two years subject to the provisions of this sub-
18 section.

19 “(B) In order for the conditional basis established
20 under this subsection for an alien to be removed, the alien
21 shall submit to the Secretary, during the 90-day period
22 before the second anniversary of the alien’s obtaining the
23 status of lawful admission for permanent residence, a peti-
24 tion which requests the removal of such conditional basis

1 and states, under penalty of perjury, the facts and infor-
2 mation described in subparagraph (G).

3 “(C) In the case of an alien with permanent resident
4 status on a conditional basis under this subsection, if no
5 petition is filed with respect to the alien in accordance with
6 the provisions of this paragraph, status shall be termi-
7 nated.

8 “(D) In any removal proceeding with respect to an
9 alien whose permanent resident status is terminated under
10 subparagraph (B), the burden of proof shall be on the
11 alien to establish compliance with the conditions of this
12 subsection.

13 “(E) If the Secretary determines that such facts and
14 information are true, the Secretary shall so notify the par-
15 ties involved and shall remove the conditional basis of the
16 party effective as of the second anniversary of the alien’s
17 obtaining the status of lawful admission for permanent
18 residence

19 “(F) If the Secretary determines that such facts and
20 information are not true, the Secretary shall so notify the
21 parties involved and, shall terminate the permanent resi-
22 dent status of an alien as of the date of the determination.

23 “(G) Each petition under this paragraph for removal
24 of conditional status shall contain the following facts and
25 information:

1 “(i) Evidence of continued employment.

2 “(ii) Evidence of employment in an area that is
3 not a high unemployment area described in section
4 218B.

5 “(iii) Evidence of compliance with—

6 “(I) section 602(g) of the STRIVE Act of
7 2007, regarding payment of income taxes

8 “(II) section 602(h) of such Act, regarding
9 basic citizenship skills

10 “(III) section 602(i) of such Act, regarding
11 security and law enforcement background
12 checks;

13 “(IV) section 602(j) of such Act, regarding
14 military selective service; and

15 “(V) section 602(k) of such Act, regarding
16 treatment of conditional nonimmigrant depend-
17 ents.

18 “(4) An alien shall demonstrate evidence of employ-
19 ment in accordance with section 602(a)(3) of the STRIVE
20 Act. It is the sense of the Congress that the requirement
21 under this paragraph should be interpreted and imple-
22 mented in a manner that recognizes and takes into ac-
23 count the difficulties encountered by aliens in obtaining
24 evidence of employment. Such alien shall prove, by a pre-
25 ponderance of the evidence, that the alien has satisfied

1 the requirements of this subsection. An alien may meet
2 such burden of proof by producing sufficient evidence to
3 demonstrate such employment as a matter of reasonable
4 inference.

5 “(5) An alien who demonstrates that the alien meets
6 the requirements of section 312 may be considered to have
7 satisfied the requirements of that section for purposes of
8 becoming naturalized as a citizen of the United States
9 under title III.

10 “(6) Filing a petition under paragraph (1) on behalf
11 of an alien or otherwise seeking permanent residence in
12 the United States for such alien shall not constitute evi-
13 dence of the alien’s ineligibility for nonimmigrant status
14 under section 101(a)(15)(H)(ii)(c).

15 “(7) The limitation regarding the period of author-
16 ized stay under section 218D(9)(d) shall not apply to an
17 H-2C nonimmigrant if—

18 “(A) a labor certification petition filed under
19 section 203(b) on behalf of such alien is pending;

20 “(B) an immigrant visa petition filed under sec-
21 tion 204(b) on behalf of such alien is pending; or

22 “(C) an application for adjustment of status
23 under paragraph (1)(B) is pending.

24 “(8) The Secretary of Homeland Security shall ex-
25 tend the stay of an alien who qualifies for an exemption

1 under paragraph (6) in 1-year increments until a final de-
2 cision is made on the alien's lawful permanent residence.

3 “(9) Nothing in this subsection shall be construed to
4 prevent an alien having nonimmigrant status described in
5 section 101(a)(15)(H)(ii)(c) from filing an application for
6 adjustment of status under this section in accordance with
7 any other provision of law.”.

8 **SEC. 408. REQUIREMENTS FOR PARTICIPATING COUN-**
9 **TRIES.**

10 (a) **IN GENERAL.**—The Secretary of State, in co-
11 operation with the Secretary and the Attorney General,
12 shall negotiate with each home country of aliens described
13 in section 101(a)(15)(H)(ii)(c) of the Immigration and
14 Nationality Act, as added by section 401, to enter into
15 a bilateral agreement with the United States that con-
16 forms to the requirements under subsection (b).

17 (b) **REQUIREMENTS OF BILATERAL AGREEMENTS.**—
18 Each agreement negotiated under subsection (a) shall re-
19 quire the participating home country to—

20 (1) accept the return of nationals who are or-
21 dered removed from the United States within 3 days
22 of such removal;

23 (2) cooperate with the United States Govern-
24 ment to—

1 (A) identify, track, and reduce gang mem-
2 bership, violence, and human trafficking and
3 smuggling; and

4 (B) control illegal immigration;

5 (3) provide the United States Government
6 with—

7 (A) passport information and criminal
8 records of aliens who are seeking admission to,
9 or are present in, the United States; and

10 (B) admission and entry data to facilitate
11 United States entry-exit data systems;

12 (4) educate nationals of the home country re-
13 garding United States temporary worker programs
14 to ensure that such nationals are not exploited; and

15 (5) evaluate means to provide housing incen-
16 tives in the alien's home country for returning work-
17 ers.

18 **SEC. 409. COMPLIANCE INVESTIGATORS.**

19 The Secretary of Labor, subject to the availability of
20 appropriations for such purpose, shall annually increase,
21 by not less than 2,000, the number of positions for compli-
22 ance investigators dedicated to enforcing compliance with
23 this title, and the amendments made by this title.

1 **SEC. 410. STANDING COMMISSION ON IMMIGRATION AND**
2 **LABOR MARKETS.**

3 (a) ESTABLISHMENT OF COMMISSION.—

4 (1) IN GENERAL.—There is established an inde-
5 pendent Federal agency within the Executive Branch
6 to be known as the Standing Commission on Immi-
7 gration and Labor Markets (referred to in this sec-
8 tion as the “Commission”).

9 (2) PURPOSES.—The purposes of the Commis-
10 sion are—

11 (A) to study the new worker program es-
12 tablished under this title to admit H-2C non-
13 immigrants (referred to in this section as the
14 “Program”);

15 (B) to make recommendations to the
16 President and Congress with respect to the Pro-
17 gram.

18 (3) MEMBERSHIP.—The Commission shall be
19 composed of—

20 (A) 6 voting members—

21 (i) who shall be appointed by the
22 President, with the advice and consent of
23 the Senate, not later than 6 months after
24 the establishment of the Program;

1 (ii) who shall serve for 3-year stag-
2 gered terms, which can be extended for 1
3 additional 3-year term;

4 (iii) who shall select a Chair from
5 among the voting members to serve a 2-
6 year term, which can be extended for 1 ad-
7 ditional 2-year term;

8 (iv) who shall have expertise in eco-
9 nomics, demography, labor, business, or
10 immigration or other pertinent qualifica-
11 tions or experience;

12 (v) who may not be an employee of
13 the Federal Government or of any State or
14 local government; and

15 (vi) not more than 3 of whom may be
16 members of the same political party.

17 (B) 7 ex-officio members, including—

18 (i) the Secretary;

19 (ii) the Secretary of State;

20 (iii) the Attorney General;

21 (iv) the Secretary of Labor;

22 (v) the Secretary of Commerce;

23 (vi) the Secretary of Health and
24 Human Services; and

25 (vii) the Secretary of Agriculture.

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.—Four voting members of
13 the Commission shall constitute a quorum.

14 (b) DUTIES OF THE COMMISSION.—The Commission
15 shall—

16 (1) examine and analyze—

17 (A) the development and implementation of
18 the Program;

19 (B) the criteria for the admission of tem-
20 porary workers under the Program;

21 (C) the formula for determining the annual
22 numerical limitations of the Program;

23 (D) the impact of the Program on immi-
24 gration;

1 (E) the impact of the Program on the
2 economy, unemployment rate, wages, workforce,
3 and businesses of the United States; and

4 (F) any other matters regarding the Pro-
5 gram that the Commission considers appro-
6 priate;

7 (2) not later than February 1, 2009, and every
8 2 years thereafter, submit a report to the President
9 and Congress that—

10 (A) contains the findings of the analysis
11 conducted under paragraph (1);

12 (B) makes recommendations regarding the
13 necessary adjustments to the numerical limits
14 of the Program in section 214(g)(1)(C) of the
15 Immigration and Nationality Act, as added by
16 section 406, to meet the labor market needs of
17 the United States; and

18 (C) makes other recommendations regard-
19 ing the Program, including legislative or admin-
20 istrative action, that the Commission deter-
21 mines to be in the national interest.

22 (3) upon receiving a request from Congress, ex-
23 amine, analyze, and report findings or recommenda-
24 tions regarding any other employment-based immi-
25 gration and visa program.

1 (c) 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 the heads of such departments and
22 agencies determine advisable and authorized by
23 law.

24 (d) PERSONNEL MATTERS.—

25 (1) STAFF.—

1 (A) APPOINTMENT AND COMPENSATION.—
2 The Chair, in accordance with rules agreed
3 upon by the Commission, may appoint and fix
4 the compensation of a staff director and such
5 other personnel as may be necessary to enable
6 the Commission to carry out its functions.

7 (B) FEDERAL EMPLOYEES.—

8 (i) IN GENERAL.—Except as provided
9 under clause (ii), the executive director and
10 any personnel of the Commission who are
11 employees shall be considered to be em-
12 ployees under section 2105 of title 5,
13 United States Code, for purposes of chap-
14 ters 63, 81, 83, 84, 85, 87, 89, and 90 of
15 such title.

16 (ii) COMMISSION MEMBERS.—Clause
17 (i) shall not apply to members of the Com-
18 mission.

19 (2) DETAILEES.—Any employee of the Federal
20 Government may be detailed to the Commission
21 without reimbursement from the Commission. Such
22 detailee shall retain the rights, status, and privileges
23 of his or her regular employment without interrup-
24 tion.

1 (3) CONSULTANT SERVICES.—The Commission
2 may procure the services of experts and consultants
3 in accordance with section 3109 of title 5, United
4 States Code, at rates not to exceed the daily rate
5 paid a person occupying a position at level IV of the
6 Executive Schedule under section 5315 of such title
7 5.

8 (e) COMPENSATION AND TRAVEL EXPENSES.—

9 (1) COMPENSATION.—Each voting member of
10 the Commission may be compensated at a rate not
11 to exceed the daily equivalent of the annual rate of
12 basic pay in effect for a position at level IV of the
13 Executive Schedule under section 5315 of title 5,
14 United States Code, for each day during which that
15 member is engaged in the actual performance of the
16 duties of the Commission.

17 (2) TRAVEL EXPENSES.—Members of the Com-
18 mission shall be allowed travel expenses, including
19 per diem in lieu of subsistence, in the same manner
20 as persons employed intermittently in the Govern-
21 ment service are allowed expenses under section
22 5703(b) of title 5, United States Code, while away
23 from their homes or regular places of business in the
24 performance of services for the Commission.

1 (f) DETERMINATION OF NEW LEVELS OF PROGRAM
2 VISAS.—The numeric levels for visas under the Program
3 shall be set automatically for the first fiscal year beginning
4 after the report is submitted under subsection (b)(2)
5 based on the numeric levels determined in the most recent
6 fiscal year, as adjusted by section 214(g)(1)(C) of the Im-
7 migration and Nationality Act, unless Congress enacts leg-
8 islation before September 30, 2009, that—

9 (1) establishes the baseline numeric levels of
10 Program visas for such fiscal year; and

11 (2) makes amendments, as necessary, to such
12 section 214(g)(1)(C).

13 (g) FUNDING.—Fees and fines deposited into the
14 New Worker and Conditional Nonimmigrants Fee Account
15 under section 286(w)(3)(B) of the Immigration and Na-
16 tionality Act may be used by the Commission to carry out
17 its duties under this section.

18 **SEC. 411. ADMISSION OF NONIMMIGRANTS.**

19 (a) PRESUMPTION OF NONIMMIGRANT STATUS.—
20 Section 214(b) (8 U.S.C. 1184(b)) is amended by striking
21 “and other than” and inserting “a nonimmigrant de-
22 scribed in section 101(a)(15)(H)(ii)(c), and”.

23 (b) EVIDENCE TO ABANDON FOREIGN RESI-
24 DENCE.—Section 214(h) (8 U.S.C. 1184(h)) is amended

1 by striking “H(i)(b) or (c),” and inserting “(H)(i)(b),
2 H(i)(c), (H)(ii)(c),”.

3 **SEC. 412. AGENCY REPRESENTATION AND COORDINATION.**

4 Section 274A(e) (8 U.S.C. 1324a(e)) is amended—

5 (1) in paragraph (2)—

6 (A) in subparagraph (A), by striking the
7 comma at the end and inserting a semicolon;

8 (B) in subparagraph (B), by striking “,
9 and” and inserting a semicolon;

10 (C) in subparagraph (C), by striking
11 “paragraph (2).” And inserting “paragraph (1);
12 and”; and

13 (D) by inserting after subparagraph (C)
14 the following:

15 “(D) United States Immigration and Cus-
16 toms Enforcement officials may not misrepre-
17 sent to employees or employers that they are a
18 member of any agency or organization that pro-
19 vides domestic violence services, enforces health
20 and safety law or other labor laws, provides
21 health care services, or any other services in-
22 tended to protect life and safety.”; and

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

24 “(10) COORDINATION.—An investigation under
25 paragraph (1)(C) shall be coordinated with the ap-

1 appropriate regional office of the National Labor Rela-
2 tions Board, the Department of Labor, and all rel-
3 evant State and local agencies that are charged with
4 enforcing workplace standards. Evidence gathered
5 from such agencies shall be considered in deter-
6 mining whether the entity under investigation has
7 violated subsection (a).”.

8 **SEC. 413. SENSE OF CONGRESS REGARDING PERSONAL**
9 **PROTECTIVE EQUIPMENT.**

10 (a) **IN GENERAL.**—It is the sense of the Congress
11 that the Secretary of Labor, not later than 90 days after
12 the date of the enactment of this Act, should amend sec-
13 tion 1910.132(a) of title 29, Code of Federal Regulations,
14 to require employers to provide personal protective equip-
15 ment to employees at no cost. Any future regulation pro-
16 mulgated under such section should require such equip-
17 ment be provided to employees at no cost.

18 (b) **DEFINED TERM.**—In this section, the term “per-
19 sonal protective equipment” has the meaning given the
20 term in section 1910.132(a) of title 29, Code of Federal
21 Regulations (or any corresponding similar regulation or
22 ruling).

23 **SEC. 414. RULEMAKING; EFFECTIVE DATE.**

24 (a) **RULEMAKING.**—Not later than 6 months after
25 the date of enactment of the STRIVE Act, the Secretary

1 of Labor shall promulgate regulations, in accordance with
2 the notice and comment provisions of section 553 of title
3 5, United States Code, to carry out the provisions of sec-
4 tions 218A and 218B of the Immigration and Nationality
5 Act, as added by this title.

6 (b) **EFFECTIVE DATE.**—The amendments made by
7 sections 402, 403, and 404 shall take effect on the date
8 that is 1 year after the date of the enactment of this Act
9 with regard to aliens, who, on such effective date, are in
10 the foreign country where they maintain residence.

11 **SEC. 415. AUTHORIZATION OF APPROPRIATIONS.**

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

14 **TITLE V—VISA REFORMS**
15 **Subtitle A—Backlog Reduction**

16 **SEC. 501. ELIMINATION OF EXISTING BACKLOGS.**

17 (a) **FAMILY-SPONSORED IMMIGRANTS.**—Section
18 201(e) (8 U.S.C. 1151(e)) is amended to read as follows:

19 “(c) **WORLDWIDE LEVEL OF FAMILY-SPONSORED**
20 **IMMIGRANTS.**—The worldwide level of family-sponsored
21 immigrants under this subsection for a fiscal year is equal
22 to the sum of—

23 “(1) 480,000;

24 “(2) the difference between the maximum num-
25 ber of visas authorized to be issued under this sub-

1 section during the previous fiscal year and the num-
2 ber of visas issued during the previous fiscal year;

3 “(3) the difference between—

4 “(A) the maximum number of visas au-
5 thorized to be issued under this subsection dur-
6 ing fiscal years 2001 through 2005 minus the
7 number of visas issued under this subsection
8 during those fiscal years; and

9 “(B) the number of visas calculated under
10 subparagraph (A) that were issued after fiscal
11 year 2005.”.

12 (b) EMPLOYMENT-BASED IMMIGRANTS.—Section
13 201(d) (8 U.S.C. 1151(d)) is amended to read as follows:

14 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
15 IMMIGRANTS.—

16 “(1) IN GENERAL.—The worldwide level of em-
17 ployment-based immigrants under this subsection for
18 a fiscal year is equal to the sum of—

19 “(A) 290,000;

20 “(B) the difference between the maximum
21 number of visas authorized to be issued under
22 this subsection during the previous fiscal year
23 and the number of visas issued during the pre-
24 vious fiscal year; and

25 “(C) the difference between—

1 “(i) the maximum number of visas au-
2 thorized to be issued under this subsection
3 during fiscal years 2001 through 2005 and
4 the number of visa numbers issued under
5 this subsection during those fiscal years;
6 and

7 “(ii) the number of visas calculated
8 under clause (i) that were issued after fis-
9 cal year 2005.

10 “(2) VISAS FOR SPOUSES AND CHILDREN.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), immigrant visas issued on or
13 after October 1, 2004, to spouses and children
14 of employment-based immigrants shall not be
15 counted against the numerical limitation set
16 forth in paragraph (1).

17 “(B) NUMERICAL LIMITATION.—The total
18 number of visas issued under paragraph (A)
19 may not exceed 800,000 during any fiscal
20 year.”.

21 “(c) EXCEPTION TO NONDISCRIMINATION.—Section
22 202(a)(1)(A) (8 U.S.C. 1152(a)(1)(A)) is amended by
23 striking “201(b)(2)(A)(i)” and inserting “201(b),
24 201(d)(2)(A)”.

1 **SEC. 502. INCREASING COUNTRY LIMITS AND EXEMPTING**
2 **FAMILY-SPONSORED AND EMPLOYMENT-**
3 **BASED IMMIGRANTS.**

4 Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is amended
5 by striking “may not exceed 7 percent” and all that fol-
6 lows and inserting “, except for aliens described in sub-
7 sections (b) and (d)(2)(A) of section 201, may not exceed
8 10 percent (in the case of a single foreign state) or 5 per-
9 cent (in the case of a dependent area) of the total number
10 of such visas made available under such subsections in
11 that fiscal year.”.

12 **SEC. 503. ALLOCATION OF IMMIGRANT VISAS.**

13 (a) PREFERENCE ALLOCATION FOR FAMILY-SPON-
14 SORED IMMIGRANTS.—Section 203(a) (8 U.S.C. 1153(a))
15 is amended to read as follows:

16 “(a) PREFERENCE ALLOCATIONS FOR FAMILY-SPON-
17 SORED IMMIGRANTS.—Aliens subject to the worldwide
18 level set forth in section 201(c) for family-sponsored immi-
19 grants shall be allocated visas as follows:

20 “(1) UNMARRIED SONS AND DAUGHTERS OF
21 CITIZENS.—Qualified immigrants who are the un-
22 married sons or daughters of citizens of the United
23 States shall be allocated visas in a quantity not to
24 exceed the sum of—

25 “(A) 10 percent of such worldwide level;
26 and

1 “(B) any visas not required for the class
2 specified in paragraph (4).

3 “(2) SPOUSES AND UNMARRIED SONS AND
4 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—

5 “(A) IN GENERAL.—Visas in a quantity
6 not to exceed 50 percent of such worldwide level
7 plus any visas not required for the class speci-
8 fied in paragraph (1) shall be allocated to quali-
9 fied immigrants who are—

10 “(i) the spouses or children of an
11 alien lawfully admitted for permanent resi-
12 dence; or

13 “(ii) the unmarried sons or daughters
14 of an alien lawfully admitted for perma-
15 nent residence.

16 “(B) MINIMUM PERCENTAGE.—Visas allo-
17 cated to individuals described in subparagraph
18 (A)(i) shall constitute not less than 77 percent
19 of the visas allocated under this paragraph.

20 “(3) MARRIED SONS AND DAUGHTERS OF CITI-
21 ZENS.—Qualified immigrants who are the married
22 sons and daughters of citizens of the United States
23 shall be allocated visas in a quantity not to exceed
24 the sum of—

1 “(A) 10 percent of such worldwide level;
2 and

3 “(B) any visas not required for the classes
4 specified in paragraphs (1) and (2).

5 “(4) BROTHERS AND SISTERS OF CITIZENS.—
6 Qualified immigrants who are the brothers or sisters
7 of a citizen of the United States who is at least 21
8 years of age shall be allocated visas in a quantity
9 not to exceed 30 percent of the worldwide level.”.

10 (b) PREFERENCE ALLOCATION FOR EMPLOYMENT-
11 BASED IMMIGRANTS.—Section 203(b) (8 U.S.C. 1153(b))
12 is amended—

13 (1) in paragraph (1), by striking “28.6 per-
14 cent” and inserting “15 percent”;

15 (2) in paragraph (2)(A), by striking “28.6 per-
16 cent” and inserting “15 percent”;

17 (3) in paragraph (3)(A)—

18 (A) by striking “28.6 percent” and insert-
19 ing “35 percent”; and

20 (B) by striking clause (iii);

21 (4) by striking paragraph (4);

22 (5) by redesignating paragraph (5) as para-
23 graph (4);

24 (6) in paragraph (4)(A), as redesignated, by
25 striking “7.1 percent” and inserting “5 percent”;

1 (7) by inserting after paragraph (4), as redesign-
2 nated, the following:

3 “(5) OTHER WORKERS.—

4 “(A) IN GENERAL.—Visas shall be made
5 available, in a number not to exceed 30 percent
6 of such worldwide level, plus any visa numbers
7 not required for the classes specified in para-
8 graphs (1) through (4), to qualified immigrants
9 who are capable, at the time of petitioning for
10 classification under this paragraph, of per-
11 forming unskilled labor that is not of a tem-
12 porary or seasonal nature, for which qualified
13 workers are determined to be unavailable in the
14 United States.

15 “(B) PRIORITY IN ALLOCATING VISAS.—In
16 allocating visas under subparagraph (A) for
17 each of the fiscal years 2007 through 2017, the
18 Secretary shall reserve 30 percent of such visas
19 for qualified immigrants who were physically
20 present in the United States before January 7,
21 2004.”; and

22 (8) by striking paragraph (6).

23 (c) SPECIAL IMMIGRANTS NOT SUBJECT TO NUMER-
24 ICAL LIMITATIONS.—Section 201(b)(1)(A) (8 U.S.C.

1 1151(b)(1)(A)) is amended by striking “subparagraph (A)
2 or (B) of”.

3 (d) TEMPORARY INCREASE IN NUMBER OF IRAQI
4 AND AFGHAN TRANSLATORS WHO MAY BE PROVIDED
5 STATUS AS SPECIAL IMMIGRANTS.—Section 1059(c)(1) of
6 the National Defense Authorization Act for Fiscal Year
7 2006 (8 U.S.C. 1101 note) is amended by striking “during
8 any fiscal year shall not exceed 50.” and inserting the fol-
9 lowing: “may not exceed—

10 “(A) 300 during each of the fiscal years
11 2007, 2008, and 2009; and

12 “(B) 50 during any subsequent fiscal
13 year.”.

14 (e) CONFORMING AMENDMENTS.—

15 (1) DEFINITION OF SPECIAL IMMIGRANT.—Sec-
16 tion 101(a)(27)(M) (8 U.S.C. 1101(a)(27)(M)) is
17 amended by striking “subject to the numerical limi-
18 tations of section 203(b)(4),”.

19 (2) REPEAL OF TEMPORARY REDUCTION IN
20 WORKERS’ VISAS.—Section 203(e) of the Nicaraguan
21 Adjustment and Central American Relief Act (Public
22 Law 105–100; 8 U.S.C. 1153 note) is repealed.

1 **SEC. 504. NURSING SHORTAGE.**

2 (a) EXCEPTION TO DIRECT NUMERICAL LIMITA-
3 TIONS.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is
4 amended by adding at the end the following:

5 “(F)(i) During the period beginning on the date
6 of the enactment the STRIVE Act and ending on
7 September 30, 2017, an alien—

8 “(I) who is otherwise described in section
9 203(b); and

10 “(II) who is seeking admission to the
11 United States to perform labor in shortage oc-
12 cupations designated by the Secretary of Labor
13 for blanket certification under section
14 212(a)(5)(A) due to the lack of sufficient
15 United States workers able, willing, qualified,
16 and available for such occupations and for
17 which the employment of aliens will not ad-
18 versely affect the terms and conditions of simi-
19 larly employed United States workers.

20 “(ii) During the period described in clause (i),
21 the spouse or dependents of an alien described in
22 clause (i), if accompanying or following to join such
23 alien.”.

24 (b) EXCEPTION TO NONDISCRIMINATION REQUIRE-
25 MENTS.—Section 202(a)(1)(A) (8 U.S.C. 1152(a)(1)(A))

1 is amended by striking “201(b)(2)(A)(i)” and inserting
2 “201(b)”.

3 (c) EXCEPTION TO PER COUNTRY LEVELS FOR FAM-
4 ILY-SPONSORED AND EMPLOYMENT-BASED IMMI-
5 GRANTS.—Section 202(a)(2) (8 U.S.C. 1152(a)(2)), as
6 amended by section 502, is further amended by inserting
7 “, except for aliens described in section 201(b),” after
8 “any fiscal year”.

9 (d) INCREASING THE DOMESTIC SUPPLY OF NURSES
10 AND PHYSICAL THERAPISTS.—Not later than January 1,
11 2007, the Secretary of Health and Human Services
12 shall—

13 (1) submit to Congress a report on the source
14 of newly licensed nurses and physical therapists in
15 each State, which report shall—

16 (A) include the past 3 years for which data
17 are available;

18 (B) provide separate data for each occupa-
19 tion and for each State;

20 (C) separately identify those receiving their
21 initial license and those licensed by endorse-
22 ment from another State;

23 (D) within those receiving their initial li-
24 cense in each year, identify the number who re-
25 ceived their professional education in the

1 United States and those who received such edu-
2 cation outside the United States; and

3 (E) to the extent possible, identify, by
4 State of residence and country of education, the
5 number of nurses and physical therapists who
6 were educated in any of the 5 countries (other
7 than the United States) from which the most
8 nurses and physical therapists arrived;

9 (F) identify the barriers to increasing the
10 supply of nursing faculty, domestically trained
11 nurses, and domestically trained physical thera-
12 pists;

13 (G) recommend strategies to be followed by
14 Federal and State governments that would be
15 effective in removing such barriers, including
16 strategies that address barriers to advancement
17 to become registered nurses for other health
18 care workers, such as home health aides and
19 nurses assistants;

20 (H) recommend amendments to Federal
21 legislation that would increase the supply of
22 nursing faculty, domestically trained nurses,
23 and domestically trained physical therapists;

24 (I) recommend Federal grants, loans, and
25 other incentives that would provide increases in

1 nurse educators, nurse training facilities, and
2 other steps to increase the domestic education
3 of new nurses and physical therapists;

4 (J) identify the effects of nurse emigration
5 on the health care systems in their countries of
6 origin; and

7 (K) recommend amendments to Federal
8 law that would minimize the effects of health
9 care shortages in the countries of origin from
10 which immigrant nurses arrived;

11 (2) enter into a contract with the National
12 Academy of Sciences Institute of Medicine to deter-
13 mine the level of Federal investment under titles VII
14 and VIII of the Public Health Service Act necessary
15 to eliminate the domestic nursing and physical ther-
16 apist shortage not later than 7 years from the date
17 on which the report is published; and

18 (3) collaborate with other agencies, as appro-
19 priate, in working with ministers of health or other
20 appropriate officials of the 5 countries from which
21 the most nurses and physical therapists arrived,
22 to—

23 (A) address health worker shortages
24 caused by emigration;

1 (B) ensure that there is sufficient human
2 resource planning or other technical assistance
3 needed to reduce further health worker short-
4 ages in such countries.

5 (e) **AUTHORITY OF CONSULAR OFFICER TO GRANT**
6 **PREFERENCE STATUS.**—Section 204(b) of the Immigra-
7 tion and Nationality Act (8 U.S.C. 1154(b)) is amended—

8 (1) by striking “(b)” and inserting “(b)(1)”;
9 and

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

11 “(2) Notwithstanding paragraph (1), for indi-
12 vidual beneficiaries outside of the United States
13 seeking classification under section 203(b) who will
14 perform labor in shortage occupations designated by
15 the Secretary of Labor for blanket certification
16 under section 212(a)(5)(A) as lacking sufficient
17 United States workers able, willing, qualified, and
18 available for such occupations and for which the em-
19 ployment of aliens will not adversely affect the terms
20 and conditions of similarly employed United States
21 workers, a consular officer, upon petition of the im-
22 porting employer, shall have authority to determine
23 eligibility if the officer determines that the facts
24 stated in the petition are true and the alien is eligi-

1 ble for the preference. The consular officer shall also
2 have authority to grant the preference status.”.

3 **SEC. 505. EXPEDITED ADJUDICATION OF EMPLOYER PETI-**
4 **TIONS FOR ALIENS OF EXTRAORDINARY AR-**
5 **TISTIC ABILITY.**

6 Section 214(c) (8 U.S.C. 1184(c)) is amended—

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

10 (2) in paragraph (6)(D)—

11 (A) by striking “Any person” and inserting
12 “(i) Except as provided in clause (ii), any per-
13 son”; and

14 (B) adding at the end the following:

15 “(ii) The Secretary of Homeland Security shall
16 adjudicate each petition for an alien with extraor-
17 dinary ability in the arts (as described in section
18 101(a)(15)(O)(i)), an alien accompanying such an
19 alien (as described in clauses (ii) and (iii) of section
20 101(a)(15)(O)), or an alien described in section
21 101(a)(15)(P) not later than 30 days after—

22 “(I) the date on which the petitioner sub-
23 mits the petition with a written advisory opin-
24 ion, letter of no objection, or request for a waiv-
25 er; or

1 “(II) the date on which the 15-day period
2 described in clause (i) has expired, if the peti-
3 tioner has had an opportunity, as appropriate,
4 to supply rebuttal evidence.

5 “(iii) If a petition described in clause (ii) is not
6 adjudicated before the end of the 30-day period de-
7 scribed in clause (ii) and the petitioner is a qualified
8 nonprofit organization or an individual or entity pe-
9 titioning primarily on behalf of a qualified nonprofit
10 organization, the Secretary of Homeland Security
11 shall provide the petitioner with the premium-proc-
12 essing services referred to in section 286(u), without
13 a fee.”.

14 **SEC. 506. POWERLINE WORKERS AND BOILERMAKERS.**

15 Section 214(e) (8 U.S.C. 1184(e)) is amended by
16 adding at the end the following:

17 “(7) A citizen of Canada shall be admitted in the
18 same manner and under the same authority as a citizen
19 of Canada described in paragraph (2) if the citizen—

20 “(A) is a powerline worker or boilermaker;

21 “(B) has received significant training; and

22 “(C) seeks admission to the United States to
23 perform powerline repair and maintenance services
24 or boilermaker repair or maintenance services.”.

1 **SEC. 507. H-1B VISAS.**

2 (a) IN GENERAL.—Section 214(g)(5) (8 U.S.C.
3 1184(g)(5)) is amended—

4 (1) in subparagraph (B)—

5 (A) by striking “nonprofit research” and
6 inserting “nonprofit”;

7 (B) by inserting “Federal, State, or local”
8 before “governmental”; and

9 (C) by striking “or” at the end;

10 (2) in subparagraph (C)—

11 (A) by striking “until the number of aliens
12 who are exempted from such numerical limita-
13 tion during such fiscal year exceeds 20,000.”
14 and inserting “or has been awarded a medical
15 specialty certification based on post-doctoral
16 training and experience in the United States.”;
17 and

18 (B) by striking the period at the end and
19 inserting “; or”; and

20 (3) by adding at the end the following:

21 “(D) has earned a master’s or higher degree in
22 science, technology, engineering, or mathematics
23 from an institution of higher education outside of
24 the United States.”.

25 (b) APPLICABILITY.—The amendments made by sub-
26 section (a) shall apply to any petition or visa application

1 pending on the date of enactment of this Act and any peti-
2 tion or visa application filed on or after such date.

3 (c) MARKET-BASED VISA LIMITS.—Section 214(g)
4 (8 U.S.C. 1184(g)) is amended—

5 (1) in paragraph (1)—

6 (A) in the matter preceding subparagraph
7 (A), by striking “(beginning with fiscal year
8 1992)”; and

9 (B) by amending subparagraph (A) to read
10 as follows:

11 “(A) under section 101(a)(15)(H)(i)(b),
12 may not exceed—

13 “(i) 115,000 in fiscal year 2007; and

14 “(ii) the sum of 115,000 and the
15 number calculated under paragraph (9) in
16 fiscal year 2008 and each subsequent fiscal
17 year;”.

18 (2) in paragraph (8)—

19 (A) in subparagraph (B), by striking
20 clause (iv); and

21 (B) by striking subparagraph (D);

22 (3) by redesignating paragraphs (9), (10), and
23 (11) as paragraphs (10), (11), and (12), respec-
24 tively; and

1 (4) by inserting after paragraph (8) the fol-
2 lowing:

3 “(9) If the numerical limitation in paragraph
4 (1)(A)—

5 “(A) is reached during a given fiscal year,
6 the numerical limitation under paragraph
7 (1)(A) for the subsequent fiscal year shall be
8 equal to 120 percent of the numerical limitation
9 of the given fiscal year, not to exceed 180,000;
10 or

11 “(B) is not reached during a given fiscal
12 year, the numerical limitation under paragraph
13 (1)(A) for the subsequent fiscal year shall be
14 equal to the numerical limitation of the given
15 fiscal year.”.

16 **SEC. 508. UNITED STATES EDUCATED IMMIGRANTS.**

17 (a) EXEMPTION FROM NUMERICAL LIMITATIONS.—

18 (1) IN GENERAL.—Section 201(b)(1) (8 U.S.C.
19 1151(b)(1)), as amended by section 504(a), is fur-
20 ther amended by adding at the end the following:

21 “(G) Aliens who have earned a master’s or
22 higher degree from an accredited university in the
23 United States.

24 “(H) Aliens who have been awarded medical
25 specialty certification based on post-doctoral training

1 and experience in the United States preceding their
2 application for an immigrant visa under section
3 203(b).

4 “(I) Aliens who will perform labor in shortage
5 occupations designated by the Secretary of Labor for
6 blanket certification under section 212(a)(5)(A) as
7 lacking sufficient United States workers able, will-
8 ing, qualified, and available for such occupations and
9 for which the employment of aliens will not adversely
10 affect the terms and conditions of similarly employed
11 United States workers.

12 “(J) Aliens who have earned a master’s degree
13 or higher in science, technology, engineering, or
14 math and have been working in a related field in the
15 United States in a nonimmigrant status during the
16 3-year period preceding their application for an im-
17 migrant visa under section 203(b).

18 “(K) Aliens described in subparagraph (A) or
19 (B) of section 203(b)(1) or who have received a na-
20 tional interest waiver under section 203(b)(2)(B).

21 “(L) The spouse and minor children of an alien
22 described in subparagraph (G), (H), (I), (J), or
23 (K).”.

24 (2) APPLICABILITY.—The amendment made by
25 paragraph (1) shall apply to any visa application—

1 (A) pending on the date of the enactment
2 of this Act; or

3 (B) filed on or after such date of enact-
4 ment.

5 (b) LABOR CERTIFICATIONS.—Section
6 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amend-
7 ed—

8 (1) in subclause (I), by striking “, or” and in-
9 serting a semicolon;

10 (2) in subclause (II), by striking the period at
11 the end and inserting “; or”; and

12 (3) by adding at the end the following:

13 “(III) is a member of the profes-
14 sions and has a master’s degree or
15 higher from an accredited university
16 in the United States or has been
17 awarded medical specialty certification
18 based on post-doctoral training and
19 experience in the United States.”.

20 (c) ATTESTATION BY HEALTHCARE WORKERS.—

21 (1) REQUIREMENT FOR ATTESTATION.—Section
22 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended by add-
23 ing at the end the following:

24 “(E) HEALTHCARE WORKERS WITH OTHER
25 OBLIGATIONS.—

1 “(i) IN GENERAL.—An alien who
2 seeks to enter the United States for the
3 purpose of performing labor as a physician
4 or other healthcare worker is inadmissible
5 unless the alien submits to the Secretary of
6 Homeland Security or the Secretary of
7 State, as appropriate, an attestation that
8 the alien is not seeking to enter the United
9 States for such purpose during any period
10 in which the alien has an outstanding obli-
11 gation to the government of the alien’s
12 country of origin or the alien’s country of
13 residence.

14 “(ii) OBLIGATION DEFINED.—In this
15 subparagraph, the term ‘obligation’ means
16 an obligation incurred as part of a valid,
17 voluntary individual agreement in which
18 the alien received financial assistance to
19 defray the costs of education or training to
20 qualify as a physician or other healthcare
21 worker in consideration for a commitment
22 to work as a physician or other healthcare
23 worker in the alien’s country of origin or
24 the alien’s country of residence.

1 “(iii) WAIVER.—The Secretary of
2 Homeland Security may waive a finding of
3 inadmissibility under clause (i) if the Sec-
4 retary determines that—

5 “(I) the obligation was incurred
6 by coercion or other improper means;

7 “(II) the alien and the govern-
8 ment of the country to which the alien
9 has an outstanding obligation have
10 reached a valid, voluntary agreement,
11 pursuant to which the alien’s obliga-
12 tion has been deemed satisfied, or the
13 alien has shown to the satisfaction of
14 the Secretary that the alien has been
15 unable to reach such an agreement
16 because of coercion or other improper
17 means; or

18 “(III) the obligation should not
19 be enforced due to other extraordinary
20 circumstances, including undue hard-
21 ship that would be suffered by the
22 alien in the absence of a waiver.”.

23 (2) EFFECTIVE DATE AND APPLICATION.—

24 (A) EFFECTIVE DATE.—The amendment
25 made by paragraph (1) shall become effective

1 180 days after the date of the enactment of this
2 Act.

3 (B) APPLICATION BY THE SECRETARY.—

4 The Secretary shall begin to carry out section
5 212(a)(5)(E) of the Immigration and Nation-
6 ality Act, as added by paragraph (1), not later
7 than the effective date described in subpara-
8 graph (A), including the requirement for the at-
9 testation and the granting of a waiver described
10 in such section, regardless of whether regula-
11 tions to implement such section have been pro-
12 mulgated.

13 **SEC. 509. STUDENT VISA REFORM.**

14 (a) IN GENERAL.—

15 (1) NONIMMIGRANT CLASSIFICATION.—Section
16 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)) is amend-
17 ed to read as follows:

18 “(F) an alien—

19 “(i) who—

20 “(I) is a bona fide student qualified to
21 pursue a full course of study in mathe-
22 matics, engineering, technology, or the
23 sciences leading to a bachelors or graduate
24 degree and who seeks to enter the United
25 States for the purpose of pursuing such a

1 course of study consistent with section
2 214(m) at an institution of higher edu-
3 cation (as defined by section 101(a) of the
4 Higher Education Act of 1965 (20 U.S.C.
5 1001(a))) in the United States, particu-
6 larly designated by the alien and approved
7 by the Secretary of Homeland Security,
8 after consultation with the Secretary of
9 Education, which institution or place of
10 study shall have agreed to report to the
11 Secretary the termination of attendance of
12 each nonimmigrant student, and if any
13 such institution of learning or place of
14 study fails to make reports promptly the
15 approval shall be withdrawn; or

16 “(II) is engaged in temporary employ-
17 ment for optional practical training related
18 to such alien’s area of study following com-
19 pletion of the course of study described in
20 subclause (I) for a period or periods of not
21 more than 24 months;

22 “(ii) who—

23 “(I) has a residence in a foreign coun-
24 try which the alien has no intention of
25 abandoning, who is a bona fide student

1 qualified to pursue a full course of study,
2 and who seeks to enter the United States
3 temporarily and solely for the purpose of
4 pursuing such a course of study consistent
5 with section 214(m) at an established col-
6 lege, university, seminary, conservatory,
7 academic high school, elementary school, or
8 other academic institution or in a language
9 training program in the United States,
10 particularly designated by the alien and
11 approved by the Secretary of Homeland
12 Security, after consultation with the Sec-
13 retary of Education, which institution or
14 place of study shall have agreed to report
15 to the Secretary the termination of attend-
16 ance of each nonimmigrant student, and if
17 any such institution of learning or place of
18 study fails to make reports promptly the
19 approval shall be withdrawn; or

20 “(II) is engaged in temporary employ-
21 ment for optional practical training related
22 to such alien’s area of study following com-
23 pletion of the course of study described in
24 subclause (I) for a period or periods of not
25 more than 24 months;

1 “(iii) who is the spouse or minor child of
2 an alien described in clause (i) or (ii) if accom-
3 panying or following to join such an alien;

4 “(iv) who—

5 “(I) is a national of Canada or Mex-
6 ico, who maintains actual residence and
7 place of abode in the country of nation-
8 ality, who is described in clause (i) or (ii)
9 except that the alien’s qualifications for
10 and actual course of study may be full or
11 part-time, and who commutes to the
12 United States institution or place of study
13 from Canada or Mexico; or

14 “(II) is engaged in temporary employ-
15 ment for optional practical training related
16 to such the student’s area of study fol-
17 lowing completion of the course of study
18 described in subclause (I) for a period or
19 periods of not more than 24 months; or

20 “(v) who—

21 “(I) maintains actual residence and
22 place of abode in the alien’s country of na-
23 tionality; and

24 “(II) is described in clause (i), except
25 that the alien’s actual course of study may

1 involve a distance learning program, for
2 which the alien is temporarily visiting the
3 United States for a period of up to 30
4 days.”.

5 (2) ADMISSION.—Section 214(b) (8 U.S.C.
6 1184(b)) is amended by inserting “(F)(i),” before
7 “(L) or (V)”.

8 (3) CONFORMING AMENDMENT.—Section
9 214(m)(1) (8 U.S.C. 1184(m)(1)) is amended, in the
10 matter preceding subparagraph (A), by striking “(i)
11 or (iii)” and inserting “(i), (ii), (iv), or (v)”.

12 (b) OFF-CAMPUS WORK AUTHORIZATION FOR FOR-
13 EIGN STUDENTS.—

14 (1) IN GENERAL.—Aliens admitted as non-
15 immigrant students described in section
16 101(a)(15)(F), as amended by subsection (a), (8
17 U.S.C. 1101(a)(15)(F)) may be employed in an off-
18 campus position unrelated to the alien’s field of
19 study if—

20 (A) the alien has enrolled full-time at the
21 educational institution and is maintaining good
22 academic standing;

23 (B) the employer provides the educational
24 institution and the Secretary of Labor with an
25 attestation that the employer—

1 (i) has spent at least 21 days recruit-
2 ing United States citizens to fill the posi-
3 tion; and

4 (ii) will pay the alien and other simi-
5 larly situated workers at a rate equal to
6 not less than the greater of—

7 (I) the actual wage level for the
8 occupation at the place of employ-
9 ment; or

10 (II) the prevailing wage level for
11 the occupation in the area of employ-
12 ment; and

13 (C) the alien will not be employed more
14 than—

15 (i) 20 hours per week during the aca-
16 demic term; or

17 (ii) 40 hours per week during vacation
18 periods and between academic terms.

19 (2) DISQUALIFICATION.—If the Secretary of
20 Labor determines that an employer has provided an
21 attestation under paragraph (1)(B) that is materi-
22 ally false or has failed to pay wages in accordance
23 with the attestation, the employer, after notice and
24 opportunity for a hearing, shall be disqualified from
25 employing an alien student under paragraph (1).

1 **SEC. 510. L-1 VISA HOLDERS SUBJECT TO VISA BACKLOG.**

2 Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended
3 by adding at the end the following:

4 “(G) The limitations contained in subparagraph (D)
5 with respect to the duration of authorized stay shall not
6 apply to any nonimmigrant alien previously issued a visa
7 or otherwise provided nonimmigrant status under section
8 101(a)(15)(L) on whose behalf a petition under section
9 204(b) to accord the alien immigrant status under section
10 203(b), or an application for labor certification (if such
11 certification is required for the alien to obtain status
12 under such section 203(b)) has been filed, if 365 days or
13 more have elapsed since such filing. The Secretary of
14 Homeland Security shall extend the stay of an alien who
15 qualifies for an exemption under this subparagraph until
16 such time as a final decision is made on the alien’s lawful
17 permanent residence.”.

18 **SEC. 511. RETAINING WORKERS SUBJECT TO GREEN CARD**
19 **BACKLOG.**

20 (a) ADJUSTMENT OF STATUS.—

21 (1) IN GENERAL.—Section 245 (8 U.S.C. 1255)
22 is amended by adding at the end the following:

23 “(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-
24 BASED IMMIGRANTS.—

25 “(1) ELIGIBILITY.—The Secretary of Homeland
26 Security shall promulgate regulations to provide for

1 the filing of an application for adjustment of status
2 by an alien (and any eligible dependents of such
3 alien), regardless of whether an immigrant visa is
4 immediately available at the time the application is
5 filed, if the alien—

6 “(A) has an approved petition under sub-
7 paragraph (E) or (F) of section 204(a)(1); or

8 “(B) at the discretion of the Secretary, has
9 a pending petition under subparagraph (E) or
10 (F) of section 204(a)(1).

11 “(2) VISA AVAILABILITY.—An application filed
12 pursuant to paragraph (1) may not be approved
13 until an immigrant visa becomes available.

14 “(3) FEES.—If an application is filed pursuant
15 to paragraph (1), the beneficiary of such application
16 shall pay a supplemental fee of \$500. Such fee may
17 not be charged to any dependent accompanying or
18 following to join such beneficiary.

19 “(4) EXTENSION OF EMPLOYMENT AUTHORIZA-
20 TION AND ADVANCED PAROLE DOCUMENT.—

21 “(A) IN GENERAL.—The Secretary of
22 Homeland Security shall provide employment
23 authorization and advanced parole documents,
24 in 3-year increments, to beneficiaries of an ap-
25 plication for adjustment of status based on a

1 petition that is filed or, at the discretion of the
2 Secretary, pending, under subparagraph (E) or
3 (F) of section 204(a)(1).

4 “(B) FEE ADJUSTMENTS.—Application
5 fees under this subsection may be adjusted in
6 accordance with the 3-year period of validity as-
7 signed to the employment authorization or ad-
8 vanced parole documents under subparagraph
9 (A).”.

10 (b) USE OF FEES.—Section 286 (8 U.S.C. 1356) is
11 amended—

12 (1) in subsection (m)—

13 (A) by striking “Notwithstanding any
14 other provisions of law,” and inserting the fol-
15 lowing:

16 “(c) IMMIGRATION EXAMINATIONS FEE ACCOUNT.—

17 “(1) IN GENERAL.—Notwithstanding any other
18 provision of law, all fees collected under section
19 245(n)(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 “(C) 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(n)(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. 512. STREAMLINING THE ADJUDICATION PROCESS**
2 **FOR ESTABLISHED EMPLOYERS.**

3 Section 214(c) (8. U.S.C. 1184) is amended by add-
4 ing at the end the following:

5 “(15) Not later than 180 days after the date of the
6 enactment of the STRIVE Act, the Secretary of Homeland
7 Security shall establish a pre-certification procedure for
8 employers who file multiple petitions described in this sub-
9 section or section 203(b). Such precertification procedure
10 shall enable an employer to avoid repeatedly submitting
11 documentation that is common to multiple petitions and
12 establish through a single filing criteria relating to the em-
13 ployer and the offered employment opportunity.”.

14 **SEC. 513. PROVIDING PREMIUM PROCESSING OF EMPLOY-**
15 **MENT-BASED VISA PETITIONS.**

16 (a) IN GENERAL.—Pursuant to section 286(u) of the
17 Immigration and Nationality Act (8 U.S.C. 1356(u)), the
18 Secretary of Homeland Security shall establish and collect
19 a fee for premium processing of employment-based immi-
20 grant petitions.

21 (b) APPEALS.—Pursuant to such section 286(u), the
22 Secretary of Homeland Security shall establish and collect
23 a fee for premium processing of an administrative appeal
24 of any decision on a permanent employment-based immi-
25 grant petition.

1 **SEC. 514. ELIMINATING PROCEDURAL DELAYS IN LABOR**
2 **CERTIFICATION PROCESS.**

3 (a) **PREVAILING WAGE RATE.—**

4 (1) **REQUIREMENT TO PROVIDE.—**The Sec-
5 retary of Labor shall provide prevailing wage deter-
6 minations to employers seeking a labor certification
7 for aliens pursuant to part 656 of title 20, Code of
8 Federal Regulations (or any successor regulation).
9 The Secretary of Labor may not delegate this func-
10 tion to any agency of a State.

11 (2) **SCHEDULE FOR DETERMINATION.—**Except
12 as provided in paragraph (3), the Secretary of Labor
13 shall provide a response to an employer's request for
14 a prevailing wage determination not later than 20
15 calendar days after the date the Secretary of Labor
16 receives such a request. If the Secretary of Labor
17 fails to reply during such 20-day period, the wage
18 proposed by the employer shall be the valid pre-
19 vailing wage rate.

20 (3) **USE OF SURVEYS.—**The Secretary of Labor
21 shall accept an alternative wage survey provided by
22 the employer unless the Secretary of Labor deter-
23 mines that the wage component of the Occupational
24 Employment Statistics Survey is more accurate for
25 the occupation in the labor market area.

1 (b) PLACEMENT OF JOB ORDER.—The Secretary of
2 Labor shall maintain a website with links to the official
3 website of each workforce agency of a State, and such offi-
4 cial website shall contain instructions on the filing of a
5 job order in order to satisfy the job order requirements
6 of section 656.17(e)(1) of title 20, Code of Federal Regu-
7 lations (or any successor regulation).

8 (c) TECHNICAL CORRECTIONS.—The Secretary of
9 Labor shall establish a process by which employers seeking
10 certification under section 212(a)(5) of the Immigration
11 and Nationality Act (8 U.S.C. 1182(a)(5)), as amended
12 by section 508(b), may make technical corrections to ap-
13 plications in order to avoid requiring employers to conduct
14 additional recruitment to correct an initial technical error.
15 A technical error shall include any error that would not
16 have a material effect on the validity of the employer's
17 recruitment of able, willing, and qualified United States
18 workers.

19 (d) ADMINISTRATIVE APPEALS.—Motions to recon-
20 sider, and administrative appeals of, a denial of a perma-
21 nent labor certification application, shall be decided by the
22 Secretary of Labor not later than 60 days after the date
23 of the filing of such motion or such appeal.

24 (e) APPLICATIONS UNDER PREVIOUS SYSTEM.—Not
25 later than 180 days after the date of the enactment of

1 this Act, the Secretary of Labor shall process and issue
2 decisions on all applications for permanent alien labor cer-
3 tification that were filed before March 28, 2005.

4 (f) **EFFECTIVE DATE.**—This section shall take effect
5 90 days after the date of the enactment of this Act, wheth-
6 er or not the Secretary of Labor has amended the regula-
7 tions under part 656 of title 20, Code of Federal Regula-
8 tions, to implement such changes.

9 **SEC. 515. VISA REVALIDATION.**

10 (a) **IN GENERAL.**—Section 222 (8 U.S.C. 1202) is
11 amended by adding at the end the following:

12 “(i) The Secretary of State shall permit an alien
13 granted a nonimmigrant visa under subparagraph (E),
14 (H), (I), (L), (O), or (P) of section 101(a)(15) to apply
15 for a renewal of such visa within the United States if—

16 “(1) such visa is valid or did not expire more
17 than 12 months before the date of such application;

18 “(2) the alien is seeking a nonimmigrant visa
19 under the same subparagraph under which the alien
20 had previously received a visa; and

21 “(3) the alien has complied with the immigra-
22 tion laws and regulations of the United States.”.

23 (b) **CONFORMING AMENDMENT.**—Section 222(h) of
24 such Act is amended, in the matter preceding subpara-

1 graph (1), by inserting “and except as provided under sub-
2 section (i),” after “Act”.

3 **SEC. 516. RELIEF FOR MINOR CHILDREN AND WIDOWS.**

4 (a) IN GENERAL.—Section 201(b)(2) (8 U.S.C.
5 1151(b)(2)) is amended to read as follows:

6 “(2)(A)(i) Aliens admitted under section 211(a)
7 on the basis of a prior issuance of a visa under sec-
8 tion 203(a) to their accompanying parent who is an
9 immediate relative.

10 “(ii) In this subparagraph, the term ‘immediate
11 relative’ means a child, spouse, or parent of a citizen
12 of the United States (and each child of such child,
13 spouse, or parent who is accompanying or following
14 to join the child, spouse, or parent), except that, in
15 the case of parents, such citizens shall be at least 21
16 years of age.

17 “(iii) An alien who was the spouse of a citizen
18 of the United States for not less than 2 years at the
19 time of the citizen’s death or, if married for less
20 than 2 years at the time of the citizen’s death,
21 proves by a preponderance of the evidence that the
22 marriage was entered into in good faith and not
23 solely for the purpose of obtaining an immigration
24 benefit and was not legally separated from the cit-
25 izen at the time of the citizen’s death, and each child

1 of such alien, shall be considered, for purposes of
2 this subsection, to remain an immediate relative
3 after the date of the citizen's death if the spouse
4 files a petition under section 204(a)(1)(A)(ii) before
5 the earlier of—

6 “(I) 2 years after such date; or

7 “(II) the date on which the spouse remar-
8 ries.

9 “(iv) In this clause, an alien who has filed a pe-
10 tition under clause (iii) or (iv) of section
11 204(a)(1)(A) remains an immediate relative if the
12 United States citizen spouse or parent loses United
13 States citizenship on account of the abuse.

14 “(B) Aliens born to an alien lawfully admitted
15 for permanent residence during a temporary visit
16 abroad.”.

17 (b) PETITION.—Section 204(a)(1)(A)(ii) (8 U.S.C.
18 1154(a)(1)(A)(ii)) is amended by striking “in the second
19 sentence of section 201(b)(2)(A)(i) also” and inserting “in
20 section 201(b)(2)(A)(iii) or an alien child or alien parent
21 described in the 201(b)(2)(A)(iv)”.

22 (c) RETENTION OF IMMEDIATE RELATIVE STA-
23 TUS.—

24 (1) IN GENERAL.—In applying clause (iii) of
25 section 201(b)(2)(A) of the Immigration and Na-

1 tionality Act, as added by subsection (a), to an alien
2 whose citizen relative died before the date of the en-
3 actment of this Act, the alien relative, notwith-
4 standing the deadlines specified in such clause, may
5 file the classification petition under section
6 204(a)(1)(A)(ii) of such Act not later than 2 years
7 after the date of the enactment of this Act.

8 (2) ELIGIBILITY FOR PAROLE.—If an alien was
9 excluded, deported, removed or departed voluntarily
10 before the date of the enactment of this Act based
11 solely upon the alien’s lack of classification as an
12 immediate relative (as defined by 201(b)(2)(A)(ii) of
13 the Immigration and Nationality Act) due to the
14 citizen’s death—

15 (A) such alien shall be eligible for parole
16 into the United States pursuant to the Attorney
17 General’s discretionary authority under section
18 212(d)(5) of such Act; and

19 (B) such alien’s application for adjustment
20 of status shall be considered notwithstanding
21 section 212(a)(9) of such Act.

22 (d) ADJUSTMENT OF STATUS.—

23 (1) IN GENERAL.—Section 245 (8 U.S.C.
24 1255), as amended by sections 407 and 511, is fur-
25 ther amended by adding at the end the following:

1 “(o) APPLICATION FOR ADJUSTMENT OF STATUS BY
2 SURVIVING SPOUSES, PARENTS, AND CHILDREN.—

3 “(1) IN GENERAL.—Any alien described in
4 paragraph (2) who applies for adjustment of status
5 before the death of the qualifying relative, may have
6 such application adjudicated as if such death had
7 not occurred.

8 “(2) ALIEN DESCRIBED.—An alien described in
9 this paragraph is an alien who—

10 “(A) is an immediate relative (as described
11 in section 201(b)(2)(A));

12 “(B) is a family-sponsored immigrant (as
13 described in subsection (a) or (d) of section
14 203);

15 “(C) is a derivative beneficiary of an em-
16 ployment-based immigrant under section 203(b)
17 (as described in section 203(d)); or

18 “(D) is a derivative beneficiary of a diver-
19 sity immigrant (as described in section
20 203(c)).”.

21 (2) TRANSITION PERIOD.—

22 (A) IN GENERAL.—Notwithstanding a de-
23 nial of an application for adjustment of status
24 for an alien whose qualifying relative died be-
25 fore the date of the enactment of this Act, such

1 application may be renewed by the alien
2 through a motion to reopen, without fee, if such
3 motion is filed not later than 2 years after such
4 date of enactment.

5 (B) ELIGIBILITY FOR PAROLE.—If an
6 alien was excluded, deported, removed or de-
7 parted voluntarily before the date of the enact-
8 ment of this Act—

9 (i) such alien shall be eligible for pa-
10 role into the United States pursuant to the
11 Attorney General’s discretionary authority
12 under section 212(d)(5) of the Immigra-
13 tion and Nationality Act; and

14 (ii) such alien’s application for adjust-
15 ment of status shall be considered notwith-
16 standing section 212(a)(9) of such Act.

17 (e) PROCESSING OF IMMIGRANT VISAS.—

18 (1) IN GENERAL.—Section 204(b) (8 U.S.C.
19 1154), as amended by section 204(b) of this Act, is
20 further amended—

21 (A) by striking “After an investigation”
22 and inserting the following:

23 “(1) IN GENERAL.—After an investigation”;
24 and

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

1 “(2) DEATH OF QUALIFYING RELATIVE.—

2 “(A) IN GENERAL.—Any alien described in
3 paragraph (2) whose qualifying relative died be-
4 fore the completion of immigrant visa proc-
5 essing may have an immigrant visa application
6 adjudicated as if such death had not occurred.
7 An immigrant visa issued before the death of
8 the qualifying relative shall remain valid after
9 such death.

10 “(B) ALIEN DESCRIBED.—An alien de-
11 scribed in this paragraph is an alien who—

12 “(i) is an immediate relative (as de-
13 scribed in section 201(b)(2)(A));

14 “(ii) is a family-sponsored immigrant
15 (as described in subsection (a) or (d) of
16 section 203);

17 “(iii) is a derivative beneficiary of an
18 employment-based immigrant under section
19 203(b) (as described in section 203(d)); or

20 “(iv) is a derivative beneficiary of a
21 diversity immigrant (as described in sec-
22 tion 203(c)).”.

23 (2) TRANSITION PERIOD.—

24 (A) IN GENERAL.—Notwithstanding a de-
25 nial or revocation of an application for an immi-

1 grant visa for an alien whose qualifying relative
2 died before the date of the enactment of this
3 Act, such application may be renewed by the
4 alien through a motion to reopen, without fee,
5 if such motion is filed not later than 2 years
6 after such date of enactment.

7 (B) INAPPLICABILITY OF BARS.—Notwith-
8 standing section 212(a)(9) of the Immigration
9 and Nationality Act (8 U.S.C. 1182(a)(9)), the
10 Secretary shall consider the application for an
11 immigrant visa submitted by an alien who was
12 excluded, deported, removed, or departed volun-
13 tarily before the date of the enactment of this
14 Act.

15 (f) NATURALIZATION.—Section 319(a) (8 U.S.C.
16 1429(a)) is amended by inserting “(or, if the spouse is
17 deceased, the spouse was a citizen of the United States)”
18 after “citizen of the United States”.

19 **SEC. 517. RELIEF FOR WIDOWS AND ORPHANS.**

20 (a) NEW SPECIAL IMMIGRANT CATEGORY.—

21 (1) CERTAIN CHILDREN AND WOMEN AT RISK
22 OF HARM.—Section 101(a)(27) (8 U.S.C.
23 1101(a)(27)) is amended—

24 (A) in subparagraph (L), by adding a
25 semicolon at the end;

1 (B) in subparagraph (M), by striking the
2 period at the end and inserting “; or”; and

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

4 “(N) subject to subsection (j), an immi-
5 grant who is not present in the United States—

6 “(i) who is—

7 “(I) referred to a consular, immi-
8 gration, or other designated official by
9 a United States Government agency,
10 an international organization, or rec-
11 ognized nongovernmental entity des-
12 ignated by the Secretary of State for
13 purposes of such referrals; and

14 “(II) determined by such official
15 to be a minor under 18 years of age
16 (as determined under subsection
17 (j)(5))—

18 “(aa) for whom no parent or
19 legal guardian is able to provide
20 adequate care;

21 “(bb) who faces a credible
22 fear of harm related to his or her
23 age;

24 “(cc) who lacks adequate
25 protection from such harm; and

1 “(dd) for whom it has been
2 determined to be in his or her
3 best interests to be admitted to
4 the United States; or

5 “(ii) who is—

6 “(I) referred to a consular or im-
7 migration official by a United States
8 Government agency, an international
9 organization or recognized nongovern-
10 mental entity designated by the Sec-
11 retary of State for purposes of such
12 referrals; and

13 “(II) determined by such official
14 to be a female who has—

15 “(aa) a credible fear of
16 harm related to her sex; and

17 “(bb) a lack of adequate
18 protection from such harm.”.

19 (2) STATUTORY CONSTRUCTION.—Section 101
20 (8 U.S.C. 1101) is amended by adding at the end
21 the following:

22 “(j)(1) No natural parent or prior adoptive parent
23 of any alien provided special immigrant status under sub-
24 section (a)(27)(N)(i) shall thereafter, by virtue of such

1 parentage, be accorded any right, privilege, or status
2 under this Act.

3 “(2)(A) No alien who qualifies for a special immi-
4 grant visa under subsection (a)(27)(N)(ii) may apply for
5 derivative status or petition for any spouse who is rep-
6 resented by the alien as missing, deceased, or the source
7 of harm at the time of the alien’s application and admis-
8 sion. The Secretary of Homeland Security may waive this
9 requirement for an alien who demonstrates that the alien’s
10 representations regarding the spouse were bona fide.

11 “(B) An alien who qualifies for a special immigrant
12 visa under subsection (a)(27)(N) may apply for derivative
13 status or petition for any sibling under the age of 18 years
14 or children under the age of 18 years of any such alien,
15 if accompanying or following to join the alien. For pur-
16 poses of this subparagraph, a determination of age shall
17 be made using the age of the alien on the date the petition
18 is filed with the Department of Homeland Security.

19 “(3) An alien who qualifies for a special immigrant
20 visa under subsection (a)(27)(N) shall be treated in the
21 same manner as a refugee solely for purposes of section
22 412.

23 “(4) The provisions of paragraphs (4), (5), and
24 (7)(A) of section 212(a) shall not be applicable to any
25 alien seeking admission to the United States under sub-

1 section (a)(27)(N), and the Secretary of Homeland Secu-
2 rity may waive any other provision of such section (other
3 than paragraph 2(C) or subparagraph (A), (B), (C), or
4 (E) of paragraph (3)) with respect to such an alien for
5 humanitarian purposes, to assure family unity, or when
6 it is otherwise in the public interest. Any such waiver by
7 the Secretary shall be in writing and shall be granted only
8 on an individual basis following an investigation. The Sec-
9 retary shall submit an annual report to Congress on the
10 number of waivers granted under this paragraph during
11 the previous fiscal year and a summary of the reasons for
12 granting such waivers.

13 “(5) For purposes of subsection (a)(27)(N)(i)(II), a
14 determination of age shall be made using the age of the
15 alien on the date on which the alien was referred to the
16 consular, immigration, or other designated official.

17 “(6) The Secretary of Homeland Security shall waive
18 any application fee for a special immigrant visa for an
19 alien described in section 101(a)(27)(N).”.

20 (3) EXPEDITED PROCESS.—Not later than 45
21 days after the date of referral to a consular, immi-
22 gration, or other designated official (as described in
23 section 101(a)(27)(N) of the Immigration and Na-
24 tionality Act, as added by paragraph (1))—

1 (A) special immigrant status shall be adju-
2 dicated; and

3 (B) if special immigrant status is granted,
4 the alien shall be paroled into the United States
5 pursuant to section 212(d)(5) of that Act (8
6 U.S.C. 1182(d)(5)) and allowed to apply for ad-
7 justment of status to permanent residence
8 under section 245 of that Act (8 U.S.C. 1255)
9 not later than 1 year after the alien's arrival in
10 the United States.

11 (4) REPORT TO CONGRESS.—Not later than 1
12 year after the date of the enactment of this Act, the
13 Secretary shall submit a report to the Committee on
14 the Judiciary of the Senate and the Committee on
15 the Judiciary of the House of Representatives that
16 includes—

17 (A) data related to the implementation of
18 this section and the amendments made by this
19 section;

20 (B) data regarding the number of place-
21 ments of females and children who faces a cred-
22 ible fear of harm as referred to in section
23 101(a)(27)(N) of the Immigration and Nation-
24 ality Act, as added by paragraph (1); and

1 (C) any other information that the Sec-
2 retary considers appropriate.

3 (5) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated such sums
5 as may be necessary to carry out this subsection and
6 the amendments made by this subsection.

7 (b) REQUIREMENTS FOR ALIENS.—

8 (1) REQUIREMENT BEFORE ENTRY INTO THE
9 UNITED STATES.—

10 (A) DATABASE SEARCH.—An alien may
11 not be admitted to the United States unless the
12 Secretary has ensured that a search of each
13 database maintained by an agency or depart-
14 ment of the United States has been conducted
15 to determine whether such alien is ineligible to
16 be admitted to the United States on criminal,
17 security, or related grounds.

18 (B) COOPERATION AND SCHEDULE.—The
19 Secretary and the head of each appropriate
20 agency or department of the United States shall
21 cooperate to ensure that each database search
22 required under subparagraph (A) is completed
23 not later than 45 days after the date on which
24 an alien files a petition seeking a special immi-
25 gration visa under section 101(a)(27)(N) of the

1 Immigration and Nationality Act, as added by
2 subsection (a)(1).

3 (2) REQUIREMENT AFTER ENTRY INTO THE
4 UNITED STATES.—

5 (A) REQUIREMENT TO SUBMIT FINGER-
6 PRINTS.—

7 (i) IN GENERAL.—Not later than 30
8 days after the date that an alien enters the
9 United States, the alien shall be
10 fingerprinted and submit to the Secretary
11 such fingerprints and any other personal
12 biometric data required by the Secretary.

13 (ii) OTHER REQUIREMENTS.—The
14 Secretary may prescribe regulations that
15 permit fingerprints submitted by an alien
16 under section 262 of the Immigration and
17 Nationality Act (8 U.S.C. 1302) or any
18 other provision of law to satisfy the re-
19 quirement to submit fingerprints of clause
20 (i).

21 (B) DATABASE SEARCH.—The Secretary
22 shall ensure that a search of each database that
23 contains fingerprints that is maintained by an
24 agency or department of the United States be
25 conducted to determine whether such alien is

1 ineligible for an adjustment of status under any
2 provision of the Immigration and Nationality
3 Act (8 U.S.C. 1101 et seq.) on criminal, secu-
4 rity, or related grounds.

5 (C) COOPERATION AND SCHEDULE.—The
6 Secretary and the head of each appropriate
7 agency or department of the United States shall
8 work cooperatively to ensure that each database
9 search required by subparagraph (B) is com-
10 pleted not later than 180 days after the date on
11 which the alien enters the United States.

12 (D) ADMINISTRATIVE AND JUDICIAL RE-
13 VIEW.—

14 (i) IN GENERAL.—There may be no
15 review of a determination by the Secretary,
16 after a search required by subparagraph
17 (B), that an alien is ineligible for an ad-
18 justment of status, under any provision of
19 the Immigration and Nationality Act (8
20 U.S.C. 1101 et seq.) on criminal, security,
21 or related grounds except as provided in
22 this subparagraph.

23 (ii) ADMINISTRATIVE REVIEW.—An
24 alien may appeal a determination described
25 in clause (i) through the Administrative

1 Appeals Office of the Bureau of Citizen-
2 ship and Immigration Services. The Sec-
3 retary shall ensure that a determination on
4 such appeal is made not later than 60 days
5 after the date that the appeal is filed.

6 (iii) JUDICIAL REVIEW.—There may
7 be no judicial review of a determination de-
8 scribed in clause (i).

9 **SEC. 518. SONS AND DAUGHTERS OF FILIPINO WORLD WAR**
10 **II VETERANS.**

11 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended
12 by sections 504 and 508, is further amended by adding
13 at the end the following:

14 “(M) Aliens who are eligible for a visa under
15 paragraph (1) or (3) of section 203(a) and are the
16 son or daughter of a citizen of the United States
17 who was naturalized pursuant to section 405 of the
18 Immigration Act of 1990 (8 U.S.C. 1440 note).”.

19 **SEC. 519. DETERMINATIONS UNDER THE HAITIAN REFUGEE**
20 **IMMIGRATION FAIRNESS ACT OF 1998.**

21 (a) IN GENERAL.—Section 902(d) of the Haitian
22 Refugee Immigration Fairness Act of 1998 (8 U.S.C.
23 1255 note) is amended by adding at the end the following:

24 “(3) DETERMINATIONS WITH RESPECT TO
25 CHILDREN.—

1 “(A) USE OF APPLICATION FILING
2 DATE.—Determinations made under this sub-
3 section as to whether an individual is a child of
4 a parent shall be made using the age and status
5 of the individual on October 21, 1998.

6 “(B) APPLICATION SUBMISSION BY PAR-
7 ENT.—Notwithstanding paragraph (1)(C), an
8 application under this subsection filed based on
9 status as a child may be filed for the benefit of
10 such child by a parent or guardian of the child,
11 if the child is physically present in the United
12 States on such filing date.”.

13 (b) NEW APPLICATIONS AND MOTIONS TO RE-
14 OPEN.—

15 (1) NEW APPLICATIONS.—Notwithstanding sec-
16 tion 902(a)(1)(A) of the Haitian Refugee Immigra-
17 tion Fairness Act of 1998, an alien who is eligible
18 for adjustment of status under such Act may submit
19 an application for adjustment of status under such
20 Act not later than the later of—

21 (A) 2 years after the date of the enactment
22 of this Act; or

23 (B) 1 year after the date on which final
24 regulations are promulgated to implement this

1 section and the amendment made by subsection
2 (a).

3 (2) MOTIONS TO REOPEN.—The Secretary shall
4 establish procedures for the reopening and reconsid-
5 eration of applications for adjustment of status
6 under the Haitian Refugee Immigration Fairness
7 Act of 1998 that are affected by the amendment
8 made by subsection (a).

9 (3) RELATIONSHIP OF APPLICATION TO CER-
10 TAIN ORDERS.—Section 902(a)(3) of the Haitian
11 Refugee Immigration Fairness Act of 1998 shall
12 apply to an alien present in the United States who
13 has been ordered excluded, deported, removed, or or-
14 dered to depart voluntarily, and who files an applica-
15 tion under paragraph (1) or a motion under para-
16 graph (2), in the same manner as such section
17 902(a)(3) applied to aliens filing applications for ad-
18 justment of status under such Act prior to April 1,
19 2000.

20 (c) INADMISSIBILITY DETERMINATION.—Section 902
21 of the Haitian Refugee Immigration Fairness Act of 1998
22 (8 U.S.C. 1255 note) is amended in subsections (a)(1)(B)
23 and (d)(1)(D) by inserting “(6)(C)(i),” after “(6)(A),”.

1 **SEC. 520. S VISAS.**

2 (a) **EXPANSION OF S VISA CLASSIFICATION.**—Sec-
3 tion 101(a)(15)(S) (8 U.S.C. 1101(a)(15)(S)) is amend-
4 ed—

5 (1) in clause (i)—

6 (A) by striking “Attorney General” each
7 place it appears and inserting “Secretary of
8 Homeland Security”;

9 (B) in subclause (I), by inserting before
10 the semicolon, “, including a criminal enterprise
11 undertaken by a foreign government, its agents,
12 representatives, or officials”;

13 (C) in subclause (III), by inserting “if the
14 information concerns a criminal enterprise un-
15 dertaken by an individual or organization that
16 is not a foreign government, its agents, rep-
17 resentatives, or officials,” before “whose”; and

18 (D) by striking “or” at the end; and

19 (2) in clause (ii)—

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

22 (B) by striking “1956,” and all that fol-
23 lows through “the alien;” and inserting the fol-
24 lowing: “1956; or

25 “(iii) the Secretary of Homeland Security
26 and the Secretary of State, in consultation with

1 the Director of Central Intelligence, jointly de-
2 termine—

3 “(I) is in possession of critical reliable
4 information concerning the activities of
5 governments or organizations, or their
6 agents, representatives, or officials, with
7 respect to weapons of mass destruction
8 and related delivery systems, if such gov-
9 ernments or organizations are at risk of
10 developing, selling, or transferring such
11 weapons or related delivery systems; and

12 “(II) is willing to supply or has sup-
13 plied, fully and in good faith, information
14 described in subclause (I) to appropriate
15 persons within the United States Govern-
16 ment; and

17 if the Secretary of Homeland Security (or with
18 respect to clause (ii), the Secretary of State and
19 the Secretary of Homeland Security jointly)
20 considers it to be appropriate, the spouse, chil-
21 dren, married and unmarried sons and daugh-
22 ters, and parents of an alien described in clause
23 (i), (ii), or (iii) if accompanying, or following to
24 join, the alien;”.

1 (b) NUMERICAL LIMITATION.—Section 214(k)(1) (8
2 U.S.C. 1184(k)(1)) is amended to read as follows:

3 “(1) The number of aliens who may be provided a
4 visa as nonimmigrants under section 101(a)(15)(S) in any
5 fiscal year may not exceed 1,000.”.

6 (c) REPORTS.—

7 (1) CONTENT.—Section 214(k)(4) (8 U.S.C.
8 1184(k)(4)) is amended—

9 (A) in the matter preceding subparagraph

10 (A)—

11 (i) by striking “Attorney General”
12 and inserting “Secretary of Homeland Se-
13 curity”; and

14 (ii) by striking “concerning” and in-
15 serting “that includes”;

16 (B) in subparagraph (D), by striking
17 “and” at the end;

18 (C) in subparagraph (E), by striking the
19 period at the end and inserting “; and”; and

20 (D) by adding at the end the following:

21 “(F) if the total number of such nonimmigrants
22 admitted is fewer than 25 percent of the total num-
23 ber provided for under paragraph (1)—

24 “(i) the reasons for the reduced number of
25 such nonimmigrants;

1 “(ii) the efforts made by the Secretary of
2 Homeland Security to admit such non-
3 immigrants; and

4 “(iii) any extenuating circumstances that
5 contributed to the reduced number of such non-
6 immigrants.”.

7 (2) FORM OF REPORT.—Section 214(k) (8
8 U.S.C. 1184(k)) is amended by adding at the end
9 the following:

10 “(5) To the extent required by law and if it is
11 in the interests of national security or the security
12 of such nonimmigrants that are admitted, as deter-
13 mined by the Secretary of Homeland Security—

14 “(A) the information contained in a report
15 described in paragraph (4) may be classified;
16 and

17 “(B) the Secretary of Homeland Security
18 shall, to the extent feasible, submit a non-classi-
19 fied version of the report to the Committee on
20 the Judiciary of the House of Representatives
21 and the Committee on the Judiciary of the Sen-
22 ate.”.

23 **SEC. 521. L VISA LIMITATIONS.**

24 Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amend-
25 ed—

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

4 (2) in subparagraph (E), by striking “In the
5 case of an alien spouse admitted under section
6 101(a)(15)(L), who” and inserting “Except as pro-
7 vided in subparagraph (H), if an alien spouse admit-
8 ted under section 101(a)(15)(L)”;

9 (3) by adding at the end the following:

10 “(G)(i) If the beneficiary of a petition under
11 this subsection is coming to the United States to
12 open, or be employed in, a new facility, the petition
13 may be approved for a period not to exceed 12
14 months only if the employer operating the new facil-
15 ity has—

16 “(I) a business plan;

17 “(II) sufficient physical premises to carry
18 out the proposed business activities; and

19 “(III) the financial ability to commence
20 doing business immediately upon the approval
21 of the petition.

22 “(ii) An extension of the approval period under
23 clause (i) may not be granted until the importing
24 employer submits to the Secretary of Homeland Se-
25 curity—

1 “(I) evidence that the importing employer
2 meets the requirements of this subsection;

3 “(II) evidence that the beneficiary meets
4 the requirements of section 101(a)(15)(L);

5 “(III) a statement summarizing the origi-
6 nal petition;

7 “(IV) evidence that the importing employer
8 has fully complied with the business plan sub-
9 mitted under clause (i);

10 “(V) evidence of the truthfulness of any
11 representations made in connection with the fil-
12 ing of the original petition;

13 “(VI) evidence that the importing em-
14 ployer, during the previous 12 months, has been
15 doing business at the new facility through reg-
16 ular, systematic, and continuous provision of
17 goods or services, or has otherwise been taking
18 commercially reasonable steps to establish the
19 new facility as a commercial enterprise;

20 “(VII) a statement of the duties the bene-
21 ficiary has performed at the new facility during
22 the preceding 12-month period and the duties
23 the beneficiary will perform at the new facility
24 during the extension period approved under this
25 clause;

1 “(VIII) a statement describing the staffing
2 at the new facility, including the number of em-
3 ployees and the types of positions held by such
4 employees;

5 “(IX) evidence of wages paid to employees
6 if the beneficiary will be employed in a manage-
7 rial or executive capacity;

8 “(X) evidence of the financial status of the
9 new facility; and

10 “(XI) any other evidence or data pre-
11 scribed by the Secretary.

12 “(iii) Notwithstanding subclauses (I) through
13 (VI) of clause (ii) and subject to the maximum pe-
14 riod of authorized admission set forth in subpara-
15 graph (D), the Secretary of Homeland Security may
16 approve a subsequently filed petition on behalf of the
17 beneficiary to continue employment at the facility
18 described in this subsection for a period beyond the
19 initially granted 12-month period if the importing
20 employer demonstrates that the failure to satisfy any
21 of the requirements described in those subclauses
22 was directly caused by extraordinary circumstances
23 beyond the control of the importing employer.

24 “(H)(i) The Secretary of Homeland Security
25 may not authorize the spouse of an alien described

1 under section 101(a)(15)(L), who is a dependent of
2 a beneficiary under subparagraph (G), to engage in
3 employment in the United States during the initial
4 12-month period described in subparagraph (G)(i).

5 “(ii) A spouse described in clause (i) may be
6 provided employment authorization upon the ap-
7 proval of an extension under subparagraph (G)(ii).

8 “(I) For purposes of determining the eligibility
9 of an alien for classification under section
10 101(a)(15)(L), the Secretary of Homeland Security
11 shall establish a program to work cooperatively with
12 the Secretary of State to verify a company or facili-
13 ty’s existence in the United States and abroad.”.

14 **SEC. 522. ESTABLISHMENT OF NEW FASHION MODEL NON-**
15 **IMMIGRANT CLASSIFICATION.**

16 (a) IN GENERAL.—

17 (1) NEW CLASSIFICATION.—Section
18 101(a)(15)(O) (8 U.S.C. 1101(a)(15)(O)) is amend-
19 ed—

20 (A) in clause (i), by striking “or” at the
21 end;

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

24 (C) by redesignating clause (iii) as clause
25 (iv);

1 (D) in clause (iv), as redesignated, by
2 striking “clause (i) or (ii)” and inserting
3 “clause (i), (ii), or (iii)”; and

4 (E) by inserting after clause (ii) the fol-
5 lowing:

6 “(iii) is a fashion model who is of dis-
7 tinguished merit and ability and who is
8 seeking to enter the United States tempo-
9 rarily to perform fashion modeling services
10 that involve events or productions which
11 have a distinguished reputation or that are
12 performed for an organization or establish-
13 ment that has a distinguished reputation
14 for, or a record of, utilizing prominent
15 modeling talent; or”.

16 (2) NUMERICAL LIMITATION.—Section
17 214(a)(2)(A) (8 U.S.C. 1184(a)(2)(A)) is amended
18 by adding at the end the following: “The number of
19 aliens who may be issued visas or otherwise provided
20 nonimmigrant status under section
21 101(a)(15)(O)(iii) in any fiscal year may not exceed
22 1,000.”.

23 (b) ELIMINATION OF H-1B CLASSIFICATION FOR
24 FASHION MODELS.—Section 101(a)(15)(H)(i)(b) (8
25 U.S.C. 1101(a)(15)(H)(i)(b)) is amended—

1 (1) in item (aa), by striking “or as a fashion
2 model”; and

3 (2) in item (bb), by striking “or, in the case of
4 a fashion model, is of distinguished merit and abil-
5 ity”.

6 (c) EFFECTIVE DATES.—

7 (1) IMPLEMENTATION OF NEW FASHION MODEL
8 NONIMMIGRANT CLASSIFICATION.—Not later than
9 60 days after the date of the enactment of this Act,
10 the Secretary shall promulgate regulations to carry
11 out the amendments made by subsection (a). Noth-
12 ing in this section shall be construed as preventing
13 an alien who is a fashion model from obtaining non-
14 immigrant status under section 101(a)(15)(O)(i) of
15 the Immigration and Nationality Act (8 U.S.C.
16 1101(a)(15)(O)(i)) if such alien is otherwise quali-
17 fied for such status.

18 (2) ELIMINATION OF H-1B CLASSIFICATION FOR
19 FASHION MODELS.—The amendments made by sub-
20 section (b)—

21 (A) shall apply on the effective date of the
22 regulations promulgated under paragraph (1);
23 and

24 (B) shall not apply to the classification of
25 an alien under section 101(a)(15)(H)(i)(b) of

1 the Immigration and Nationality Act (8 U.S.C.
2 1101(a)(15)(H)(i)(b)) as a fashion model pur-
3 suant to a petition for such classification that
4 was filed before such effective date.

5 **SEC. 523. EB-5 REGIONAL CENTER PROGRAM.**

6 (a) CONCURRENT PROCESSING FOR EMPLOYEMENT
7 CREATION IMMIGRANTS.—Section 245 (8 U.S.C. 1255),
8 as amended by section 511, is further amended by adding
9 at the end the following:

10 “(o) CONCURRENT PROCESSING FOR EMPLOYEMENT
11 CREATION IMMIGRANTS.—If, at the time an alien files a
12 petition for classification under section 203(b)(5), ap-
13 proval of the petition would make a visa immediately avail-
14 able to the alien beneficiary, the alien beneficiary’s appli-
15 cation for adjustment of status under this section shall
16 be considered properly filed whether submitted concur-
17 rently with, or subsequent to, such petition.”.

18 (b) REGIONAL CENTER DESIGNATION FEES.—Sec-
19 tion 610 of the Departments of Commerce, Justice, and
20 State, the Judiciary, and Related Agencies Appropriations
21 Act, 1993 (8 U.S.C. 1153 note) is amended—

22 (1) in subsection (b), by striking “for 15
23 years”; and

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

1 “(e) In addition to any other fees authorized by law,
2 the Secretary of Homeland Security shall impose a \$2,500
3 fee to apply for designation as a regional center under this
4 section. Fees collected under this subsection shall be de-
5 posited in the Treasury in accordance with section 286(w)
6 of the Immigration and Nationality Act (8 U.S.C.
7 1356(w)).”.

8 (c) IMMIGRANT ENTREPRENEUR REGIONAL CENTER
9 ACCOUNT.—

10 (1) ESTABLISHMENT.—Section 286 (8 U.S.C.
11 1356) is amended by adding at the end the fol-
12 lowing:

13 “(y) IMMIGRANT ENTREPRENEUR REGIONAL CEN-
14 TER ACCOUNT.—

15 “(1) IN GENERAL.—There is established in the
16 general fund of the Treasury a separate account,
17 which shall be known as the ‘Immigrant Entre-
18 preneur Regional Center Account’. Notwithstanding
19 any other provision of law, there shall be deposited
20 as offsetting receipts into the account all fees col-
21 lected under section 610(e) of the Departments of
22 Commerce, Justice, and State, the Judiciary, and
23 Related Agencies Appropriations Act, 1993 (8
24 U.S.C. 1153 note).

1 “(2) USE OF FEES.—Fees deposited in the ac-
2 count established under paragraph (1) may only be
3 used to carry out the EB–5 immigrant investor pro-
4 gram.”.

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

7 (A) shall take effect on the date on which
8 regulations are published to carry out this sec-
9 tion and the amendments made by this section;
10 and

11 (B) shall apply to regional center applica-
12 tions filed on or after such date.

13 **SEC. 524. RETURN OF TALENT PROGRAM.**

14 (a) SHORT TITLE.—This section may be cited as the
15 “Return of Talent Act”.

16 (b) ESTABLISHMENT.—

17 (1) IN GENERAL.—Title III (8 U.S.C. 1401 et
18 seq.) is amended by inserting after section 317 the
19 following:

20 **“SEC. 317A. TEMPORARY ABSENCE OF PERSONS PARTICI-**
21 **PATING IN THE RETURN OF TALENT PRO-**
22 **GRAM.**

23 “(a) IN GENERAL.—The Secretary of Homeland Se-
24 curity, in consultation with the Secretary of State, shall
25 establish the Return of Talent Program to permit eligible

1 aliens to temporarily return to the alien's country of citi-
2 zenship in order to make a material contribution to that
3 country if the country is engaged in post-conflict or nat-
4 ural disaster reconstruction activities, for a period not
5 longer than 2 years, unless an exception is granted under
6 subsection (d).

7 “(b) ELIGIBLE ALIEN.—An alien is eligible to partici-
8 pate in the Return of Talent Program established under
9 subsection (a) if the alien meets the special immigrant de-
10 scription under section 101(a)(27)(N).

11 “(c) FAMILY MEMBERS.—The spouse, parents, sib-
12 lings, and any minor children of an alien who participates
13 in the Return of Talent Program established under sub-
14 section (a) may return to such alien's country of citizen-
15 ship with the alien and reenter the United States with the
16 alien.

17 “(d) EXTENSION OF TIME.—The Secretary of Home-
18 land Security may extend the 2-year period referred to in
19 subsection (a) upon a showing that circumstances warrant
20 that an extension is necessary for post-conflict or natural
21 disaster reconstruction efforts.

22 “(e) RESIDENCY REQUIREMENTS.—An immigrant
23 described in section 101(a)(27)(N) who participates in the
24 Return of Talent Program established under subsection
25 (a), and the spouse, parents, siblings, and any minor chil-

1 dren who accompany such immigrant to that immigrant's
2 country of citizenship, shall be considered, during such pe-
3 riod of participation in the program—

4 “(1) for purposes of section 316(a), physically
5 present and residing in the United States for pur-
6 poses of naturalization within the meaning of that
7 section; and

8 “(2) for purposes of section 316(b), to meet the
9 continuous residency requirements in that section.

10 “(f) OVERSIGHT AND ENFORCEMENT.—The Sec-
11 retary of Homeland Security, in consultation with the Sec-
12 retary of State, shall oversee and enforce the requirements
13 of this section.”.

14 (2) TABLE OF CONTENTS.—The table of con-
15 tents (8 U.S.C. 1101 et seq.) is amended by insert-
16 ing after the item relating to section 317 the fol-
17 lowing:

“317A. Temporary absence of persons participating in the Return of Talent
Program”.

18 (c) ELIGIBLE IMMIGRANTS.—Section 101(a)(27) (8
19 U.S.C. 1101(a)(27)) is amended—

20 (1) in subparagraph (L), by inserting a semi-
21 colon after “Improvement Act of 1998”;

22 (2) in subparagraph (M), by striking the period
23 and inserting “; or”; and

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

1 “(N) an immigrant who—

2 “(i) has been lawfully admitted to the
3 United States for permanent residence;

4 “(ii) demonstrates an ability and willing-
5 ness to make a material contribution to the
6 post-conflict or natural disaster reconstruction
7 in the alien’s country of citizenship; and

8 “(iii) as determined by the Secretary of
9 State in consultation with the Secretary of
10 Homeland Security—

11 “(I) is a citizen of a country in which
12 Armed Forces of the United States are en-
13 gaged, or have engaged in the 10 years
14 preceding such determination, in combat or
15 peacekeeping operations;

16 “(II) is a citizen of a country where
17 authorization for United Nations peace-
18 keeping operations was initiated by the
19 United Nations Security Council during
20 the 10 years preceding such determination;
21 or

22 “(III) is a citizen of a country which
23 received, during the preceding 2 years,
24 funding from the Office of Foreign Dis-
25 aster Assistance of the United States

1 Agency for International Development in
2 response to a declared disaster in such
3 country by the United States Ambassador,
4 the Chief of the U.S. Mission, or the ap-
5 propriate Assistant Secretary of State, that
6 is beyond the ability of such country's re-
7 sponse capacity and warrants a response
8 by the United States Government.”.

9 (d) REPORT TO CONGRESS.—Not later than 2 years
10 after the date of the enactment of this Act, the Secretary,
11 in consultation with the Secretary of State, shall submit
12 a report to Congress that describes—

13 (1) the countries of citizenship of the partici-
14 pants in the Return of Talent Program established
15 under section 317A of the Immigration and Nation-
16 ality Act, as added by subsection (b);

17 (2) the post-conflict or natural disaster recon-
18 struction efforts that benefitted, or were made pos-
19 sible, through participation in the program; and

20 (3) any other information that the Secretary
21 determines to be appropriate.

22 (e) REGULATIONS.—Not later than 6 months after
23 the date of the enactment of this Act, the Secretary shall
24 promulgate regulations to carry out this section and the
25 amendments made by this section.

1 (f) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to United States Citi-
3 zenship and Immigration Services, such sums as may be
4 necessary to carry out this section and the amendments
5 made by this section.

6 **Subtitle B—Preservation of Imm-**
7 **igration Benefits for Victims of a**
8 **Major Disaster or Emergency**

9 **SEC. 531. SHORT TITLE.**

10 This subtitle may be cited as the “Major Disaster and
11 Emergency Victims Immigration Benefits Preservation
12 Act”.

13 **SEC. 532. DEFINITIONS.**

14 In this subtitle:

15 (1) APPLICATION OF DEFINITIONS FROM THE
16 IMMIGRATION AND NATIONALITY ACT.—Except as
17 otherwise specifically provided in this subtitle, the
18 definitions in the Immigration and Nationality Act
19 shall apply in the administration of this subtitle.

20 (2) DIRECT RESULT OF A MAJOR DISASTER OR
21 EMERGENCY.—The term “direct result of a major
22 disaster or emergency”—

23 (A) means physical damage, disruption of
24 communications or transportation, forced or
25 voluntary evacuation, business closures, or

1 other circumstances directly caused by a major
2 disaster or emergency; and

3 (B) does not include collateral or con-
4 sequential economic effects in or on the United
5 States or global economies.

6 (3) EMERGENCY.—The term “emergency” has
7 the meaning given the term in section 102(1) of the
8 Robert T. Stafford Disaster Relief and Emergency
9 Assistance Act (42 U.S.C. 5122(1)).

10 (4) LAST BUSINESS DAY.—The term “last busi-
11 ness day” means the last business day preceding a
12 major disaster or emergency. For purposes of Hurri-
13 cane Katrina and Hurricane Rita, the last business
14 day is August 26, 2005.

15 (5) MAJOR DISASTER.—The term “major dis-
16 aster” has the meaning given the term in section
17 102(2) of the Robert T. Stafford Disaster Relief and
18 Emergency Assistance Act (42 U.S.C. 5122(2)) and
19 includes Hurricane Katrina and Hurricane Rita.

20 **SEC. 533. SPECIAL IMMIGRANT STATUS.**

21 (a) PROVISION OF STATUS.—

22 (1) IN GENERAL.—For purposes of the Immi-
23 gration and Nationality Act (8 U.S.C. 1101 et seq.),
24 the Secretary may provide an alien described in sub-
25 section (b) with the status of a special immigrant

1 under section 101(a)(27) of such Act (8 U.S.C.
2 1101(a)(27)) if the alien—

3 (A) files a petition with the Secretary
4 under section 204 of such Act (8 U.S.C. 1154)
5 for classification under section 203(b)(4) of
6 such Act (8 U.S.C. 1153(b)(4));

7 (B) is otherwise eligible to receive an im-
8 migrant visa; and

9 (C) is otherwise admissible to the United
10 States for permanent residence.

11 (2) INAPPLICABLE PROVISION.—In determining
12 admissibility under paragraph (1)(C), the grounds
13 for inadmissibility specified in section 212(a)(4) of
14 such Act (8 U.S.C. 1182(a)(4)) shall not apply.

15 (b) ALIENS DESCRIBED.—

16 (1) PRINCIPAL ALIENS.—An alien is described
17 in this subsection if—

18 (A) the alien was the beneficiary of—

19 (i) a petition that was filed with the
20 Secretary on or before the last business
21 day—

22 (I) under section 204 of the Im-
23 migration and Nationality Act (8
24 U.S.C. 1154) to classify the alien as
25 a family-sponsored immigrant under

1 section 203(a) of such Act (8 U.S.C.
2 1153(a)) or as an employment-based
3 immigrant under section 203(b) of
4 such Act (8 U.S.C. 1153(b)); or

5 (II) under section 214(d) of such
6 Act (8 U.S.C. 1184(d)) to authorize
7 the issuance of a nonimmigrant visa
8 to the alien under section
9 101(a)(15)(K) of such Act (8 U.S.C.
10 1101(a)(15)(K)); or

11 (ii) an application for labor certifi-
12 cation under section 212(a)(5)(A) of such
13 Act (8 U.S.C. 1182(a)(5)(A)) that was
14 filed under regulations of the Secretary of
15 Labor on or before the last business day;
16 and

17 (B) such petition or application was re-
18 voked or terminated before or after its ap-
19 proval, solely due to—

20 (i) the death or disability of the peti-
21 tioner, applicant, or alien beneficiary as a
22 direct result of a major disaster or emer-
23 gency; or

24 (ii) loss of employment as a direct re-
25 sult of a major disaster or emergency.

1 (2) SPOUSES AND CHILDREN.—

2 (A) IN GENERAL.—An alien is described in
3 this subsection if—

4 (i) the alien, as of the last business
5 day, was the spouse or child of a principal
6 alien described in paragraph (1); and

7 (ii) the alien—

8 (I) is accompanying such prin-
9 cipal alien; or

10 (II) is following to join such prin-
11 cipal alien within a reasonable period
12 after a major disaster or emergency,
13 as determined by the Attorney Gen-
14 eral.

15 (B) CONSTRUCTION.—

16 (i) DEATH DISREGARDED.—In con-
17 struing the terms “accompanying” and
18 “following to join” in subparagraph (A)(ii),
19 the death of a principal alien described in
20 paragraph (1)(B)(i) shall be disregarded.

21 (ii) REASONABLE PERIOD.—The rea-
22 sonable period described in subparagraph
23 (A)(ii)(II), as applied to Hurricane
24 Katrina and Hurricane Rita, shall end 90

1 days after the date of the enactment of
2 this Act.

3 (3) GRANDPARENTS OR LEGAL GUARDIANS OF
4 ORPHANS.—An alien is described in this subsection
5 if the alien is a grandparent or legal guardian of a
6 child whose parents died as a direct result of a
7 major disaster or emergency, if either of the de-
8 ceased parents was, as of the last business day, a
9 citizen or national of the United States or an alien
10 lawfully admitted for permanent residence in the
11 United States.

12 (c) PRIORITY DATE.—Immigrant visas made avail-
13 able under this section shall be issued to aliens in the
14 order in which a petition on behalf of each such alien is
15 filed with the Secretary under subsection (a)(1), except
16 that if an alien was assigned a priority date with respect
17 to a petition described in subsection (b)(1)(A)(i), the alien
18 may maintain that priority date.

19 (d) NUMERICAL LIMITATIONS.—In applying sections
20 201 through 203 of the Immigration and Nationality Act
21 (8 U.S.C. 1151–1153) in any fiscal year, aliens eligible
22 to be provided status under this section shall be treated
23 as special immigrants who are not described in subpara-
24 graph (A), (B), (C), or (K) of section 101(a)(27) of such
25 Act (8 U.S.C. 1101(a)(27)).

1 **SEC. 534. EXTENSION OF FILING OR REENTRY DEADLINES.**

2 (a) AUTOMATIC EXTENSION OF NONIMMIGRANT STA-
3 TUS.—

4 (1) IN GENERAL.—Notwithstanding section 214
5 of the Immigration and Nationality Act (8 U.S.C.
6 1184), an alien described in paragraph (2) who was
7 lawfully present in the United States as a non-
8 immigrant on the last business day, may, unless oth-
9 erwise determined by the Secretary in the Sec-
10 retary's discretion, lawfully remain in the United
11 States in the same nonimmigrant status until the
12 latest of—

13 (A) the date on which such lawful non-
14 immigrant status would have otherwise termi-
15 nated absent the enactment of this subsection;

16 (B) 1 year after the death or onset of dis-
17 ability described in paragraph (2); or

18 (C) 3 months after the date of the enact-
19 ment of this Act, for victims of Hurricane
20 Katrina or Hurricane Rita.

21 (2) ALIENS DESCRIBED.—

22 (A) PRINCIPAL ALIENS.—An alien is de-
23 scribed in this paragraph if the alien was dis-
24 abled as a direct result of a major disaster or
25 emergency.

1 (B) SPOUSES AND CHILDREN.—An alien is
2 described in this paragraph if the alien, as of
3 the last business day, was the spouse or child
4 of—

5 (i) a principal alien described in sub-
6 paragraph (A); or

7 (ii) an alien who died as a direct re-
8 sult of a major disaster or emergency.

9 (3) AUTHORIZED EMPLOYMENT.—During the
10 period in which a principal alien or alien spouse is
11 in lawful nonimmigrant status under paragraph (1),
12 the alien may be provided an “employment author-
13 ized” endorsement or other appropriate document
14 signifying authorization of employment.

15 (b) NEW DEADLINES FOR EXTENSION OR CHANGE
16 OF NONIMMIGRANT STATUS.—

17 (1) FILING DELAYS.—

18 (A) IN GENERAL.—If an alien, who was
19 lawfully present in the United States as a non-
20 immigrant on the last business day, was pre-
21 vented from filing a timely application for an
22 extension or change of nonimmigrant status as
23 a direct result of a major disaster or emer-
24 gency, the alien’s application may be considered
25 timely filed if it is filed within a reasonable pe-

1 riod, as determined by the Secretary, after the
2 application would have otherwise been due. For
3 victims of Hurricane Katrina or Hurricane
4 Rita, this period shall end 3 months after the
5 date of the enactment of this Act.

6 (B) CIRCUMSTANCES PREVENTING TIMELY
7 ACTION.—For purposes of subparagraph (A),
8 circumstances preventing an alien from timely
9 acting are—

- 10 (i) office closures;
- 11 (ii) mail or courier service cessations
12 or delays;
- 13 (iii) other closures, cessations, or
14 delays affecting case processing or travel
15 necessary to satisfy legal requirements;
- 16 (iv) mandatory evacuation and reloca-
17 tion; or
- 18 (v) other circumstances, including
19 medical problems or financial hardship.

20 (2) DEPARTURE DELAYS.—

21 (A) IN GENERAL.—If an alien, who was
22 lawfully present in the United States as a non-
23 immigrant on the last business day, is unable to
24 timely depart the United States as a direct re-
25 sult of a major disaster or emergency, the alien

1 shall not be considered to have been unlawfully
2 present in the United States during the period
3 beginning on the last business day, and ending
4 on the date of the alien's departure, if such de-
5 parture occurred within a reasonable period, as
6 determined by the Secretary. If a victim of
7 Hurricane Katrina or Hurricane Rita departs
8 the United States not later than 3 months after
9 the date of the enactment of this Act, such de-
10 parture shall be considered to have been within
11 a reasonable period under this subparagraph.

12 (B) CIRCUMSTANCES PREVENTING TIMELY
13 ACTION.—For purposes of subparagraph (A),
14 circumstances preventing an alien from timely
15 acting are—

- 16 (i) office closures;
- 17 (ii) transportation cessations or
18 delays;
- 19 (iii) other closures, cessations, or
20 delays affecting case processing or travel
21 necessary to satisfy legal requirements;
- 22 (iv) mandatory evacuation and reloca-
23 tion; or
- 24 (v) other circumstances, including
25 medical problems or financial hardship.

1 (c) DIVERSITY IMMIGRANTS.—Section
2 204(a)(1)(I)(ii)(II) (8 U.S.C. 1154(a)(1)(I)(ii)(II)), is
3 amended to read as follows:

4 “(II) An immigrant visa made available under sub-
5 section 203(c) for fiscal year 1998, or for a subsequent
6 fiscal year, may be issued, or adjustment of status under
7 section 245(a) based upon the availability of such visa may
8 be granted, to an eligible qualified alien who has properly
9 applied for such visa or adjustment in the fiscal year for
10 which the alien was selected notwithstanding the end of
11 such fiscal year. Such visa or adjustment of status shall
12 be counted against the worldwide level set forth in sub-
13 section 201(e) for the fiscal year for which the alien was
14 selected.”.

15 (d) EXTENSION OF FILING PERIOD.—If an alien is
16 unable to timely file an application to register or reregister
17 for temporary protected status under section 244 of the
18 Immigration and Nationality Act (8 U.S.C. 1254a) as a
19 direct result of a major disaster or emergency, the alien’s
20 application may be considered timely filed if it is filed not
21 later than 90 days after it otherwise would have been due.

22 (e) VOLUNTARY DEPARTURE.—

23 (1) IN GENERAL.—Notwithstanding section
24 240B of the Immigration and Nationality Act (8
25 U.S.C. 1229c), if a period for voluntary departure

1 under such section expired during the period begin-
2 ning on the last business day and ending within a
3 reasonable period, as determined by the Attorney
4 General, and the alien was unable to voluntarily de-
5 part before the expiration date as a direct result of
6 a major disaster or emergency, such voluntary de-
7 parture period is deemed to have been extended for
8 an additional 60 days. For purposes of Hurricane
9 Katrina and Hurricane Rita, the reasonable period
10 shall be deemed to have ended on December 31,
11 2005.

12 (2) CIRCUMSTANCES PREVENTING DEPAR-
13 TURE.—For purposes of this subsection, cir-
14 cumstances preventing an alien from voluntarily de-
15 parting the United States are—

16 (A) office closures;

17 (B) transportation cessations or delays;

18 (C) other closures, cessations, or delays af-
19 fecting case processing or travel necessary to
20 satisfy legal requirements;

21 (D) mandatory evacuation and removal;

22 and

23 (E) other circumstances, including medical
24 problems or financial hardship.

25 (f) CURRENT NONIMMIGRANT VISA HOLDERS.—

1 (1) IN GENERAL.—An alien, who was lawfully
2 present in the United States on the last business
3 day, as a nonimmigrant under section
4 101(a)(15)(H) of the Immigration and Nationality
5 Act (8 U.S.C. 1101(a)(15)(H)) and lost employment
6 as a direct result of a major disaster or emergency
7 may accept new employment upon the filing by a
8 prospective employer of a new petition on behalf of
9 such nonimmigrant not later than 1 year after such
10 major disaster or emergency. For victims of Hurri-
11 cane Katrina or Hurricane Rita, this period shall be
12 extended until August 29, 2007.

13 (2) CONTINUATION OF EMPLOYMENT AUTHOR-
14 IZATION.—Employment authorization shall continue
15 for such alien until the new petition is adjudicated.
16 If the new petition is denied, such employment shall
17 cease.

18 (3) SAVINGS PROVISION.—Nothing in this sub-
19 section shall be construed to limit eligibility for port-
20 ability under section 214(n) of the Immigration and
21 Nationality Act (8 U.S.C. 1184(n)).

22 **SEC. 535. HUMANITARIAN RELIEF FOR CERTAIN SURVIVING**
23 **SPOUSES AND CHILDREN.**

24 (a) TREATMENT AS IMMEDIATE RELATIVES.—

1 (1) SPOUSES.—Notwithstanding the second
2 sentence of section 201(b)(2)(A)(i) of the Immigra-
3 tion and Nationality Act (8 U.S.C.
4 1151(b)(2)(A)(i)), if an alien was the spouse of a
5 citizen of the United States at the time of the citi-
6 zen’s death and was not legally separated from the
7 citizen at the time of the citizen’s death, and the citi-
8 zen died as a direct result of a major disaster or
9 emergency, the alien (and each child of the alien)
10 may be considered, for purposes of section 201(b) of
11 such Act, to remain an immediate relative after the
12 date of the citizen’s death if the alien files a petition
13 under section 204(a)(1)(A)(ii) of such Act not later
14 than 2 years after such date and only until the date
15 on which the alien remarries. For purposes of such
16 section 204(a)(1)(A)(ii), an alien granted relief
17 under this paragraph shall be considered an alien
18 spouse described in the second sentence of section
19 201(b)(2)(A)(i) of such Act.

20 (2) CHILDREN.—

21 (A) IN GENERAL.—In the case of an alien
22 who was the child of a citizen of the United
23 States at the time of the citizen’s death, if the
24 citizen died as a direct result of a major dis-
25 aster or emergency, the alien may be consid-

1 ered, for purposes of section 201(b) of the Im-
2 migration and Nationality Act (8 U.S.C.
3 1151(b)), to remain an immediate relative after
4 the date of the citizen's death (regardless of
5 subsequent changes in age or marital status),
6 but only if the alien files a petition under sub-
7 paragraph (B) not later than 2 years after such
8 date.

9 (B) PETITIONS.—An alien described in
10 subparagraph (A) may file a petition with the
11 Secretary for classification of the alien under
12 section 201(b)(2)(A)(i) of the Immigration and
13 Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)),
14 which shall be considered a petition filed under
15 section 204(a)(1)(A) of such Act (8 U.S.C.
16 1154(a)(1)(A)).

17 (b) SPOUSES, CHILDREN, UNMARRIED SONS AND
18 DAUGHTERS OF LAWFUL PERMANENT RESIDENT
19 ALIENS.—

20 (1) IN GENERAL.—Any spouse, child, or unmar-
21 ried son or daughter of an alien described in para-
22 graph (3) who is included in a petition for classifica-
23 tion as a family-sponsored immigrant under section
24 203(a)(2) of the Immigration and Nationality Act (8
25 U.S.C. 1153(a)(2)), which was filed by such alien

1 before the last business day, may be considered (if
2 the spouse, child, son, or daughter has not been ad-
3 mitted or approved for lawful permanent residence
4 by such date) a valid petitioner for preference status
5 under such section with the same priority date as
6 that assigned before the death described in para-
7 graph (3)(A). No new petition shall be required to
8 be filed. Such spouse, child, son, or daughter may be
9 eligible for deferred action and work authorization.

10 (2) SELF-PETITIONS.—Any spouse, child, or
11 unmarried son or daughter of an alien described in
12 paragraph (3) who is not a beneficiary of a petition
13 for classification as a family-sponsored immigrant
14 under section 203(a)(2) of the Immigration and Na-
15 tionality Act may file a petition for such classifica-
16 tion with the Secretary, if the spouse, child, son, or
17 daughter was present in the United States on the
18 last business day. Such spouse, child, son, or daugh-
19 ter may be eligible for deferred action and work au-
20 thorization.

21 (3) ALIENS DESCRIBED.—An alien is described
22 in this paragraph if the alien—

23 (A) died as a direct result of a major dis-
24 aster or emergency; and

1 (B) on the day of such death, was lawfully
2 admitted for permanent residence in the United
3 States.

4 (c) APPLICATIONS FOR ADJUSTMENT OF STATUS BY
5 SURVIVING SPOUSES AND CHILDREN OF EMPLOYMENT-
6 BASED IMMIGRANTS.—

7 (1) IN GENERAL.—Any alien who was, on the
8 last business day, the spouse or child of an alien de-
9 scribed in paragraph (2), and who applied for ad-
10 justment of status before the death described in
11 paragraph (2)(A), may have such application adju-
12 dicated as if such death had not occurred.

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

15 (A) died as a direct result of a major dis-
16 aster or emergency; and

17 (B) on the day before such death, was—

18 (i) an alien lawfully admitted for per-
19 manent residence in the United States by
20 reason of having been allotted a visa under
21 section 203(b) of the Immigration and Na-
22 tionality Act (8 U.S.C. 1153(b)); or

23 (ii) an applicant for adjustment of
24 status to that of an alien described in

1 clause (i), and admissible to the United
2 States for permanent residence.

3 (d) APPLICATIONS BY SURVIVING SPOUSES AND
4 CHILDREN OF REFUGEES AND ASYLEES.—

5 (1) IN GENERAL.—Any alien who, on the last
6 business day, was the spouse or child of an alien de-
7 scribed in paragraph (2), may have his or her eligi-
8 bility to be admitted under section 207(c)(2)(A) or
9 208(b)(3)(A) of the Immigration and Nationality
10 Act (8 U.S.C. 1157(c)(2)(A), 1158(b)(3)(A)) consid-
11 ered as if the alien's death had not occurred.

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

14 (A) died as a direct result of a major dis-
15 aster or emergency; and

16 (B) on the day before such death, was—

17 (i) an alien admitted as a refugee
18 under section 207 of the Immigration and
19 Nationality Act (8 U.S.C. 1157); or

20 (ii) granted asylum under section 208
21 of such Act (8 U.S.C. 1158).

22 (e) WAIVER OF PUBLIC CHARGE GROUNDS.—In de-
23 termining the admissibility of any alien accorded an immi-
24 gration benefit under this section, the grounds for inad-
25 missibility specified in section 212(a)(4) of the Immigra-

1 tion and Nationality Act (8 U.S.C. 1182(a)(4)) shall not
2 apply.

3 **SEC. 536. RECIPIENT OF PUBLIC BENEFITS.**

4 An alien shall not be inadmissible under section
5 212(a)(4) of the Immigration and Nationality Act (8
6 U.S.C. 1182(a)(4)) or deportable under section 237(a)(5)
7 of such Act (8 U.S.C. 1227(a)(5)) on the basis that the
8 alien received any public benefit as a direct result of a
9 major disaster or emergency.

10 **SEC. 537. AGE-OUT PROTECTION.**

11 In administering the immigration laws, the Secretary
12 and the Attorney General may grant any application or
13 benefit notwithstanding the applicant or beneficiary (in-
14 cluding a derivative beneficiary of the applicant or bene-
15 ficiary) reaching an age that would render the alien ineli-
16 gible for the benefit sought, if the alien's failure to meet
17 the age requirement occurred as a direct result of a major
18 disaster or emergency.

19 **SEC. 538. EMPLOYMENT ELIGIBILITY VERIFICATION.**

20 (a) IN GENERAL.—The Secretary may suspend or
21 modify any requirement under section 274A(b) of the Im-
22 migration and Nationality Act (8 U.S.C. 1324a(b)) or
23 subtitle A of title IV of the Illegal Immigration Reform
24 and Immigrant Responsibility Act of 1996 (8 U.S.C.
25 1324a note), either generally or with respect to particular

1 persons, class of persons, geographic areas, or economic
2 sectors, to the extent to which the Secretary determines
3 necessary or appropriate to respond to major disasters or
4 emergencies.

5 (b) NOTIFICATION.—If the Secretary suspends or
6 modifies any requirement under section 274A(b) of the
7 Immigration and Nationality Act pursuant to subsection
8 (a), the Secretary shall send notice of such decision, in-
9 cluding the reasons for the suspension or modification,
10 to—

11 (1) the Committee on the Judiciary of the Sen-
12 ate; and

13 (2) the Committee on the Judiciary of the
14 House of Representatives.

15 (c) SUNSET DATE.—The authority under subsection
16 (a) shall expire on August 26, 2008.

17 **SEC. 539. NATURALIZATION.**

18 The Secretary may, with respect to applicants for
19 naturalization in any district of the United States Citizen-
20 ship and Immigration Services affected by a major dis-
21 aster or emergency, administer the provisions of Title III
22 of the Immigration and Nationality Act (8 U.S.C. 1401
23 et seq.) notwithstanding any provision of such title relat-
24 ing to the jurisdiction of an eligible court to administer
25 the oath of allegiance, or requiring residence to be main-

1 tained or any action to be taken in any specific district
2 or State within the United States.

3 **SEC. 540. DISCRETIONARY AUTHORITY.**

4 The Secretary or the Attorney General may waive vio-
5 lations of the immigration laws committed by an alien—

6 (1) who was in lawful status on the last busi-
7 ness day; and

8 (2) whose failure to comply with the immigra-
9 tion laws—

10 (A) was a direct result of a major disaster
11 or emergency;

12 (B) occurred within a period to be deter-
13 mined by the Attorney General; and

14 (C) for the victims of Hurricane Katrina
15 or Hurricane Rita, occurred on or before March
16 1, 2006.

17 **SEC. 541. EVIDENTIARY STANDARDS AND REGULATIONS.**

18 The Secretary shall establish appropriate evidentiary
19 standards for demonstrating, for purposes of this subtitle,
20 that a major disaster or emergency directly resulted in—

21 (1) death;

22 (2) disability; or

23 (3) loss of employment due to physical damage
24 to, or destruction of, a business.

1 **SEC. 542. IDENTIFICATION DOCUMENTS.**

2 (a) TEMPORARY IDENTIFICATION.—The Secretary
3 shall have the authority to instruct any Federal agency
4 to issue temporary identification documents to individuals
5 affected by a major disaster or emergency. Such docu-
6 ments shall be acceptable for identification purposes under
7 any Federal law until 1 year after the relevant major dis-
8 aster or emergency. For victims of Hurricane Katrina or
9 Hurricane Rita, such documents shall be valid until Au-
10 gust 29, 2007.

11 (b) ISSUANCE.—An agency may not issue identity
12 documents under this section after January 1, 2006.

13 (c) NO COMPULSION TO ACCEPT OR CARRY IDENTI-
14 FICATION DOCUMENTS.—Nationals of the United States
15 shall not be compelled to accept or carry documents issued
16 under this section.

17 (d) NO PROOF OF CITIZENSHIP.—Identity docu-
18 ments issued under this section shall not constitute proof
19 of citizenship or immigration status.

20 **SEC. 543. WAIVER OF REGULATIONS.**

21 The Secretary shall carry out the provisions of this
22 subtitle as expeditiously as possible. The Secretary is not
23 required to promulgate regulations before implementing
24 this subtitle. The requirements of chapter 5 of title 5,
25 United States Code (commonly referred to as the “Admin-
26 istrative Procedure Act”) or any other law relating to rule

1 making, information collection, or publication in the Fed-
2 eral Register, shall not apply to any action to implement
3 this subtitle to the extent the Secretary, the Secretary of
4 Labor, or the Secretary of State determine that compli-
5 ance with such requirement would impede the expeditious
6 implementation of such Act.

7 **SEC. 544. NOTICES OF CHANGE OF ADDRESS.**

8 (a) IN GENERAL.—If a notice of change of address
9 otherwise required to be submitted to the Secretary by an
10 alien described in subsection (b) relates to a change of
11 address occurring during the period beginning on the last
12 business day, and ending on a date to be determined by
13 the Secretary, the alien may submit such notice. For vic-
14 tims of Hurricane Katrina or Hurricane Rita, such period
15 shall end on the date of the enactment of this Act.

16 (b) ALIENS DESCRIBED.—An alien is described in
17 this subsection if the alien—

18 (1) resided, on the last business day, within a
19 district of the United States that was declared by
20 the President to be affected by a major disaster or
21 emergency; and

22 (2) is required, under section 265 of the Immi-
23 gration and Nationality Act (8 U.S.C. 1305) or any
24 other provision of law, to notify the Secretary in
25 writing of a change of address.

1 **SEC. 545. FOREIGN STUDENTS AND EXCHANGE PROGRAM**
2 **PARTICIPANTS.**

3 (a) **IN GENERAL.**—The nonimmigrant status of an
4 alien described in subsection (b) shall be deemed to have
5 been maintained during the period beginning on the last
6 business day, and ending on a date to be determined by
7 the Attorney General, if on such later date, the alien is
8 enrolled in a course of study, or participating in a des-
9 ignated exchange visitor program, sufficient to satisfy the
10 terms and conditions of the alien's nonimmigrant status
11 on the last business day. For victims of Hurricane Katrina
12 or Hurricane Rita, the relevant period shall be deemed to
13 have ended on September 15, 2006.

14 (b) **ALIENS DESCRIBED.**—An alien is described in
15 this subsection if the alien—

16 (1) was, on the last business day, lawfully
17 present in the United States in the status of a non-
18 immigrant described in subparagraph (F), (J), or
19 (M) of section 101(a)(15) of the Immigration and
20 Nationality Act (8 U.S.C. 1101(a)(15)); and

21 (2) fails to satisfy a term or condition of such
22 status as a direct result of a major disaster or emer-
23 gency.

1 **TITLE VI—LEGALIZATION OF**
2 **UNDOCUMENTED INDIVIDUALS**
3 **Subtitle A—Conditional**
4 **Nonimmigrants**

5 **SEC. 601. CONDITIONAL NONIMMIGRANTS.**

6 (a) **IN GENERAL.**—Notwithstanding any other provi-
7 sion of law, including section 244(h) of the Immigration
8 and Nationality Act (8 U.S.C. 1254a(h)), the Secretary
9 may classify an alien as a conditional nonimmigrant or
10 conditional nonimmigrant dependent if the alien—

11 (1) submits an application for such classifica-
12 tion; and

13 (2) meets the requirements of this section.

14 (b) **PRESENCE IN THE UNITED STATES.**—

15 (1) **IN GENERAL.**—The alien shall establish
16 that the alien—

17 (A) was present in the United States be-
18 fore June 1, 2006;

19 (B) has been continuously present in the
20 United States since the date described in sub-
21 paragraph (A); and

22 (C) was not legally present in the United
23 States on that date under any classification de-
24 scribed in section 101(a)(15) of the Immigra-
25 tion and Nationality Act (8 U.S.C.

1 1101(a)(15)) or any other nonimmigrant status
2 made available under a treaty or other multi-
3 national agreement that has been ratified by
4 the Senate.

5 (2) CONTINUOUS PRESENCE.—For purposes of
6 this subsection, an absence from the United States
7 without authorization for a continuous period of
8 more than 180 days between June 1, 2006, and the
9 beginning of the application period for classification
10 as a conditional nonimmigrant shall constitute a
11 break in continuous physical presence.

12 (c) CONDITIONAL NONIMMIGRANT DEPENDENTS.—
13 Notwithstanding any other provision of law, the Secretary
14 shall classify the spouse or child of a conditional non-
15 immigrant as a conditional nonimmigrant dependent, or
16 provide the spouse or child with a conditional non-
17 immigrant dependent visa if—

18 (1) the spouse or child meets the applicable eli-
19 gibility requirements under this section; or

20 (2) the alien was, before the date on which this
21 Act was introduced in Congress, the spouse or child
22 of an alien who was subsequently classified as a con-
23 ditional nonimmigrant under this section, or is eligi-
24 ble for such classification, if—

1 (A) the termination of the relationship
2 with such spouse or parent was connected to
3 domestic violence; and

4 (B) the spouse or child has been battered
5 or subjected to extreme cruelty by the spouse or
6 parent who is a conditional nonimmigrant.

7 (d) OTHER CRITERIA.—

8 (1) IN GENERAL.—An alien may be classified as
9 a conditional nonimmigrant or conditional non-
10 immigrant dependent if the Secretary determines
11 that the alien—

12 (A) is not inadmissible to the United
13 States under section 212(a) of the Immigration
14 and Nationality Act (8 U.S.C. 1182(a)), except
15 as provided in paragraph (2);

16 (B) has not ordered, incited, assisted, or
17 otherwise participated in the persecution of any
18 person on account of race, religion, nationality,
19 membership in a particular social group, or po-
20 litical opinion; and

21 (C) is not an alien—

22 (i) who has been convicted by final
23 judgment of a particularly serious crime
24 and constitutes a danger to the community
25 of the United States;

1 (ii) for whom there are reasonable
2 grounds for believing that the alien has
3 committed a particularly serious crime out-
4 side the United States before arriving in
5 the United States; or

6 (iii) for whom there are reasonable
7 grounds for regarding the alien as a dan-
8 ger to the security of the United States;
9 and

10 (D) has been convicted of a felony or 3 or
11 more misdemeanors under Federal or State law.

12 (2) GROUNDS OF INADMISSIBILITY.—In deter-
13 mining an alien's admissibility under paragraph
14 (1)(A)—

15 (A) paragraphs (5), (6) (excluding sub-
16 paragraph (E)), (7), (9), and (10)(B) of section
17 212(a) of such Act shall not apply;

18 (B) the Secretary may not waive—

19 (i) subparagraph (A), (B), (C),
20 (D)(ii), (E), (G), (H), or (I) of section
21 212(a)(2) of such Act (relating to crimi-
22 nals);

23 (ii) section 212(a)(3) of such Act (re-
24 lating to security and related grounds); or

1 (iii) subparagraph (A), (C), or (D) of
2 section 212(a)(10) of such Act (relating to
3 polygamists and child abductors);

4 (C) the Secretary may waive the applica-
5 tion of any provision of section 212(a) of such
6 Act not listed in subparagraph (B) on behalf of
7 an individual alien for humanitarian purposes,
8 to ensure family unity, or if such waiver is oth-
9 erwise in the public interest; and

10 (D) nothing in this paragraph shall be con-
11 strued as affecting the authority of the Sec-
12 retary other than under this paragraph to waive
13 the provisions of section 212(a) of such Act.

14 (3) APPLICABILITY OF OTHER PROVISIONS.—
15 Sections 240B(d) and 241(a)(5) of the Immigration
16 and Nationality Act (8 U.S.C. 1229c(d) and
17 1231(a)(5)) shall not apply to an alien who is apply-
18 ing for classification under this section for conduct
19 that occurred before the date on which this Act was
20 introduced in Congress.

21 (e) ATTESTATION OF EMPLOYMENT.—The Secretary
22 may not classify an alien as a conditional nonimmigrant
23 unless the alien—

24 (1) attests, under penalty of perjury, that the
25 alien—

1 (A) was employed full time, part time, or
2 seasonally in the United States or was self-em-
3 ployed before June 1, 2006, and has been em-
4 ployed in the United States since that date; or

5 (B) was otherwise physically present before
6 June 1, 2006, under the limitations described
7 in subsections (b) and (c) of section 602; and

8 (2) submits evidence that the Secretary deter-
9 mines to be necessary to establish prima facie evi-
10 dence of employment or physical presence in the
11 United States.

12 (f) SECURITY AND LAW ENFORCEMENT BACK-
13 GROUND CHECKS.—

14 (1) SUBMISSION OF FINGERPRINTS.—The Sec-
15 retary may not classify an alien as a conditional
16 nonimmigrant or a conditional nonimmigrant de-
17 pendent unless the alien submits fingerprints in ac-
18 cordance with procedures established by the Sec-
19 retary.

20 (2) BACKGROUND CHECKS.—The Secretary
21 shall utilize fingerprints and other biometric data
22 provided by the alien to conduct a background check
23 of such alien to search for criminal, national secu-
24 rity, or other law enforcement actions that would

1 render the alien ineligible for classification under
2 this section.

3 (3) EXPEDITIOUS PROCESSING.—The back-
4 ground checks required under paragraph (2) shall be
5 conducted as expeditiously as possible.

6 (g) PERIOD OF AUTHORIZED STAY; APPLICATION
7 FEE AND FINE.—

8 (1) PERIOD OF AUTHORIZED STAY.—

9 (A) IN GENERAL.—Except as provided
10 under subparagraph (C), the period of author-
11 ized stay for a conditional nonimmigrant or a
12 conditional nonimmigrant dependent shall be 6
13 years from the date on which such status is
14 conferred.

15 (B) LIMITATION.—The Secretary may not
16 adjust or change the status of a conditional
17 nonimmigrant or a conditional nonimmigrant
18 dependent to any other immigrant or non-
19 immigrant classification until the termination of
20 the 6-year period described in subparagraph
21 (A).

22 (C) EXTENSION.—The Secretary may only
23 extend the period described in subparagraph
24 (A) to accommodate the processing of an appli-

1 cation for adjustment of status under section
2 602.

3 (2) APPLICATION FEE AND FINES.—

4 (A) APPLICATION FEE.—The Secretary
5 shall impose a fee for filing an application
6 under this section. Such fee shall be sufficient
7 to cover the administrative and other expenses
8 incurred in connection with the review of such
9 applications.

10 (B) FINES.—

11 (i) IN GENERAL.—Except as provided
12 under clause (ii), an alien filing an applica-
13 tion under this section shall submit to the
14 Secretary, in addition to the fee required
15 under subparagraph (A), a fine of \$500.

16 (ii) EXCEPTION.—An alien who is
17 younger than 21 years of age shall not be
18 required to pay a fine under this para-
19 graph.

20 (C) DISPOSITION OF FEES AND FINES.—

21 (i) FEES.—Fees collected under this
22 paragraph shall be deposited into the Im-
23 migration Examination Fee Account and
24 remain available as provided under sub-
25 sections (m) and (n) of section 286.

1 (ii) FINES.—Fines collected under
2 this paragraph shall be deposited into the
3 New Worker Program and Conditional
4 Nonimmigrant Fee Account established
5 under section 286(w).

6 (h) TREATMENT OF APPLICANTS.—

7 (1) IN GENERAL.—An alien who files an appli-
8 cation under this section to become a conditional
9 nonimmigrant or a conditional nonimmigrant de-
10 pendent—

11 (A) shall be granted employment author-
12 ization pending final adjudication of the alien's
13 application;

14 (B) shall be granted permission to travel
15 abroad;

16 (C) may not be detained for immigration
17 purposes, determined inadmissible or deport-
18 able, or removed pending final adjudication of
19 the alien's application, unless the alien, due to
20 conduct or criminal conviction, becomes ineli-
21 gible for conditional nonimmigrant classifica-
22 tion; and

23 (D) may not be considered an unauthor-
24 ized alien (as defined in section 274A(h)(3) of
25 the Immigration and Nationality Act (8 U.S.C.

1 1324a(h)(3)) until employment authorization
2 under subparagraph (A) is denied.

3 (2) DOCUMENT OF AUTHORIZATION.—The Sec-
4 retary shall provide each alien described in para-
5 graph (1) with a counterfeit-resistant document of
6 authorization that—

7 (A) meets all current requirements estab-
8 lished by the Secretary for travel documents, in-
9 cluding the requirements under section 403 of
10 the Illegal Immigration Reform and Immigrant
11 Responsibility Act of 1996 (8 U.S.C. 1324a
12 note); and

13 (B) reflects the benefits and status set
14 forth in paragraph (1).

15 (3) BEFORE APPLICATION PERIOD.—If an alien
16 is apprehended between the date of the enactment of
17 this Act and the date on which regulations are pro-
18 mulgated to implement this section, and the alien
19 can establish prima facie eligibility as a conditional
20 nonimmigrant or a conditional nonimmigrant de-
21 pendent, the Secretary shall provide the alien with a
22 reasonable opportunity to file an application under
23 this section after such regulations are promulgated.

24 (4) DURING CERTAIN PROCEEDINGS.—Notwith-
25 standing any provision of the Immigration and Na-

1 tionality Act, if an immigration judge determines
2 that an alien who is in removal proceedings has
3 made a prima facie case of eligibility for classifica-
4 tion as a conditional nonimmigrant or a conditional
5 nonimmigrant dependent, the judge shall adminis-
6 tratively close such proceedings and permit the alien
7 a reasonable opportunity to apply for such classifica-
8 tion.

9 (5) RELATIONSHIPS OF APPLICATION TO CER-
10 TAIN ORDERS.—

11 (A) IN GENERAL.—An alien who is present
12 in the United States and has been ordered ex-
13 cluded, deported, removed, or ordered to depart
14 voluntarily from the United States under any
15 provision of the Immigration and Nationality
16 Act—

17 (i) notwithstanding such order, may
18 apply for classification as a conditional
19 nonimmigrant or conditional nonimmigrant
20 dependent under this subtitle; and

21 (ii) shall not be required to file a sep-
22 arate motion to reopen, reconsider, or va-
23 cate the exclusion, deportation, removal, or
24 voluntary departure order.

1 (B) APPLICATION GRANTED.—If the Sec-
2 retary grants the application described in sub-
3 paragraph (A)(i), the Secretary shall cancel the
4 order described in subparagraph (A).

5 (C) APPLICATION DENIED.—If the Sec-
6 retary renders a final administrative decision to
7 deny the application described in subparagraph
8 (A)(i), the order described in subparagraph (A)
9 shall be effective and enforceable to the same
10 extent as if the application had not been made.

11 (i) CLASSIFICATION.—If the Secretary determines
12 that an alien is eligible for classification as a conditional
13 nonimmigrant or conditional nonimmigrant dependent,
14 the alien shall be entitled to all benefits described in sub-
15 section (h)(1). The Secretary may authorize the use of a
16 document described in subsection (h)(2) as evidence of
17 such classification or may issue additional documentation
18 as evidence of classification as a conditional nonimmigrant
19 or conditional nonimmigrant dependent.

20 (j) TERMINATION OF BENEFITS.—

21 (1) IN GENERAL.—Any benefit provided to an
22 alien seeking classification as a conditional non-
23 immigrant or conditional nonimmigrant dependent,
24 or who is classified as such, under this section shall
25 terminate if—

1 (A) the Secretary determines that the alien
2 is ineligible for such classification and all review
3 procedures under section 603 have been ex-
4 hausted or waived by the alien;

5 (B) the alien is found removable from the
6 United States under section 237 of the Immi-
7 gration and Nationality Act (8 U.S.C. 1227);

8 (C) the alien has used documentation
9 issued under this section for unlawful or fraud-
10 ulent purposes; or

11 (D) in the case of the spouse or child of
12 an alien applying for classification as a condi-
13 tional nonimmigrant or classified as a condi-
14 tional nonimmigrant under this section, the
15 benefits for the principal alien are terminated.

16 (k) DISSEMINATION OF INFORMATION ON CONDI-
17 TIONAL NONIMMIGRANT PROGRAM.—During the 12-
18 month period immediately after the issuance of regula-
19 tions implementing this section, the Secretary, in coopera-
20 tion with entities approved by the Secretary, shall broadly
21 disseminate information respecting conditional non-
22 immigrant or conditional nonimmigrant dependent classi-
23 fication under this section and the requirements to be sat-
24 isfied to obtain such classification. The Secretary shall dis-
25 seminate information to employers and labor unions to ad-

1 vise them of the rights and protections available to them
2 and to workers who file applications under this section.
3 Such information shall be broadly disseminated, in the
4 principal languages, as determined by the Secretary, spo-
5 ken by aliens who would qualify for classification under
6 this section, including to television, radio, and print media
7 to which such aliens would have access.

8 **SEC. 602. ADJUSTMENT OF STATUS FOR CONDITIONAL**
9 **NONIMMIGRANTS.**

10 (a) REQUIREMENTS.—

11 (1) IN GENERAL.—Notwithstanding any other
12 provision of law, including section 244(h) of the Im-
13 migration and Nationality Act (8 U.S.C. 1254a(h)),
14 the Secretary may adjust the status of a conditional
15 nonimmigrant or a conditional nonimmigrant de-
16 pendent to that of an alien lawfully admitted for
17 permanent residence if the conditional nonimmigrant
18 or conditional nonimmigrant dependent satisfies the
19 applicable requirements under this subsection.

20 (2) COMPLETION OF EMPLOYMENT OR EDU-
21 CATION REQUIREMENT.—A conditional non-
22 immigrant applying for adjustment of status under
23 this section shall establish that during the 6-year pe-
24 riod immediately preceding the application for ad-
25 justment of status, he or she—

1 (A) has been employed full-time, part-time,
2 or seasonally in the United States;

3 (B) has been self-employed in the United
4 States; or

5 (C) has met the education requirements
6 under subsection (c).

7 (3) EVIDENCE OF EMPLOYMENT.—

8 (A) CONCLUSIVE DOCUMENTS.—An alien
9 may conclusively establish employment status in
10 compliance with paragraph (2) by submitting
11 records to the Secretary that demonstrate such
12 employment, and have been maintained by the
13 Social Security Administration, the Internal
14 Revenue Service, or any other Federal, State,
15 or local government agency.

16 (B) OTHER DOCUMENTS.—An alien who is
17 unable to submit a document described in sub-
18 paragraph (A) may satisfy the requirement
19 under paragraph (1) by submitting to the Sec-
20 retary at least 2 other types of reliable docu-
21 ments that provide evidence of employment, in-
22 cluding—

23 (i) bank records;

24 (ii) business records;

25 (iii) employer records;

1 (iv) records of a labor union, day
2 labor center, or organization that assists
3 workers in employment;

4 (v) sworn affidavits from nonrelatives
5 who have direct knowledge of the alien's
6 work, that contain—

7 (I) the name, address, and tele-
8 phone number of the affiant;

9 (II) the nature and duration of
10 the relationship between the affiant
11 and the alien; and

12 (III) other verification or infor-
13 mation; and

14 (vi) remittance records.

15 (C) ADDITIONAL DOCUMENTS AND RE-
16 STRICTIONS.—The Secretary may—

17 (i) designate additional documents to
18 evidence employment in the United States;
19 and

20 (ii) set such terms and conditions on
21 the use of affidavits as is necessary to
22 verify and confirm the identity of any affi-
23 ant or otherwise prevent fraudulent sub-
24 missions.

1 (4) SENSE OF CONGRESS.—It is the sense of
2 the Congress that the requirement under this sub-
3 section should be interpreted and implemented in a
4 manner that recognizes and takes into account the
5 difficulties encountered by aliens in obtaining evi-
6 dence of employment due to the undocumented sta-
7 tus of the alien.

8 (5) BURDEN OF PROOF.—An alien described in
9 paragraph (1) who is applying for adjustment of sta-
10 tus under this section shall prove, by a preponder-
11 ance of the evidence, that the alien has satisfied the
12 requirements of this subsection. An alien may meet
13 such burden of proof by producing sufficient evi-
14 dence to demonstrate such employment as a matter
15 of reasonable inference.

16 (6) PORTABILITY.—An alien shall not be re-
17 quired to complete the employment requirements
18 under this section with a single employer.

19 (b) EXCEPTIONS AND SPECIAL RULES.—

20 (1) EXCEPTIONS BASED ON AGE.—The employ-
21 ment requirements under this section shall not
22 apply—

23 (A) to any alien who is classified as a con-
24 ditional nonimmigrant dependent who was

1 younger than 21 years of age on the date of the
2 enactment of this Act; or

3 (B) to any alien who is 65 years of age or
4 older on the date of the enactment of this Act.

5 (2) DISABILITIES; PREGNANCY.—The employ-
6 ment requirements under this section shall be re-
7 duced for an alien who cannot demonstrate employ-
8 ment based on a physical or mental disability (as de-
9 fined under section 3(2) of the Americans with Dis-
10 abilities Act of 1990 (42 U.S.C. 12102(2)) or as a
11 result of pregnancy if such condition is evidenced by
12 the submission of documentation prescribed by the
13 Secretary.

14 (c) APPLICATION PROCEDURE AND FEE.—

15 (1) IN GENERAL.—The Secretary shall promul-
16 gate regulations establishing procedures for submit-
17 ting an application for adjustment of status under
18 this section. The Secretary shall impose a fee for fil-
19 ing an application for adjustment of status under
20 this section which shall be sufficient to cover the ad-
21 ministrative and other expenses incurred in connec-
22 tion with the review of such applications.

23 (2) FINES.—

24 (A) IN GENERAL.—Except as provided
25 under subparagraph (B), an alien filing an ap-

1 plication for adjustment of status under this
2 section shall pay a \$1500 fine to the Secretary,
3 in addition to the fee required under paragraph
4 (1).

5 (B) EXCEPTION.—An alien who is classi-
6 fied as a conditional nonimmigrant dependent
7 who was under 21 years of age on the date of
8 enactment of this Act shall not be required to
9 pay a fine under this paragraph.

10 (3) STATE IMPACT ASSISTANCE FEE.—

11 (A) IN GENERAL.—In addition to any
12 other amounts required to be paid under this
13 subsection, a conditional nonimmigrant shall
14 submit a State impact assistance fee equal to
15 \$500 with the application for adjustment filed
16 under this section.

17 (B) USE OF FEE.—Fees collected under
18 subparagraph (A) shall be deposited in the
19 State Impact Assistance Account and shall re-
20 main available under 286(x) of the Immigration
21 and Nationality Act.

22 (4) DEPOSIT OF FEES.—Fees collected under
23 this paragraph shall be deposited into the Immigra-
24 tion Examination Fee Account and shall remain
25 available as provided under subsections (m) and (n)

1 of section 286 of the Immigration and Nationality
2 Act (8 U.S.C. 1356).

3 (5) DEPOSIT OF FINES.—Fines collected under
4 this paragraph shall be deposited into the New
5 Worker Program and Conditional Nonimmigrant
6 Fee Account and shall remain available as provided
7 under section 286(w) of the Immigration and Na-
8 tionality Act.

9 (d) ADMISSIBLE UNDER IMMIGRATION LAWS.—A
10 conditional nonimmigrant or conditional nonimmigrant
11 dependent applying for adjustment of status under this
12 section shall establish that he or she is not inadmissible
13 under section 212(a), except for any provision under that
14 section that is not applicable or waived under paragraph
15 (2) or (3) of section 601(d). For purposes of an applica-
16 tion filed under this section, any prior waiver of inadmis-
17 sibility granted to an alien under section 601(d)(2)(C) shall
18 remain in effect with respect to the specific conduct con-
19 sidered by the Secretary at the time of classification under
20 section 601.

21 (e) LEGAL REENTRY.—

22 (1) IN GENERAL.—A conditional nonimmigrant
23 applying for adjustment of status under this section
24 shall physically depart the United States and after
25 such departure, be admitted to the United States as

1 a conditional nonimmigrant or applicant for condi-
2 tional nonimmigrant status, as evidenced by docu-
3 mentation issued by the Secretary. A record of such
4 admission shall be created by the Secretary through
5 the US-VISIT exit and entry system, or any other
6 system maintained by the Secretary to create a
7 record of a lawful entry.

8 (2) DEPARTURE AND REENTRY.—A conditional
9 nonimmigrant seeking to establish lawful admission
10 under paragraph (1)(B) may seek admission to the
11 United States at any port of entry at which the US-
12 VISIT exit and entry system, or any other system
13 maintained by the Secretary to record lawful admis-
14 sion, is in operation. Departure and subsequent law-
15 ful admission to the United States shall occur not
16 later than 90 days before the conditional non-
17 immigrant files an application for adjustment to
18 lawful permanent resident status under this section.

19 (3) EXEMPTIONS.—Paragraph (2) shall not
20 apply to an alien who, on the date on which the ap-
21 plication for adjustment of status is filed under this
22 section—

23 (A) has served in the Armed Forces of the
24 United States;

1 (B) has a son or daughter who has served
2 or is serving in the Armed Forces of the United
3 States;

4 (C) has a pending or approved application
5 under section 244 of the Immigration and Na-
6 tionality Act (8 U.S.C. 1254a), the Nicaraguan
7 Adjustment and Central American Relief Act
8 (Public Law 105–100), or the Haitian Refugee
9 Immigration Fairness Act of 1998 (Public Law
10 105–277);

11 (D) is at least 65 years of age;

12 (E) is younger than 21 years of age;

13 (F) suffers from an ongoing physical or
14 mental disability (as defined in section 3(2) of
15 the Americans with Disabilities Act of 1990 (42
16 U.S.C. 12102));

17 (G) is a single parent head of household;

18 or

19 (H) cannot comply with such paragraph
20 due to extreme hardship to the alien or an im-
21 mediate family member, as determined by the
22 Secretary.

23 (4) FAILURE TO ESTABLISH LAWFUL ADMIS-
24 SION TO THE UNITED STATES.—Unless exempted
25 under paragraph (3), a conditional nonimmigrant

1 who fails to depart and reenter the United States in
2 accordance with paragraph (1) may not become a
3 lawful permanent resident under this section.

4 (f) **MEDICAL EXAMINATION.**—A conditional non-
5 immigrant or a conditional nonimmigrant dependent shall
6 undergo an appropriate medical examination (including a
7 determination of immunization status) that conforms to
8 generally accepted professional standards of medical prac-
9 tice.

10 (g) **PAYMENT OF INCOME TAXES.**—

11 (1) **IN GENERAL.**—Not later than the date on
12 which status is adjusted under this section, a condi-
13 tional nonimmigrant or conditional nonimmigrant
14 dependent shall satisfy any applicable Federal tax li-
15 ability by establishing that—

16 (A) no such tax liability exists;

17 (B) all outstanding liabilities have been
18 paid; or

19 (C) the conditional nonimmigrant has en-
20 tered into, and is in compliance with, an agree-
21 ment for payment of all outstanding liabilities
22 with the Internal Revenue Service.

23 (2) **APPLICABLE FEDERAL TAX LIABILITY.**—

24 For purposes of paragraph (1), the term “applicable
25 Federal tax liability” means liability for Federal

1 taxes, including penalties and interest, owed for any
2 year during the period of employment required
3 under subsection (a)(2) for which the statutory pe-
4 riod for assessment of any deficiency for such taxes
5 has not expired.

6 (3) IRS COOPERATION.—The Secretary of the
7 Treasury shall establish rules and procedures under
8 which the Commissioner of Internal Revenue shall
9 provide documentation to—

10 (A) a conditional nonimmigrant or condi-
11 tional nonimmigrant dependent, upon request,
12 to establish the payment of all taxes required
13 under this subsection; or

14 (B) the Secretary, upon request, regarding
15 the payment of Federal taxes by an alien apply-
16 ing for a benefit under this section.

17 (4) COMPLIANCE.—The alien may satisfy proof
18 of compliance with this subsection by submitting
19 documentation that establishes that—

20 (A) no such tax liability exists;

21 (B) all outstanding liabilities have been
22 met; or

23 (C) the alien has entered into, and is in
24 compliance with, an agreement for payment of

1 all outstanding liabilities with the Internal Rev-
2 enue Service.

3 (h) BASIC CITIZENSHIP SKILLS.—

4 (1) IN GENERAL.—Except as provided under
5 paragraph (2), a conditional nonimmigrant or condi-
6 tional nonimmigrant dependent shall establish that
7 he or she—

8 (A) meets the requirements under section
9 312 of the Immigration and Nationality Act (8
10 U.S.C. 1423); or

11 (B) is satisfactorily pursuing a course of
12 study to achieve such an understanding of
13 English and knowledge and understanding of
14 the history and Government of the United
15 States.

16 (2) RELATION TO NATURALIZATION EXAMINA-
17 TION.—A conditional nonimmigrant or conditional
18 nonimmigrant dependent who demonstrates that he
19 or she meets the requirements under such section
20 312 may be considered to have satisfied the require-
21 ments of that section for purposes of becoming natu-
22 ralized as a citizen of the United States under title
23 III of the Immigration and Nationality Act (8
24 U.S.C. 1401 et seq.).

25 (3) EXCEPTIONS.—

1 (A) MANDATORY.—Paragraph (1) shall
2 not apply to any person who is unable to com-
3 ply with those requirements because of a phys-
4 ical or developmental disability or mental im-
5 pairment as described in section 312(b)(1) of
6 the Immigration and Nationality Act.

7 (B) DISCRETIONARY.—The Secretary may
8 waive all or part of paragraph (1) for a condi-
9 tional nonimmigrant who is at least 65 years of
10 age on the date on which an application is filed
11 for adjustment of status under this section.

12 (i) SECURITY AND LAW ENFORCEMENT BACK-
13 GROUND CHECKS.—The Secretary shall conduct a secu-
14 rity and law enforcement background check in accordance
15 with procedures described in section 601(f).

16 (j) MILITARY SELECTIVE SERVICE.—If a conditional
17 nonimmigrant or conditional nonimmigrant dependent is
18 within the age period required under the Military Selective
19 Service Act (50 U.S.C. App. 451 et seq.), the conditional
20 nonimmigrant shall establish proof of registration under
21 that Act.

22 (k) TREATMENT OF CONDITIONAL NONIMMIGRANT
23 DEPENDENTS.—

1 (1) ADJUSTMENT OF STATUS.—Notwith-
2 standing any other provision of law, the Secretary
3 may—

4 (A) adjust the status of a conditional non-
5 immigrant dependent to that of a person admit-
6 ted for lawful permanent residence if the prin-
7 cipal conditional nonimmigrant spouse or par-
8 ent has been found eligible for adjustment of
9 status under this section;

10 (B) adjust the status of a conditional non-
11 immigrant dependent who was the spouse or
12 child of an alien who was classified as a condi-
13 tional nonimmigrant or was eligible for such
14 classification under section 601, to that of a
15 person admitted for permanent residence if—

16 (i) the termination of the relationship
17 with such spouse or parent was connected
18 to domestic violence; and

19 (ii) the spouse or child has been bat-
20 tered or subjected to extreme cruelty by
21 the spouse or parent.

22 (2) APPLICATION OF OTHER LAW.—In proc-
23 essing applications under this subsection on behalf
24 of aliens who have been battered or subjected to ex-
25 treme cruelty, the Secretary shall apply—

1 (A) the provisions under section
2 204(a)(1)(J) of the Immigration and Nation-
3 ality Act (8 U.S.C. 1154(a)(1)(J)); and

4 (B) the protections, prohibitions, and pen-
5 alties under section 384 of the Illegal Immigra-
6 tion Reform and Immigrant Responsibility Act
7 of 1996 (8 U.S.C. 1367).

8 (l) BACK OF THE LINE.—An alien may not adjust
9 status to that of a lawful permanent resident status under
10 the Development, Relief, and Education for Alien Minors
11 Act of 2007 until that earlier of—

12 (1) 30 days after an immigrant visa becomes
13 available for petitions filed under sections 201, 202,
14 and 203 that were filed before the date of enactment
15 of the STRIVE Act of 2007; or

16 (2) 8 years after the enactment of the Develop-
17 ment, Relief, and Education for Alien Minors Act of
18 2007.

19 (m) INELIGIBILITY FOR PUBLIC BENEFITS.—For
20 purposes of section 403 of the Personal Responsibility and
21 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.
22 1613), an alien whose status has been adjusted under this
23 section shall not be eligible for any Federal means-tested
24 public benefit unless the alien meets the alien eligibility

1 criteria for such benefit under title IV of such Act (8
2 U.S.C. 1601 et seq.).

3 **SEC. 603. ADMINISTRATIVE AND JUDICIAL REVIEW.**

4 (a) ADMINISTRATIVE REVIEW.—

5 (1) SINGLE LEVEL OF ADMINISTRATIVE APPEL-
6 LATE REVIEW.—The Secretary shall establish an ap-
7 pellate review process within United States Citizen-
8 ship and Immigration Services to provide for a sin-
9 gle level of administrative appellate review of a final
10 determination respecting an application for classi-
11 fication or adjustment of status under this subtitle.

12 (2) STANDARD FOR REVIEW.—Administrative
13 appellate review under paragraph (1) shall be based
14 solely upon the administrative record established at
15 the time of the determination on the application and
16 upon the presentation of additional or newly discov-
17 ered evidence during the time of the pending appeal.

18 (b) JUDICIAL REVIEW.—

19 (1) IN GENERAL.—The circuit courts of appeal
20 of the United States shall have jurisdiction to review
21 the denial of an application for classification or ad-
22 justment of status under this subtitle. Notwith-
23 standing any other provision of law, the standard for
24 review of such a denial shall be governed by para-
25 graph (2).

1 (2) STANDARD FOR JUDICIAL REVIEW.—Judicial
2 review of a denial of an application under this
3 subtitle shall be based solely upon the administrative
4 record established at the time of the review. The
5 findings of fact and other determinations contained
6 in the record shall be conclusive unless the applicant
7 can establish abuse of discretion or findings that are
8 directly contrary to clear and convincing facts con-
9 tained in the record, considered as a whole.

10 (3) JURISDICTION OF COURTS.—

11 (A) IN GENERAL.—Notwithstanding any
12 other provision of law, the district courts of the
13 United States shall have jurisdiction over any
14 cause or claim arising from a pattern or prac-
15 tice of the Secretary in the operation or imple-
16 mentation of this subtitle that is arbitrary, ca-
17 pricious, or otherwise contrary to law, and may
18 order any appropriate relief.

19 (B) REMEDIES.—A district court may
20 order any appropriate relief under subpara-
21 graph (A) if the court determines that—

22 (i) resolution of such cause or claim
23 will serve judicial and administrative effi-
24 ciency; or

1 (ii) a remedy would otherwise not be
2 reasonably available or practicable.

3 (c) **STAY OF REMOVAL.**—An alien seeking adminis-
4 trative or judicial review under this section may not be
5 removed from the United States until a final decision is
6 rendered establishing that the alien is ineligible for classi-
7 fication or adjustment of status under this subtitle unless
8 such removal is based on criminal or national security
9 grounds.

10 **SEC. 604. MANDATORY DISCLOSURE OF INFORMATION.**

11 (a) **MANDATORY DISCLOSURE.**—The Secretary and
12 the Secretary of State shall provide a duly recognized law
13 enforcement entity that submits a written request with the
14 information furnished pursuant to an application filed
15 under this subtitle, and any other information derived
16 from such furnished information, in connection with a
17 criminal investigation or prosecution or a national security
18 investigation or prosecution, of an individual suspect or
19 group of suspects.

20 (b) **LIMITATIONS.**—Except as otherwise provided
21 under this section, no Federal agency, or any officer, em-
22 ployee, or agent of such agency, may—

23 (1) use the information furnished by the appli-
24 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) CRIMINAL PENALTY.—Any person who knowingly
10 uses, publishes, or permits information to be examined in
11 violation of this section shall be fined not more than
12 \$10,000.

13 **SEC. 605. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**
14 **TIONS.**

15 (a) CRIMINAL PENALTY.—

16 (1) VIOLATION.—It shall be unlawful for any
17 person—

18 (A) to file, or assist in filing, an applica-
19 tion for benefits under this subtitle; and

20 (i) to knowingly and willfully falsify,
21 misrepresent, conceal, or cover up a mate-
22 rial fact;

23 (ii) to make any false, fictitious, or
24 fraudulent statements or representations;

25 or

1 (iii) to make or use any false writing
2 or document knowing the same to contain
3 any false, fictitious, or fraudulent state-
4 ment or entry; or

5 (B) to create or supply a false writing or
6 document for use in making such an applica-
7 tion.

8 (2) PENALTY.—Any person who violates para-
9 graph (1) shall be fined in accordance with title 18,
10 United States Code, imprisoned not more than 5
11 years, or both.

12 (b) INADMISSIBILITY.—An alien who is convicted of
13 violating subsection (a) shall be considered to be inadmis-
14 sible to the United States on the ground described in sec-
15 tion 212(a)(6)(C)(i) of the Immigration and Nationality
16 Act (8 U.S.C. 1182(a)(6)(C)(i)).

17 (c) EXCEPTION.—Notwithstanding subsections (a)
18 and (b), any alien or other entity (including an employer
19 or union) that submits an employment record that con-
20 tains incorrect data used by the alien to obtain such em-
21 ployment, shall not, on that ground, be determined to have
22 violated this section.

1 **SEC. 606. ALIENS NOT SUBJECT TO DIRECT NUMERICAL**
2 **LIMITATIONS.**

3 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended
4 by title V, is further amended—

5 (1) in subparagraph (A), by striking “subpara-
6 graph (A) or (B) of”; and

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

8 “(N) Aliens whose status is adjusted from that
9 of a conditional nonimmigrant or conditional non-
10 immigrant dependent.”.

11 **SEC. 607. EMPLOYER PROTECTIONS.**

12 (a) IMMIGRATION STATUS OF ALIEN.—Employers of
13 aliens applying for conditional nonimmigrant or condi-
14 tional nonimmigrant dependent classification or adjust-
15 ment of status under section 601 or 602 shall not be sub-
16 ject to civil and criminal tax liability relating directly to
17 the employment of such alien before receiving employment
18 authorization under this subtitle.

19 (b) PROVISION OF EMPLOYMENT RECORDS.—Em-
20 ployers that provide unauthorized aliens with copies of em-
21 ployment records or other evidence of employment pursu-
22 ant to an application for conditional nonimmigrant or con-
23 ditional nonimmigrant dependent classification or adjust-
24 ment of status under section 601 or 602 or any other ap-
25 plication or petition pursuant to any other immigration
26 law, shall not be subject to civil and criminal liability

1 under section 274A of the Immigration and Nationality
2 Act (8 U.S.C. 1324a) for employing such unauthorized
3 aliens.

4 (c) APPLICABILITY OF OTHER LAW.—Nothing in this
5 section may be used to shield an employer from liability
6 under section 274B of the Immigration and Nationality
7 Act (8 U.S.C. 1324b) or any other labor or employment
8 law.

9 **SEC. 608. LIMITATIONS ON ELIGIBILITY.**

10 (a) IN GENERAL.—An alien is not ineligible for any
11 immigration benefit under any provision of this title, or
12 any amendment made by this title, solely on the basis that
13 the alien violated section 1543, 1544, or 1546 of title 18,
14 United States Code, or any amendments made by this Act,
15 during the period beginning on the date of the enactment
16 of this Act and ending on the date on which the alien ap-
17 plies for any benefits under this title.

18 (b) PROSECUTION.—An alien who commits a viola-
19 tion of section 1543, 1544, or 1546 of such title or any
20 amendments made by this Act, during the period begin-
21 ning on the date of the enactment of this Act and ending
22 on the date that the alien applies for eligibility for such
23 benefit may be prosecuted for the violation if the alien's
24 application for such benefit is denied.

1 **SEC. 609. RULEMAKING.**

2 The Secretary shall promulgate regulations regarding
3 the timely filing and processing of applications for benefits
4 under this subtitle.

5 **SEC. 610. AUTHORIZATION OF APPROPRIATIONS.**

6 (a) IN GENERAL.—There are authorized to be appro-
7 priated to the Secretary such sums as may be necessary
8 to carry out this subtitle and the amendments made by
9 this subtitle.

10 (b) AVAILABILITY OF FUNDS.—Funds appropriated
11 pursuant to subsection (a) shall remain available until ex-
12 pended.

13 (c) SENSE OF CONGRESS.—It is the sense of the Con-
14 gress that funds authorized to be appropriated under sub-
15 section (a) should be directly appropriated so as to facili-
16 tate the orderly and timely commencement of the proc-
17 essing of applications filed under sections 601 and 602.

18 **Subtitle B—DREAM Act of 2007**

19 **SEC. 621. SHORT TITLE.**

20 This subtitle may be cited as the “Development, Re-
21 lief, and Education for Alien Minors Act of 2007” or the
22 “DREAM Act of 2007”.

23 **SEC. 622. DEFINITIONS.**

24 In this subtitle:

25 (1) INSTITUTION OF HIGHER EDUCATION.—The
26 term “institution of higher education” has the

1 meaning given that term in section 101 of the High-
2 er Education Act of 1965 (20 U.S.C. 1001).

3 (2) UNIFORMED SERVICES.—The term “uni-
4 formed services” has the meaning given that term in
5 section 101(a) of title 10, United States Code.

6 **SEC. 623. RESTORATION OF STATE OPTION TO DETERMINE**
7 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**
8 **CATION BENEFITS.**

9 (a) IN GENERAL.—Section 505 of the Illegal Immi-
10 gration Reform and Immigrant Responsibility Act of 1996
11 (8 U.S.C. 1623) is repealed.

12 (b) EFFECTIVE DATE.—The repeal under subsection
13 (a) shall take effect as if included in the enactment of the
14 Illegal Immigration Reform and Immigrant Responsibility
15 Act of 1996 (division C of Public Law 104–208; 110 Stat.
16 3009-546).

17 **SEC. 624. CANCELLATION OF REMOVAL AND ADJUSTMENT**
18 **OF STATUS OF CERTAIN LONG-TERM RESI-**
19 **DENTS WHO ENTERED THE UNITED STATES**
20 **AS CHILDREN.**

21 (a) SPECIAL RULE FOR CERTAIN LONG-TERM RESI-
22 DENTS WHO ENTERED THE UNITED STATES AS CHIL-
23 DREN.—

24 (1) IN GENERAL.—Notwithstanding any other
25 provision of law and except as otherwise provided in

1 this subtitle, the Secretary may cancel removal of,
2 and adjust to the status of an alien lawfully admit-
3 ted for permanent residence, subject to the condi-
4 tional basis described in section 625, an alien who
5 is inadmissible or deportable from the United States,
6 if the alien demonstrates that—

7 (A) the alien has been physically present in
8 the United States for a continuous period of
9 not less than 5 years immediately preceding the
10 date of enactment of this Act, and had not yet
11 reached the age of 16 years at the time of ini-
12 tial entry;

13 (B) the alien has been a person of good
14 moral character since the time of application;

15 (C) the alien—

16 (i) is not inadmissible under para-
17 graph (2), (3), (6)(E), or (10)(C) of sec-
18 tion 212(a) of the Immigration and Na-
19 tionality Act (8 U.S.C. 1182(a)); and

20 (ii) is not deportable under paragraph
21 (1)(E), (2), or (4) of section 237(a) of the
22 Immigration and Nationality Act (8 U.S.C.
23 1227(a));

24 (D) the alien, at the time of application,
25 has been admitted to an institution of higher

1 education in the United States, or has earned
2 a high school diploma or obtained a general
3 education development certificate in the United
4 States; and

5 (E) the alien has never been under a final
6 administrative or judicial order of exclusion, de-
7 portation, or removal, unless the alien—

8 (i) has remained in the United States
9 under color of law after such order was
10 issued; or

11 (ii) received the order before attaining
12 the age of 16 years.

13 (2) WAIVER.—Notwithstanding paragraph (1),
14 the Secretary may waive the ground of ineligibility
15 under section 212(a)(6)(E) of the Immigration and
16 Nationality Act and the ground of deportability
17 under paragraph (1)(E) of section 237(a) of that
18 Act for humanitarian purposes or family unity or
19 when it is otherwise in the public interest.

20 (3) PROCEDURES.—The Secretary shall provide
21 a procedure by regulation allowing eligible individ-
22 uals to apply affirmatively for the relief available
23 under this subsection without being placed in re-
24 moval proceedings.

1 (b) TERMINATION OF CONTINUOUS PERIOD.—For
2 purposes of this section, any period of continuous resi-
3 dence or continuous physical presence in the United States
4 of an alien who applies for cancellation of removal under
5 this section shall not terminate when the alien is served
6 a notice to appear under section 239(a) of the Immigra-
7 tion and Nationality Act (8 U.S.C. 1229(a)).

8 (c) TREATMENT OF CERTAIN BREAKS IN PRES-
9 ENCE.—

10 (1) IN GENERAL.—An alien shall be considered
11 to have failed to maintain continuous physical pres-
12 ence in the United States under subsection (a) if the
13 alien has departed from the United States for any
14 period in excess of 90 days or for any periods in the
15 aggregate exceeding 180 days.

16 (2) EXTENSIONS FOR EXCEPTIONAL CIR-
17 CUMSTANCES.—The Secretary may extend the time
18 periods described in paragraph (1) if the alien dem-
19 onstrates that the failure to timely return to the
20 United States was due to exceptional circumstances.
21 The exceptional circumstances determined sufficient
22 to justify an extension should be no less compelling
23 than serious illness of the alien, or death or serious
24 illness of a parent, grandparent, sibling, or child.

1 (d) EXEMPTION FROM NUMERICAL LIMITATIONS.—
2 Nothing in this section may be construed to apply a nu-
3 merical limitation on the number of aliens who may be
4 eligible for cancellation of removal or adjustment of status
5 under this section.

6 (e) RULEMAKING.—

7 (1) PROPOSED REGULATIONS.—Not later than
8 180 days after the date of enactment of this Act, the
9 Secretary shall publish regulations implementing this
10 section. Such regulations shall be effective imme-
11 diately on an interim basis, but are subject to
12 change and revision after public notice and oppor-
13 tunity for a period for public comment.

14 (2) INTERIM, FINAL REGULATIONS.—Within a
15 reasonable time after publication of the interim reg-
16 ulations in accordance with paragraph (1), the Sec-
17 retary shall publish final regulations implementing
18 this section.

19 (f) REMOVAL OF ALIEN.—The Secretary may not re-
20 move any alien who has a pending application for condi-
21 tional status under this subtitle.

22 **SEC. 625. CONDITIONAL PERMANENT RESIDENT STATUS.**

23 (a) IN GENERAL.—

24 (1) CONDITIONAL BASIS FOR STATUS.—Not-
25 withstanding any other provision of law, and except

1 as provided in section 626, an alien whose status has
2 been adjusted under section 624 to that of an alien
3 lawfully admitted for permanent residence shall be
4 considered to have obtained such status on a condi-
5 tional basis subject to the provisions of this section.
6 Such conditional permanent resident status shall be
7 valid for a period of 6 years, subject to termination
8 under subsection (b).

9 (2) NOTICE OF REQUIREMENTS.—

10 (A) AT TIME OF OBTAINING PERMANENT
11 RESIDENCE.—At the time an alien obtains per-
12 manent resident status on a conditional basis
13 under paragraph (1), the Secretary shall pro-
14 vide for notice to the alien regarding the provi-
15 sions of this section and the requirements of
16 subsection (c) to have the conditional basis of
17 such status removed.

18 (B) EFFECT OF FAILURE TO PROVIDE NO-
19 TICE.—The failure of the Secretary to provide
20 a notice under this paragraph—

21 (i) shall not affect the enforcement of
22 the provisions of this Act with respect to
23 the alien; and

24 (ii) shall not give rise to any private
25 right of action by the alien.

1 (b) TERMINATION OF STATUS.—

2 (1) IN GENERAL.—The Secretary shall termi-
3 nate the conditional permanent resident status of
4 any alien who obtained such status under this sub-
5 title, if the Secretary determines that the alien—

6 (A) ceases to meet the requirements of
7 subparagraph (B) or (C) of section 624(a)(1);

8 (B) has become a public charge; or

9 (C) has received a dishonorable or other
10 than honorable discharge from the uniformed
11 services.

12 (2) RETURN TO PREVIOUS IMMIGRATION STA-
13 TUS.—Any alien whose conditional permanent resi-
14 dent status is terminated under paragraph (1) shall
15 return to the immigration status the alien had im-
16 mediately prior to receiving conditional permanent
17 resident status under this subtitle.

18 (c) REQUIREMENTS OF TIMELY PETITION FOR RE-
19 MOVAL OF CONDITION.—

20 (1) IN GENERAL.—In order for the conditional
21 basis of permanent resident status obtained by an
22 alien under subsection (a) to be removed, the alien
23 shall file with the Secretary, in accordance with
24 paragraph (3), a petition which—

1 (A) requests the removal of such condi-
2 tional basis; and

3 (B) provides, under penalty of perjury, the
4 facts and information needed by the Secretary
5 to make the determination described in para-
6 graph (2)(A).

7 (2) ADJUDICATION OF PETITION TO REMOVE
8 CONDITION.—

9 (A) IN GENERAL.—If a petition is filed in
10 accordance with paragraph (1) for an alien, the
11 Secretary shall make a determination as to
12 whether the alien meets the requirements set
13 forth in subparagraphs (A) through (E) of sub-
14 section (d)(1).

15 (B) REMOVAL OF CONDITIONAL BASIS IF
16 FAVORABLE DETERMINATION.—If the Secretary
17 determines that the alien meets such require-
18 ments, the Secretary shall notify the alien of
19 such determination and immediately remove the
20 conditional basis of the status of the alien.

21 (C) TERMINATION IF ADVERSE DETER-
22 MINATION.—If the Secretary determines that
23 the alien does not meet such requirements, the
24 Secretary shall notify the alien of such deter-
25 mination and terminate the conditional perma-

1 nent resident status of the alien as of the date
2 of the determination.

3 (3) TIME TO FILE PETITION.—

4 (A) IN GENERAL.—An alien may petition
5 to remove the conditional basis to lawful resi-
6 dent status during the period beginning 180
7 days before and ending 2 years after the date
8 that is 6 years after—

9 (i) the date of the granting of condi-
10 tional permanent resident status; or

11 (ii) any other expiration date of the
12 conditional permanent resident status as
13 extended by the Secretary in accordance
14 with this subtitle.

15 (B) STATUS.—The alien shall be deemed
16 in conditional permanent resident status in the
17 United States during the period in which a peti-
18 tion under subparagraph (A) is pending.

19 (d) DETAILS OF PETITION.—

20 (1) CONTENTS OF PETITION.—Each petition
21 for an alien under subsection (c)(1) shall contain in-
22 formation to permit the Secretary to determine
23 whether each of the following requirements is met:

24 (A) The alien has demonstrated good
25 moral character during the entire period the

1 alien has been a conditional permanent resi-
2 dent.

3 (B) The alien is in compliance with section
4 624(a)(1)(C).

5 (C) The alien has not abandoned the
6 alien's residence in the United States. The Sec-
7 retary shall presume that the alien has aban-
8 doned such residence if the alien is absent from
9 the United States for more than 365 days, in
10 the aggregate, during the period of conditional
11 residence, unless the alien demonstrates that
12 the alien has not abandoned the alien's resi-
13 dence. An alien who is absent from the United
14 States due to active service in the uniformed
15 services has not abandoned the alien's residence
16 in the United States during the period of such
17 service.

18 (D) The alien has completed at least 1 of
19 the following:

20 (i) The alien has acquired a degree
21 from an institution of higher education in
22 the United States or has completed at
23 least 2 years, in good standing, in a pro-
24 gram for a bachelor's degree or higher de-
25 gree in the United States.

1 (ii) The alien has served in the uni-
2 formed services for at least 2 years and, if
3 discharged, has received an honorable dis-
4 charge.

5 (E) The alien has provided a list of each
6 secondary school (as that term is defined in sec-
7 tion 9101 of the Elementary and Secondary
8 Education Act of 1965 (20 U.S.C. 7801)) that
9 the alien attended in the United States.

10 (2) HARDSHIP EXCEPTION.—

11 (A) IN GENERAL.—The Secretary may re-
12 move the conditional status of an alien if the
13 alien—

14 (i) satisfies the requirements of sub-
15 paragraphs (A), (B), and (C) of paragraph
16 (1);

17 (ii) demonstrates compelling cir-
18 cumstances for the inability to complete
19 the requirements described in paragraph
20 (1)(D); and

21 (iii) demonstrates that the alien's re-
22 moval from the United States would result
23 in exceptional and extremely unusual hard-
24 ship to the alien or the alien's spouse, par-

1 ent, or child who is a citizen or a lawful
2 permanent resident of the United States.

3 (B) EXTENSION.—Upon a showing of good
4 cause, the Secretary may extend the period of
5 conditional resident status for the purpose of
6 completing the requirements described in para-
7 graph (1)(D).

8 (e) TREATMENT OF PERIOD FOR PURPOSES OF NAT-
9 URALIZATION.—For purposes of title III of the Immigra-
10 tion and Nationality Act (8 U.S.C. 1401 et seq.), an alien
11 who is in the United States as a lawful permanent resident
12 on a conditional basis under this section shall be consid-
13 ered to have been admitted as an alien lawfully admitted
14 for permanent residence and to be in the United States
15 as an alien lawfully admitted to the United States for per-
16 manent residence. The alien may not apply for naturaliza-
17 tion until the conditional basis is removed.

18 **SEC. 626. RETROACTIVE BENEFITS UNDER THIS ACT.**

19 If, on the date of the enactment of this Act, an alien
20 has satisfied all the requirements of subparagraphs (A)
21 through (E) of section 624(a)(1) and section
22 625(d)(1)(D), the Secretary may adjust the status of the
23 alien to that of a conditional resident in accordance with
24 section 624. The alien may petition for removal of such
25 condition at the end of the conditional residence period

1 in accordance with section 625(c) if the alien has met the
2 requirements of subparagraphs (A), (B), and (C) of sec-
3 tion 625(d)(1) during the entire period of conditional resi-
4 dence.

5 **SEC. 627. EXCLUSIVE JURISDICTION.**

6 (a) IN GENERAL.—The Secretary shall have exclusive
7 jurisdiction to determine eligibility for relief under this
8 subtitle, except if the alien has been placed into deporta-
9 tion, exclusion, or removal proceedings either prior to or
10 after filing an application for relief under this Act, in
11 which case the Attorney General shall have exclusive juris-
12 diction and shall assume all the powers and duties of the
13 Secretary until proceedings are terminated, or if a final
14 order of deportation, exclusion, or removal is entered the
15 Secretary shall resume all powers and duties delegated to
16 the Secretary under this subtitle.

17 (b) STAY OF REMOVAL OF CERTAIN ALIENS EN-
18 ROLLED IN PRIMARY OR SECONDARY SCHOOL.—The At-
19 torney General shall stay the removal proceedings of any
20 alien who—

21 (1) meets all the requirements of subpara-
22 graphs (A), (B), (C), and (E) of section 624(a)(1);

23 (2) is at least 12 years of age; and

24 (3) is enrolled full time in a primary or sec-
25 ondary school.

1 (c) EMPLOYMENT.—An alien whose removal is stayed
2 pursuant to subsection (b) may be engaged in employment
3 in the United States consistent with the Fair Labor
4 Standards Act (29 U.S.C. 201 et seq.) and State and local
5 laws governing minimum age for employment.

6 (d) LIFT OF STAY.—The Attorney General shall lift
7 the stay granted pursuant to subsection (b) if the alien—

8 (1) is no longer enrolled in a primary or sec-
9 ondary school; or

10 (2) ceases to meet the requirements of sub-
11 section (b)(1).

12 **SEC. 628. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**
13 **TION.**

14 Any person who files an application for relief under
15 this subtitle and willfully and knowingly falsifies, mis-
16 represents, or conceals a material fact or makes any false
17 or fraudulent statement or representation, or makes or
18 uses any false writing or document knowing the same to
19 contain any false or fraudulent statement or entry, shall
20 be fined in accordance with title 18, United States Code,
21 imprisoned not more than 5 years, or both.

22 **SEC. 629. CONFIDENTIALITY OF INFORMATION.**

23 (a) PROHIBITION.—Except as provided in subsection
24 (b), no officer or employee of the United States may—

1 (1) use the information furnished by the appli-
2 cant pursuant to an application filed under this Act
3 to initiate removal proceedings against any persons
4 identified in the application;

5 (2) make any publication whereby the informa-
6 tion furnished by any particular individual pursuant
7 to an application under this Act can be identified; or

8 (3) permit anyone other than an officer or em-
9 ployee of the United States Government or, in the
10 case of applications filed under this Act with a des-
11 ignated entity, that designated entity, to examine
12 applications filed under this Act.

13 (b) **REQUIRED DISCLOSURE.**—The Secretary or the
14 Attorney General shall provide the information furnished
15 under this section, and any other information derived from
16 such furnished information, to—

17 (1) a duly recognized law enforcement entity in
18 connection with an investigation or prosecution of an
19 offense described in paragraph (2) or (3) of section
20 212(a) of the Immigration and Nationality Act (8
21 U.S.C. 1182(a)), when such information is requested
22 in writing by such entity; or

23 (2) an official coroner for purposes of affirma-
24 tively identifying a deceased individual (whether or

1 not such individual is deceased as a result of a
2 crime).

3 (c) PENALTY.—Any person who knowingly uses, pub-
4 lishes, or permits information to be examined in violation
5 of this section shall be fined not more than \$10,000.

6 **SEC. 630. EXPEDITED PROCESSING OF APPLICATIONS; PRO-**
7 **HIBITION ON FEES.**

8 Regulations promulgated under this subtitle shall
9 provide that applications under this subtitle will be consid-
10 ered on an expedited basis and without a requirement for
11 the payment by the applicant of any additional fee for
12 such expedited processing.

13 **SEC. 631. HIGHER EDUCATION ASSISTANCE.**

14 Notwithstanding any provision of the Higher Edu-
15 cation Act of 1965 (20 U.S.C. 1001 et seq.), with respect
16 to assistance provided under title IV of such Act (20
17 U.S.C. 1070 et seq.), an alien who adjusts status to that
18 of a lawful permanent resident under this subtitle shall
19 only be eligible for the following assistance under such
20 title:

21 (1) Student loans under parts B, D, and E of
22 such title IV (20 U.S.C. 1071 et seq., 1087a et seq.,
23 1087aa et seq.), subject to the requirements of such
24 parts.

1 (2) Federal work-study programs under part C
2 of such title IV (42 U.S.C. 2751 et seq.), subject to
3 the requirements of such part.

4 (3) Services under such title IV (20 U.S.C.
5 1070 et seq.), subject to the requirements for such
6 services.

7 **SEC. 632. GAO REPORT.**

8 Not later than 7 years after the date of the enact-
9 ment of this Act, the Comptroller General of the United
10 States shall submit a report to the Committee on the Judi-
11 ciary of the Senate and the Committee on the Judiciary
12 of the House of Representatives that sets forth—

13 (1) the number of aliens who were eligible for
14 cancellation of removal and adjustment of status
15 under section 624(a);

16 (2) the number of aliens who applied for adjust-
17 ment of status under section 624(a);

18 (3) the number of aliens who were granted ad-
19 justment of status under section 624(a); and

20 (4) the number of aliens whose conditional per-
21 manent resident status was removed under section
22 625.

1 **Subtitle C—AgJOBS Act of 2007**

2 **SEC. 641. SHORT TITLE.**

3 This subtitle may be cited as the “Agricultural Job
4 Opportunities, Benefits, and Security Act of 2007” or the
5 “AgJOBS Act of 2007”.

6 **SEC. 642. DEFINITIONS.**

7 In this subtitle:

8 (1) **AGRICULTURAL EMPLOYMENT.**—The term
9 “agricultural employment” means any service or ac-
10 tivity that is considered to be agricultural under sec-
11 tion 3(f) of the Fair Labor Standards Act of 1938
12 (29 U.S.C. 203(f)) or agricultural labor under sec-
13 tion 3121(g) of the Internal Revenue Code of 1986
14 or the performance of agricultural labor or services
15 described in section 101(a)(15)(H)(ii)(a) of the Im-
16 migration and Nationality Act (8 U.S.C.
17 1101(a)(15)(H)(ii)(a)).

18 (2) **BLUE CARD STATUS.**—The term “blue card
19 status” means the status of an alien who has been
20 lawfully admitted into the United States for tem-
21 porary residence under section 101(a).

22 (3) **DEPARTMENT.**—The term “Department”
23 means the Department of Homeland Security.

24 (4) **EMPLOYER.**—The term “employer” means
25 any person or entity, including any farm labor con-

1 tractor and any agricultural association, that em-
2 ploys workers in agricultural employment.

3 (5) SECRETARY.—Except as otherwise provided,
4 the term “Secretary” means the Secretary of Home-
5 land Security.

6 (6) TEMPORARY.—A worker is employed on a
7 “temporary” basis when the employment is intended
8 not to exceed 10 months.

9 (7) WORK DAY.—The term “work day” means
10 any day in which the individual is employed 5.75 or
11 more hours in agricultural employment.

12 **CHAPTER 1—PILOT PROGRAM FOR**
13 **EARNED STATUS ADJUSTMENT OF AG-**
14 **RICULTURAL WORKERS**

15 **Subchapter A—Blue Card Status**

16 **SEC. 643. REQUIREMENTS FOR BLUE CARD STATUS.**

17 (a) REQUIREMENT TO GRANT BLUE CARD STA-
18 TUS.—Notwithstanding any other provision of law, the
19 Secretary shall, pursuant to the requirements of this sec-
20 tion, grant blue card status to an alien who qualifies under
21 this section if the Secretary determines that the alien—

22 (1) has performed agricultural employment in
23 the United States for at least 863 hours or 150
24 work days during the 24-month period ending on
25 December 31, 2006;

1 (2) applied for such status during the 18-month
2 application period beginning on the first day of the
3 seventh month that begins after the date of enact-
4 ment of this Act;

5 (3) is otherwise admissible to the United States
6 under section 212 of the Immigration and Nation-
7 ality Act (8 U.S.C. 1182), except as otherwise pro-
8 vided under section 647(b); and

9 (4) has not been convicted of any felony or a
10 misdemeanor, an element of which involves bodily in-
11 jury, threat of serious bodily injury, or harm to
12 property in excess of \$500.

13 (b) AUTHORIZED TRAVEL.—An alien who is granted
14 blue card status is authorized to travel outside the United
15 States (including commuting to the United States from
16 a residence in a foreign country) in the same manner as
17 an alien lawfully admitted for permanent residence.

18 (c) AUTHORIZED EMPLOYMENT.—The Secretary
19 shall provide an alien who is granted blue card status an
20 employment authorized endorsement or other appropriate
21 work permit, in the same manner as an alien lawfully ad-
22 mitted for permanent residence.

23 (d) TERMINATION OF BLUE CARD STATUS.—

24 (1) IN GENERAL.—The Secretary may termi-
25 nate blue card status granted to an alien under this

1 section only if the Secretary determines that the
2 alien is deportable.

3 (2) GROUNDS FOR TERMINATION OF BLUE
4 CARD STATUS.—Before any alien becomes eligible
5 for adjustment of status under section 645, the Sec-
6 retary may deny adjustment to permanent resident
7 status and provide for termination of the blue card
8 status granted such alien under paragraph (1) if—

9 (A) the Secretary finds, by a preponder-
10 ance of the evidence, that the adjustment to
11 blue card status was the result of fraud or will-
12 ful misrepresentation (as described in section
13 212(a)(6)(C)(i) of the Immigration and Nation-
14 ality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

15 (B) the alien—

16 (i) commits an act that makes the
17 alien inadmissible to the United States as
18 an immigrant, except as provided under
19 section 647(b);

20 (ii) is convicted of a felony or 3 or
21 more misdemeanors committed in the
22 United States;

23 (iii) is convicted of an offense, an ele-
24 ment of which involves bodily injury, threat

1 of serious bodily injury, or harm to prop-
2 erty in excess of \$500; or

3 (iv) fails to perform the agricultural
4 employment required under section
5 645(a)(1)(A) unless the alien was unable
6 to work in agricultural employment due to
7 the extraordinary circumstances described
8 in section 645(a)(3).

9 (e) RECORD OF EMPLOYMENT.—

10 (1) IN GENERAL.—Each employer of an alien
11 granted blue card status under this section shall an-
12 nually—

13 (A) provide a written record of employ-
14 ment to the alien; and

15 (B) provide a copy of such record to the
16 Secretary.

17 (2) SUNSET.—The obligation under paragraph
18 (1) shall terminate on the date that is 6 years after
19 the date of the enactment of this Act.

20 (f) REQUIRED FEATURES OF IDENTITY CARD.—The
21 Secretary shall provide each alien granted blue card sta-
22 tus, and the spouse and any child of each such alien resid-
23 ing in the United States, with a card that contains—

1 (1) an encrypted, machine-readable, electronic
2 identification strip that is unique to the alien to
3 whom the card is issued;

4 (2) biometric identifiers, including fingerprints
5 and a digital photograph; and

6 (3) physical security features designed to pre-
7 vent tampering, counterfeiting, or duplication of the
8 card for fraudulent purposes.

9 (g) FINE.—An alien granted blue card status shall
10 pay a fine of \$100 to the Secretary.

11 (h) MAXIMUM NUMBER.—The Secretary may not
12 issue more than 1,500,000 blue cards during the 5-year
13 period beginning on the date of the enactment of this Act.

14 **SEC. 644. TREATMENT OF ALIENS GRANTED BLUE CARD**
15 **STATUS.**

16 (a) IN GENERAL.—Except as otherwise provided
17 under this section, an alien granted blue card status shall
18 be considered to be an alien lawfully admitted for perma-
19 nent residence for purposes of any law other than any pro-
20 vision of the Immigration and Nationality Act (8 U.S.C.
21 1101 et seq.).

22 (b) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL
23 PUBLIC BENEFITS.—An alien granted blue card status
24 shall not be eligible, by reason of such status, for any form
25 of assistance or benefit described in section 403(a) of the

1 Personal Responsibility and Work Opportunity Reconcili-
2 ation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after
3 the date on which the alien is granted an adjustment of
4 status under section 645.

5 (c) TERMS OF EMPLOYMENT.—

6 (1) PROHIBITION.—No alien granted blue card
7 status may be terminated from employment by any
8 employer during the period of blue card status ex-
9 cept for just cause.

10 (2) TREATMENT OF COMPLAINTS.—

11 (A) ESTABLISHMENT OF PROCESS.—The
12 Secretary shall establish a process for the re-
13 ceipt, initial review, and disposition of com-
14 plaints by aliens granted blue card status who
15 allege that they have been terminated without
16 just cause. No proceeding shall be conducted
17 under this paragraph with respect to a termi-
18 nation unless the Secretary determines that the
19 complaint was filed not later than 6 months
20 after the date of the termination.

21 (B) INITIATION OF ARBITRATION.—If the
22 Secretary finds that an alien has filed a com-
23 plaint in accordance with subparagraph (A) and
24 there is reasonable cause to believe that the
25 alien was terminated from employment without

1 just cause, the Secretary shall initiate binding
2 arbitration proceedings by requesting the Fed-
3 eral Mediation and Conciliation Service to ap-
4 point a mutually agreeable arbitrator from the
5 roster of arbitrators maintained by such Service
6 for the geographical area in which the employer
7 is located. The procedures and rules of such
8 Service shall be applicable to the selection of
9 such arbitrator and to such arbitration pro-
10 ceedings. The Secretary shall pay the fee and
11 expenses of the arbitrator, subject to the avail-
12 ability of appropriations for such purpose.

13 (C) ARBITRATION PROCEEDINGS.—The ar-
14 bitrator shall conduct the proceeding under this
15 paragraph in accordance with the policies and
16 procedures promulgated by the American Arbi-
17 tration Association applicable to private arbitra-
18 tion of employment disputes. The arbitrator
19 shall make findings respecting whether the ter-
20 mination was for just cause. The arbitrator
21 may not find that the termination was for just
22 cause unless the employer so demonstrates by a
23 preponderance of the evidence. If the arbitrator
24 finds that the termination was not for just
25 cause, the arbitrator shall make a specific find-

1 ing of the number of days or hours of work lost
2 by the employee as a result of the termination.
3 The arbitrator shall have no authority to order
4 any other remedy, including reinstatement,
5 back pay, or front pay to the affected employee.
6 Not later than 30 days after the date of the
7 conclusion of the arbitration proceeding, the ar-
8 bitrator shall transmit the findings in the form
9 of a written opinion to the parties to the arbi-
10 tration and the Secretary. Such findings shall
11 be final and conclusive, and no official or court
12 of the United States shall have the power or ju-
13 risdiction to review any such findings.

14 (D) EFFECT OF ARBITRATION FIND-
15 INGS.—If the Secretary receives a finding of an
16 arbitrator that an employer has terminated the
17 employment of an alien who is granted blue
18 card status without just cause, the Secretary
19 shall credit the alien for the number of days or
20 hours of work not performed during such period
21 of termination for the purpose of determining if
22 the alien meets the qualifying employment re-
23 quirement of section 645(a).

24 (E) TREATMENT OF ATTORNEY'S FEES.—
25 Each party to an arbitration under this para-

1 graph shall bear the cost of their own attorney's
2 fees for the arbitration.

3 (F) NONEXCLUSIVE REMEDY.—The com-
4 plaint process provided for in this paragraph is
5 in addition to any other rights an employee may
6 have in accordance with applicable law.

7 (G) EFFECT ON OTHER ACTIONS OR PRO-
8 CEEDINGS.—Any finding of fact or law, judg-
9 ment, conclusion, or final order made by an ar-
10 bitrator in the proceeding before the Secretary
11 shall not be conclusive or binding in any sepa-
12 rate or subsequent action or proceeding between
13 the employee and the employee's current or
14 prior employer brought before an arbitrator, ad-
15 ministrative agency, court, or judge of any
16 State or the United States, regardless of wheth-
17 er the prior action was between the same or re-
18 lated parties or involved the same facts, except
19 that the arbitrator's specific finding of the
20 number of days or hours of work lost by the
21 employee as a result of the employment termi-
22 nation may be referred to the Secretary pursu-
23 ant to subparagraph (D).

24 (3) CIVIL PENALTIES.—

1 (A) IN GENERAL.—If the Secretary finds,
2 after notice and opportunity for a hearing, that
3 an employer of an alien granted blue card sta-
4 tus has failed to provide the record of employ-
5 ment required under section 643(e) or has pro-
6 vided a false statement of material fact in such
7 a record, the employer shall be subject to a civil
8 money penalty in an amount not to exceed
9 \$1,000 per violation.

10 (B) LIMITATION.—The penalty applicable
11 under subparagraph (A) for failure to provide
12 records shall not apply unless the alien has pro-
13 vided the employer with evidence of employment
14 authorization granted under this section.

15 **SEC. 645. ADJUSTMENT TO PERMANENT RESIDENCE.**

16 (a) IN GENERAL.—Except as provided in subsection
17 (b), the Secretary shall adjust the status of an alien grant-
18 ed blue card status to that of an alien lawfully admitted
19 for permanent residence if the Secretary determines that
20 the following requirements are satisfied:

21 (1) QUALIFYING EMPLOYMENT.—

22 (A) IN GENERAL.—Subject to subpara-
23 graph (B), the alien has performed at least—

24 (i) 5 years of agricultural employment
25 in the United States for at least 100 work

1 days per year, during the 5-year period be-
2 ginning on the date of the enactment of
3 this Act; or

4 (ii) 3 years of agricultural employ-
5 ment in the United States for at least 150
6 work days per year, during the 3-year pe-
7 riod beginning on the date of the enact-
8 ment of this Act.

9 (B) 4-YEAR PERIOD OF EMPLOYMENT.—

10 An alien shall be considered to meet the re-
11 quirements of subparagraph (A) if the alien has
12 performed 4 years of agricultural employment
13 in the United States for at least 150 work days
14 during 3 years of those 4 years and at least
15 100 work days during the remaining year, dur-
16 ing the 4-year period beginning on the date of
17 the enactment of this Act.

18 (2) PROOF.—An alien may demonstrate compli-
19 ance with the requirement under paragraph (1) by
20 submitting—

21 (A) the record of employment described in
22 section 643(e); or

23 (B) such documentation as may be sub-
24 mitted under section 646(c).

1 (3) EXTRAORDINARY CIRCUMSTANCES.—In de-
2 termining whether an alien has met the requirement
3 of paragraph (1)(A), the Secretary may credit the
4 alien with not more than 12 additional months to
5 meet the requirement of that subparagraph if the
6 alien was unable to work in agricultural employment
7 due to—

8 (A) pregnancy, injury, or disease, if the
9 alien can establish such pregnancy, disabling in-
10 jury, or disease through medical records;

11 (B) illness, disease, or other special needs
12 of a minor child, if the alien can establish such
13 illness, disease, or special needs through med-
14 ical records; or

15 (C) severe weather conditions that pre-
16 vented the alien from engaging in agricultural
17 employment for a significant period of time.

18 (4) APPLICATION PERIOD.—The alien applies
19 for adjustment of status not later than 7 years after
20 the date of the enactment of this Act.

21 (5) FINE.—The alien pays a fine of \$400 to the
22 Secretary.

23 (b) GROUNDS FOR DENIAL OF ADJUSTMENT OF STA-
24 TUS.—The Secretary may deny an alien granted blue card

1 status an adjustment of status under this section and pro-
2 vide for termination of such blue card status if—

3 (1) the Secretary finds by a preponderance of
4 the evidence that the adjustment to blue card status
5 was the result of fraud or willful misrepresentation,
6 as described in section 212(a)(6)(C)(i) of the Immi-
7 gration and Nationality Act (8 U.S.C.
8 1182(a)(6)(C)(i)); or

9 (2) the alien—

10 (A) commits an act that makes the alien
11 inadmissible to the United States under section
12 212 of the Immigration and Nationality Act (8
13 U.S.C. 1182), except as provided under section
14 647(b);

15 (B) is convicted of a felony or 3 or more
16 misdemeanors committed in the United States;
17 or

18 (C) is convicted of an offense, an element
19 of which involves bodily injury, threat of serious
20 bodily injury, or harm to property in excess of
21 \$500.

22 (c) GROUNDS FOR REMOVAL.—Any alien granted
23 blue card status who does not apply for adjustment of sta-
24 tus under this section before the expiration of the applica-
25 tion period described in subsection (a)(4) or who fails to

1 meet the other requirements of subsection (a) by the end
2 of the application period, is deportable and may be re-
3 moved under section 240 of the Immigration and Nation-
4 ality Act (8 U.S.C. 1229a).

5 (d) PAYMENT OF TAXES.—

6 (1) IN GENERAL.—Not later than the date on
7 which an alien’s status is adjusted under this sec-
8 tion, the alien shall establish that the alien does not
9 owe any applicable Federal tax liability by estab-
10 lishing that—

11 (A) no such tax liability exists;

12 (B) all such outstanding tax liabilities have
13 been paid; or

14 (C) the alien has entered into an agree-
15 ment for payment of all outstanding liabilities
16 with the Internal Revenue Service.

17 (2) APPLICABLE FEDERAL TAX LIABILITY.—In
18 paragraph (1) the term “applicable Federal tax li-
19 ability” means liability for Federal taxes, including
20 penalties and interest, owed for any year during the
21 period of employment required under subsection
22 (a)(1) for which the statutory period for assessment
23 of any deficiency for such taxes has not expired.

24 (3) IRS COOPERATION.—The Secretary of the
25 Treasury shall establish rules and procedures under

1 which the Commissioner of Internal Revenue shall
2 provide documentation to an alien upon request to
3 establish the payment of all taxes required by this
4 subsection.

5 (e) SPOUSES AND MINOR CHILDREN.—

6 (1) IN GENERAL.—Notwithstanding any other
7 provision of law, the Secretary shall confer the sta-
8 tus of lawful permanent resident on the spouse and
9 minor child of an alien granted any adjustment of
10 status under subsection (a), including any individual
11 who was a minor child on the date such alien was
12 granted blue card status, if the spouse or minor
13 child applies for such status, or if the principal alien
14 includes the spouse or minor child in an application
15 for adjustment of status to that of a lawful perma-
16 nent resident.

17 (2) TREATMENT OF SPOUSES AND MINOR CHIL-
18 DREN.—

19 (A) GRANTING OF STATUS AND RE-
20 MOVAL.—The Secretary may grant derivative
21 status to the alien spouse and any minor child
22 residing in the United States of an alien grant-
23 ed blue card status and shall not remove such
24 derivative spouse or child during the period that
25 the alien granted blue card status maintains

1 such status, except as provided in paragraph
2 (3). A grant of derivative status to such a
3 spouse or child under this subparagraph shall
4 not decrease the number of aliens who may re-
5 ceive blue card status under subsection (h) of
6 section 643.

7 (B) TRAVEL.—The derivative spouse and
8 any minor child of an alien granted blue card
9 status may travel outside the United States in
10 the same manner as an alien lawfully admitted
11 for permanent residence.

12 (C) EMPLOYMENT.—The derivative spouse
13 of an alien granted blue card status may apply
14 to the Secretary for a work permit to authorize
15 such spouse to engage in any lawful employ-
16 ment in the United States while such alien
17 maintains blue card status.

18 (3) GROUNDS FOR DENIAL OF ADJUSTMENT OF
19 STATUS AND REMOVAL.—The Secretary may deny
20 an alien spouse or child adjustment of status under
21 paragraph (1) and may remove such spouse or child
22 under section 240 of the Immigration and Nation-
23 ality Act (8 U.S.C. 1229a) if the spouse or child—

24 (A) commits an act that makes the alien
25 spouse or child inadmissible to the United

1 States under section 212 of such Act (8 U.S.C.
2 1182), except as provided under section 647(b);

3 (B) is convicted of a felony or 3 or more
4 misdemeanors committed in the United States;
5 or

6 (C) is convicted of an offense, an element
7 of which involves bodily injury, threat of serious
8 bodily injury, or harm to property in excess of
9 \$500.

10 **SEC. 646. APPLICATIONS.**

11 (a) SUBMISSION.—The Secretary shall provide that—

12 (1) applications for blue card status under sec-
13 tion 643 may be submitted—

14 (A) to the Secretary if the applicant is rep-
15 resented by an attorney or a nonprofit religious,
16 charitable, social service, or similar organization
17 recognized by the Board of Immigration Ap-
18 peals under section 292.2 of title 8, Code of
19 Federal Regulations; or

20 (B) to a qualified designated entity if the
21 applicant consents to the forwarding of the ap-
22 plication to the Secretary; and

23 (2) applications for adjustment of status under
24 section 645 shall be filed directly with the Secretary.

1 (b) QUALIFIED DESIGNATED ENTITY DEFINED.—In
2 this section, the term “qualified designated entity”
3 means—

4 (1) a qualified farm labor organization or an
5 association of employers designated by the Sec-
6 retary; or

7 (2) any such other person designated by the
8 Secretary if that Secretary determines such person
9 is qualified and has substantial experience, dem-
10 onstrated competence, and has a history of long-
11 term involvement in the preparation and submission
12 of applications for adjustment of status under sec-
13 tion 209, 210, or 245 of the Immigration and Na-
14 tionality Act (8 U.S.C. 1159, 1160, and 1255), the
15 Act entitled “An Act to adjust the status of Cuban
16 refugees to that of lawful permanent residents of the
17 United States, and for other purposes”, approved
18 November 2, 1966 (Public Law 89–732; 8 U.S.C.
19 1255 note), Public Law 95–145 (8 U.S.C. 1255
20 note), or the Immigration Reform and Control Act
21 of 1986 (Public Law 99–603; 100 Stat. 3359) or
22 any amendment made by that Act.

23 (c) PROOF OF ELIGIBILITY.—

24 (1) IN GENERAL.—An alien may establish that
25 the alien meets the requirement of section 643(a)(1)

1 or 645(a)(1) through government employment
2 records or records supplied by employers or collec-
3 tive bargaining organizations, and other reliable docu-
4 mentation as the alien may provide. The Secretary
5 shall establish special procedures to properly credit
6 work in cases in which an alien was employed under
7 an assumed name.

8 (2) DOCUMENTATION OF WORK HISTORY.—

9 (A) BURDEN OF PROOF.—An alien apply-
10 ing for status under section 643(a) or 645(a)
11 has the burden of proving by a preponderance
12 of the evidence that the alien has worked the
13 requisite number of hours or days required
14 under section 643(a)(1) or 645(a)(1), as appli-
15 cable.

16 (B) TIMELY PRODUCTION OF RECORDS.—
17 If an employer or farm labor contractor employ-
18 ing such an alien has kept proper and adequate
19 records respecting such employment, the alien's
20 burden of proof under subparagraph (A) may
21 be met by securing timely production of those
22 records under regulations to be promulgated by
23 the Secretary.

24 (C) SUFFICIENT EVIDENCE.—An alien
25 may meet the burden of proof under subpara-

1 graph (A) to establish that the alien has per-
2 formed the days or hours of work required by
3 section 643(a)(1) or 645(a)(1) by producing
4 sufficient evidence to show the extent of that
5 employment as a matter of just and reasonable
6 inference.

7 (d) APPLICATIONS SUBMITTED TO QUALIFIED DES-
8 IGNATED ENTITIES.—

9 (1) REQUIREMENTS.—Each qualified des-
10 ignated entity shall agree—

11 (A) to forward to the Secretary an applica-
12 tion submitted to that entity pursuant to sub-
13 section (a)(1)(B) if the applicant has consented
14 to such forwarding;

15 (B) not to forward to the Secretary any
16 such application if the applicant has not con-
17 sented to such forwarding; and

18 (C) to assist an alien in obtaining docu-
19 mentation of the alien's work history, if the
20 alien requests such assistance.

21 (2) NO AUTHORITY TO MAKE DETERMINA-
22 TIONS.—No qualified designated entity may make a
23 determination required by this subtitle to be made
24 by the Secretary.

1 (e) LIMITATION ON ACCESS TO INFORMATION.—Files
2 and records collected or compiled by a qualified designated
3 entity for the purposes of this section are confidential and
4 the Secretary shall not have access to such a file or record
5 relating to an alien without the consent of the alien, except
6 as allowed by a court order issued pursuant to subsection
7 (f).

8 (f) CONFIDENTIALITY OF INFORMATION.—

9 (1) IN GENERAL.—Except as otherwise pro-
10 vided in this section, the Secretary or any other offi-
11 cial or employee of the Department or a bureau or
12 agency of the Department is prohibited from—

13 (A) using information furnished by the ap-
14 plicant pursuant to an application filed under
15 this subtitle, the information provided by an ap-
16 plicant to a qualified designated entity, or any
17 information provided by an employer or former
18 employer for any purpose other than to make a
19 determination on the application or for impos-
20 ing the penalties described in subsection (g);

21 (B) making any publication in which the
22 information furnished by any particular indi-
23 vidual can be identified; or

24 (C) permitting a person other than a
25 sworn officer or employee of the Department or

1 a bureau or agency of the Department or, with
2 respect to applications filed with a qualified
3 designated entity, that qualified designated en-
4 tity, to examine individual applications.

5 (2) REQUIRED DISCLOSURES.—The Secretary
6 shall provide the information furnished under this
7 subtitle or any other information derived from such
8 furnished information to—

9 (A) a duly recognized law enforcement en-
10 tity in connection with a criminal investigation
11 or prosecution, if such information is requested
12 in writing by such entity; or

13 (B) an official coroner, for purposes of af-
14 firmatively identifying a deceased individual,
15 whether or not the death of such individual re-
16 sulted from a crime.

17 (3) CONSTRUCTION.—

18 (A) IN GENERAL.—Nothing in this sub-
19 section shall be construed to limit the use, or
20 release, for immigration enforcement purposes
21 or law enforcement purposes, of information
22 contained in files or records of the Department
23 pertaining to an application filed under this sec-
24 tion, other than information furnished by an
25 applicant pursuant to the application, or any

1 other information derived from the application,
2 that is not available from any other source.

3 (B) CRIMINAL CONVICTIONS.—Notwith-
4 standing any other provision of this subsection,
5 information concerning whether the alien apply-
6 ing for blue card status under section 643 or an
7 adjustment of status under section 645 has
8 been convicted of a crime at any time may be
9 used or released for immigration enforcement
10 or law enforcement purposes.

11 (4) CRIME.—Any person who knowingly uses,
12 publishes, or permits information to be examined in
13 violation of this subsection shall be subject to a fine
14 in an amount not to exceed \$10,000.

15 (g) PENALTIES FOR FALSE STATEMENTS IN APPLI-
16 CATIONS.—

17 (1) CRIMINAL PENALTY.—Any person who—

18 (A) files an application for blue card status
19 under section 643 or an adjustment of status
20 under section 645 and knowingly and willfully
21 falsifies, conceals, or covers up a material fact
22 or makes any false, fictitious, or fraudulent
23 statements or representations, or makes or uses
24 any false writing or document knowing the

1 same to contain any false, fictitious, or fraudu-
2 lent statement or entry; or

3 (B) creates or supplies a false writing or
4 document for use in making such an applica-
5 tion,

6 shall be fined in accordance with title 18,
7 United States Code, imprisoned not more than
8 5 years, or both.

9 (2) INADMISSIBILITY.—An alien who is con-
10 victed of a crime under paragraph (1) shall be con-
11 sidered to be inadmissible to the United States on
12 the ground described in section 212(a)(6)(C)(i) of
13 the Immigration and Nationality Act (8 U.S.C.
14 1182(a)(6)(C)(i)).

15 (h) ELIGIBILITY FOR LEGAL SERVICES.—Section
16 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53
17 et seq.) shall not be construed to prevent a recipient of
18 funds under the Legal Services Corporation Act (42
19 U.S.C. 2996 et seq.) from providing legal assistance di-
20 rectly related to an application for blue card status under
21 section 643 or an adjustment of status under section 645.

22 (i) APPLICATION FEES.—

23 (1) FEE SCHEDULE.—The Secretary shall pro-
24 vide for a schedule of fees that—

1 (A) shall be charged for the filing of an
2 application for blue card status under section
3 643 or for an adjustment of status under sec-
4 tion 645; and

5 (B) may be charged by qualified des-
6 ignated entities to help defray the costs of serv-
7 ices provided to such applicants.

8 (2) PROHIBITION ON EXCESS FEES BY QUALI-
9 FIED DESIGNATED ENTITIES.—A qualified des-
10 ignated entity may not charge any fee in excess of,
11 or in addition to, the fees authorized under para-
12 graph (1)(B) for services provided to applicants.

13 (3) DISPOSITION OF FEES.—

14 (A) IN GENERAL.—There is established in
15 the general fund of the Treasury a separate ac-
16 count, which shall be known as the “Agricul-
17 tural Worker Immigration Status Adjustment
18 Account”. Notwithstanding any other provision
19 of law, there shall be deposited as offsetting re-
20 cepts into the account all fees collected under
21 paragraph (1)(A).

22 (B) USE OF FEES FOR APPLICATION PROC-
23 ESSING.—Amounts deposited in the “Agricul-
24 tural Worker Immigration Status Adjustment
25 Account” shall remain available to the Sec-

1 retary until expended for processing applica-
2 tions for blue card status under section 643 or
3 an adjustment of status under section 645.

4 **SEC. 647. WAIVER OF NUMERICAL LIMITATIONS AND CER-**
5 **TAIN GROUNDS FOR INADMISSIBILITY.**

6 (a) NUMERICAL LIMITATIONS DO NOT APPLY.—The
7 numerical limitations of sections 201 and 202 of the Im-
8 migration and Nationality Act (8 U.S.C. 1151 and 1152)
9 shall not apply to the adjustment of aliens to lawful per-
10 manent resident status under section 645.

11 (b) WAIVER OF CERTAIN GROUNDS OF INADMIS-
12 SIBILITY.—In the determination of an alien's eligibility for
13 status under section 101(a) or an alien's eligibility for ad-
14 justment of status under section 645(b)(2)(A) the fol-
15 lowing rules shall apply:

16 (1) GROUNDS OF EXCLUSION NOT APPLICA-
17 BLE.—The provisions of paragraphs (5), (6)(A), (7),
18 and (9) of section 212(a) of the Immigration and
19 Nationality Act (8 U.S.C. 1182(a)) shall not apply.

20 (2) WAIVER OF OTHER GROUNDS.—

21 (A) IN GENERAL.—Except as provided in
22 subparagraph (B), the Secretary may waive any
23 other provision of such section 212(a) in the
24 case of individual aliens for humanitarian pur-

1 poses, to ensure family unity, or if otherwise in
2 the public interest.

3 (B) GROUNDS THAT MAY NOT BE
4 WAIVED.—Paragraphs (2)(A), (2)(B), (2)(C),
5 (3), and (4) of such section 212(a) may not be
6 waived by the Secretary under subparagraph
7 (A).

8 (C) CONSTRUCTION.—Nothing in this
9 paragraph shall be construed as affecting the
10 authority of the Secretary other than under this
11 subparagraph to waive provisions of such sec-
12 tion 212(a).

13 (3) SPECIAL RULE FOR DETERMINATION OF
14 PUBLIC CHARGE.—An alien is not ineligible for blue
15 card status under section 643 or an adjustment of
16 status under section 645 by reason of a ground of
17 inadmissibility under section 212(a)(4) of the Immi-
18 gration and Nationality Act (8 U.S.C. 1182(a)(4)) if
19 the alien demonstrates a history of employment in
20 the United States evidencing self-support without re-
21 liance on public cash assistance.

22 (c) TEMPORARY STAY OF REMOVAL AND WORK AU-
23 THORIZATION FOR CERTAIN APPLICANTS.—

24 (1) BEFORE APPLICATION PERIOD.—Effective
25 on the date of enactment of this Act, the Secretary

1 shall provide that, in the case of an alien who is ap-
2 prehended before the beginning of the application
3 period described in section 643(a)(2) and who can
4 establish a nonfrivolous case of eligibility for blue
5 card status (but for the fact that the alien may not
6 apply for such status until the beginning of such pe-
7 riod), until the alien has had the opportunity during
8 the first 30 days of the application period to com-
9 plete the filing of an application for blue card status,
10 the alien—

11 (A) may not be removed; and

12 (B) shall be granted authorization to en-
13 gage in employment in the United States and
14 be provided an employment authorized endorse-
15 ment or other appropriate work permit for such
16 purpose.

17 (2) DURING APPLICATION PERIOD.—The Sec-
18 retary shall provide that, in the case of an alien who
19 presents a nonfrivolous application for blue card sta-
20 tus during the application period described in section
21 643(a)(2), including an alien who files such an ap-
22 plication within 30 days of the alien's apprehension,
23 and until a final determination on the application
24 has been made in accordance with this section, the
25 alien—

1 (A) may not be removed; and

2 (B) shall be granted authorization to en-
3 gage in employment in the United States and
4 be provided an employment authorized endorse-
5 ment or other appropriate work permit for such
6 purpose.

7 **SEC. 648. ADMINISTRATIVE AND JUDICIAL REVIEW.**

8 (a) IN GENERAL.—There shall be no administrative
9 or judicial review of a determination respecting an applica-
10 tion for blue card status under section 643 or adjustment
11 of status under section 645 except in accordance with this
12 section.

13 (b) ADMINISTRATIVE REVIEW.—

14 (1) SINGLE LEVEL OF ADMINISTRATIVE APPEL-
15 LATE REVIEW.—The Secretary shall establish an ap-
16 pellate authority to provide for a single level of ad-
17 ministrative appellate review of such a determina-
18 tion.

19 (2) STANDARD FOR REVIEW.—Such administra-
20 tive appellate review shall be based solely upon the
21 administrative record established at the time of the
22 determination on the application and upon such ad-
23 ditional or newly discovered evidence as may not
24 have been available at the time of the determination.

25 (c) JUDICIAL REVIEW.—

1 (1) LIMITATION TO REVIEW OF REMOVAL.—

2 There shall be judicial review of such a determina-
3 tion only in the judicial review of an order of re-
4 moval under section 242 of the Immigration and
5 Nationality Act (8 U.S.C. 1252).

6 (2) STANDARD FOR JUDICIAL REVIEW.—Such
7 judicial review shall be based solely upon the admin-
8 istrative record established at the time of the review
9 by the appellate authority and the findings of fact
10 and determinations contained in such record shall be
11 conclusive unless the applicant can establish abuse
12 of discretion or that the findings are directly con-
13 trary to clear and convincing facts contained in the
14 record considered as a whole.

15 **SEC. 649. USE OF INFORMATION.**

16 Beginning not later than the first day of the applica-
17 tion period described in section 643(a)(2), the Secretary,
18 in cooperation with qualified designated entities (as that
19 term is defined in section 646(b)), shall broadly dissemi-
20 nate information respecting the benefits that aliens may
21 receive under this subtitle and the requirements that an
22 alien is required to meet to receive such benefits.

1 **SEC. 650. REGULATIONS, EFFECTIVE DATE, AUTHORIZA-**
2 **TION OF APPROPRIATIONS.**

3 (a) REGULATIONS.—The Secretary shall issue regula-
4 tions to implement this subtitle not later than the first
5 day of the seventh month that begins after the date of
6 enactment of this Act.

7 (b) EFFECTIVE DATE.—This subtitle shall take effect
8 on the date that regulations required by subsection (a) are
9 issued, regardless of whether such regulations are issued
10 on an interim basis or on any other basis.

11 (c) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Secretary such
13 sums as may be necessary to implement this subtitle, in-
14 cluding any sums needed for costs associated with the ini-
15 tiation of such implementation, for fiscal years 2007 and
16 2008.

17 **Subchapter B—Correction of Social Security**
18 **Records**

19 **SEC. 651. CORRECTION OF SOCIAL SECURITY RECORDS.**

20 (a) IN GENERAL.—Section 208(e)(1) of the Social
21 Security Act (42 U.S.C. 408(e)(1)) is amended—

22 (1) in subparagraph (B)(ii), by striking “or” at
23 the end;

24 (2) in subparagraph (C), by inserting “or” at
25 the end;

1 “(1) IN GENERAL.—No alien may be admitted
2 to the United States as an H-2A worker, or other-
3 wise provided status as an H-2A worker, unless the
4 employer has filed with the Secretary of Labor an
5 application containing—

6 “(A) the assurances described in sub-
7 section (b);

8 “(B) a description of the nature and loca-
9 tion of the work to be performed;

10 “(C) the anticipated period (expected be-
11 ginning and ending dates) for which the work-
12 ers will be needed; and

13 “(D) the number of job opportunities in
14 which the employer seeks to employ the work-
15 ers.

16 “(2) ACCOMPANIED BY JOB OFFER.—Each ap-
17 plication filed under paragraph (1) shall be accom-
18 panied by a copy of the job offer describing the
19 wages and other terms and conditions of employ-
20 ment and the bona fide occupational qualifications
21 that shall be possessed by a worker to be employed
22 in the job opportunity in question.

23 “(b) ASSURANCES FOR INCLUSION IN APPLICA-
24 TIONS.—The assurances referred to in subsection (a)(1)
25 are the following:

1 “(1) JOB OPPORTUNITIES COVERED BY COL-
2 LECTIVE BARGAINING AGREEMENTS.—With respect
3 to a job opportunity that is covered under a collec-
4 tive bargaining agreement:

5 “(A) UNION CONTRACT DESCRIBED.—The
6 job opportunity is covered by a union contract
7 which was negotiated at arm’s length between a
8 bona fide union and the employer.

9 “(B) STRIKE OR LOCKOUT.—The specific
10 job opportunity for which the employer is re-
11 questing an H-2A worker is not vacant because
12 the former occupant is on strike or being locked
13 out in the course of a labor dispute.

14 “(C) NOTIFICATION OF BARGAINING REP-
15 RESENTATIVES.—The employer, at the time of
16 filing the application, has provided notice of the
17 filing under this paragraph to the bargaining
18 representative of the employer’s employees in
19 the occupational classification at the place or
20 places of employment for which aliens are
21 sought.

22 “(D) TEMPORARY OR SEASONAL JOB OP-
23 PORTUNITIES.—The job opportunity is tem-
24 porary or seasonal.

1 “(E) OFFERS TO UNITED STATES WORK-
2 ERS.—The employer has offered or will offer
3 the job to any eligible United States worker
4 who applies and is equally or better qualified
5 for the job for which the nonimmigrant is, or
6 the nonimmigrants are, sought and who will be
7 available at the time and place of need.

8 “(F) PROVISION OF INSURANCE.—If the
9 job opportunity is not covered by the State
10 workers’ compensation law, the employer will
11 provide, at no cost to the worker, insurance cov-
12 ering injury and disease arising out of, and in
13 the course of, the worker’s employment which
14 will provide benefits at least equal to those pro-
15 vided under the State’s workers’ compensation
16 law for comparable employment.

17 “(2) JOB OPPORTUNITIES NOT COVERED BY
18 COLLECTIVE BARGAINING AGREEMENTS.—With re-
19 spect to a job opportunity that is not covered under
20 a collective bargaining agreement:

21 “(A) STRIKE OR LOCKOUT.—The specific
22 job opportunity for which the employer has ap-
23 plied for an H-2A worker is not vacant because
24 the former occupant is on strike or being locked
25 out in the course of a labor dispute.

1 “(B) TEMPORARY OR SEASONAL JOB OP-
2 PORTUNITIES.—The job opportunity is tem-
3 porary or seasonal.

4 “(C) BENEFIT, WAGE, AND WORKING CON-
5 DITIONS.—The employer will provide, at a min-
6 imum, the benefits, wages, and working condi-
7 tions required by section 218A to all workers
8 employed in the job opportunities for which the
9 employer has applied for an H-2A worker
10 under subsection (a) and to all other workers in
11 the same occupation at the place of employ-
12 ment.

13 “(D) NONDISPLACEMENT OF UNITED
14 STATES WORKERS.—The employer did not dis-
15 place and will not displace a United States
16 worker employed by the employer during the
17 period of employment and for a period of 30
18 days preceding the period of employment in the
19 occupation at the place of employment for
20 which the employer has applied for an H-2A
21 worker.

22 “(E) REQUIREMENTS FOR PLACEMENT OF
23 THE NONIMMIGRANT WITH OTHER EMPLOY-
24 ERS.—The employer will not place the non-
25 immigrant with another employer unless—

1 “(i) the nonimmigrant performs du-
2 ties in whole or in part at 1 or more work-
3 sites owned, operated, or controlled by
4 such other employer;

5 “(ii) there are indicia of an employ-
6 ment relationship between the non-
7 immigrant and such other employer; and

8 “(iii) the employer has inquired of the
9 other employer as to whether, and has no
10 actual knowledge or notice that, during the
11 period of employment and for a period of
12 30 days preceding the period of employ-
13 ment, the other employer has displaced or
14 intends to displace a United States worker
15 employed by the other employer in the oc-
16 cupation at the place of employment for
17 which the employer seeks approval to em-
18 ploy H-2A workers.

19 “(F) STATEMENT OF LIABILITY.—The ap-
20 plication form shall include a clear statement
21 explaining the liability under subparagraph (E)
22 of an employer if the other employer described
23 in such subparagraph displaces a United States
24 worker as described in such subparagraph.

1 “(G) PROVISION OF INSURANCE.—If the
2 job opportunity is not covered by the State
3 workers’ compensation law, the employer will
4 provide, at no cost to the worker, insurance cov-
5 ering injury and disease arising out of and in
6 the course of the worker’s employment which
7 will provide benefits at least equal to those pro-
8 vided under the State’s workers’ compensation
9 law for comparable employment.

10 “(H) EMPLOYMENT OF UNITED STATES
11 WORKERS.—

12 “(i) RECRUITMENT.—The employer
13 has taken or will take the following steps
14 to recruit United States workers for the
15 job opportunities for which the H-2A non-
16 immigrant is, or H-2A nonimmigrants are,
17 sought:

18 “(I) CONTACTING FORMER
19 WORKERS.—The employer shall make
20 reasonable efforts through the sending
21 of a letter by United States Postal
22 Service mail, or otherwise, to contact
23 any United States worker the em-
24 ployer employed during the previous
25 season in the occupation at the place

1 of intended employment for which the
2 employer is applying for workers and
3 has made the availability of the em-
4 ployer's job opportunities in the occu-
5 pation at the place of intended em-
6 ployment known to such previous
7 workers, unless the worker was termi-
8 nated from employment by the em-
9 ployer for a lawful job-related reason
10 or abandoned the job before the work-
11 er completed the period of employ-
12 ment of the job opportunity for which
13 the worker was hired.

14 “(II) FILING A JOB OFFER WITH
15 THE LOCAL OFFICE OF THE STATE
16 EMPLOYMENT SECURITY AGENCY.—
17 Not later than 28 days before the
18 date on which the employer desires to
19 employ an H-2A worker in a tem-
20 porary or seasonal agricultural job op-
21 portunity, the employer shall submit a
22 copy of the job offer described in sub-
23 section (a)(2) to the local office of the
24 State employment security agency
25 which serves the area of intended em-

1 employment and authorize the posting of
2 the job opportunity on ‘America’s Job
3 Bank’ or other electronic job registry,
4 except that nothing in this subclause
5 shall require the employer to file an
6 interstate job order under section 653
7 of title 20, Code of Federal Regula-
8 tions.

9 “(III) ADVERTISING OF JOB OP-
10 PORTUNITIES.—Not later than 14
11 days before the date on which the em-
12 ployer desires to employ an H-2A
13 worker in a temporary or seasonal ag-
14 ricultural job opportunity, the em-
15 ployer shall advertise the availability
16 of the job opportunities for which the
17 employer is seeking workers in a pub-
18 lication in the local labor market that
19 is likely to be patronized by potential
20 farm workers.

21 “(IV) EMERGENCY PROCE-
22 DURES.—The Secretary of Labor
23 shall, by regulation, provide a proce-
24 dure for acceptance and approval of
25 applications in which the employer

1 has not complied with the provisions
2 of this subparagraph because the em-
3 ployer's need for H-2A workers could
4 not reasonably have been foreseen.

5 “(ii) JOB OFFERS.—The employer has
6 offered or will offer the job to any eligible
7 United States worker who applies and is
8 equally or better qualified for the job for
9 which the nonimmigrant is, or non-
10 immigrants are, sought and who will be
11 available at the time and place of need.

12 “(iii) PERIOD OF EMPLOYMENT.—The
13 employer will provide employment to any
14 qualified United States worker who applies
15 to the employer during the period begin-
16 ning on the date on which the H-2A work-
17 er departs for the employer's place of em-
18 ployment and ending on the date on which
19 50 percent of the period of employment for
20 which the H-2A worker who is in the job
21 was hired has elapsed, subject to the fol-
22 lowing requirements:

23 “(I) PROHIBITION.—No person
24 or entity shall willfully and knowingly
25 withhold United States workers before

1 the arrival of H-2A workers in order
2 to force the hiring of United States
3 workers under this clause.

4 “(II) COMPLAINTS.—Upon re-
5 ceipt of a complaint by an employer
6 that a violation of subclause (I) has
7 occurred, the Secretary of Labor shall
8 immediately investigate. The Sec-
9 retary of Labor shall, within 36 hours
10 of the receipt of the complaint, issue
11 findings concerning the alleged viola-
12 tion. If the Secretary of Labor finds
13 that a violation has occurred, the Sec-
14 retary of Labor shall immediately sus-
15 pend the application of this clause
16 with respect to that certification for
17 that date of need.

18 “(III) PLACEMENT OF UNITED
19 STATES WORKERS.—Before referring
20 a United States worker to an em-
21 ployer during the period described in
22 the matter preceding subclause (I),
23 the Secretary of Labor shall make all
24 reasonable efforts to place the United
25 States worker in an open job accept-

1 able to the worker, if there are other
2 job offers pending with the job service
3 that offer similar job opportunities in
4 the area of intended employment.

5 “(iv) STATUTORY CONSTRUCTION.—
6 Nothing in this subparagraph shall be con-
7 strued to prohibit an employer from using
8 such legitimate selection criteria relevant
9 to the type of job that are normal or cus-
10 tomary to the type of job involved so long
11 as such criteria are not applied in a dis-
12 criminatory manner.

13 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
14 OF EMPLOYER MEMBERS.—

15 “(1) IN GENERAL.—An agricultural association
16 may file an application under subsection (a) on be-
17 half of 1 or more of its employer members that the
18 association certifies in its application has or have
19 agreed in writing to comply with the requirements of
20 this section and sections 218A, 218B, and 218C.

21 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
22 EMPLOYERS.—If an association filing an application
23 under paragraph (1) is a joint or sole employer of
24 the temporary or seasonal agricultural workers re-
25 quested on the application, the certifications granted

1 under subsection (e)(2)(B) to the association may be
2 used for the certified job opportunities of any of its
3 producer members named on the application, and
4 such workers may be transferred among such pro-
5 ducer members to perform the agricultural services
6 of a temporary or seasonal nature for which the cer-
7 tifications were granted.

8 “(d) WITHDRAWAL OF APPLICATIONS.—

9 “(1) IN GENERAL.—An employer may withdraw
10 an application filed pursuant to subsection (a), ex-
11 cept that if the employer is an agricultural associa-
12 tion, the association may withdraw an application
13 filed pursuant to subsection (a) with respect to 1 or
14 more of its members. To withdraw an application,
15 the employer or association shall notify the Sec-
16 retary of Labor in writing, and the Secretary of
17 Labor shall acknowledge in writing the receipt of
18 such withdrawal notice. An employer who withdraws
19 an application under subsection (a), or on whose be-
20 half an application is withdrawn, is relieved of the
21 obligations undertaken in the application.

22 “(2) LIMITATION.—An application may not be
23 withdrawn while any alien provided status under sec-
24 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
25 tion is employed by the employer.

1 “(3) OBLIGATIONS UNDER OTHER STATUTES.—

2 Any obligation incurred by an employer under any
3 other law or regulation as a result of the recruit-
4 ment of United States workers or H-2A workers
5 under an offer of terms and conditions of employ-
6 ment required as a result of making an application
7 under subsection (a) is unaffected by withdrawal of
8 such application.

9 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

10 “(1) RESPONSIBILITY OF EMPLOYERS.—The
11 employer shall make available for public examina-
12 tion, within 1 working day after the date on which
13 an application under subsection (a) is filed, at the
14 employer’s principal place of business or worksite, a
15 copy of each such application (and such accom-
16 panying documents as are necessary).

17 “(2) RESPONSIBILITY OF THE SECRETARY OF
18 LABOR.—

19 “(A) COMPILATION OF LIST.—The Sec-
20 retary of Labor shall compile, on a current
21 basis, a list (by employer and by occupational
22 classification) of the applications filed under
23 subsection (a). Such list shall include the wage
24 rate, number of workers sought, period of in-
25 tended employment, and date of need. The Sec-

1 retary of Labor shall make such list available
2 for examination in the District of Columbia.

3 “(B) REVIEW OF APPLICATIONS.—The
4 Secretary of Labor shall review such an applica-
5 tion only for completeness and obvious inac-
6 curacies. Unless the Secretary of Labor finds
7 that the application is incomplete or obviously
8 inaccurate, the Secretary of Labor shall certify
9 that the intending employer has filed with the
10 Secretary of Labor an application as described
11 in subsection (a). Such certification shall be
12 provided within 7 days of the filing of the appli-
13 cation.”

14 **“SEC. 218A. H-2A EMPLOYMENT REQUIREMENTS.**

15 “(a) PREFERENTIAL TREATMENT OF ALIENS PRO-
16 HIBITED.—Employers seeking to hire United States work-
17 ers shall offer the United States workers no less than the
18 same benefits, wages, and working conditions that the em-
19 ployer is offering, intends to offer, or will provide to H-
20 2A workers. Conversely, no job offer may impose on
21 United States workers any restrictions or obligations
22 which will not be imposed on the employer’s H-2A work-
23 ers.

24 “(b) MINIMUM BENEFITS, WAGES, AND WORKING
25 CONDITIONS.—Except in cases where higher benefits,

1 wages, or working conditions are required by the provi-
2 sions of subsection (a), in order to protect similarly em-
3 ployed United States workers from adverse effects with
4 respect to benefits, wages, and working conditions, every
5 job offer which shall accompany an application under sec-
6 tion 218(b)(2) shall include each of the following benefit,
7 wage, and working condition provisions:

8 “(1) REQUIREMENT TO PROVIDE HOUSING OR A
9 HOUSING ALLOWANCE.—

10 “(A) IN GENERAL.—An employer applying
11 under section 218(a) for H-2A workers shall
12 offer to provide housing at no cost to all work-
13 ers in job opportunities for which the employer
14 has applied under that section and to all other
15 workers in the same occupation at the place of
16 employment, whose place of residence is beyond
17 normal commuting distance.

18 “(B) TYPE OF HOUSING.—In complying
19 with subparagraph (A), an employer may, at
20 the employer’s election, provide housing that
21 meets applicable Federal standards for tem-
22 porary labor camps or secure housing that
23 meets applicable local standards for rental or
24 public accommodation housing or other sub-
25 stantially similar class of habitation, or in the

1 absence of applicable local standards, State
2 standards for rental or public accommodation
3 housing or other substantially similar class of
4 habitation. In the absence of applicable local or
5 State standards, Federal temporary labor camp
6 standards shall apply.

7 “(C) FAMILY HOUSING.—If it is the pre-
8 vailing practice in the occupation and area of
9 intended employment to provide family housing,
10 family housing shall be provided to workers
11 with families who request it.

12 “(D) WORKERS ENGAGED IN THE RANGE
13 PRODUCTION OF LIVESTOCK.—The Secretary of
14 Labor shall issue regulations that address the
15 specific requirements for the provision of hous-
16 ing to workers engaged in the range production
17 of livestock.

18 “(E) LIMITATION.—Nothing in this para-
19 graph shall be construed to require an employer
20 to provide or secure housing for persons who
21 were not entitled to such housing under the
22 temporary labor certification regulations in ef-
23 fect on June 1, 1986.

24 “(F) CHARGES FOR HOUSING.—

1 “(i) CHARGES FOR PUBLIC HOUS-
2 ING.—If public housing provided for mi-
3 grant agricultural workers under the aus-
4 pices of a local, county, or State govern-
5 ment is secured by an employer, and use of
6 the public housing unit normally requires
7 charges from migrant workers, such
8 charges shall be paid by the employer di-
9 rectly to the appropriate individual or enti-
10 ty affiliated with the housing’s manage-
11 ment.

12 “(ii) DEPOSIT CHARGES.—Charges in
13 the form of deposits for bedding or other
14 similar incidentals related to housing shall
15 not be levied upon workers by employers
16 who provide housing for their workers. An
17 employer may require a worker found to
18 have been responsible for damage to such
19 housing which is not the result of normal
20 wear and tear related to habitation to re-
21 imburse the employer for the reasonable
22 cost of repair of such damage.

23 “(G) HOUSING ALLOWANCE AS ALTER-
24 NATIVE.—

1 “(i) IN GENERAL.—If the requirement
2 set out in clause (ii) is satisfied, the em-
3 ployer may provide a reasonable housing
4 allowance instead of offering housing
5 under subparagraph (A). Upon the request
6 of a worker seeking assistance in locating
7 housing, the employer shall make a good
8 faith effort to assist the worker in identi-
9 fying and locating housing in the area of
10 intended employment. An employer who of-
11 fers a housing allowance to a worker, or
12 assists a worker in locating housing which
13 the worker occupies, pursuant to this
14 clause shall not be deemed a housing pro-
15 vider under section 203 of the Migrant and
16 Seasonal Agricultural Worker Protection
17 Act (29 U.S.C. 1823) solely by virtue of
18 providing such housing allowance. No
19 housing allowance may be used for housing
20 which is owned or controlled by the em-
21 ployer.

22 “(ii) CERTIFICATION.—The require-
23 ment of this clause is satisfied if the Gov-
24 ernor of the State certifies to the Secretary
25 of Labor that there is adequate housing

1 available in the area of intended employ-
2 ment for migrant farm workers and H-2A
3 workers who are seeking temporary hous-
4 ing while employed in agricultural work.
5 Such certification shall expire after 3 years
6 unless renewed by the Governor of the
7 State.

8 “(iii) AMOUNT OF ALLOWANCE.—

9 “(I) NONMETROPOLITAN COUN-
10 TIES.—If the place of employment of
11 the workers provided an allowance
12 under this subparagraph is a non-
13 metropolitan county, the amount of
14 the housing allowance under this sub-
15 paragraph shall be equal to the state-
16 wide average fair market rental for
17 existing housing for nonmetropolitan
18 counties for the State, as established
19 by the Secretary of Housing and
20 Urban Development pursuant to sec-
21 tion 8(c) of the United States Hous-
22 ing Act of 1937 (42 U.S.C. 1437f(c)),
23 based on a 2-bedroom dwelling unit
24 and an assumption of 2 persons per
25 bedroom.

1 “(II) METROPOLITAN COUN-
2 TIES.—If the place of employment of
3 the workers provided an allowance
4 under this paragraph is in a metro-
5 politan county, the amount of the
6 housing allowance under this subpara-
7 graph shall be equal to the statewide
8 average fair market rental for existing
9 housing for metropolitan counties for
10 the State, as established by the Sec-
11 retary of Housing and Urban Devel-
12 opment pursuant to section 8(c) of
13 the United States Housing Act of
14 1937 (42 U.S.C. 1437f(c)), based on
15 a 2-bedroom dwelling unit and an as-
16 sumption of 2 persons per bedroom.

17 “(2) REIMBURSEMENT OF TRANSPORTATION.—

18 “(A) TO PLACE OF EMPLOYMENT.—A
19 worker who completes 50 percent of the period
20 of employment of the job opportunity for which
21 the worker was hired shall be reimbursed by the
22 employer for the cost of the worker’s transpor-
23 tation and subsistence from the place from
24 which the worker came to work for the em-
25 ployer (or place of last employment, if the

1 worker traveled from such place) to the place of
2 employment.

3 “(B) FROM PLACE OF EMPLOYMENT.—A
4 worker who completes the period of employment
5 for the job opportunity involved shall be reim-
6 bursed by the employer for the cost of the
7 worker’s transportation and subsistence from
8 the place of employment to the place from
9 which the worker, disregarding intervening em-
10 ployment, came to work for the employer, or to
11 the place of next employment, if the worker has
12 contracted with a subsequent employer who has
13 not agreed to provide or pay for the worker’s
14 transportation and subsistence to such subse-
15 quent employer’s place of employment.

16 “(C) LIMITATION.—

17 “(i) AMOUNT OF REIMBURSEMENT.—
18 Except as provided in clause (ii), the
19 amount of reimbursement provided under
20 subparagraph (A) or (B) to a worker or
21 alien shall not exceed the lesser of—

22 “(I) the actual cost to the worker
23 or alien of the transportation and sub-
24 sistence involved; or

1 “(II) the most economical and
2 reasonable common carrier transpor-
3 tation charges and subsistence costs
4 for the distance involved.

5 “(ii) DISTANCE TRAVELED.—No reim-
6 bursement under subparagraph (A) or (B)
7 shall be required if the distance traveled is
8 100 miles or less, or the worker is not re-
9 siding in employer-provided housing or
10 housing secured through an allowance as
11 provided in paragraph (1)(G).

12 “(D) EARLY TERMINATION.—If the worker
13 is laid off or employment is terminated for con-
14 tract impossibility (as described in paragraph
15 (4)(D)) before the anticipated ending date of
16 employment, the employer shall provide the
17 transportation and subsistence required by sub-
18 paragraph (B) and, notwithstanding whether
19 the worker has completed 50 percent of the pe-
20 riod of employment, shall provide the transpor-
21 tation reimbursement required by subparagraph
22 (A).

23 “(E) TRANSPORTATION BETWEEN LIVING
24 QUARTERS AND WORKSITE.—The employer
25 shall provide transportation between the work-

1 er's living quarters and the employer's worksite
2 without cost to the worker, and such transpor-
3 tation will be in accordance with applicable laws
4 and regulations.

5 “(3) REQUIRED WAGES.—

6 “(A) IN GENERAL.—An employer applying
7 for workers under section 218(a) shall offer to
8 pay, and shall pay, all workers in the occupa-
9 tion for which the employer has applied for
10 workers, not less (and is not required to pay
11 more) than the greater of the prevailing wage
12 in the occupation in the area of intended em-
13 ployment or the adverse effect wage rate. No
14 worker shall be paid less than the greater of the
15 hourly wage prescribed under section 6(a)(1) of
16 the Fair Labor Standards Act of 1938 (29
17 U.S.C. 206(a)(1)) or the applicable State min-
18 imum wage.

19 “(B) LIMITATION.—Effective on the date
20 of the enactment of the Agricultural Job Op-
21 portunities, Benefits, and Security Act of 2007
22 and continuing for 3 years thereafter, no ad-
23 verse effect wage rate for a State may be more
24 than the adverse effect wage rate for that State
25 in effect on January 1, 2003, as established by

1 section 655.107 of title 20, Code of Federal
2 Regulations.

3 “(C) REQUIRED WAGES AFTER 3-YEAR
4 FREEZE.—

5 “(i) FIRST ADJUSTMENT.—If Con-
6 gress does not set a new wage standard
7 applicable to this section before the first
8 March 1 that is not less than 3 years after
9 the date of enactment of this section, the
10 adverse effect wage rate for each State be-
11 ginning on such March 1 shall be the wage
12 rate that would have resulted if the ad-
13 verse effect wage rate in effect on January
14 1, 2003, had been annually adjusted, be-
15 ginning on March 1, 2006, by the lesser
16 of—

17 “(I) the 12-month percentage
18 change in the Consumer Price Index
19 for All Urban Consumers between De-
20 cember of the second preceding year
21 and December of the preceding year;
22 and

23 “(II) 4 percent.

24 “(ii) SUBSEQUENT ANNUAL ADJUST-
25 MENTS.—Beginning on the first March 1

1 that is not less than 4 years after the date
2 of enactment of this section, and each
3 March 1 thereafter, the adverse effect
4 wage rate then in effect for each State
5 shall be adjusted by the lesser of—

6 “(I) the 12-month percentage
7 change in the Consumer Price Index
8 for All Urban Consumers between De-
9 cember of the second preceding year
10 and December of the preceding year;
11 and

12 “(II) 4 percent.

13 “(D) DEDUCTIONS.—The employer shall
14 make only those deductions from the worker’s
15 wages that are authorized by law or are reason-
16 able and customary in the occupation and area
17 of employment. The job offer shall specify all
18 deductions not required by law which the em-
19 ployer will make from the worker’s wages.

20 “(E) FREQUENCY OF PAY.—The employer
21 shall pay the worker not less frequently than
22 twice monthly, or in accordance with the pre-
23 vailing practice in the area of employment,
24 whichever is more frequent.

1 “(F) HOURS AND EARNINGS STATE-
2 MENTS.—The employer shall furnish to the
3 worker, on or before each payday, in 1 or more
4 written statements—

5 “(i) the worker’s total earnings for
6 the pay period;

7 “(ii) the worker’s hourly rate of pay,
8 piece rate of pay, or both;

9 “(iii) the hours of employment which
10 have been offered to the worker (broken
11 out by hours offered in accordance with
12 and over and above the $\frac{3}{4}$ guarantee de-
13 scribed in paragraph (4);

14 “(iv) the hours actually worked by the
15 worker;

16 “(v) an itemization of the deductions
17 made from the worker’s wages; and

18 “(vi) if piece rates of pay are used,
19 the units produced daily.

20 “(G) REPORT ON WAGE PROTECTIONS.—
21 Not later than December 31, 2009, the Comp-
22 troller General of the United States shall pre-
23 pare and transmit to the Secretary of Labor,
24 the Committee on the Judiciary of the Senate,

1 and Committee on the Judiciary of the House
2 of Representatives, a report that addresses—

3 “(i) whether the employment of H–2A
4 or unauthorized aliens in the United States
5 agricultural workforce has depressed
6 United States farm worker wages below
7 the levels that would otherwise have pre-
8 vailed if alien farm workers had not been
9 employed in the United States;

10 “(ii) whether an adverse effect wage
11 rate is necessary to prevent wages of
12 United States farm workers in occupations
13 in which H–2A workers are employed from
14 falling below the wage levels that would
15 have prevailed in the absence of the em-
16 ployment of H–2A workers in those occu-
17 pations;

18 “(iii) whether alternative wage stand-
19 ards, such as a prevailing wage standard,
20 would be sufficient to prevent wages in oc-
21 cupations in which H–2A workers are em-
22 ployed from falling below the wage level
23 that would have prevailed in the absence of
24 H–2A employment;

1 “(iv) whether any changes are war-
2 ranted in the current methodologies for
3 calculating the adverse effect wage rate
4 and the prevailing wage; and

5 “(v) recommendations for future wage
6 protection under this section.

7 “(H) COMMISSION ON WAGE STAND-
8 ARDS.—

9 “(i) ESTABLISHMENT.—There is es-
10 tablished the Commission on Agricultural
11 Wage Standards under the H-2A program
12 (in this subparagraph referred to as the
13 ‘Commission’).

14 “(ii) COMPOSITION.—The Commission
15 shall consist of 10 members as follows:

16 “(I) Four representatives of agri-
17 cultural employers and 1 representa-
18 tive of the Department of Agriculture,
19 each appointed by the Secretary of
20 Agriculture.

21 “(II) Four representatives of agri-
22 cultural workers and 1 representa-
23 tive of the Department of Labor, each
24 appointed by the Secretary of Labor.

1 “(iii) FUNCTIONS.—The Commission
2 shall conduct a study that shall address—

3 “(I) whether the employment of
4 H-2A or unauthorized aliens in the
5 United States agricultural workforce
6 has depressed United States farm
7 worker wages below the levels that
8 would otherwise have prevailed if alien
9 farm workers had not been employed
10 in the United States;

11 “(II) whether an adverse effect
12 wage rate is necessary to prevent
13 wages of United States farm workers
14 in occupations in which H-2A work-
15 ers are employed from falling below
16 the wage levels that would have pre-
17 vailed in the absence of the employ-
18 ment of H-2A workers in those occu-
19 pations;

20 “(III) whether alternative wage
21 standards, such as a prevailing wage
22 standard, would be sufficient to pre-
23 vent wages in occupations in which
24 H-2A workers are employed from fall-
25 ing below the wage level that would

1 have prevailed in the absence of H-2A
2 employment;

3 “(IV) whether any changes are
4 warranted in the current methodolo-
5 gies for calculating the adverse effect
6 wage rate and the prevailing wage
7 rate; and

8 “(V) recommendations for future
9 wage protection under this section.

10 “(iv) FINAL REPORT.—Not later than
11 December 31, 2009, the Commission shall
12 submit a report to the Congress setting
13 forth the findings of the study conducted
14 under clause (iii).

15 “(v) TERMINATION DATE.—The Com-
16 mission shall terminate upon submitting
17 its final report.

18 “(4) GUARANTEE OF EMPLOYMENT.—

19 “(A) OFFER TO WORKER.—The employer
20 shall guarantee to offer the worker employment
21 for the hourly equivalent of at least $\frac{3}{4}$ of the
22 work days of the total period of employment,
23 beginning with the first work day after the ar-
24 rival of the worker at the place of employment
25 and ending on the expiration date specified in

1 the job offer. For purposes of this subpara-
2 graph, the hourly equivalent means the number
3 of hours in the work days as stated in the job
4 offer and shall exclude the worker's Sabbath
5 and Federal holidays. If the employer affords
6 the United States or H-2A worker less employ-
7 ment than that required under this paragraph,
8 the employer shall pay such worker the amount
9 which the worker would have earned had the
10 worker, in fact, worked for the guaranteed
11 number of hours.

12 “(B) FAILURE TO WORK.—Any hours
13 which the worker fails to work, up to a max-
14 imum of the number of hours specified in the
15 job offer for a work day, when the worker has
16 been offered an opportunity to do so, and all
17 hours of work actually performed (including vol-
18 untary work in excess of the number of hours
19 specified in the job offer in a work day, on the
20 worker's Sabbath, or on Federal holidays) may
21 be counted by the employer in calculating
22 whether the period of guaranteed employment
23 has been met.

24 “(C) ABANDONMENT OF EMPLOYMENT,
25 TERMINATION FOR CAUSE.—If the worker vol-

1 untarily abandons employment before the end
2 of the contract period, or is terminated for
3 cause, the worker is not entitled to the ‘ $\frac{3}{4}$
4 guarantee’ described in subparagraph (A).

5 “(D) CONTRACT IMPOSSIBILITY.—If, be-
6 fore the expiration of the period of employment
7 specified in the job offer, the services of the
8 worker are no longer required for reasons be-
9 yond the control of the employer due to any
10 form of natural disaster, including a flood, hur-
11 ricane, freeze, earthquake, fire, drought, plant
12 or animal disease or pest infestation, or regu-
13 latory drought, before the guarantee in sub-
14 paragraph (A) is fulfilled, the employer may
15 terminate the worker’s employment. In the
16 event of such termination, the employer shall
17 fulfill the employment guarantee in subpara-
18 graph (A) for the work days that have elapsed
19 from the first work day after the arrival of the
20 worker to the termination of employment. In
21 such cases, the employer will make efforts to
22 transfer the United States worker to other com-
23 parable employment acceptable to the worker. If
24 such transfer is not effected, the employer shall

1 provide the return transportation required in
2 paragraph (2)(D).

3 “(5) MOTOR VEHICLE SAFETY.—

4 “(A) MODE OF TRANSPORTATION SUBJECT
5 TO COVERAGE.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in clauses (iii) and (iv), this sub-
8 section applies to any H-2A employer that
9 uses or causes to be used any vehicle to
10 transport an H-2A worker within the
11 United States.

12 “(ii) DEFINED TERM.—In this para-
13 graph, the term ‘uses or causes to be
14 used’—

15 “(I) applies only to transpor-
16 tation provided by an H-2A employer
17 to an H-2A worker, or by a farm
18 labor contractor to an H-2A worker
19 at the request or direction of an H-
20 2A employer; and

21 “(II) does not apply to—

22 “(aa) transportation pro-
23 vided, or transportation arrange-
24 ments made, by an H-2A work-
25 er, unless the employer specifi-

1 cally requested or arranged such
2 transportation; or

3 “(bb) car pooling arrange-
4 ments made by H-2A workers
5 themselves, using 1 of the work-
6 ers’ own vehicles, unless specifi-
7 cally requested by the employer
8 directly or through a farm labor
9 contractor.

10 “(iii) CLARIFICATION.—Providing a
11 job offer to an H-2A worker that causes
12 the worker to travel to or from the place
13 of employment, or the payment or reim-
14 bursement of the transportation costs of
15 an H-2A worker by an H-2A employer,
16 shall not constitute an arrangement of, or
17 participation in, such transportation.

18 “(iv) AGRICULTURAL MACHINERY AND
19 EQUIPMENT EXCLUDED.—This subsection
20 does not apply to the transportation of an
21 H-2A worker on a tractor, combine, har-
22 vester, picker, or other similar machinery
23 or equipment while such worker is actually
24 engaged in the planting, cultivating, or
25 harvesting of agricultural commodities or

1 the care of livestock or poultry or engaged
2 in transportation incidental thereto.

3 “(v) COMMON CARRIERS EX-
4 CLUDED.—This subsection does not apply
5 to common carrier motor vehicle transpor-
6 tation in which the provider holds itself out
7 to the general public as engaging in the
8 transportation of passengers for hire and
9 holds a valid certification of authorization
10 for such purposes from an appropriate
11 Federal, State, or local agency.

12 “(B) APPLICABILITY OF STANDARDS, LI-
13 CENSING, AND INSURANCE REQUIREMENTS.—

14 “(i) IN GENERAL.—When using, or
15 causing to be used, any vehicle for the pur-
16 pose of providing transportation to which
17 this subparagraph applies, each employer
18 shall—

19 “(I) ensure that each such vehi-
20 cle conforms to the standards pre-
21 scribed by the Secretary of Labor
22 under section 401(b) of the Migrant
23 and Seasonal Agricultural Worker
24 Protection Act (29 U.S.C. 1841(b))

1 and other applicable Federal and
2 State safety standards;

3 “(II) ensure that each driver has
4 a valid and appropriate license, as
5 provided by State law, to operate the
6 vehicle; and

7 “(III) have an insurance policy
8 or a liability bond that is in effect
9 which insures the employer against li-
10 ability for damage to persons or prop-
11 erty arising from the ownership, oper-
12 ation, or causing to be operated, of
13 any vehicle used to transport any H-
14 2A worker.

15 “(ii) AMOUNT OF INSURANCE RE-
16 QUIRED.—The level of insurance required
17 shall be determined by the Secretary of
18 Labor pursuant to regulations to be issued
19 under this subsection.

20 “(iii) EFFECT OF WORKERS’ COM-
21 PENSATION COVERAGE.—If the employer
22 of any H-2A worker provides workers’
23 compensation coverage for such worker in
24 the case of bodily injury or death as pro-
25 vided by State law, the following adjust-

1 ments in the requirements of subparagraph
2 (B)(i)(III) relating to having an insurance
3 policy or liability bond apply:

4 “(I) No insurance policy or liabil-
5 ity bond shall be required of the em-
6 ployer, if such workers are trans-
7 ported only under circumstances for
8 which there is coverage under such
9 State law.

10 “(II) An insurance policy or li-
11 ability bond shall be required of the
12 employer for circumstances under
13 which coverage for the transportation
14 of such workers is not provided under
15 such State law.

16 “(c) COMPLIANCE WITH LABOR LAWS.—An em-
17 ployer shall assure that, except as otherwise provided in
18 this section, the employer will comply with all applicable
19 Federal, State, and local labor laws, including laws affect-
20 ing migrant and seasonal agricultural workers, with re-
21 spect to all United States workers and alien workers em-
22 ployed by the employer, except that a violation of this as-
23 surance shall not constitute a violation of the Migrant and
24 Seasonal Agricultural Worker Protection Act (29 U.S.C.
25 1801 et seq.).

1 expedited adjudication of petitions filed under subsection
2 (a) and within 7 working days shall, by fax, cable, or other
3 means assuring expedited delivery, transmit a copy of no-
4 tice of action on the petition to the petitioner and, in the
5 case of approved petitions, to the appropriate immigration
6 officer at the port of entry or United States consulate (as
7 the case may be) where the petitioner has indicated that
8 the alien beneficiary (or beneficiaries) will apply for a visa
9 or admission to the United States.

10 “(c) CRITERIA FOR ADMISSIBILITY.—

11 “(1) IN GENERAL.—An H-2A worker shall be
12 considered admissible to the United States if the
13 alien is otherwise admissible under this section, sec-
14 tion 218, and section 218A, and the alien is not in-
15 eligible under paragraph (2).

16 “(2) DISQUALIFICATION.—An alien shall be
17 considered inadmissible to the United States and in-
18 eligible for nonimmigrant status under section
19 101(a)(15)(H)(ii)(a) if the alien has, at any time
20 during the past 5 years—

21 “(A) violated a material provision of this
22 section, including the requirement to promptly
23 depart the United States when the alien’s au-
24 thorized period of admission under this section
25 has expired; or

1 “(B) otherwise violated a term or condition
2 of admission into the United States as a non-
3 immigrant, including overstaying the period of
4 authorized admission as such a nonimmigrant.

5 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
6 FUL PRESENCE.—

7 “(A) IN GENERAL.—An alien who has not
8 previously been admitted into the United States
9 pursuant to this section, and who is otherwise
10 eligible for admission in accordance with para-
11 graphs (1) and (2), shall not be deemed inad-
12 missible by virtue of section 212(a)(9)(B). If an
13 alien described in the preceding sentence is
14 present in the United States, the alien may
15 apply from abroad for H-2A status, but may
16 not be granted that status in the United States.

17 “(B) MAINTENANCE OF WAIVER.—An
18 alien provided an initial waiver of ineligibility
19 pursuant to subparagraph (A) shall remain eli-
20 gible for such waiver unless the alien violates
21 the terms of this section or again becomes ineli-
22 gible under section 212(a)(9)(B) by virtue of
23 unlawful presence in the United States after
24 the date of the initial waiver of ineligibility pur-
25 suant to subparagraph (A).

1 “(d) PERIOD OF ADMISSION.—

2 “(1) IN GENERAL.—The alien shall be admitted
3 for the period of employment in the application cer-
4 tified by the Secretary of Labor pursuant to section
5 218(e)(2)(B), not to exceed 10 months, supple-
6 mented by a period of not more than 1 week before
7 the beginning of the period of employment for the
8 purpose of travel to the worksite and a period of 14
9 days following the period of employment for the pur-
10 pose of departure or extension based on a subse-
11 quent offer of employment, except that—

12 “(A) the alien is not authorized to be em-
13 ployed during such 14-day period except in the
14 employment for which the alien was previously
15 authorized; and

16 “(B) the total period of employment, in-
17 cluding such 14-day period, may not exceed 10
18 months.

19 “(2) CONSTRUCTION.—Nothing in this sub-
20 section shall limit the authority of the Secretary to
21 extend the stay of the alien under any other provi-
22 sion of this Act.

23 “(e) ABANDONMENT OF EMPLOYMENT.—

24 “(1) IN GENERAL.—An alien admitted or pro-
25 vided status under section 101(a)(15)(H)(ii)(a) who

1 abandons the employment which was the basis for
2 such admission or status shall be considered to have
3 failed to maintain nonimmigrant status as an H-2A
4 worker and shall depart the United States or be sub-
5 ject to removal under section 237(a)(1)(C)(i).

6 “(2) REPORT BY EMPLOYER.—The employer, or
7 association acting as agent for the employer, shall
8 notify the Secretary not later than 7 days after an
9 H-2A worker prematurely abandons employment.

10 “(3) REMOVAL BY THE SECRETARY.—The Sec-
11 retary shall promptly remove from the United States
12 any H-2A worker who violates any term or condi-
13 tion of the worker’s nonimmigrant status.

14 “(4) VOLUNTARY TERMINATION.—Notwith-
15 standing paragraph (1), an alien may voluntarily
16 terminate his or her employment if the alien prompt-
17 ly departs the United States upon termination of
18 such employment.

19 “(f) REPLACEMENT OF ALIEN.—

20 “(1) IN GENERAL.—Upon presentation of the
21 notice to the Secretary required by subsection (e)(2),
22 the Secretary of State shall promptly issue a visa to,
23 and the Secretary shall admit into the United
24 States, an eligible alien designated by the employer
25 to replace an H-2A worker—

1 “(A) who abandons or prematurely termi-
2 nates employment; or

3 “(B) whose employment is terminated
4 after a United States worker is employed pur-
5 suant to section 218(b)(2)(H)(iii), if the United
6 States worker voluntarily departs before the
7 end of the period of intended employment or if
8 the employment termination is for a lawful job-
9 related reason.

10 “(2) CONSTRUCTION.—Nothing in this sub-
11 section is intended to limit any preference required
12 to be accorded United States workers under any
13 other provision of this Act.

14 “(g) IDENTIFICATION DOCUMENT.—

15 “(1) IN GENERAL.—Each alien authorized to be
16 admitted under section 101(a)(15)(H)(ii)(a) shall be
17 provided an identification and employment eligibility
18 document to verify eligibility for employment in the
19 United States and verify the alien’s identity.

20 “(2) REQUIREMENTS.—No identification and
21 employment eligibility document may be issued
22 which does not meet the following requirements:

23 “(A) The document shall be capable of re-
24 liably determining whether—

1 “(i) the individual with the identifica-
2 tion and employment eligibility document
3 whose eligibility is being verified is in fact
4 eligible for employment;

5 “(ii) the individual whose eligibility is
6 being verified is claiming the identity of
7 another person; and

8 “(iii) the individual whose eligibility is
9 being verified is authorized to be admitted
10 into, and employed in, the United States
11 as an H-2A worker.

12 “(B) The document shall be in a form that
13 is resistant to counterfeiting and to tampering.

14 “(C) The document shall—

15 “(i) be compatible with other data-
16 bases of the Secretary for the purpose of
17 excluding aliens from benefits for which
18 they are not eligible and determining
19 whether the alien is unlawfully present in
20 the United States; and

21 “(ii) be compatible with law enforce-
22 ment databases to determine if the alien
23 has been convicted of criminal offenses.

24 “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE
25 UNITED STATES.—

1 “(1) EXTENSION OF STAY.—If an employer
2 seeks approval to employ an H-2A alien who is law-
3 fully present in the United States, the petition filed
4 by the employer or an association pursuant to sub-
5 section (a), shall request an extension of the alien’s
6 stay and a change in the alien’s employment.

7 “(2) LIMITATION ON FILING A PETITION FOR
8 EXTENSION OF STAY.—A petition may not be filed
9 for an extension of an alien’s stay—

10 “(A) for a period of more than 10 months;

11 or

12 “(B) to a date that is more than 3 years
13 after the date of the alien’s last admission to
14 the United States under this section.

15 “(3) WORK AUTHORIZATION UPON FILING A
16 PETITION FOR EXTENSION OF STAY.—

17 “(A) IN GENERAL.—An alien who is law-
18 fully present in the United States may com-
19 mence the employment described in a petition
20 under paragraph (1) on the date on which the
21 petition is filed.

22 “(B) DEFINITION.—For purposes of sub-
23 paragraph (A), the term ‘file’ means sending
24 the petition by certified mail via the United
25 States Postal Service, return receipt requested,

1 or delivered by guaranteed commercial delivery
2 which will provide the employer with a docu-
3 mented acknowledgment of the date of receipt
4 of the petition.

5 “(C) HANDLING OF PETITION.—The em-
6 ployer shall provide a copy of the employer’s pe-
7 tition to the alien, who shall keep the petition
8 with the alien’s identification and employment
9 eligibility document as evidence that the peti-
10 tion has been filed and that the alien is author-
11 ized to work in the United States.

12 “(D) APPROVAL OF PETITION.—Upon ap-
13 proval of a petition for an extension of stay or
14 change in the alien’s authorized employment,
15 the Secretary shall provide a new or updated
16 employment eligibility document to the alien in-
17 dicating the new validity date, after which the
18 alien is not required to retain a copy of the pe-
19 tition.

20 “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-
21 TION OF ALIENS WITHOUT VALID IDENTIFICATION
22 AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-
23 pired identification and employment eligibility docu-
24 ment, together with a copy of a petition for exten-
25 sion of stay or change in the alien’s authorized em-

1 ployment that complies with the requirements of
2 paragraph (1), shall constitute a valid work author-
3 ization document for a period of not more than 60
4 days beginning on the date on which such petition
5 is filed, after which time only a currently valid iden-
6 tification and employment eligibility document shall
7 be acceptable.

8 “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN
9 STATUS.—

10 “(A) MAXIMUM PERIOD.—The maximum
11 continuous period of authorized status as an
12 H–2A worker (including any extensions) is 3
13 years.

14 “(B) REQUIREMENT TO REMAIN OUTSIDE
15 THE UNITED STATES.—

16 “(i) IN GENERAL.—Subject to clause
17 (ii), in the case of an alien outside the
18 United States whose period of authorized
19 status as an H–2A worker (including any
20 extensions) has expired, the alien may not
21 again apply for admission to the United
22 States as an H–2A worker unless the alien
23 has remained outside the United States for
24 a continuous period equal to at least $\frac{1}{5}$
25 the duration of the alien’s previous period

1 of authorized status as an H-2A worker
2 (including any extensions).

3 “(ii) EXCEPTION.—Clause (i) shall
4 not apply in the case of an alien if the
5 alien’s period of authorized status as an
6 H-2A worker (including any extensions)
7 was for a period of not more than 10
8 months and such alien has been outside
9 the United States for at least 2 months
10 during the 12 months preceding the date
11 the alien again is applying for admission to
12 the United States as an H-2A worker.

13 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS
14 SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORK-
15 ERS.—Notwithstanding any provision of the Agricultural
16 Job Opportunities, Benefits, and Security Act of 2007, an
17 alien admitted under section 101(a)(15)(H)(ii)(a) for em-
18 ployment as a shepherd, goat herder, or dairy worker—

19 “(1) may be admitted for an initial period of 12
20 months;

21 “(2) subject to subsection (j)(5), may have such
22 initial period of admission extended for a period of
23 up to 3 years; and

1 “(3) shall not be subject to the requirements of
2 subsection (h)(5) (relating to periods of absence
3 from the United States).

4 “(j) ADJUSTMENT TO LAWFUL PERMANENT RESI-
5 DENT STATUS FOR ALIENS EMPLOYED AS SHEEP-
6 HERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

7 “(1) ELIGIBLE ALIEN.—For purposes of this
8 subsection, the term ‘eligible alien’ means an alien—

9 “(A) having nonimmigrant status under
10 section 101(a)(15)(H)(ii)(a) based on employ-
11 ment as a shepherd, goat herder, or dairy
12 worker;

13 “(B) who has maintained such non-
14 immigrant status in the United States for a cu-
15 mulative total of 36 months (excluding any pe-
16 riod of absence from the United States); and

17 “(C) who is seeking to receive an immi-
18 grant visa under section 203(b)(3)(A)(iii).

19 “(2) CLASSIFICATION PETITION.—In the case
20 of an eligible alien, the petition under section 204
21 for classification under section 203(b)(3)(A)(iii) may
22 be filed by—

23 “(A) the alien’s employer on behalf of the
24 eligible alien; or

25 “(B) the eligible alien.

1 “(3) NO LABOR CERTIFICATION REQUIRED.—
2 Notwithstanding section 203(b)(3)(C), no deter-
3 mination under section 212(a)(5)(A) is required with
4 respect to an immigrant visa described in paragraph
5 (1)(C) for an eligible alien.

6 “(4) EFFECT OF PETITION.—The filing of a pe-
7 tition described in paragraph (2) or an application
8 for adjustment of status based on the approval of
9 such a petition shall not constitute evidence of an
10 alien’s ineligibility for nonimmigrant status under
11 section 101(a)(15)(H)(ii)(a).

12 “(5) EXTENSION OF STAY.—The Secretary
13 shall extend the stay of an eligible alien having a
14 pending or approved classification petition described
15 in paragraph (2) in 1-year increments until a final
16 determination is made on the alien’s eligibility for
17 adjustment of status to that of an alien lawfully ad-
18 mitted for permanent residence.

19 “(6) CONSTRUCTION.—Nothing in this sub-
20 section shall be construed to prevent an eligible alien
21 from seeking adjustment of status in accordance
22 with any other provision of law.

23 **“SEC. 218C. WORKER PROTECTIONS AND LABOR STAND-**
24 **ARDS ENFORCEMENT.**

25 “(a) ENFORCEMENT AUTHORITY.—

1 “(1) INVESTIGATION OF COMPLAINTS.—

2 “(A) AGGRIEVED PERSON OR THIRD-PARTY
3 COMPLAINTS.—The Secretary of Labor shall es-
4 tablish a process for the receipt, investigation,
5 and disposition of complaints respecting a peti-
6 tioner’s failure to meet a condition specified in
7 section 218(b), or an employer’s misrepresenta-
8 tion of material facts in an application under
9 section 218(a). Complaints may be filed by any
10 aggrieved person or organization (including bar-
11 gaining representatives). No investigation or
12 hearing shall be conducted on a complaint con-
13 cerning such a failure or misrepresentation un-
14 less the complaint was filed not later than 12
15 months after the date of the failure, or mis-
16 representation, respectively. The Secretary of
17 Labor shall conduct an investigation under this
18 subparagraph if there is reasonable cause to be-
19 lieve that such a failure or misrepresentation
20 has occurred.

21 “(B) DETERMINATION ON COMPLAINT.—
22 Under such process, the Secretary of Labor
23 shall provide, within 30 days after the date
24 such a complaint is filed, for a determination as
25 to whether or not a reasonable basis exists to

1 make a finding described in subparagraph (C),
2 (D), (E), or (G). If the Secretary of Labor de-
3 termines that such a reasonable basis exists,
4 the Secretary of Labor shall provide for notice
5 of such determination to the interested parties
6 and an opportunity for a hearing on the com-
7 plaint, in accordance with section 556 of title 5,
8 United States Code, within 60 days after the
9 date of the determination. If such a hearing is
10 requested, the Secretary of Labor shall make a
11 finding concerning the matter not later than 60
12 days after the date of the hearing. In the case
13 of similar complaints respecting the same appli-
14 cant, the Secretary of Labor may consolidate
15 the hearings under this subparagraph on such
16 complaints.

17 “(C) FAILURES TO MEET CONDITIONS.—If
18 the Secretary of Labor finds, after notice and
19 opportunity for a hearing, a failure to meet a
20 condition of paragraph (1)(A), (1)(B), (1)(D),
21 (1)(F), (2)(A), (2)(B), or (2)(G) of section
22 218(b), a substantial failure to meet a condition
23 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),
24 (2)(E), or (2)(H) of section 218(b), or a mate-

1 rial misrepresentation of fact in an application
2 under section 218(a)—

3 “(i) the Secretary of Labor shall no-
4 tify the Secretary of such finding and may,
5 in addition, impose such other administra-
6 tive remedies (including civil money pen-
7 alties in an amount not to exceed \$1,000
8 per violation) as the Secretary of Labor
9 determines to be appropriate; and

10 “(ii) the Secretary may disqualify the
11 employer from the employment of aliens
12 described in section 101(a)(15)(H)(ii)(a)
13 for a period of 1 year.

14 “(D) WILLFUL FAILURES AND WILLFUL
15 MISREPRESENTATIONS.—If the Secretary of
16 Labor finds, after notice and opportunity for
17 hearing, a willful failure to meet a condition of
18 section 218(b), a willful misrepresentation of a
19 material fact in an application under section
20 218(a), or a violation of subsection (d)(1)—

21 “(i) the Secretary of Labor shall no-
22 tify the Secretary of such finding and may,
23 in addition, impose such other administra-
24 tive remedies (including civil money pen-
25 alties in an amount not to exceed \$5,000

1 per violation) as the Secretary of Labor
2 determines to be appropriate;

3 “(ii) the Secretary of Labor may seek
4 appropriate legal or equitable relief to ef-
5 fectuate the purposes of subsection (d)(1);
6 and

7 “(iii) the Secretary may disqualify the
8 employer from the employment of H-2A
9 workers for a period of 2 years.

10 “(E) DISPLACEMENT OF UNITED STATES
11 WORKERS.—If the Secretary of Labor finds,
12 after notice and opportunity for hearing, a will-
13 ful failure to meet a condition of section 218(b)
14 or a willful misrepresentation of a material fact
15 in an application under section 218(a), in the
16 course of which failure or misrepresentation the
17 employer displaced a United States worker em-
18 ployed by the employer during the period of em-
19 ployment on the employer’s application under
20 section 218(a) or during the period of 30 days
21 preceding such period of employment—

22 “(i) the Secretary of Labor shall no-
23 tify the Secretary of such finding and may,
24 in addition, impose such other administra-
25 tive remedies (including civil money pen-

1 alties in an amount not to exceed \$15,000
2 per violation) as the Secretary of Labor
3 determines to be appropriate; and

4 “(ii) the Secretary may disqualify the
5 employer from the employment of H-2A
6 workers for a period of 3 years.

7 “(F) LIMITATIONS ON CIVIL MONEY PEN-
8 ALTIES.—The Secretary of Labor shall not im-
9 pose total civil money penalties with respect to
10 an application under section 218(a) in excess of
11 \$90,000.

12 “(G) FAILURES TO PAY WAGES OR RE-
13 QUIRED BENEFITS.—If the Secretary of Labor
14 finds, after notice and opportunity for a hear-
15 ing, that the employer has failed to pay the
16 wages, or provide the housing allowance, trans-
17 portation, subsistence reimbursement, or guar-
18 antee of employment, required under section
19 218A(b), the Secretary of Labor shall assess
20 payment of back wages, or other required bene-
21 fits, due any United States worker or H-2A
22 worker employed by the employer in the specific
23 employment in question. The back wages or
24 other required benefits under section 218A(b)
25 shall be equal to the difference between the

1 amount that should have been paid and the
2 amount that actually was paid to such worker.

3 “(2) STATUTORY CONSTRUCTION.—Nothing in
4 this section shall be construed as limiting the au-
5 thority of the Secretary of Labor to conduct any
6 compliance investigation under any other labor law,
7 including any law affecting migrant and seasonal ag-
8 ricultural workers, or, in the absence of a complaint
9 under this section, under section 218 or 218A.

10 “(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF
11 ACTION.—H-2A workers may enforce the following rights
12 through the private right of action provided in subsection
13 (c), and no other right of action shall exist under Federal
14 or State law to enforce such rights:

15 “(1) The providing of housing or a housing al-
16 lowance as required under section 218A(b)(1).

17 “(2) The reimbursement of transportation as
18 required under section 218A(b)(2).

19 “(3) The payment of wages required under sec-
20 tion 218A(b)(3) when due.

21 “(4) The benefits and material terms and con-
22 ditions of employment expressly provided in the job
23 offer described in section 218(a)(2), not including
24 the assurance to comply with other Federal, State,
25 and local labor laws described in section 218A(c),

1 compliance with which shall be governed by the pro-
2 visions of such laws.

3 “(5) The guarantee of employment required
4 under section 218A(b)(4).

5 “(6) The motor vehicle safety requirements
6 under section 218A(b)(5).

7 “(7) The prohibition of discrimination under
8 subsection (d)(2).

9 “(c) PRIVATE RIGHT OF ACTION.—

10 “(1) MEDIATION.—Upon the filing of a com-
11 plaint by an H-2A worker aggrieved by a violation
12 of rights enforceable under subsection (b), and with-
13 in 60 days of the filing of proof of service of the
14 complaint, a party to the action may file a request
15 with the Federal Mediation and Conciliation Service
16 to assist the parties in reaching a satisfactory reso-
17 lution of all issues involving all parties to the dis-
18 pute. Upon a filing of such request and giving of no-
19 tice to the parties, the parties shall attempt medi-
20 ation within the period specified in subparagraph
21 (B).

22 “(A) MEDIATION SERVICES.—The Federal
23 Mediation and Conciliation Service shall be
24 available to assist in resolving disputes arising
25 under subsection (b) between H-2A workers

1 and agricultural employers without charge to
2 the parties.

3 “(B) 90-DAY LIMIT.—The Federal Medi-
4 ation and Conciliation Service may conduct me-
5 diation or other nonbinding dispute resolution
6 activities for a period not to exceed 90 days be-
7 ginning on the date on which the Federal Medi-
8 ation and Conciliation Service receives the re-
9 quest for assistance unless the parties agree to
10 an extension of this period of time.

11 “(C) AUTHORIZATION.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), there are authorized to be appro-
14 priated to the Federal Mediation and Con-
15 ciliation Service \$500,000 for each fiscal
16 year to carry out this section.

17 “(ii) MEDIATION.—Notwithstanding
18 any other provision of law, the Director of
19 the Federal Mediation and Conciliation
20 Service is authorized to conduct the medi-
21 ation or other dispute resolution activities
22 from any other appropriated funds avail-
23 able to the Director and to reimburse such
24 appropriated funds when the funds are ap-
25 propriated pursuant to this authorization,

1 such reimbursement to be credited to ap-
2 propriations currently available at the time
3 of receipt.

4 “(2) MAINTENANCE OF CIVIL ACTION IN DIS-
5 TRICT COURT BY AGGRIEVED PERSON.—An H–2A
6 worker aggrieved by a violation of rights enforceable
7 under subsection (b) by an agricultural employer or
8 other person may file suit in any district court of the
9 United States having jurisdiction over the parties,
10 without regard to the amount in controversy, with-
11 out regard to the citizenship of the parties, and
12 without regard to the exhaustion of any alternative
13 administrative remedies under this Act, not later
14 than 3 years after the date the violation occurs.

15 “(3) ELECTION.—An H–2A worker who has
16 filed an administrative complaint with the Secretary
17 of Labor may not maintain a civil action under
18 paragraph (2) unless a complaint based on the same
19 violation filed with the Secretary of Labor under
20 subsection (a)(1) is withdrawn before the filing of
21 such action, in which case the rights and remedies
22 available under this subsection shall be exclusive.

23 “(4) PREEMPTION OF STATE CONTRACT
24 RIGHTS.—Nothing in this Act shall be construed to
25 diminish the rights and remedies of an H–2A worker

1 under any other Federal or State law or regulation
2 or under any collective bargaining agreement, except
3 that no court or administrative action shall be avail-
4 able under any State contract law to enforce the
5 rights created by this Act.

6 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-
7 ments by employees purporting to waive or modify
8 their rights under this Act shall be void as contrary
9 to public policy, except that a waiver or modification
10 of the rights or obligations in favor of the Secretary
11 of Labor shall be valid for purposes of the enforce-
12 ment of this Act. The preceding sentence may not
13 be construed to prohibit agreements to settle private
14 disputes or litigation.

15 “(6) AWARD OF DAMAGES OR OTHER EQUI-
16 TABLE RELIEF.—

17 “(A) If the court finds that the respondent
18 has intentionally violated any of the rights en-
19 forceable under subsection (b), it shall award
20 actual damages, if any, or equitable relief.

21 “(B) Any civil action brought under this
22 section shall be subject to appeal as provided in
23 chapter 83 of title 28, United States Code.

24 “(7) WORKERS’ COMPENSATION BENEFITS; EX-
25 CLUSIVE REMEDY.—

1 “(A) Notwithstanding any other provision
2 of this section, where a State’s workers’ com-
3 pensation law is applicable and coverage is pro-
4 vided for an H-2A worker, the workers’ com-
5 pensation benefits shall be the exclusive remedy
6 for the loss of such worker under this section
7 in the case of bodily injury or death in accord-
8 ance with such State’s workers’ compensation
9 law.

10 “(B) The exclusive remedy prescribed in
11 subparagraph (A) precludes the recovery under
12 paragraph (6) of actual damages for loss from
13 an injury or death but does not preclude other
14 equitable relief, except that such relief shall not
15 include back or front pay or in any manner, di-
16 rectly or indirectly, expand or otherwise alter or
17 affect—

18 “(i) a recovery under a State workers’
19 compensation law; or

20 “(ii) rights conferred under a State
21 workers’ compensation law.

22 “(8) TOLLING OF STATUTE OF LIMITATIONS.—
23 If it is determined under a State workers’ compensa-
24 tion law that the workers’ compensation law is not
25 applicable to a claim for bodily injury or death of an

1 H-2A worker, the statute of limitations for bringing
2 an action for actual damages for such injury or
3 death under subsection (c) shall be tolled for the pe-
4 riod during which the claim for such injury or death
5 under such State workers' compensation law was
6 pending. The statute of limitations for an action for
7 actual damages or other equitable relief arising out
8 of the same transaction or occurrence as the injury
9 or death of the H-2A worker shall be tolled for the
10 period during which the claim for such injury or
11 death was pending under the State workers' com-
12 pensation law.

13 “(9) PRECLUSIVE EFFECT.—Any settlement by
14 an H-2A worker and an H-2A employer or any per-
15 son reached through the mediation process required
16 under subsection (c)(1) shall preclude any right of
17 action arising out of the same facts between the par-
18 ties in any Federal or State court or administrative
19 proceeding, unless specifically provided otherwise in
20 the settlement agreement.

21 “(10) SETTLEMENTS.—Any settlement by the
22 Secretary of Labor with an H-2A employer on be-
23 half of an H-2A worker of a complaint filed with the
24 Secretary of Labor under this section or any finding
25 by the Secretary of Labor under subsection

1 (a)(1)(B) shall preclude any right of action arising
2 out of the same facts between the parties under any
3 Federal or State court or administrative proceeding,
4 unless specifically provided otherwise in the settle-
5 ment agreement.

6 “(d) DISCRIMINATION PROHIBITED.—

7 “(1) IN GENERAL.—It is a violation of this sub-
8 section for any person who has filed an application
9 under section 218(a), to intimidate, threaten, re-
10 strain, coerce, blacklist, discharge, or in any other
11 manner discriminate against an employee (which
12 term, for purposes of this subsection, includes a
13 former employee and an applicant for employment)
14 because the employee has disclosed information to
15 the employer, or to any other person, that the em-
16 ployee reasonably believes evidences a violation of
17 section 218 or 218A or any rule or regulation per-
18 taining to section 218 or 218A, or because the em-
19 ployee cooperates or seeks to cooperate in an inves-
20 tigation or other proceeding concerning the employ-
21 er’s compliance with the requirements of section 218
22 or 218A or any rule or regulation pertaining to ei-
23 ther of such sections.

24 “(2) DISCRIMINATION AGAINST H-2A WORK-
25 ERS.—It is a violation of this subsection for any per-

1 son who has filed an application under section
2 218(a), to intimidate, threaten, restrain, coerce,
3 blacklist, discharge, or in any manner discriminate
4 against an H-2A employee because such worker has,
5 with just cause, filed a complaint with the Secretary
6 of Labor regarding a denial of the rights enumer-
7 ated and enforceable under subsection (b) or insti-
8 tuted, or caused to be instituted, a private right of
9 action under subsection (c) regarding the denial of
10 the rights enumerated under subsection (b), or has
11 testified or is about to testify in any court pro-
12 ceeding brought under subsection (c).

13 “(e) AUTHORIZATION TO SEEK OTHER APPRO-
14 PRIATE EMPLOYMENT.—The Secretary of Labor and the
15 Secretary shall establish a process under which an H-2A
16 worker who files a complaint regarding a violation of sub-
17 section (d) and is otherwise eligible to remain and work
18 in the United States may be allowed to seek other appro-
19 priate employment in the United States for a period not
20 to exceed the maximum period of stay authorized for such
21 nonimmigrant classification.

22 “(f) ROLE OF ASSOCIATIONS.—

23 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
24 TION.—An employer on whose behalf an application
25 is filed by an association acting as its agent is fully

1 responsible for such application, and for complying
2 with the terms and conditions of sections 218 and
3 218A, as though the employer had filed the applica-
4 tion itself. If such an employer is determined, under
5 this section, to have committed a violation, the pen-
6 alty for such violation shall apply only to that mem-
7 ber of the association unless the Secretary of Labor
8 determines that the association or other member
9 participated in, had knowledge, or reason to know,
10 of the violation, in which case the penalty shall be
11 invoked against the association or other association
12 member as well.

13 “(2) VIOLATIONS BY AN ASSOCIATION ACTING
14 AS AN EMPLOYER.—If an association filing an appli-
15 cation as a sole or joint employer is determined to
16 have committed a violation under this section, the
17 penalty for such violation shall apply only to the as-
18 sociation unless the Secretary of Labor determines
19 that an association member or members participated
20 in or had knowledge, or reason to know of the viola-
21 tion, in which case the penalty shall be invoked
22 against the association member or members as well.

23 **“SEC. 218D. DEFINITIONS.**

24 “For purposes of this section and section 218, 218A,
25 218B, and 218C:

1 “(1) AGRICULTURAL EMPLOYMENT.—The term
2 ‘agricultural employment’ means any service or ac-
3 tivity that is considered to be agricultural under sec-
4 tion 3(f) of the Fair Labor Standards Act of 1938
5 (29 U.S.C. 203(f)) or agricultural labor under sec-
6 tion 3121(g) of the Internal Revenue Code of 1986
7 or the performance of agricultural labor or services
8 described in section 101(a)(15)(H)(ii)(a).

9 “(2) BONA FIDE UNION.—The term ‘bona fide
10 union’ means any organization in which employees
11 participate and which exists for the purpose of deal-
12 ing with employers concerning grievances, labor dis-
13 putes, wages, rates of pay, hours of employment, or
14 other terms and conditions of work for agricultural
15 employees. Such term does not include an organiza-
16 tion formed, created, administered, supported, domi-
17 nated, financed, or controlled by an employer or em-
18 ployer association or its agents or representatives.

19 “(3) DISPLACE.—The term ‘displace’, in the
20 case of an application with respect to 1 or more H-
21 2A workers by an employer, means laying off a
22 United States worker from a job for which the H-
23 2A worker or workers is or are sought.

24 “(4) ELIGIBLE.—The term ‘eligible’, when used
25 with respect to an individual, means an individual

1 who is not an unauthorized alien (as defined in sec-
2 tion 274A).

3 “(5) EMPLOYER.—The term ‘employer’ means
4 any person or entity, including any farm labor con-
5 tractor and any agricultural association, that em-
6 ploys workers in agricultural employment.

7 “(6) H-2A EMPLOYER.—The term ‘H-2A em-
8 ployer’ means an employer who seeks to hire 1 or
9 more nonimmigrant aliens described in section
10 101(a)(15)(H)(ii)(a).

11 “(7) H-2A WORKER.—The term ‘H-2A worker’
12 means a nonimmigrant described in section
13 101(a)(15)(H)(ii)(a).

14 “(8) JOB OPPORTUNITY.—The term ‘job oppor-
15 tunity’ means a job opening for temporary or sea-
16 sonal full-time employment at a place in the United
17 States to which United States workers can be re-
18 ferred.

19 “(9) LAYING OFF.—

20 “(A) IN GENERAL.—The term ‘laying off’,
21 with respect to a worker—

22 “(i) means to cause the worker’s loss
23 of employment, other than through a dis-
24 charge for inadequate performance, viola-
25 tion of workplace rules, cause, voluntary

1 departure, voluntary retirement, contract
2 impossibility (as described in section
3 218A(b)(4)(D)), or temporary suspension
4 of employment due to weather, markets, or
5 other temporary conditions; but

6 “(ii) does not include any situation in
7 which the worker is offered, as an alter-
8 native to such loss of employment, a simi-
9 lar employment opportunity with the same
10 employer (or, in the case of a placement of
11 a worker with another employer under sec-
12 tion 218(b)(2)(E), with either employer de-
13 scribed in such section) at equivalent or
14 higher compensation and benefits than the
15 position from which the employee was dis-
16 charged, regardless of whether or not the
17 employee accepts the offer.

18 “(B) STATUTORY CONSTRUCTION.—Noth-
19 ing in this paragraph is intended to limit an
20 employee’s rights under a collective bargaining
21 agreement or other employment contract.

22 “(10) REGULATORY DROUGHT.—The term ‘reg-
23 ulatory drought’ means a decision subsequent to the
24 filing of the application under section 218 by an en-
25 tity not under the control of the employer making

1 such filing which restricts the employer's access to
2 water for irrigation purposes and reduces or limits
3 the employer's ability to produce an agricultural
4 commodity, thereby reducing the need for labor.

5 “(11) SEASONAL.—Labor is performed on a
6 ‘seasonal’ basis if—

7 “(A) ordinarily, it pertains to or is of the
8 kind exclusively performed at certain seasons or
9 periods of the year; and

10 “(B) from its nature, it may not be contin-
11 uous or carried on throughout the year.

12 “(12) SECRETARY.—Except as otherwise pro-
13 vided, the term ‘Secretary’ means the Secretary of
14 Homeland Security.

15 “(13) TEMPORARY.—A worker is employed on a
16 ‘temporary’ basis where the employment is intended
17 not to exceed 10 months.

18 “(14) UNITED STATES WORKER.—The term
19 ‘United States worker’ means any worker, whether
20 a national of the United States, an alien lawfully ad-
21 mitted for permanent residence, or any other alien,
22 who is authorized to work in the job opportunity
23 within the United States, except an alien admitted
24 or otherwise provided status under section
25 101(a)(15)(H)(ii)(a).”.

1 (b) TABLE OF CONTENTS.—The table of contents of
2 the Immigration and Nationality Act (8 U.S.C. 1101 et
3 seq.) is amended by striking the item relating to section
4 218 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.”.

5 **CHAPTER 3—MISCELLANEOUS**
6 **PROVISIONS**

7 **SEC. 653. DETERMINATION AND USE OF USER FEES.**

8 (a) SCHEDULE OF FEES.—The Secretary shall estab-
9 lish and periodically adjust a schedule of fees for the em-
10 ployment of aliens pursuant to the amendment made by
11 section 652(a) of this Act and a collection process for such
12 fees from employers. Such fees shall be the only fees
13 chargeable to employers for services provided under such
14 amendment.

15 (b) DETERMINATION OF SCHEDULE.—

16 (1) IN GENERAL.—The schedule under sub-
17 section (a) shall reflect a fee rate based on the num-
18 ber of job opportunities indicated in the employer’s
19 application under section 218 of the Immigration
20 and Nationality Act, as amended by section 652 of
21 this Act, and sufficient to provide for the direct
22 costs of providing services related to an employer’s
23 authorization to employ aliens pursuant to the

1 amendment made by section 652(a) of this Act, to
2 include the certification of eligible employers, the
3 issuance of documentation, and the admission of eli-
4 gible aliens.

5 (2) PROCEDURE.—

6 (A) IN GENERAL.—In establishing and ad-
7 justing such a schedule, the Secretary shall
8 comply with Federal cost accounting and fee
9 setting standards.

10 (B) PUBLICATION AND COMMENT.—The
11 Secretary shall publish in the Federal Register
12 an initial fee schedule and associated collection
13 process and the cost data or estimates upon
14 which such fee schedule is based, and any sub-
15 sequent amendments thereto, pursuant to which
16 public comment shall be sought and a final rule
17 issued.

18 (c) USE OF PROCEEDS.—Notwithstanding any other
19 provision of law, all proceeds resulting from the payment
20 of the fees pursuant to the amendment made by section
21 652(a) of this Act shall be available without further appro-
22 priation and shall remain available without fiscal year lim-
23 itation to reimburse the Secretary, the Secretary of State,
24 and the Secretary of Labor for the costs of carrying out
25 sections 218 and 218B of the Immigration and Nation-

1 ality Act, as amended and added, respectively, by section
2 652 of this Act, and the provisions of this Act.

3 **SEC. 654. REGULATIONS.**

4 (a) REQUIREMENT FOR THE SECRETARY TO CON-
5 SULT.—The Secretary shall consult with the Secretary of
6 Labor and the Secretary of Agriculture during the promul-
7 gation of all regulations to implement the duties of the
8 Secretary under this Act and the amendments made by
9 this Act.

10 (b) REQUIREMENT FOR THE SECRETARY OF STATE
11 TO CONSULT.—The Secretary of State shall consult with
12 the Secretary, the Secretary of Labor, and the Secretary
13 of Agriculture on all regulations to implement the duties
14 of the Secretary of State under this Act and the amend-
15 ments made by this Act.

16 (c) REQUIREMENT FOR THE SECRETARY OF LABOR
17 TO CONSULT.—The Secretary of Labor shall consult with
18 the Secretary of Agriculture and the Secretary on all regu-
19 lations to implement the duties of the Secretary of Labor
20 under this Act and the amendments made by this Act.

21 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—
22 All regulations to implement the duties of the Secretary,
23 the Secretary of State, and the Secretary of Labor created
24 under sections 218, 218A, 218B, 218C, and 218D of the
25 Immigration and Nationality Act, as amended or added

1 by section 652 of this Act, shall take effect on the effective
2 date of section 652 and shall be issued not later than 1
3 year after the date of enactment of this Act.

4 **SEC. 655. REPORTS TO CONGRESS.**

5 (a) ANNUAL REPORT.—Not later than September 30
6 of each year, the Secretary shall submit a report to Con-
7 gress that identifies, for the previous year—

8 (1) the number of job opportunities approved
9 for employment of aliens admitted under section
10 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
11 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the
12 number of workers actually admitted, disaggregated
13 by State and by occupation;

14 (2) the number of such aliens reported to have
15 abandoned employment pursuant to subsection
16 218B(e)(2) of such Act;

17 (3) the number of such aliens who departed the
18 United States within the period specified in sub-
19 section 218B(d) of such Act;

20 (4) the number of aliens who applied for adjust-
21 ment of status pursuant to section 643(a);

22 (5) the number of such aliens whose status was
23 adjusted under section 643(a);

24 (6) the number of aliens who applied for perma-
25 nent residence pursuant to section 643(c); and

1 (7) the number of such aliens who were ap-
2 proved for permanent residence pursuant section
3 645(c).

4 (b) IMPLEMENTATION REPORT.—Not later than 180
5 days after the date of the enactment of this Act, the Sec-
6 retary shall prepare and submit to Congress a report that
7 describes the measures being taken and the progress made
8 in implementing this Act.

9 **SEC. 656. EFFECTIVE DATE.**

10 Except as otherwise provided, sections 652 and 653
11 shall take effect 1 year after the date of the enactment
12 of this Act.

13 **Subtitle D—Programs to Assist**
14 **Nonimmigrant Workers**

15 **SEC. 661. GRANTS TO SUPPORT PUBLIC EDUCATION AND**
16 **COMMUNITY TRAINING.**

17 (a) GRANTS AUTHORIZED.—The Assistant Attorney
18 General, Office of Justice Programs, may award grants
19 to qualified non-profit community organizations to edu-
20 cate, train, and support non-profit agencies, immigrant
21 communities, and other interested entities regarding the
22 provisions of this Act and the amendments made by this
23 Act.

24 (b) USE OF FUNDS.—

1 (1) IN GENERAL.—Grants awarded under this
2 section shall be used—

3 (A) for public education, training, technical
4 assistance, government liaison, and all related
5 costs (including personnel and equipment) in-
6 curred by the grantee in providing services re-
7 lated to this Act; and

8 (B) to educate, train, and support non-
9 profit organizations, immigrant communities,
10 and other interested parties regarding this Act
11 and the amendments made by this Act and on
12 matters related to its implementation.

13 (2) EDUCATION.—In addition to the purposes
14 described in paragraph (1), grants awarded under
15 this section shall be used to—

16 (A) educate immigrant communities and
17 other interested entities regarding—

18 (i) the individuals and organizations
19 that can provide authorized legal represen-
20 tation in immigration matters under regu-
21 lations prescribed by the Secretary; and

22 (ii) the dangers of securing legal ad-
23 vice and assistance from those who are not
24 authorized to provide legal representation
25 in immigration matters;

1 (B) educate interested entities regarding
2 the requirements for obtaining nonprofit rec-
3 ognition and accreditation to represent immi-
4 grants under regulations prescribed by the Sec-
5 retary;

6 (C) provide nonprofit agencies with train-
7 ing and technical assistance on the recognition
8 and accreditation process; and

9 (D) educate nonprofit community organi-
10 zations, immigrant communities, and other in-
11 terested entities regarding—

12 (i) the process for obtaining benefits
13 under this Act or under an amendment
14 made by this Act; and

15 (ii) the availability of authorized legal
16 representation for low-income persons who
17 may qualify for benefits under this Act or
18 under an amendment made by this Act.

19 (c) DIVERSITY.—The Assistant Attorney General
20 shall ensure, to the extent possible, that the nonprofit
21 community organizations receiving grants under this sec-
22 tion serve geographically diverse locations and ethnically
23 diverse populations who may qualify for benefits under the
24 Act.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Office of Justice
3 Programs of the Department of Justice such sums as may
4 be necessary for each of the fiscal years 2008 through
5 2010 to carry out this section.

6 **SEC. 662. GRANT PROGRAM TO ASSIST APPLICANTS FOR**
7 **NATURALIZATION.**

8 (a) PURPOSE.—The purpose of this section is to es-
9 tablish a grant program within United States Citizenship
10 and Immigration Services that provides funding to com-
11 munity-based organizations, including community-based
12 legal service organizations, as appropriate, to develop and
13 implement programs to assist eligible applicants for natu-
14 ralization.

15 (b) DEFINITIONS.—In this section:

16 (1) COMMUNITY-BASED ORGANIZATION.—The
17 term “community-based organization” means a non-
18 profit, tax-exempt organization, including a faith-
19 based organization, whose staff has experience and
20 expertise in meeting the legal, social, educational,
21 cultural educational, or cultural needs of immi-
22 grants, refugees, persons granted asylum, or persons
23 applying for such statuses.

1 (2) IEACA GRANT.—The term “IEACA grant”
2 means an Initial Entry, Adjustment, and Citizenship
3 Assistance Grant authorized under subsection (c).

4 (c) ESTABLISHMENT OF INITIAL ENTRY, ADJUST-
5 MENT, AND CITIZENSHIP ASSISTANCE GRANT PRO-
6 GRAM.—

7 (1) GRANTS AUTHORIZED.—The Secretary,
8 working through the Director of United States Citi-
9 zenship and Immigration Services, may award
10 IEACA grants to community-based organizations.

11 (2) USE OF FUNDS.—Grants awarded under
12 this section may be used for the design and imple-
13 mentation of programs to provide the following serv-
14 ices:

15 (A) INITIAL APPLICATION.—Assistance
16 and instruction, including legal assistance, to
17 aliens making initial application for conditional
18 nonimmigrant or conditional nonimmigrant
19 dependent classification under section 601. Such
20 assistance may include assisting applicants in—

21 (i) screening to assess prospective ap-
22 plicants’ potential eligibility for partici-
23 pating in such program;

24 (ii) filling out applications for such
25 program;

1 (iii) gathering proof of identification,
2 employment, residence, and tax payment;

3 (iv) gathering proof of relationships of
4 eligible family members;

5 (v) applying for any waivers for which
6 applicants and qualifying family members
7 may be eligible; and

8 (vi) any other assistance that the Sec-
9 retary or grantee considers useful to aliens
10 who are interested in filing applications for
11 treatment under section 601.

12 (B) ADJUSTMENT OF STATUS.—Assistance
13 and instruction, including legal assistance, to
14 aliens seeking to adjust their status in accord-
15 ance with section 602 of this Act or section 245
16 of the Immigration and Nationality Act (8
17 U.S.C. 1255).

18 (C) CITIZENSHIP.—Assistance and instruc-
19 tion to applicants on—

20 (i) the rights and responsibilities of
21 United States citizenship;

22 (ii) English as a second language;

23 (iii) civics; or

24 (iv) applying for United States citi-
25 zenship.

1 (3) DURATION AND RENEWAL.—

2 (A) DURATION.—Subject to subparagraph
3 (B), each grant awarded under this section
4 shall be awarded for a period of not more than
5 3 years.

6 (B) RENEWAL.—The Secretary may renew
7 any grant awarded under this section in 1-year
8 increments.

9 (4) APPLICATION FOR GRANTS.—Each entity
10 desiring an IEACA grant under this section shall
11 submit an application to the Secretary at such time,
12 in such manner, and accompanied by such informa-
13 tion as the Secretary may require.

14 (5) ELIGIBLE ORGANIZATIONS.—A community-
15 based organization applying for a grant under this
16 section to provide services described in subparagraph
17 (A), (B), or (C)(iv) of paragraph (2) may not receive
18 such a grant unless the organization is—

19 (A) recognized by the Board of Immigra-
20 tion Appeals under section 292.2 of title 8,
21 Code of Federal Regulations; or

22 (B) otherwise directed by an attorney.

23 (6) SELECTION OF GRANTEES.—Grants award-
24 ed under this section shall be awarded on a competi-
25 tive basis.

1 (7) GEOGRAPHIC DISTRIBUTION OF GRANTS.—

2 The Secretary shall approve applications under this
3 section in a manner that ensures, to the greatest ex-
4 tent practicable, that—

5 (A) not less than 50 percent of the funding
6 for grants under this section are awarded to
7 programs located in the 10 States with the
8 highest percentage of residents who were born
9 in foreign countries; and

10 (B) not less than 20 percent of the funding
11 for grants under this section are awarded to
12 programs located in States that are not de-
13 scribed in subparagraph (A).

14 (8) ETHNIC DIVERSITY.—The Secretary shall
15 ensure that community-based organizations receiving
16 grants under this section provide services to an eth-
17 nically diverse population, to the greatest extent pos-
18 sible.

19 (d) LIAISON BETWEEN USCIS AND GRANTEES.—

20 The Secretary shall establish a liaison between United
21 States Citizenship and Immigration Services and the com-
22 munity of providers of services under this section to assure
23 quality control, efficiency, and greater client willingness
24 to come forward.

1 (e) REPORTS TO CONGRESS.—Not later than 180
2 days after the date of enactment of this Act, and July
3 1 of each subsequent year, the Secretary shall submit a
4 report to Congress that includes information regarding—

5 (1) the status of the implementation of this sec-
6 tion;

7 (2) the grants issued pursuant to this section;
8 and

9 (3) the activities carried out with such grants.

10 (f) SOURCE OF GRANT FUNDS.—

11 (1) APPLICATION FEES.—The Secretary may
12 use funds made available under section 601(g)(2)(A)
13 of this Act and section 218A(b)(3) of the Immigra-
14 tion and Nationality Act, as added by this Act, to
15 carry out this section.

16 (2) AUTHORIZATION OF APPROPRIATIONS.—

17 (A) AMOUNTS AUTHORIZED.—In addition
18 to the amounts made available under paragraph
19 (1), there are authorized to be appropriated
20 such additional sums as may be necessary for
21 each of fiscal years 2008 through 2012 to carry
22 out this section.

23 (B) AVAILABILITY.—Any amounts appro-
24 priated pursuant to the authorization of appro-

1 priations in subparagraph (A) shall remain
2 available until expended.

3 (g) DISTRIBUTION OF FEES AND FINES.—

4 (1) H-2C VISA FEES.—Notwithstanding section
5 218A(j) of the Immigration and Nationality Act, as
6 added by section 402, 2 percent of the fees collected
7 under section 218A of such Act shall be made avail-
8 able for grants under the Initial Entry, Adjustment,
9 and Citizenship Assistance Grant Program estab-
10 lished under this section.

11 (2) CONDITIONAL NONIMMIGRANT VISA FEES
12 AND FINES.—Notwithstanding section 601(g)(2), 2
13 percent of the fees and fines collected under section
14 601 shall be made available for grants under the Ini-
15 tial Entry, Adjustment, and Citizenship Assistance
16 Grant Program established under this section.

17 **SEC. 663. STRENGTHENING AMERICAN CITIZENSHIP.**

18 (a) SHORT TITLE.—This section may be cited as the
19 “Strengthening American Citizenship Act of 2007”.

20 (b) DEFINITIONS.—In this section:

21 (1) LEGAL RESIDENT.—The term “legal resi-
22 dent” means a lawful permanent resident or a law-
23 fully admitted alien who, in order to adjust status to
24 that of a lawful permanent resident, demonstrates a
25 knowledge of the English language or satisfactory

1 pursuit of a course of study to acquire such knowl-
2 edge of the English language.

3 (2) OATH OF ALLEGIANCE.—The term “Oath
4 of Allegiance” means the binding oath (or affirma-
5 tion) of allegiance required to be naturalized as a
6 citizen of the United States.

7 (c) ENGLISH FLUENCY.—

8 (1) EDUCATION GRANTS.—

9 (A) ESTABLISHMENT.—The Chief of the
10 Office of Citizenship of the Department (re-
11 ferred to in this paragraph as the “Chief”) shall
12 establish a grant program to provide
13 grants, in an amount not to exceed \$500, to as-
14 sist legal residents of the United States who de-
15 clare an intent to apply for citizenship in the
16 United States to meet the requirements under
17 section 312 of the Immigration and Nationality
18 Act (8 U.S.C. 1423).

19 (B) USE OF FUNDS.—Grant funds award-
20 ed under this paragraph shall be paid directly
21 to an accredited institution of higher education
22 or other qualified educational institution (as de-
23 termined by the Chief) for tuition, fees, books,
24 and other educational resources required by a

1 course on the English language in which the
2 legal resident is enrolled.

3 (C) APPLICATION.—A legal resident desir-
4 ing a grant under this paragraph shall submit
5 an application to the Chief at such time, in
6 such manner, and accompanied by such infor-
7 mation as the Chief may reasonably require.

8 (D) PRIORITY.—If insufficient funds are
9 available to award grants to all qualified appli-
10 cants, the Chief shall give priority based on the
11 financial need of the applicants.

12 (E) NOTICE.—The Secretary, upon rel-
13 evant registration of a legal resident with the
14 Department, shall notify such legal resident of
15 the availability of grants under this paragraph
16 for legal residents who declare an intent to
17 apply for United States citizenship.

18 (2) FASTER CITIZENSHIP FOR ENGLISH FLU-
19 ENCY.—Section 316 (8 U.S.C. 1427) is amended by
20 adding at the end the following:

21 “(g) A lawful permanent resident of the United
22 States who demonstrates English fluency, in accordance
23 with regulations prescribed by the Secretary of Homeland
24 Security, in consultation with the Secretary of State, will
25 satisfy the residency requirement under subsection (a)

1 upon the completion of 4 years of continuous legal resi-
2 dency in the United States.”.

3 (3) SAVINGS PROVISION.—Nothing in this sub-
4 section shall be construed to—

5 (A) modify the English language require-
6 ments for naturalization under section
7 312(a)(1) of the Immigration and Nationality
8 Act (8 U.S.C. 1423(a)(1)); or

9 (B) influence the naturalization test rede-
10 sign process of the Office of Citizenship (except
11 for the requirement under subsection (h)(2)).

12 (d) AMERICAN CITIZENSHIP GRANT PROGRAM.—

13 (1) IN GENERAL.—The Secretary shall establish
14 a competitive grant program to provide financial as-
15 sistance for—

16 (A) efforts by entities (including veterans
17 and patriotic organizations) certified by the Of-
18 fice of Citizenship to promote the patriotic inte-
19 gration of prospective citizens into the Amer-
20 ican way of life by providing civics, history, and
21 English as a second language courses, with a
22 specific emphasis on attachment to principles of
23 the Constitution of the United States, the he-
24 roes of American history (including military he-

1 roes), and the meaning of the Oath of Alle-
2 giance; and

3 (B) other activities approved by the Sec-
4 retary to promote the patriotic integration of
5 prospective citizens and the implementation of
6 the Immigration and Nationality Act (8 U.S.C.
7 1101 et seq.), including grants—

8 (i) to promote an understanding of
9 the form of government and history of the
10 United States; and

11 (ii) to promote an attachment to the
12 principles of the Constitution of the United
13 States and the well being and happiness of
14 the people of the United States.

15 (2) ACCEPTANCE OF GIFTS.—The Secretary
16 may accept and use gifts from the United States
17 Citizenship Foundation, if the foundation is estab-
18 lished under subsection (e), for grants under this
19 subsection.

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

23 (e) FUNDING FOR THE OFFICE OF CITIZENSHIP.—

24 (1) AUTHORIZATION.—The Secretary, acting
25 through the Director of the Bureau of Citizenship

1 and Immigration Services, may establish the United
2 States Citizenship Foundation (referred to in this
3 subsection as the “Foundation”), an organization
4 duly incorporated in the District of Columbia, exclu-
5 sively for charitable and educational purposes to
6 support the functions of the Office of Citizenship.

7 (2) DEDICATED FUNDING.—

8 (A) IN GENERAL.—Not less than 1.5 per-
9 cent of the funds made available to the Bureau
10 of Citizenship and Immigration Services from
11 fees shall be dedicated to the functions of the
12 Office of Citizenship, which shall include the
13 patriotic integration of prospective citizens
14 into—

15 (i) American common values and tra-
16 ditions, including an understanding of
17 American history and the principles of the
18 Constitution of the United States; and

19 (ii) civic traditions of the United
20 States, including the Pledge of Allegiance,
21 respect for the flag of the United States,
22 and voting in public elections.

23 (B) SENSE OF CONGRESS.—It is the sense
24 of the Congress that dedicating increased funds
25 to the Office of Citizenship should not result in

1 an increase in fees charged by the Bureau of
2 Citizenship and Immigration Services.

3 (3) GIFTS.—

4 (A) TO FOUNDATION.—The Foundation
5 may solicit, accept, and make gifts of money
6 and other property in accordance with section
7 501(c)(3) of the Internal Revenue Code of
8 1986.

9 (B) FROM FOUNDATION.—The Office of
10 Citizenship may accept gifts from the Founda-
11 tion to support the functions of the Office.

12 (4) AUTHORIZATION OF APPROPRIATIONS.—
13 There are authorized to be appropriated such sums
14 as may be necessary to carry out the mission of the
15 Office of Citizenship, including the functions de-
16 scribed in paragraph (2)(A).

17 (f) RESTRICTION ON USE OF FUNDS.—No funds ap-
18 propriated to carry out a program under subsection (d)
19 or (e) may be used to organize individuals for the purpose
20 of political activism or advocacy.

21 (g) REPORTING REQUIREMENT.—

22 (1) IN GENERAL.—The Chief of the Office of
23 Citizenship shall submit an annual report to the
24 Committee on Health, Education, Labor, and Pen-
25 sions of the Senate, the Committee on the Judiciary

1 of the Senate, the Committee on Education and
2 Labor of the House of Representatives, and the
3 Committee on the Judiciary of the House of Rep-
4 resentatives.

5 (2) CONTENTS.—The report submitted under
6 paragraph (1) shall include—

7 (A) a list of the entities that have received
8 funds from the Office of Citizenship during the
9 reporting period under this section and the
10 amount of funding received by each such entity;

11 (B) an evaluation of the extent to which
12 grants received under this section successfully
13 promoted an understanding of—

14 (i) the English language; and

15 (ii) American history and government,
16 including the heroes of American history,
17 the meaning of the Oath of Allegiance, and
18 an attachment to the principles of the Con-
19 stitution of the United States; and

20 (C) information about the number of legal
21 residents who were able to achieve the knowl-
22 edge described under paragraph (2) as a result
23 of the grants provided under this section.

24 (h) ESTABLISHMENT OF NEW CITIZENS AWARD
25 PROGRAM.—

1 (1) ESTABLISHMENT.—There is established a
2 new citizens award program to recognize citizens
3 who—

4 (A) have made an outstanding contribution
5 to the United States; and

6 (B) were naturalized during the 10-year
7 period ending on the date of such recognition.

8 (2) PRESENTATION AUTHORIZED.—

9 (A) IN GENERAL.—The President is au-
10 thorized to present a medal, in recognition of
11 outstanding contributions to the United States,
12 to citizens described in paragraph (1).

13 (B) MAXIMUM NUMBER OF AWARDS.—Not
14 more than 10 citizens may receive a medal
15 under this subsection in any calendar year.

16 (3) DESIGN AND STRIKING.—The Secretary of
17 the Treasury shall strike a medal with suitable em-
18 blems, devices, and inscriptions, to be determined by
19 the President.

20 (4) NATIONAL MEDALS.—The medals struck
21 pursuant to this subsection are national medals for
22 purposes of chapter 51 of title 31, United States
23 Code.

24 (i) NATURALIZATION CEREMONIES.—

1 (1) IN GENERAL.—The Secretary, in consulta-
2 tion with the Director of the National Park Service,
3 the Archivist of the United States, and other appro-
4 priate Federal officials, shall develop and implement
5 a strategy to enhance the public awareness of natu-
6 ralization ceremonies.

7 (2) VENUES.—In developing the strategy under
8 this subsection, the Secretary shall consider the use
9 of outstanding and historic locations as venues for
10 select naturalization ceremonies.

11 (3) REPORTING REQUIREMENT.—The Secretary
12 shall submit an annual report to Congress that in-
13 cludes—

14 (A) the content of the strategy developed
15 under this subsection; and

16 (B) the progress made towards the imple-
17 mentation of such strategy.

18 **SEC. 664. ADDRESSING POVERTY IN MEXICO.**

19 (a) FINDINGS.—Congress finds the following:

20 (1) There is a strong correlation between eco-
21 nomic freedom and economic prosperity.

22 (2) Trade policy, fiscal burden of government,
23 government intervention in the economy, monetary
24 policy, capital flows and foreign investment, banking
25 and finance, wages and prices, property rights, regu-

1 lation, and informal market activity are key factors
2 in economic freedom.

3 (3) Poverty in Mexico, including rural poverty,
4 can be mitigated through strengthened economic
5 freedom within Mexico.

6 (4) Strengthened economic freedom in Mexico
7 can be a major influence in mitigating illegal immi-
8 gration.

9 (5) Advancing economic freedom within Mexico
10 is an important part of any comprehensive plan to
11 understanding the sources of poverty and the path
12 to economic prosperity.

13 (b) GRANT AUTHORIZED.—The Secretary of State
14 may award a grant to a land grant university in the
15 United States to establish a national program for a broad,
16 university-based, Mexican rural poverty mitigation pro-
17 gram.

18 (c) FUNCTIONS OF MEXICAN RURAL POVERTY MITI-
19 GATION PROGRAM.—The program established pursuant to
20 subsection (b) shall—

21 (1) match a land grant university in the United
22 States with the lead Mexican public university in
23 each of Mexico's 31 states to provide state-level co-
24 ordination of rural poverty programs in Mexico;

1 (2) establish relationships and coordinate pro-
2 grammatic ties between universities in the United
3 States and universities in Mexico to address the
4 issue of rural poverty in Mexico;

5 (3) establish and coordinate relationships with
6 key leaders in the United States and Mexico to ex-
7 plore the effect of rural poverty on illegal immigra-
8 tion of Mexicans into the United States; and

9 (4) address immigration and border security
10 concerns through a university-based, binational ap-
11 proach for long-term institutional change.

12 (d) USE OF FUNDS.—

13 (1) AUTHORIZED USES.—Grant funds awarded
14 under this section may be used—

15 (A) for education, training, technical as-
16 sistance, and any related expenses (including
17 personnel and equipment) incurred by the
18 grantee in implementing a program described in
19 subsection (a); and

20 (B) to establish an administrative struc-
21 ture for such program in the United States.

22 (2) LIMITATIONS.—Grant funds awarded under
23 this section may not be used for activities, respon-
24 sibilities, or related costs incurred by entities in
25 Mexico.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such funds as may be
3 necessary to carry out this section.

4 **TITLE VII—MISCELLANEOUS**
5 **Subtitle A—Increasing Court**
6 **Personnel**

7 **SEC. 701. ADDITIONAL IMMIGRATION PERSONNEL.**

8 (a) DEPARTMENT OF HOMELAND SECURITY.—In
9 each of fiscal years 2008 through 2012, the Secretary
10 shall, subject to the availability of appropriations for such
11 purpose, increase by not less than 100 the number of posi-
12 tions for attorneys in the Office of General Counsel of the
13 Department to represent the Department in immigration
14 matters.

15 (b) DEPARTMENT OF JUSTICE.—

16 (1) LITIGATION ATTORNEYS.—In each of fiscal
17 years 2008 through 2012, the Attorney General
18 shall, subject to the availability of appropriations for
19 such purpose, increase by not less than 50 the num-
20 ber of positions for attorneys in the Office of Immi-
21 gration Litigation of the Department of Justice.

22 (2) UNITED STATES ATTORNEYS.—In each of
23 fiscal years 2008 through 2012, the Attorney Gen-
24 eral shall, subject to the availability of appropria-
25 tions for such purpose, increase by not less than 50

1 the number of positions for attorneys in the United
2 States Attorneys' office to litigate immigration cases
3 in the Federal courts.

4 (3) IMMIGRATION JUDGES.—In each of fiscal
5 years 2008 through 2012, the Attorney General
6 shall, subject to the availability of appropriations for
7 such purpose—

8 (A) increase by not less than 20 the num-
9 ber of positions for full-time immigration
10 judges; and

11 (B) increase by not less than 80 the num-
12 ber of positions for personnel to support the im-
13 migration judges described in subparagraph
14 (A).

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

19 (A) increase by not less than 10 the num-
20 ber of positions for full-time staff attorneys in
21 the Board of Immigration Appeals; and

22 (B) increase by not less than 10 the num-
23 ber of positions for personnel to support the
24 staff attorneys described in subparagraph (A).

1 (c) ADMINISTRATIVE OFFICE OF THE UNITED
2 STATES COURTS.—In each of the fiscal years 2008
3 through 2012, the Director of the Administrative Office
4 of the United States Courts shall, subject to the avail-
5 ability of appropriations, increase by not less than 50 the
6 number of positions for attorneys in the Federal Defend-
7 ers Program to litigate criminal immigration cases in the
8 Federal courts.

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

13 **SEC. 702. SENIOR JUDGE PARTICIPATION IN THE SELEC-**
14 **TION OF MAGISTRATES.**

15 Section 631(a) of title 28, United States Code, is
16 amended by striking “Northern Mariana Islands” the first
17 place it appears and inserting “Northern Mariana Islands,
18 including any judge in regular active service and any judge
19 who has retired from regular active service under section
20 371(b) of this title,”.

21 **SEC. 703. STUDY ON THE APPELLATE PROCESS FOR IMMI-**
22 **GRATION APPEALS.**

23 (a) IN GENERAL.—Not later than 180 days after the
24 date of enactment of this Act, the Director of the Federal

1 Judicial Center shall conduct a study on the appellate
2 process for immigration appeals.

3 (b) REQUIREMENTS.—In conducting the study under
4 subsection (a), the Director shall consider the possibility
5 of consolidating all appeals from the Board of Immigra-
6 tion Appeals and habeas corpus petitions in immigration
7 cases into 1 United States Court of Appeals.

8 (c) FACTORS TO CONSIDER.—In conducting the
9 study under subsection (a), the Director, in consultation
10 with the Attorney General, the Secretary, and the Judicial
11 Conference of the United States, shall consider—

12 (1) the resources needed for each alternative,
13 including judges, attorneys, and other support staff,
14 case management techniques, including technological
15 requirements, physical infrastructure, and other pro-
16 cedural and logistical issues as appropriate;

17 (2) the impact of each alternative on various
18 circuits, including the caseload of each circuit and
19 the caseload per panel in each circuit;

20 (3) the possibility of utilizing case management
21 techniques to reduce the impact of any consolidation
22 option, such as requiring certificates of reviewability,
23 similar to procedures employed in habeas corpus
24 proceedings and existing summary dismissal proce-
25 dures in local rules of the Courts of Appeals;

1 (4) the effect of the reforms made by this sub-
2 title on the ability of the circuit courts to adjudicate
3 such appeals;

4 (5) potential impact, if any, on litigants; and

5 (6) other reforms to improve adjudication of
6 immigration matters, including appellate review of
7 motions to reopen and reconsider, and attorney fee
8 awards with respect to review of final orders of re-
9 moval.

10 **SEC. 704. SENSE OF CONGRESS REGARDING THE ESTAB-**
11 **LISHMENT OF AN IMMIGRATION COURT SYS-**
12 **TEM.**

13 (a) **FINDING.**—The Congress finds that the United
14 States tradition as a nation of laws and a nation of immi-
15 grants is best served by an effective, fair, and well-staffed
16 immigration court system that upholds the rule of law and
17 ensures that individuals and families receive fair treat-
18 ment.

19 (b) **SENSE OF CONGRESS.**—It is the sense of the
20 Congress that an effective and fair immigration court sys-
21 tem should be established.

1 **Subtitle B—Citizenship Assistance**
2 **for Members of the Armed Services**

3 **SEC. 711. WAIVER OF REQUIREMENT FOR FINGERPRINTS**
4 **FOR MEMBERS OF THE ARMED FORCES.**

5 Notwithstanding any other provision of law or any
6 regulation, the Secretary shall use the fingerprints pro-
7 vided by an individual at the time the individual enlists
8 in the Armed Forces to satisfy any requirement for finger-
9 prints as part of an application to become a naturalized
10 citizen of the United States, if the individual—

11 (1) may be naturalized pursuant to section 328
12 or 329 of the Immigration and Nationality Act (8
13 U.S.C. 1439 and 1440);

14 (2) was fingerprinted in accordance with the re-
15 quirements of the Secretary of Defense at the time
16 the individual enlisted in the Armed Forces; and

17 (3) submits the application to become a natu-
18 ralized citizen of the United States not later than 12
19 months after the date the individual enlisted in the
20 Armed Forces.

21 **SEC. 712. NONCITIZEN MEMBERSHIP IN THE ARMED**
22 **FORCES.**

23 Section 329 (8 U.S.C. 1440) is amended—

24 (1) in subsection (b), by striking “subsection
25 (a)” and inserting “subsection (a), (d), or (e)”; and

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

2 “(d)(1) Notwithstanding any other provision of law,
3 except for provisions relating to revocation of citizenship
4 under subsection (c), an individual who is not a citizen
5 of the United States shall not be denied the opportunity
6 to apply for membership in the United States Armed
7 Forces. Such an individual who becomes an active duty
8 member of the United States Armed Forces shall, con-
9 sistent with this section and with the approval of the indi-
10 vidual’s commanding officer, be granted United States
11 citizenship after performing at least 2 years of honorable
12 and satisfactory service on active duty. Not later than 90
13 days after such requirements are met with respect to an
14 individual, such individual shall be granted United States
15 citizenship.

16 “(2) An individual described in paragraph (1) shall
17 be naturalized without regard to the requirements of this
18 title, if the individual—

19 “(A) filed an application for naturalization in
20 accordance with such procedures to carry out this
21 subsection as may be established by regulation by
22 the Secretary of Homeland Security or the Secretary
23 of Defense;

24 “(B) demonstrates to the individual’s com-
25 manding officer proficiency in the English language,

1 good moral character, and knowledge of the Federal
2 Government and United States history, consistent
3 with the requirements of this Act; and

4 “(C) takes the oath required under section 337
5 and participates in an oath administration ceremony
6 in accordance with this Act.

7 “(e) Notwithstanding any other provision of law, ex-
8 cept for provisions relating to revocation of citizenship
9 under subsection (c), an individual who is not a citizen
10 of the United States who serves under orders on active
11 duty as an enlisted member or warrant officer of the
12 Armed Forces of the United States in a combat zone (as
13 that term is defined in section 112(e) of the Internal Rev-
14 enue Code of 1986) shall be granted United States citizen-
15 ship effective as of the commencement of such service in
16 the combat zone without regard to the requirements of
17 this title if the individual files an application for natu-
18 ralization in accordance with such procedures to carry out
19 this subsection as may be established by regulation by the
20 Secretary of Homeland Security and Secretary of De-
21 fense.”.

22 **SEC. 713. PROVISION OF INFORMATION ON NATURALIZA-**
23 **TION TO MEMBERS OF THE ARMED FORCES.**

24 The Secretary shall—

1 (1) provide information to members of the
2 Armed Forces and the families of such members
3 through a dedicated toll-free telephone service re-
4 lated to naturalization pursuant to section 328 or
5 329 of the Immigration and Nationality Act (8
6 U.S.C. 1439 and 1440), including the status of an
7 application for such naturalization;

8 (2) ensure that the telephone service required
9 by paragraph (1) is operated by employees of the
10 Department who—

11 (A) have received specialized training on
12 the naturalization process for members of the
13 Armed Forces and the families of such mem-
14 bers; and

15 (B) are physically located in the same unit
16 as the military processing unit that adjudicates
17 applications for naturalization pursuant to such
18 section 328 or 329; and

19 (3) implement a quality control program to
20 monitor, on a regular basis, the accuracy and quality
21 of information provided by the employees who oper-
22 ate the telephone service required by paragraph (1),
23 including the breadth of the knowledge related to the
24 naturalization process of such employees.

1 **SEC. 714. PROVISION OF INFORMATION ON NATURALIZA-**
2 **TION TO THE PUBLIC.**

3 Not later than 30 days after the date that a modifica-
4 tion to any law or regulation related to the naturalization
5 process becomes effective, the Secretary shall update the
6 appropriate application form for naturalization, the in-
7 structions and guidebook for obtaining naturalization, and
8 the Internet website maintained by the Secretary to reflect
9 such modification.

10 **SEC. 715. REPORTS.**

11 (a) ADJUDICATION PROCESS.—Not later than 120
12 days after the date of enactment of this Act, the Comp-
13 troller General of the United States shall submit to the
14 appropriate congressional committees a report on the en-
15 tire process for the adjudication of an application for natu-
16 ralization filed pursuant to section 328 or 329 of the Im-
17 migration and Nationality Act (8 U.S.C. 1439 and 1440),
18 including the process that begins at the time the applica-
19 tion is mailed to, or received by the Secretary, regardless
20 of whether the Secretary determines that such application
21 is complete, through the final disposition of such applica-
22 tion. Such report shall include a description of—

23 (1) the methods of the Secretary to process and
24 adjudicate such applications;

25 (2) the effectiveness of the chain of authority,
26 supervision, and training of employees of the Gov-

1 ernment or of other entities, including contract em-
2 ployees, who have any role in such process or adju-
3 dication; and

4 (3) the ability of the Secretary to use tech-
5 nology to facilitate or accomplish any aspect of such
6 process or adjudication.

7 (b) IMPLEMENTATION.—

8 (1) STUDY.—The Comptroller General of the
9 United States shall conduct a study on the imple-
10 mentation of this subtitle by the Secretary, including
11 studying any technology that may be used to im-
12 prove the efficiency of the naturalization process for
13 members of the Armed Forces.

14 (2) REPORT.—Not later than 180 days after
15 the date that the Comptroller General submits the
16 report required by subsection (a), the Comptroller
17 General shall submit to the appropriate congress-
18 sional committees a report on the study required by
19 paragraph (1). The report shall include any rec-
20 ommendations of the Comptroller General for im-
21 proving the implementation of this subtitle by the
22 Secretary.

23 (c) APPROPRIATE CONGRESSIONAL COMMITTEES DE-
24 FINED.—In this section, the term “appropriate congress-
25 sional committees” means—

1 (2) RULES IN APPLYING CERTAIN PROVI-
2 SIONS.—In the case of an alien described in sub-
3 section (b) who is applying for adjustment of status
4 under this section—

5 (A) the provisions of section 241(a)(5) of
6 the Immigration and Nationality Act (8 U.S.C.
7 1231(a)(5)) shall not apply; and

8 (B) the Secretary may grant the alien a
9 waiver on the grounds of inadmissibility under
10 subparagraphs (A) and (C) of section 212(a)(9)
11 of such Act (8 U.S.C. 1182(a)(9)).

12 (3) RELATIONSHIP OF APPLICATION TO CER-
13 TAIN ORDERS.—

14 (A) APPLICATION PERMITTED.—An alien
15 present in the United States who has been or-
16 dered excluded, deported, removed, or ordered
17 to depart voluntarily from the United States
18 under any provision of the Immigration and
19 Nationality Act (8 U.S.C. 1101 et seq.) may,
20 notwithstanding such order, apply for adjust-
21 ment of status under paragraph (1).

22 (B) MOTION NOT REQUIRED.—An alien
23 described in subparagraph (A) may not be re-
24 quired, as a condition of submitting or granting

1 such application, to file a separate motion to re-
2 open, reconsider, or vacate such order.

3 (C) EFFECT OF DECISION.—If the Sec-
4 retary adjusts the status of an alien described
5 in subparagraph (A) under paragraph (1), the
6 Secretary shall cancel the order referred to in
7 subparagraph (A) with respect to such alien. If
8 the Secretary renders a final administrative de-
9 cision to deny such alien’s application for an
10 adjustment of status under paragraph (1), the
11 order referred to in subparagraph (A) with re-
12 spect to such alien shall be effective and en-
13 forceable to the same extent as if the applica-
14 tion had not been made.

15 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
16 TUS.—A alien described in this subsection is an alien
17 who—

18 (1) was lawfully present in the United States as
19 a nonimmigrant alien described in section
20 101(a)(15) of the Immigration and Nationality Act
21 (8 U.S.C. 1101(a)(15)) on September 10, 2001;

22 (2) was, on such date, the spouse, child, de-
23 pendent son, or dependent daughter of an alien
24 who—

1 (A) was lawfully present in the United
2 States as a nonimmigrant alien described in
3 such section 101(a)(15) on such date; and

4 (B) died as a direct result of a specified
5 terrorist activity; and

6 (3) was deemed to be a beneficiary under the
7 September 11th Victim Compensation Fund of 2001
8 (49 U.S.C. 40101 note; title IV of Public Law 107–
9 42).

10 (c) STAY OF REMOVAL AND WORK AUTHORIZA-
11 TION.—

12 (1) IN GENERAL.—The Secretary shall estab-
13 lish, by regulation, a process by which an alien sub-
14 ject to a final order of removal may seek a stay of
15 such order based on the filing of an application
16 under subsection (a).

17 (2) DURING CERTAIN PROCEEDINGS.—Notwith-
18 standing any provision of the Immigration and Na-
19 tionality Act (8 U.S.C. 1101 et seq.), the Secretary
20 shall not order any alien to be removed from the
21 United States, if the alien is in removal proceedings
22 under any provision of such Act and has applied for
23 adjustment of status under subsection (a), except
24 where the Secretary has rendered a final administra-
25 tive determination to deny the application.

1 (3) WORK AUTHORIZATION.—The Secretary
2 shall authorize an alien who has applied for adjust-
3 ment of status under subsection (a) to engage in
4 employment in the United States during the pend-
5 ency of such application.

6 (d) AVAILABILITY OF ADMINISTRATIVE REVIEW.—
7 The Secretary shall provide to applicants for adjustment
8 of status under subsection (a) the same right to, and pro-
9 cedures for, administrative review as are provided to—

10 (1) applicants for adjustment of status under
11 section 245 of the Immigration and Nationality Act
12 (8 U.S.C. 1255); or

13 (2) aliens subject to removal proceedings under
14 section 240 of such Act (8 U.S.C. 1229a).

15 **SEC. 722. CANCELLATION OF REMOVAL FOR CERTAIN IMMI-**
16 **GRANT VICTIMS OF TERRORISM.**

17 (a) IN GENERAL.—Subject to the provisions of the
18 Immigration and Nationality Act (8 U.S.C. 1101 et seq.),
19 other than subsections (b)(1), (d)(1), and (e) of section
20 240A of such Act (8 U.S.C. 1229b), the Secretary shall,
21 under such section 240A, cancel the removal of, and ad-
22 just to the status of an alien to that of an alien lawfully
23 admitted for permanent residence, an alien described in
24 subsection (b), if the alien applies for such relief.

1 (b) ALIENS ELIGIBLE FOR CANCELLATION OF RE-
2 MOVAL.—An alien described in subsection (a) is an alien
3 who—

4 (1) was, on September 10, 2001, the spouse,
5 child, dependent son, or dependent daughter of an
6 alien who died as a direct result of a specified ter-
7 rorist activity; and

8 (2) was deemed to be a beneficiary under the
9 September 11th Victim Compensation Fund of 2001
10 (49 U.S.C. 40101 note; title IV of Public Law 107–
11 42).

12 (c) STAY OF REMOVAL; WORK AUTHORIZATION.—

13 (1) IN GENERAL.—The Secretary shall provide
14 by regulation for an alien subject to a final order of
15 removal to seek a stay of such order based on the
16 filing of an application under subsection (a).

17 (2) WORK AUTHORIZATION.—The Secretary
18 shall authorize an alien who has applied for cancella-
19 tion of removal under subsection (a) to engage in
20 employment in the United States during the pend-
21 ency of such application.

22 (d) MOTIONS TO REOPEN REMOVAL PRO-
23 CEEDINGS.—

24 (1) IN GENERAL.—Notwithstanding any limita-
25 tion imposed by law on motions to reopen removal

1 proceedings (except limitations premised on an
2 alien's conviction of an aggravated felony (as defined
3 in section 101(a)(43) of the Immigration and Na-
4 tionality Act (8 U.S.C. 1101(a)(43))), any alien who
5 has become eligible for cancellation of removal as a
6 result of enactment of this section may file 1 motion
7 to reopen removal proceedings to apply for such re-
8 lief.

9 (2) **FILING PERIOD.**—The Secretary shall des-
10 ignate a specific time period in which all such mo-
11 tions to reopen are required to be filed. The period
12 shall begin not later than 60 days after the date of
13 enactment of this Act and shall extend for a period
14 not to exceed 240 days.

15 **SEC. 723. EXCEPTIONS.**

16 Notwithstanding any other provision of this subtitle,
17 an alien may not be provided relief under this subtitle if
18 the alien is—

19 (1) inadmissible under paragraph (2) or (3) of
20 section 212(a) of the Immigration and Nationality
21 Act (8 U.S.C. 1182(a)), or deportable under para-
22 graph (2) or (4) of section 237(a) of such Act (8
23 U.S.C. 1227(a)), including any individual culpable
24 for a specified terrorist activity; or

1 (2) a family member of an alien described in
2 paragraph (1).

3 **SEC. 724. EVIDENCE OF DEATH.**

4 For purposes of this subtitle, the Secretary shall use
5 the standards established under section 426 of the Uniting
6 and Strengthening America by Providing Appropriate
7 Tools Required to Intercept and Obstruct Terrorism (USA
8 PATRIOT ACT) Act of 2001 (115 Stat. 362) to deter-
9 mine whether the death of an individual occurred as a di-
10 rect result of a specified terrorist activity.

11 **SEC. 725. DEFINITIONS.**

12 (a) APPLICATION OF IMMIGRATION AND NATION-
13 ALITY ACT DEFINITIONS.—Except as otherwise specifi-
14 cally provided in this subtitle, the definitions used in the
15 Immigration and Nationality Act (8 U.S.C. 1101 et seq.),
16 other than the definitions applicable exclusively to title III
17 of such Act, shall apply in the administration of this sub-
18 title.

19 (b) SPECIFIED TERRORIST ACTIVITY DEFINED.—In
20 this subtitle, the term “specified terrorist activity” means
21 any terrorist activity conducted against the Government
22 or the people of the United States on September 11, 2001.

1 **Subtitle D—Other Matters**

2 **SEC. 731. OFFICE OF INTERNAL CORRUPTION INVESTIGA-**
3 **TION.**

4 (a) INTERNAL CORRUPTION AND BENEFITS
5 FRAUD.—Section 453 of the Homeland Security Act of
6 2002 (6 U.S.C. 273) is amended—

7 (1) by striking “the Bureau of” each place it
8 appears and inserting “United States”;

9 (2) in subsection (a)—

10 (A) by striking paragraph (1) and insert-
11 ing the following:

12 “(1) establishing the Office of Internal Corrup-
13 tion Investigation, which shall—

14 “(A) receive, process, administer, and in-
15 vestigate criminal and noncriminal allegations
16 of misconduct, corruption, and fraud involving
17 any employee or contract worker of United
18 States Citizenship and Immigration Services
19 that are not subject to investigation by the In-
20 specter General for the Department;

21 “(B) ensure that all complaints alleging
22 any violation described in subparagraph (A) are
23 handled and stored in a manner appropriate to
24 their sensitivity;

1 “(C) have access to all records, reports,
2 audits, reviews, documents, papers, rec-
3 ommendations, or other material available to
4 United States Citizenship and Immigration
5 Services, which relate to programs and oper-
6 ations for which the Director is responsible
7 under this Act;

8 “(D) request such information or assist-
9 ance from any Federal, State, or local govern-
10 ment agency as may be necessary for carrying
11 out the duties and responsibilities under this
12 section;

13 “(E) require the production of all informa-
14 tion, documents, reports, answers, records, ac-
15 counts, papers, and other data and documen-
16 tary evidence necessary to carry out the func-
17 tions under this section—

18 “(i) by subpoena, which shall be en-
19 forceable, in the case of contumacy or re-
20 fusal to obey, by order of any appropriate
21 United States district court; or

22 “(ii) through procedures other than
23 subpoenas if obtaining documents or infor-
24 mation from Federal agencies;

1 “(F) administer to, or take from, any per-
2 son an oath, affirmation, or affidavit, as nec-
3 essary to carry out the functions under this sec-
4 tion, which oath, affirmation, or affidavit, if ad-
5 ministered or taken by or before an agent of
6 the Office of Internal Corruption Investigation
7 shall have the same force and effect as if ad-
8 ministered or taken by or before an officer hav-
9 ing a seal;

10 “(G) investigate criminal allegations and
11 noncriminal misconduct;

12 “(H) acquire adequate office space, equip-
13 ment, and supplies as necessary to carry out
14 the functions and responsibilities under this
15 section; and

16 “(I) be under the direct supervision of the
17 Director.”;

18 (B) in paragraph (2), by striking “and” at
19 the end;

20 (C) in paragraph (3), by striking the pe-
21 riod at the end and inserting “; and”; and

22 (D) by adding at the end the following:

23 “(4) establishing the Office of Immigration
24 Benefits Fraud Investigation, which shall—

1 “(A) conduct administrative investigations,
2 including site visits, to address immigration
3 benefit fraud;

4 “(B) assist United States Citizenship and
5 Immigration Services provide the right benefit
6 to the right person at the right time;

7 “(C) track, measure, assess, conduct pat-
8 tern analysis, and report fraud-related data to
9 the Director; and

10 “(D) work with counterparts in other Fed-
11 eral agencies on matters of mutual interest or
12 information-sharing relating to immigration
13 benefit fraud.”; and

14 (3) by adding at the end the following:

15 “(c) ANNUAL REPORT.—The Director, in consulta-
16 tion with the Office of Internal Corruption Investigations,
17 shall submit an annual report to the Committee on the
18 Judiciary of the Senate and the Committee on the Judici-
19 ary of the House of Representatives that describes—

20 “(1) the activities of the Office, including the
21 number of investigations began, completed, pending,
22 turned over to the Inspector General for criminal in-
23 vestigations, and turned over to a United States At-
24 torney for prosecution; and

1 “(2) the types of allegations investigated by the
2 Office during the 12-month period immediately pre-
3 ceding the submission of the report that relate to the
4 misconduct, corruption, and fraud described in sub-
5 section (a)(1).”.

6 (b) USE OF IMMIGRATION FEES TO COMBAT
7 FRAUD.—Section 286(v)(2)(B) (8 U.S.C. 1356(v)(2)(B))
8 is amended by adding at the end the following: “Not less
9 than 20 percent of the funds made available under this
10 subparagraph shall be used for activities and functions de-
11 scribed in paragraphs (1) and (4) of section 453(a) of the
12 Homeland Security Act of 2002 (6 U.S.C. 273(a)).”.

13 **SEC. 732. ADJUSTMENT OF STATUS FOR CERTAIN PER-**
14 **SECUTED RELIGIOUS MINORITIES.**

15 (a) IN GENERAL.—The Secretary shall adjust the
16 status of an alien to that of an alien lawfully admitted
17 for permanent residence if the alien—

18 (1) is a persecuted religious minority;

19 (2) is admissible to the United States as an im-
20 migrant, except as provided in subsection (b);

21 (3) had an application for asylum pending on
22 May 1, 2003;

23 (4) applies for such adjustment of status;

1 (5) was physically present in the United States
2 on the date the application for such adjustment is
3 filed; and

4 (6) pays a fee, in an amount determined by the
5 Secretary, for the processing of such application.

6 (b) WAIVER OF CERTAIN GROUNDS FOR INADMIS-
7 SIBILITY.—

8 (1) INAPPLICABLE PROVISION.—Section
9 212(a)(7) of the Immigration and Nationality Act (8
10 U.S.C. 1182(a)(7)) shall not apply to any adjust-
11 ment of status under this section.

12 (2) WAIVER.—The Secretary may waive any
13 other provision of section 212(a) of such Act (except
14 for paragraphs (2) and (3)) if extraordinary and
15 compelling circumstances warrant such an adjust-
16 ment for humanitarian purposes, to ensure family
17 unity, or if it is otherwise in the public interest.

18 **SEC. 733. ELIGIBILITY OF AGRICULTURAL AND FORESTRY**
19 **WORKERS FOR CERTAIN LEGAL ASSISTANCE.**

20 Section 305 of the Immigration Reform and Control
21 Act of 1986 (8 U.S.C. 1101 note; Public Law 99–603)
22 is amended—

23 (1) by striking “section 101(a)(15)(H)(ii)(a) of
24 the Immigration and Nationality Act (8 U.S.C.
25 1101(a)(15)(H)(ii)(a))” and inserting “item (a) or

1 (b) of section 101(a)(15)(H)(ii) of the Immigration
2 and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii));
3 and

4 (2) by inserting “or forestry” after “agricul-
5 tural”.

6 **SEC. 734. STATE COURT INTERPRETER GRANTS.**

7 (a) GRANTS AUTHORIZED.—

8 (1) IN GENERAL.—The Administrator of the
9 Office of Justice Programs of the Department of
10 Justice (referred to in this section as the “Adminis-
11 trator”) shall make grants, in accordance with such
12 regulations as the Attorney General may prescribe,
13 to State courts to develop and implement programs
14 to assist individuals with limited English proficiency
15 to access and understand State court proceedings in
16 which they are a party.

17 (2) TECHNICAL ASSISTANCE.—The Adminis-
18 trator shall allocate, for each fiscal year, \$500,000
19 of the amount appropriated pursuant to the author-
20 ization of appropriation in subsection (f) to be used
21 to establish a court interpreter technical assistance
22 program to assist State courts receiving grants
23 under this section.

24 (b) USE OF GRANTS.—Grants awarded pursuant to
25 subsection (a) may be used by State courts to—

- 1 (1) assess regional language demands;
- 2 (2) develop a court interpreter program for the
3 State courts;
- 4 (3) develop, institute, and administer language
5 certification examinations;
- 6 (4) recruit, train, and certify qualified court in-
7 terpreters;
- 8 (5) pay for salaries, transportation, and tech-
9 nology necessary to implement the court interpreter
10 program developed under paragraph (2); and
- 11 (6) engage in other related activities, as pre-
12 scribed by the Attorney General.

13 (c) APPLICATION.—

14 (1) IN GENERAL.—The highest State court of
15 each State desiring a grant under this section shall
16 submit an application to the Administrator at such
17 time, in such manner, and accompanied by such in-
18 formation as the Administrator may reasonably re-
19 quire.

20 (2) STATE COURTS.—The highest State court
21 of each State submitting an application under para-
22 graph (1) shall include in the application—

23 (A) an identification of each State court in
24 that State which would receive funds from the
25 grant;

1 (B) the amount of funds each State court
2 identified under subparagraph (A) would re-
3 ceive from the grant; and

4 (C) the procedures the highest State court
5 would use to directly distribute grant funds to
6 State courts identified under subparagraph (A).

7 (d) STATE COURT ALLOTMENTS.—

8 (1) BASE ALLOTMENT.—From amounts appro-
9 priated for each fiscal year pursuant to the author-
10 ization of appropriations in subsection (f), the Ad-
11 ministrator shall allocate \$100,000 to each of the
12 highest State court of each State, which has an ap-
13 plication approved under subsection (c).

14 (2) DISCRETIONARY ALLOTMENT.—From
15 amounts appropriated for each fiscal year pursuant
16 to the authorization of appropriations in subsection
17 (f), the Administrator shall allocate a total of
18 \$5,000,000 to the highest State court of States that
19 have extraordinary needs that must be addressed in
20 order to develop, implement, or expand a State court
21 interpreter program.

22 (3) ADDITIONAL ALLOTMENT.—In addition to
23 the allocations made under paragraphs (1) and (2),
24 the Administrator shall allocate to each of the high-
25 est State court of each State, which has an applica-

1 tion approved under subsection (c), an amount equal
2 to the product reached by multiplying—

3 (A) the unallocated balance of the amount
4 appropriated for each fiscal year pursuant to
5 the authorization of appropriations in sub-
6 section (f); and

7 (B) the ratio between the number of people
8 over 5 years of age who speak a language other
9 than English at home in the State and the
10 number of people over 5 years of age who speak
11 a language other than English at home in all
12 the States that receive an allocation under
13 paragraph (1), as those numbers are deter-
14 mined by the Bureau of the Census.

15 (e) TREATMENT OF THE DISTRICT OF COLUMBIA.—
16 For purposes of this section—

17 (1) the District of Columbia shall be treated as
18 a State; and

19 (2) the District of Columbia Court of Appeals
20 shall be the highest State court of the District of
21 Columbia.

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

1 **SEC. 735. ADEQUATE NOTICE FOR ALTERNATE COUNTRY**
2 **OF REMOVAL.**

3 Section 241(b)(2) (8 U.S.C. 1231(b)(2)) is amended
4 by adding at the end the following new subparagraph:

5 “(G) NOTICE OF COUNTRY OF REMOVAL.—

6 If the Secretary of Homeland Security deter-
7 mines that an alien will be removed to a coun-
8 try that was not designated by the alien under
9 subparagraph (A)(i) of section 241 as amended
10 at the time of the removal hearing, the Sec-
11 retary shall provide notice of such determina-
12 tion to the alien and provide the alien an oppor-
13 tunity for a hearing before an immigration
14 judge to request protection from removal to
15 that country on the basis that the alien would
16 face persecution or torture in that country.”.

17 **SEC. 736. STANDARDS FOR BIOMETRIC DOCUMENTS.**

18 Any visa issued by the Secretary of State and any
19 immigration-related document issued by the Secretary of
20 State or the Secretary shall—

21 (1) comply with authentication and biometric
22 standards recognized by domestic and international
23 standards organizations;

24 (2) be machine-readable and tamper-resistant;

25 (3) use biometric identifiers that are consistent
26 with the requirements of section 303 of the En-

1 hanced Border Security and Visa Entry Reform Act
2 of 2002 (8 U.S.C. 1732), and represent the benefits
3 and status set forth in such section;

4 (4) comply with the biometric and document
5 identifying standards established by the Inter-
6 national Civil Aviation Organization; and

7 (5) meet other requirements determined to be
8 necessary by the Secretary of State and the Sec-
9 retary.

10 **SEC. 737. STATE IMPACT ASSISTANCE ACCOUNT.**

11 Section 286 (8 U.S.C. 1356), as amended by this Act,
12 is further amended by adding at the end the following new
13 subsection:

14 “(x) STATE IMPACT ASSISTANCE ACCOUNT.—

15 “(1) ESTABLISHMENT.—There is established in
16 the general fund of the Treasury an account, which
17 shall be known as the ‘State Impact Assistance Ac-
18 count’.

19 “(2) SOURCE OF FUNDS.—Notwithstanding any
20 other provision under this Act, there shall be depos-
21 ited as offsetting receipts into the State Impact As-
22 sistance Account all State impact assistance fees col-
23 lected under sections 407 and 602 of this Act.

24 “(3) USE OF FUNDS.—Amounts deposited into
25 the State Impact Assistance Account may only be

1 used to carry out the State Impact Assistance Grant
2 Program established under paragraph (4).

3 “(4) STATE IMPACT ASSISTANCE GRANT PRO-
4 GRAM.—

5 “(A) ESTABLISHMENT.—The Secretary of
6 Health and Human Services, in consultation
7 with the Secretary of Education, shall establish
8 the State Impact Assistance Grant Program
9 (referred to in this section as the ‘Program’),
10 under which the Secretary of Health and
11 Human may award grants to States to provide
12 health and education services to noncitizens in
13 accordance with this paragraph.

14 “(B) STATE ALLOCATIONS.—The Sec-
15 retary of Health and Human Services shall an-
16 nually allocate the amounts available in the
17 State Impact Assistance Account among the
18 States as follows:

19 “(i) NONCITIZEN POPULATIONS.—
20 Eighty percent of such amounts shall be
21 allocated so that each State receives the
22 greater of—

23 “(I) \$5,000,000; or

24 “(II) after adjusting for alloca-
25 tions under subclause (I), the percent-

1 age of the amount to be distributed
2 under this clause that is equal to the
3 noncitizen resident population of the
4 State divided by the noncitizen resi-
5 dent population of all States, based on
6 the most recent data available from
7 the Bureau of the Census.

8 “(ii) HIGH GROWTH RATES.—Twenty
9 percent of such amounts shall be allocated
10 among the 20 States with the largest
11 growth rates in noncitizen resident popu-
12 lation, as determined by the Secretary of
13 Health and Human Services, so that each
14 such State receives the percentage of the
15 amount distributed under this clause that
16 is equal to—

17 “(I) the growth rate in the non-
18 citizen resident population of the
19 State during the most recent 3-year
20 period for which data is available from
21 the Bureau of the Census; divided by

22 “(II) the average growth rate in
23 noncitizen resident population for the
24 20 States during such 3-year period.

1 “(iii) LEGISLATIVE APPROPRIA-
2 TIONS.—The use of grant funds allocated
3 to States under this paragraph shall be
4 subject to appropriation by the legislature
5 of each State in accordance with the terms
6 and conditions under this paragraph.

7 “(C) FUNDING FOR LOCAL GOVERN-
8 MENT.—

9 “(i) DISTRIBUTION CRITERIA.—Grant
10 funds received by States under this para-
11 graph shall be distributed to units of local
12 government based on need and function.

13 “(ii) MINIMUM DISTRIBUTION.—Ex-
14 cept as provided in clause (iii), a State
15 shall distribute not less than 30 percent of
16 the grant funds received under this para-
17 graph to units of local government not
18 later than 180 days after receiving such
19 funds.

20 “(iii) EXCEPTION.—If an eligible unit
21 of local government that is available to
22 carry out the activities described in sub-
23 paragraph (D) cannot be found in a State,
24 the State does not need to comply with
25 clause (ii).

1 “(iv) UNEXPENDED FUNDS.—Any
2 grant funds distributed by a State to a
3 unit of local government that remain unex-
4 pended as of the end of the grant period
5 shall revert to the State for redistribution
6 to another unit of local government.

7 “(D) USE OF FUNDS.—States and units of
8 local government shall use grant funds received
9 under this paragraph to provide health services,
10 educational services, and related services to
11 noncitizens within their jurisdiction directly, or
12 through contracts with eligible services pro-
13 viders, including—

14 “(i) health care providers;

15 “(ii) local educational agencies; and

16 “(iii) charitable and religious organi-
17 zations.

18 “(E) STATE DEFINED.—In this paragraph,
19 the term ‘State’ means each of the several
20 States of the United States, the District of Co-
21 lumbia, the Commonwealth of Puerto Rico, the
22 Virgin Islands, Guam, American Samoa, and
23 the Commonwealth of the Northern Mariana Is-
24 lands.

1 “(F) CERTIFICATION.—In order to receive
2 a payment under this section, the State shall
3 provide the Secretary of Health and Human
4 Services with a certification that the State’s
5 proposed uses of the fund are consistent with
6 (D).

7 “(G) ANNUAL NOTICE TO STATES.—The
8 Secretary of Health and Human Services shall
9 inform the States annually of the amount of
10 funds available to each State under the Pro-
11 gram.”.

12 **SEC. 738. NEW WORKER PROGRAM AND CONDITIONAL NON-**
13 **IMMIGRANT FEE ACCOUNT.**

14 Section 286 (8 U.S.C. 1356), as amended by this Act,
15 is further amended by adding at the end the following new
16 subsection:

17 “(y) NEW WORKER PROGRAM AND CONDITIONAL
18 NONIMMIGRANT FEE ACCOUNT.—

19 “(1) ESTABLISHMENT.—There is established in
20 the general fund of the Treasury an account, which
21 shall be known as the ‘New Worker Program and
22 Conditional Nonimmigrant Fee Account’.

23 “(2) DEPOSITS.—Notwithstanding any other
24 provision of this Act, there shall be deposited as off-

1 setting receipts into the New Worker Program and
2 Conditional Nonimmigrant Fee Account—

3 “(A) all fees collected under section 218A;
4 and

5 “(B) all fines collected under section
6 601(g)(2)(B).

7 “(3) USE OF FUNDS.—Of the fees and fines de-
8 posited into the New Worker Program and Condi-
9 tional Nonimmigrant Fee Account—

10 “(A) 53 percent shall remain available to
11 the Secretary of Homeland Security for efforts
12 related to the adjudication and implementation
13 of the New Worker program and the program
14 for conditional nonimmigrants and any other ef-
15 forts necessary to carry out the provisions of
16 the STRIVE Act of 2007 and the amendments
17 made by such Act, of which the Secretary shall
18 allocate—

19 “(i) 10 percent for the border security
20 efforts described in title I of the STRIVE
21 Act of 2007;

22 “(ii) not more than 1 percent for pro-
23 motion of public awareness of the program
24 for conditional nonimmigrants;

1 “(iii) not more than 1 percent for the
2 Office of Citizenship to promote civics inte-
3 gration activities described in section 663
4 of the STRIVE Act of 2007; and

5 “(iv) 2 percent for the American Citi-
6 zenship Grant Program under section 663
7 of the STRIVE Act of 2007;

8 “(B) 15 percent shall remain available to
9 the Secretary of Labor for the enforcement of
10 labor standards in the geographic and occupa-
11 tional areas in which H-2C visa holders are
12 likely to be employed and for other enforcement
13 efforts under the STRIVE Act of 2007, or any
14 amendment made by that Act, including tar-
15 geted audits of employers that participate in
16 the H-2C program;

17 “(C) 15 percent shall remain available to
18 the Commissioner of Social Security and the
19 Secretary of Homeland Security for the creation
20 and maintenance of the Employment Eligibility
21 Verification System described in section
22 274A(e);

23 “(D) 15 percent shall remain available to
24 the Secretary of State to carry out any nec-

1 essary provisions of the STRIVE Act of 2007,
2 or any amendments made by that Act; and

3 “(E) 2 percent shall remain available to
4 the Secretary of Health and Human Services
5 for the reimbursement of hospitals serving H-
6 2C workers and conditional nonimmigrants es-
7 tablished in the STRIVE Act of 2007 and the
8 amendments made by such Act.”.