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S. 1639

The Secure Borders, Economic Opportunity and Immigration Reform Act of 2007 (Placed on Calendar in Senate)

Calendar No.
110th CONGRESS
1st Session
S.

To provide for comprehensive immigration reform and for other purposes.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To provide for comprehensive immigration reform and for other purposes.

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

1 **Secure Borders, Economic Opportunity and Immigration**
2 **Reform Act of 2007**
3

4 **SECTION 1. EFFECTIVE DATE TRIGGERS.**

5 (a) *In General.*--With the exception of the probationary benefits
6 conferred by section 601(h) of this Act, the provisions of subtitle C of
7 title IV, and the admission of aliens under section 101(a)(15)(H)(ii) of
8 the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)), as
9 amended by title IV, the programs established by title IV, and the
10 programs established by title VI that grant legal status to any
11 individual or that adjust the current status of any individual who is
12 unlawfully present in the United States to that of an alien lawfully
13 admitted for permanent residence, shall become effective on the date
14 that the Secretary submits a written certification to the President and
15 the Congress, based on analysis by and in consultation with the
16 Comptroller General, that each of the following border security and
17 other measures are established, funded, and operational:

18 (1) **OPERATIONAL CONTROL OF THE INTERNATIONAL BORDER**
19 **WITH MEXICO.**--The Secretary of Homeland Security has established
20 and demonstrated operational control of 100 percent of the
21 international land border between the United States and Mexico,
22 including the ability to monitor such border through available methods
23 and technology.

24 (2) **STAFF ENHANCEMENTS FOR BORDER PATROL.**--The United
25 States Customs and Border Protection Border Patrol has hired, trained,
26 and reporting for duty 20,000 full-time agents as of the date of the
27 certification under this subsection.

28 (3) **STRONG BORDER BARRIERS.**--There has been--

29 (A) installed along the international land border between the United
30 States and Mexico as of the date of the certification under this
31 subsection, at least--

32 (i) 300 miles of vehicle barriers;

33 (ii) 370 miles of fencing; and

34 (iii) 105 ground-based radar and camera towers; and

1 (B) deployed for use along the along the international land border
2 between the United States and Mexico, as of the date of the
3 certification under this subsection, 4 unmanned aerial vehicles, and
4 the supporting systems for such vehicles.

5 (4) CATCH AND RETURN.--The Secretary of Homeland Security is
6 detaining all removable aliens apprehended crossing the international
7 land border between the United States and Mexico in violation of
8 Federal or State law, except as specifically mandated by Federal or
9 State law or humanitarian circumstances, and United States
10 Immigration and Customs Enforcement has the resources to maintain
11 this practice, including the resources necessary to detain up to 31,500
12 aliens per day on an annual basis.

13 (5) WORKPLACE ENFORCEMENT TOOLS.--In compliance with the
14 requirements of title III of this Act, the Secretary of Homeland
15 Security has established, and is using, secure and effective
16 identification tools to prevent unauthorized workers from obtaining
17 employment in the United States. Such identification tools shall include
18 establishing--

19 (A) strict standards for identification documents that are required to
20 be presented by the alien to an employer in the hiring process,
21 including the use of secure documentation that--

22 (i) contains--

23 (I) a photograph of the alien; and

24 (II) biometric data identifying the alien; or

25 (ii) complies with the requirements for such documentation under
26 the REAL ID Act (Public Law 109-13; 119 Stat. 231); and

27 (B) an electronic employment eligibility verification system that is
28 capable of querying Federal and State databases in order to restrict
29 fraud, identity theft, and use of false social security numbers in the
30 hiring of aliens by an employer by electronically providing a digitized
31 version of the photograph on the alien's original Federal or State
32 issued document or documents for verification of that alien's identity
33 and work eligibility.

34 (6) PROCESSING APPLICATIONS OF ALIENS.--The Secretary of
35 Homeland Security has received, and is processing and adjudicating in

1 a timely manner, applications for Z nonimmigrant status under title VI
2 of this Act, including conducting all necessary background and security
3 checks required under that title.

4 (b) *Sense of Congress.*--It is the sense of Congress that the border
5 security and other measures described in subsection (a) shall be
6 completed as soon as practicable, subject to the necessary
7 appropriations.

8 (c) *Presidential Progress Report.*--

9 (1) IN GENERAL.--Not later than 90 days after the date of
10 enactment of this Act, and every 90 days thereafter until the
11 requirements under subsection (a) are met, the President shall submit
12 a report to Congress detailing the progress made in funding, meeting,
13 or otherwise satisfying each of the requirements described under
14 paragraphs (1) through (6) of subsection (a), including detailing any
15 contractual agreements reached to carry out such measures.

16 (2) PROGRESS NOT SUFFICIENT.--If the President determines that
17 sufficient progress is not being made, the President shall include in the
18 report required under paragraph (1) specific funding
19 recommendations, authorization needed, or other actions that are or
20 should be undertaken by the Secretary of Homeland Security.

21 (d) *GAO Report.*--Not later than 30 days after the certification is
22 submitted under subsection (a), the Comptroller General shall submit
23 a report to Congress on the accuracy of such certification.

24 **SECTION 2. Immigration Security Account .**

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

27 "(z) Immigration Security Account.-

29
30 (1) IN GENERAL.- There is established in the general fund of the
31 Treasury a separate account, which shall be known as the
32 "Immigration Security Account".

33
34 (2) SOURCE OF FUNDS.- Immediately upon enactment,
35 \$4,400,000,000 shall be transferred from the general fund of the
36 Treasury to the Immigration Security Account.

37

1 (3) APPROPRIATIONS.-

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

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

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

14
15 (i) Fencing and Infrastructure;

16
17 (ii) Towers;

18
19 (iii) Detention beds;

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

24
25 (v) Implementation of programs authorized in titles IV and VI; and

26
27 (vi) Other federal border and interior enforcement requirements to
28 ensure the integrity of programs authorized in titles IV and VI.

29
30 (4) TRANSFERS.-The Secretary of Homeland Security shall have the
31 authority to transfer amounts out of the Immigration Security Account
32 as appropriate to carry out subsections (3)(b) and (3)(c) of this
33 section.

34
35 (5) REPORTING.- The Secretary of Homeland Security shall submit
36 to the Committees on the Judiciary and Appropriations of the Senate a
37 plan for expenditure of the funds under subsection 2 within 60 days of
38 enactment of this Act, and update the plan annually, that -

39
40 (i) identifies one-time and on-going costs;

41
42 (ii) identifies the level of funding for each program, project,
43 and activity, and if that funding will supplement an
44 appropriated program, project, or activity;

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

(iv) includes milestones for completion of each identified program, project, or activity;

(v) demonstrates how activities will further the goals and objectives of this Act.

(6) NOTIFICATIONS.- The Secretary of Homeland Security shall notify the Committees on Judiciary and Appropriations of the Senate 15 days prior to reprogramming funds from the original allocation or transferring funds out of the Immigration Security Account.

1 **TITLE I—BORDER ENFORCEMENT**

2 **Subtitle A—Assets for Controlling United States Borders.**

3 **SEC. 101. ENFORCEMENT PERSONNEL.**

4 (a) Additional Personnel-

5 (1) U.S. CUSTOMS AND BORDER PROTECTION OFFICERS -
6 In each of the fiscal years 2008 through 2012, the
7 Secretary shall, subject to the availability of
8 appropriations, increase by not less than 500 the number
9 of positions for full-time active duty CBP officers and
10 provide appropriate training, equipment, and support to
11 such additional CBP officers.

12 (2) INVESTIGATIVE PERSONNEL-

13 (A) IMMIGRATION AND CUSTOMS ENFORCEMENT
14 INVESTIGATORS- Section 5203 of the Intelligence
15 Reform and Terrorism Prevention Act of 2004 (Public
16 Law 108-458; 118 Stat. 3734) is amended by
17 striking `800' and inserting `1000'.

18 (B) ADDITIONAL PERSONNEL- In addition to the
19 positions authorized under section 5203 of the
20 Intelligence Reform and Terrorism Prevention Act of
21 2004, as amended by subparagraph (A), during each
22 of the fiscal years 2008 through 2012, the Secretary
23 shall, subject to the availability of appropriations,
24 increase by not less than 200 the number of
25 positions for personnel within the Department
26 assigned to investigate alien smuggling.

27 (3) DEPUTY UNITED STATES MARSHALS- In each of the
28 fiscal years 2008 through 2012, the Attorney General
29 shall, subject to the availability of appropriations, increase
30 by not less than 50 the number of positions for full-time
31 active duty Deputy United States Marshals that assist in
32 matters related to immigration.

33 (4) RECRUITMENT OF FORMER MILITARY PERSONNEL-

34 (A) IN GENERAL- The Commissioner of United States
35 Customs and Border Protection, in conjunction with
36 the Secretary of Defense or a designee of the
37 Secretary of Defense, shall establish a program to
38 actively recruit members of the Army, Navy, Air
39 Force, Marine Corps, and Coast Guard who have

1 elected to separate from active duty.

2 (B) REPORT- Not later than 180 days after the date
3 of the enactment of this Act, the Commissioner shall
4 submit a report on the implementation of the
5 recruitment program established pursuant to
6 subparagraph (A) to the Committee on the Judiciary
7 of the Senate and the Committee on the Judiciary of
8 the House of Representatives.

9 (b) Authorization of Appropriations-

10 (1) U.S. CUSTOMS AND BORDER PROTECTION OFFICERS -
11 There are authorized to be appropriated to the Secretary
12 such sums as may be necessary for each of the fiscal years
13 2008 through 2012 to carry out paragraph (1) of
14 subsection (a).

15 (2) DEPUTY UNITED STATES MARSHALS- There are
16 authorized to be appropriated to the Attorney General such
17 sums as may be necessary for each of the fiscal years
18 2008 through 2012 to carry out subsection (a)(3).

19 (3) BORDER PATROL AGENTS- Section 5202 of the
20 Intelligence Reform and Terrorism Prevention Act of 2004
21 (118 Stat. 3734) is amended to read as follows:

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

24 (a) Annual Increases- The Secretary of Homeland Security
25 shall, subject to the availability of appropriations for such
26 purpose, increase the number of positions for full-time active-
27 duty border patrol agents within the Department of Homeland
28 Security (above the number of such positions for which funds
29 were appropriated for the preceding fiscal year), by not less
30 than—

31 (1) 2,000 in fiscal year 2007;

32 (2) 2,400 in fiscal year 2008;

33 (3) 2,400 in fiscal year 2009;

34 (4) 2,400 in fiscal year 2010;

35 (5) 2,400 in fiscal year 2011; and

36 (6) 2,400 in fiscal year 2012.

37 (b) Northern Border- In each of the fiscal years 2008 through
38 2012, in addition to the border patrol agents assigned along the

1 northern border of the United States during the previous fiscal
2 year, the Secretary shall assign a number of border patrol
3 agents equal to not less than 20 percent of the net increase in
4 border patrol agents during each such fiscal year.

5 `(c) Authorization of Appropriations- There are authorized to be
6 appropriated such sums as may be necessary for each of fiscal
7 years 2008 through 2012 to carry out this section.'

8 (c) *Shadow Wolves Apprehension and Tracking*.--

9 (1) PURPOSE.--The purpose of this subsection is to authorize the
10 Secretary, acting through the Assistant Secretary of Immigration and
11 Customs Enforcement (referred to in this subsection as the
12 ``Secretary''), to establish new units of Customs Patrol Officers
13 (commonly known as ``Shadow Wolves'') during the 5-year period
14 beginning on the date of enactment of this Act.

15 (2) ESTABLISHMENT OF NEW UNITS.--

16 (A) IN GENERAL.--During the 5-year period beginning on the date
17 of enactment of this Act, the Secretary is authorized to establish within
18 United States Immigration and Customs Enforcement up to 5
19 additional units of Customs Patrol Officers in accordance with this
20 subsection, as appropriate.

21 (B) MEMBERSHIP.--Each new unit established pursuant to
22 subparagraph (A) shall consist of up to 15 Customs Patrol Officers.

23 (3) DUTIES.--The additional Immigration and Customs Enforcement
24 units established pursuant to paragraph (2)(A) shall operate on Indian
25 reservations (as defined in section 3 of the Indian Financing Act of
26 1974 (25 U.S.C. 1452)) located on or near (as determined by the
27 Secretary) an international border with Canada or Mexico, and such
28 other Federal land as the Secretary determines to be appropriate, by--

29 (A) investigating and preventing the entry of terrorists, other
30 unlawful aliens, instruments of terrorism, narcotics, and other
31 contraband into the United States; and

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

1 (4) AUTHORIZATION OF APPROPRIATIONS.--There are authorized
2 to be appropriated to carry out this subsection such sums as are
3 necessary for each of fiscal years 2008 through 2013.

4 **SEC. 102. TECHNOLOGICAL ASSETS.**

5 (a) Acquisition—Subject to the availability of appropriations for such
6 purpose, the Secretary shall procure additional unmanned aerial
7 vehicles, cameras, poles, sensors, and other technologies necessary to
8 achieve operational control of the borders of the United States.

9 (b) Increased Availability of Equipment—The Secretary and the
10 Secretary of Defense shall develop and implement a plan to use
11 authorities provided to the Secretary of Defense under chapter 18 of
12 title 10, United States Code, to increase the availability and use of
13 Department of Defense equipment, including unmanned aerial
14 vehicles, tethered aerostat radars, and other surveillance equipment,
15 to assist the Secretary in carrying out surveillance activities conducted
16 at or near the international land borders of the United States to
17 prevent illegal immigration.

18 (c) Authorization of Appropriations—There are authorized to be
19 appropriated to the Secretary such sums as may be necessary for each
20 of the fiscal years 2008 through 2012 to carry out subsection (a).

21 **SEC. 103. INFRASTRUCTURE.**

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

24 (1) in subsection (a), by striking "Attorney General, in
25 consultation with the Commissioner of Immigration and
26 Naturalization," and inserting "Secretary of Homeland Security";
27 and

28 (2) in subsection (b)—

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

31 (B) by inserting before paragraph (2), as redesignated, the
32 following:

33 "(1) FENCING NEAR SAN DIEGO, CALIFORNIA —In carrying out
34 subsection (a), the Secretary shall provide for the construction
35 along the 14 miles of the international land border of the United
36 States, starting at the Pacific Ocean and extending eastward, of
37 second and third fences, in addition to the existing reinforced
38 fence, and for roads between the fences."

1 (C) in paragraph (2), as redesignated –

2 (i) in the header, by striking ``**SECURITY FEATURES**''
3 and inserting ``**ADDITIONAL FENCING ALONG**''
4 **SOUTHWEST BORDER**''; and

5 (ii) by striking subparagraphs (A) through (C) and
6 inserting the following:

7 `` (A) REINFORCED FENCING.--In carrying out subsection (a), the
8 Secretary of Homeland Security shall construct reinforced fencing
9 along not less than 700 miles of the southwest border where fencing
10 would be most practical and effective and provide for the installation of
11 additional physical barriers, roads, lighting, cameras, and sensors to
12 gain operational control of the southwest border.

13 `` (B) PRIORITY AREAS.--In carrying out this section, the Secretary
14 of Homeland Security shall--

15 `` (i) identify the 370 miles along the southwest border where
16 fencing would be most practical and effective in deterring smugglers
17 and aliens attempting to gain illegal entry into the United States; and

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

20 `` (C) CONSULTATION.--

21 `` (i) IN GENERAL.--In carrying out this section, the Secretary of
22 Homeland Security shall consult with the Secretary of Interior, the
23 Secretary of Agriculture, States, local governments, Indian tribes, and
24 property owners in the United States to minimize the impact on the
25 environment, culture, commerce, and quality of life for the
26 communities and residents located near the sites at which such fencing
27 is to be constructed.

28 `` (ii) SAVINGS PROVISION.--Nothing in this subparagraph may be
29 construed to--

30 `` (I) create any right of action for a State, local government, or
31 other person or entity affected by this subsection; or

32 `` (II) affect the eminent domain laws of the United States or of any
33 State.

1 (D) LIMITATION ON REQUIREMENTS.--Notwithstanding
2 subparagraph (A), nothing in this paragraph shall require the
3 Secretary of Homeland Security to install fencing, physical barriers,
4 roads, lighting, cameras, and sensors in a particular location along an
5 international border of the United States, if the Secretary determines
6 that the use or placement of such resources is not the most
7 appropriate means to achieve and maintain operational control over
8 the international border at such location."; and

9 (D) in paragraph (5), as redesignated, by striking (D) to carry out
10 this subsection not to exceed \$12,000,000" and inserting (D) such sums
11 as may be necessary to carry out this subsection".

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

13 Section 102 of the Illegal Immigration Reform and Immigrant
14 Responsibility Act of 1996, Division C of Public Law 104-208, is
15 amended by the addition, at the end of that section, of the following
16 new subsection:

17 "(e) Construction and Improvements —The Secretary is authorized
18 to—

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

22 (2) make necessary improvements to the ports of entry.".

24 **Subtitle B—Other Border Security Initiatives**

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

26 (a) Collection of Biometric Data From Aliens Entering and Departing
27 the United States —Section 215 (8 U.S.C. 1185) is amended—

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

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

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

32 "(c) The Secretary is authorized to require aliens entering and
33 departing the United States to provide biometric data and other
34 information relating to their immigration status.".

35 (b) Inspection of Applicants for Admission—Section 235(d) (8 U.S.C.
36 1225(d)) is amended by adding at the end the following:

1 “(5) AUTHORITY TO COLLECT BIOMETRIC DATA—In conducting
2 inspections under subsections (a) and (b), immigration officers are
3 authorized to collect biometric data from—

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

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

11 (c) Collection of Biometric Data From Alien Crewmen—Section 252
12 (8 U.S.C. 1282) is amended by adding at the end the following:

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

16 (d) Grounds of Inadmissibility—Section 212 (8 U.S.C. 1182) is
17 amended—

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

19 “(C) WITHHOLDERS OF BIOMETRIC DATA—Any alien who fails or
20 has failed to comply with a lawful request for biometric data
21 under section 215(c), 235(d), or 252(d) is inadmissible.”; and

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

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

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

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

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

36 (2) in subsection (l)—

37 (A) by striking “There are authorized” and inserting the
38 following:

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

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

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

8 **SEC. 112. UNLAWFUL FLIGHT FROM IMMIGRATION OR**
9 **CUSTOMS CONTROLS.**

10 (a) In General- Section 758 of Title 18, United States Code, is
11 amended to read as follows:

12 **“758. Unlawful Flight from Immigration or Customs Controls**

13 “(a) Evading a checkpoint- Any person who, while operating a
14 motor vehicle or vessel, knowingly flees or evades a checkpoint
15 operated by the Department of Homeland Security or any other
16 Federal law enforcement agency, and then knowingly or recklessly
17 disregards or disobeys the lawful command of any law enforcement
18 agent, shall be fined under this title, imprisoned not more than five
19 years, or both.

20 “(b) Failure to stop- Any person who, while operating a motor
21 vehicle, aircraft, or vessel, knowingly or recklessly disregards or
22 disobeys the lawful command of an officer of the Department of
23 Homeland Security engaged in the enforcement of the immigration,
24 customs, or maritime laws, or the lawful command of any law
25 enforcement agent assisting such officer, shall be fined under this
26 title, imprisoned not more than two years, or both.

27 “(c) Alternative penalties- Notwithstanding the penalties provided
28 in subsection (a) or (b), any person who violates such subsection
29 shall—

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

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

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

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

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

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

4 “(4) be fined under this title, imprisoned for any term of years or
5 life, or both, if the violation resulted in the death of any person.

6 “(d) Attempt and conspiracy- Any person who attempts or
7 conspires to commit any offense under this section shall be punished
8 in the same manner as a person who completes the offense.

9 “(e) Forfeiture- Any property, real or personal, constituting or
10 traceable to the gross proceeds of the offense and any property, real
11 or personal, used or intended to be used to commit or facilitate the
12 commission of the offense shall be subject to forfeiture.

13 “(f) Forfeiture procedures- Seizures and forfeitures under this
14 section shall be governed by the provisions of chapter 46 of this title,
15 relating to civil forfeitures, including section 981(d) of such title,
16 except that such duties as are imposed upon the Secretary of the
17 Treasury under the customs laws described in that section shall be
18 performed by such officers, agents, and other persons as may be
19 designated for that purpose by the Secretary of Homeland Security or
20 the Attorney General. Nothing in this section shall limit the authority
21 of the Secretary to seize and forfeit motor vehicles, aircraft, or vessels
22 under the Customs laws or any other laws of the United States.

23 “(g) Definitions- For purposes of this section—

24 “(1) The term “checkpoint” includes, but is not limited to, any
25 customs or immigration inspection at a port of entry.

26 “(2) The term “lawful command” includes, but is not limited to,
27 a command to stop, decrease speed, alter course, or land, whether
28 communicated orally, visually, by means of lights or sirens, or by
29 radio, telephone, or other wire communication.

30 “(3) The term “law enforcement agent” means any Federal,
31 State, local or tribal official authorized to enforce criminal law, and,
32 when conveying a command covered under subsection (b) of this
33 section, an air traffic controller.

34 “(4) The term “motor vehicle” means any motorized or self-
35 propelled means of terrestrial transportation.

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

38 **SEC. 113. RELEASE OF ALIENS FROM NONCONTIGUOUS**
39 **COUNTRIES.**

1 Section 236(a)(2) (8 U.S.C. 1226(a)(2)) is amended—

2 (1) by striking “on”;

3 (2) in subparagraph (A)—

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

6 (B) by striking “or” at the end;

7 (3) by redesignating subparagraph (B) as subparagraph (C); and

8 (4) by inserting after subparagraph (A) the following:

9 “(B) upon the giving of a bond of not less than \$5,000 with
10 security approved by, and containing conditions prescribed by,
11 the Secretary or the Attorney General, if the alien—

12 “(i) is a national of a noncontiguous country;

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

15 “(iii) was apprehended within 100 miles of the
16 international border of the United States or presents a
17 flight risk, as determined by the Secretary of Homeland
18 Security; or”.

19 **SEC. 114. SEIZURE OF CONVEYANCE WITH CONCEALED**
20 **COMPARTMENT: EXPANDING THE DEFINITION OF**
21 **CONVEYANCES WITH HIDDEN COMPARTMENTS SUBJECT TO**
22 **FORFEITURE.**

23 (a) In General. Section 1703 of Title 19, United States Code is
24 amended:

25 (i) by amending the title of such section to read as follows:

26 “Sec. 1703. Seizure and forfeiture of vessels, vehicles, other
27 conveyances and instruments of international traffic”;

28 (ii) by amending the title of subsection (a) to read as follows:

29 “(a) Vessels, vehicles, other conveyances and instruments of
30 international traffic subject to seizure and forfeiture”;

31 (iii) by amending the title of subsection (b) to read as follows:

32 “(b) Vessels, vehicles, other conveyances and instruments of
33 international traffic defined”;

34 (iv) by inserting “,vehicle, other conveyance or instrument of
35 international traffic” after the word “vessel” everywhere it
36 appears in the text of subsections (a) and (b); and

1 (v) by amending subsection (c) to read as follows:

2 "(c) Acts constituting prima facie evidence of vessel, vehicle, or
3 other conveyance or instrument of international traffic engaged
4 in smuggling "For the purposes of this section, prima facie
5 evidence that a conveyance is being, or has been, or is
6 attempted to be employed in smuggling or to defraud the
7 revenue of the United States shall be --

8 "(1) in the case of a vessel, the fact that a vessel has
9 become subject to pursuit as provided in section 1581 of
10 this title, or is a hovering vessel, or that a vessel fails, at
11 any place within the customs waters of the United States
12 or within a customs-enforcement area, to display light as
13 required by law.

14 "(2) in the case of a vehicle, other conveyance or
15 instrument of international traffic, the fact that a vehicle,
16 other conveyance or instrument of international traffic has
17 any compartment or equipment that is built or fitted out
18 for smuggling."

19 (b) Clerical Amendment. The table of sections for Chapter 5 in title
20 19, United States Code, is amended by striking the items relating to
21 section 1703 and inserting in lieu thereof the following:

22 "1703. Seizure and forfeiture of vessels, vehicles, other conveyances
23 or instruments of international traffic.

24 "(a) Vessels, vehicles, other conveyances or instruments of
25 international traffic subject to seizure and forfeiture.

26 "(b) Vessels, vehicles, other conveyances or instruments of
27 international traffic defined.

28 "(c) Acts constituting prima facie evidence of vessel, vehicle, other
29 conveyance or instrument of international traffic engaged in
30 smuggling."

31
32 **Subtitle C —Other Measures**

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

34 (a) Collection of Statistics- The Commissioner of the Bureau of
35 Customs and Border Protection shall collect statistics relating to deaths
36 occurring at the border between the United States and Mexico,
37 including—

38 (1) the causes of the deaths; and

1 (2) the total number of deaths.

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

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

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

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

11 (a) Definitions- In this section:

12 (1) PROTECTED LAND- The term `protected land' means
13 land under the jurisdiction of the Secretary concerned.

14 (2) SECRETARY CONCERNED- The term `Secretary
15 concerned' means—

16 (A) with respect to land under the jurisdiction of the
17 Secretary of Agriculture, the Secretary of
18 Agriculture; and

19 (B) with respect to land under the jurisdiction of the
20 Secretary of the Interior, the Secretary of the
21 Interior.

22 (b) Support for Border Security Needs-

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

29 (A) increased U.S. Customs and Border Protection
30 personnel to secure protected land along the
31 international land borders of the United States;

32 (B) Federal land resource training for U.S. Customs
33 and Border Protection agents dedicated to protected
34 land; and

35 (C) Unmanned Aerial Vehicles, aerial assets, Remote
36 Video Surveillance camera systems, and sensors on
37 protected land that is directly adjacent to the
38 international land border of the United States.

1 (2) COORDINATION- In providing training for Customs and
2 Border Protection agents under paragraph (1)(B), the
3 Secretary shall coordinate with the Secretary concerned to
4 ensure that the training is appropriate to the mission of
5 the National Park Service, the United States Fish and
6 Wildlife Service, the Forest Service, or the relevant agency
7 of the Department of the Interior or the Department of
8 Agriculture to minimize the adverse impact on natural and
9 cultural resources from border protection activities.

10 (c) Analysis of Damage to Protected Lands- The Secretary and
11 Secretaries concerned shall develop an analysis of damage to
12 protected lands relating to illegal border activity, including the
13 cost of equipment, training, recurring maintenance, construction
14 of facilities, restoration of natural and cultural resources,
15 recapitalization of facilities, and operations.

16 (d) Recommendations- The Secretary shall--

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

22 (2) not later than one year from the date of enactment,
23 submit to the appropriate congressional committees (as
24 defined in section 2 of the Homeland Security Act of 2002
25 (6 U.S.C. 101)), including the Subcommittee on National
26 Parks of the Senate and the Subcommittee on National
27 Parks, Recreation and Public Lands of the House of
28 Representatives, the recommendations developed under
29 paragraph (1).

30 (e) Border Protection Strategy- The Secretary, the Secretary of
31 the Interior, and the Secretary of Agriculture shall jointly
32 develop a border protection strategy that supports the border
33 security needs of the United States in the manner that best
34 protects the homeland, including--

35 (1) units of the National Park System;

36 (2) National Forest System land;

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

39 (4) other relevant land under the jurisdiction of the
40 Department of the Interior or the Department of

1 Agriculture.

2 **SEC. 123. SECURE COMMUNICATION.**

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

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

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

11 (3) between all appropriate border security agencies of the
12 Department and State, local, and tribal law enforcement
13 agencies.

14 **SEC. 124. UNMANNED AIRCRAFT SYSTEMS.**

15 (a) Unmanned Aircraft and Associated Infrastructure- The
16 Secretary shall acquire and maintain unmanned aircraft systems
17 for use on the border, including related equipment such as--

18 (1) additional sensors;

19 (2) critical spares;

20 (3) satellite command and control; and

21 (4) other necessary equipment for operational support.

22 (b) Authorization of Appropriations-

23 (1) IN GENERAL- There are authorized to be appropriated
24 to the Secretary to carry out subsection (a)--

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

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

27 (2) AVAILABILITY OF FUNDS- Amounts appropriated
28 pursuant to paragraph (1) shall remain available until
29 expended.

30
31 **SEC. 125. SURVEILLANCE TECHNOLOGIES PROGRAMS.**

32 (a) Aerial Surveillance Program-

33 (1) IN GENERAL- In conjunction with the border
34 surveillance plan developed under section 5201 of the
35 Intelligence Reform and Terrorism Prevention Act of 2004
36 (Public Law 108-458; 8 U.S.C. 1701 note), the Secretary,

1 not later than 90 days after the date of enactment of this
2 Act, shall develop and implement a program to fully
3 integrate and utilize aerial surveillance technologies,
4 including unmanned aerial vehicles, to enhance the
5 security of the international border between the United
6 States and Canada and the international border between
7 the United States and Mexico. The goal of the program
8 shall be to ensure continuous monitoring of each mile of
9 each such border.

10 (2) ASSESSMENT AND CONSULTATION REQUIREMENTS-
11 In developing the program under this subsection, the
12 Secretary shall—

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

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

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

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

27 (3) ADDITIONAL REQUIREMENTS-

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

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

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

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

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

9 (5) REPORT TO CONGRESS- Not later than 180 days after
10 implementing the program under this subsection, the
11 Secretary shall submit a report to Congress regarding the
12 program developed under this subsection. The Secretary
13 shall include in the report a description of the program
14 together with such recommendations as the Secretary
15 finds appropriate for enhancing the program.

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

19 (b) Integrated and Automated Surveillance Program-

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

30 (2) PROGRAM COMPONENTS- The Secretary shall ensure,
31 to the maximum extent feasible, the Integrated and
32 Automated Surveillance Program is carried out in a manner
33 that—

34 (A) the technologies utilized in the Program are
35 integrated and function cohesively in an automated
36 fashion, including the integration of motion sensor
37 alerts and cameras, whereby a sensor alert
38 automatically activates a corresponding camera to
39 pan and tilt in the direction of the triggered sensor;

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

- 1 (C) such camera views and positions are not fixed;
- 2 (D) surveillance video taken by such cameras can be
- 3 viewed at multiple designated communications
- 4 centers;
- 5 (E) a standard process is used to collect, catalog,
- 6 and report intrusion and response data collected
- 7 under the Program;
- 8 (F) future remote surveillance technology
- 9 investments and upgrades for the Program can be
- 10 integrated with existing systems;
- 11 (G) performance measures are developed and
- 12 applied that can evaluate whether the Program is
- 13 providing desired results and increasing response
- 14 effectiveness in monitoring and detecting illegal
- 15 intrusions along the international borders of the
- 16 United States;
- 17 (H) plans are developed under the Program to
- 18 streamline site selection, site validation, and
- 19 environmental assessment processes to minimize
- 20 delays of installing surveillance technology
- 21 infrastructure;
- 22 (I) standards are developed under the Program to
- 23 expand the shared use of existing private and
- 24 governmental structures to install remote
- 25 surveillance technology infrastructure where
- 26 possible; and
- 27 (J) standards are developed under the Program to
- 28 identify and deploy the use of nonpermanent or
- 29 mobile surveillance platforms that will increase the
- 30 Secretary's mobility and ability to identify illegal
- 31 border intrusions.

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

39 (4) EVALUATION OF CONTRACTORS-

40 (A) REQUIREMENT FOR STANDARDS- The Secretary

1 shall develop appropriate standards to evaluate the
2 performance of any contractor providing goods or
3 services to carry out the Integrated and Automated
4 Surveillance Program.

5 (B) REVIEW BY THE INSPECTOR GENERAL- The
6 Inspector General of the Department shall timely
7 review each new contract related to the Program
8 that has a value of more than \$5,000,000, to
9 determine whether such contract fully complies with
10 applicable cost requirements, performance
11 objectives, program milestones, and schedules. The
12 Inspector General shall report the findings of such
13 review to the Secretary in a timely manner. Not later
14 than 30 days after the date the Secretary receives a
15 report of findings from the Inspector General, the
16 Secretary shall submit to the Committee on
17 Homeland Security and Governmental Affairs of the
18 Senate and the Committee on Homeland Security of
19 the House of Representatives a report of such
20 findings and a description of any the steps that the
21 Secretary has taken or plans to take in response to
22 such findings.

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

26 **SEC. 126. SURVEILLANCE PLAN.**

27 (a) Requirement for Plan- The Secretary shall develop a
28 comprehensive plan for the systematic surveillance of the
29 international land and maritime borders of the United States.

30 (b) Content- The plan required by subsection (a) shall include
31 the following:

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

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

38 (3) A description of how the Commissioner of the United
39 States Customs and Border Protection of the Department
40 is working, or is expected to work, with the Under
41 Secretary for Science and Technology of the Department

1 to identify and test surveillance technology.

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

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

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

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

13 (c) Submission to Congress- Not later than 6 months after the
14 date of the enactment of this Act, the Secretary shall submit to
15 Congress the plan required by this section.

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

17 (a) Requirement for Strategy- The Secretary, in consultation
18 with the heads of other appropriate Federal agencies, shall
19 develop a National Strategy for Border Security that describes
20 actions to be carried out to achieve operational control over all
21 ports of entry into the United States and the international land
22 and maritime borders of the United States.

23 (b) Content- The National Strategy for Border Security shall
24 include the following:

25 (1) The implementation schedule for the comprehensive
26 plan for systematic surveillance described in section 136.

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

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

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

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

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

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

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

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

21 (8) An assessment of existing efforts and technologies
22 used for border security and the effect of the use of such
23 efforts and technologies on civil rights, personal property
24 rights, privacy rights, and civil liberties, including an
25 assessment of efforts to take into account asylum seekers,
26 trafficking victims, unaccompanied minor aliens, and other
27 vulnerable populations.

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

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

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

40 (12) A description of the performance metrics to be used
41 to ensure accountability by the bureaus of the Department

1 in implementing such Strategy.

2 (13) A schedule for the implementation of the security
3 measures described in such Strategy, including a
4 prioritization of security measures, realistic deadlines for
5 addressing the security and enforcement needs, an
6 estimate of the resources needed to carry out such
7 measures, and a description of how such resources should
8 be allocated.

9 (c) Consultation- In developing the National Strategy for Border
10 Security, the Secretary shall consult with representatives of--

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

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

17 (d) Coordination- The National Strategy for Border Security shall
18 be consistent with the National Strategy for Maritime Security
19 developed pursuant to Homeland Security Presidential Directive
20 13, dated December 21, 2004.

21 (e) Submission to Congress-

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

25 (2) UPDATES- The Secretary shall submit to Congress any
26 update of such Strategy that the Secretary determines is
27 necessary, not later than 30 days after such update is
28 developed.

29 (f) Immediate Action- Nothing in this section or section 111 may
30 be construed to relieve the Secretary of the responsibility to take
31 all actions necessary and appropriate to achieve and maintain
32 operational control over the entire international land and
33 maritime borders of the United States.

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

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

39 (b) Components of Review- The review under subsection (a)

1 shall include the following components:

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

9 (2) A review and a detailed breakdown of the costs
10 incurred by the Bureau of Customs and Border Protection
11 and the Federal Law Enforcement Training Center to train
12 1 new Border Patrol agent.

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

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

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

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

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

27 **SEC. 129. BIOMETRIC DATA ENHANCEMENTS.**

28 Not later than October 1, 2008, the Secretary shall--

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

35 (2) in consultation with the Secretary of State, collect all
36 fingerprints from each alien required to provide
37 fingerprints during the alien's initial enrollment in the
38 integrated entry and exit data system described in section
39 110 of the Illegal Immigration Reform and Immigrant

1 Responsibility Act of 1996 (8 U.S.C. 1365a).

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

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

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

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

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

15 **SEC. 131. DOCUMENT FRAUD DETECTION.**

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

22 (b) Forensic Document Laboratory- The Secretary shall provide
23 all U.S. Customs and Border Protection officers with access to
24 the Forensic Document Laboratory.

25 (c) Assessment-

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

30 (2) REPORT TO CONGRESS- Not later than 6 months after
31 the date of the enactment of this Act, the Inspector
32 General shall submit to Congress the findings of the
33 assessment required by paragraph (1).

34 (d) Authorization of Appropriations- There are authorized to be
35 appropriated to the Secretary such sums as may be necessary
36 for each of fiscal years 2008 through 2012 to carry out this
37 section.

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

1 (a) Grants Authorized-

2 (1) IN GENERAL- The Secretary is authorized to award
3 grants, subject to the availability of appropriations, to an
4 eligible law enforcement agency to provide assistance to
5 such agency to address--

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

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

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

13 (3) COMPETITIVE BASIS- The Secretary shall award grants
14 under this subsection on a competitive basis, except that
15 the Secretary shall give priority to applications from any
16 eligible law enforcement agency serving a community—

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

18 (B) located no more than 100 miles from a United
19 States border with--

20 (i) Canada; or

21 (ii) Mexico.

22 (b) Use of Funds- Grants awarded pursuant to subsection (a)
23 may only be used to provide additional resources for an eligible
24 law enforcement agency to address criminal activity occurring
25 along any such border, including--

26 (1) to obtain equipment;

27 (2) to hire additional personnel;

28 (3) to upgrade and maintain law enforcement technology;

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

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

33 (c) Application-

34 (1) IN GENERAL- Each eligible law enforcement agency
35 seeking a grant under this section shall submit an
36 application to the Secretary at such time, in such manner,
37 and accompanied by such information as the Secretary

1 may reasonably require.

2 (2) CONTENTS- Each application submitted pursuant to
3 paragraph (1) shall--

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

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

9 (d) Definitions- For the purposes of this section:

10 (1) ELIGIBLE LAW ENFORCEMENT AGENCY- The term
11 `eligible law enforcement agency' means a tribal, State, or
12 local law enforcement agency—

13 (A) located in a county no more than 100 miles from
14 a United States border with--

15 (i) Canada; or

16 (ii) Mexico; or

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

20 (2) HIGH IMPACT AREA- The term `High Impact Area'
21 means any county designated by the Secretary as such,
22 taking into consideration--

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

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

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

33 (e) Authorization of Appropriations-

34 (1) IN GENERAL- There are authorized to be appropriated
35 \$100,000,000 for each of fiscal years 2008 through 2012
36 to carry out the provisions of this section.

37 (2) DIVISION OF AUTHORIZED FUNDS- Of the amounts

1 authorized under paragraph (1)--

2 (A) 2/3 shall be set aside for eligible law
3 enforcement agencies located in the 6 States with
4 the largest number of undocumented alien
5 apprehensions; and

6 (B) 1/3 shall be set aside for areas designated as a
7 High Impact Area under subsection (d).

8 (f) Supplement Not Supplant- Amounts appropriated for grants
9 under this section shall be used to supplement and not supplant
10 other State and local public funds obligated for the purposes
11 provided under this title.

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

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

24 (b) Consultation- In preparing the updated studies required in
25 subsection (a), the Administrator of General Services shall
26 consult with the Director of the Office of Management and
27 Budget, the Secretary, and the Commissioner.

28 (c) Content- Each updated study required in subsection (a) shall-

29 (1) identify port of entry infrastructure and technology
30 improvement projects that would enhance border security
31 and facilitate the flow of legitimate commerce if
32 implemented;

33 (2) include the projects identified in the National Land
34 Border Security Plan required by section; and

35 (3) prioritize the projects described in paragraphs (1) and
36 (2) based on the ability of a project to--

37 (A) fulfill immediate security requirements; and

38 (B) facilitate trade across the borders of the United
39 States.

1 (d) Project Implementation- The Commissioner shall implement
2 the infrastructure and technology improvement projects
3 described in subsection (c) in the order of priority assigned to
4 each project under subsection (c)(3).

5 (e) Divergence From Priorities- The Commissioner may diverge
6 from the priority order if the Commissioner determines that
7 significantly changed circumstances, such as immediate security
8 needs or changes in infrastructure in Mexico or Canada,
9 compellingly alter the need for a project in the United States.

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

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

18 (b) Vulnerability Assessment-

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

22 (2) PORT SECURITY COORDINATORS- The Secretary may
23 establish 1 or more port security coordinators at each port
24 of entry located on the northern border or the southern
25 border--

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

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

30 **SEC. 135. PORT OF ENTRY TECHNOLOGY DEMONSTRATION**
31 **PROGRAM.**

32 (a) Establishment- The Secretary shall carry out a technology
33 demonstration program to—

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

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

37 (3) train personnel under realistic conditions.

38 (b) Technology and Facilities-

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

5 (A) inspections;

6 (B) communications;

7 (C) port tracking;

8 (D) identification of persons and cargo;

9 (E) sensory devices;

10 (F) personal detection;

11 (G) decision support; and

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

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

19 (A) cross-training among agencies;

20 (B) advanced law enforcement training; and

21 (C) equipment orientation.

22 (c) Demonstration Sites-

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

26 (2) SELECTION CRITERIA- To ensure that at least 1 of the
27 facilities selected as a port of entry demonstration site for
28 the demonstration program has the most up-to-date
29 design, contains sufficient space to conduct the
30 demonstration program, has a traffic volume low enough
31 to easily incorporate new technologies without interrupting
32 normal processing activity, and can efficiently carry out
33 demonstration and port of entry operations, at least 1 port
34 of entry selected as a demonstration site shall--

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

37 (B) consist of not less than 65 acres, with the

1 possibility of expansion to not less than 25 adjacent
2 acres; and

3 (C) have serviced an average of not more than
4 50,000 vehicles per month during the 1-year period
5 ending on the date of the enactment of this Act.

6 (d) Relationship With Other Agencies- The Secretary shall permit
7 personnel from an appropriate Federal or State agency to utilize
8 a demonstration site described in subsection (c) to test
9 technologies that enhance port of entry operations, including
10 technologies described in subparagraphs (A) through (H) of
11 subsection (b)(1).

12 (e) Report-

13 (1) REQUIREMENT- Not later than 1 year after the date of
14 the enactment of this Act, and annually thereafter, the
15 Secretary shall submit to Congress a report on the
16 activities carried out at each demonstration site under the
17 technology demonstration program established under this
18 section.

19 (2) CONTENT- The report submitted under paragraph (1)
20 shall include an assessment by the Secretary of the
21 feasibility of incorporating any demonstrated technology
22 for use throughout the U.S. Customs and Border
23 Protection.

24 **SEC. 136. COMBATING HUMAN SMUGGLING.**

25 (a) Requirement for Plan- The Secretary shall develop and
26 implement a plan to improve coordination between the U.S.
27 Immigration and Customs Enforcement and the U.S. Customs
28 and Border Protection of the Department and any other Federal,
29 State, local, or tribal authorities, as determined appropriate by
30 the Secretary, to improve coordination efforts to combat human
31 smuggling.

32 (b) Content- In developing the plan required by subsection (a),
33 the Secretary shall consider--

34 (1) the interoperability of databases utilized to prevent
35 human smuggling;

36 (2) adequate and effective personnel training;

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

39 (4) effective utilization of--

- 1 (A) visas for victims of trafficking and other crimes;
- 2 and
- 3 (B) investigatory techniques, equipment, and
- 4 procedures that prevent, detect, and prosecute
- 5 international money laundering and other operations
- 6 that are utilized in smuggling;
- 7 (5) joint measures, with the Secretary of State, to enhance
- 8 intelligence sharing and cooperation with foreign
- 9 governments whose citizens are preyed on by human
- 10 smugglers; and
- 11 (6) other measures that the Secretary considers
- 12 appropriate to combating human smuggling.
- 13 (c) Report- Not later than 1 year after implementing the plan
- 14 described in subsection (a), the Secretary shall submit to
- 15 Congress a report on such plan, including any recommendations
- 16 for legislative action to improve efforts to combating human
- 17 smuggling.
- 18 (d) Savings Provision- Nothing in this section may be construed
- 19 to provide additional authority to any State or local entity to
- 20 enforce Federal immigration laws.

21 **SEC. 137. INCREASE OF FEDERAL DETENTION SPACE AND THE**
22 **UTILIZATION OF FACILITIES IDENTIFIED FOR CLOSURES AS A**
23 **RESULT OF THE DEFENSE BASE CLOSURE REALIGNMENT ACT OF**
24 **1990.**

- 25 (a) Construction or Acquisition of Detention Facilities-
- 26 (1) IN GENERAL- The Secretary shall construct or acquire,
- 27 in addition to existing facilities for the detention of aliens,
- 28 at least 20 detention facilities in the United States that
- 29 have the capacity to detain a combined total of not less
- 30 than 20,000 individuals at any time for aliens detained
- 31 pending removal or a decision on removal of such aliens
- 32 from the United States subject to available appropriations.
- 33 (b) Construction of or Acquisition of Detention Facilities-
- 34 (1) REQUIREMENT TO CONSTRUCT OR ACQUIRE- The
- 35 Secretary shall construct or acquire additional detention
- 36 facilities in the United States to accommodate the
- 37 detention beds required by section 5204(a) of the
- 38 Intelligence Reform and Terrorism Protection Act of 2004,
- 39 as amended by subsection (a), subject to available

1 appropriations.

2 (2) USE OF ALTERNATE DETENTION FACILITIES- Subject
3 to the availability of appropriations, the Secretary shall
4 fully utilize all possible options to cost effectively increase
5 available detention capacities, and shall utilize detention
6 facilities that are owned and operated by the Federal
7 Government if the use of such facilities is cost effective.

8 (3) USE OF INSTALLATIONS UNDER BASE CLOSURE
9 LAWS- In acquiring additional detention facilities under this
10 subsection, the Secretary shall consider the transfer of
11 appropriate portions of military installations approved for
12 closure or realignment under the Defense Base Closure
13 and Realignment Act of 1990 (part A of title XXIX of Public
14 Law 101-510; 10 U.S.C. 2687 note) for use in accordance
15 with subsection (a).

16 (4) DETERMINATION OF LOCATION- The location of any
17 detention facility constructed or acquired in accordance
18 with this subsection shall be determined, with the
19 concurrence of the Secretary, by the senior officer
20 responsible for Detention and Removal Operations in the
21 Department. The detention facilities shall be located so as
22 to enable the officers and employees of the Department to
23 increase to the maximum extent practicable the annual
24 rate and level of removals of illegal aliens from the United
25 States.

26 (c) Annual Report to Congress- Not later than 1 year after the
27 date of the enactment of this Act, and annually thereafter, in
28 consultation with the heads of other appropriate Federal
29 agencies, the Secretary shall submit to Congress an assessment
30 of the additional detention facilities and bed space needed to
31 detain unlawful aliens apprehended at the United States ports of
32 entry or along the international land borders of the United
33 States.

34 (d) Technical and Conforming Amendment- Section 241(g)(1) (8
35 U.S.C. 1231(g)(1)) is amended by striking 'may expend' and
36 inserting 'shall expend'.

37 (e) Authorization of Appropriations- There are authorized to be
38 appropriated such sums as may be necessary to carry out this
39 section.

40 **Sec. 138. UNITED STATES-MEXICO BORDER ENFORCEMENT**
41 **REVIEW COMMISSION.**

1 (a) Establishment of Commission.-

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

6 (2) PURPOSES-The purposes of the Commission are-

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

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

13 (3) MEMBERSHIP-The Commission shall be composed of 17
14 voting members, who shall be appointed as follows:

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

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

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

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

25 (B) 2 nonvoting members, of whom-

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

27 (ii) 1 shall be appointed by the Attorney
28 General; and

29 (iii) 1 shall be appointed by the Secretary of
30 State.

31 (4) QUALIFICATIONS-

32 (A) IN GENERAL-Members of the Commission shall
33 be-

34 (i) individuals with expertise in migration,
35 border enforcement and protection, civil and
36 human rights, community relations, cross-
37 border trade and commerce or other pertinent

1 qualifications or experience; and

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

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

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

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

21 (6) TERM OF SERVICE-The term of office for members
22 shall be for life of the Commission.

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

26 (8) MEETINGS-

27 (A) INITIAL MEETING-The Commission shall meet
28 and begin the operations of the Commission as soon
29 as practicable.

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

33 (9) QUORUM-Nine members of the Commission shall
34 constitute a quorum.

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

39 (b) Duties-The Commission shall review, examine, and make

1 recommendations regarding border enforcement policies,
2 strategies, and programs, including recommendations regarding-

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

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

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

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

13 (A) environment;

14 (B) cross border traffic and commerce; and

15 (C) the quality of life of border communities;

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

18 (6) any other matters regarding border enforcement
19 policies, strategies, and programs the Commission
20 determines appropriate.

21 (c) Information and Assistance From Federal Agencies.-

22 (1) INFORMATION FROM FEDERAL AGENCIES-The
23 Commission may seek directly from any department or
24 agency of the United States such information, including
25 suggestions, estimates, and statistics, as allowed by law
26 and as the Commission considers necessary to carry out
27 the provisions of this section. Upon request of the
28 Commission, the head of such department or agency shall
29 furnish such information to the Commission.

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

38 (d) Compensation-

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

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

8 (e) Report-Not later than 2 years after the date of the first
9 meeting called pursuant to (a)(8)(A), the Commission shall
10 submit a report to the President and Congress that contains-

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

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

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

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

21 (f) Authorization of Appropriations-There are authorized to be
22 appropriated such sums as may be necessary to carry out this
23 section.

24 (g) Sunset-Unless the Commission is reauthorized by Congress,
25 the Commission shall terminate on the date that is 90 days after
26 the date the Commission submits the report described in
27 subsection (e).

28 **SEC. 139. NORTHERN BORDER PROSECUTION**
29 **REIMBURSEMENT.**

30 (a) *Short Title.*--This section may be cited as the ``Northern Border
31 Prosecution Initiative Reimbursement Act''.

32 (b) *Northern Border Prosecution Initiative.*--

33 (1) INITIATIVE REQUIRED.--From amounts made available to carry
34 out this section, the Attorney General, acting through the Director of
35 the Bureau of Justice Assistance of the Office of Justice Programs, shall
36 carry out a program, to be known as the Northern Border Prosecution
37 Initiative, to provide funds to reimburse eligible northern border

1 entities for costs incurred by those entities for handling case
2 dispositions of criminal cases that are federally initiated but federally
3 declined-referred. This program shall be modeled after the
4 Southwestern Border Prosecution Initiative and shall serve as a
5 partner program to that initiative to reimburse local jurisdictions for
6 processing Federal cases.

7 (2) PROVISION AND ALLOCATION OF FUNDS.--Funds provided
8 under the program shall be provided in the form of direct
9 reimbursements and shall be allocated in a manner consistent with the
10 manner under which funds are allocated under the Southwestern
11 Border Prosecution Initiative.

12 (3) USE OF FUNDS.--Funds provided to an eligible northern border
13 entity may be used by the entity for any lawful purpose, including the
14 following purposes:

15 (A) Prosecution and related costs.

16 (B) Court costs.

17 (C) Costs of courtroom technology.

18 (D) Costs of constructing holding spaces.

19 (E) Costs of administrative staff.

20 (F) Costs of defense counsel for indigent defendants.

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

22 (4) DEFINITIONS.--In this section:

23 (A) The term ``eligible northern border entity'' means--

24 (i) any of the following States: Alaska, Idaho, Maine, Michigan,
25 Minnesota, Montana, New Hampshire, New York, North Dakota, Ohio,
26 Pennsylvania, Vermont, Washington, and Wisconsin; or

27 (ii) any unit of local government within a State referred to in clause
28 (i).

29 (B) The term ``federally initiated'' means, with respect to a
30 criminal case, that the case results from a criminal investigation or an

1 arrest involving Federal law enforcement authorities for a potential
2 violation of Federal criminal law, including investigations resulting from
3 multi-jurisdictional task forces.

4 (C) The term ``federally declined-referred'' means, with respect to
5 a criminal case, that a decision has been made in that case by a
6 United States Attorney or a Federal law enforcement agency during a
7 Federal investigation to no longer pursue Federal criminal charges
8 against a defendant and to refer the investigation to a State or local
9 jurisdiction for possible prosecution. The term includes a decision
10 made on an individualized case-by-case basis as well as a decision
11 made pursuant to a general policy or practice or pursuant to
12 prosecutorial discretion.

13 (D) The term ``case disposition'', for purposes of the Northern
14 Border Prosecution Initiative, refers to the time between a suspect's
15 arrest and the resolution of the criminal charges through a county or
16 State judicial or prosecutorial process. Disposition does not include
17 incarceration time for sentenced offenders, or time spent by
18 prosecutors on judicial appeals.

19 (c) *Authorization of Appropriations.*--There is authorized to be
20 appropriated to carry out this section \$28,000,000 for fiscal year 2008
21 and such sums as may be necessary for each succeeding fiscal year.

22 **Subtitle D. Asylum and Detention Safeguards**

23 **SEC. 140. SHORT TITLE.**

24 This subtitle may be cited as the "Secure and Safe Detention and
25 Asylum Act".

26 **SEC. 141. DEFINITIONS.**

27 In this subtitle:

28 (1) CREDIBLE FEAR OF PERSECUTION.—The term "credible fear of
29 persecution" has the meaning given that term in section
30 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C.
31 1225(b)(1)(B)(v)).

32 (2) DETAINEE.—The term "detainee" means an alien in the
33 custody of the Department of Homeland Security who is held in a
34 detention facility.

35 (3) DETENTION FACILITY.—The term "detention facility" means any
36 Federal facility in which an alien detained pending the outcome of
37 a removal proceeding, or an alien detained pending the execution

1 of a final order of removal, is detained for more than 72 hours, or
2 any other facility in which such detention services are provided to
3 the Federal Government by contract, and does not include
4 detention at any port of entry in the United States.

5 (4) REASONABLE FEAR OF PERSECUTION OR TORTURE.—The term
6 "reasonable fear of persecution or torture" has the meaning given
7 that term in section 208.31 of title 8, Code of Federal Regulations.

8 (5) STANDARD.—The term "standard" means any policy,
9 procedure, or other requirement.

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

11 (a) In General.—The Secretary shall establish quality assurance
12 procedures and take steps to effectively ensure that questions by
13 employees of the Department exercising expedited removal authority
14 under section 235(b) of the Immigration and Nationality Act (8 U.S.C.
15 1225(b)) are asked in a standard manner, and that both these
16 questions and the answers provided in response to them are recorded
17 in a uniform fashion.

18 (b) Factors Relating to Sworn Statements.—Where practicable, as
19 determined by the Secretary in his discretion, any sworn or signed
20 written statement taken of an alien as part of the record of a
21 proceeding under section 235(b)(1)(A) of the Immigration and
22 Nationality Act (8 U.S.C. 1225(b)(1)(A)) shall be accompanied by a
23 recording of the interview which served as the basis for that sworn
24 statement.

25 (c) Exemption Authority.—

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

29 (2) EXEMPTION.—The Secretary or the Secretary's designee may
30 exempt any facility, location, or area from the requirements of this
31 section based on a determination by the Secretary or the
32 Secretary's designee that compliance with subsection (b) at that
33 facility would impair operations or impose undue burdens or costs.

34 (3) REPORT.—The Secretary or the Secretary's designee shall
35 report annually to Congress on the facilities that have been
36 exempted pursuant to this subsection.

37 (d) Interpreters.—The Secretary shall ensure that a competent
38 interpreter, not affiliated with the government of the country from
39 which the alien may claim asylum, is used when the interviewing
40 officer does not speak a language understood by the alien and there is

1 no other Federal, State, or local government employee available who
2 is able to interpret effectively, accurately, and impartially.

3 (e) Recordings in Immigration Proceedings.—Recordings of
4 interviews of aliens subject to expedited removal shall be included in
5 the record of proceeding and may be considered as evidence in any
6 further proceedings involving the alien.

7 (f) No Private Right of Action.—Nothing in this section shall be
8 construed to create any right, benefit, trust, or responsibility, whether
9 substantive or procedural, enforceable in law or equity by a party
10 against the United States, its departments, agencies, instrumentalities,
11 entities, officers, employees, or agents, or any person, nor does this
12 section create any right of review in any administrative, judicial, or
13 other proceeding.

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

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

17 (1) in subsection (a)—

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

19 (i) in the first sentence by striking “Attorney General”
20 and inserting “Secretary of Homeland Security”; and

21 (ii) in the second sentence by striking “Attorney General”
22 and inserting “Secretary”;

23 (B) in paragraph (2)—

24 (i) in subparagraph (A)—

25 (I) by striking “Attorney General” and inserting
26 “Secretary”; and

27 (II) by striking “or” at the end;

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

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

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

32 “(D) a secure alternatives program as provided for in this
33 section; but”;

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

36 (3) in subsection (c)—

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

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

5 (4) in subsection (d)—

6 (A) in paragraph (1), by striking "Attorney General" and
7 inserting "Secretary";

8 (B) in paragraph (1), in subparagraphs (A) and (B), by
9 striking "Service" each place it appears and inserting
10 "Department of Homeland Security"; and

11 (C) in paragraph (3), by striking "Service" and inserting
12 "Secretary of Homeland Security".

13 **SEC. 144. REPORT TO CONGRESS ON PAROLE PROCEDURES**
14 **AND STANDARDIZATION OF PAROLE PROCEDURES.**

15 (a) In General.—The Attorney General and the Secretary of
16 Homeland Security shall jointly conduct a review and report to the
17 appropriate Committees of the Senate and the House of
18 Representatives within 180 days of the date of enactment of this Act
19 regarding the effectiveness of parole and custody determination
20 procedures applicable to aliens who have established a credible fear of
21 persecution and are awaiting a final determination regarding their
22 asylum claim by the immigration courts. The report shall include the
23 following:

24 (1) An analysis of the rate at which release from detention
25 (including release on parole) is granted to aliens who have
26 established a credible fear of persecution and are awaiting a final
27 determination regarding their asylum claim by the immigration
28 courts throughout the United States, and any disparity that exists
29 between locations or geographical areas, including explanation of
30 the reasons for this disparity and what actions are being taken to
31 have consistent and uniform application of the standards for
32 granting parole.

33 (2) An analysis of the effect of the procedures and policies
34 applied with respect to parole and custody determinations both by
35 the Attorney General and the Secretary on the alien's pursuit of
36 their asylum claim before an immigration court.

37 (3) An analysis of the effect of the procedures and policies
38 applied with respect to parole and custody determinations both by
39 the Attorney General and the Secretary on the alien's physical and
40 psychological well-being.

1 (4) An analysis of the effectiveness of the procedures and
2 policies applied with respect to parole and custody determinations
3 both by the Attorney General and the Secretary in securing the
4 alien's presence at the immigration court proceedings.

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

14 **SEC. 145. LEGAL ORIENTATION PROGRAM.**

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

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

24 (c) Expansion of Legal Assistance.—The Secretary shall ensure the
25 expansion through the United States Citizenship and Immigration
26 Service of public-private partnerships that facilitate pro bono
27 counseling and legal assistance for aliens awaiting a credible fear of
28 persecution interview or an interview related to a reasonable fear of
29 persecution or torture determination under section 241(b)(3).

30 **SEC. 146. CONDITIONS OF DETENTION.**

31 (a) In General.—The Secretary shall ensure that standards
32 governing conditions and procedures at detention facilities are fully
33 implemented and enforced, and that all detention facilities comply with
34 the standards.

35 (b) Procedures and Standards.—The Secretary shall promulgate new
36 standards, or modify existing detention standards, to comply with the
37 following policies and procedures:

38 (1) FAIR AND HUMANE TREATMENT.—Procedures to prevent detainees
39 from being subject to degrading or inhumane treatment such as
40 physical abuse, sexual abuse or harassment, or arbitrary

1 punishment.

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

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

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

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

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

19 (A) the detainee’s access to legal representatives; and

20 (B) the proximity of the facility to the venue of the asylum or
21 removal proceeding.

22 (7) QUALITY OF MEDICAL CARE.—

23 (A) IN GENERAL.—Essential medical care provided promptly at
24 no cost to the detainee, including dental care, eye care, mental
25 health care, and where appropriate, individual and group
26 counseling, medical dietary needs, and other medically
27 necessary specialized care. Medical facilities in all detention
28 facilities used by the Department maintain current
29 accreditation by the National Commission on Correctional
30 Health Care (NCCHC). Requirements that each medical facility
31 that is not accredited by the Joint Commission on the
32 Accreditation of Health Care Organizations (JCAHO) will seek
33 to obtain such accreditation. Maintenance of complete medical
34 records for every detainee which shall be made available upon
35 request to a detainee, his legal representative, or other
36 authorized individuals.

37 (B) EXCEPTION.—A detention facility that is not operated by
38 the Department of Homeland Security or by a private
39 contractor on behalf of the Department of Homeland Security
40 shall not be required to maintain current accreditation by the

1 NCCHC or to seek accreditation by the JCAHO.

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

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

9 (c) Special Standards for Noncriminal Detainees.—The Secretary
10 shall promulgate new standards, or modifications to existing
11 standards, that—

12 (1) recognize the distinctions between persons with criminal
13 convictions or a history of violent behavior and all other detainees;
14 and

15 (2) ensure that procedures and conditions of detention are
16 appropriate for a noncriminal, nonviolent population.

17 (d) Special Standards for Specific Populations.—The Secretary shall
18 promulgate new standards, or modifications to existing standards,
19 that—

20 (1) recognize the unique needs of—

21 (A) victims of persecution, torture, trafficking, and domestic
22 violence;

23 (B) families with children;

24 (C) detainees who do not speak English; and

25 (D) detainees with special religious, cultural, or spiritual
26 considerations; and

27 (2) ensure that procedures and conditions of detention are
28 appropriate for the populations described in paragraph (1).

29 (e) Training of Personnel.—

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

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

36 (B) victims of torture or other trauma and victims of
37 persecution, trafficking, and domestic violence; and

1 (C) families with children, detainees who do not speak
2 English, and detainees with special religious, cultural, or
3 spiritual considerations.

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

9 (f) No Private Right of Action.—Nothing in this section shall be
10 construed to create any right, benefit, trust, or responsibility, whether
11 substantive or procedural, enforceable in law or equity by a party
12 against the United States, its departments, agencies, instrumentalities,
13 entities, officers, employees, or agents, or any person, nor does this
14 section create any right of review in any administrative, judicial, or
15 other proceeding.

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

17 (a) Establishment of the Office.—

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

21 (2) HEAD OF THE OFFICE.—There shall be at the head of the Office
22 an Administrator. At the discretion of the Secretary, the
23 Administrator of the Office shall be appointed by, and shall report
24 to, either the Secretary or the Assistant Secretary of Homeland
25 Security for United States Immigration and Customs Enforcement.
26 The Office shall be independent of the Office of Detention and
27 Removal Operations, but shall be subject to the supervision and
28 direction of the Secretary or Assistant Secretary.

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

32 (b) Responsibilities of the Office.—

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

35 (A) undertake regular and, where appropriate, unannounced
36 inspections of all detention facilities;

37 (B) develop a procedure for any detainee or the detainee’s
38 representative to file a confidential written complaint directly
39 with the Office; and

1 (C) report to the Secretary and to the Assistant Secretary all
2 findings of a detention facility's noncompliance with detention
3 standards.

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

5 (A) initiate investigations, as appropriate, into allegations of
6 systemic problems at detention facilities or incidents that
7 constitute serious violations of detention standards;

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

10 (C) report to the Secretary and the Assistant Secretary the
11 results of all investigations, reviews, or audits; and

12 (D) refer matters, where appropriate, for further action to—

13 (i) the Department of Justice;

14 (ii) the Office of the Inspector General of the
15 Department;

16 (iii) the Office of Civil Rights and Civil Liberties of the
17 Department; or

18 (iv) any other relevant office or agency.

19 (3) REPORT TO CONGRESS.—

20 (A) IN GENERAL.—The Administrator of the Office shall submit
21 to the Secretary, the Assistant Secretary, the Committee on
22 the Judiciary and the Committee on Homeland Security and
23 Governmental Affairs of the Senate, and the Committee on the
24 Judiciary and the Committee on Homeland Security of the
25 House of Representatives an annual report on the
26 Administrator's findings on detention conditions and the results
27 of the completed investigations carried out by the
28 Administrator.

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

31 (i) a description of—

32 (I) each detention facility found to be in
33 noncompliance with the standards for detention
34 required by this subtitle; and

35 (II) the actions taken by the Department to remedy
36 any findings of noncompliance or other identified
37 problems; and

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

4 (c) Cooperation With Other Offices and Agencies.—Whenever
5 appropriate, the Administrator of the Office shall cooperate and
6 coordinate its activities with—

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

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

10 (3) the Privacy Officer of the Department;

11 (4) the Department of Justice; or

12 (5) any other relevant office or agency.

13 **SEC. 148. SECURE ALTERNATIVES PROGRAM.**

14 (a) Establishment of Program.—The Secretary shall establish a
15 secure alternatives program under which an alien who has been
16 detained may be released under enhanced supervision to prevent the
17 alien from absconding and to ensure that the alien makes appearances
18 related to such detention.

19 (b) Program Requirements.—

20 (1) NATIONWIDE IMPLEMENTATION.—The Secretary shall facilitate the
21 development of the secure alternatives program on a nationwide
22 basis, as a continuation of existing pilot programs such as the
23 Intensive Supervision Appearance Program developed by the
24 Department.

25 (2) UTILIZATION OF ALTERNATIVES.—In facilitating the development
26 of the secure alternatives program, the Secretary shall have
27 discretion to utilize a continuum of alternatives to a supervision of
28 the alien, including placement of the alien with an individual or
29 organizational sponsor, or in a supervised group home.

30 (3) ALIENS ELIGIBLE FOR SECURE ALTERNATIVES PROGRAM.—

31 (A) IN GENERAL.—Aliens who would otherwise be subject to
32 detention based on a consideration of the release criteria in
33 section 236(b)(2), or who are released pursuant to section
34 236(c)(2), shall be considered for the secure alternatives
35 program.

36 (B) DESIGN OF PROGRAMS.—In developing the secure
37 alternatives program, the Secretary shall take into account the
38 extent to which the program includes only those alternatives to

1 detention that reasonably and reliably ensure—

2 (i) the alien’s continued presence at all future
3 immigration proceedings;

4 (ii) the alien’s compliance with any future order or
5 removal; and

6 (iii) the public safety or national security.

7 (C) CONTINUED EVALUATION.—The Secretary shall evaluate
8 regularly the effectiveness of the program, including the
9 effectiveness of the particular alternatives to detention used
10 under the program, and make such modifications as the
11 Secretary deems necessary to improve the program’s
12 effectiveness or to deter abuse.

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

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

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

23 (b) Criteria.—In pursuing the development of detention facilities
24 pursuant to this section, the Secretary shall—

25 (1) consider the design, operation, and conditions of existing
26 secure but less restrictive detention facilities; and

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

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

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

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

36 (D) detainees have frequent access to programs and
37 recreation;

38 (E) detainees are permitted contact visits with legal

1 representatives and family members; and

2 (F) special facilities are provided to families with children.

3 (c) Facilities for Families With Children.—In any case in which
4 release or secure alternatives programs are not a practicable option,
5 the Secretary shall, to the extent practicable, ensure that special
6 detention facilities for the purposes of long-term detention where
7 detainees are held longer than 72 hours are specifically designed to
8 house parents with their minor children, including ensuring that—

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

11 (2) living and sleeping quarters for children under 14 years of
12 age are not physically separated from at least 1 of the child's
13 parents.

14 (d) Placement in Nonpunitive Facilities.—Among the factors to be
15 considered with respect to placing a detainee in a less restrictive
16 facility is whether the detainee is—

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

18 (2) a victim of persecution, torture, trafficking, or domestic
19 violence; or

20 (3) a nonviolent, noncriminal detainee.

21 (e) Procedures and Standards.—Where necessary, the Secretary
22 shall promulgate new standards, or modify existing detention
23 standards, to promote the development of less restrictive detention
24 facilities.

25 (f) No Private Right of Action.—Nothing in this section shall be
26 construed to create any right, benefit, trust, or responsibility, whether
27 substantive or procedural, enforceable in law or equity by a party
28 against the United States, its departments, agencies, instrumentalities,
29 entities, officers, employees, or agents, or any person, nor does this
30 section create any right of review in any administrative, judicial, or
31 other proceeding.

32 **SEC. 150. AUTHORIZATION OF APPROPRIATIONS; EFFECTIVE**
33 **DATE.**

34 (a) Authorization of Appropriations.—There are authorized to be
35 appropriated such sums as are necessary to carry out this subtitle.

36 (b) Effective Date.—This subtitle and the amendments made by this
37 subtitle shall take effect on the date that is 180 days after the date of
38 the enactment of this Act.

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1 **TITLE II--INTERIOR ENFORCEMENT**

2 **SEC. 201. ADDITIONAL IMMIGRATION**
3 **PERSONNEL.**

4 (a) Department of Homeland Security.—

5 (1) TRIAL ATTORNEYS.—In each of the fiscal years 2008 through
6 2012, the Secretary, subject to the availability of appropriations
7 for such purpose, shall increase the number of positions for
8 attorneys in the Office of General Counsel of the Department
9 who represent the Department in immigration matters by not
10 less than 100 compared to the number of such positions for
11 which funds were made available during the preceding fiscal
12 year.

13 (2) USCIS ADJUDICATORS.— In each of the fiscal years 2008
14 through 2012, the Secretary, subject to the availability of
15 appropriations for such purpose, shall increase the number of
16 positions for adjudicators in the United States Citizenship and
17 Immigration Service by not less than 100 compared to the
18 number of such positions for which funds were made available
19 during the preceding fiscal year.

20 (3) AUTHORIZATION OF APPROPRIATIONS.—There are
21 authorized to be
22 appropriated to the Secretary for each of the fiscal years 2008
23 through 2012 such sums as may be necessary to carry out
24 paragraphs (1) and (2).
25

26 (b) Department of Justice.—

27 (1) JUDICIAL CLERKS—The Attorney General shall, subject to the
28 availability of appropriations for such purpose, appoint necessary
29 law clerks for immigration judges and Board of Immigration
30 Appeals members of no less than one per judge and member. A
31 law clerk appointed under this section shall be exempt from the
32 provisions of subchapter I of chapter 63 of title 5 [5 USCS §§
33 6301 et seq.]

34 (2) LITIGATION ATTORNEYS.—In each of the fiscal years 2008
35 through 2012, the
36 Attorney General, subject to the availability of appropriations for
37 such purpose, shall increase the number of positions for
38 attorneys in the Office of Immigration
39 Litigation by not less than 50 compared to the number of such
40 positions for which funds were made available during the
41 preceding fiscal year.

1 (3) UNITED STATES ATTORNEYS.—In each of the fiscal years
2 2008 through 2012,
3 the Attorney General, subject to the availability of appropriations
4 for such purpose, shall increase the number of attorneys in the
5 United States Attorneys' office to litigate immigration cases in
6 the Federal courts by not less than 50 compared to the number
7 of such positions for which funds were made available during the
8 preceding fiscal year.

9 (4) IMMIGRATION JUDGES.—In each of the fiscal years 2008
10 through 2012, the
11 Attorney General, subject to the availability of appropriations for
12 such purpose,
13 shall—

14 (A) increase by not less than 20 the number of full-time
15 immigration judges compared to the number of such
16 positions for which funds were made available during the
17 preceding fiscal year; and

18 (B) increase by not less than 80 the number of positions
19 for personnel to
20 support the immigration judges described in subparagraph
21 (A) compared to the number of such positions for which
22 funds were made available during the preceding fiscal
23 year.

24 (5) BOARD OF IMMIGRATION APPEALS MEMBERS.—The Attorney General
25 shall, subject to the availability of appropriations, increase by 10
26 the number members of the Board of Immigration Appeals over
27 the number of members serving on the date of enactment of this
28 Act.

29 (6) STAFF ATTORNEYS.—In each of the fiscal years 2008
30 through 2012, the
31 Attorney General shall, subject to the availability of
32 appropriations for such
33 purpose—

34 (A) increase the number of positions for full-time staff
35 attorneys in the Board of Immigration Appeals by not less
36 than 20 compared to the number of such positions for
37 which funds were made available during the preceding
38 fiscal year; and

39 (B) increase the number of positions for personnel to
40 support the staff
41 attorneys described in subparagraph (A) by not less than
42 10 compared to the number of such positions for which
43 funds were made available during the preceding fiscal
44 year.

1 (7) AUTHORIZATION OF APPROPRIATIONS.—There are
2 authorized to be
3 appropriated to the Attorney General for each of the fiscal years
4 2008 through 2012 such sums as may be necessary to carry out
5 this subsection, including the hiring of necessary support staff.
6

7 (c) Administrative Office of the United States Courts.—In each of the
8 fiscal years 2008
9 through 2012, the Director of the Administrative Office of the United
10 States Courts,
11 subject to the availability of appropriations, shall increase the number
12 of attorneys in the
13 Federal Defenders Program who litigate criminal immigration cases in
14 the Federal courts
15 by not less than 50 compared to the number of such positions for
16 which funds were made
17 available during the preceding fiscal year.
18

19 (d) Legal Orientation Program.

20 (1) CONTINUED OPERATION.—The Director of the Executive Office for
21 Immigration Review shall continue to operate a legal orientation
22 program to provide basic information about immigration court
23 procedures for immigration detainees and shall expand the legal
24 orientation program to provide such information on a nationwide basis.

25 (2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be
26 appropriated such sums as may be necessary to carry out such legal
27 orientation program.

28 **SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED**
29 **REMOVED.**

30 (a) In General-

31 (1) AMENDMENTS- Section 241(a) (8 U.S.C. 1231(a)) is
32 amended--

33 (A) by striking `Attorney General' the first place it
34 appears, except for the first reference in clause
35 (a)(4)(B)(i), and inserting `Secretary of Homeland
36 Security';

37 (B) by striking `Attorney General' any other place it
38 appears and inserting `Secretary';

39 (C) in paragraph (1)--

40 (i) in subparagraph (B), by amending clause

41 (ii) to read as follows:

1 (ii) If a court, the Board of Immigration
2 Appeals, or an immigration judge orders a stay
3 of the removal of the alien, the expiration date
4 of the stay of removal.';

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

7 (C) EXTENSION OF PERIOD- The removal period
8 shall be extended beyond a period of 90 days and
9 the alien may remain in detention during such
10 extended period if the alien fails or refuses to--

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

13 (ii) fully cooperate with the Secretary's efforts
14 to establish the alien's identity and carry out
15 the removal order, including failing to make
16 timely application in good faith for travel or
17 other documents necessary to the alien's
18 departure, or conspiring or acting to prevent
19 the alien's removal.'; and

20 (iii) by adding at the end the following:

21 (D) TOLLING OF PERIOD- If, at the time described
22 in subparagraph (B), the alien is not in the custody
23 of the Secretary under the authority of this Act, the
24 removal period shall not begin until the alien is taken
25 into such custody. If the Secretary lawfully transfers
26 custody of the alien during the removal period to
27 another Federal agency or to a State or local
28 government agency in connection with the official
29 duties of such agency, the removal period shall be
30 tolled, and shall recommence on the date on which
31 the alien is returned to the custody of the
32 Secretary.';

33 (D) in paragraph (2), by adding at the end the
34 following: 'If a court, the Board of Immigration
35 Appeals, or an immigration judge orders a stay of
36 removal of an alien who is subject to an
37 administrative final order of removal, the Secretary,
38 in the exercise of discretion, may detain the alien
39 during the pendency of such stay of removal.';

40 (E) in paragraph (3), by amending subparagraph (D)
41 to read as follows:

42 (D) to obey reasonable restrictions on the alien's
43 conduct or activities, or to perform affirmative acts,
44 that the Secretary prescribes for the alien--

- ` (i) to prevent the alien from absconding;
- ` (ii) for the protection of the community; or
- ` (iii) for other purposes related to the enforcement of the immigration laws.';

(F) in paragraph (6), by striking `removal period and, if released,' and inserting `removal period, in the discretion of the Secretary, without any limitations other than those specified in this section, until the alien is removed. If an alien is released, the alien';

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

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

` (7) PAROLE- If an alien detained pursuant to paragraph (6) is an applicant for admission, the Secretary of Homeland Security, in the Secretary's discretion, may parole the alien under section 212(d)(5) and may provide, notwithstanding section 212(d)(5), that the alien shall not be returned to custody unless either the alien violates the conditions of the alien's parole or the alien's removal becomes reasonably foreseeable, provided that in no circumstance shall such alien be considered admitted.

` (8) ADDITIONAL RULES FOR DETENTION OR RELEASE OF ALIENS- The following procedures shall apply to an alien detained under this section:

` (A) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE EFFECTED AN ENTRY AND FULLY COOPERATE WITH REMOVAL- The Secretary of Homeland Security shall establish an administrative review process to determine whether an alien described in subparagraph (B) should be detained or released after the removal period in accordance with this paragraph.

` (B) ALIEN DESCRIBED- An alien is described in this subparagraph if the alien--

- ` (i) has effected an entry into the United States;

- ` (ii) has made all reasonable efforts to comply with the alien's removal order;

- ` (iii) has cooperated fully with the Secretary's efforts to establish the alien's identity and to carry out the removal order, including making timely application in good faith for travel or

1 other documents necessary for the alien's
2 departure; and

3 ` (iv) has not conspired or acted to prevent
4 removal.

5 `(C) EVIDENCE- In making a determination under
6 subparagraph (A), the Secretary--

7 `(i) shall consider any evidence submitted by
8 the alien;

9 `(ii) may consider any other evidence,
10 including--

11 `(I) any information or assistance
12 provided by the Department of State or
13 other Federal agency; and

14 `(II) any other information available to
15 the Secretary pertaining to the ability to
16 remove the alien.

17 `(D) AUTHORITY TO DETAIN FOR 90 DAYS BEYOND
18 REMOVAL PERIOD- The Secretary, in the exercise of
19 the Secretary's discretion and without any limitations
20 other than those specified in this section, may detain
21 an alien for 90 days beyond the removal period
22 (including any extension of the removal period under
23 paragraph (1)(C)).

24 `(E) AUTHORITY TO DETAIN FOR ADDITIONAL
25 PERIOD- The Secretary, in the exercise of the
26 Secretary's discretion and without any limitations
27 other than those specified in this section, may detain
28 an alien beyond the 90-day period authorized under
29 subparagraph (D) until the alien is removed, if the
30 Secretary--

31 `(i) determines that there is a significant
32 likelihood that the alien will be removed in the
33 reasonably foreseeable future; or

34 `(ii) certifies in writing--

35 `(I) in consultation with the Secretary of
36 Health and Human Services, that the
37 alien has a highly contagious disease
38 that poses a threat to public safety;

39 `(II) after receipt of a written
40 recommendation from the Secretary of
41 State, that the release of the alien would
42 likely have serious adverse foreign policy
43 consequences for the United States;

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` (III) based on information available to the Secretary (including classified, sensitive, or national security information, and regardless of the grounds upon which the alien was ordered removed), that there is reason to believe that the release of the alien would threaten the national security of the United States;

` (IV) that--

` (aa) the release of the alien would threaten the safety of the community or any person, and conditions of release cannot reasonably be expected to ensure the safety of the community or any person; and

` (bb) the alien--

` (AA) has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(43)(A)), or of 1 or more attempts or conspiracies to commit any such aggravated felonies for an aggregate term of imprisonment of at least 5 years; or

` (BB) has committed a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, is likely to engage in acts of violence in the future; or

` (V) that--

` (aa) the release of the alien would threaten the safety of the community or any person, notwithstanding conditions

1 of release designed to ensure the safety
2 of the community or any person; and

3 (bb) the alien has been convicted of 1
4 or more aggravated felonies (as defined
5 in section 101(a)(43)) for which the alien
6 was sentenced to an aggregate term of
7 imprisonment of not less than 1 year.

8 (F) ATTORNEY GENERAL REVIEW – If the Secretary
9 authorizes an extension of detention under
10 subparagraph (E), the alien may seek review of that
11 determination before the Attorney General. If the
12 Attorney General concludes that the alien should be
13 released, then the Secretary shall release the alien
14 pursuant to subparagraph (I). The Attorney General,
15 in consultation with the Secretary, shall promulgate
16 regulations governing review under this paragraph.

17 (G) ADMINISTRATIVE REVIEW PROCESS- The
18 Secretary, without any limitations other than those
19 specified in this section, may detain an alien pending
20 a determination under subparagraph (E)(ii), if the
21 Secretary has initiated the administrative review
22 process identified in subparagraph (A) not later than
23 30 days after the expiration of the removal period
24 (including any extension of the removal period under
25 paragraph (1)(C)).
26

27 (H) RENEWAL AND DELEGATION OF
28 CERTIFICATION-

29 (i) RENEWAL- The Secretary may renew a
30 certification under subparagraph (E)(ii) every 6
31 months, without limitation, after providing the
32 alien with an opportunity to request
33 reconsideration of the certification and to
34 submit documents or other evidence in support
35 of that request. If the Secretary does not
36 renew such certification, the Secretary shall
37 release the alien, pursuant to subparagraph
38 (I). If the Secretary authorizes an extension of
39 detention under paragraph (E), the alien may
40 seek review of that determination before the
41 Attorney General. If the Attorney General

1 concludes that the alien should be released,
2 then the Secretary shall release the alien
3 pursuant to subparagraph (I).

4 ` (ii) DELEGATION- Notwithstanding any other
5 provision of law, the Secretary may not
6 delegate the authority to make or renew a
7 certification described in subclause (II), (III),
8 or (V) of subparagraph (E)(ii) below the level
9 of the Assistant Secretary for Immigration and
10 Customs Enforcement.

11 ` (iii) HEARING- The Secretary may request
12 that the Attorney General, or a designee of the
13 Attorney General, provide for a hearing to
14 make the determination described in
15 subparagraph (E)(ii)(IV)(bb)(BB).

16 ` (I) RELEASE ON CONDITIONS- If it is determined
17 that an alien should be released from detention, the
18 Secretary may, in the Secretary's discretion, impose
19 conditions on release in accordance with the
20 regulations prescribed pursuant to paragraph (3).

21
22 ` (J) REDETENTION- The Secretary, without any
23 limitations other than those specified in this section,
24 may detain any alien subject to a final removal order
25 who has previously been released from custody if--

26 ` (i) the alien fails to comply with the
27 conditions of release;

28 ` (ii) the alien fails to continue to satisfy the
29 conditions described in subparagraph (B); or

30 ` (iii) upon reconsideration, the Secretary
31 determines that the alien can be detained
32 under subparagraph (E).

33
34 ` (K) APPLICABILITY- This paragraph and paragraphs
35 (6) and (7) shall apply to any alien returned to
36 custody under subparagraph (I) as if the removal
37 period terminated on the day of the redetention.

38
39 ` (L) DETENTION REVIEW PROCESS FOR ALIENS
40 WHO HAVE EFFECTED AN ENTRY AND FAIL TO
41 COOPERATE WITH REMOVAL- The Secretary shall
42 detain an alien until the alien makes all reasonable
43 efforts to comply with a removal order and to

1 cooperate fully with the Secretary's efforts, if the
2 alien--

3 (i) has effected an entry into the United
4 States; and

5 (ii)(I) and the alien faces a significant
6 likelihood that the alien will be removed in the
7 reasonably foreseeable future, or would have
8 been removed if the alien had not--

9 (aa) failed or refused to make all
10 reasonable efforts to comply with a
11 removal order;

12 (bb) failed or refused to fully cooperate
13 with the Secretary's efforts to establish
14 the alien's identity and carry out the
15 removal order, including the failure to
16 make timely application in good faith for
17 travel or other documents necessary to
18 the alien's departure; or

19 (cc) conspired or acted to prevent
20 removal; or

21 (II) the Secretary makes a certification as
22 specified in subparagraph (E), or the renewal
23 of a certification specified in subparagraph (H).

24
25 (M) DETENTION REVIEW PROCESS FOR ALIENS
26 WHO HAVE NOT EFFECTED AN ENTRY- Except as
27 otherwise provided in this subparagraph, the
28 Secretary shall follow the guidelines established in
29 section 241.4 of title 8, Code of Federal Regulations,
30 when detaining aliens who have not effected an
31 entry. The Secretary may decide to apply the review
32 process outlined in this paragraph.

33
34 (9) JUDICIAL REVIEW- Judicial review of any action or
35 decision made pursuant to paragraph (6), (7), or (8) shall
36 be available exclusively in a habeas corpus proceeding
37 brought in a United States district court and only if the
38 alien has exhausted all administrative remedies (statutory
39 and nonstatutory) available to the alien as of right.'

40
41 (2) EFFECTIVE DATE- The amendments made by
42 paragraph (1)--

43 (A) shall take effect on the date of the enactment of
44 this Act; and

1 (B) shall apply to--

- 2 (i) any alien subject to a final administrative
3 removal, deportation, or exclusion order that
4 was issued before, on, or after the date of the
5 enactment of this Act, unless (a) that order
6 was issued and the alien was subsequently
7 released or paroled before the enactment of
8 this Act and (b) the alien has complied with
9 and remains in compliance with the terms and
10 conditions of that release or parole; and
11 (ii) any act or condition occurring or existing
12 before, on, or after the date of the enactment
13 of this Act.

14 **SEC. 203. AGGRAVATED FELONY.**

15 (a) Definition of Aggravated Felony- Section 101(a)(43) (8
16 U.S.C. 1101(a)(43)) is amended--

- 17 (1) by striking `The term `aggravated felony' means--'
18 and inserting `Notwithstanding any other provision of law,
19 the term `aggravated felony' applies to an offense
20 described in this paragraph, whether in violation of Federal
21 or State law, and to such an offense in violation of the law
22 of a foreign country for which the term of imprisonment
23 was completed within the previous 15 years, and
24 regardless of whether the conviction was entered before,
25 on, or after September 30, 1996, and means--';
26 (2) in subparagraph (A), by striking `murder, rape, or
27 sexual abuse of a minor;' and inserting `murder, rape, or
28 sexual abuse of a minor, whether or not the minority of
29 the victim is established by evidence contained in the
30 record of conviction or by evidence extrinsic to the record
31 of conviction;';
32 (3) in subparagraph (N), by striking `paragraph (1)(A) or
33 (2) of'; and
34 (4) by striking the undesignated matter following
35 subparagraph (U).

36 (b) Effective Date and Application-

37 (1) IN GENERAL- The amendments made by subsection (a)
38 shall--

39 (A) take effect on the date of the enactment of this
40 Act; and

41 (B) apply to any conviction that occurred on or after
42 the date of the enactment of this Act.

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

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

10 (a) *Definition of Criminal Gang.*--Section 101(a) (8 U.S.C. 1101(a))
11 is amended by inserting after paragraph (51) the following:

12 `` (52)(A) The term `criminal gang' means an ongoing group, club,
13 organization, or association of 5 or more persons--

14 `` (i) that has, as 1 of its primary purposes, the commission of 1 or
15 more of the criminal offenses described in subparagraph (B); and

16 `` (ii) the members of which engage, or have engaged within the
17 past 5 years, in a continuing series of offenses described in
18 subparagraph (B).

19 `` (B) Offenses described in this subparagraph, whether in violation
20 of Federal or State law or in violation of the law of a foreign country,
21 regardless of whether charged, and regardless of whether the conduct
22 occurred before, on, or after the date of the enactment of this
23 paragraph, are--

24 `` (i) a felony drug offense (as defined in section 102 of the
25 Controlled Substances Act (21 U.S.C. 802));

26 `` (ii) a felony offense involving firearms or explosives, including a
27 violation of section 924(c), 924(h), or 931 of title 18 (relating to
28 purchase, ownership, or possession of body armor by violent felons);

29 `` (iii) an offense under section 274 (relating to bringing in and
30 harboring certain aliens), section 277 (relating to aiding or assisting
31 certain aliens to enter the United States), or section 278 (relating to
32 the importation of an alien for immoral purpose);

33 `` (iv) a felony crime of violence as defined in section 16 of title 18,
34 United States Code, which is punishable by a sentence of

1 imprisonment of 5 years or more, including first degree murder, arson,
2 possession, brandishment, or discharge of firearm in connection with
3 crime of violence or drug trafficking offense, use of a short-barreled or
4 semi-automatic weapons, use of a machine gun, murder of individuals
5 involved in aiding a Federal investigation, kidnapping, bank robbery if
6 death results or a hostage is kidnapped, sexual exploitation and other
7 abuse of children, selling or buying of children, activities relating to
8 material involving the sexual exploitation of a minor, activities relating
9 to material constituting or containing child pornography, or illegal
10 transportation of a minor;

11 (v) a crime involving obstruction of justice; tampering with or
12 retaliating against a witness, victim, or informant; or burglary;

13 (vi) any conduct punishable under sections 1028 and 1029 of title
14 18, United States Code (relating to fraud and related activity in
15 connection with identification documents or access devices), sections
16 1581 through 1594 of such title (relating to peonage, slavery and
17 trafficking in persons), section 1952 of such title (relating to interstate
18 and foreign travel or transportation in aid of racketeering enterprises),
19 section 1956 of such title (relating to the laundering of monetary
20 instruments), section 1957 of such title (relating to engaging in
21 monetary transactions in property derived from specified unlawful
22 activity), or sections 2312 through 2315 of such title (relating to
23 interstate transportation of stolen motor vehicles or stolen property);
24 and

25 (vii) a conspiracy to commit an offense described in clause (i)
26 through (vi)."

27 (b) *Inadmissibility*.--Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is
28 amended--

29 (1) by redesignating subparagraph (F) as subparagraph (L); and

30 (2) by inserting after subparagraph (E) the following:

31 (F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.--Unless the
32 Secretary of Homeland Security or the Attorney General waives the
33 application of this subparagraph, any alien who a consular officer, the
34 Attorney General, or the Secretary of Homeland Security knows or has
35 reason to believe participated in a criminal gang, knowing or having
36 reason to know that such participation promoted, furthered, aided, or
37 supported the illegal activity of the gang, is inadmissible."

1 (c) *Deportability*.--Section 237(a)(2) (8 U.S.C. 1227(a)(2)) is
2 amended by adding at the end the following:

3 `` (F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.--Any alien, in
4 or admitted to the United States, who at any time has participated in a
5 criminal gang, knowing or having reason to know that such
6 participation promoted, furthered, aided, or supported the illegal
7 activity of the gang is deportable. The Secretary of Homeland Security
8 or the Attorney General may waive the application of this
9 subparagraph.".

10 (d) *Temporary Protected Status*.--Section 244 (8 U.S.C. 1254a) is
11 amended--

12 (1) by striking `` Attorney General" each place it appears and
13 inserting `` Secretary of Homeland Security";

14 (2) in subparagraph (c)(2)(B)--

15 (A) in clause (i), by striking `` , or" and inserting a semicolon;

16 (B) in clause (ii), by striking the period at the end and inserting `` ;
17 or"; and

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

19 `` (iii) the alien participates in, or at any time after admission has
20 participated in, knowing or having reason to know that such
21 participation promoted, furthered, aided, or supported the illegal
22 activity of the gang, the activities of a criminal gang."; and

23 (3) in subsection (d)--

24 (A) in paragraph (2)--

25 (i) by striking `` Subject to paragraph (3), such" and inserting
26 `` Such"; and

27 (ii) by striking `` (under paragraph (3))";

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

29 (C) by redesignating paragraph (4) as paragraph (3); and

1 (D) in paragraph (3), as redesignated, by adding at the end the
2 following: ``The Secretary of Homeland Security may detain an alien
3 provided temporary protected status under this section whenever
4 appropriate under any other provision.".

5 (e) *Increased Penalties Barring the Admission of Convicted Sex*
6 *Offenders Failing to Register and Requiring Deportation of Sex*
7 *Offenders Failing to Register.--*

8 (1) INADMISSIBILITY.--Section 212(a)(2)(A)(i) (8 U.S.C.
9 1182(a)(2)(A)(i)), as amended by section 209(a)(3), is further
10 amended--

11 (A) in subclause (II), by striking ``or" at the end;

12 (B) in subclause (III), by striking the comma at the end and
13 inserting a semicolon; and

14 (C) by inserting after subclause (III) the following:

15 `` (IV) a violation of section 2250 of title 18, United States Code
16 (relating to failure to register as a sex offender); or".

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

19 (A) in subclause (I), by striking `` , and" and inserting a semicolon;

20 (B) in subclause (II), by striking the comma at the end and
21 inserting `` ; or"; and

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

23 `` (III) a violation of section 2250 of title 18, United States Code
24 (relating to failure to register as a sex offender)".

25 (f) *Precluding Admissibility of Aliens Convicted of Serious Criminal*
26 *Offenses and Domestic Violence, Stalking, Child Abuse and Violation of*
27 *Protection Orders.--*

28 (1) INADMISSIBILITY ON CRIMINAL AND RELATED GROUNDS;
29 WAIVERS.--Section 212 (8 U.S.C. 1182) is amended--

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

1 `` (J) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION
2 OF PROTECTIVE ORDERS; CRIMES AGAINST CHILDREN.--

3 `` (i) DOMESTIC VIOLENCE, STALKING, AND CHILD ABUSE.--Any
4 alien who has been convicted of a crime of domestic violence, a crime
5 of stalking, or a crime of child abuse, child neglect, or child
6 abandonment, provided the alien served at least 1 year's
7 imprisonment for the crime or provided the alien was convicted of or
8 admitted to acts constituting more than 1 such crime, not arising out
9 of a single scheme of criminal misconduct, is inadmissible. In this
10 clause, the term `crime of domestic violence' means any crime of
11 violence (as defined in section 16 of title 18, United States Code)
12 against a person committed by a current or former spouse of the
13 person, by an individual with whom the person shares a child in
14 common, by an individual who is cohabiting with or has cohabited with
15 the person as a spouse, by an individual similarly situated to a spouse
16 of the person under the domestic or family violence laws of the
17 jurisdiction where the offense occurs, or by any other individual
18 against a person who is protected from that individual's acts under the
19 domestic or family violence laws of the United States or any State,
20 Indian tribal government, or unit of local or foreign government.

21 `` (ii) VIOLATORS OF PROTECTION ORDERS.--Any alien who at any
22 time is enjoined under a protection order issued by a court and whom
23 the court determines has engaged in conduct that constitutes criminal
24 contempt of the portion of a protection order that involves protection
25 against credible threats of violence, repeated harassment, or bodily
26 injury to the person or persons for whom the protection order was
27 issued, is inadmissible. In this clause, the term `protection order'
28 means any injunction issued for the purpose of preventing violent or
29 threatening acts of domestic violence, including temporary or final
30 orders issued by civil or criminal courts (other than support or child
31 custody orders or provisions) whether obtained by filing an
32 independent action or as an independent order in another proceeding.

33 `` (iii) APPLICABILITY.--This subparagraph shall not apply to an
34 alien who has been battered or subjected to extreme cruelty and who
35 is not and was not the primary perpetrator of violence in the
36 relationship, upon a determination by the Attorney General or the
37 Secretary of Homeland Security that--

38 `` (I) the alien was acting in self-defense;

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

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

6 (B) in subsection (h)--

7 (i) by striking `` The Attorney General may, in his discretion, waive
8 the application of subparagraphs (A)(i)(I), (B), (D), and (E) of
9 subsection (a)(2)" and inserting `` The Attorney General or the
10 Secretary of Homeland Security may waive the application of
11 subparagraphs (A)(i)(I), (B), (D), (E), (F), (J), and (K) of subsection
12 (a)(2)"; and

13 (ii) by inserting `` or Secretary of Homeland Security" after `` the
14 Attorney General" each place it appears.

15 (2) EFFECTIVE DATE.--The amendments made by this subsection
16 shall apply to any acts that occurred on or after the date of the
17 enactment of this Act.

18 **SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO**
19 **DRUNK DRIVING, ILLEGAL ENTRY, PERJURY, AND FIREARMS**
20 **OFFENSES.**

21 (a) *Drunk Driving*--

22 (1) INADMISSIBILITY.--Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is
23 amended by inserting after subparagraph (J), as added by section
24 204(f) the following:

25 `` (K) DRUNK DRIVERS.--Any alien who has been convicted of 1
26 felony for driving under the influence under Federal or State law, for
27 which the alien was sentenced to more than 1 year imprisonment, is
28 inadmissible."

29 (2) DEPORTABILITY.--Section 237(a)(2) (8 U.S.C. 1227(a)(2)) is
30 amended by adding at the end the following:

31 `` (F) DRUNK DRIVERS.--Unless the Secretary of Homeland Security
32 or the Attorney General waives the application of this subparagraph,
33 any alien who has been convicted of 1 felony for driving under the

1 influence under Federal or State law, for which the alien was
2 sentenced to more than 1 year imprisonment, is deportable."

3 (3) CONFORMING AMENDMENT.--Section 212(h) (8 U.S.C. 1182(h))
4 is amended--

5 (A) in the subsection heading, by striking ``*Subsection*
6 *(a)(2)(A)(i)(I), (II), (B), (D), and (E)*" and inserting ``*Certain*
7 *Provisions in Subsection (a)(2)*"; and

8 (B) in the matter preceding paragraph (1), by striking ``and (E)"
9 and inserting ``(E), and (F)".

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

13 (b) *Illegal Entry*.--

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

16 ``**SEC. 275. ILLEGAL ENTRY.**

17 `` (a) *In General*.--

18 `` (1) CRIMINAL OFFENSES.--An alien shall be subject to the
19 penalties set forth in paragraph (2) if the alien--

20 `` (A) knowingly enters or crosses the border into the United States
21 at any time or place other than as designated by the Secretary of
22 Homeland Security;

23 `` (B) knowingly eludes examination or inspection by an
24 immigration officer (including failing to stop at the command of such
25 officer), or a customs or agriculture inspection at a port of entry; or

26 `` (C) knowingly enters or crosses the border to the United States
27 by means of a knowingly false or misleading representation or the
28 knowing concealment of a material fact (including such representation
29 or concealment in the context of arrival, reporting, entry, or clearance
30 requirements of the customs laws, immigration laws, agriculture laws,
31 or shipping laws.

1 `` (2) CRIMINAL PENALTIES.--Any alien who violates any provision
2 under paragraph (1)--

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

5 `` (B) shall, for a second or subsequent violation, or following an
6 order of voluntary departure, be fined under such title, imprisoned not
7 more than 2 years, or both;

8 `` (C) if the violation occurred after the alien had been convicted of
9 3 or more misdemeanors or for a felony, shall be fined under such
10 title, imprisoned not more than 10 years, or both;

11 `` (D) if the violation occurred after the alien had been convicted of
12 a felony for which the alien received a term of imprisonment of not
13 less than 30 months, shall be fined under such title, imprisoned not
14 more than 15 years, or both; and

15 `` (E) if the violation occurred after the alien had been convicted of
16 a felony for which the alien received a term of imprisonment of not
17 less than 60 months, such alien shall be fined under such title,
18 imprisoned not more than 20 years, or both.

19 `` (3) PRIOR CONVICTIONS.--The prior convictions described in
20 subparagraphs (C) through (E) of paragraph (2) are elements of the
21 offenses described in that paragraph and the penalties in such
22 subparagraphs shall apply only in cases in which the conviction or
23 convictions that form the basis for the additional penalty are--

24 `` (A) alleged in the indictment or information; and

25 `` (B) proven beyond a reasonable doubt at trial or admitted by the
26 defendant.

27 `` (4) DURATION OF OFFENSE.--An offense under this subsection
28 continues until the alien is discovered within the United States by an
29 immigration officer.

30 `` (5) ATTEMPT.--Whoever attempts to commit any offense under
31 this section shall be punished in the same manner as for a completion
32 of such offense.

1 ` ` (b) *Improper Time or Place; Civil Penalties.*--Any alien who is
2 apprehended while entering, attempting to enter, or knowingly
3 crossing or attempting to cross, the border to the United States at a
4 time or place other than as designated by immigration officers shall be
5 subject to a civil penalty, in addition to any criminal or other civil
6 penalties that may be imposed under any other provision of law, in an
7 amount equal to--

8 ` ` (1) not less than \$50 and not more than \$250 for each such
9 entry, crossing, attempted entry, or attempted crossing; or

10 ` ` (2) twice the amount specified in paragraph (1) if the alien had
11 previously been subject to a civil penalty under this subsection."

12 (2) CLERICAL AMENDMENT.--The table of contents is amended by
13 striking the item relating to section 275 and inserting the following:

14 ` ` Sec..275..Illegal entry."

15 (3) EFFECTIVE DATE.--Section 275(a)(4) of the Immigration and
16 Nationality Act, as added by this Act, shall apply only to violations of
17 section 275(a)(1) committed on or after the date of the enactment of
18 this Act.

19 (c) *Perjury and False Statements.*--Any person who willfully submits
20 any materially false, fictitious, or fraudulent statement or
21 representation (including any document, attestation, or sworn affidavit
22 for that person or any person) relating to an application for any benefit
23 under the immigration laws (including for Z non-immigrant status) will
24 be subject to prosecution for perjury under section 1621 of title 18,
25 United States Code, or for making such a statement or representation
26 under section 1001 of that title.

27 (d) *Increased Penalties Relating to Firearms Offenses.*--

28 (1) PENALTIES RELATED TO REMOVAL.--Section 243 (8 U.S.C.
29 1253) is amended--

30 (A) in subsection (a)(1)--

31 (i) in the matter preceding subparagraph (A), by inserting
32 ` ` 212(a)" or after ` ` section"; and

33 (ii) in the matter following subparagraph (D)--

1 (I) by striking ``or imprisoned not more than four years" and
2 inserting ``and imprisoned for not more than 5 years"; and

3 (II) by striking `` , or both";

4 (B) in subsection (b), by striking ``not more than \$1000 or
5 imprisoned for not more than one year, or both" and inserting ``under
6 title 18, United States Code, and imprisoned for not more than 5 years
7 (or for not more than 10 years if the alien is a member of any of the
8 classes described in paragraphs (1)(E), (2), (3), and (4) of section
9 237(a))."; and

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

13 (A) in paragraph (1)--

14 (i) in subparagraph (A), by inserting `` , alien smuggling crime,"
15 after ``any crime of violence";

16 (ii) in subparagraph (A), by inserting `` , alien smuggling crime,"
17 after ``such crime of violence"; and

18 (iii) in subparagraph (D)(ii), by inserting `` , alien smuggling
19 crime," after ``crime of violence"; and

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

21 `` (6) For purposes of this subsection, the term `alien smuggling
22 crime' means any felony punishable under section 274(a), 277, or 278
23 of the Immigration and Nationality Act (8 U.S.C. 1324(a), 1327, and
24 1328).".

25 (3) INADMISSIBILITY FOR FIREARMS OFFENSES.--Section
26 212(a)(2)(A) (8 U.S.C. 1182(a)(2)(A)), as amended by sections
27 204(e) and 209(a)(3), is amended--

28 (A) in clause (i), by inserting after subclause (IV) the following:

29 `` (V) a crime involving the purchasing, selling, offering for sale,
30 exchanging, using, owning, possessing, or carrying, or of attempting
31 or conspiring to purchase, sell, offer for sale, exchange, use, own,
32 possess, or carry, any weapon, part, or accessory which is a firearm or

1 destructive device (as defined in section 921(a) of title 18, United
2 States Code), provided the alien was sentenced to at least 1 year for
3 the offense,"; and

4 (B) in clause (ii), by striking "Clause (i)(I)" and inserting
5 "Subclauses (I), (IV), and (V) of clause (i)".

6 **SEC. 206. ILLEGAL ENTRY.**

7 (a) In General- Section 275 (8 U.S.C. 1325) is amended to read
8 as follows:

9 **SEC. 275. ILLEGAL ENTRY.**

10 (a) In General-

11 (1) CRIMINAL OFFENSES- An alien shall be subject to the
12 penalties set forth in paragraph (2) if the alien--

13 (A) knowingly enters or crosses the border into the
14 United States at any time or place other than as
15 designated by the Secretary of Homeland Security;

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

20 (C) knowingly enters or crosses the border to the
21 United States by means of a knowingly false or
22 misleading representation or the knowing
23 concealment of a material fact (including such
24 representation or concealment in the context of
25 arrival, reporting, entry, or clearance requirements
26 of the customs laws, immigration laws, agriculture
27 laws, or shipping laws).

28 (2) CRIMINAL PENALTIES- Any alien who violates any
29 provision under paragraph (1)--

30 (A) shall, for the first violation, be fined under title
31 18, United States Code, imprisoned not more than 6
32 months, or both;

33 (B) shall, for a second or subsequent violation, or
34 following an order of voluntary departure, be fined
35 under such title, imprisoned not more than 2 years,
36 or both;

37 (C) if the violation occurred after the alien had been
38 convicted of 3 or more misdemeanors or for a felony,

1 shall be fined under such title, imprisoned not more
2 than 10 years, or both;

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

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

13 ` (3) PRIOR CONVICTIONS- The prior convictions described
14 in subparagraphs (C) through (E) of paragraph (2) are
15 elements of the offenses described in that paragraph and
16 the penalties in such subparagraphs shall apply only in
17 cases in which the conviction or convictions that form the
18 basis for the additional penalty are--

19 ` (A) alleged in the indictment or information; and

20 ` (B) proven beyond a reasonable doubt at trial or
21 admitted by the defendant.

22 ` (4) DURATION OF OFFENSE- An offense under this
23 subsection continues until the alien is discovered within the
24 United States by an immigration officer.

25 ` (5) ATTEMPT- Whoever attempts to commit any offense
26 under this section shall be punished in the same manner
27 as for a completion of such offense.

28 ` (b) Improper Time or Place; Civil Penalties-Any alien who is
29 apprehended while entering, attempting to enter, or knowingly
30 crossing or attempting to cross the border to the United States
31 at a time or place other than as designated by immigration
32 officers shall be subject to a civil penalty, in addition to any
33 criminal or other civil penalties that may be imposed under any
34 other provision of law, in an amount equal to--

35 ` (1) not less than \$50 or more than \$250 for each such
36 entry, crossing, attempted entry, or attempted crossing; or

37 ` (2) twice the amount specified in paragraph (1) if the
38 alien had previously been subject to a civil penalty under
39 this subsection.

40 (b) Clerical Amendment- The table of contents is amended by
41 striking the item relating to section 275 and inserting the
42 following:

43 ` Sec. 275. Illegal entry.'.

1 (c) Effective Date – Subsection (a)(4) of section 275 of the
2 Immigration and Nationality Act, as created by this Act, shall
3 apply only to violations of subsection (a)(1) of Section 275
4 committed on or after the date of enactment of this Act.

5 **SEC. 207. ILLEGAL REENTRY.**

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

7 **SEC. 276. REENTRY OF REMOVED ALIEN.**

8 Strike subsections (a) through (c) of section 276 of the Immigration
9 and Nationality Act, and insert the following:

10 (a) *Reentry After Removal.*--Any alien who has been denied
11 admission, excluded, deported, or removed, or who has departed the
12 United States while an order of exclusion, deportation, or removal is
13 outstanding, and subsequently enters, attempts to enter, crosses the
14 border to, attempts to cross the border to, or is at any time found in
15 the United States, shall be fined under title 18, United States Code,
16 and imprisoned not less than 60 days and not more than 2 years.

17 (b) *Reentry of Criminal Offenders.*--Notwithstanding the penalty
18 provided in subsection (a), if an alien described in that subsection--

19 (1) was convicted for 3 or more misdemeanors or a felony before
20 such removal or departure, the alien shall be fined under title 18,
21 United States Code, and imprisoned not less than 1 year and not more
22 than 10 years, or both;

23 (2) was convicted for a felony before such removal or departure
24 for which the alien was sentenced to a term of imprisonment of not
25 less than 30 months, the alien shall be fined under such title, and
26 imprisoned not less than 2 years and not more than 15 years, or both;

27 (3) was convicted for a felony before such removal or departure
28 for which the alien was sentenced to a term of imprisonment of not
29 less than 60 months, the alien shall be fined under such title, and
30 imprisoned not less than 4 years and not more than 20 years, or both;

31 (4) was convicted for 3 felonies before such removal or
32 departure, the alien shall be fined under such title, and imprisoned not
33 less than 4 years and not more than 20 years, or both; or

1 (5) was convicted, before such removal or departure, for murder,
2 rape, kidnaping, or a felony offense described in chapter 77 (relating
3 to peonage and slavery) or 113B (relating to terrorism) of such title,
4 the alien shall be fined under such title, and imprisoned not less than 5
5 years and not more than 20 years, or both.

6 (c) *Reentry After Repeated Removal.*--Any alien who has been
7 denied admission, excluded, deported, or removed 3 or more times
8 and thereafter enters, attempts to enter, crosses the border to,
9 attempts to cross the border to, or is at any time found in the United
10 States, shall be fined under title 18, United States Code, and
11 imprisoned not less than 2 years and not more than 10 years, or
12 both."

13 (d) Proof of Prior Convictions- The prior convictions described in
14 subsection (b) are elements of the crimes described in that
15 subsection, and the penalties in that subsection shall apply only
16 in cases in which the conviction or convictions that form the
17 basis for the additional penalty are--

- 18 (1) alleged in the indictment or information; and
- 19 (2) proven beyond a reasonable doubt at trial or admitted
20 by the defendant.

21 (e) Affirmative Defenses- It shall be an affirmative defense to a
22 violation of this section that--

23 (1) prior to the alleged violation, the alien had sought
24 and received the express consent of the Secretary of
25 Homeland Security to reapply for admission into the United
26 States;

27 (2) with respect to an alien previously denied admission
28 and removed, the alien--

29 (A) was not required to obtain such advance
30 consent under the Immigration and Nationality Act or
31 any prior Act; and

32 (B) had complied with all other laws and regulations
33 governing the alien's admission into the United
34 States; or

35 (3) at the time of the prior exclusion, deportation,
36 removal, or denial of admission alleged in the violation, the
37 alien--

38 (A) was under the age of eighteen, and

39 (B) had not been convicted of a crime or adjudicated
40 a delinquent minor by a court of the United States,
41 or a court of a state or territory, for conduct that
42 would constitute a felony if committed by an adult.

1
2 ` (f) Limitation on Collateral Attack on Underlying Removal
3 Order- In a criminal proceeding under this section, an alien may
4 not challenge the validity of any prior removal order concerning
5 the alien unless the alien demonstrates by clear and convincing
6 evidence that--

7 ` (1) the alien exhausted all administrative remedies that
8 may have been available to seek relief against the order;

9 ` (2) the removal proceedings at which the order was
10 issued improperly deprived the alien of the opportunity for
11 judicial review; and

12 ` (3) the entry of the order was fundamentally unfair.

13 ` (g) Reentry of Alien Removed Prior to Completion of Term of
14 Imprisonment- Any alien removed pursuant to section 241(a)(4)
15 who enters, attempts to enter, crosses the border to, attempts
16 to cross the border to, or is at any time found in, the United
17 States shall be incarcerated for the remainder of the sentence of
18 imprisonment which was pending at the time of deportation
19 without any reduction for parole or supervised release unless the
20 alien affirmatively demonstrates that the Secretary of Homeland
21 Security has expressly consented to the alien's reentry. Such
22 alien shall be subject to such other penalties relating to the
23 reentry of removed aliens as may be available under this section
24 or any other provision of law.

25 ` (h) Limitation- It is not aiding and abetting a violation of this
26 section for an individual to provide an alien with emergency
27 humanitarian assistance, including emergency medical care and
28 food, or to transport the alien to a location where such
29 assistance can be rendered without compensation or the
30 expectation of compensation.

31 ` (i) Definitions- In this section:

32 ` (1) FELONY- Term `felony' means any criminal offense
33 punishable by a term of imprisonment of more than 1 year
34 under the laws of the United States, any State, or a
35 foreign government.

36 ` (2) MISDEMEANOR- The term `misdemeanor' means any
37 criminal offense punishable by a term of imprisonment of
38 not more than 1 year under the applicable laws of the
39 United States, any State, or a foreign government.

40 ` (3) REMOVAL- The term `removal' includes any denial of
41 admission, exclusion, deportation, or removal, or any
42 agreement by which an alien stipulates or agrees to
43 exclusion, deportation, or removal.

1 ` (4) STATE- The term `State' means a State of the United
2 States, the District of Columbia, and any commonwealth,
3 territory, or possession of the United States.'.

4 **SEC. 208. REFORM OF PASSPORT, VISA, AND IMMIGRATION**
5 **FRAUD OFFENSES.**

6 (a) Passport, Visa, and Immigration Fraud-

7 (1) IN GENERAL- Chapter 75 of title 18, United States Code,
8 is amended to read as follows:

9 ` **CHAPTER 75--PASSPORT, VISA, AND IMMIGRATION FRAUD**

10 ` Sec.

11 ` 1541. Trafficking in passports.

12 ` 1542. False statement in an application for a passport.

13 ` 1543. Forgery and unlawful production of a passport.

14 ` 1544. Misuse of a passport.

15 ` 1545. Schemes to defraud aliens.

16 ` 1546. Immigration and visa fraud.

17 ` 1547. Marriage fraud.

18 ` 1548. Attempts and conspiracies.

19 ` 1549. Alternative penalties for certain offenses.

20 ` 1550. Seizure and forfeiture.

21 ` 1551. Additional jurisdiction.

22 ` 1552. Definitions.

23 ` 1553. Authorized law enforcement activities.`

24
25 ` **Sec. 1541. Trafficking in passports**

26 ` (a) Multiple Passports.- Any person who, during any period of 3
27 years or less, knowingly--

28 ` (1) and without lawful authority produces, issues, or
29 transfers 10 or more passports;

30 ` (2) forges, counterfeits, alters, or falsely makes 10 or more
31 passports;

32 ` (3) secures, possesses, uses, receives, buys, sells, or
33 distributes 10 or more passports, knowing the passports to be
34 forged, counterfeited, altered, falsely made, stolen, procured
35 by fraud, or produced or issued without lawful authority; or

1 ` (4) completes, mails, prepares, presents, signs, or submits
2 10 or more applications for a United States passport, knowing
3 the applications to contain any false statement or
4 representation,

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

7 ` (b) Passport Materials- Any person who knowingly and without
8 lawful authority produces, buys, sells, possesses, or uses any
9 official material (or counterfeit of any official material) used to
10 make a passport, including any distinctive paper, seal, hologram,
11 image, text, symbol, stamp, engraving, or plate, shall be fined
12 under this title, imprisoned not more than 20 years, or both.

13
14 ` **Sec. 1542. False statement in an application for a passport.**

15 (a) In General.- Any person who knowingly makes any false statement
16 or representation in an application for a United States passport, or
17 mails, prepares, presents, or signs an application for a United States
18 passport knowing the application to contain any false statement or
19 representation, shall be fined under this title, imprisoned not more
20 than 15 years, or both.

21
22 (b) Venue.-

23 (1) An offense under subsection (a) may be prosecuted in any
24 district,

25 (A) in which the false statement or representation was
26 made or the application for a United States passport was
27 prepared or signed, or

28 (B) in which or to which the application was mailed or
29 presented.

30 (2) An offense under subsection (a) involving an application
31 prepared and adjudicated outside the United States may be
32 prosecuted in the district in which the resultant passport was or
33 would have been produced.

34
35 (c) Savings Clause.-Nothing in this section may be construed to limit
36 the venue otherwise available under sections 3237 and 3238 of this
37 title.

38
39 ` **Sec. 1543. Forgery and unlawful production of a passport**

40 ` (a) Forgery- Any person who--

41 ` (1) knowingly forges, counterfeits, alters, or falsely makes
42 any passport; or

1 ` (2) knowingly transfers any passport knowing it to be
2 forged, counterfeited, altered, falsely made, stolen, or to have
3 been produced or issued without lawful authority,
4 shall be fined under this title, imprisoned not more than 15 years,
5 or both.

6 ` (b) Unlawful Production- Any person who knowingly and without
7 lawful authority--

8 ` (1) produces, issues, authorizes, or verifies a passport in
9 violation of the laws, regulations, or rules governing the
10 issuance of the passport;

11 ` (2) produces, issues, authorizes, or verifies a United States
12 passport for or to any person, knowing or in reckless
13 disregard of the fact that such person is not entitled to
14 receive a passport; or

15 ` (3) transfers or furnishes a passport to any person for use
16 by any person other than the person for whom the passport
17 was issued or designed,

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

20
21 ` **Sec. 1544. Misuse of a passport**

22 Any person who knowingly--

23 ` (1) uses any passport issued or designed for the use of
24 another;

25 ` (2) uses any passport in violation of the conditions or
26 restrictions therein contained, or in violation of the laws,
27 regulations, or rules governing the issuance and use of the
28 passport;

29 ` (3) secures, possesses, uses, receives, buys, sells, or
30 distributes any passport knowing it to be forged,
31 counterfeited, altered, falsely made, procured by fraud, or
32 produced or issued without lawful authority; or

33 ` (4) violates the terms and conditions of any safe conduct
34 duly obtained and issued under the authority of the United
35 States,

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

1 **Sec. 1545. Schemes to defraud aliens**

2 (a) In General- Any person who knowingly executes a scheme or
3 artifice, in connection with any matter that is authorized by or
4 arises under Federal immigration laws or any matter the offender
5 claims or represents is authorized by or arises under Federal
6 immigration laws, to--

7 (1) defraud any person, or

8 (2) obtain or receive money or anything else of value from
9 any person, by means of false or fraudulent pretenses,
10 representations, or promises,

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

13 (b) Misrepresentation- Any person who knowingly and falsely
14 represents that such person is an attorney or accredited
15 representative (as that term is defined in section 1292.1 of title 8,
16 Code of Federal Regulations (or any successor regulation to such
17 section)) in any matter arising under Federal immigration laws shall
18 be fined under this title, imprisoned not more than 15 years, or
19 both.

20 **Sec. 1546. Immigration and visa fraud**

21 (a) In General- Any person who knowingly--

22 (1) uses any immigration document issued or designed for
23 the use of another;

24 (2) forges, counterfeits, alters, or falsely makes any
25 immigration document;

26 (3) completes, mails, prepares, presents, signs, or submits
27 any immigration document knowing it to contain any
28 materially false statement or representation;

29 (4) secures, possesses, uses, transfers, receives, buys, sells,
30 or distributes any immigration document knowing it to be
31 forged, counterfeited, altered, falsely made, stolen, procured
32 by fraud, or produced or issued without lawful authority;

33 (5) adopts or uses a false or fictitious name to evade or to
34 attempt to evade the immigration laws; or

35 (6) transfers or furnishes, without lawful authority, an
36 immigration document to another person for use by a person
37 other than the person for whom the immigration document
38 was issued or designed,

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

3 ` (b) Any person who, during any period of 3 years or less,
4 knowingly --

5 ` (1) and without lawful authority produces, issues, or
6 transfers 10 or more immigration documents;

7 ` (2) forges, counterfeits, alters, or falsely makes 10 or more
8 immigration documents;

9 ` (3) secures, possesses, uses, buys, sells, or distributes 10 or
10 more immigration documents, knowing the immigration
11 documents to be forged, counterfeited, altered, stolen, falsely
12 made, procured by fraud, or produced or issued without
13 lawful authority; or

14 ` (4) completes, mails, prepares, presents, signs, or submits
15 10 or more immigration documents knowing the documents
16 to contain any materially false statement or representation,

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

19 ` (c) Immigration Document Materials.- Any person who knowingly
20 and without lawful authority produces, buys, sells, or possesses any
21 official material (or counterfeit of any official material) used to
22 make an immigration document, including any distinctive paper,
23 seal, hologram, image, text, symbol, stamp, engraving, or plate,
24 shall be fined under this title, imprisoned not more than 20 years,
25 or both.

26 `(d) Employment Documents.—Whoever uses—

27 `(1) an identification document, knowing (or having reason to
28 know) that the document was not issued lawfully for the use of the
29 possessor;

30 `(2) an identification document knowing (or having reason to
31 know) that the document is false; or

32 `(3) a false attestation,

33 for the purpose of satisfying a requirement of section 274A(b) of
34 the Immigration and Nationality Act (8 U.S.C. 1324a(b)), shall be
35 fined under this title, imprisoned not more than 5 years, or both.”.

36
37 **` Sec. 1547. Marriage fraud**

38 ` (a) Evasion or Misrepresentation.- Any person who--

- 1 ` (1) knowingly enters into a marriage for the purpose of
2 evading any provision of the immigration laws; or
3 ` (2) knowingly misrepresents the existence or circumstances
4 of a marriage--
5 ` (A) in an application or document authorized by the
6 immigration laws; or
7 ` (B) during any immigration proceeding conducted by
8 an administrative adjudicator (including an immigration
9 officer or examiner, a consular officer, an immigration
10 judge, or a member of the Board of Immigration
11 Appeals),

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

14 ` (b) Multiple Marriages.- Any person who--

- 15 ` (1) knowingly enters into 2 or more marriages for the
16 purpose of evading any immigration law; or
17 ` (2) knowingly arranges, supports, or facilitates 2 or more
18 marriages designed or intended to evade any immigration
19 law,

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

22 ` (c) Commercial Enterprise- Any person who knowingly establishes
23 a commercial enterprise for the purpose of evading any provision of
24 the immigration laws shall be fined under this title, imprisoned for
25 not more than 10 years, or both.

26 ` (d) Duration of Offense.-

- 27 ` (1) IN GENERAL- An offense under subsection (a) or (b)
28 continues until the fraudulent nature of the marriage or
29 marriages is discovered by an immigration officer.
30 ` (2) COMMERCIAL ENTERPRISE- An offense under subsection
31 (c) continues until the fraudulent nature of the commercial
32 enterprise is discovered by an immigration officer or other law
33 enforcement officer.

34
35 ` **Sec. 1548. Attempts and conspiracies**

36 ` Any person who attempts or conspires to violate any section of
37 this chapter shall be punished in the same manner as a person who
38 completed a violation of that section.

1 **Sec. 1549. Alternative penalties for certain offenses**

2 Notwithstanding any other provision of this title, the maximum term of
3 imprisonment that may be imposed for an offense under this chapter—

4 (1) if committed to facilitate a drug trafficking crime (as defined
5 in 929(a)) is 20 years; and

6 (2) if committed to facilitate an act of international terrorism (as
7 defined in section 2331) is 25 years.

8 **Sec. 1550. Seizure and forfeiture**

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

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

22 **Sec. 1551. Additional jurisdiction**

23 (a) In General.- Any person who commits an offense under this
24 chapter within the special maritime and territorial jurisdiction of the
25 United States shall be punished as provided under this chapter.

26 (b) Extraterritorial Jurisdiction.- Any person who commits an
27 offense under this chapter outside the United States shall be
28 punished as provided under this chapter if--

29 (1) the offense involves a United States passport or
30 immigration document (or any document purporting to be
31 such a document) or any matter, right, or benefit arising
32 under or authorized by Federal immigration laws;

33 (2) the offense is in or affects foreign commerce;

34 (3) the offense affects, jeopardizes, or poses a significant
35 risk to the lawful administration of Federal immigration laws,
36 or the national security of the United States;

37 (4) the offense is committed to facilitate an act of
38 international terrorism (as defined in section 2331) or a drug
39 trafficking crime (as defined in section 929(a)(2)) that affects
40 or would affect the national security of the United States;

1 ` (5) the offender is a national of the United States or an alien
2 lawfully admitted for permanent residence in the United
3 States (as those terms are defined in section 101(a) of the
4 Immigration and Nationality Act (8 U.S.C. 1101(a))); or

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

7 **` Sec. 1552. Definitions**

8 ` As used in this chapter:

9 ` (1) The term `falsely make' means to prepare or complete
10 an immigration document with knowledge or in reckless
11 disregard of the fact that the document--

12 ` (A) contains a statement or representation that is
13 false, fictitious, or fraudulent;

14 ` (B) has no basis in fact or law; or

15 ` (C) otherwise fails to state a fact which is material to
16 the purpose for which the document was created,
17 designed, or submitted.

18 ` (2) The term `application for a United States passport'
19 includes any document, photograph, or other piece of
20 evidence attached to or submitted in support of the
21 application.

22 ` (3) The term `false statement or representation' includes a
23 personation or an omission.

24 ` (4) The term `immigration document'--

25 ` (A) means any application, petition, affidavit,
26 declaration, attestation, form, visa, identification card,
27 alien registration document, employment authorization
28 document, border crossing card, certificate, permit,
29 order, license, stamp, authorization, grant of authority,
30 or other official document, arising under or authorized
31 by the immigration laws of the United States; and

32 ` (B) includes any document, photograph, or other piece
33 of evidence attached to or submitted in support of an
34 immigration document.

35 ` (5) The term `immigration laws' includes--

36 ` (A) the laws described in section 101(a)(17) of the
37 Immigration and Nationality Act (8 U.S.C.
38 1101(a)(17));

1 ` (B) the laws relating to the issuance and use of
2 passports; and

3 ` (C) the regulations prescribed under the authority of
4 any law described in paragraphs (A) and (B).

5 ` (6) The term `immigration proceeding' includes an
6 adjudication, interview, hearing, or review.

7 ` (7) A person does not exercise `lawful authority' if the
8 person abuses or improperly exercises lawful authority the
9 person otherwise holds.

10 ` (8) The term `passport' means—

11 (A) a travel document attesting to the identity and
12 nationality of the bearer that is issued under the
13 authority of the Secretary of State, a foreign
14 government, or an international organization; or

15 (B) any instrument purporting to be a document
16 described in subparagraph (A).

17 ` (9) The term `to present' means to offer or submit for official
18 processing, examination, or adjudication. Any such
19 presentation continues until the official processing,
20 examination, or adjudication is complete.

21 ` (10) The term `proceeds' includes any property or interest in
22 property obtained or retained as a consequence of an act or
23 omission in violation of this section.

24 ` (11) The term `produce' means to make, prepare,
25 assemble, issue, print, authenticate, or alter.

26 ` (12) The term `State' means a State of the United States,
27 the District of Columbia, or any commonwealth, territory, or
28 possession of the United States.

29 ` (13) The `use' of a passport or an immigration document
30 referred to in section 1541(a), section 1543(b), section 1544,
31 section 1546(a), and section 1546(b) of this chapter includes
32 any officially authorized use; use to travel; use to
33 demonstrate identity, residence, nationality, citizenship, or
34 immigration status; use to seek or maintain employment; or
35 use in any matter within the jurisdiction of the Federal
36 government or of a State government.'

1 **Sec. 1553. Authorized law enforcement activities**

2 Nothing in this chapter shall prohibit any lawfully authorized
3 investigative, protective, or intelligence activity of a law enforcement
4 agency of the United States, a State, or a political subdivision of a
5 State, or an intelligence agency of the United States, or any activity
6 authorized under title V of the Organized Crime Control Act of 1970
7 (84 Stat. 933).

8 (b) Protection For Legitimate Refugees And Asylum Seekers—

9 (1) Prosecution Guidelines.— The Attorney General, in
10 consultation with the Secretary of Homeland Security, shall
11 develop binding prosecution guidelines for federal prosecutors to
12 ensure that any prosecution of an alien seeking entry into the
13 United States by fraud is consistent with the obligations of the
14 United States under Article 31(1) of the Convention Relating to
15 the Status of Refugees, done at Geneva July 28, 1951 (as made
16 applicable by the Protocol Relating to the Status of Refugees,
17 done at New York January 31, 1967 (19 UST 6223)).

18 (2) No Private Right of Action.— The guidelines required by
19 subparagraph (1), and any internal office procedures adopted
20 pursuant thereto, are intended solely for the guidance of
21 attorneys for the United States. This section, the guidelines
22 required by subsection (a), and the process for determining such
23 guidelines are not intended to, do not, and may not be relied
24 upon to create any right or benefit, substantive or procedural,
25 enforceable at law by any party in any administrative, civil, or
26 criminal matter.

27 **SEC. 209. INADMISSIBILITY AND REMOVAL FOR PASSPORT**
28 **AND IMMIGRATION FRAUD OFFENSES.**

29 (a) Inadmissibility- Section 212(a)(2)(A)(i) (8 U.S.C.
30 1182(a)(2)(A)(i)) is amended--

31 (1) in subclause (I), by striking ` , or' at the end and
32 inserting a semicolon;

33 (2) in subclause (II), by striking the comma at the end and
34 inserting ` ; or'; and

35 (3) by inserting after subclause (II) the following:

36 (III) a violation of (or a conspiracy or
37 attempt to violate) section 1541, 1545,
38 subsection (b) of section 1546, or
39 subsection (b) of section 1547 of title 18,
40 United States Code,'.

1 (b) Removal- Section 237(a)(3)(B)(iii) (8 U.S.C.
2 1227(a)(3)(B)(iii)) is amended to read as follows:
3 (iii) a violation of (or a conspiracy or attempt
4 to violate) section 1541, 1545, 1546, or
5 subsection (b) of section 1547 of title 18,
6 United States Code,'.

7 (c) Effective Date- The amendments made by subsections (a)
8 and (b) shall apply to proceedings pending on or after the date
9 of the enactment of this Act, with respect to conduct occurring
10 on or after that date.

11 **SEC. 210. INCARCERATION OF CRIMINAL ALIENS.**

12 (a) Institutional Removal Program-

13 (1) CONTINUATION- The Secretary shall continue to
14 operate the Institutional Removal Program (referred to in
15 this section as the 'Program') or shall develop and
16 implement another program to--

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

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

21 (C) remove such aliens from the United States after
22 the completion of their sentences.

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

25 (b) Technology Usage- Technology, such as videoconferencing,
26 shall be used to the maximum extent practicable to make the
27 Program available in remote locations. Mobile access to Federal
28 databases of aliens, such as IDENT, and live scan technology
29 shall be used to the maximum extent practicable to make these
30 resources available to State and local law enforcement agencies
31 in remote locations.

32 (c) Report to Congress- Not later than 6 months after the date of
33 the enactment of this Act, and annually thereafter, the Secretary
34 shall submit a report to Congress on the participation of States
35 in the Program and in any other program authorized under
36 subsection (a).

37 (d) Authorization of Appropriations- There are authorized to be
38 appropriated such sums as may be necessary in each of the
39 fiscal years 2008 through 2012 to carry out the Program.

40 **SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.**

1 (a) In General- Section 240B (8 U.S.C. 1229c) is amended--
2 (1) in subsection (a)--

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

4 ` (1) INSTEAD OF REMOVAL PROCEEDINGS- If an alien is
5 not described in paragraph (2)(A)(iii) or (4) of section
6 237(a), the Secretary of Homeland Security may permit
7 the alien to voluntarily depart the United States at the
8 alien's own expense under this subsection instead of being
9 subject to proceedings under section 240.';

10 (B) by striking paragraph (3);

11 (C) by redesignating paragraph (2) as paragraph
12 (3);

13 (D) by adding after paragraph (1) the following:

14 ` (2) BEFORE THE CONCLUSION OF REMOVAL
15 PROCEEDINGS- If an alien is not described in paragraph
16 (2)(A)(iii) or (4) of section 237(a), the Attorney General
17 may permit the alien to voluntarily depart the United
18 States at the alien's own expense under this subsection
19 after the initiation of removal proceedings under section
20 240 and before the conclusion of such proceedings before
21 an immigration judge.';

22 (E) in paragraph (3), as redesignated--

23 (i) by amending subparagraph (A) to read as
24 follows:

25 ` (A) INSTEAD OF REMOVAL- Subject to
26 subparagraph (C), permission to voluntarily depart
27 under paragraph (1) shall not be valid for any period
28 in excess of 120 days. The Secretary may require an
29 alien permitted to voluntarily depart under
30 paragraph (1) to post a voluntary departure bond, to
31 be surrendered upon proof that the alien has
32 departed the United States within the time
33 specified.';

34 (ii) by redesignating subparagraphs (B), (C),
35 and (D) as paragraphs (C), (D), and (E),
36 respectively;

37 (iii) by adding after subparagraph (A) the
38 following:

39 ` (B) BEFORE THE CONCLUSION OF REMOVAL
40 PROCEEDINGS- Permission to voluntarily depart
41 under paragraph (2) shall not be valid for any period
42 in excess of 60 days, and may be granted only after
43 a finding that the alien has the means to depart the
44 United States and intends to do so. An alien

1 permitted to voluntarily depart under paragraph (2)
2 shall post a voluntary departure bond, in an amount
3 necessary to ensure that the alien will depart, to be
4 surrendered upon proof that the alien has departed
5 the United States within the time specified. An
6 immigration judge may waive the requirement to
7 post a voluntary departure bond in individual cases
8 upon a finding that the alien has presented
9 compelling evidence that the posting of a bond will
10 pose a serious financial hardship and the alien has
11 presented credible evidence that such a bond is
12 unnecessary to guarantee timely departure.';

13 (iv) in subparagraph (C), as redesignated, by
14 striking ` subparagraphs (C) and(D)(ii)' and
15 inserting ` subparagraphs (D) and (E)(ii)';

16 (v) in subparagraph (D), as redesignated, by
17 striking ` subparagraph (B)' each place that
18 term appears and inserting ` subparagraph
19 (C)'; and

20 (vi) in subparagraph (E), as redesignated, by
21 striking ` subparagraph (B)' each place that
22 term appears and inserting ` subparagraph
23 (C)'; and

24 (F) in paragraph (4), by striking ` paragraph (1)' and
25 inserting ` paragraphs (1) and (2)';

26 (2) in subsection (b)(2), by striking ` a period exceeding
27 60 days' and inserting ` any period in excess of 45 days';

28 (3) by amending subsection (c) to read as follows:

29 `(c) Conditions on Voluntary Departure-

30 `(1) VOLUNTARY DEPARTURE AGREEMENT- Voluntary
31 departure may only be granted as part of an affirmative
32 agreement by the alien.

33 `(2) CONCESSIONS BY THE SECRETARY- In connection
34 with the alien's agreement to depart voluntarily under
35 paragraph (1), the Secretary of Homeland Security may
36 agree to a reduction in the period of inadmissibility under
37 subparagraph (A) or (B)(i) of section 212(a)(9).

38 `(3) ADVISALS- Agreements relating to voluntary
39 departure granted during removal proceedings under
40 section 240, or at the conclusion of such proceedings, shall
41 be presented on the record before the immigration judge.
42 The immigration judge shall advise the alien of the
43 consequences of a voluntary departure agreement before
44 accepting such agreement.

1 ` (4) FAILURE TO COMPLY WITH AGREEMENT- If an alien
2 agrees to voluntary departure under this section and fails
3 to depart the United States within the time allowed for
4 voluntary departure or fails to comply with any other terms
5 of the agreement (including failure to timely post any
6 required bond), the alien is--

7 ` (A) ineligible for the benefits of the agreement;

8 ` (B) subject to the penalties described in subsection
9 (d); and

10 ` (C) subject to an alternate order of removal if
11 voluntary departure was granted under subsection
12 (a)(2) or (b);

13 (4) by amending subsection (d) to read as follows:

14 ` (d) Penalties for Failure To Depart- If an alien is permitted to
15 voluntarily depart under this section and fails to voluntarily
16 depart from the United States within the time period specified or
17 otherwise violates the terms of a voluntary departure
18 agreement, the alien will be subject to the following penalties:

19 ` (1) CIVIL PENALTY- The alien shall be liable for a civil
20 penalty of \$3,000. The order allowing voluntary departure
21 shall specify the amount of the penalty, which shall be
22 acknowledged by the alien on the record. If the Secretary
23 thereafter establishes that the alien failed to depart
24 voluntarily within the time allowed, no further procedure
25 will be necessary to establish the amount of the penalty,
26 and the Secretary may collect the civil penalty at any time
27 thereafter and by whatever means provided by law. An
28 alien will be ineligible for any benefits under this chapter
29 until this civil penalty is paid.

30 ` (2) INELIGIBILITY FOR RELIEF- The alien shall be
31 ineligible during the time the alien remains in the United
32 States and for a period of 10 years after the alien's
33 departure for any further relief under this section and
34 sections 240A, 245, 248, and 249. The order permitting
35 the alien to depart voluntarily shall inform the alien of the
36 penalties under this subsection.

37 ` (3) REOPENING- The alien shall be ineligible to reopen
38 the final order of removal that took effect upon the alien's
39 failure to depart, or upon the alien's other violations of the
40 conditions for voluntary departure, during the period
41 described in paragraph (2). This paragraph does not
42 preclude a motion to reopen to seek withholding of
43 removal under section 241(b)(3) or protection against
44 torture, if the motion--

1 (A) presents material evidence of changed country
2 conditions arising after the date of the order granting
3 voluntary departure in the country to which the alien
4 would be removed; and

5 (B) makes a sufficient showing to the satisfaction of
6 the Attorney General that the alien is otherwise
7 eligible for such protection.'; and

8 (5) by amending subsection (e) to read as follows:

9 (e) Eligibility-

10 (1) PRIOR GRANT OF VOLUNTARY DEPARTURE- An alien
11 shall not be permitted to voluntarily depart under this
12 section if the Secretary of Homeland Security or the
13 Attorney General previously permitted the alien to depart
14 voluntarily.

15 (2) RULEMAKING- The Secretary may promulgate
16 regulations to limit eligibility or impose additional
17 conditions for voluntary departure under subsection (a)(1)
18 for any class of aliens. The Secretary or Attorney General
19 may by regulation limit eligibility or impose additional
20 conditions for voluntary departure under subsections
21 (a)(2) or (b) of this section for any class or classes of
22 aliens.'; and

23 (6) in subsection (f), by adding at the end the following:

24 'Notwithstanding section 242(a)(2)(D) of this Act, sections
25 1361, 1651, and 2241 of title 28, United States Code, any
26 other habeas corpus provision, and any other provision of
27 law (statutory or nonstatutory), no court shall have
28 jurisdiction to affect, reinstate, enjoin, delay, stay, or toll
29 the period allowed for voluntary departure under this
30 section.'

31 (b) Rulemaking- The Secretary shall promulgate regulations to
32 provide for the imposition and collection of penalties for failure
33 to depart under section 240B(d) of the Immigration and
34 Nationality Act (8 U.S.C. 1229c(d)).

35 (c) Effective Dates-

36 (1) IN GENERAL- Except as provided in paragraph (2), the
37 amendments made by this section shall apply with respect
38 to all orders granting voluntary departure under section
39 240B of the Immigration and Nationality Act (8 U.S.C.
40 1229c) made on or after the date that is 180 days after
41 the enactment of this Act.

42 (2) EXCEPTION- The amendment made by subsection
43 (a)(6) shall take effect on the date of the enactment of this

1 Act and shall apply with respect to any petition for review
2 which is filed on or after such date.

3 **SEC. 212. DETERRING ALIENS ORDERED REMOVED FROM**
4 **REMAINING IN THE UNITED STATES UNLAWFULLY.**

5 (a) Inadmissible Aliens- Section 212(a)(9)(A) (8 U.S.C.
6 1182(a)(9)(A)) is amended--

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

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

17 (b) Bar on Discretionary Relief- Section 274D (8 U.S.C. 1324d) is
18 amended--

19 (1) in subsection (a), by striking `Commissioner' and
20 inserting `Secretary of Homeland Security'; and

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

22 `(c) Ineligibility for Relief-

23 `(1) IN GENERAL- Unless a timely motion to reconsider
24 under section 240(c)(6) or a timely motion to reopen
25 under section 240(c)(7) is granted, an alien described in
26 subsection (a) shall be ineligible for any discretionary relief
27 from removal (including cancellation of removal and
28 adjustment of status) during the time the alien remains in
29 the United States and for a period of 10 years after the
30 alien's departure from the United States.

31 `(2) SAVINGS PROVISION- Nothing in paragraph (1) shall
32 preclude a motion to reopen to seek withholding of
33 removal under section 241(b)(3) or protection against
34 torture, if the motion--

35 `(A) presents material evidence of changed country
36 conditions arising after the date of the final order of
37 removal in the country to which the alien would be
38 removed; and

39 `(B) makes a sufficient showing to the satisfaction of
40 the Attorney General that the alien is otherwise
41 eligible for such protection.'.

1 (c) Effective Dates- The amendments made by this section shall
2 take effect on the date of the enactment of this Act with respect
3 to aliens who are subject to a final order of removal entered on
4 or after such date.

5 **SEC. 213. PROHIBITION OF THE SALE OF FIREARMS TO, OR THE**
6 **POSSESSION OF FIREARMS BY CERTAIN ALIENS.**

7 Section 922 of title 18, United States Code, is amended--

8 (a) in subsection (d)(5)--

9 in subparagraph (B), by striking `(y)(2)' and all that
10 follows and inserting `(y), is in the United States not
11 as an alien lawfully admitted for permanent
12 residence';

13 (b) in subsection (g)(5)--

14 in subparagraph (B), by striking `(y)(2)' and all that
15 follows and inserting `(y), is in the United States not
16 as an alien lawfully admitted for permanent
17 residence'; and

18 (c) in subsection (y)--

19 (1) in the header, by striking `Admitted Under
20 Nonimmigrant Visas' and inserting `not Lawfully
21 Admitted for Permanent Residence';

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

24 `(B) the term `lawfully admitted for permanent
25 residence' has the same meaning as in section
26 101(a)(20) of the Immigration and Nationality Act (8
27 U.S.C. 1101(a)(20)).';

28 (C) in paragraph (2), by striking `under a
29 nonimmigrant visa' and inserting `but not lawfully
30 admitted for permanent residence'; and

31 (D) in paragraph (3)(A), by striking `admitted to the
32 United States under a nonimmigrant visa' and
33 inserting `lawfully admitted to the United States but
34 not as an alien lawfully admitted for permanent
35 residence'.

36 **SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN**
37 **IMMIGRATION, PASSPORT, AND NATURALIZATION OFFENSES.**

38 (a) In General- Section 3291 of title 18, United States Code, is
39 amended to read as follows:

1 **`Sec. 3291. IMMIGRATION, PASSPORT, AND NATURALIZATION**
2 **OFFENSES**

3 `No person shall be prosecuted, tried, or punished for a violation
4 of any section of chapters 69 (relating to nationality and
5 citizenship offenses), 75 (relating to passport, visa, and
6 immigration offenses), or for a violation of any criminal
7 provision under section 243, 266, 274, 275, 276, 277, or 278 of
8 the Immigration and Nationality Act (8 U.S.C. 1253, 1306, 1324,
9 1325, 1326, 1327, and 1328), or for an attempt or conspiracy to
10 violate any such section, unless the indictment is returned or the
11 information filed not later than 10 years after the commission of
12 the offense.'.

13 (b) Clerical Amendment- The table of sections for chapter 213 of
14 title 18, United States Code, is amended by striking the item
15 relating to section 3291 and inserting the following:

16 `3291. Immigration, passport, and naturalization
17 offenses.'.

18 **SEC. 215. DIPLOMATIC SECURITY SERVICE.**

19 (a) Section 2709(a)(1) of title 22, United States Code, is
20 amended to read as follows:

21 `(1) conduct investigations concerning—

22 `(A) illegal passport or visa issuance or use;

23 `(B) identity theft or document fraud affecting or
24 relating to the programs, functions, and authorities
25 of the Department of State;

26 `(C) violations of chapter 77 of title 18, United
27 States Code; and

28 `(D) Federal offenses committed within the special
29 maritime and territorial jurisdiction defined in
30 paragraph (9) of section 7 of title 18, United States
31 Code, except as that jurisdiction relates to the
32 premises of United States military missions and
33 related residences;".

34
35 (b) Construction.— Nothing in this section shall be construed to
36 limit the investigative authority of any other Federal department
37 or agency.

38 **SEC. 216. STREAMLINED PROCESSING OF BACKGROUND**
39 **CHECKS CONDUCTED FOR IMMIGRATION BENEFITS.**

1 (a) Information Sharing; Interagency Task Force- Section 105 (8
2 U.S.C. 1105) is amended by adding at the end the following:

3 (e) Interagency Task Force-

4 (1) IN GENERAL- The Secretary of Homeland Security
5 and the Attorney General shall establish an interagency
6 task force to resolve cases in which an application or
7 petition for an immigration benefit conferred under this Act
8 has been delayed due to an outstanding background check
9 investigation for more than 2 years after the date on which
10 such application or petition was initially filed.

11 (2) MEMBERSHIP- The interagency task force established
12 under paragraph (1) shall include representatives from
13 Federal agencies with immigration, law enforcement, or
14 national security responsibilities under this Act.'

15 (b) Authorization of Appropriations- There are authorized to be
16 appropriated to the Director of the Federal Bureau of
17 Investigation such sums as are necessary for each fiscal year,
18 2008 through 2012 for enhancements to existing systems for
19 conducting background and security checks necessary to support
20 immigration security and orderly processing of applications.

21 (c) Report on Background and Security Checks-

22 (1) IN GENERAL- Not later than 180 days after the date of
23 the enactment of this Act, the Director of the Federal
24 Bureau of Investigation shall submit to the Committee on
25 the Judiciary of the Senate and the Committee on the
26 Judiciary of the House of Representatives a report on the
27 background and security checks conducted by the Federal
28 Bureau of Investigation on behalf of United States
29 Citizenship and Immigration Services.

30 (2) CONTENT- The report required under paragraph (1)
31 shall include--

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

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

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

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

1 **SEC. 217. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

2 (a) Reimbursement for Costs Associated With Processing
3 Criminal Illegal Aliens- The Secretary may reimburse States and
4 units of local government for costs associated with processing
5 undocumented criminal aliens through the criminal justice
6 system, including--

- 7 (1) indigent defense;
8 (2) criminal prosecution;
9 (3) autopsies;
10 (4) translators and interpreters; and
11 (5) courts costs.

12 (b) Authorization of Appropriations-

13 (1) PROCESSING CRIMINAL ILLEGAL ALIENS- There are
14 authorized to be appropriated \$400,000,000 for each of
15 the fiscal years 2008 through 2013 to carry out subsection
16 (a).

17 (2) COMPENSATION UPON REQUEST- Section 241(i)(5) (8
18 U.S.C. 1231(i)) is amended to read as follows:

19 ` (5) There are authorized to be appropriated to carry this
20 subsection--

- 21 ` (A) such sums as may be necessary for fiscal year
22 2008;
23 ` (B) \$750,000,000 for fiscal year 2009;
24 ` (C) \$850,000,000 for fiscal year 2010; and
25 ` (D) \$950,000,000 for each of the fiscal years 2011
26 through 2013.'.

27 (c) Technical Amendment- Section 501 of the Immigration
28 Reform and Control Act of 1986 (8 U.S.C. 1365) is amended by
29 striking `Attorney General' each place it appears and inserting
30 `Secretary of Homeland Security'.

31 **SEC. 218. TRANSPORTATION AND PROCESSING OF ILLEGAL**
32 **ALIENS APPREHENDED BY STATE AND LOCAL LAW**
33 **ENFORCEMENT OFFICERS.**

34 (a) In General- The Secretary may provide sufficient
35 transportation and officers to take illegal aliens apprehended by
36 State and local law enforcement officers into custody for
37 processing at a detention facility operated by the Department.

38 (b) Authorization of Appropriations- There are authorized to be
39 appropriated such sums as may be necessary for each of fiscal
40 years 2008 through 2012 to carry out this section.

1 **SEC. 219. REDUCING ILLEGAL IMMIGRATION AND ALIEN**
2 **SMUGGLING ON TRIBAL LANDS.**

3 (a) Grants Authorized- The Secretary may award grants to
4 Indian tribes with lands adjacent to an international border of
5 the United States that have been adversely affected by illegal
6 immigration.

7 (b) Use of Funds- Grants awarded under subsection (a) may be
8 used for--

- 9 (1) law enforcement activities;
10 (2) health care services;
11 (3) environmental restoration; and
12 (4) the preservation of cultural resources.

13 (c) Report- Not later than 180 days after the date of the
14 enactment of this Act, the Secretary shall submit a report to the
15 Committee on the Judiciary of the Senate and the Committee on
16 the Judiciary of the House of Representatives that--

- 17 (1) describes the level of access of Border Patrol agents on
18 tribal lands;
19 (2) describes the extent to which enforcement of
20 immigration laws may be improved by enhanced access to
21 tribal lands;
22 (3) contains a strategy for improving such access through
23 cooperation with tribal authorities; and
24 (4) identifies grants provided by the Department for Indian
25 tribes, either directly or through State or local grants,
26 relating to border security expenses.

27 (d) Authorization of Appropriations- There are authorized to be
28 appropriated such sums as may be necessary for each of the
29 fiscal years 2008 through 2012 to carry out this section.

30 **SEC. 220. ALTERNATIVES TO DETENTION.**

31 The Secretary shall conduct a study of--

- 32 (1) the effectiveness of alternatives to detention, including
33 electronic monitoring devices and intensive supervision
34 programs, in ensuring alien appearance at court and
35 compliance with removal orders;
36 (2) the effectiveness of the Intensive Supervision
37 Appearance Program and the costs and benefits of
38 expanding that program to all States; and
39 (3) other alternatives to detention, including--
40 (A) release on an order of recognizance;
41 (B) appearance bonds; and

1 (C) electronic monitoring devices.

2 **SEC. 221. STATE AND LOCAL ENFORCEMENT OF FEDERAL**
3 **IMMIGRATION LAWS.**

- 4 (a) In General- Section 287(g) (8 U.S.C. 1357(g)) is amended--
5 (1) in paragraph (2), by adding at the end the following:
6 `If such training is provided by a State or political
7 subdivision of a State to an officer or employee of such
8 State or political subdivision of a State, the cost of such
9 training (including applicable overtime costs) shall be
10 reimbursed by the Secretary of Homeland Security.'; and
11 (2) in paragraph (4), by adding at the end the following:
12 `The cost of any equipment required to be purchased
13 under such written agreement and necessary to perform
14 the functions under this subsection shall be reimbursed by
15 the Secretary of Homeland Security.'
16 (b) Authorization of Appropriations- There are authorized to be
17 appropriated to the Secretary such sums as may be necessary to
18 carry out this section and the amendments made by this section.

19 **SEC. 222. PROTECTING IMMIGRANTS FROM CONVICTED SEX**
20 **OFFENDERS.**

- 21 (a) Immigrants- Section 204(a)(1) (8 U.S.C. 1154(a)(1)), is
22 amended--
23 (1) in subparagraph (A), by amending clause (viii) to read
24 as follows:
25 `(viii) Clause (i) shall not apply to a citizen of the United
26 States who has been convicted of an offense described in
27 subparagraph (A), (I), or (K) of section 101(a)(43), unless
28 the Secretary of Homeland Security, in the Secretary's sole
29 and unreviewable discretion, determines that the citizen
30 poses no risk to the alien with respect to whom a petition
31 described in clause (i) is filed.'; and
32 (2) in subparagraph (B)(i), by amending subclause (II) to
33 read as follows:
34 `(II) Subclause (I) shall not apply in the case of an alien
35 admitted for permanent residence who has been convicted
36 of an offense described in subparagraph (A), (I), or (K) of
37 section 101(a)(43), unless the Secretary of Homeland
38 Security, in the Secretary's sole and unreviewable
39 discretion, determines that the alien lawfully admitted for
40 permanent residence poses no risk to the alien with

1. respect to whom a petition described in subclause (I) is
2 filed.'.

3 (b) Nonimmigrants- Section 101(a)(15)(K) (8 U.S.C.
4 1101(a)(15)(K)), is amended by inserting '(other than a citizen
5 described in section 204(a)(1)(A)(viii))' after 'citizen of the
6 United States' each place that phrase appears.

7 **SEC. 223 LAW ENFORCEMENT AUTHORITY OF STATES AND**
8 **POLITICAL SUBDIVISIONS AND TRANSFER TO FEDERAL**
9 **CUSTODY.**

10 (a) In General- Title II (8 U.S.C. 1151 et. seq.) is amended by
11 adding after section 240C the following new section:

12 **' SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES AND**
13 **POLITICAL SUBDIVISIONS AND TRANSFER OF ALIENS TO**
14 **FEDERAL CUSTODY.**

15 '(a) Transfer- If the head of a law enforcement entity of a State
16 (or, if appropriate, a political subdivision of the State) exercising
17 authority with respect to the apprehension or arrest of an alien
18 submits a request to the Secretary of Homeland Security that
19 the alien be taken into Federal custody, the Secretary of
20 Homeland Security--

21 '(1) shall--

22 '(A) deem the request to include the inquiry to
23 verify immigration status described in section 642(c)
24 of the Illegal Immigration Reform and Immigrant
25 Responsibility Act of 1996 (8 U.S.C. 1373(c)), and
26 expeditiously inform the requesting entity whether
27 such individual is an alien lawfully admitted to the
28 United States or is otherwise lawfully present in the
29 United States; and

30 '(B) if the individual is an alien who is not lawfully
31 admitted to the United States or otherwise is not
32 lawfully present in the United States--

33 '(i) take the illegal alien into the custody of
34 the Federal Government not later than 72
35 hours after--

36 '(I) the conclusion of the State charging
37 process or dismissal process; or

38 '(II) the illegal alien is apprehended, if
39 no State charging or dismissal process is
40 required; or

1 (ii) request that the relevant State or local
2 law enforcement agency temporarily detain or
3 transport the alien to a location for transfer to
4 Federal custody; and

5 (2) shall designate at least 1 Federal, State, or local
6 prison or jail or a private contracted prison or detention
7 facility within each State as the central facility for that
8 State to transfer custody of aliens to the Department of
9 Homeland Security.

10 (b) Reimbursement-

11 (1) IN GENERAL- The Secretary of Homeland Security
12 shall reimburse a State, or a political subdivision of a
13 State, for expenses, as verified by the Secretary, incurred
14 by the State or political subdivision in the detention and
15 transportation of an alien as described in subparagraphs
16 (A) and (B) of subsection (c)(1).

17 (2) COST COMPUTATION- Compensation provided for
18 costs incurred under subparagraphs (A) and (B) of
19 subsection (c)(1) shall be--

20 (A) the product of--

21 (i) the average daily cost of incarceration of a
22 prisoner in the relevant State, as determined
23 by the chief executive officer of a State (or, as
24 appropriate, a political subdivision of the
25 State); multiplied by

26 (ii) the number of days that the alien was in
27 the custody of the State or political
28 subdivision; plus

29 (B) the cost of transporting the alien from the point
30 of apprehension or arrest to the location of
31 detention, and if the location of detention and of
32 custody transfer are different, to the custody transfer
33 point; plus

34 (C) the cost of uncompensated emergency medical
35 care provided to a detained alien during the period
36 between the time of transmittal of the request
37 described in subsection (c) and the time of transfer
38 into Federal custody.

39 (c) Requirement for Appropriate Security- The Secretary of
40 Homeland Security shall ensure that--

41 (1) aliens incarcerated in a Federal facility pursuant to
42 this section are held in facilities which provide an
43 appropriate level of security; and

1 (2) if practicable, aliens detained solely for civil violations
2 of Federal immigration law are separated within a facility
3 or facilities.

4 (d) Requirement for Schedule- In carrying out this section, the
5 Secretary of Homeland Security shall establish a regular circuit
6 and schedule for the prompt transportation of apprehended
7 aliens from the custody of those States, and political subdivisions
8 of States, which routinely submit requests described in
9 subsection (c), into Federal custody.

10 (e) Authority for Contracts-

11 (1) IN GENERAL- The Secretary of Homeland Security
12 may enter into contracts or cooperative agreements with
13 appropriate State and local law enforcement and detention
14 agencies to implement this section.

15 (2) DETERMINATION BY SECRETARY- Prior to entering
16 into a contract or cooperative agreement with a State or
17 political subdivision of a State under paragraph (1), the
18 Secretary shall determine whether the State, or if
19 appropriate, the political subdivision in which the agencies
20 are located, has in place any formal or informal policy that
21 violates section 642 of the Illegal Immigration Reform and
22 Immigrant Responsibility Act of 1996 (8 U.S.C. 1373). The
23 Secretary shall not allocate any of the funds made
24 available under this section to any State or political
25 subdivision that has in place a policy that violates such
26 section.

27 (b) Authorization of Appropriations for the Detention and
28 Transportation to Federal Custody of Aliens Not Lawfully Present-
29 There are authorized to be appropriated \$850,000,000 for fiscal
30 year 2008 and each subsequent fiscal year for the detention and
31 removal of aliens not lawfully present in the United States under
32 the Immigration and Nationality Act (8 U.S.C. 1101 et. seq.).

33 **SEC. 224. LAUNDERING OF MONETARY INSTRUMENTS.**

34 Section 1956(c)(7)(D) of title 18, United States Code, is
35 amended--

36 (1) by inserting `section 1590 (relating to trafficking with
37 respect to peonage, slavery, involuntary servitude, or
38 forced labor),' after `section 1363 (relating to destruction
39 of property within the special maritime and territorial
40 jurisdiction),'; and

41 (2) by inserting `section 274(a) of the Immigration and
42 Nationality Act (8 U.S.C.1324(a)) (relating to bringing in

1 and harboring certain aliens), after section 590 of the
2 Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation
3 smuggling),

4 **SEC. 225. COOPERATIVE ENFORCEMENT PROGRAMS.**

5 Not later than 2 years after the date of the enactment of this
6 Act, the Secretary shall negotiate and execute, where
7 practicable, a cooperative enforcement agreement described in
8 section 287(g) of the Immigration and Nationality Act (8 U.S.C.
9 1357(g)) with at least 1 law enforcement agency in each State,
10 to train law enforcement officers in the detection and
11 apprehension of individuals engaged in transporting, harboring,
12 sheltering, or encouraging aliens in violation of section 274 of
13 such Act (8 U.S.C. 1324).

14 **SEC. 226. EXPANSION OF THE JUSTICE PRISONER AND ALIEN**
15 **TRANSFER SYSTEM.**

16 Not later than 60 days after the date of enactment of this Act,
17 the Attorney General shall issue a directive to expand the Justice
18 Prisoner and Alien Transfer System (JPATS) so that such System
19 provides additional services with respect to aliens who are
20 illegally present in the United States. Such expansion should
21 include--

- 22 (1) increasing the daily operations of such System with
23 buses and air hubs in 3 geographic regions;
24 (2) allocating a set number of seats for such aliens for
25 each metropolitan area;
26 (3) allowing metropolitan areas to trade or give some of
27 seats allocated to them under the System for such aliens
28 to other areas in their region based on the transportation
29 needs of each area; and
30 (4) requiring an annual report that analyzes of the number
31 of seats that each metropolitan area is allocated under this
32 System for such aliens and modifies such allocation if
33 necessary.
34

35 **SEC. 227. DIRECTIVE TO THE UNITED STATES SENTENCING**
36 **COMMISSION.**

37 (a) In General.—Pursuant to the authority under section 994 of title
38 28, United States Code, the United States Sentencing Commission
39 shall promulgate or amend the sentencing guidelines, policy

1 statements, and official commentaries related to passport fraud
2 offenses, including the offenses described in chapter 75 of title 18,
3 United States Code, as amended by section 208 of this Act, to reflect
4 the serious nature of such offenses.

5 (b) Report.—Not later than one year after the date of the enactment
6 of this Act, the United States Sentencing Commission shall submit to
7 the Committee on the Judiciary of the Senate and the Committee on
8 the Judiciary of the House of Representatives a report on the
9 implementation of this section.

10 11 **SEC. 228. CANCELLATION OF VISAS.**

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

13
14 (1) in paragraph (1)—

15
16 (A) by striking "Attorney General" and inserting "Secretary";

17
18 (B) by inserting "or otherwise violated any of the terms of the
19 nonimmigrant classification in which the alien was admitted, "
20 before "such visa"; and
21

22
23 (C) by inserting "and any other nonimmigrant visa issued by the
24 United States that is in the possession of the alien" after "such
25 visa"; and
26

27 (2) in paragraph (2)(A), by striking "(other than the visa described in
28 paragraph (1)) issued in a consular office located in the country of the
29 alien's nationality" and inserting "(other than a visa described in
30 paragraph (1)) issued in a consular office located in the country of the
31 alien's nationality or foreign residence".
32

33 **SEC. 229. JUDICIAL REVIEW OF VISA REVOCATION**

34 (a) *In General.*--Section 221(i) of the Immigration and Nationality
35 Act (8 U.S.C. 1201(i)) is amended by striking "There shall be no
36 means of judicial review" and all that follows and inserting the
37 following: "Notwithstanding any other provision of law, including
38 section 2241 of title 28, United States Code, any other habeas corpus
39 provision, and sections 1361 and 1651 of such title, a revocation under
40 this subsection may not be reviewed by any court, and no court shall
41 have jurisdiction to hear any claim arising from, or any challenge to,

1 such a revocation; provided that the revocation is executed by the
2 Secretary."

3 (b) *Effective Date.*--The amendment made by subsection (a) shall--

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

5 (2) apply to all revocations made on or after such date.

6

1 **TITLE III—WORKSITE ENFORCEMENT**

2

3 Sec. 301. Purposes.

4 Sec. 302. Unlawful Employment of Aliens.

5 Sec. 303. Effective Date.

6 Sec. 304. Disclosure of Certain Taxpayer Information to Assist in
7 Immigration Enforcement.

8 Sec. 305. Increasing Security and Integrity of Social Security Cards.

9 Sec. 306. Increasing Security and Integrity of Identity Documents.

10 Sec. 307. Voluntary Advanced Verification Program to Combat Identity
11 Theft.

12 Sec. 308. Responsibilities of the Social Security Administration.

13 Sec. 309. Immigration Enforcement Support by the Internal Revenue
14 Service and the Social Security Administration.

15 Sec. 310. Authorization of appropriations.

16

17

18

1 **TITLE III – WORKSITE ENFORCEMENT**

2
3 **SEC. 301. PURPOSES.**

4
5 (a) To continue to prohibit the hiring, recruitment, or referral of
6 unauthorized aliens.

7
8 (b) To require that each employer take reasonable steps to verify the
9 identity and work authorization status of all its employees, without
10 regard to national origin and citizenship status.

11
12 (c) To authorize the Secretary of Homeland Security to access records
13 of other federal agencies for the purposes of confirming identity,
14 authenticating lawful presence and preventing identity theft and fraud
15 related to unlawful employment.

16
17 (d) To ensure that the Commissioner of Social Security has the
18 necessary authority to provide information to the Secretary of
19 Homeland Security that would assist in the enforcement of the
20 immigration laws.

21
22 (e) To authorize the Secretary of Homeland Security to confirm
23 issuance of state identity documents, including driver's licenses, and to
24 obtain and transmit individual photographic images held by states for
25 identity authentication purposes.

26
27 (f) To collect information on employee hires.

28
29 (g) To electronically secure a social security number in the
30 Employment Eligibility Verification System (EEVS) at the request of an
31 individual who has been confirmed to be the holder of that number,
32 and to prevent fraudulent use of the number by others.

33
34 (h) To provide for record retention of EEVS inquiries, to prevent
35 identity fraud and employment authorization fraud.

36
37 (i) To employ fast track regulatory and procurement procedures to
38 expedite implementation of this Title and pertinent sections of the INA
39 for a period of two years from enactment.

40
41 (j) To establish the following:
42

- 1 (i) a document verification process requiring employers to
2 inspect, copy, and retain identity and work authorization
3 documents;
4
5 (ii) an EEVS requiring employers to obtain confirmation of an
6 individual's identity and work authorization;
7
8 (iii) procedures for employers to register for the EEVS and to
9 confirm work eligibility through the EEVS;
10
11 (iv) a streamlined enforcement procedure to ensure efficient
12 adjudication of violations of this Title;
13
14 (v) a system for the imposition of civil penalties and their
15 enforcement, remission or mitigation;
16
17 (vi) an enhancement of criminal and civil penalties;
18
19 (vii) increased coordination of information and enforcement
20 between the Internal Revenue Service and the Department of
21 Homeland Security regarding employers who have violations
22 related to the employment of unauthorized aliens;
23
24 (viii) increased penalties under the Internal Revenue Code for
25 employers who have violations relating to the employment of
26 unauthorized aliens.
27

28 **SEC. 302. UNLAWFUL EMPLOYMENT OF ALIENS.**

29 (a) Section 274A of the Immigration and Nationality Act (8 U.S.C.
30 1324a) is amended to read as follows:

31 "(a) Making Employment of Unauthorized Aliens Unlawful.

32
33 "(1) In general.—It is unlawful for an employer—

34
35 "(A) to hire, or to recruit or refer for a fee, an alien for
36 employment in the United States knowing or with reckless
37 disregard that the alien is an unauthorized alien (as
38 defined in subsection (b)(1)) with respect to such
39 employment; or
40

1 “(B) to hire, or to recruit or refer for a fee, for employment
2 in the United States an individual without complying with
3 the requirements of subsections (c) and (d).
4

5 “(2) Continuing employment.— It is unlawful for an employer,
6 after hiring an alien for employment, to continue to employ the
7 alien in the United States knowing or with reckless disregard that
8 the alien is (or has become) an unauthorized alien with respect
9 to such employment.
10

11 “(3) Use of labor through contract.— For purposes of this
12 section, an employer who uses a contract, subcontract, or
13 exchange to obtain the labor of an alien in the United States
14 knowing that the alien is an unauthorized alien (as defined in
15 subsection (b)(1)) with respect to performing such labor, shall
16 be considered to have hired the alien for employment in the
17 United States in violation of paragraph (1)(A).

18 (A) By regulation, the Secretary may require, for
19 purposes of ensuring compliance with the immigration
20 laws, that an employer include in a written contract,
21 subcontract, or exchange an effective and enforceable
22 requirement that the contractor or subcontractor
23 adhere to the immigration laws of the United States,
24 including use of EEVS. .

25 (B) The Secretary may establish procedures by which an
26 employer may obtain confirmation from the Secretary
27 that the contractor or subcontractor has registered with
28 the EEVS and is utilizing the EEVS to verify its
29 employees.

30 (C) The Secretary may establish such other
31 requirements for employers using contractors or
32 subcontractors as the Secretary deems necessary to
33 prevent knowing violations of this paragraph.
34

35 “(4) Application to federal government.— For purposes of this
36 section, the term “employer” includes entities in any branch of
37 the Federal Government.

38 “(5) Defense.— An employer that establishes that it has
39 complied in good faith with the requirements of subsections

1 (c)(1) through (c)(4), pertaining to document verification
2 requirements, and subsection (d) has established an affirmative
3 defense that the employer has not violated paragraph (1)(A)
4 with respect to such hiring, recruiting, or referral, however:
5

6 "(A) until such time as the Secretary has required an employer
7 to participate in the EEVS or such participation is permitted on a
8 voluntary basis pursuant to subsection (d), a defense is
9 established without a showing of compliance with subsection (d)
10 ; and
11

12 "(B) to establish a defense, the employer must also be in
13 compliance with any additional requirements that the Secretary
14 may promulgate by regulation pursuant to subsections (c), (d),
15 and (k).
16

17 "(6) An employer is presumed to have acted with knowledge or
18 reckless disregard if the employer fails to comply with written
19 standards, procedures or instructions issued by the Secretary.
20 Such standards, procedures or instructions shall be objective and
21 verifiable.
22

23 "(b) Definitions.—

24 "(1) Definition of unauthorized alien.— As used in this section,
25 the term 'unauthorized alien' means, with respect to the
26 employment of an alien at a particular time, that the alien is not
27 at that time either—
28

29 "(A) an alien lawfully admitted for permanent residence; or

30 "(B) authorized to be so employed by this Act or by the
31 Secretary.

32 "(2) Definition of employer. —For purposes of this section, the
33 term "employer" means any person or entity hiring, recruiting,
34 or referring an individual for employment in the United States.
35

36 "(c) Document Verification Requirements.—

37 "Any employer hiring, recruiting, or referring an individual for
38 employment in the United States shall take all reasonable steps to
39 verify that the individual is authorized to work in the United States,

1 including the requirements of subsection (d) and the following
2 paragraphs:

3
4 “(1) Attestation after examination of documentation.

5
6 “(A) In general.— The employer must attest, under penalty
7 of perjury and on a form prescribed by the Secretary, that
8 it has verified the identity and work authorization status of
9 the individual by examining:—

10 “(i) a document described in subparagraph (B); or

11
12 “(ii) a document described in subparagraph (C) and
13 a document described in subparagraph (D).

14
15 “Such attestation may be manifested by a handwritten or
16 electronic signature. An employer has complied with the
17 requirement of this paragraph with respect to examination
18 of documentation if the employer has followed applicable
19 regulations and any written procedures or instructions
20 provided by the Secretary and if a reasonable person
21 would conclude that the documentation is genuine and
22 establishes the employee’s identity and authorization to
23 work, taking into account any information provided to the
24 employer by the Secretary, including photographs.

25 “(B) Documents establishing both employment
26 authorization and identity.— A document described in this
27 subparagraph is an individual’s—

28
29 “(i) United States passport, or passport card issued
30 pursuant to the Secretary of State’s authority under
31 22 U.S.C. 211a;

32
33 “(ii) permanent resident card or other document
34 issued by the Secretary or Secretary of State to
35 aliens authorized to work in the United States, if the
36 document—

37
38 “(I) contains a photograph of the individual,
39 biometric data, such as fingerprints, or such
40 other personal identifying information relating
41 to the individual as the Secretary finds, by

1 regulation, sufficient for the purposes of this
2 subsection;

3
4 “(II) is evidence of authorization for
5 employment in the United States; and
6

7 “(III) contains security features to make it
8 resistant to tampering, counterfeiting, and
9 fraudulent use; or
10

11 (iii) a temporary interim benefits card valid under
12 section 218C(c) of the Immigration and Nationality
13 Act, as amended by Section 602 of the
14 Comprehensive Immigration Reform Act of 2007,
15 bearing a photograph and an expiration date, and
16 issued by the Secretary to aliens applying for
17 temporary worker status under the Z-visa
18

19 “(C) Documents establishing identity of individual.— A
20 document described in this subparagraph includes—
21

22 “(i) an individual’s driver’s license or identity card
23 issued by a State, the Commonwealth of the
24 Northern Mariana Islands, or an outlying possession
25 of the United States, provided that the issuing state
26 or entity has certified to the Secretary of Homeland
27 Security that it is in compliance with the minimum
28 standards required under section 202 of the REAL ID
29 Act of 2005 (division B of Public Law 109-13) (49
30 U.S.C. 30301 note) and implementing regulations
31 issued by the Secretary of Homeland Security once
32 those requirements become effective;
33

34 “(ii) an individual’s driver’s license or identity card
35 issued by a State, the Commonwealth of the
36 Northern Mariana Islands, or an outlying possession
37 of the United States which is not compliant with
38 section 202 of the REAL ID Act of 2005 if
39

40 “(I) the driver’s license or identity card
41 contains the individual’s photograph as well as
42 the individual’s name, date of birth, gender,
43 height, eye color and address,
44

1 (II) the card has been approved for this
2 purpose in accordance with timetables and
3 procedures established by the Secretary
4 pursuant to subsection (c)(1)(F) of this
5 section, and
6

7 (III) the card is presented by the individual
8 and examined by the employer in combination
9 with a U.S. birth certificate, or a Certificate of
10 Naturalization, or a Certificate of Citizenship,
11 or such other documents as may be prescribed
12 by the Secretary,
13

14 "(iii) for individuals under 16 years of age who are
15 unable to present a document listed in clause (i) or
16 (ii), documentation of personal identity of such other
17 type as the Secretary finds provides a reliable means
18 of identification, provided it contains security
19 features to make it resistant to tampering,
20 counterfeiting, and fraudulent use; or
21

22 "(iv) other documentation evidencing identity as
23 identified by the Secretary in his discretion, with
24 notice to the public provided in the Federal Register,
25 to be acceptable for purposes of this section,
26 provided that the document, including any electronic
27 security measures linked to the document, contains
28 security features that make the document as
29 resistant to tampering, counterfeiting, and fraudulent
30 use as the documents listed in (B)(i), B(ii), or (C)(i).
31

32 "(D) Documents evidencing employment authorization.—
33 The following documents may be accepted as evidence of
34 employment authorization—
35

36 "(i) a social security account number card issued by
37 the Commissioner of Social Security (other than a
38 card which specifies on its face that the card is not
39 valid for employment in the United States). The
40 Secretary, in consultation with the Commissioner of
41 Social Security, may require by publication of a
42 notice in the Federal Register that only a social
43 security account number card described in Section
44 305 of this Title be accepted for this purpose; or

1
2 “(ii) any other documentation evidencing
3 authorization of employment in the United States
4 which the Secretary declares, by publication in the
5 Federal Register, to be acceptable for purposes of
6 this section, provided that the document, including
7 any electronic security measures linked to the
8 document contains security features to make it
9 resistant to tampering, counterfeiting, and fraudulent
10 use.

11
12 “(E) Authority to prohibit use of certain documents.— If
13 the Secretary finds that any document or class of
14 documents described in subparagraph (B), (C), or (D) as
15 establishing employment authorization or identity does not
16 reliably establish such authorization or identity or is being
17 used fraudulently to an unacceptable degree, the
18 Secretary shall, with notice to the public provided in the
19 Federal Register, prohibit or restrict the use of that
20 document or class of documents for purposes of this
21 subsection.

22 “(F) After June 1, 2013, no driver’s license or state
23 identity card may be accepted if it does not comply with
24 the REAL ID Act of 2005. This paragraph (c)(1)(F) shall
25 have no effect on paragraphs (c)(1)(B), (c)(1)(C)(iii),
26 (c)(1)(C)(iv), or (c)(1)(D).

27
28 “(2) Individual attestation of employment authorization.— The
29 individual must attest, under penalty of perjury on the form
30 prescribed by the Secretary, that the individual is a citizen or
31 national of the United States, an alien lawfully admitted for
32 permanent residence, or an alien who is authorized under this
33 Act or by the Secretary to be hired, recruited, or referred for
34 such employment. Such attestation may be manifested by
35 either a hand-written or electronic signature.

36 “(3) Retention of verification form.— After completion of such
37 form in accordance with paragraphs (1) and (2), the employer
38 must retain a paper, microfiche, microfilm, or electronic version
39 of the form and make it available for inspection by officers of the
40 Department of Homeland Security (or persons designated by the
41 Secretary), the Special Counsel for Immigration-Related Unfair
42 Employment Practices, or the Department of Labor during a

1 period beginning on the date of the hiring, recruiting, or referral
2 of the individual and ending—

3
4 “(A) in the case of the recruiting or referral for a fee
5 (without hiring) of an individual, seven years after the date
6 of the recruiting or referral; and

7
8 “(B) in the case of the hiring of an individual—

9
10 “(i) seven years after the date of such hiring; or

11
12 “(ii) two years after the date the individual’s
13 employment is terminated, whichever is earlier.

14 “(4) Copying of documentation and recordkeeping required.

15
16 “(A) Notwithstanding any other provision of law, the
17 employer shall copy all documents presented by an
18 individual pursuant to this subsection and shall retain a
19 paper, microfiche, microfilm, or electronic copy as
20 prescribed in paragraph (3), but only (except as otherwise
21 permitted under law) for the purposes of complying with
22 the requirements of this subsection. Such copies shall
23 reflect the signatures of the employer and the employee,
24 as well as the date of receipt.

25
26 “(B) The employer shall also maintain records of Social
27 Security Administration correspondence regarding name
28 and number mismatches or no-matches and the steps
29 taken to resolve such issues.

30
31 “(C) The employer shall maintain records of all actions and
32 copies of any correspondence or action taken by the
33 employer to clarify or resolve any issue that raises
34 reasonable doubt as to the validity of the alien’s identity or
35 work authorization.

36
37 “(D) The employer shall maintain such records as
38 prescribed in this subsection. The Secretary may prescribe
39 the manner of recordkeeping and may require that
40 additional records be kept or that additional documents be
41 copied and maintained. The Secretary may require that
42 these documents be transmitted electronically, and may

1 develop automated capabilities to request such
2 documents.

3 “(5) Penalties.— An employer that fails to comply with any
4 requirement of this subsection shall be penalized under
5 subsection (e)(4)(B).

6 “(6) No Authorization of National Identification Cards.— Nothing
7 in this section shall be construed to authorize, directly or
8 indirectly, the issuance or use of national identification cards or
9 the establishment of a national identification card.

10 “(7) The employer shall use the procedures for
11 document verification set forth in this paragraph for all
12 employees without regard to national origin or citizenship status.

13
14 “(d) Employment Eligibility Verification System. —

15 “(1) In general. The Secretary, in cooperation and consultation
16 with the Secretary of State, the Commissioner of Social Security,
17 and the states, shall implement and specify the procedures for
18 EEVS. The participating employers shall timely register with
19 EEVS and shall use EEVS as described in subsection (d)(5).

20 “(2) Implementation schedule.

21 “(A) As of the date of enactment of this section, the
22 Secretary in his discretion, with notice to the public
23 provided in the Federal Register, is authorized to require
24 any employer or industry which the Secretary determines
25 to be part of the critical infrastructure, a federal
26 contractor, or directly related to the national security or
27 homeland security of the United States to participate in the
28 EEVS. This requirement may be applied to both newly
29 hired and current employees. The Secretary shall notify
30 employers subject to this subparagraph 30 days prior to
31 EEVS.

32 “(B) No later than 6 months after the date of enactment of
33 this section, the Secretary shall require additional
34 employers or industries to participate in the EEVS. This
35 requirement shall be applied to new employees hired, and
36 current employees subject to reverification because of
37 expiring work authorization documentation or expiration of
38 immigration status, on or after the date on which the

1 requirement takes effect. The Secretary, by notice in the
2 Federal Register, shall designate these employers or
3 industries, in his discretion, based upon risks to critical
4 infrastructure, national security, immigration enforcement,
5 or homeland security needs.

6 “(C) No later than 18 months after the date of
7 enactment of this section, the Secretary shall require
8 all employers to participate in the EEVS with respect to
9 newly hired employees and current employees subject
10 to reverification because of expiring work authorization
11 documentation or expiration of immigration status.

12 “(D) No later than three years after the date of
13 enactment of this section, all employers shall
14 participate in the EEVS with respect to new employees,
15 all employees whose identity and employment
16 authorization have not been previously verified
17 through EEVS, and all employees in Z status who have
18 not previously presented a secure document
19 evidencing their Z status. The Secretary may specify
20 earlier dates for participation in the EEVS in his
21 discretion for some or all classes of employer or
22 employee.

23 “(E) The Secretary shall create the necessary systems and
24 processes to monitor the functioning of the EEVS, including
25 the volume of the workflow, the speed of processing of
26 queries, and the speed and accuracy of responses. These
27 systems and processes shall be audited by the
28 Government Accountability Office 9 months after the date
29 of enactment of this section and 24 months after the date
30 of enactment of this section. The Government
31 Accountability Office shall report the results of the audits
32 to Congress.

33
34 “(3) Participation in EEVS. —The Secretary has the following
35 discretionary authority to require or to permit participation in
36 the EEVS –

37 “(A) To permit any employer that is not required to
38 participate in the EEVS to do so on a voluntary basis;

1 “(B) To require any employer that is required to
2 participate in the EEVS with respect to its newly hired
3 employees also to do so with respect to its current
4 workforce if the Secretary has reasonable cause to
5 believe that the employer has engaged in any violation of
6 the immigration laws.

7 “(4) Consequence of failure to participate. —If an employer is
8 required under this subsection to participate in the EEVS and
9 fails to comply with the requirements of such program with
10 respect to an individual—

11 “(A) such failure shall be treated as a violation of
12 subsection (a)(1)(B) of this section with respect to that
13 individual, and
14

15 “(B) a rebuttable presumption is created that the employer
16 has violated subsection (a)(1)(A) or (a)(2) of this section.
17

18

19 “Subparagraph (B) shall not apply in any prosecution under
20 subsection 274A(f)(1).

21 “(5) Procedures for participants in the EEVS.

22 “(A) In general. —An employer participating in the EEVS
23 must register in the EEVS and conform to the following
24 procedures in the event of hiring, recruiting, or referring
25 any individual for employment in the United States:
26

27 “(i) Registration of Employers.—The Secretary,
28 through notice in the Federal Register, shall
29 prescribe procedures that employers must follow to
30 register in the EEVS. In prescribing these
31 procedures, the Secretary shall have authority to
32 require employers to provide:

33 “(I) employer’s name;

34 “(II) employer’s Employment Identification
35 Number (EIN);

36 “(III) company address;

37 “(IV) name, position and social security
38 number of the employer’s employees accessing
39 the EEVS; and

1 “(V) such other information as the Secretary
2 deems necessary to ensure proper use and
3 security of the EEVS.
4

5 The Secretary shall require employers to undergo
6 such training as the Secretary deems necessary to
7 ensure proper use and security of the EEVS. To the
8 extent practicable, such training shall be made
9 available electronically.
10

11 “(ii) Provision of additional information.—The
12 employer shall obtain from the individual (and the
13 individual shall provide) and shall record in such
14 manner as the Secretary may specify:--
15

16 “(I) an individual’s social security account
17 number,
18

19 “(II) if the individual does not attest to United
20 States nationality under subsection (c)(2) of
21 this section, such identification or authorization
22 number established by the Department of
23 Homeland Security as the Secretary of
24 Homeland Security shall specify, and
25

26 “(III) such other information as the Secretary
27 may require to determine the identity and
28 work authorization of an employee.
29

30 “(iii) Presentation of documentation.— The employer,
31 and the individual whose identity and employment
32 eligibility are being confirmed, shall fulfill the
33 requirements of subsection (c) of this section.
34

35 “(iv) Presentation of biometrics. -- Employers who
36 are enrolled in the Voluntary Advanced Verification
37 Program to Combat Identity Theft under section 307
38 of this Title shall, in addition to documentary
39 evidence of identity and work eligibility,
40 electronically provide the fingerprints of the
41 individual to the Department of Homeland Security.”
42

43 “(B) Seeking confirmation.—
44

1 (i) The employer shall use the EEVS to provide to the
2 Secretary all required information in order to obtain
3 confirmation of the identity and employment eligibility
4 of any individual no earlier than the date of hire and no
5 later than on the first day of employment (or
6 recruitment or referral, as the case may be). An
7 employer may not, however, make the starting date of
8 an individual's employment contingent on the receipt of
9 a confirmation of the identity and employment
10 eligibility.

11
12 (ii) For reverification of an employee with a limited
13 period of work authorization (including Z card holder),
14 all required verification procedures must be complete
15 on the date the employee's work authorization expires.
16

17 (iii) For initial verification of an employee hired before
18 the employer is subject to the employment eligibility
19 verification system, all required procedures must be
20 complete on such date as the Secretary shall specify in
21 accordance with subparagraph (d)(2)(D).
22

23 (iv) The Secretary shall provide, and the employer shall
24 utilize, as part of EEVS, a method of communicating
25 notices and requests for information or action on the
26 part of the employer with respect to expiring work
27 authorization or status and other matters. Additionally,
28 the Secretary shall provide a method of notifying
29 employers of a confirmation, nonconfirmation or a
30 notice that further action is required ("further action
31 notice"). The employer shall communicate to the
32 individual that is the subject of the verification all
33 information provided to the employer by the EEVS for
34 communication to the individual.
35

36 "(C) Confirmation or nonconfirmation.—

37 "(i) Initial response. —The verification system shall
38 provide a confirmation, a nonconfirmation, or a
39 further action notice of an individual's identity and
40 employment eligibility at the time of the inquiry,
41 unless for technological reasons or due to
42 unforeseen circumstances, the EEVS is unable to
43 provide such confirmation or further action notice.

1 In such situations, the system shall provide
2 confirmation or further action notice within 3
3 business days of the initial inquiry. If providing
4 confirmation or further action notice, the EEVS shall
5 provide an appropriate code indicating such
6 confirmation or such further action notice.

7 "(ii) Confirmation upon initial inquiry.—When the
8 employer receives an appropriate confirmation of an
9 individual's identity and work eligibility under the
10 EEVS, the employer shall record the confirmation in
11 such manner as the Secretary may specify.
12

13 "(iii) Further action notice upon initial inquiry and
14 secondary verification.—

15 "(I) Further action notice. —If the employer
16 receives a further action notice of an
17 individual's identity or work eligibility under
18 the EEVS, the employer shall inform the
19 individual without delay for whom the
20 confirmation is sought of the further action
21 notice and any procedures specified by the
22 Secretary for addressing the further action
23 notice. The employee must acknowledge in
24 writing the receipt of the further action notice
25 from the employer.

26 "(II) Contest. —Within ten business days from
27 the date of notification to the employee, the
28 employee must contact the appropriate agency
29 to contest the further action notice and, if the
30 Secretary so requires, appear in person at the
31 appropriate Federal or state agency for
32 purposes of verifying the individual's identity
33 and employment authorization. The Secretary,
34 in consultation with the Commissioner of Social
35 Security and other appropriate Federal and
36 State agencies, shall specify an available
37 secondary verification procedure to confirm the
38 validity of information provided and to provide
39 a final confirmation or nonconfirmation. An
40 individual contesting a further action notice

1 must attest under penalty of perjury to his
2 identity and employment authorization.

3 "(III) No contest. – If the individual does not
4 contest the further action notice within the
5 period specified in subparagraph (5)(C)(iii)(II),
6 a final nonconfirmation shall issue. The
7 employer shall then record the
8 nonconfirmation in such manner as the
9 Secretary may specify.

10 "(IV) Finality. – The EEVS shall provide a final
11 confirmation or nonconfirmation within 10
12 business days from the date of the employee's
13 contesting of the further action notice. As long
14 as the employee is taking the steps required
15 by the Secretary and the agency that the
16 employee has contacted to resolve a further
17 action notice, the Secretary shall extend the
18 period of investigation until the secondary
19 verification procedure allows the Secretary to
20 provide a final confirmation or
21 nonconfirmation. If the employee fails to take
22 the steps required by the Secretary and the
23 appropriate agency, a final nonconfirmation
24 may be issued to that employee.

25
26 "(V) Re-examination. – Nothing in this section
27 shall prevent the Secretary from reexamining a
28 case where a final confirmation has been
29 provided if subsequently received information
30 indicates that the individual may not be work
31 authorized.

32
33 "In no case shall an employer terminate employment
34 of an individual solely because of a failure of the
35 individual to have identity and work eligibility
36 confirmed under this section until a nonconfirmation
37 becomes final and the period to timely file an
38 administrative appeal has passed, and in the case
39 where an administrative appeal has been denied, the
40 period to timely file a petition for judicial review has
41 passed. When final confirmation or nonconfirmation
42 is provided, the confirmation system shall provide an

1 appropriate code indicating such confirmation or
2 nonconfirmation. An individual's failure to contest a
3 further action notice shall not be considered an
4 admission of guilt with respect to any violation of
5 this section or any provision of law.

6 "(D) Consequences of nonconfirmation.—

7 "(i) Termination of continued employment.—If the
8 employer has received a final nonconfirmation
9 regarding an individual, the employer shall terminate
10 employment (or recruitment or referral) of the
11 individual, unless the individual files an
12 administrative appeal of a final nonconfirmation
13 notice under paragraph (7) within the time period
14 prescribed in that paragraph and the Secretary or
15 the Commissioner stays the final nonconfirmation
16 notice pending the resolution of the administrative
17 appeal.

18
19 "(ii) Continued employment after final
20 nonconfirmation. —If the employer continues to
21 employ (or to recruit or refer) an individual after
22 receiving final nonconfirmation (unless the individual
23 filed an administrative appeal of a final
24 nonconfirmation notice under paragraph (7) within
25 the time period prescribed in that paragraph and the
26 Secretary of the Commissioner stayed the final
27 nonconfirmation notice pending the resolution of the
28 administrative appeal), a rebuttable presumption is
29 created that the employer has violated subsections
30 (a)(1)(A) and (a)(2) of this section. The previous
31 sentence shall not apply in any prosecution under
32 subsection (f)(1) of this section.

33
34 "(E) Obligation to Respond to Queries and Additional
35 Information --

36
37 (i) Employers are required to comply with
38 requests from the Secretary through EEVS for
39 information, including queries concerning
40 current and former employees that relate to
41 the functioning of the EEVS, the accuracy of
42 the responses provided by the EEVS, and any

1 suspected fraud or identity theft in the use of
2 the EEVS. Failure to comply with such a
3 request is a violation of section (a)(1)(B).
4

5 (ii) Individuals being verified through EEVS may
6 be required to take further action to address
7 irregularities identified in the documents relied
8 upon for purposes of employment verification.
9 The employer shall communicate to the
10 individual any such requirement for further
11 actions and shall record the date and manner
12 of such communication. The individual must
13 acknowledge in writing the receipt of this
14 communication from the employer. Failure to
15 communicate such a requirement is a violation
16 of section (a)(1)(B).
17

18
19 (iii) The Secretary is authorized, with notice to the
20 public provided in the Federal Register, to
21 implement, clarify, and supplement the
22 requirements of this paragraph in order to
23 facilitate the functioning of the EEVS or to
24 prevent fraud or identity theft in the use of the
25 EEVS.
26

27 "(F) Impermissible Use of the EEVS –
28

29 "(i) An employer may not use the EEVS to verify an
30 individual prior to extending to the individual an offer
31 of employment.
32

33 "(ii) An employer may not require an individual to
34 verify the individual's own employment eligibility
35 through the EEVS as a condition of extending to that
36 individual an offer of employment. Nothing in this
37 paragraph shall be construed to prevent an employer
38 from encouraging an employee or a prospective
39 employee from verifying the employee's or a
40 prospective employee's own employment eligibility
41 prior to obtaining employment pursuant to
42 paragraph (5)(H).
43

1 “(iii) An employer may not terminate an individual’s
2 employment solely because that individual has been
3 issued a further action notice.
4

5 “(iv) An employer may not take the following actions
6 solely because an individual has been issued a
7 further action notice:
8

9 “(I) reduce salary, bonuses or other
10 compensation due to the employee;
11

12 “(II) suspend the employee without pay;
13

14 “(III) reduce the hours that the employee is
15 required to work if such reduction is
16 accompanied by a reduction in salary, bonuses
17 or other compensation due to the employee,
18 except that, with the agreement of the
19 employee, an employer may provide an
20 employee with reasonable time off without pay
21 in order to contest and resolve the further
22 action notice received by the employee;
23

24 “(IV) deny the employee the training necessary
25 to perform the employment duties for which
26 the employee has been hired.
27

28 “(v) An employer may not, in the course of utilizing
29 the procedures for document verification set forth in
30 subsection (c), require that a prospective employee
31 present additional documents or different documents
32 than those prescribed under that subsection.
33

34 “(vi) The Secretary of Homeland Security shall
35 develop the necessary policies and procedures to
36 monitor employers’ use of the EEVS and their
37 compliance with the requirements set forth in this
38 section. Employers are required to comply with
39 requests from the Secretary for information related
40 to any monitoring, audit or investigation undertaken
41 pursuant to this subparagraph.
42

43 “(vii) The Secretary of Homeland Security, in
44 consultation with the Secretary of Labor, shall

1 establish and maintain a process by which any
2 employee (or any prospective employee who would
3 otherwise have been hired) who has reason to
4 believe that an employer has violated subparagraphs
5 (i)-(v) may file a complaint against the employer.
6

7 "(viii) Any employer found to have violated
8 subparagraphs (i)-(v) shall pay a civil penalty of up
9 to \$10,000 for each violation.
10

11 "(ix) This paragraph is not intended to, and does not,
12 create any right, benefit, trust, or responsibility,
13 whether substantive or procedural, enforceable at
14 law or equity by a party against the United States,
15 its departments, agencies, instrumentalities, entities,
16 officers, employees, or agents, or any person, nor
17 does it create any right of review in a judicial
18 proceeding.
19

20
21 "(x) No later than 3 months after the date of
22 enactment of this section, the Secretary of Homeland
23 Security, in cooperation with the Secretary of Labor
24 and the Administrator of the Small Business
25 Administration, shall conduct a campaign to
26 disseminate information respecting the rights and
27 remedies prescribed under this section. Such
28 campaign shall be aimed at increasing the knowledge
29 of employers, employees, and the general public
30 concerning employer and employee rights,
31 responsibilities and remedies under this section.
32

33 "(I) In order to carry out the campaign under
34 this paragraph, the Secretary of Homeland
35 Security may, to the extent deemed
36 appropriate and subject to the availability of
37 appropriations, contract with public and private
38 organizations for outreach activities under the
39 campaign.
40

41 "(II) There are authorized to be appropriated
42 to carry out this paragraph \$40,000,000 for
43 each fiscal year 2007 through 2009.

1 “(G) Based on a regular review of the EEVS and the
2 document verification procedures to identify fraudulent use
3 and to assess the security of the documents being used to
4 establish identity or employment authorization, the
5 Secretary in consultation with the Commissioner of Social
6 Security may modify by Notice published in the Federal
7 Register the documents that must be presented to the
8 employer, the information that must be provided to EEVS
9 by the employer, and the procedures that must be
10 followed by employers with respect to any aspect of the
11 EEVS if the Secretary in his discretion concludes that the
12 modification is necessary to ensure that EEVS accurately
13 and reliably determines the work authorization of
14 employees while providing protection against fraud and
15 identity theft.
16

17 “(H) Subject to appropriate safeguards to prevent misuse
18 of the system, the Secretary in consultation with the
19 Commissioner of Social Security, shall establish secure
20 procedures to permit an individual who seeks to verify the
21 individual's own employment eligibility prior to obtaining or
22 changing employment, to contact the appropriate agency
23 and, in a timely manner, correct or update the information
24 used by the EEVS.
25

26 “(6) Protection from liability for actions taken on the basis of
27 information provided by the confirmation system.—No employer
28 participating in the EEVS shall be liable under any law for any
29 employment-related action taken with respect to the employee
30 in good faith reliance on information provided through the
31 confirmation system.
32

33 “(7) ADMINISTRATIVE REVIEW –
34

35 “(A) IN GENERAL -- An individual who receives a final
36 nonconfirmation notice may, not later than 15 days after
37 the date that such notice is received, file an administrative
38 appeal of such final notice. An individual who did not
39 timely contest a further action notice may not avail himself
40 of this paragraph. Unless the Secretary of Homeland
41 Security, in consultation with the Commissioner of Social
42 Security, specifies otherwise, all administrative appeals
43 shall be filed as follows:
44

1 (i) NATIONALS OF THE UNITED STATES – An
2 individual claiming to be a national of the United States
3 shall file the administrative appeal with the Commissioner.
4

5 (ii) ALIENS – An individual claiming to be an alien
6 authorized to work in the United States shall file the
7 administrative appeal with the Secretary.
8

9 “(B) REVIEW FOR ERROR. – The Secretary and the
10 Commissioner shall each develop procedures for resolving
11 administrative appeals regarding final nonconfirmations
12 based upon the information that the individual has
13 provided, including any additional evidence that was not
14 previously considered. Appeals shall be resolved within 30
15 days after the individual has submitted all evidence
16 relevant to the appeal. The Secretary and the
17 Commissioner may, on a case by case basis for good
18 cause, extend this period in order to ensure accurate
19 resolution of an appeal before him. Administrative review
20 under this paragraph (7) shall be limited to whether the
21 final nonconfirmation notice is supported by the weight of
22 the evidence.
23

24 “(C) ADMINISTRATIVE RELIEF. -- The relief available
25 under this paragraph (7) is limited to an administrative
26 order upholding, reversing, modifying, amending, or
27 setting aside the final nonconfirmation notice. The
28 Secretary or the Commissioner shall stay the final
29 nonconfirmation notice pending the resolution of the
30 administrative appeal unless the Secretary or the
31 Commissioner determines that the administrative appeal is
32 frivolous, unlikely to succeed on the merits, or filed for
33 purposes of delay and terminates the stay.
34

35 “(D) DAMAGES, FEES AND COSTS.-- No money damages,
36 fees or costs may be awarded in the administrative review
37 process, and no court shall have jurisdiction to award any
38 damages, fees or costs relating to such administrative
39 review under the Equal Access to Justice Act or any other
40 law.
41

42 “(8) JUDICIAL REVIEW.—
43

1 "(A) EXCLUSIVE PROCEDURE. -- Notwithstanding any
2 other provision of law (statutory or nonstatutory) including
3 sections 1361 and 1651 of title 28, no court shall have
4 jurisdiction to consider any claim against the United
5 States, or any of its agencies, officers, or employees,
6 challenging or otherwise relating to a final nonconfirmation
7 notice or to the EEVS, except as specifically provided by
8 this paragraph. Judicial review of a final nonconfirmation
9 notice is governed only by chapter 158 of title 28, except
10 as provided below.

11
12 (B) REQUIREMENTS FOR REVIEW OF A FINAL
13 NONCONFIRMATION NOTICE. With respect to review of a
14 final nonconfirmation notice under subsection (a), the
15 following requirements apply:

16
17 (i) Deadline. The petition for review must be filed no
18 later than 30 days after the date of the completion of
19 the administrative appeal.

20
21 (ii) Venue and forms. The petition for review shall be
22 filed with the United States Court of Appeals for the
23 judicial circuit wherein the petitioner resided when the
24 final nonconfirmation notice was issued. The record
25 and briefs do not have to be printed. The court of
26 appeals shall review the proceeding on a typewritten
27 record and on typewritten briefs.

28
29 (iii) Service. The respondent is either the Secretary of
30 Homeland Security or the Commissioner of Social
31 Security, but not both, depending upon who issued (or
32 affirmed) the final nonconfirmation notice. In addition
33 to serving the respondent, the petitioner must also
34 serve the Attorney General.

35
36 (iv) Petitioner's Brief. The petitioner shall serve and file
37 a brief in connection with a petition for judicial review
38 not later than 40 days after the date on which the
39 administrative record is available, and may serve and
40 file a reply brief not later than 14 days after service of
41 the brief of the respondent, and the court may not
42 extend these deadlines, except for good cause shown.
43 If a petitioner fails to file a brief within the time
44 provided in this paragraph, the court shall dismiss the

1 appeal unless a manifest injustice would result. The
2 court of appeals may set an expedited briefing
3 schedule.
4

5 (v) Scope and standard for review. The court of
6 appeals shall decide the petition only on the
7 administrative record on which the final
8 nonconfirmation order is based. The burden shall be on
9 the petitioner to show that the final nonconfirmation
10 decision was arbitrary, capricious, not supported by
11 substantial evidence, or otherwise not in accordance
12 with law. Administrative findings of fact are conclusive
13 unless any reasonable adjudicator would be compelled
14 to conclude to the contrary.
15

16 (vi) Stay. The court of appeals shall stay the final
17 nonconfirmation notice pending its decision on the
18 petition for review unless the court determines that the
19 petition for review is frivolous, unlikely to succeed on
20 the merits, or filed for purposes of delay.
21

22 “(C) Exhaustion of Administrative Remedies. A court may
23 review a final nonconfirmation order only if –

- 24 (1) the petitioner has exhausted all administrative
25 remedies available to the alien as of right, and
26 (2) another court has not decided the validity of the
27 order, unless the reviewing court finds that the
28 petition presents grounds that could not have
29 been presented in the prior judicial proceeding or
30 that the remedy provided by the prior proceeding
31 was inadequate or ineffective to test the validity
32 of the order.
33

34 “(D) Limit on injunctive relief. Regardless of the nature of
35 the action or claim or of the identity of the party or parties
36 bringing the action, no court (other than the Supreme
37 Court) shall have jurisdiction or authority to enjoin or
38 restrain the operation of the provisions in this section,
39 other than with respect to the application of such
40 provisions to an individual petitioner.

41 “(9) Management of Employment Eligibility Verification System. —

1 “(A) In general. —The Secretary is authorized to
2 establish, manage and modify an EEVS that shall—
3

4 “(i) respond to inquiries made by participating
5 employers at any time through the internet
6 concerning an individual's identity and whether the
7 individual is authorized to be employed;
8

9 “(ii) maintain records of the inquiries that were
10 made, of confirmations provided (or not provided),
11 and of the codes provided to employers as evidence
12 of their compliance with their obligations under the
13 EEVS; and
14

15 “(iii) provide information to, and request action by,
16 employers and individuals using the system,
17 including notifying employers of the expiration or
18 other relevant change in an employee's employment
19 authorization, and directing an employer to convey
20 to the employee a request to contact the appropriate
21 Federal or State agency.
22

23 “(B) Design and operation of system.— The EEVS shall be
24 designed and operated—

25 “(i) to maximize its reliability and ease of use by
26 employers consistent with insulating and protecting
27 the privacy and security of the underlying
28 information;
29

30 “(ii) to respond accurately to all inquiries made by
31 employers on whether individuals are authorized to
32 be employed and to register any times when the
33 system is unable to receive inquiries;
34

35 “(iii) to maintain appropriate administrative,
36 technical, and physical safeguards to prevent
37 unauthorized disclosure of personal information;
38

39 “(iv) to allow for auditing use of the system to detect
40 fraud and identify theft, and to preserve the security
41 of the information in all of the system, including but
42 not limited to the following:

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- (a) to develop and use algorithms to detect potential identity theft, such as multiple uses of the same identifying information or documents;
- (b) to develop and use algorithms to detect misuse of the system by employers and employees;
- (c) to develop capabilities to detect anomalies in the use of the system that may indicate potential fraud or misuse of the system;
- (d) to audit documents and information submitted by potential employees to employers, including authority to conduct interviews with employers and employees;

“(v) to confirm identity and work authorization through verification of records maintained by the Secretary, other federal departments, states, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States, as determined necessary by the Secretary, including:

- a) records maintained by the Social Security Administration as specified in (D);
- b) Birth and death records maintained by vital statistics agencies of any state or other United States jurisdiction;
- c) Passport and visa records (including photographs) maintained by the United States Department of State;
- d) State driver’s license or identity card information (including photographs) maintained by State department of motor vehicles.

“(vi) to confirm electronically the issuance of the employment authorization or identity document and to display the digital photograph that the issuer placed on the document so that the employer can compare the photograph displayed to the photograph on the document presented by the employee. If in exceptional cases a photograph is not available from the issuer, the Secretary shall specify a temporary

1 alternative procedure for confirming the authenticity
2 of the document.
3

4 "(C) The Secretary is authorized, with notice to the public
5 provided in the Federal Register, to issue regulations
6 concerning operational and technical aspects of the EEVS
7 and the efficiency, accuracy, and security of the EEVS.
8

9 "(D) Access to Information. ---
10

11 "(i) Notwithstanding any other provision of law, the
12 Secretary of Homeland Security shall have access to
13 relevant records described at paragraph (9)(B)(v),
14 for the purposes of preventing identity theft and
15 fraud in the use of the EEVS and enforcing the
16 provisions of this section governing employment
17 verification. A State or other non-federal jurisdiction
18 that does not provide such access shall not be
19 eligible for any grant or other program of financial
20 assistance administered by the Secretary.
21

22 "(ii) The Secretary, in consultation with the
23 Commissioner of Social Security and other
24 appropriate Federal and State agencies, shall
25 develop policies and procedures to ensure protection
26 of the privacy and security of personally identifiable
27 information and identifiers contained in the records
28 accessed pursuant to this paragraph and
29 subparagraph (d)(5)(E)(i). The Secretary, in
30 consultation with the Commissioner and other
31 appropriate Federal and State agencies, shall
32 develop and deploy appropriate privacy and security
33 training for the Federal and State employees
34 accessing the records pursuant to this paragraph and
35 subparagraph (d)(5)(E)(i).
36

37 "(iii) The Chief Privacy Officer of the Department of
38 Homeland Security shall conduct regular privacy
39 audits of the policies and procedures established
40 under subparagraph (9)(D)(ii), including any
41 collection, use, dissemination, and maintenance of
42 personally identifiable information and any
43 associated information technology systems, as well
44 as scope of requests for this information. The Chief

1 Privacy Officer shall review the results of the audits
2 and recommend to the Secretary and the Privacy
3 and Civil Liberties Oversight Board any changes
4 necessary to improve the privacy protections of the
5 program.
6

7 "(E) Responsibilities of the Secretary of Homeland
8 Security.—

9 "(i) As part of the EEVS, the Secretary shall establish
10 a reliable, secure method, which, operating through
11 the EEVS and within the time periods specified,
12 compares the name, alien identification or
13 authorization number, or other relevant information
14 provided in an inquiry against such information
15 maintained or accessed by the Secretary in order to
16 confirm (or not confirm) the validity of the
17 information provided, the correspondence of the
18 name and number, whether the alien is authorized to
19 be employed in the United States (or, to the extent
20 that the Secretary determines to be feasible and
21 appropriate, whether the Secretary's records verify
22 United States citizenship), and such other
23 information as the Secretary may prescribe.

24 "(ii) As part of the EEVS, the Secretary shall
25 establish a reliable, secure method, which, operating
26 through the EEVS, displays the digital photograph
27 described in paragraph (d)(9)(B)(vi).

28 "(iii) The Secretary shall have authority to prescribe
29 when a confirmation, nonconfirmation or further
30 action notice shall be issued.

31 "(iv) The Secretary shall perform regular audits
32 under the EEVS, as described in paragraph
33 (d)((9)(B)(iv) of this section and shall utilize the
34 information obtained from such audits, as well as
35 any information obtained from the Commissioner of
36 Social Security pursuant to section 304 of the
37 Comprehensive Immigration Act of 2007, for the
38 purposes of this Title and of immigration
39 enforcement in general.

1 “(v) The Secretary shall make appropriate
2 arrangements to allow employers who are otherwise
3 unable to access the EEVS to use federal government
4 facilities or public facilities in order to utilize the
5 EEVS.
6

7 “(F) Responsibilities of the Secretary of State.----- As part
8 of the EEVS, the Secretary of State shall provide to the
9 Secretary access to passport and visa information as
10 needed to confirm that a passport or passport card
11 presented under section (c)(1)(B) belongs to the subject of
12 the EEVS check, or that a passport or visa photograph
13 matches an individual;
14

15 “(G) Updating information.— The Commissioner of Social
16 Security and the Secretaries of Homeland Security and
17 State shall update their information in a manner that
18 promotes maximum accuracy and shall provide a process
19 for the prompt correction of erroneous information.

20 “(10) Limitation on use of the Employment Eligibility Verification
21 System.— Notwithstanding any other provision of law, nothing in
22 this subsection shall be construed to permit or allow any
23 department, bureau, or other agency of the United States
24 Government to utilize any information, database, or other
25 records assembled under this subsection for any purpose other
26 than for the enforcement and administration of the immigration
27 laws, anti-terrorism laws, or for enforcement of Federal criminal
28 law related to the functions of the EEVS, including prohibitions
29 on forgery, fraud and identity theft.

30 “(11) Unauthorized Use or Disclosure of Information.

31
32 Any employee of the Department of Homeland Security or
33 another Federal or State agency who knowingly uses or discloses
34 the information assembled under this subsection for a purpose
35 other than one authorized under this section shall pay a civil
36 penalty of \$5,000-\$50,000 for each violation.
37

38 “(12) Conforming amendment.— Public Law 104-208, Div. C,
39 Title IV, Subtitle A, sections 401-05 are repealed, provided that
40 nothing in this subsection shall be construed to limit the
41 authority of the Secretary to allow or continue to allow the

1 participation of Basic Pilot employers in the EEVS established by
2 this subsection.
3

4 “(13) Funds.— In addition to any appropriated funds, the
5 Secretary is authorized to use funds provided in sections 286(m)
6 and (n), for the maintenance and operation of the EEVS. EEVS
7 shall be considered an immigration adjudication service for
8 purposes of sections 286(m) and (n).”

9 “(14) The employer shall use the procedures for EEVS specified
10 in this section for all employees without regard to national origin
11 or citizenship status.
12

13 “(e) Compliance.—

14 “(1) Complaints and investigations.— The Secretary of Homeland
15 Security shall establish procedures—
16

17 “(A) for individuals and entities to file complaints
18 respecting potential violations of subsection (a) or (g)(1);
19

20 “(B) for the investigation of those complaints which the
21 Secretary deems it appropriate to investigate; and
22

23 “(C) for the investigation of such other violations of
24 subsection (a) or (g)(1) as the Secretary determines to be
25 appropriate.
26

27 “(2) Authority in investigations.— In conducting investigations
28 and hearings under this subsection—
29

30 “(A) immigration officers shall have reasonable access to
31 examine evidence of any employer being investigated; and
32

33 “(B) immigration officers designated by the Secretary may
34 compel by subpoena the attendance of witnesses and the
35 production of evidence at any designated place in an
36 investigation or case under this subsection. In case of
37 contumacy or refusal to obey a subpoena lawfully issued
38 under this paragraph, the Secretary may request that the
39 Attorney General apply in an appropriate district court of
40 the United States for an order requiring compliance with
41 such subpoena, and any failure to obey such order may be
42 punished by such court as a contempt thereof. Failure to

1 cooperate with such subpoena shall be subject to further
2 penalties, including but not limited to further fines and the
3 voiding of any mitigation of penalties or termination of
4 proceedings under subsection (e)(3)(B).
5

6 “(3) Compliance Procedures.—
7

8 “(A) Pre-penalty notice.— If the Secretary has reasonable
9 cause to believe that there has been a civil violation of this
10 section or the requirements of this section, including but
11 not limited to subsections (b), (c), (d) and (k), and
12 determines that further proceedings are warranted, the
13 Secretary shall issue to the employer concerned a written
14 notice of the Department’s intention to issue a claim for a
15 monetary or other penalty. Such pre-penalty notice shall:
16

17 “(i) describe the violation;

18 “(ii) specify the laws and regulations allegedly
19 violated;

20 “(iii) disclose the material facts which establish the
21 alleged violation; and

22 “(iv) inform such employer that he or she shall
23 have a reasonable opportunity to make
24 representations as to why a claim for a monetary
25 or other penalty should not be imposed.
26

27 “(B) Remission or mitigation of penalties.— Whenever any
28 employer receives written pre-penalty notice of a fine or
29 other penalty in accordance with subparagraph (A), the
30 employer may file, within 15 days from receipt of such
31 notice, with the Secretary a petition for the remission or
32 mitigation of such fine or penalty, or a petition for
33 termination of the proceedings. The petition may include
34 any relevant evidence or proffer of evidence the employer
35 wishes to present, and shall be filed and considered in
36 accordance with procedures to be established by the
37 Secretary. If the Secretary finds that such fine, penalty,
38 or forfeiture was incurred erroneously, or finds the
39 existence of such mitigating circumstances as to justify the
40 remission or mitigation of such fine or penalty, the
41 Secretary may remit or mitigate the same upon such

1 terms and conditions as the Secretary deems reasonable
2 and just, or order termination of any proceedings relating
3 thereto. Such mitigating circumstances may include, but
4 need not be limited to, good faith compliance and
5 participation in, or agreement to participate in, the EEVS, if
6 not otherwise required.

7 "This subparagraph shall not apply to an employer that
8 has or is engaged in a pattern or practice of violations of
9 subsection (a)(1)(A), (a)(1)(B), or (a)(2) or of any other
10 requirements of this section.

11 "(C) Penalty Claim.—After considering evidence and
12 representations, if any, offered by the employer pursuant
13 to subparagraph (B), the Secretary shall determine
14 whether there was a violation and promptly issue a written
15 final determination setting forth the findings of fact and
16 conclusions of law on which the determination is based. If
17 the Secretary determines that there was a violation, the
18 Secretary shall issue the final determination with a written
19 penalty claim. The penalty claim shall specify all charges in
20 the information provided under clauses (i) through (iii) of
21 subparagraph (A) and any mitigation or remission of the
22 penalty that the Secretary deems appropriate.

23
24 "(4) Civil Penalties.—

25
26 "(A) Hiring or continuing to employ unauthorized aliens.
27 Any employer that violates any provision of subsection
28 (a)(1)(A) or (a)(2) shall:

29
30 "(1) pay a civil penalty of \$5,000 for each
31 unauthorized alien with respect to which each
32 violation of either subsection (a)(1)(A) or (a)(2)
33 occurred;

34
35 "(2) if an employer has previously been fined under
36 subsection (e)(4)(A), pay a civil penalty of \$ 10,000
37 for each unauthorized alien with respect to which a
38 violation of either subsection (a)(1)(A) or (a)(2)
39 occurred; and

40
41 "(3) if an employer has previously been fined more
42 than once under subsection (e)(4), pay a civil

1 penalty of \$ 25,000 for each unauthorized alien with
2 respect to which a violation of either subsection has
3 occurred. This penalty shall apply, in addition to any
4 penalties previously assessed, to employers who fail
5 to comply with a previously issued and final order
6 under this section.

7
8 "(4) if an employer has previously been fined
9 more than twice under subsection (e)(4)(A), pay
10 a civil penalty of \$75,000 for each alien with
11 respect to which a violation of either subsection
12 (a)(1) or (a)(2) occurred

13
14 "(5) In addition to any penalties previously assessed,
15 an employer who fails to comply with a previously
16 issued and final order under this section shall be
17 fined \$75,000 for each violation.

18
19 "(B) Recordkeeping or Verification Practices.—Any
20 employer that violates or fails to comply with any
21 requirement of subsection (b), (c), and (d), shall pay a
22 civil penalty as follows:

23 "(1) pay a civil penalty of \$1,000 for each violation;

24 "(2) if an employer has previously been fined under
25 subsection (e)(4)(B), pay a civil penalty of \$2,000
26 for each violation; and

27
28 "(3) if an employer has previously been fined more
29 than once under subsection (e)(4), pay a civil
30 penalty of \$5,000 for each violation. This penalty
31 shall apply, in addition to any penalties previously
32 assessed, to employers who fail to comply with a
33 previously issued and final order under this section.

34
35 "(4) if an employer has previously been fined more
36 than twice under subsection (e)(4)(B), pay a civil
37 penalty of \$15,000 for each violation.

38
39 "(5) In addition to any penalties previously assessed,
40 an employer who fails to comply with a previously
41 issued and final order under this section shall be
42 fined \$15,000 for each violation.

1
2 “(C) Other Penalties. The Secretary may impose
3 additional penalties for violations, including cease and
4 desist orders, specially designed compliance plans to
5 prevent further violations, suspended fines to take effect
6 in the event of a further violation, and in appropriate
7 cases, the remedy provided by paragraph (g)(2). All
8 penalties in this section may be adjusted every four years
9 to account for inflation as provided by law.

10 “(D) The Secretary is authorized to reduce or mitigate
11 penalties imposed upon employers, based upon factors
12 including, but not limited to, the employer’s hiring volume,
13 compliance history, good-faith implementation of a
14 compliance program, participation in a temporary worker
15 program, and voluntary disclosure of violations of this
16 subsection to the Secretary.

17 “(5) Order of internal review and certification of compliance.—

18
19 “If the Secretary has reasonable cause to believe that an
20 employer has failed to comply with this section, the Secretary is
21 authorized, at any time, to require that the employer certify that
22 it is in compliance with this section, or has instituted a program
23 to come into compliance. Within 60 days of receiving a notice
24 from the Secretary requiring such a certification, the employer’s
25 chief executive officer or similar official with responsibility for,
26 and authority to bind the company on, all hiring and immigration
27 compliance notices shall certify under penalty of perjury that the
28 employer is in conformance with the requirements of subsections
29 (c)(1) through (c)(4), pertaining to document verification
30 requirements, and with subsection (d), pertaining to the EEVS
31 (once that system is implemented according to the requirements
32 of (d)(1)), and with any additional requirements that the
33 Secretary may promulgate by regulation pursuant to subsections
34 (c), (d), and (k), or that the employer has instituted a program
35 to come into compliance with these requirements. At the
36 request of the employer, the Secretary may extend the 60-day
37 deadline for good cause. The Secretary is authorized to publish
38 in the Federal Register standards or methods for such
39 certification, require specific recordkeeping practices with
40 respect to such certifications, and audit the records thereof at
41 any time. This authority shall not be construed to diminish or
42 qualify any other penalty provided by this section.

1 “(6) Judicial review.—

2 “(A) Notwithstanding any other provision of law (statutory
3 or nonstatutory) including sections 1361 and 1651 of title
4 28, no court shall have jurisdiction to consider a final
5 determination or penalty claim issued under subparagraph
6 (3)(C), except as specifically provided by this paragraph.
7 Judicial review of a final determination under paragraph
8 (e)(4) is governed only by chapter 158 of title 28, except
9 as specifically provided below. The filing of a petition as
10 provided in this paragraph shall stay the Secretary’s
11 determination until entry of judgment by the court. The
12 Secretary is authorized to require that petitioner provide,
13 prior to filing for review, security for payment of fines and
14 penalties through bond or other guarantee of payment
15 acceptable to the Secretary.

16 (B) REQUIREMENTS FOR REVIEW OF A FINAL
17 DETERMINATION. With respect to judicial review of a final
18 determination or penalty claim issued under subparagraph
19 (3)(C), the following requirements apply:

20
21 (i) Deadline. The petition for review must be filed no
22 later than 30 days after the date of the final
23 determination or penalty claim issued under
24 subparagraph (3)(C).

25
26 (ii) Venue and forms. The petition for review shall be
27 filed with the court of appeals for the judicial circuit
28 wherein the employer resided when the final
29 determination or penalty claim was issued. The record
30 and briefs do not have to be printed. The court of
31 appeals shall review the proceeding on a typewritten
32 record and on typewritten briefs.

33
34 (iii) Service. The respondent is either the Secretary of
35 Homeland Security or the Commissioner of Social
36 Security, but not both, depending upon who issued (or
37 affirmed) the final nonconfirmation notice. In addition
38 to serving the respondent, the petitioner must also
39 serve the Attorney General.

40
41 (iv) Petitioner’s Brief. The petitioner shall serve and
42 file a brief in connection with a petition for judicial

1 review not later than 40 days after the date on which
2 the administrative record is available, and may serve
3 and file a reply brief not later than 14 days after
4 service of the brief of the respondent, and the court
5 may not extend these deadlines, except for good cause
6 shown. If a petitioner fails to file a brief within the
7 time provided in this paragraph, the court shall dismiss
8 the appeal unless a manifest injustice would result.
9

10 (v) Scope and standard for review. The court of
11 appeals shall decide the petition only on the
12 administrative record on which the final determination
13 is based. The burden shall be on the petitioner to
14 show that the final determination was arbitrary,
15 capricious, not supported by substantial evidence, or
16 otherwise not in accordance with law. Administrative
17 findings of fact are conclusive unless any reasonable
18 adjudicator would be compelled to conclude to the
19 contrary.
20

21 "(C) Exhaustion of Administrative Remedies. A court may
22 review a final determination under subparagraph (3)(C)
23 only if –
24

- 25 (1) the petitioner has exhausted all administrative
26 remedies available to the petitioner as of right,
27 and
- 28 (2) another court has not decided the validity of
29 the order, unless the reviewing court finds that
30 the petition presents grounds that could not have
31 been presented in the prior judicial proceeding or
32 that the remedy provided by the prior proceeding
33 was inadequate or ineffective to test the validity
34 of the order.
35

36 "(D) Limit on injunctive relief. Regardless of the nature of
37 the action or claim or of the identity of the party or parties
38 bringing the action, no court (other than the Supreme
39 Court) shall have jurisdiction or authority to enjoin or
40 restrain the operation of the provisions in this section,
41 other than with respect to the application of such
42 provisions to an individual petitioner.
43

1 “(7) Enforcement of orders. —If an employer fails to comply
2 with a final determination issued against that employer under
3 this subsection, and the final determination is not subject to
4 review as provided in paragraph (6), the Attorney General may
5 file suit to enforce compliance with the final determination in
6 any appropriate district court of the United States. In any such
7 suit, the validity and appropriateness of the final determination
8 shall not be subject to review.

9 “(8) Liens.—

10 “(A) Creation of lien. —If any employer liable for a fee or
11 penalty under this section neglects or refuses to pay such
12 liability and fails to file a petition for review (if applicable)
13 as provided in paragraph 6 of this subsection, such
14 liability is a lien in favor of the United States on all
15 property and rights to property of such person as if the
16 liability of such person were a liability for a tax assessed
17 under the Internal Revenue Code of 1986. If a petition for
18 review is filed as provided in paragraph 6 of this
19 subsection, the lien (if any) shall arise upon the entry of a
20 final judgment by the court. The lien continues for 20
21 years or until the liability is satisfied, remitted, set aside,
22 or is terminated.

23
24 “(B) Effect of filing notice of lien. —Upon filing of a notice
25 of lien in the manner in which a notice of tax lien would be
26 filed under section 6323(f)(1) and (2) of the Internal
27 Revenue Code of 1986, the lien shall be valid against any
28 purchaser, holder of a security interest, mechanic's lien or
29 judgment lien creditor, except with respect to properties or
30 transactions specified in subsection (b), (c), or (d) of
31 section 6323 of the Internal Revenue Code of 1986 for
32 which a notice of tax lien properly filed on the same date
33 would not be valid. The notice of lien shall be considered a
34 notice of lien for taxes payable to the United States for the
35 purpose of any State or local law providing for the filing of
36 a notice of a tax lien. A notice of lien that is registered,
37 recorded, docketed, or indexed in accordance with the
38 rules and requirements relating to judgments of the courts
39 of the State where the notice of lien is registered,
40 recorded, docketed, or indexed shall be considered for all
41 purposes as the filing prescribed by this section. The

1 provisions of section 3201(e) of chapter 176 of title 28
2 shall apply to liens filed as prescribed by this section.

3 "(C) Enforcement of a lien -- A lien obtained through this
4 process shall be considered a debt as defined by 28
5 U.S.C. § 3002 and enforceable pursuant to the Federal
6 Debt Collection Procedures Act.

7 "(f) Criminal Penalties and Injunctions for Pattern or Practice
8 Violations.—

9 "(1) Criminal penalty.—Any employer which engages in a pattern
10 or practice of knowing violations of subsection (a)(1)(A) or
11 (a)(2) shall be fined not more than \$75,000 for each
12 unauthorized alien with respect to whom such a violation occurs,
13 imprisoned for not more than six months for the entire pattern
14 or practice, or both.

15 "(2) Enjoining of pattern or practice violations.—Whenever the
16 Secretary or the Attorney General has reasonable cause to
17 believe that an employer is engaged in a pattern or practice of
18 employment, recruitment, or referral in violation of paragraph
19 (1)(A) or (2) of subsection (a), the Attorney General may bring a
20 civil action in the appropriate district court of the United States
21 requesting such relief, including a permanent or temporary
22 injunction, restraining order, or other order against the
23 employer, as the Secretary deems necessary.

24 "(g) Prohibition of Indemnity Bonds.—

25 "(1) Prohibition.—It is unlawful for an employer, in the hiring,
26 recruiting, or referring for employment of any individual, to
27 require the individual to post a bond or security, to pay or agree
28 to pay an amount, or otherwise to provide a financial guarantee
29 or indemnity, against any potential liability arising under this
30 section relating to such hiring, recruiting, or referring of the
31 individual.

32
33 "(2) Civil penalty.—Any employer which is determined, after
34 notice and opportunity for mitigation of the monetary penalty
35 under subsection (e), to have violated paragraph (1) of this
36 subsection shall be subject to a civil penalty of \$10,000 for each
37 violation and to an administrative order requiring the return of
38 any amounts received in violation of such paragraph to the

1 employee or, if the employee cannot be located, to the general
2 fund of the Treasury.

3
4 “(h) Government Contracts.

5 “(1) Employers.—Whenever an employer who does not hold
6 Federal contracts, grants, or cooperative agreements is
7 determined by the Secretary to be a repeat violator of this
8 section or is convicted of a crime under this section, the
9 employer shall be subject to debarment from the receipt of
10 Federal contracts, grants, or cooperative agreements for a
11 period of up to two years in accordance with the procedures and
12 standards prescribed by the Federal Acquisition Regulations. The
13 Secretary or the Attorney General shall advise the Administrator
14 of General Services of any such debarment, and the
15 Administrator of General Services shall list the employer on the
16 List of Parties Excluded from Federal Procurement and
17 Nonprocurement Programs for the period of the debarment. The
18 Administrator of General Services, in consultation with the
19 Secretary and Attorney General, may waive operation of this
20 subsection or may limit the duration or scope of the debarment.

21 “(2) Contractors and recipients.—Whenever an employer who
22 holds Federal contracts, grants, or cooperative agreements is
23 determined by the Secretary to be a repeat violator of this
24 section or is convicted of a crime under this section, the
25 employer shall be subject to debarment from the receipt of
26 Federal contracts, grants, or cooperative agreements for a
27 period of up to two years in accordance with the procedures and
28 standards prescribed by the Federal Acquisition Regulations.
29 Prior to debarring the employer, the Secretary, in cooperation
30 with the Administrator of General Services, shall advise all
31 agencies holding contracts, grants, or cooperative agreements
32 with the employer of the proceedings to debar the employer
33 from the receipt of new Federal contracts, grants, or cooperative
34 agreements for a period of up to two years. After consideration
35 of the views of agencies holding contracts, grants or cooperative
36 agreements with the employer, the Secretary may, in lieu of
37 proceedings to debar the employer from the receipt of new
38 Federal contracts, grants, or cooperative agreements for a
39 period of up to two years, waive operation of this subsection,
40 limit the duration or scope of the proposed debarment, or may
41 refer to an appropriate lead agency the decision of whether to
42 seek debarment of the employer, for what duration, and under

1 what scope in accordance with the procedures and standards
2 prescribed by the Federal Acquisition Regulation. However, any
3 proposed debarment predicated on an administrative
4 determination of liability for civil penalty by the Secretary or the
5 Attorney General shall not be reviewable in any debarment
6 proceeding.

7 “(3) Indictments for violations of this section or adequate
8 evidence of actions that could form the basis for debarment
9 under this subsection shall be considered a cause for
10 suspension under the procedures and standards for suspension
11 prescribed by the Federal Acquisition Regulation.

12 “(4) Inadvertent violations of recordkeeping or verification
13 requirements, in the absence of any other violations of this
14 section, shall not be a basis for determining that an employer is
15 a repeat violator for purposes of this subsection.

16
17 “(i) Miscellaneous Provisions.—

18 “(1) Documentation.—In providing documentation or
19 endorsement of authorization of aliens (other than aliens lawfully
20 admitted for permanent residence) authorized to be employed in
21 the United States, the Secretary shall provide that any
22 limitations with respect to the period or type of employment or
23 employer shall be conspicuously stated on the documentation or
24 endorsement.

25
26 “(2) Preemption.—The provisions of this section preempt any
27 State or local law that requires the use of the EEVS in a fashion
28 that conflicts with federal policies, procedures or timetables, or
29 that imposes civil or criminal sanctions (other than through
30 licensing and similar laws) upon those who employ, or recruit or
31 refer for a fee for employment, unauthorized aliens.

32 “(j) Deposit of Amounts Received.— Except as otherwise specified, civil
33 penalties
34 collected under this section shall be deposited by the Secretary into
35 the general fund of the Treasury.

36 “(k) No Match Notice. —

37 “(1) For the purpose of this subsection, a no match notice is written
38 notice from the Social Security Administration (SSA) to an employer
39 reporting earnings on a Form W-2 that employees’ names or

1 corresponding social security account numbers fail to match SSA
2 records. The Secretary, in consultation with the Commissioner of the
3 Social Security Administration, is authorized to establish by regulation
4 requirements for verifying the identity and work authorization of
5 employees who are the subject of no-match notices. The Secretary
6 shall establish by regulation a reasonable period during which an
7 employer must allow an employee who is subject to a no-match notice
8 to resolve the no match notice with no adverse employment
9 consequences to the employee. The Secretary may also establish
10 penalties for noncompliance by regulation.

11
12 *“(I) Challenges to Validity—*

13
14 *“(1) In General.—Any right, benefit, or claim not otherwise*
15 *waived or limited pursuant to this section is available in an*
16 *action instituted in the United States District Court for the*
17 *District of Columbia, but shall be limited to determinations of –*

18
19 *“(A) whether this section, or any regulation issued to*
20 *implement this section, violates the Constitution of the*
21 *United States; or*

22
23 *“(B) whether such a regulation issued by or under the*
24 *authority of the Secretary to implement this section, is*
25 *contrary to applicable provisions of this section or was*
26 *issued in violation of title 5, chapter 5, United States Code.*

27
28 *“(2) Deadlines for Bringing Actions.— Any action instituted under*
29 *this paragraph must be filed no later than 90 days after the date*
30 *the challenged section or regulation described in clause (i) or (ii)*
31 *of subparagraph (A) is first implemented.*

32
33 *“(3) Class Actions.--The court may not certify a class under Rule*
34 *23 of the Federal Rules of Civil Procedure in any action under*
35 *this section.*

36
37 *“(4) Rule of Construction.-- In determining whether the*
38 *Secretary’s interpretation regarding any provision of this section*
39 *is contrary to law, a court shall accord to such interpretation the*
40 *maximum deference permissible under the Constitution.*

41
42 *“(5) No Attorneys’ Fees.--Notwithstanding any other provision of*
43 *law, the court shall not award fees or other expenses to any*

1 person or entity based upon any action relating to this Title
2 brought pursuant to this section (I)."
3

4 **SEC. 303. EFFECTIVE DATE.**

5 This title shall become effective on the date of enactment.
6

7 **SEC. 304. DISCLOSURE OF CERTAIN TAXPAYER INFORMATION**
8 **TO ASSIST IN IMMIGRATION ENFORCEMENT.**
9

10 (a) Disclosure of Certain Taxpayer Identity Information.--
11

12 (1) IN GENERAL.--Section 6103(l) of the Internal Revenue Code of
13 1986 is amended by adding at the end the following new paragraph:
14

15 `` (21) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY
16 INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO
17 DEPARTMENT OF HOMELAND SECURITY.—
18

19 `` (A) IN GENERAL.--From taxpayer identity information or other
20 information which has been disclosed or otherwise made available to
21 the Social Security Administration and upon written request by the
22 Secretary of Homeland Security (in this paragraph referred to as the
23 `Secretary'), the Commissioner of Social Security shall disclose
24 directly to officers, employees, and contractors of the Department of
25 Homeland Security—
26

27 `` (i) the taxpayer identity information of each person who has filed
28 an information return required by reason of section 6051 after
29 calendar year 2005 and before the date specified in subparagraph (D)
30 which contains—
31

32 `` (I) 1 (or any greater number the Secretary shall request)
33 taxpayer identifying number, name, and address of any employee
34 (within the meaning of such section) that did not match the records
35 maintained by the Commissioner of Social Security, or
36

37 `` (II) 2 (or any greater number the Secretary shall request)
38 names, and addresses of employees (within the meaning of such
39 section), with the same taxpayer identifying number,
40

41 and the taxpayer identity of each such employee, and
42

1 (ii) the taxpayer identity of each person who has filed an
2 information return required by reason of section 6051 after calendar
3 year 2005 and before the date specified in subparagraph (D) which
4 contains the taxpayer identifying number (assigned under section
5 6109) of an employee (within the meaning of section 6051)—

6
7 (I) who is under the age of 14 (or any lesser age the Secretary shall
8 request), according to the records maintained by the Commissioner of
9 Social Security,

10
11 (II) whose date of death, according to the records so maintained,
12 occurred in a calendar year preceding the calendar year for which the
13 information return was filed,

14
15 (III) whose taxpayer identifying number is contained in more than
16 one (or any greater number the Secretary shall request) information
17 return filed in such calendar year, or

18
19 (IV) who is not authorized to work in the United States, according to
20 the records maintained by the Commissioner of Social Security,

21
22 and the taxpayer identity and date of birth of each such employee.

23
24 (B) REIMBURSEMENT.-- The Secretary shall transfer to the
25 Commissioner the funds necessary to cover the additional cost directly
26 incurred by the Commissioner in carrying out the searches or
27 manipulations requested by the Secretary.”

28
29 (2) COMPLIANCE BY DHS CONTRACTORS WITH CONFIDENTIALITY
30 SAFEGUARDS.—

31
32 (A) IN GENERAL.--Section 6103(p) of such Code is amended by
33 adding at the end the following new paragraph:

34
35 (9) DISCLOSURE TO DHS CONTRACTORS.--Notwithstanding any
36 other provision of this section, no return or return information shall be
37 disclosed to any contractor of the Department of Homeland Security
38 unless such Department, to the satisfaction of the Secretary—

39
40 (A) has requirements in effect which require each such contractor
41 which would have access to returns or return information to provide
42 safeguards (within the meaning of paragraph (4)) to protect the
43 confidentiality of such returns or return information,

1 ` ` (B) agrees to conduct an on-site review every 3 years (mid-point
2 review in the case of contracts or agreements of less than 3 years in
3 duration) of each contractor to determine compliance with such
4 requirements,

5
6 ` ` (C) submits the findings of the most recent review conducted
7 under subparagraph (B) to the Secretary as part of the report required
8 by paragraph (4)(E), and

9
10 ` ` (D) certifies to the Secretary for the most recent annual period
11 that such contractor is in compliance with all such requirements.

12
13 The certification required by subparagraph (D) shall include the
14 name and address of each contractor, a description of the contract or
15 agreement with such contractor, and the duration of such contract or
16 agreement."

17
18 (3) CONFORMING AMENDMENTS.—

19
20 (A) Section 6103(a)(3) of such Code is amended by striking ` ` or
21 (20)" and inserting ` `(20), or (21)".

22
23 (B) Section 6103(p)(3)(A) of such Code is amended by adding at
24 the end the following new sentence: ` `The Commissioner of Social
25 Security shall provide to the Secretary such information as the
26 Secretary may require in carrying out this paragraph with respect to
27 return information inspected or disclosed under the authority of
28 subsection (l)(21)."

29
30 (C) Section 6103(p)(4) of such Code is amended—

31
32 (i) by striking ` ` or (17)" both places it appears and inserting
33 ` `(17), or (21)"; and

34
35 (ii) by striking ` ` or (20)" each place it appears and inserting
36 ` `(20), or (21)".

37
38 (D) Section 6103(p)(8)(B) of such Code is amended by inserting
39 ` ` or paragraph (9)" after ` ` subparagraph (A)".

40
41 (E) Section 7213(a)(2) of such Code is amended by striking ` ` or
42 (20)" and inserting ` `(20), or (21)".

43
44 (b) Authorization of Appropriations.—

1 There are authorized to be appropriated to the Secretary of Homeland
2 Security such sums as are necessary to carry out the amendments
3 made by this section.
4

5 (c) Repeal of Reporting Requirements.--

6 (1) REPORT ON EARNINGS OF ALIENS NOT AUTHORIZED TO
7 WORK.--Subsection (c) of section 290 of the Immigration and
8 Nationality Act (8 U.S.C. 1360) is repealed.
9

10 (2) REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT
11 NUMBERS.--Subsection (b) of section 414 of the Illegal Immigration
12 Reform and Immigrant Responsibility Act of 1996 (division C of Public
13 Law 104-208; 8 U.S.C. 1360 note) is repealed.
14

15 (d) Effective Dates.--

16 (1) IN GENERAL.--The amendments made by subsection (a) shall
17 apply to disclosures made after the date of the enactment of this Act.
18

19 (2) CERTIFICATIONS.--The first certification under section
20 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by
21 subsection (a)(2), shall be made with respect to calendar year 2007.
22

23 (3) REPEALS.--The repeals made by subsection (c) shall take effect
24 on the date of the enactment of this Act.
25

26 **SEC. 305. INCREASING SECURITY AND INTEGRITY OF SOCIAL** 27 **SECURITY CARDS** 28

29 (a) FRAUD-RESISTANT, TAMPER-RESISTANT AND WEAR-RESISTANT
30 SOCIAL SECURITY CARDS.—
31

32 (1) ISSUANCE.—
33

34 (A) PRELIMINARY WORK.—Not later than 180 days after the date of
35 enactment of this title, the Commissioner of Social Security shall begin
36 work to administer and issue fraud-resistant, tamper-resistant Social
37 Security cards.
38

39 (B) COMPLETION.—Not later than two years after the date of
40 enactment of this title, the Commissioner of Social Security shall only
41 issue fraud-resistant, tamper-resistant and wear-resistant Social
42 Security cards.
43

1 (2) AMENDMENT.—Section 205(c)(2)(G) of the Social Security Act (42
2 U.S.C. 405(c)(2)(G)) is amended to read —
3

4 “(i) The Commissioner of Social Security shall issue a social security
5 card to each individual at the time of the issuance of a social security
6 account number to such individual. The social security card shall be
7 fraud-resistant, tamper-resistant and wear-resistant.”
8

9 (3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to
10 be appropriated such sums as may be necessary to carry out this
11 subsection and the amendments made by this subsection.
12

13 (3) Report on Feasibility of Including Biometrics - Within 180 days of
14 enactment, the Commissioner of Social Security shall provide to
15 Congress a report on the utility, costs and feasibility of including a
16 photograph and other biometric information on the Social Security
17 Card.
18

19 (b) MULTIPLE CARDS.— Section 205(c)(2)(G) of of the Social Security
20 Act (42 U.S.C. 405(c)(2)(G)) is further amended by adding at the end
21 the following:
22

23 “(ii) The Commissioner of Social Security shall not issue a replacement
24 Social Security card to any individual unless the Commissioner
25 determines that the purpose for requiring the issuance of the
26 replacement document is legitimate.”
27

28 **SEC. 306. INCREASING SECURITY AND INTEGRITY OF IDENTITY DOCUMENTS**

29 (a) Purpose- The Secretary of Homeland Security, shall establish
30 the State Records Improvement Grant Program (referred to in this
31 section as the `Program'), under which the Secretary may award
32 grants to States for the purpose of advancing the purposes of this Act
33 and of issuing or implementing plans to issue driver’s license and
34 identity cards that can be used for purposes of verifying identity under
35 this Title and that comply with the state license requirements in
36 section 202 of the REAL ID Act of 2005 (division B of Public Law 109-
37 13; 49 U.S.C. 30301 note).
38

39 (b) States that do not certify their intent to comply with the
40 REAL ID Act and implementing regulations or that do not submit a
41 compliance plan acceptable to the Secretary are not eligible for grants
42 under the Program. Driver’s license or identification cards issued by

1 States that do not comply with REAL ID may not be used to verify
2 identity under this Title except under conditions approved by the
3 Secretary.
4

5 (c) Grants and Contracts Authorized—
6

7 (1) IN GENERAL- The Secretary is authorized to award
8 grants, subject to the availability of appropriations, to a
9 State to provide assistance to such State agency to meet
10 the deadlines for the issuance of a driver's license which
11 meets the requirements of section 202 of the REAL ID Act
12 of 2005 (division B of Public Law 109-13; 49 U.S.C. 30301
13 note).
14

15 (2) DURATION- Grants may be awarded under this
16 subsection during fiscal years 2007 through 2011.
17

18 (3) COMPETITIVE BASIS - The Secretary shall give priority
19 to States whose REAL ID implementation plan is
20 compatible with the employment verification systems,
21 processes, and implementation schedules set forth in
22 Section 302, as determined by the Secretary. Minimum
23 standards for compatibility will include the ability of the
24 State to promptly verify the document and provide access
25 to the digital photograph displayed on the document.
26

27 (4) Where the Secretary of Homeland Security determines
28 that compliance with REAL ID and with the requirements of
29 the employment verification system can best be met by
30 awarding grants or contracts to a State, a group of States,
31 a government agency, or a private entity, the Secretary
32 may utilize Program funds to award such a grant, grants,
33 contract or contracts.
34

35 (5) On an expedited basis, the Secretary shall award
36 grants or contracts for the purpose of improving the
37 accuracy and electronic availability of states' records of
38 births, deaths, driver's licenses, and of other records
39 necessary for implementation of EEVS and as otherwise
40 necessary to advance the purposes of this Act.
41

42 (d) Use of Funds- Grants or contracts awarded pursuant to the
43 Program may be used to assist State compliance with the REAL
44 ID requirements, including, but not limited to -

- 1
- 2 (1) upgrade and maintain technology
- 3 (2) obtain equipment;
- 4 (3) hire additional personnel;
- 5 (4) cover operational costs, including overtime; and
- 6 (5) such other resources as are available to assist that
- 7 agency.
- 8

9 (e) Application-

10

11 (1) IN GENERAL- Each eligible state seeking a grant under
12 this section shall submit an application to the Secretary at
13 such time, in such manner, and accompanied by such
14 information as the Secretary may reasonably require.

15

16 (2) CONTENTS- Each application submitted pursuant to
17 paragraph (1) shall—

18

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

21

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

25

26 (f) Conditions – All grants under the Program shall be
27 conditioned on the recipient providing REAL ID compliance
28 certification and implementation plans acceptable to the
29 Secretary which include ---

30 (1) adopting appropriate security measures to protect
31 against improper issuance of driver's licenses and
32 identity cards, tampering with electronic issuance
33 systems, and identity theft as the Secretary may
34 prescribe;

35 (2) ensuring introduction and maintenance of such
36 security features and other measures necessary to
37 make the documents issued by recipient resistant to
38 tampering, counterfeiting, and fraudulent use as the
39 Secretary may prescribe; and

40 (3) ensuring implementation and maintenance of such
41 safeguards for the security of the information contained
42 on these documents as the Secretary may prescribe.
43

1 All grants shall also be conditioned on the recipient
2 agreeing to adhere to the timetables and procedures for
3 issuing REAL ID driver's licenses and identification cards as
4 specified in section 274A(c)(1)(F).
5

6 All grants shall further be conditioned on the recipient
7 agreeing to implement the requirements of this Act and
8 any implementing regulations to the satisfaction of the
9 Secretary of Homeland Security.
10

11 (g) Authorization of Appropriations- IN GENERAL- There is
12 authorized to be appropriated \$300,000,000 for each of fiscal
13 years 2007 through 2011 to carry out the provisions of this
14 section.
15

16 (h) Supplement Not Supplant- Amounts appropriated for grants
17 under this section shall be used to supplement and not supplant
18 other State and local public funds obligated for the purposes
19 provided under this title.
20

21 (i) Additional Uses – Amounts authorized under this section may
22 also be used to assist in sharing of law enforcement information
23 between States and the Department of Homeland Security for
24 purposes of implementing Section 602(c), at the discretion of
25 the Secretary.
26

27 **SECTION 307. VOLUNTARY ADVANCED VERIFICATION PROGRAM TO COMBAT**
28 **IDENTITY THEFT.**
29

30 (a) Voluntary Advanced Verification Program. The Secretary
31 shall establish and make available a voluntary program allowing
32 employers to submit and verify an employee's fingerprints for
33 purposes of determining the identity and work authorization of
34 the employee.
35

36 (1) Implementation Date. No later than 18 months after
37 the date of enactment of this Act, the Secretary shall
38 implement the voluntary advanced verification program
39 and make it available to employers willing to volunteer in
40 the program.
41

42 (2) Voluntary Participation. The fingerprint verification
43 program is voluntary; employers are not required to
44 participate in it.

1
2 (b) Limited Retention Period for Fingerprints.
3

4 (1) The Secretary shall only maintain fingerprint records of
5 a U.S. Citizen that were submitted by an employer through
6 the EEVS for 10 business days, upon which such records
7 shall be purged from any EEVS-related system unless the
8 fingerprints have been ordered to be retained for purposes
9 of a fraud or similar investigation by a government agency
10 with criminal or other investigative authority.
11

12 (2) Exception: For purposes of preventing identity theft
13 or other harm, a U.S. Citizen employee may request in
14 writing that his fingerprint records be retained for
15 employee verification purposes by the Secretary. In such
16 instances of written consent, the Secretary may retain
17 such fingerprint records until notified in writing by the U.S.
18 Citizen of his withdrawal of consent, at which time the
19 Secretary must purge such fingerprint records within 10
20 business days unless the fingerprints have been ordered to
21 be retained for purposes of a fraud or similar investigation
22 by a government agency with an independent criminal or
23 other investigative authority.
24

25 (d) Limited Use of Fingerprints Submitted for Program. The
26 Secretary and the employer may use any fingerprints taken from
27 the employee and transmitted for querying the EEVS solely for
28 the purposes of verifying identity and employment eligibility
29 during the employee verification process. Such transmitted
30 fingerprints may not be used for any other purpose. This
31 provision does not alter any other provisions regarding the use
32 of non-fingerprint information in the EEVS.
33

34 (e) Safeguarding of Fingerprint Information. The Secretary,
35 subject to specifications and limitations set forth under this
36 section and other relevant provisions of this Act, shall be
37 responsible for safely and securely maintaining and storing all
38 fingerprints submitted under this program.
39

40 **SEC. 308. RESPONSIBILITIES OF THE SOCIAL SECURITY ADMINISTRATION**

41 Section 205(c)(12) of the Social Security Act, 42 U.S.C. 405(c)(2), is
42 amended by adding at the end the following new subparagraphs:

1 “(I) Responsibilities of the Commissioner of Social Security.—

2 “(i) As part of the verification system, the Commissioner of
3 Social Security shall, subject to the provisions of section
4 274A(d) of the Immigration and Nationality Act, establish a
5 reliable, secure method that, operating through the EEVS
6 and within the time periods specified in section 274A(d) of
7 the Immigration and Nationality Act:

8 “(1) compares the name, social security account
9 number and available citizenship information
10 provided in an inquiry against such information
11 maintained by the Commissioner in order to confirm
12 (or not confirm) the validity of the information
13 provided regarding an individual whose identity and
14 employment eligibility must be confirmed;

15 “(2) the correspondence of the name, number, and
16 any other identifying information;

17 “(3) whether the name and number belong to an
18 individual who is deceased;

19 “(4) whether an individual is a national of the United
20 States (when available); and

21 “(5) whether the individual has presented a social
22 security account number that is not valid for
23 employment.

24 The EEVS shall not disclose or release social security
25 information to employers through the confirmation system
26 (other than such confirmation or nonconfirmation).

27 “(ii) Social Security Administration Database
28 Improvements – For purposes of preventing identity theft,
29 protecting employees, and reducing burden on employers,
30 and notwithstanding section 6103 of title 26, United States
31 Code, the Commissioner of Social Security, in consultation
32 with the Secretary, shall review the Social Security
33 Administration databases and information technology to
34 identify any deficiencies and discrepancies related to
35 name, birth date, citizenship status, or death records of
36 the social security accounts and social security account

1 holders likely to contribute to fraudulent use of documents,
2 or identity theft, or to affect the proper functioning of the
3 EEVS and shall correct any identified errors. The
4 Commissioner shall ensure that a system for identifying
5 and correcting such deficiencies and discrepancies is
6 adopted to ensure the accuracy of the Social Security
7 Administration's databases.

8 "(iii) Notification to "Freeze" Use of Social Security Number
9 - The Commissioner of Social Security, in consultation with
10 the Secretary of Homeland Security, shall establish a
11 secure process whereby an individual can request that the
12 Commissioner preclude any confirmation under the EEVS
13 based on that individual's Social Security number until it is
14 reactivated by that individual."

15 **SEC. 309. IMMIGRATION ENFORCEMENT SUPPORT BY THE INTERNAL**
16 **REVENUE SERVICE AND THE SOCIAL SECURITY ADMINISTRATION.**

17
18 (a) Tightening requirements for the provision of social security
19 numbers on Form W-2 wage and tax statements.--
20

21 Section 6724 of the Internal Revenue Code of 1986 (relating to
22 waiver; definitions and special rules) is amended by adding at
23 the end the following new subsection:
24

25 "(f) Special rules with respect to social security numbers
26 on withholding exemption certificates.
27

28 "(l) Reasonable cause waiver not to apply.
29

30 Subsection (a) shall not apply with respect to the social
31 security account number of an employee furnished under
32 section 6051 (a)(2).
33

34 "(2) Exception.- "(A) In general.-Except as provided in
35 subparagraph (B), [*paragraph (1)*] shall not apply in any
36 case in which the employer-
37

38 "(i) receives confirmation that the discrepancy
39 described in section 205(c)(2)(I) of the Social
40 Security Act has been resolved, or
41

1 "(ii) corrects a clerical error made by the employer
2 with respect to the social security account number of
3 an employee within 60 days after notification under
4 section 205(c)(2)(1) of the Social Security Act that
5 the social security account number contained in
6 wage records provided to the Social Security
7 Administration by the employer with respect to the
8 employee does not match the social security account
9 number of the employee contained in relevant
10 records otherwise maintained by the Social Security
11 Administration.

12
13 "(B) Exception not applicable to frequent offenders.
14 Subparagraph (A) shall not apply -

15
16 "(i) in any case in which not less than 50 of the
17 statements required to be made by an employer
18 pursuant to section 6051 either fail to include an
19 employee's social security account number or include
20 an incorrect social security account number, or
21 "(ii) with respect to any employer who has received
22 written notification under section 205(c)(2)(1) of the
23 Social Security Act during each of the 3 preceding
24 taxable years that the social security account
25 numbers in the wage records provided to the Social
26 Security Administration by such employer with
27 respect to 10 more employees do not match relevant
28 records otherwise
29 maintained by the Social Security Administration."
30

31 (b) Enforcement -

32
33 (1) In general.-Not later than 90 days after the date of the
34 enactment of this Act, the Secretary of the Treasury, in
35 consultation with the Secretary of Homeland Security, shall
36 establish a unit within the Criminal Investigation office of
37 the Internal Revenue Service to investigate violations of
38 the Internal Revenue Code of 1986 related to the
39 employment of individuals who are not authorized to work
40 in the United States.

41
42 (2) Special agents; support staff. - The Secretary of the
43 Treasury shall assign to the unit a minimum of 10 full-time
44 special agents and necessary support staff and is

1 authorized to employ up to 200 full time special agents for
2 this unit based on investigative requirements and work
3 load.
4

5 (3) Reports.-During each of the first 5 calendar years
6 beginning after the establishment of such unit and
7 biennially thereafter, the unit shall transmit to Congress a
8 report that describes its activities and includes the number
9 of investigations and cases referred for prosecution.
10

11 (c) INCREASE IN PENALTY ON EMPLOYER FAILING TO FILE
12 CORRECT INFORMATION RETURNS.-Section 6721 of such Code
13 (relating to failure to file correct information returns) is amended
14 as follows-

15
16 (1) in subsection (a)(1)-

17
18 (A) by striking "\$50" and inserting "\$200", and

19
20 (B) by striking "\$250,000" and inserting "\$1,000,000",
21

22 (2) in subsection (b)(1)(A), by striking "\$15 in lieu of
23 \$50" and inserting "\$60 in lieu of \$200",
24

25 (3) in subsection (b)(1)(B), by striking "\$75,000" and
26 inserting "\$300,000",
27

28 (4) in subsection (b)(2)(A), by striking "\$30 in lieu of \$50"
29 and inserting "\$120 in lieu of \$200",
30

31 (5) in subsection (b)(2)(B), by striking "\$150,000" and
32 inserting "\$600,000",
33

34 (6) in subsection (d)(A) in paragraph (1)-
35

36 (i) by striking "'\$100,000' for '\$250,000' " and
37 inserting "'\$400,000' for '\$1,000,000' " in
38 subparagraph (A),
39

40 (ii) by striking "'\$25,000' for '\$75,000' " and inserting"
41 '\$100,000' for '\$300,000' " in subparagraph (B), and
42

1 (iii) by striking " '\$50,000' for '\$150,000' " and inserting "
2 '\$200,000' for '\$600,000' " in subparagraph (C),

3 (B) in paragraph (2)(A), by striking "\$5,000,000" and
4 inserting "\$2,000,000", and

5
6 (C) in the heading, by striking "\$5,000,000" and
7 inserting "\$2,000,000",

8
9 (7) in subsection (e)(2)-

10
11 (A) by striking "\$100" and inserting "\$400",

12
13 (B) by striking "\$25,000" and inserting "\$100,000" in
14 subparagraph (C)(i), and

15
16 (C) by striking "\$100,000" and inserting "\$400,000" in
17 subparagraph (C)(ii), and

18 (8) in subsection (e)(3)(A), by striking "\$250,000" and
19 inserting "\$1,000,000".

20
21 (d) Effective Date.-

22
23 The amendments made by subsections (b) and (c) shall apply to
24 failures occurring after December 31, 2006.

25
26 **SEC. 310. AUTHORIZATION OF APPROPRIATIONS**

27
28 (a) There are authorized to be appropriated to the Secretary of
29 Homeland Security such sums as may be necessary to carry out the
30 provisions of this Act, and the amendments made by this Act, including
31 the following appropriations:

32
33 (1) In each of the five years beginning on the date of the
34 enactment of this Act, the appropriations necessary to increase
35 to a level not less than 4500 the number of personnel of the
36 Department of Homeland Security assigned exclusively or
37 principally to an office or offices dedicated to monitoring and
38 enforcing compliance with sections 274A and 274C of the
39 Immigration and Nationality Act (8 U.S.C. 1324a and 1324c),

1 including compliance with the requirements of the EEVS. These
2 personnel shall perform the following compliance and monitoring
3 activities:
4

5 (i) verify Employment Identification Numbers of employers
6 participating in the EEVS;
7

8 (ii) verify compliance of employers participating in the
9 EEVS with the requirements for participation that are
10 prescribed by the Secretary;
11

12 (iii) monitor the EEVS for multiple uses of Social Security
13 Numbers and any immigration identification numbers for
14 evidence that could indicate identity theft or fraud;
15

16 (iv) monitor the EEVS to identify discriminatory practices;
17

18 (v) monitor the EEVS to identify employers who are not
19 using the system properly, including employers who fail to
20 make appropriate records with respect to their queries and
21 any notices of confirmation, nonconfirmation, or further
22 action;
23

24 (vi) identify instances where employees allege that an
25 employer violated their privacy rights;
26

27 (vii) analyze and audit the use of the EEVS and the data
28 obtained through the EEVS to identify fraud trends,
29 including fraud trends across industries, geographical
30 areas, or employer size;
31

32 (viii) analyze and audit the use of the EEVS and the data
33 obtained through the EEVS to develop compliance tools as
34 necessary to respond to changing patterns of fraud;
35

36 (ix) provide employers with additional training and other
37 information on the proper use of the EEVS;
38

39 (x) perform threshold evaluation of cases for referral to
40 the U.S. Immigration and Customs Enforcement and to
41 liaise with the U.S. Immigration and Customs Enforcement
42 with respect to these referrals;
43

1 (xi) any other compliance and monitoring activities that, in
2 the Secretary's judgment, are necessary to ensure the
3 functioning of the EEVS;
4

5 (x) investigate identity theft and fraud detected through
6 the EEVS and undertake the necessary enforcement
7 actions;
8

9 (xi) investigate use of fraudulent documents or access to
10 fraudulent documents through local facilitation and
11 undertake the necessary enforcement actions;
12

13 (xii) provide support to the U.S. Citizenship and
14 Immigration Services with respect to the evaluation of
15 cases for referral to the U.S. Immigration and Customs
16 Enforcement;
17

18 (xiii) perform any other investigations that, in the
19 Secretary's judgment, are necessary to ensure the
20 functioning of the EEVS, and undertake any enforcement
21 actions necessary as a result of these investigations.
22

23 (2) The appropriations necessary to acquire, install and maintain
24 technological equipment necessary to support the functioning of
25 the EEVS and the connectivity between U.S. Citizenship and
26 Immigration Services and the U.S. Immigration and Customs
27 Enforcement with respect to the sharing of information to
28 support the EEVS and related immigration enforcement actions.
29

30 (b) There are authorized to be appropriated to Commissioner of Social
31 Security such sums as may be necessary to carry out the provisions of
32 this Act, including Section 308 of this Act.
33

1 **TITLE IV--NEW TEMPORARY WORKER PROGRAM**

2 **SUBTITLE A: SEASONAL NON-AGRICULTURAL AND YEAR-**
3 **ROUND NONIMMIGRANT TEMPORARY WORKERS**

4 **SEC. 401. NONIMMIGRANT TEMPORARY WORKER.**

5 (a) IN GENERAL- Section 101(a)(15) of the Immigration and
6 Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

7
8 (1) in subparagraph (H)-

9
10 (A) by striking subclause (ii)(b);

11
12 (B) by striking `or (iii)` and inserting `(iii)`;

13
14 (C) by striking `; and the alien spouse` and inserting `; or
15 (iv) the alien spouse`;

16
17 (2) by striking `or` at the end of subparagraph (U);

18
19 (3) by striking the period at the end of subparagraph (V) and
20 inserting a semi-colon; and

21
22 (4) by inserting at the end the following new subparagraphs-

23
24 ` (W) [Reserved];

25
26 ` (X) [Reserved]; or

27
28 ` (Y) subject to section 218A, an alien having a residence in a
29 foreign country which the alien has no intention of abandoning
30 and who is coming temporarily to the United States—

31
32 ` (i) to perform temporary labor or services other than the
33 labor or services described in clause (i)(b), (i)(b1), (i)(c),
34 or (iii) of subparagraph of (H), subparagraph (D), (E), (I),
35 (L), (O), (P), or (R), or section 214(e) (if United States
36 workers who are able, willing, and qualified to perform
37 such labor or services cannot be found in the United
38 States);

39
40 ` (ii) to perform seasonal non-agricultural labor or services;

1 `or

2

3 ` (iii) as the spouse or child of an alien described in clause
4 (i) or (ii) of this subparagraph.'

5

6 (b) REFERENCES- All references in the immigration laws as amended
7 by this Title to section 101(a)(15)(H)(ii)(b) of the Immigration and
8 Nationality Act shall be considered a reference to both that section of
9 the Act and to section 101(a)(15)(Y)(ii) of the Act.

10

11 (c) EFFECTIVE DATE- The effective date of the amendment made by
12 subparagraph (1)(A) of subsection (a) shall be the date on which the
13 Secretary of Homeland Security makes the certification described in
14 section 1(a) of this Act.

15 (d) Sunset of Y-1 Visa Program.--

16 (1) SUNSET.--Notwithstanding any other provision of this Act, or
17 any amendment made by this Act, no alien may be issued a new
18 visa as a Y-1 nonimmigrant (as defined in section 218B of the
19 Immigration and Nationality Act, as added by section 403) on
20 the date that is 5 years after the date that the first such visa is
21 issued.

22 (2) CONSTRUCTION.--Nothing in paragraph (1) may be
23 construed to affect issuance of visas to Y-2B nonimmigrants (as
24 defined in such section 218B), under the AgJOBS Act of 2007, as
25 added by subtitle C, under the H-2A visa program, or any visa
26 program other than the Y-1 visa program.

27 **SEC. 402. ADMISSION OF NONIMMIGRANT WORKERS.**

28 (a) New Workers- Chapter 2 of title II of the Act (8 U.S.C. 1181 et
29 seq.) is amended by striking section 218 and inserting the following:

30 **`SEC. 218A. ADMISSION OF Y NONIMMIGRANTS.**

31 **`(a) Application Procedures.—**

32

33 ` (1) Labor Certification.—The Secretary of Labor shall prescribe
34 by regulation the procedures for a United States employer to
35 obtain a labor certification of a job opportunity under the terms
36 set forth in section 218B.

37

1 ` (2) Petition.--The Secretary of Homeland Security shall
2 prescribe by regulation the procedures for a United States
3 employer to petition to the Secretary of Homeland Security for
4 authorization to employ an alien as a Y nonimmigrant worker
5 and the evidence required to demonstrate eligibility for such
6 authorization under the terms set forth in subsection (c).
7

8 ` (3) Y Nonimmigrant Visa.-- The Secretary of State and the
9 Secretary of Homeland Security, as appropriate, shall prescribe
10 by regulation the procedures for an alien to apply for a Y
11 nonimmigrant visa and the evidence required to demonstrate
12 eligibility for such visa under the terms set forth in subsection
13 (e).
14

15 ` (4) Regulations.--The regulations referenced in paragraphs (1),
16 (2), and (3) shall describe, at a minimum—
17

18 ` (A) the procedures for collection and verification of
19 biometric data from an alien seeking a Y nonimmigrant
20 visa or admission in Y nonimmigrant status; and
21

22 ` (B) the procedure and standards for validating an
23 employment arrangement between a United States
24 employer and an alien seeking a visa or admission
25 described in (A).
26

27 ` (b) Application for Certification of a Job Opportunity Offered to Y
28 Nonimmigrant Workers.—An employer desiring to employ a Y
29 nonimmigrant worker shall, with respect to a specific opening that the
30 employer seeks to fill with such a Y nonimmigrant, submit an
31 application for labor certification of the job opportunity filed in
32 accordance with the procedures established by section 218B.

33 ` (c) Petition to Employ Y Nonimmigrant Workers.—
34

35 ` (1) In General.-- An employer that seeks authorization to
36 employ a Y nonimmigrant worker must file a petition with the
37 Secretary of Homeland Security. The petition must be
38 accompanied by—
39

40 ` (A) evidence that the employer has obtained a
41 certification under section 218B from the Secretary of
42 Labor for the position sought to be filled by a Y
43 nonimmigrant worker and that such certification remains
44 valid;

1
2 ` (B) evidence that the job offer was and remains valid;
3

4 ` (C) the name and other biographical information of the
5 alien beneficiary and any accompanying spouse or child;
6 and
7

8 ` (D) any biometrics from the beneficiary that the
9 Secretary of Homeland Security may require by regulation.
10

11 ` (2) Timing of Filing.—
12

13 ` (A) In General.—A petition under this subsection must be
14 filed with the Secretary of Homeland Security within 180
15 days of the date of certification under section 218B by the
16 Secretary of Labor of the job opportunity.
17

18 ` (B) Expiration of Certification.--If a labor certification is
19 not filed in support of a petition under this subsection with
20 the Secretary of Homeland Security within 180 days of the
21 date of certification by the Secretary of Labor, then the
22 certification expires and may not support a Y
23 nonimmigrant petition or be the basis for Y nonimmigrant
24 visa issuance.
25

26 ` (3) Ability to Request Documentation.--The Secretary of
27 Homeland Security may request information to verify the
28 attestations the employer made during the labor certification
29 process, and any other fact relevant to the adjudication of the
30 petition.
31

32 ` (4) Adjudication of Petition.—
33

34 ` (A) Post-Adjudication Action.--After review of the
35 petition, if the Secretary—
36

37 ` (i) is satisfied that the petition meets all of the
38 requirements of paragraph (1), and any other
39 requirements the Secretary has prescribed in
40 regulations, he may approve the petition and by fax,
41 cable, electronic, or any other means assuring
42 expedited delivery—
43

 ` (I) transmit a copy of the notice of action on
the petition to the petitioner; and

1
2 ` (II) in the case of approved petitions,
3 transmit notice of the approval to the
4 Secretary of State;

5 ` (ii) finds that the employer is not eligible or that the
6 petition is otherwise not approvable, the Secretary
7 may—

8 ` (I) deny the petition without seeking
9 additional evidence and inform the petitioner—

10 ` (aa) that the petition was denied and
11 the reason for the denial;

12 ` (bb) of any available process for
13 administrative appeal of the decision;
14 and

15 ` (cc) that the denial is without prejudice
16 to the filing of any subsequent petitions,
17 except as provided in section
18 218B(e)(4);

19 ` (II) issue a request for documentation of the
20 attestations or any other information or
21 evidence that is material to the petition; or

22 ` (III) audit, investigate or otherwise review
23 the petition in such manner as he may
24 determine and refer evidence of fraud to
25 appropriate law enforcement agencies based
26 on the audit information.

27 ` (B) Validity of Approved Petition.—An approved petition
28 shall have the same period of validity as the certification
29 described in subsection (c)(1)(A) and expire on the same
30 date that the certification expires, except that the
31 Secretary of Homeland Security may terminate in his
32 discretion an approved petition—

33
34 ` (i) when he determines that any material fact,
35 including, but not limited to the proffered wage rate,
36 the geographic location of employment, or the duties
37 of the position, has changed in a way that would
38 invalidate the recruitment actions; or

39 ` (ii) when he or the Secretary of Labor makes a
40 finding of fraud or misrepresentation concerning the

1 facts on the petition or any other representation
2 made by the employer before the Secretary of Labor
3 or Secretary of Homeland Security.

4 ` (C) Administrative Review.—The Secretary of Homeland
5 Security shall authorize a single level of administrative
6 review with the United States Citizenship and Immigration
7 Services Administrative Appeals Office of a petition denial
8 or termination.
9

10 ` (d) Authorization to Grant Y Nonimmigrant Visa-

11
12 ` (1) IN GENERAL- A consular officer may grant a single-entry
13 temporary visa to a Y nonimmigrant who demonstrates an intent
14 to perform labor or services in the United States (other than the
15 labor or services described in clause (i)(b), (i)(b1), (i)(c), or (iii)
16 of section 101(a)(15)(H), subparagraph (D), (E), (I), (L), (O),
17 (P), or (R) of section 101(a)(15), or section 214(e) (if United
18 States workers who are able, willing, and qualified to perform
19 such labor or services cannot be found in the United States).
20

21 ` (2) APPLICANTS FROM CANADA.--Notwithstanding any waivers
22 of the visa requirement under section 212(a)(7)(B)(i)(II), a
23 national of Canada seeking admission as a Y nonimmigrant will
24 be inadmissible if not in possession of-

25
26 ` (I) a valid Y nonimmigrant visa; or

27
28 ` (II) documentation of Y nonimmigrant status, as
29 described in subsection (m).
30

31 ` (e) Requirements for Admission- An alien shall be eligible for Y
32 nonimmigrant status if the alien meets the following requirements:
33

34 ` (1) ELIGIBILITY TO WORK- The alien shall establish that the
35 alien is capable of performing the labor or services required for
36 an occupation described in section 101(a)(15)(Y)(i) or (Y)(ii).
37

38 ` (2) EVIDENCE OF EMPLOYMENT OFFER- The alien's evidence of
39 employment shall be provided in accordance with the
40 requirements issued by the Secretary of State, in consultation
41 with the Secretary of Labor. In carrying out this paragraph, the
42 Secretary may consider evidence from employers, employer
43 associations, and labor representatives.
44

1 ` (3) FEES-

2
3 ` (A) Processing Fees- An alien making an application for a
4 Y nonimmigrant visa shall be required to pay, in addition
5 to any fees charged by the Department of State for
6 processing and adjudicating such visa application, a
7 processing fee in an amount sufficient to recover the full
8 cost to the Secretary of Homeland Security of
9 administrative and other expenses associated with
10 processing the alien's participation in the Y nonimmigrant
11 program, including the costs of production of
12 documentation of evidence under subsection (m).

13 ` (B) State Impact Fee- Aliens making an application for a
14 Y-1 nonimmigrant visa shall pay a state impact fee of \$500
15 and an additional \$250 for each dependent accompanying
16 or following to join the alien, not to exceed \$1500 per
17 family.

18 ` (C) Deposit and Spending of Fees- The processing fees
19 under subparagraph (A) shall be deposited and remain
20 available until expended as provided by sections 286(m)
21 and (n).

22 ` (D) Deposit and Disposition of State Impact Assistance
23 Funds- The funds described in subparagraph (B) shall be
24 deposited and remain available as provided by section
25 286(x).

26 ` (E) Construction- Nothing in this paragraph shall be
27 construed to affect consular procedures for collection of
28 machine-readable visa fees or reciprocal fees for the
29 issuance of the visa.

30
31 ` (4) MEDICAL EXAMINATION- The alien shall undergo a medical
32 examination (including a determination of immunization status),
33 at the alien's expense, that conforms to generally accepted
34 standards of medical practice.

35
36 ` (5) APPLICATION CONTENT AND WAIVER-

37
38 ` (A) APPLICATION FORM- The alien shall submit to the
39 Secretary of State a completed application, which contains
40 evidence that the requirements under paragraphs (1) and
41 (2) have been met.

42 ` (B) CONTENT- In addition to any other information that
43 the Secretary requires to determine an alien's eligibility for

1 Y nonimmigrant status, the Secretary of State shall require
2 an alien to provide information concerning the alien's--

- 3 (i) physical and mental health;
- 4 (ii) criminal history, including all arrests and
5 dispositions, and gang membership;
- 6 (iii) immigration history; and
- 7 (iv) involvement with groups or individuals that
8 have engaged in terrorism, genocide, persecution, or
9 who seek the overthrow of the United States
10 Government.

11 (C) KNOWLEDGE- The alien shall include with the
12 application submitted under this paragraph a signed
13 certification in which the alien certifies that--

- 14 (i) the alien has read and understands all of the
15 questions and statements on the application form;
- 16 (ii) the alien certifies under penalty of perjury under
17 the laws of the United States that the application,
18 and any evidence submitted with it, are all true and
19 correct; and
- 20 (iii) the applicant authorizes the release of any
21 information contained in the application and any
22 attached evidence for law enforcement purposes.

23
24 (6) MUST NOT BE INELIGIBLE- The alien must not fall within a
25 class of aliens ineligible for Y nonimmigrant status listed under
26 subsection (h).

27
28 (7) MUST NOT BE INADMISSIBLE- The alien must not be
29 inadmissible as a nonimmigrant to the United States under
30 section 212, except as provided in subsection (f).

31
32 (8) SPOUSE OR CHILD OF Y NONIMMIGRANT.—An alien seeking
33 admission as a derivative Y-3 nonimmigrant must demonstrate,
34 in addition to satisfaction of the requirements of paragraphs (2)
35 through (6)—

36
37 (A) that the annual wage of the principal Y nonimmigrant
38 paid by the principal nonimmigrant's U.S. employer,
39 combined with the annual wage of the principal Y
40 nonimmigrant's spouse where the Y-3 nonimmigrant is a
41 child and the Y nonimmigrant's spouse is a member of the
42 principal Y nonimmigrant's household, is equal to or
43 greater than 150 percent of the U.S. poverty level for a
44 household size equal in size to that of the principal alien

1 (including all dependents, family members supported by
2 the principal alien, and the spouse or child seeking to
3 accompany or join the principal alien), as determined by
4 the Secretary of Health and Human Services for the fiscal
5 year in which the spouse or child's application for a
6 nonimmigrant visa is filed; and
7

8 (B) that the alien's cost of medical care is covered by
9 medical insurance, valid in the United States, carried by
10 the principal Y nonimmigrant alien, the principal Y
11 nonimmigrant's spouse (where the Y-3 nonimmigrant is a
12 child), or the principal Y nonimmigrant alien's employer.
13

14 (f) Grounds of Inadmissibility-

15
16 (1) WAIVED GROUNDS OF INADMISSIBILITY- In determining
17 an alien's admissibility as a Y nonimmigrant, such alien shall be
18 found to be inadmissible if the alien would be subject to the
19 grounds of inadmissibility under section 601(d)(2).
20

21 (2) WAIVER- The Secretary may in his discretion waive the
22 application of any provision of section 212(a) of the Act not
23 listed in paragraph (2) on behalf of an individual alien for
24 humanitarian purposes, to ensure family unity, or if such waiver
25 is otherwise in the public interest.
26

27 (3) CONSTRUCTION- Nothing in this subsection shall be
28 construed as affecting the authority of the Secretary other than
29 under this paragraph to waive the provisions of section 212(a).
30

31 (g) Background Checks- The Secretary of Homeland Security shall
32 not admit, and the Secretary of State shall not issue a visa to, an alien
33 seeking Y nonimmigrant visa or status unless all appropriate
34 background checks have been completed to the satisfaction of the
35 Secretaries of State and Homeland Security.
36

37 (h) Grounds of Ineligibility-

38
39 (1) In General- An alien is ineligible for a Y nonimmigrant visa
40 or Y nonimmigrant status if the alien is described in section
41 601(d)(1)(A), (D), (E), (F), or (G) of the [insert Title of Act].
42

1 ` (2) Ineligibility of Derivative Y-3 Nonimmigrants.—An alien is
2 ineligible for Y-3 nonimmigrant status if the principal Y
3 nonimmigrant is ineligible under paragraph (1).
4

5 ` (3) Applicability to Grounds of Inadmissibility.--Nothing in this
6 subsection shall be construed to limit the applicability of any
7 ground of inadmissibility under section 212.
8

9 ` (i) Period of Authorized Admission-

10
11 ` (1) IN GENERAL.--Aliens admitted to the United States as Y
12 nonimmigrants shall be granted the following periods of
13 admission:
14

15 ` (A) Y-1 Nonimmigrants.—Except as provided in (2), aliens
16 granted admission as Y-1 nonimmigrants shall be granted
17 an authorized period of admission of two years. Subject to
18 paragraph (4), such two-year period of admission may be
19 extended for two additional two-year periods.
20

21 ` (B) Y-2B Nonimmigrants.—Aliens granted admission as Y-
22 2B nonimmigrants shall be granted an authorized period of
23 admission of 10 months.
24

25 ` (2) Y-1 Nonimmigrants With Y-3 Dependents.—A Y-1
26 nonimmigrant who has accompanying or following-to-join
27 derivative family members in Y-3 nonimmigrant status shall be
28 limited to two two-year periods of admission. If the family
29 members accompany the Y-1 nonimmigrant during the alien's
30 first period of admission the family members may not
31 accompany or join the Y-1 nonimmigrant during the alien's
32 second period of admission. If the Y-1 nonimmigrant's family
33 members accompany or follow to join the Y-1 nonimmigrant
34 during the alien's second period of admission, but not his first
35 period of admission, then the Y-1 nonimmigrant shall not be
36 granted any additional periods of admission in Y nonimmigrant
37 status. The period of authorized admission of a Y-3
38 nonimmigrant shall expire on the same date as the period of
39 authorized admission of the principal Y-1 nonimmigrant worker.
40

41 ` (3) SUPPLEMENTARY PERIODS.—Each period of authorized
42 admission described in paragraph (1) shall be supplemented by
43 a period of not more than 1 week before the beginning of the
44 period of employment for the purpose of travel to the worksite

1 and, except where such period of authorized admission has been
2 terminated under subsection (j), a period of 14 days following
3 the period of employment for the purpose of departure or
4 extension based on a subsequent offer of employment, except
5 that—

6
7 (A) the alien is not authorized to be employed during
8 such 14-day period except in the employment for which
9 the alien was previously authorized; and

10
11 (B) the total period of employment, including such 14-
12 day period, may not exceed the maximum applicable
13 period of admission under paragraph (1).

14
15 (4) EXTENSIONS OF THE PERIOD OF ADMISSION.—

16
17 (A) In General- The periods of authorized admission
18 described in paragraph (1) may not, except as provided in
19 subparagraph (C)(2) of paragraph (1), be extended
20 beyond the maximum period of admission set forth in that
21 paragraph.

22
23 (B) Extension of Y-1 Nonimmigrant Status- A Y-1
24 nonimmigrant described in paragraph (1)(A) who has
25 spent 24 months in the United States in Y-1 nonimmigrant
26 status may not seek extension or be readmitted to the
27 United States as a Y-1 nonimmigrant unless the alien has
28 resided and been physically present outside the United
29 States for the immediate prior 12 months.

30
31 (5) LIMITATION ON ADMISSION.—

32 (A) Y-1 Nonimmigrants.--An alien who has been admitted
33 to the United States in Y-1 nonimmigrant status for a
34 period of two years under paragraph (1)(B), or as the Y-3
35 nonimmigrant spouse or child of such a Y-1 nonimmigrant,
36 may not be readmitted to the United States as a Y-1 or Y-3
37 nonimmigrant after expiration of such period of authorized
38 admission, regardless of whether the alien was employed
39 or present in the United States for all or a part of such
40 period.

41
42 (B) Y-2B Nonimmigrants.-- An alien who has been
43 admitted to the United States in Y-2B nonimmigrant status
44 may not, after expiration of the alien's period of authorized

1 admission, be readmitted to the United States as a Y
2 nonimmigrant after expiration of the alien's period of
3 authorized admission, regardless of whether the alien was
4 employed or present in the United States for all or only a
5 part of such period, unless the alien has resided and been
6 physically present outside the United States for the
7 immediately preceding two months.

8
9 ` (C) Readmission With New Employment- Nothing in this
10 paragraph shall be construed to prevent a Y nonimmigrant,
11 whose period of authorized admission has not yet expired
12 or been terminated under subsection (j), and who leaves
13 the United States in a timely fashion after completion of
14 the employment described in the petition of the Y
15 nonimmigrant's most recent employer, from reentering the
16 United States as a Y nonimmigrant to work for a new
17 employer, if the alien and the new employer have complied
18 with all applicable requirements of this section and section
19 218B.
20

21 ` (6) INTERNATIONAL COMMUTERS- An alien who maintains
22 actual residence and place of abode outside the United States
23 and commutes, on days the alien is working, into the United
24 States to work as a Y-1 nonimmigrant, shall be granted an
25 authorized period of admission of three years. The limitations
26 described in paragraphs (3) and (4) shall not apply to
27 commuters described in this paragraph.
28

29 `(j) Termination-

30
31 `(1) IN GENERAL- The period of authorized admission of a Y
32 nonimmigrant shall terminate immediately if:

33
34 `(A) the Secretary of Homeland Security determines that
35 the alien was not eligible for such Y nonimmigrant status
36 at the time of visa application or admission;

37
38 `(B) (i) the alien commits an act that makes the alien
39 removable from the United States under section 237;

40
41 `(ii) the alien becomes inadmissible under section
42 212 (except as provided in subsection (f)); or
43

1 (iii) the alien becomes ineligible under subsection
2 (h);

3
4 (C) the alien uses the documentation of his or her Y
5 nonimmigrant status issued under subsection (m) for
6 unlawful or fraudulent purposes;

7
8 (D) subject to paragraph (2), the alien is unemployed
9 within the United States for—

10
11 (i) 60 or more consecutive days;

12
13 (ii) in the case of a Y-1 nonimmigrant, an
14 aggregate period of 120 days, provided that the
15 alien's 14-day period to lawfully depart the United
16 States shall not be considered to begin until the date
17 that the alien has been provided notice of the
18 termination; or

19
20 (iii) in the case of a Y-2B nonimmigrant, an
21 aggregate period of 30 days, provided that the
22 alien's 14-day period to lawfully depart the United
23 States shall not be considered to begin until the date
24 that the alien has been provided notice of the
25 termination;

26 or;

27
28 (E) the alien is a Y-3 nonimmigrant whose spouse or
29 parent in Y-1 nonimmigrant status is an alien described in
30 subparagraphs (A), (B), (C), or (D).

31
32 (2) EXCEPTION- The period of authorized admission of a Y
33 nonimmigrant shall not terminate for unemployment under
34 subparagraph (1)(D) if the alien submits documentation to the
35 Secretary of Homeland Security that establishes that such
36 unemployment was caused by--

37
38 (A) a period of physical or mental disability of the alien or
39 the spouse, son, daughter, or parent (as defined in section
40 101 of the Family and Medical Leave Act of 1993 (29
41 U.S.C. 2611)) of the alien;

1 ` (B) a period of vacation, medical leave, maternity leave,
2 or similar leave from employment authorized by employer
3 policy, State law, or Federal law; or
4

5 ` (C) any other period of temporary unemployment that is
6 the direct result of a force majeure event.
7

8 ` (3) RETURN TO FOREIGN RESIDENCE- Any alien whose period
9 of authorized admission terminates under paragraph (1) shall be
10 required to leave the United States immediately and register
11 such departure at a designated port of departure in a manner to
12 be prescribed by the Secretary.
13

14 ` (4) INVALIDATION OF DOCUMENTATION.-- Any documentation
15 that is issued by the Secretary of Homeland Security under
16 subsection (m) to any alien, whose period of authorized
17 admission terminates under paragraph (1), shall automatically
18 be rendered invalid for any purpose except departure.
19

20 ` (k) VISITS OUTSIDE THE UNITED STATES-

21 ` (A) IN GENERAL- Under regulations established by the
22 Secretary of Homeland Security, a Y nonimmigrant—
23

24 ` (i) may travel outside of the United States; and
25

26 ` (ii) may be readmitted for a period not more than the
27 remaining time left until the alien accrues the maximum
28 period of admission set forth in subsection (i), and without
29 having to obtain a new visa if:
30

31 ` (A) the period of authorized admission has not
32 expired or been terminated;
33

34 ` (B) the alien is the bearer of valid documentary
35 evidence of Y nonimmigrant status that satisfies the
36 conditions set forth in subsection (m); and
37

38 ` (C) the alien is not subject to the bars on extension
39 or admission described in subsection (l).
40

41 ` (B) EFFECT ON PERIOD OF AUTHORIZED ADMISSION- Time
42 spent outside the United States under subparagraph (A) shall

1 not extend the most recent period of authorized admission in the
2 United States.

3
4 `(I) BARS TO EXTENSION OR ADMISSION- An alien may not be
5 granted Y nonimmigrant status if—

6
7 `(A) the alien has violated any material term or condition of
8 such status granted previously, including failure to comply with
9 the change of address reporting requirements under section
10 265;

11
12 `(B) the alien is inadmissible as a nonimmigrant, except for
13 those grounds previously waived under subsection (f); or

14
15 `(C) the granting of such status would allow the alien to exceed
16 limitations on stay in the United States in Y status described in
17 subsection (i).

18
19 `(m) EVIDENCE OF NONIMMIGRANT STATUS- Each Y nonimmigrant
20 shall be issued documentary evidence of nonimmigrant status, which—

21
22 `(1) shall be machine-readable, tamper-resistant, and shall
23 contain a digitized photograph and other biometric identifiers
24 that can be authenticated;

25
26 `(2) shall, during the alien's authorized period of admission
27 under subsection (i), serve as a valid entry document for the
28 purpose of applying for admission to the United States—

29
30 `(A) instead of a passport and visa if the alien—

31
32 `(i) is a national of a foreign territory contiguous to
33 the United States; and

34
35 `(ii) is applying for admission at a land border port
36 of entry; and

37
38 `(B) in conjunction with a valid passport, if the alien is
39 applying for admission at an air or sea port of entry;

40
41 `(3) may be accepted during the period of its validity by an
42 employer as evidence of employment authorization and identity
43 under section 274A(b)(1)(B); and
44

1 ` (4) shall be issued to the Y nonimmigrant by the Secretary of
2 Homeland Security promptly after such alien's admission to the
3 United States as a Y nonimmigrant and reporting to the
4 employer's worksite under subsection (q) or, at the discretion of
5 the Secretary of Homeland Security, may be issued by the
6 Secretary of State at a consulate instead of a visa.
7

8 ` (n) Permanent Bars for Overstays.—
9

10 ` (1) In General- Any Y nonimmigrant who remains beyond his or
11 her initial authorized period of admission is permanently barred
12 from any future benefits under the immigration laws, except—
13

14 ` (A) asylum under section 208(a);

15 ` (B) withholding of removal under section 241(b)(3); or
16
17 ` (C) protection under the Convention Against Torture and
18 Other Cruel, Inhuman or Degrading Treatment or
19 Punishment, done at New York December 10, 1984.
20

21 ` (2) Exception- Overstay of the authorized period of admission
22 may be excused in the discretion of the Secretary where it is
23 demonstrated that:
24

25 ` (A) the period of overstay was due to extraordinary
26 circumstances beyond the control of the applicant, and the
27 Secretary finds the period commensurate with the
28 circumstances; and
29

30 ` (B) the alien has not otherwise violated his Y
31 nonimmigrant status.
32

33 ` (o) Penalty for Illegal Entry or Overstay-
34

35 ` (1) Illegal Entry- Any alien who after the date of the enactment
36 of this section, unlawfully enters, attempts to enter, or crosses
37 the border, and is physically present in the United States after
38 such date in violation of the immigration laws, is barred
39 permanently from any future benefits under the immigration
40 laws, except as provided in paragraph (3) or (4).
41
42

43 ` (2) Overstay- Any alien, other than a Y nonimmigrant, who,
44 after the date of the enactment of this section remains

1 unlawfully in the United States beyond the period of authorized
2 admission, is barred for a period of ten years from any future
3 benefits under the immigration laws, except as provided in
4 paragraph (3) or (4).

5
6 ` (3) Relief— Notwithstanding the bar in paragraph (1) or (2), an
7 alien may apply for--

8
9 ` (A) asylum under section 208(a);

10
11 ` (B) withholding of removal under section 241(b)(3); or

12
13 ` (C) protection under the Convention Against Torture and
14 Other Cruel, Inhuman or Degrading Treatment or
15 Punishment, done at New York December 10, 1984.

16
17 ` (4) Exception.—Overstay of the authorized period of admission
18 may be excused in the discretion of the Secretary where it is
19 demonstrated that:

20
21 ` (A) the period of overstay was due to extraordinary
22 circumstances beyond the control of the applicant, and the
23 Secretary finds the period commensurate with the
24 circumstances; and

25
26 ` (B) the alien has not otherwise violated his nonimmigrant
27 status.

28
29 ` (p) Portability- A Y nonimmigrant worker, who was previously issued
30 a visa or otherwise provided Y nonimmigrant status, may accept a new
31 offer of employment with a subsequent employer, if—

32
33 ` (1) the position being offered the Y nonimmigrant has been
34 certified by the Secretary of Labor under section 218B and the
35 employer complies with all requirements of this section and
36 section 218B;

37
38 ` (2) the alien, after lawful admission to the United States, did
39 not work without authorization; and

40
41 ` (3) the subsequent employer has notified the Secretary of
42 Homeland Security under subsection (q) of the Y nonimmigrant's
43 change of employment.
44

1 (q) Reporting of Start and Termination of Employment.—

2
3 (1) Start of Y Worker Employment.--A Y nonimmigrant shall
4 report in the manner prescribed by the Secretary of Homeland
5 Security to the employer whose job offer was the basis for
6 issuance of the alien's Y nonimmigrant visa within 7 days of
7 admission into the United States.

8
9 (2) Employer Notification Requirement.--An employer shall
10 within three days make notification in the manner prescribed by
11 the Secretary of Homeland Security, of the following events:

12 (A) a Y nonimmigrant worker has reported for work
13 pursuant to paragraph (1) after admission in Y
14 nonimmigrant status;

15
16 (B) a Y nonimmigrant worker has changed jobs under
17 subsection (r) and started employment with the employer;

18 (C) the employment of a Y nonimmigrant worker has
19 terminated; or

20 (D) a Y nonimmigrant worker on whose behalf the
21 employer has filed a petition under this subsection that has
22 been approved by the Secretary of Homeland Security has
23 failed to report for work within three days of the
24 employment start date agreed upon between the employer
25 and the Y nonimmigrant.

26
27 (3) Verification.--An employer shall provide upon request of the
28 Secretary of Homeland Security verification that an alien who
29 has been granted admission as a Y nonimmigrant worker was or
30 continues to be employed by the employer.

31 (4) Fine.--Any employer that fails to comply with the
32 notification requirements of this subsection shall pay to the
33 Secretary of Homeland Security a fine, in an amount and under
34 procedures established by the Secretary in regulation.

35
36 (r) No Threatening of Employees.—It shall be a violation of this
37 section for an employer who has filed a petition under this section to
38 threaten the alien beneficiary of such petition with the withdrawal of
39 such a petition in retaliation for the beneficiary's exercise of a right
40 protected by section 218B.

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`(s) Change of Status.—

`(1) In General.—

`(A) A Y nonimmigrant may apply to change status to another nonimmigrant status, subject to section 248 and if otherwise eligible.

`(B) No alien admitted to the United States under the immigration laws in a classification other than Y nonimmigrant status may change status to Y nonimmigrant status.

`(C) An alien in Y nonimmigrant status may not change status to any other Y nonimmigrant status.

`(2) Construction.--Nothing in this subsection shall be construed to prevent an alien who is precluded from changing status to a particular Y nonimmigrant classification under subparagraphs (1)(B), (C), or (D) from leaving the United States and applying at a U.S. consulate for the desired nonimmigrant visa, subject to all applicable eligibility requirements, in the appropriate Y classification.

`(t) Visitation of Y Nonimmigrant by Spouse or Child of Without a Y-3 Nonimmigrant Visa.--Nothing in this section shall be construed to prohibit the spouse or child of a Y nonimmigrant worker to be admitted to the United States under any other existing legal basis for which the spouse or child may qualify.

`(u) Change of Address- A Y nonimmigrant shall comply with the change of address reporting requirements under section 265 through electronic or paper notification."

(b) Conforming Amendment Regarding Creation of Treasury Accounts. Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by inserting at the end the following new subsections.--

`(w) Temporary Worker Program account.--

`(1) IN GENERAL.-- There is established in the general fund of the Treasury a separate account, which shall be known as the

1 `Temporary Worker Program Account". Notwithstanding any other
2 section of this Act, there shall be deposited into the account all fines
3 and civil penalties collected under sections 218A, 218B, or 218F and
4 Title VI of [name of Act], except as specifically provided otherwise
5 in such sections.

6 `(2) USE OF FUNDS.-- Amounts deposited into the Temporary
7 Worker Program Account shall remain available until expended as
8 follows:

9 `(A) for the administration of the Standing Commission on
10 Immigration and Labor Markets, established under section
11 409 of the [Insert title of Act]; and

12 `(B) after amounts needed by the Standing Commission on
13 Immigration and Labor Markets have been expended, for the
14 Secretaries of Labor and Homeland Security, as follows:

15 `(i) one-third to the Secretary of Labor to carry out the
16 Secretary of Labor's functions and responsibilities,
17 including enforcement of labor standards under sections
18 218A, 218B, and 218F, and under applicable labor laws
19 including the Fair Labor Standards Act of 1938 (29 U.S.C.
20 201 et seq.) and the Occupational Safety and Health Act of
21 1970 (29 U.S.C. 651 et seq.). Such activities shall include
22 random audits of employers that participate in the Y visa
23 program; and

24 `(ii) two-thirds to the Secretary of Homeland Security to
25 improve immigration services and enforcement.

26 `(x) State Impact Assistance Account.--

27 `(1) IN GENERAL.-- There is established in the general fund of
28 the Treasury a separate account, which shall be known as the
29 `State Impact Assistant Account".

30
31 `(2) SOURCE OF FUNDS.-- Notwithstanding any other provision
32 under this Act, there shall be deposited as offsetting receipts into
33 the State Impact Assistance Account all State Impact Assistance
34 fees collected under sections 218A(e)(3)(B) and section
35 601(e)(6)(C) of the [Insert title of Act].

36
37 `(3) USE OF FUNDS.-- Amounts deposited into the State Impact
38 Assistance Account may only be used to carry out the State
39 Impact Assistance Grant Program established under paragraph
40 (4).

41

1 ` (4) STATE IMPACT ASSISTANCE GRANT PROGRAM.--

2
3 ` (A) ESTABLISHMENT.-- The Secretary of Health and
4 Human Services, in consultation with the Secretary of
5 Education, shall establish the State Impact Assistance
6 Grant Program (referred to in this subsection as the
7 ` Program'), under which the Secretary may award grants
8 to States to provide health and education services to
9 noncitizens in accordance with this paragraph.

10
11 ` (B) STATE ALLOCATIONS.-- The Secretary of Health and
12 Human Services shall annually allocate the amounts
13 available in the State Impact Assistance Account among
14 the States as follows:

15
16 ` (i) NONCITIZEN POPULATION.-- Eighty percent of
17 such amounts shall be allocated so that each State
18 receives the greater of--

19
20 ` (I) \$5,000,000; or

21
22 ` (II) after adjusting for allocations under
23 subclause (I), the percentage of the amount to
24 be distributed under this clause that is equal to
25 the noncitizen resident population of the State
26 divided by the noncitizen resident population of
27 all States, based on the most recent data
28 available from the Bureau of the Census.

29
30 ` (ii) HIGH GROWTH RATES.-- Twenty percent of
31 such amounts shall be allocated among the 20
32 States with the largest growth rates in noncitizen
33 resident population, as determined by the Secretary
34 of Health and Human Services, so that each such
35 State receives the percentage of the amount
36 distributed under this clause that is equal to--

37
38 ` (I) the growth rate in the noncitizen resident
39 population of the State during the most recent
40 3-year period for which data is available from
41 the Bureau of the Census; divided by
42

1 ` (II) the average growth rate in noncitizen
2 resident population for the 20 States during
3 such 3-year period.
4

5 ` (iii) LEGISLATIVE APPROPRIATIONS.-- The use of
6 grant funds allocated to States under this paragraph
7 shall be subject to appropriation by the legislature of
8 each State in accordance with the terms and
9 conditions under this paragraph.
10

11 ` (C) FUNDING FOR LOCAL GOVERNMENT.--
12

13 ` (i) DISTRIBUTION CRITERIA.-- Grant funds
14 received by States under this paragraph shall be
15 distributed to units of local government based on
16 need and function.
17

18 ` (ii) MINIMUM DISTRIBUTION.-- Except as provided
19 in clause (iii), a State shall distribute not less than
20 30 percent of the grant funds received under this
21 paragraph to units of local government not later than
22 180 days after receiving such funds.
23

24 ` (iii) EXCEPTION.-- If an eligible unit of local
25 government that is available to carry out the
26 activities described in subparagraph (D) cannot be
27 found in a State, the State does not need to comply
28 with clause (ii).
29

30 ` (iv) UNEXPENDED FUNDS.-- Any grant funds
31 distributed by a State to a unit of local government
32 that remain unexpended as of the end of the grant
33 period shall revert to the State for redistribution to
34 another unit of local government.
35

36 ` (D) USE OF FUNDS.-- States and units of local
37 government shall use grant funds received under this
38 paragraph to provide health services, educational services,
39 and related services to noncitizens within their jurisdiction
40 directly, or through contracts with eligible services
41 providers, including—
42

43 ` (i) health care providers;
44

1 (ii) local educational agencies; and

2
3 (iii) charitable and religious organizations.

4
5 (E) STATE DEFINED.-- In this paragraph, the term
6 'State' means each of the several States of the United
7 States, the District of Columbia, the Commonwealth of
8 Puerto Rico, the Virgin Islands, Guam, American Samoa,
9 and the Commonwealth of the Northern Mariana Islands.

10
11 (F) CERTIFICATION.-- In order to receive a payment
12 under this section, the State shall provide the Secretary of
13 Health and Human Services with a certification that the
14 State's proposed uses of the fund are consistent with (D).

15
16 (G) ANNUAL REPORT.-- The Secretary of Health and
17 Human Services shall inform the States annually of the
18 amount of funds available to each State under the
19 Program.”.

20
21 (c) Clerical Amendment- The table of contents Immigration and
22 Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after
23 the item relating to section 218 the following:

24 'Sec. 218A. Admission of Y nonimmigrants.'

25 **SEC. 403. GENERAL Y NONIMMIGRANT EMPLOYER**
26 **OBLIGATIONS.**

27 (a) In General- Title II (8 U.S.C. 1201 et seq.) is amended by inserting
28 after section 218A of the Immigration and Nationality Act, as added by
29 section 402, the following:

30 **' SEC. 218B. GENERAL Y NONIMMIGRANT EMPLOYER**
31 **OBLIGATIONS.**

32 (a) General Requirements- Each employer who seeks to employ a Y
33 nonimmigrant shall--

34 (1) file in accordance with subsection (b) an application for
35 labor certification of the position that the employer seeks to fill
36 with a Y nonimmigrant that contains—

37
38 (A) the attestation described in subsection (c);
39

1 (B) a description of the nature and location of the work to
2 be performed;

3
4 (C) the anticipated period (expected beginning and
5 ending dates) for which the workers will be needed; and
6

7 (D) the number of job opportunities in which the
8 employer seeks to employ the workers;
9

10 (2) include with the application filed under paragraph (1) a
11 copy of the job offer describing the wages and other terms and
12 conditions of employment and the bona fide occupational
13 qualifications that shall be possessed by a worker to be
14 employed in the job opportunity in question; and
15

16 (3) be required to pay, with respect to an application to employ
17 a Y-1 worker—
18

19 (A) an application processing fee for each alien, in an
20 amount sufficient to recover the full cost to the Secretary
21 of Labor of administrative and other expenses associated
22 with adjudicating the application; and
23

24 (B) a secondary fee, to be deposited in the Treasury in
25 accordance with section 286(x), of--
26

27 (i) \$500, in the case of an employer employing 25
28 employees or less;

29
30 (ii) \$750, in the case of an employer employing
31 between 26 and 150 employees;

32
33 (iii) \$1000, in the case of an employer employing
34 between 151 and 500 employees; or
35

36 (iv) \$1,250, in the case of an employer employing
37 more than 500 employees;
38

39 provided that an employer who provides a Y
40 nonimmigrant health insurance coverage shall not be
41 required to pay the impact fee.
42

43 (b) Required Procedure- Each employer of Y
44 nonimmigrants shall comply with the following requirements:

1
2 ` (1) EFFORTS TO RECRUIT UNITED STATES WORKERS- The
3 employer involved shall recruit United States workers for the
4 position for which labor certification is sought under this section,
5 by--

6
7 ` (A) Not later than 90 days before the date on which an
8 application is filed under subsection (a)(1) submitting a
9 copy of the job opportunity, including a description of the
10 wages and other terms and conditions of employment and
11 the minimum education, training, experience and other
12 requirements of the job, to the designated state agency
13 and--

14
15 ` (i) authorizing the designated state agency to post
16 the job opportunity on the Internet website
17 established under section 414 of [Title of bill], with
18 local job banks, and with unemployment agencies
19 and other labor referral and recruitment sources
20 pertinent to the job involved; and

21
22 ` (ii) authorizing the designated state agency to
23 notify labor organizations in the State in which the
24 job is located and, if applicable, the office of the local
25 union which represents the employees in the same
26 or substantially equivalent job classification of the
27 job opportunity;

28
29 ` (B) posting the availability of the job opportunity for
30 which the employer is seeking a worker in conspicuous
31 locations at the place of employment for all employees to
32 see for a period of time beginning not later than 90 days
33 before the date on which an application is filed under
34 subsection (a)(1) and ending no earlier than 14 days
35 before such filing date;

36
37 ` (C) advertising the availability of the job opportunity for
38 which the employer is seeking a worker in one of the three
39 highest circulation publications in the labor market that is
40 likely to be patronized by a potential worker for not fewer
41 than 10 consecutive days during the period of time
42 beginning not later than 90 days before the date on which
43 an application is filed under subsection (a)(1) and ending
44 no earlier than 14 days before such filing date; and

1
2 ` (D) advertising the availability of the job opportunity in
3 professional, trade, or ethnic publications that are likely to
4 be patronized by a potential worker, as recommended by
5 the designated state agency. The employer shall not be
6 required to advertise in more than three such
7 recommended publications.
8

9 ` (2) EFFORTS TO EMPLOY UNITED STATES WORKERS- An
10 employer that seeks to employ a Y nonimmigrant shall first offer
11 the job with, at a minimum, the same wages, benefits, and
12 working conditions, to any eligible United States worker who
13 applies, is qualified for the job and is available at the time of
14 need.
15

16 ` (3) DEFINITION- For purposes of this subsection, ` designated
17 state agency' shall mean the state agency designated to perform
18 the functions in this subsection in the area of employment in the
19 State in which the employer is located.
20

21 ` (c) Application- An application under this section for labor certification
22 of a position that an employer seeks to fill with a Y nonimmigrant shall
23 be filed with the Secretary of Labor and shall include an attestation by
24 the employer of the following:
25

26 ` (1) with respect to an application for labor certification of a
27 position that an employer seeks to fill with a Y-1 or Y-2B
28 nonimmigrant--
29

30 ` (A) PROTECTION OF UNITED STATES WORKERS- The
31 employment of a Y nonimmigrant--
32

33 ` (i) will not adversely affect the wages and working
34 conditions of workers in the United States similarly
35 employed; and
36

37 ` (ii) did not and will not cause the separation from
38 employment of a United States worker employed by
39 the employer within the 180-day period beginning 90
40 days before the date on which the petition is filed.
41

42 ` (B) WAGES-
43

1 (i) IN GENERAL- The Y nonimmigrant worker will be
2 paid not less than the greater of--

3
4 (I) the actual wage level paid by the
5 employer to all other individuals with similar
6 experience and qualifications for the specific
7 employment in question; or

8
9 (II) the prevailing competitive wage level for
10 the occupational classification in the area of
11 employment, taking into account experience
12 and skill levels of employees.

13
14 (ii) CALCULATION- The wage levels under
15 subparagraph (A) shall be calculated based on the
16 best information available at the time of the filing of
17 the application.

18
19 (iii) PREVAILING COMPETITIVE WAGE LEVEL- For
20 purposes of subclause (i)(II), the prevailing
21 competitive wage level shall be determined as
22 follows:

23
24 (I) If the job opportunity is covered by a
25 collective bargaining agreement between a
26 union and the employer, the prevailing
27 competitive wage shall be the wage rate set
28 forth in the collective bargaining agreement.

29
30 (II) If the job opportunity is not covered by
31 such an agreement and it is on a project that
32 is covered by a wage determination under a
33 provision of subchapter IV of chapter 31 of title
34 40, United States Code, or the Service
35 Contract Act of 1965 (41 U.S.C. 351 et seq.),
36 the prevailing competitive wage level shall be
37 the appropriate statutory wage.

38
39 (III)(aa) If the job opportunity is not covered
40 by such an agreement and it is not on a
41 project covered by a wage determination under
42 a provision of subchapter IV of chapter 31 of
43 title 40, United States Code, or the Service
44 Contract Act of 1965 (41 U.S.C. 351 et seq.),

1 the prevailing competitive wage level shall be
2 based on published wage data for the
3 occupation from the Bureau of Labor Statistics,
4 including the Occupational Employment
5 Statistics survey, Current Employment
6 Statistics data, National Compensation Survey,
7 and Occupational Employment Projections
8 program. If the Bureau of Labor Statistics does
9 not have wage data applicable to such
10 occupation, the employer may base the
11 prevailing competitive wage level on data from
12 another wage survey approved by the state
13 workforce agency under regulations
14 promulgated by the Secretary of Labor.

15
16 ` (bb) Such regulations shall require, among
17 other things, that such surveys are statistically
18 valid and recently conducted.

19
20 `(D) LABOR DISPUTE- There is not a strike, lockout, or
21 work stoppage in the course of a labor dispute in the
22 occupation at the place of employment at which the Y
23 nonimmigrant will be employed. If such strike, lockout, or
24 work stoppage occurs following submission of the
25 application, the employer will provide notification in
26 accordance with regulations promulgated by the Secretary
27 of Labor.

28
29 `(E) PROVISION OF INSURANCE- If the position for which
30 the Y nonimmigrant is sought is not covered by the State
31 workers' compensation law, the employer will provide, at
32 no cost to the Y nonimmigrant, insurance covering injury
33 and disease arising out of, and in the course of, the
34 worker's employment, which will provide benefits at least
35 equal to those provided under the State workers'
36 compensation law for comparable employment.

37
38 `(F) NOTICE TO EMPLOYEES-

39
40 `(i) IN GENERAL- The employer has provided notice
41 of the filing of the application to the bargaining
42 representative of the employer's employees in the
43 occupational classification and area of employment
44 for which the Y nonimmigrant is sought.

1
2 ` (ii) NO BARGAINING REPRESENTATIVE- If there is
3 no such bargaining representative, the employer
4 has--

5
6 ` (I) posted a notice of the filing of the
7 application in a conspicuous location at the
8 place or places of employment for which the Y
9 nonimmigrant is sought; or

10
11 ` (II) electronically disseminated such a notice
12 to the employer's employees in the
13 occupational classification for which the Y
14 nonimmigrant is sought.

15
16 ` (G) RECRUITMENT- —That--

17
18 ` (i) there are not sufficient workers who are able,
19 willing, and qualified, and who will be available at the
20 time and place needed, to perform the labor or
21 services described in the application; and

22
23 ` (ii) good faith efforts have been taken to recruit
24 United States workers, in accordance with
25 regulations promulgated by the Secretary of Labor,
26 which efforts included--

27
28 ` (I) the completion of recruitment during the
29 period beginning on the date that is 90 days
30 before the date on which the application was
31 filed with the Department of Labor and ending
32 on the date that is 14 days before such filing
33 date; and

34
35 ` (II) the wages that the employer would be
36 required by law to provide for the Y
37 nonimmigrant were used in conducting
38 recruitment.

39
40 ` (H) INELIGIBILITY- The employer is not currently
41 ineligible from using the Y nonimmigrant program
42 described in this section.
43

1 ` (I) BONAFIDE OFFER OF EMPLOYMENT- The job for which
2 the Y nonimmigrant is sought is a bona fide job--

- 3
4 ` (i) for which the employer needs labor or services;
5 ` (ii) which has been and is clearly open to any
6 United States worker; and
7 ` (iii) for which the employer will be able to place the
8 Y nonimmigrant on the payroll.
9

10 ` (J) PUBLIC AVAILABILITY AND RECORDS RETENTION- A
11 copy of each application filed under this section and
12 documentation supporting each attestation, in accordance
13 with regulations promulgated by the Secretary of Labor,
14 will--

15
16 ` (i) be provided to every Y nonimmigrant employed
17 under the petition;

18
19 ` (ii) be made available for public examination at the
20 employer's place of business or work site;

21
22 ` (iii) be made available to the Secretary of Labor
23 during any audit; and

24
25 ` (iv) remain available for examination for 5 years
26 after the date on which the application is filed.
27

28 ` (K) NOTIFICATION UPON SEPARATION FROM OR
29 TRANSFER OF EMPLOYMENT- The employer will notify the
30 Secretary of Labor and the Secretary of Homeland Security
31 of a Y nonimmigrant's separation from employment or
32 transfer to another employer not more than 3 business
33 days after the date of such separation or transfer, in
34 accordance with section 218A(q)(2).
35

36 ` (L) ACTUAL NEED FOR LABOR OR SERVICES- The
37 application was filed not more than 60 days before the
38 date on which the employer needed labor or services for
39 which the Y nonimmigrant is sought.
40

41 ` (d) Audit of Attestations-

42

1 ` (1) REFERRALS BY SECRETARY OF HOMELAND SECURITY- The
2 Secretary of Homeland Security shall refer all petitions approved
3 under section 218A to the Secretary of Labor for potential audit.
4

5 ` (2) AUDITS AUTHORIZED- The Secretary of Labor may audit
6 any approved petition referred pursuant to paragraph (1), in
7 accordance with regulations promulgated by the Secretary of
8 Labor.
9

10 ` (e) Ineligible Employers-

11 ` (1) IN GENERAL- In addition to any other applicable penalties
12 under law, the Secretary of Labor and the Secretary of
13 Homeland Security shall not, for the period described in
14 paragraph (2), approve an employer's petition or application for
15 a labor certification under any immigrant or nonimmigrant
16 program if the Secretary of Labor determines, after notice and
17 an opportunity for a hearing, that the employer submitting such
18 documents--
19

20 ` (A) has, with respect to the application required under
21 subsection (a), including attestations required under
22 subsection (b)—
23

24 ` (i) misrepresented a material fact;
25

26 ` (ii) made a fraudulent statement; or
27

28 ` (iii) failed to comply with the terms of such
29 attestations; or
30

31 ` (B) failed to cooperate in the audit process in accordance
32 with regulations promulgated by the Secretary of Labor;
33

34 ` (C) has been convicted of any of the offenses codified in
35 Chapter 77 of Title 18 of the United States Code (slave
36 labor) or any conspiracy to commit such offenses, or any
37 human trafficking offense under state or territorial law;
38

39 ` (D) has, within three years prior to the date of
40 application:
41

42 (i) committed any hazardous occupation orders
43 violation resulting in injury or death under the child labor
44

1 provisions contained in section 12 of the Fair Labor
2 Standards Act and any regulation thereunder;
3 (ii) been assessed a civil money penalty for any
4 repeated or willful violation of the minimum wage
5 provisions of section 6 of the Fair Labor Standards Act; or
6 (iii) been assessed a civil money penalty for any
7 repeated or willful violation of the overtime provisions of
8 section 7 of the Fair Labor Standards Act or any
9 regulations thereunder, other than a repeated violation
10 that is self-reported; or
11

12 ` (E) has, within three years prior to the date of
13 application, received a citation for:

14 (i) a willful violation; or
15 (ii) repeated serious violations involving injury or
16 death of section 5 of the Occupational Safety and Health
17 Act, or any standard, rule, or order promulgated pursuant
18 to section 6 of the Occupational Safety and Health Act, or
19 any regulations prescribed pursuant to that. This
20 subsection shall also apply to equivalent violations of a
21 plan approved under section 18 of the Occupational Safety
22 and Health Act.
23

24 ` (2) LENGTH OF INELIGIBILITY- An employer described in
25 paragraph (1) shall be ineligible to participate in the labor
26 certification programs of the Secretary of Labor for not less than
27 the time period determined by the Secretary, not to exceed 3
28 years. However, an employer who has been convicted of any of
29 the offenses codified in Chapter 77 of Title 18 of the United
30 States Code (slave labor) or any conspiracy to commit such
31 offenses, or any human trafficking offense under state or
32 territorial law shall be permanently ineligible to participate in the
33 labor certification programs.
34

35 ` (3) EMPLOYERS IN HIGH UNEMPLOYMENT AREAS- The
36 Secretary of Labor may not approve any employer's application
37 under subsection (b) if the work to be performed by the Y
38 nonimmigrant is not agriculture based and is located in a county
39 where the unemployment rate during the most recently
40 completed year is more than 7 percent. An employer in a high
41 unemployment area may petition the Secretary for a waiver of
42 this provision. The Secretary shall promulgate regulations for
43 the expeditious review of such waivers, which shall specify that
44 the employer must satisfy the requirements of section (b) above

1 and in addition must provide documentation of its recruitment
2 efforts, including proof that it has advertised the position in one
3 of the three publications that have the highest circulation in the
4 labor market that is likely to be patronized by a potential worker
5 for not fewer than 20 consecutive days under the rules and
6 conditions set forth in section (b). An employer who has
7 provided proof of advertising in accordance with this section
8 shall be deemed to be in compliance with the requirements of
9 subsection (b)(1)(D) of this section. The Secretary shall provide
10 for a process to promptly respond to all waiver requests, and
11 shall maintain on the Department of Labor's website an annual
12 list of counties to which this subsection applies.
13

14 ` (4) INELIGIBILITY FOR PETITIONS- The Secretary of Labor
15 shall inform the Secretary of Homeland Security of a
16 determination under paragraph (1) with respect to a specific
17 employer. The Secretary of Homeland Security shall not, for the
18 period described in paragraph (2), approve the petitions or
19 applications of any such employer for any immigrant or
20 nonimmigrant program, regardless of whether such application
21 or petition requires a labor certification.
22

23 ` (f) Prohibition of Independent Contractors-

24
25 ` (1) COVERAGE- Notwithstanding any other provision of law--

26
27 ` (A) a Y nonimmigrant is prohibited from being treated as
28 an independent contractor under any federal or state law;
29

30 ` (B) no person, including an employer or labor contractor
31 and any persons who are affiliated with or contract with an
32 employer or labor contractor, may treat a Y nonimmigrant
33 as an independent contractor; and
34

35 ` (C) this provision shall not be construed to prevent
36 employers who operate as independent contractors from
37 employing Y nonimmigrants as employees.
38

39 ` (2) APPLICABILITY OF LAWS- A Y nonimmigrant shall not be
40 denied any right or any remedy under Federal, State, or local
41 labor or employment law that would be applicable to a United
42 States worker employed in a similar position with the employer
43 because of the alien's status as a nonimmigrant worker.
44

1 ` (3) TAX RESPONSIBILITIES- With respect to each employed Y
2 nonimmigrant, an employer shall comply with all applicable
3 Federal, State, and local tax and revenue laws.
4

5 ` (g) Whistleblower Protection-

6
7 ` (1) PROHIBITED ACTIVITIES- It shall be unlawful for an
8 employer or a labor contractor of a Y nonimmigrant to
9 intimidate, threaten, restrain, coerce, retaliate, discharge, or in
10 any other manner, discriminate against an employee or former
11 employee because the employee or former employee--

12
13 ` (A) discloses information to the employer or any other
14 person that the employee or former employee reasonably
15 believes demonstrates a violation of this Act or [title of
16 bill]; or

17
18 ` (B) cooperates or seeks to cooperate in an investigation
19 or other proceeding concerning compliance with the
20 requirements of this Act or [title of bill].
21

22 ` (2) RULEMAKING- The Secretary of Labor shall promulgate
23 regulations that establish a process by which a nonimmigrant
24 alien described in section 101(a)(15)(Y) or 101(a)(15)(H) who
25 files a nonfrivolous complaint (as defined by the Federal Rules of
26 Civil Procedure) regarding a violation of this Act, [title of bill] or
27 any other Federal labor or employment law, or any other rule or
28 regulation pertaining to such laws and is otherwise eligible to
29 remain and work in the United States prior to the expiration of
30 the maximum period of stay authorized for that nonimmigrant
31 classification for a period of 120 consecutive days or such
32 additional time period as the Secretary shall determine through
33 rulemaking is necessary to collect information or take evidence
34 from the nonimmigrant alien regarding a complaint or agency
35 investigation. This period shall be allowed to exceed the
36 maximum period of stay authorized for that nonimmigrant
37 classification if the Secretary of Labor has designated the
38 nonimmigrant alien as a necessary witness.
39

40 ` (h) Labor Recruiters-With respect to the employment of Y
41 nonimmigrant workers--

42
43 ` (1) IN GENERAL- Each employer that engages in foreign labor
44 contracting activity and each foreign labor contractor shall

1 ascertain and disclose, to each such worker who is recruited for
2 employment at the time of the worker's recruitment--

3
4 (A) the place of employment;

5
6 (B) the compensation for the employment;

7
8 (C) a description of employment activities;

9
10 (D) the period of employment;

11
12 (E) any other employee benefit to be provided and any
13 costs to be charged for each benefit;

14
15 (F) any travel or transportation expenses to be assessed;

16
17 (G) the existence of any labor organizing effort, strike,
18 lockout, or other labor dispute at the place of employment;

19
20 (H) the existence of any arrangement with any owner,
21 employer, foreign contractor, or its agent where such
22 person receives a commission from the provision of items
23 or services to workers;

24
25 (I) the extent to which workers will be compensated
26 through workers' compensation, private insurance, or
27 otherwise for injuries or death, including--

28
29 (i) work related injuries and death during the period
30 of employment;

31
32 (ii) the name of the State workers' compensation
33 insurance carrier or the name of the policyholder of
34 the private insurance;

35
36 (iii) the name and the telephone number of each
37 person who must be notified of an injury or death;
38 and

39
40 (iv) the time period within which such notice must
41 be given;

42
43 (J) any education or training to be provided or required,
44 including--

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` (i) the nature and cost of such training;

` (ii) the entity that will pay such costs; and

` (iii) whether the training is a condition of employment, continued employment, or future employment; and

` (K) a statement, in a form specified by the Secretary of Labor, describing the protections of this Act and of the Trafficking Victims Protection Act of 2000, P.L. 106-486, for workers recruited abroad.

` (2) FALSE OR MISLEADING INFORMATION- No foreign labor contractor or employer who engages in foreign labor contracting activity shall knowingly provide materially false or misleading information to any worker concerning any matter required to be disclosed in paragraph (1).

` (3) LANGUAGES- The information required to be disclosed under paragraph (1) shall be provided in writing in English or, as necessary and reasonable, in the language of the worker being recruited. The Secretary of Labor shall make forms available in English, Spanish, and other languages, as necessary and reasonable, which may be used in providing workers with information required under this section.

` (4) FEES- A person conducting a foreign labor contracting activity shall not assess any fee to a worker for such foreign labor contracting activity.

` (5) TERMS- No employer or foreign labor contractor shall, without justification, violate the terms of any agreement related to the requirements of this section made by that contractor or employer regarding employment under this program.

` (6) TRAVEL COSTS- If the foreign labor contractor or employer charges the employee for transportation, such transportation costs shall be reasonable.

` (7) OTHER WORKER PROTECTIONS-

1 ` (A) NOTIFICATION- Not less frequently than once every
2 year, each employer shall notify the Secretary of Labor of
3 the identity of any foreign labor contractor engaged by the
4 employer in any foreign labor contractor activity for, or on
5 behalf of, the employer.
6

7 ` (B) REGISTRATION OF FOREIGN LABOR CONTRACTORS-

8
9 ` (i) IN GENERAL- No person shall engage in foreign
10 labor recruiting activity unless such person has a
11 certificate of registration from the Secretary of Labor
12 specifying the activities that such person is
13 authorized to perform. An employer who retains the
14 services of a foreign labor contractor shall only use
15 those foreign labor contractors who are registered
16 under this subparagraph.
17

18 ` (ii) ISSUANCE- The Secretary shall promulgate
19 regulations to establish an efficient electronic
20 process for the investigation and approval of an
21 application for a certificate of registration of foreign
22 labor contractors not later than 14 days after such
23 application is filed, including--
24

25 ` (I) requirements under paragraphs (1), (4),
26 and (5) of section 102 of the Migrant and
27 Seasonal Agricultural Worker Protection Act
28 (29 U.S.C. 1812);
29

30 ` (II) an expeditious means to update
31 registrations and renew certificates; and
32

33 ` (III) any other requirements that the
34 Secretary may prescribe.
35

36 ` (iii) TERM- Unless suspended or revoked, a
37 certificate under this subparagraph shall be valid for
38 2 years.
39

40 ` (iv) REFUSAL TO ISSUE; REVOCATION;
41 SUSPENSION- In accordance with regulations
42 promulgated by the Secretary of Labor, the
43 Secretary may refuse to issue or renew, or may

1 suspend or revoke, a certificate of registration under
2 this subparagraph if--

3
4 (I) the application or holder of the
5 certification has knowingly made a material
6 misrepresentation in the application for such
7 certificate;

8
9 (II) the applicant for, or holder of, the
10 certification is not the real party in interest in
11 the application or certificate of registration and
12 the real party in interest--

13 (aa) is a person who has been refused
14 issuance or renewal of a certificate;

15 (bb) has had a certificate suspended or
16 revoked; or

17 (cc) does not qualify for a certificate
18 under this paragraph; or

19 (III) the applicant for or holder of the
20 certification has failed to comply with this Act.

21
22 (C) REMEDY FOR VIOLATIONS- An employer engaging in
23 foreign labor contracting activity and a foreign labor
24 contractor that violates the provisions of this subsection
25 shall be subject to remedies for foreign labor contractor
26 violations under subsections (j) and (k). If a foreign labor
27 contractor who is an agent of an employer violates any
28 provision of this subsection when acting within the scope
29 of its agency, the employer shall be subject to remedies
30 under subsections (j) and (k). An employer shall not be
31 subject to remedies for violations committed by a foreign
32 labor contractor when such contractor is acting in direct
33 contravention of an express, written contractual provision
34 contained in the agreement between the employer and the
35 foreign labor contractor. An employer that violates a
36 provision of this subsection relating to employer
37 obligations shall be subject to remedies under subsections
38 (j) and (k).
39

1 ` (D) EMPLOYER NOTIFICATION- An employer shall notify
2 the Secretary of Labor if the employer becomes aware of a
3 violation of this subsection by a foreign labor recruiter.
4

5 ` (E) WRITTEN AGREEMENTS- A foreign labor contractor
6 may not violate the terms of any written agreements made
7 with an employer relating to any contracting activity or
8 worker protection under this subsection.
9

10 ` (F) BONDING REQUIREMENT- The Secretary of Labor
11 may require a foreign labor contractor to post a bond in an
12 amount sufficient to ensure the protection of individuals
13 recruited by the foreign labor contractor. The Secretary
14 may consider the extent to which the foreign labor
15 contractor has sufficient ties to the United States to
16 adequately enforce this subsection.
17

18 ` (i) Waiver of Rights Prohibited- A Y nonimmigrant may not be
19 required to waive any rights or protections under this Act. Nothing
20 under this subsection shall be construed to affect the interpretation of
21 other laws.
22

23 ` (j) Enforcement- With respect to violations of the provisions of this
24 section relating to the employment of Y nonimmigrant workers—
25

26 ` (1) IN GENERAL- The Secretary of Labor shall promulgate
27 regulations for the receipt, investigation, and disposition of
28 complaints by an aggrieved person respecting a violation of this
29 section.
30

31 ` (2) FILING DEADLINE- No investigation or hearing shall be
32 conducted on a complaint concerning a violation under this
33 section unless the complaint was filed not later than 12 months
34 after the date of such violation.
35

36 ` (3) REASONABLE BASIS - The Secretary of Labor shall conduct
37 an investigation under this subsection if there is reasonable basis
38 to believe that a violation of this section has occurred. The
39 process established under this subsection shall provide that, not
40 later than 30 days after a complaint is filed, the Secretary shall
41 determine if there is reasonable cause to find such a violation.
42

43 ` (4) NOTICE AND HEARING-
44

1 ` (A) IN GENERAL- Not later than 60 days after the
2 Secretary of Labor makes a determination of reasonable
3 basis under paragraph (3), the Secretary shall issue a
4 notice to the interested parties and offer an opportunity for
5 a hearing on the complaint, in accordance with section 556
6 of title 5, United States Code.
7

8 ` (B) COMPLAINT- If the Secretary of Labor, after receiving
9 a complaint under this subsection, does not offer the
10 aggrieved person or organization an opportunity for a
11 hearing under subparagraph (A), the Secretary shall notify
12 the aggrieved person or organization of such determination
13 and the aggrieved person or organization may seek a
14 hearing on the complaint under procedures established by
15 the Secretary which comply with the requirements of
16 section 556.
17

18 ` (C) HEARING DEADLINE- Not later than 60 days after the
19 date of a hearing under this paragraph, the Secretary of
20 Labor shall make a finding on the matter in accordance
21 with paragraph (5).
22

23 ` (5) ATTORNEY'S FEES- A complainant who prevails in an action
24 under this section with respect to a claim related to wages or
25 compensation for employment, or a claim for a violation of
26 subsection (j), shall be entitled to an award of reasonable
27 attorney's fees and costs.
28

29 ` (6) POWER OF THE SECRETARY- The Secretary may bring an
30 action in any court of competent jurisdiction--
31

32 ` (A) to seek remedial action, including injunctive relief;
33

34 ` (B) to recover the damages described in subsection (k);
35 or
36

37 ` (C) to ensure compliance with terms and conditions
38 described in subsection (g).
39

40 ` (7) SOLICITOR OF LABOR- Except as provided in section 518(a)
41 of title 28, United States Code, the Solicitor of Labor may appear
42 for and represent the Secretary of Labor in any civil litigation
43 brought under this subsection. All such litigation shall be subject
44 to the direction and control of the Attorney General.

1
2 ` (8) PROCEDURES IN ADDITION TO OTHER RIGHTS OF
3 EMPLOYEES- The rights and remedies provided to workers under
4 this section are in addition to any other contractual or statutory
5 rights and remedies of the workers, and are not intended to alter
6 or affect such rights and remedies.

7
8 ` (k) Penalties- With respect to violations of the provisions of this
9 section relating to the employment of Y-1 or Y-2B nonimmigrants--

10
11 ` (1) IN GENERAL- If, after notice and an opportunity for a
12 hearing, the Secretary of Labor finds a violation of this section,
13 the Secretary may impose administrative remedies and
14 penalties, including—

15
16 ` (A) back wages;

17
18 ` (B) benefits; and

19
20 ` (C) civil monetary penalties.

21
22 ` (2) CIVIL PENALTIES- The Secretary of Labor may impose, as a
23 civil penalty--

24
25 ` (A) for a violation of subsections (b) through (g)--

26
27 ` (i) a fine in an amount not more than \$2,000 per
28 violation per affected worker and \$4,000 per
29 violation per affected worker for each subsequent
30 violation;

31
32 ` (ii) if the violation was willful, a fine in an amount
33 not more than \$5,000 per violation per affected
34 worker;

35
36 ` (iii) if the violation was willful and if in the course of
37 such violation a United States worker was harmed, a
38 fine in an amount not more than \$25,000 per
39 violation per affected worker; and

40
41 ` (B) for a violation of subsection (h)--

42
43 ` (i) a fine in an amount not less than \$500 and not
44 more than \$4,000 per violation per affected worker;

1
2 ` (ii) if the violation was willful, a fine in an amount
3 not less than \$2,000 and not more than \$5,000 per
4 violation per affected worker; and
5

6 ` (iii) if the violation was willful and if in the course of
7 such violation a United States worker was harmed, a
8 fine in an amount not less than \$6,000 and not more
9 than \$35,000 per violation per affected worker.

10
11 ` (C) for knowingly or recklessly failing to comply with the
12 terms of representations made in petitions, applications,
13 certifications, or attestations under any immigrant or
14 nonimmigrant program, or with representations made in
15 materials required by section (h) (concerning labor
16 recruiters) –

17
18 ` (1) a fine in an amount not more than \$4,000 per
19 affected worker; and
20

21 ` (2) upon the occasion of a third offense of failure to
22 comply with representations, a fine in an amount not
23 to exceed \$5,000 per affected worker and
24 designation as an ineligible employer, recruiter, or
25 broker for purposes of any immigrant or
26 nonimmigrant program.

27
28 ` (3) USE OF CIVIL PENALTIES- All penalties collected under this
29 subsection shall be deposited in the Treasury in accordance with
30 section 286(w).

31
32 ` (4) CRIMINAL PENALTIES- If a willful and knowing violation of
33 subsection (g) causes extreme physical or financial harm to an
34 individual, the person in violation of such subsection may be
35 imprisoned for not more than 6 months, fined in an amount not
36 more than \$35,000, or both.

37
38 ` (I) Definitions- Unless otherwise provided, in this section and section
39 218A:

40
41 ` (1) AGGRIEVED PERSON- term `aggrieved person' means a
42 person adversely affected by an alleged violation of this section,
43 including--
44

1 ` (A) a worker whose job, wages, or working conditions are
2 adversely affected by the violation; and

3
4 ` (B) a representative authorized by a worker whose jobs,
5 wages, or working conditions are adversely affected by the
6 violation who brings a complaint on behalf of such worker.

7
8 ` (2) AREA OF EMPLOYMENT- The terms `area of employment'
9 and `area of intended employment' mean the area within normal
10 commuting distance of the worksite or physical location at which
11 the work of the Y worker is or will be performed. If such worksite
12 or location is within a Metropolitan Statistical Area, any place
13 within such area is deemed to be within the area of employment.

14
15 ` (3) CONVENTION AGAINST TORTURE- The term `Convention
16 Against Torture' shall refer to the United Nations Convention
17 Against Torture and Other Cruel, Inhuman or Degrading
18 Treatment or Punishment, subject to any reservations,
19 understandings, declarations, and provisos contained in the
20 United States Senate resolution of ratification of the Convention,
21 as implemented by section 2242 of the Foreign Affairs Reform
22 and Restructuring Act of 1998 (Pub. L. 105-277, 112 Stat. 2681,
23 2681-821).

24
25 ` (4) DERIVATIVE Y NONIMMIGRANT- The term `derivative' Y
26 nonimmigrant means an alien described at paragraph (Y)(iii) of
27 subsection 101(a)(15).

28
29 ` (5) ELIGIBLE; ELIGIBLE INDIVIDUAL- The term `eligible,' when
30 used with respect to an individual, or `eligible individual',
31 means, with respect to employment, an individual who is not an
32 unauthorized alien (as defined in section 274A) with respect to
33 that employment.

34
35 ` (6) EMPLOY; EMPLOYEE; EMPLOYER- The terms `employ',
36 `employee', and `employer' have the meanings given such
37 terms in section 3 of the Fair Labor Standards Act of 1938 (29
38 U.S.C. 203).

39
40 ` (7) FELONY- The term `felony', with regard to a conviction in a
41 foreign jurisdiction, means a crime for which a sentence of one
42 year or longer in prison may be imposed.

1 ` (8) FORCE MAJEURE EVENT- The term 'force majeure event'
2 shall mean an event that is beyond the control of either party,
3 including, without limitation, hurricanes, earthquakes, act of
4 terrorism, war, fire, civil disorder or other events of a similar or
5 different kind.

6
7 ` (9) FOREIGN LABOR CONTRACTOR- The term 'foreign labor
8 contractor' means any person who for any compensation or
9 other valuable consideration paid or promised to be paid,
10 performs any foreign labor contracting activity.

11
12 ` (10) FOREIGN LABOR CONTRACTING ACTIVITY- The term
13 'foreign labor contracting activity' means recruiting, soliciting,
14 hiring, employing, or furnishing, an individual who resides
15 outside of the United States for employment in the United States
16 as a nonimmigrant alien described in section
17 101(a)(15)(H)(ii)(c).

18
19 ` (11) FULL TIME- The term 'full time,' with respect to a job in
20 agricultural labor or services, means any job in which the
21 individual is employed 5.75 or more hours per day; and for any
22 job, means in any period of authorized admission or portion of
23 such period, employment or study for at least 90% of the total
24 number of work-hours in such period, calculated at a rate of
25 1,575 work-hours per year (1,438 work-hours per year for
26 agricultural employment). Each credit-hour of study shall be
27 counted as the equivalent of 50 work-hours.

28
29 ` (12) JOB OPPORTUNITY- The term 'job opportunity' means a
30 job opening for temporary or seasonal full-time employment at a
31 place in the United States to which United States workers can be
32 referred.

33
34 ` (B) STATUTORY CONSTRUCTION- Nothing in this
35 paragraph is intended to limit an employee's rights under a
36 collective bargaining agreement or other employment
37 contract.

38
39 ` (14) MISDEMEANOR- The term 'misdemeanor', with regard to a
40 conviction in a foreign jurisdiction, means a crime for which a
41 sentence of no more than 364 days in prison may be imposed.

42
43 ` (15) REGULATORY DROUGHT- The term 'regulatory drought'
44 means a decision subsequent to the filing of the application

1 under section 218B by an entity not under the control of the
2 employer making such filing which restricts the employer's
3 access to water for irrigation purposes and reduces or limits the
4 employer's ability to produce an agricultural commodity, thereby
5 reducing the need for labor.
6

7 ` (16) SEASONAL- Labor is performed on a ` seasonal' basis if--

8
9 ` (A) ordinarily, it pertains to or is of the kind exclusively
10 performed at certain seasons or periods of the year; and

11 ` (B) from its nature, it may not be continuous or carried
12 on throughout the year.
13

14 ` (17) SECRETARY- Except as otherwise provided, the term
15 ` Secretary' means the Secretary of Homeland Security.
16

17 ` (18) SEPARATION FROM EMPLOYMENT- The term ` separation
18 from employment' means the worker's loss of employment,
19 other than through a discharge for inadequate performance,
20 violation of workplace rules, cause, voluntary departure,
21 voluntary retirement, or the expiration of a grant or contract.
22 The term does not include any situation in which the worker is
23 offered, as an alternative to such loss of employment, a similar
24 employment opportunity with the same employer at equivalent
25 or higher compensation and benefits than the position from
26 which the employee was discharged, regardless of whether the
27 employee accepts the offer. Nothing in this paragraph shall limit
28 an employee's rights under a collective bargaining agreement or
29 other employment contract.
30

31 ` (19) UNITED STATES WORKER- The term ` United States
32 worker' means an employee who is--

33
34 ` (A) a citizen or national of the United States; or

35
36 ` (B) an alien who is--

37
38 ` (i) lawfully admitted for permanent residence;

39
40 ` (ii) admitted as a refugee under section 207;

41
42 ` (iii) granted asylum under section 208; or
43

3

1 (iv) otherwise authorized, under this Act or by the
2 Secretary of Homeland Security, to be employed in
3 the United States.'

4
5 (20) Y NONIMMIGRANT; Y NONIMMIGRANT WORKER

6
7 (A) The term 'Y nonimmigrant' means an alien admitted
8 to the United States under paragraph (Y)(i) or (Y)(ii) of
9 subsection 101(a)(15), or the spouse or child of such
10 nonimmigrant in derivative status under (Y)(iii);

11 (B) The term 'Y nonimmigrant worker' means an alien
12 admitted to the United States under paragraph (Y)(i) or
13 (Y)(ii) of subsection 101(a)(15); and

14
15 (21) Y-1 NONIMMIGRANT; Y-1 WORKER- The term 'Y-1
16 nonimmigrant' or 'Y-1 worker' means an alien admitted to the
17 United States under paragraph (i) of subsection 101(a)(15)(Y).

18
19 (23) Y-2B NONIMMIGRANT; Y-2B WORKER - The term 'Y-2B
20 nonimmigrant' or 'Y-2B worker' means an alien admitted to the
21 United States under paragraph (ii) of subsection 101(a)(15)(Y).

22
23 (24) Y-3 NONIMMIGRANT- The term 'Y-3 nonimmigrant'
24 means an alien admitted to the United States under paragraph
25 (iii) of subsection 101(a)(15)(Y).'

26
27 (b) Clerical Amendment- The table of contents is amended by inserting
28 after the item relating to section 218A, as added by section 402, the
29 following:

30 'Sec. 218B. Employer obligations.'

31
32 **SUBTITLE B: SEASONAL AGRICULTURAL NONIMMIGRANT**
33 **TEMPORARY WORKERS**

34
35 **SEC. 404. AMENDMENT TO THE IMMIGRATION AND**
36 **NATIONALITY ACT.**

37 (a) In General.—Title II of the Immigration and Nationality Act (8
38 U.S.C. 1151 et seq.) is amended inserting the following after section
39 218B:

40 "SEC. 218C. H-2A EMPLOYER APPLICATIONS.

41 "(a) Applications to the Secretary of Labor.—

42 "(1) IN GENERAL.—No alien may be admitted to the United States

1 as an H-2A worker, or otherwise provided status as an H-2A
2 worker, unless the employer has filed with the Secretary of Labor
3 an application containing—

4 “(A) the assurances described in subsection (b);

5 “(B) a description of the nature and location of the work to
6 be performed;

7 “(C) the anticipated period (expected beginning and ending
8 dates) for which the workers will be needed; and

9 “(D) the number of job opportunities in which the employer
10 seeks to employ the workers.

11 “(2) ACCOMPANIED BY JOB OFFER.—Each application filed under
12 paragraph (1) shall be accompanied by a copy of the job offer
13 describing the wages and other terms and conditions of
14 employment and the bona fide occupational qualifications that
15 shall be possessed by a worker to be employed in the job
16 opportunity in question.

17 “(b) Assurances for Inclusion in Applications.—The assurances
18 referred to in subsection (a)(1) are the following:

19 “(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING
20 AGREEMENTS.—With respect to a job opportunity that is covered
21 under a collective bargaining agreement:

22 “(A) UNION CONTRACT DESCRIBED.—The job opportunity is
23 covered by a union contract which was negotiated at arm’s
24 length between a bona fide union and the employer.

25 “(B) STRIKE OR LOCKOUT.—The specific job opportunity for
26 which the employer is requesting an H-2A worker is not vacant
27 because the former occupant is on strike or being locked out in
28 the course of a labor dispute.

29 “(C) NOTIFICATION OF BARGAINING REPRESENTATIVES.—The
30 employer, at the time of filing the application, has provided
31 notice of the filing under this paragraph to the bargaining
32 representative of the employer’s employees in the occupational
33 classification at the place or places of employment for which
34 aliens are sought.

35 “(D) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job
36 opportunity is temporary or seasonal.

37 “(E) OFFERS TO UNITED STATES WORKERS.—The employer has
38 offered or will offer the job to any eligible United States worker
39 who applies and is equally or better qualified for the job for

1 which the nonimmigrant is, or the nonimmigrants are, sought
2 and who will be available at the time and place of need.

3 "(F) PROVISION OF INSURANCE.—If the job opportunity is not
4 covered by the State workers' compensation law, the employer
5 will provide, at no cost to the worker, insurance covering
6 injury and disease arising out of, and in the course of, the
7 worker's employment which will provide benefits at least equal
8 to those provided under the State's workers' compensation law
9 for comparable employment.

10 "(2) JOB OPPORTUNITIES NOT COVERED BY COLLECTIVE BARGAINING
11 AGREEMENTS.—With respect to a job opportunity that is not covered
12 under a collective bargaining agreement:

13 "(A) STRIKE OR LOCKOUT.—The specific job opportunity for
14 which the employer has applied for an H-2A worker is not
15 vacant because the former occupant is on strike or being
16 locked out in the course of a labor dispute.

17 "(B) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job
18 opportunity is temporary or seasonal.

19 "(C) BENEFIT, WAGE, AND WORKING CONDITIONS.—The employer
20 will provide, at a minimum, the benefits, wages, and working
21 conditions required by section 218E to all workers employed in
22 the job opportunities for which the employer has applied for an
23 H-2A worker under subsection (a) and to all other workers in
24 the same occupation at the place of employment.

25 "(D) NONDISPLACEMENT OF UNITED STATES WORKERS.—The
26 employer did not displace and will not displace a United States
27 worker employed by the employer during the period of
28 employment and for a period of 30 days preceding the period
29 of employment in the occupation at the place of employment
30 for which the employer has applied for an H-2A worker.

31 "(E) REQUIREMENTS FOR PLACEMENT OF THE NONIMMIGRANT WITH
32 OTHER EMPLOYERS.—The employer will not place the
33 nonimmigrant with another employer unless—

34 "(i) the nonimmigrant performs duties in whole or in part
35 at 1 or more worksites owned, operated, or controlled by
36 such other employer;

37 "(ii) there are indicia of an employment relationship
38 between the nonimmigrant and such other employer; and

39 "(iii) the employer has inquired of the other employer as
40 to whether, and has no actual knowledge or notice that,

1 during the period of employment and for a period of 30
2 days preceding the period of employment, the other
3 employer has displaced or intends to displace a United
4 States worker employed by the other employer in the
5 occupation at the place of employment for which the
6 employer seeks approval to employ H-2A workers.

7 “(F) STATEMENT OF LIABILITY.—The application form shall
8 include a clear statement explaining the liability under
9 subparagraph (E) of an employer if the other employer
10 described in such subparagraph displaces a United States
11 worker as described in such subparagraph.

12 “(G) PROVISION OF INSURANCE.—If the job opportunity is not
13 covered by the State workers’ compensation law, the employer
14 will provide, at no cost to the worker, insurance covering
15 injury and disease arising out of and in the course of the
16 worker’s employment which will provide benefits at least equal
17 to those provided under the State’s workers’ compensation law
18 for comparable employment.

19 “(H) EMPLOYMENT OF UNITED STATES WORKERS.—

20 “(i) RECRUITMENT.—The employer has taken or will take
21 the following steps to recruit United States workers for the
22 job opportunities for which the H-2A nonimmigrant is, or
23 H-2A nonimmigrants are, sought:

24 “(I) CONTACTING FORMER WORKERS.—The employer shall
25 make reasonable efforts through the sending of a
26 letter by United States Postal Service mail, or
27 otherwise, to contact any United States worker the
28 employer employed during the previous season in the
29 occupation at the place of intended employment for
30 which the employer is applying for workers and has
31 made the availability of the employer’s job
32 opportunities in the occupation at the place of intended
33 employment known to such previous workers, unless
34 the worker was terminated from employment by the
35 employer for a lawful job-related reason or abandoned
36 the job before the worker completed the period of
37 employment of the job opportunity for which the
38 worker was hired.

39 “(II) FILING A JOB OFFER WITH THE LOCAL OFFICE OF THE
40 STATE EMPLOYMENT SECURITY AGENCY.—Not later than 28
41 days before the date on which the employer desires to

1 employ an H-2A worker in a temporary or seasonal
2 agricultural job opportunity, the employer shall submit
3 a copy of the job offer described in subsection (a)(2)
4 to the local office of the State workforce agency which
5 serves the area of intended employment and authorize
6 the posting of the job opportunity on its electronic job
7 registry, except that nothing in this subclause shall
8 require the employer to file an interstate job order
9 under section 653 of title 20, Code of Federal
10 Regulations.

11 “(III) ADVERTISING OF JOB OPPORTUNITIES.—Not later
12 than 14 days before the date on which the employer
13 desires to employ an H-2A worker in a temporary or
14 seasonal agricultural job opportunity, the employer
15 shall advertise the availability of the job opportunities
16 for which the employer is seeking workers in a
17 publication in the local labor market that is likely to be
18 patronized by potential farm workers.

19 “(IV) EMERGENCY PROCEDURES.—The Secretary of Labor
20 shall, by regulation, provide a procedure for
21 acceptance and approval of applications in which the
22 employer has not complied with the provisions of this
23 subparagraph because the employer’s need for H-2A
24 workers could not reasonably have been foreseen.

25 “(ii) JOB OFFERS.—The employer has offered or will offer
26 the job to any eligible United States worker who applies
27 and is equally or better qualified for the job for which the
28 nonimmigrant is, or nonimmigrants are, sought and who
29 will be available at the time and place of need.

30 “(iii) PERIOD OF EMPLOYMENT.—The employer will provide
31 employment to any qualified United States worker who
32 applies to the employer during the period beginning on the
33 date on which the H-2A worker departs for the employer’s
34 place of employment and ending on the date on which 50
35 percent of the period of employment for which the H-2A
36 worker who is in the job was hired has elapsed, subject to
37 the following requirements:

38 “(I) PROHIBITION.—No person or entity shall willfully
39 and knowingly withhold United States workers before
40 the arrival of H-2A workers in order to force the hiring
41 of United States workers under this clause.

1 “(II) COMPLAINTS.—Upon receipt of a complaint by an
2 employer that a violation of subclause (I) has
3 occurred, the Secretary of Labor shall immediately
4 investigate. The Secretary of Labor shall, within 36
5 hours of the receipt of the complaint, issue findings
6 concerning the alleged violation. If the Secretary of
7 Labor finds that a violation has occurred, the Secretary
8 of Labor shall immediately suspend the application of
9 this clause with respect to that certification for that
10 date of need.

11 “(III) PLACEMENT OF UNITED STATES WORKERS.—Before
12 referring a United States worker to an employer during
13 the period described in the matter preceding subclause
14 (I), the Secretary of Labor shall make all reasonable
15 efforts to place the United States worker in an open
16 job acceptable to the worker, if there are other job
17 offers pending with the job service that offer similar
18 job opportunities in the area of intended employment.

19 “(iv) STATUTORY CONSTRUCTION.—Nothing in this
20 subparagraph shall be construed to prohibit an employer
21 from using such legitimate selection criteria relevant to the
22 type of job that are normal or customary to the type of job
23 involved so long as such criteria are not applied in a
24 discriminatory manner.

25 “(V) UNITED STATES WORKER.—For purpose of this
26 subparagraph, the term “United States worker” means an
27 alien described in section 218G(14) except an alien
28 admitted or otherwise provided status under section
29 101(a)(15)(Z).

30 “(c) Applications by Associations on Behalf of Employer Members.—

31 “(1) IN GENERAL.—An agricultural association may file an
32 application under subsection (a) on behalf of 1 or more of its
33 employer members that the association certifies in its application
34 has or have agreed in writing to comply with the requirements of
35 this section and sections 218E, 218F, and 218G.

36 “(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an
37 association filing an application under paragraph (1) is a joint or
38 sole employer of the temporary or seasonal agricultural workers
39 requested on the application, the certifications granted under
40 subsection (e)(2)(B) to the association may be used for the
41 certified job opportunities of any of its producer members named

1 on the application, and such workers may be transferred among
2 such producer members to perform the agricultural services of a
3 temporary or seasonal nature for which the certifications were
4 granted.

5 “(d) Withdrawal of Applications.—

6 “(1) IN GENERAL.—An employer may withdraw an application filed
7 pursuant to subsection (a), except that if the employer is an
8 agricultural association, the association may withdraw an
9 application filed pursuant to subsection (a) with respect to 1 or
10 more of its members. To withdraw an application, the employer or
11 association shall notify the Secretary of Labor in writing, and the
12 Secretary of Labor shall acknowledge in writing the receipt of such
13 withdrawal notice. An employer who withdraws an application
14 under subsection (a), or on whose behalf an application is
15 withdrawn, is relieved of the obligations undertaken in the
16 application.

17 “(2) LIMITATION.—An application may not be withdrawn while any
18 alien provided status under section 101(a)(15)(H)(ii)(a) pursuant
19 to such application is employed by the employer.

20 “(3) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred
21 by an employer under any other law or regulation as a result of
22 the recruitment of United States workers or H-2A workers under
23 an offer of terms and conditions of employment required as a
24 result of making an application under subsection (a) is unaffected
25 by withdrawal of such application.

26 “(e) Review and Approval of Applications.—

27 “(1) RESPONSIBILITY OF EMPLOYERS.—The employer shall make
28 available for public examination, within 1 working day after the
29 date on which an application under subsection (a) is filed, at the
30 employer’s principal place of business or worksite, a copy of each
31 such application (and such accompanying documents as are
32 necessary).

33 “(2) RESPONSIBILITY OF THE SECRETARY OF LABOR.—

34 “(A) COMPILATION OF LIST.—The Secretary of Labor shall
35 compile, on a current basis, a list (by employer and by
36 occupational classification) of the applications filed under
37 subsection (a). Such list shall include the wage rate, number of
38 workers sought, period of intended employment, and date of
39 need. The Secretary of Labor shall make such list available for
40 examination in the District of Columbia.

1 “(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall
2 review such an application only for completeness and obvious
3 inaccuracies. Unless the Secretary of Labor finds that the
4 application is incomplete or obviously inaccurate, the Secretary
5 of Labor shall certify that the intending employer has filed with
6 the Secretary of Labor an application as described in
7 subsection (a). Such certification shall be provided within 7
8 days of the filing of the application.”

9 “SEC. 218D. H-2A EMPLOYMENT REQUIREMENTS.

10 “(a) Preferential Treatment of Aliens Prohibited.—Employers seeking
11 to hire United States workers shall offer the United States workers no
12 less than the same benefits, wages, and working conditions that the
13 employer is offering, intends to offer, or will provide to H-2A workers.
14 Conversely, no job offer may impose on United States workers any
15 restrictions or obligations which will not be imposed on the employer’s
16 H-2A workers.

17 “(b) Minimum Benefits, Wages, and Working Conditions.—Except in
18 cases where higher benefits, wages, or working conditions are required
19 by the provisions of subsection (a), in order to protect similarly
20 employed United States workers from adverse effects with respect to
21 benefits, wages, and working conditions, every job offer which shall
22 accompany an application under section 218C(b)(2) shall include each
23 of the following benefit, wage, and working condition provisions:

24 “(1) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.—

25 “(A) IN GENERAL.—An employer applying under section
26 218C(a) for H-2A workers shall offer to provide housing at no
27 cost to all workers in job opportunities for which the employer
28 has applied under that section and to all other workers in the
29 same occupation at the place of employment, whose place of
30 residence is beyond normal commuting distance.

31 “(B) TYPE OF HOUSING.—In complying with subparagraph (A),
32 an employer may, at the employer’s election, provide housing
33 that meets applicable Federal standards for temporary labor
34 camps or secure housing that meets applicable local standards
35 for rental or public accommodation housing or other
36 substantially similar class of habitation, or in the absence of
37 applicable local standards, State standards for rental or public
38 accommodation housing or other substantially similar class of
39 habitation. In the absence of applicable local or State
40 standards, Federal temporary labor camp standards shall
41 apply.

1 “(C) FAMILY HOUSING.—If it is the prevailing practice in the
2 occupation and area of intended employment to provide family
3 housing, family housing shall be provided to workers with
4 families who request it.

5 “(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—
6 The Secretary of Labor shall issue regulations that address the
7 specific requirements for the provision of housing to workers
8 engaged in the range production of livestock.

9 “(E) LIMITATION.—Nothing in this paragraph shall be
10 construed to require an employer to provide or secure housing
11 for persons who were not entitled to such housing under the
12 temporary labor certification regulations in effect on June 1,
13 1986.

14 “(F) CHARGES FOR HOUSING.—

15 “(i) CHARGES FOR PUBLIC HOUSING.—If public housing
16 provided for migrant agricultural workers under the
17 auspices of a local, county, or State government is secured
18 by an employer, and use of the public housing unit
19 normally requires charges from migrant workers, such
20 charges shall be paid by the employer directly to the
21 appropriate individual or entity affiliated with the housing’s
22 management.

23 “(ii) DEPOSIT CHARGES.—Charges in the form of deposits
24 for bedding or other similar incidentals related to housing
25 shall not be levied upon workers by employers who provide
26 housing for their workers. An employer may require a
27 worker found to have been responsible for damage to such
28 housing which is not the result of normal wear and tear
29 related to habitation to reimburse the employer for the
30 reasonable cost of repair of such damage.

31 “(G) HOUSING ALLOWANCE AS ALTERNATIVE.—

32 “(i) IN GENERAL.—If the requirement set out in clause (ii)
33 is satisfied, the employer may provide a reasonable
34 housing allowance instead of offering housing under
35 subparagraph (A). Upon the request of a worker seeking
36 assistance in locating housing, the employer shall make a
37 good faith effort to assist the worker in identifying and
38 locating housing in the area of intended employment. An
39 employer who offers a housing allowance to a worker, or
40 assists a worker in locating housing which the worker
41 occupies, pursuant to this clause shall not be deemed a

1 housing provider under section 203 of the Migrant and
2 Seasonal Agricultural Worker Protection Act (29 U.S.C.
3 1823) solely by virtue of providing such housing allowance.
4 No housing allowance may be used for housing which is
5 owned or controlled by the employer.

6 "(ii) CERTIFICATION.—The requirement of this clause is
7 satisfied if the Governor of the State certifies to the
8 Secretary of Labor that there is adequate housing available
9 in the area of intended employment for migrant farm
10 workers and H-2A workers who are seeking temporary
11 housing while employed in agricultural work. Such
12 certification shall expire after 3 years unless renewed by
13 the Governor of the State.

14 "(iii) AMOUNT OF ALLOWANCE.—

15 "(I) NONMETROPOLITAN COUNTIES.—If the place of
16 employment of the workers provided an allowance
17 under this subparagraph is a nonmetropolitan county,
18 the amount of the housing allowance under this
19 subparagraph shall be equal to the statewide average
20 fair market rental for existing housing for
21 nonmetropolitan counties for the State, as established
22 by the Secretary of Housing and Urban Development
23 pursuant to section 8(c) of the United States Housing
24 Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-
25 bedroom dwelling unit and an assumption of 2 persons
26 per bedroom.

27 "(II) METROPOLITAN COUNTIES.—If the place of
28 employment of the workers provided an allowance
29 under this paragraph is in a metropolitan county, the
30 amount of the housing allowance under this
31 subparagraph shall be equal to the statewide average
32 fair market rental for existing housing for metropolitan
33 counties for the State, as established by the Secretary
34 of Housing and Urban Development pursuant to section
35 8(c) of the United States Housing Act of 1937 (42
36 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit
37 and an assumption of 2 persons per bedroom.

38 "(2) REIMBURSEMENT OF TRANSPORTATION.—

39 "(A) TO PLACE OF EMPLOYMENT.—A worker who completes 50
40 percent of the period of employment of the job opportunity for
41 which the worker was hired shall be reimbursed by the

1 employer for the cost of the worker's transportation and
2 subsistence from the place from which the worker came to
3 work for the employer (or place of last employment, if the
4 worker traveled from such place) to the place of employment.

5 "(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the
6 period of employment for the job opportunity involved shall be
7 reimbursed by the employer for the cost of the worker's
8 transportation and subsistence from the place of employment
9 to the place from which the worker, disregarding intervening
10 employment, came to work for the employer, or to the place of
11 next employment, if the worker has contracted with a
12 subsequent employer who has not agreed to provide or pay for
13 the worker's transportation and subsistence to such
14 subsequent employer's place of employment.

15 "(C) LIMITATION.—

16 "(i) AMOUNT OF REIMBURSEMENT.—Except as provided in
17 clause (ii), the amount of reimbursement provided under
18 subparagraph (A) or (B) to a worker or alien shall not
19 exceed the lesser of—

20 "(I) the actual cost to the worker or alien of the
21 transportation and subsistence involved; or

22 "(II) the most economical and reasonable common
23 carrier transportation charges and subsistence costs
24 for the distance involved.

25 "(ii) DISTANCE TRAVELED.—No reimbursement under
26 subparagraph (A) or (B) shall be required if the distance
27 traveled is 100 miles or less, or the worker is not residing
28 in employer-provided housing or housing secured through
29 an allowance as provided in paragraph (1)(G).

30 "(D) EARLY TERMINATION.—If the worker is laid off or
31 employment is terminated for contract impossibility (as
32 described in paragraph (4)(D)) before the anticipated ending
33 date of employment, the employer shall provide the
34 transportation and subsistence required by subparagraph (B)
35 and, notwithstanding whether the worker has completed 50
36 percent of the period of employment, shall provide the
37 transportation reimbursement required by subparagraph (A).

38 "(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORKSITE.—
39 The employer shall provide transportation between the
40 worker's living quarters and the employer's worksite without
41 cost to the worker, and such transportation will be in

1 accordance with applicable laws and regulations.

2 “(3) REQUIRED WAGES.—

3 “(A) IN GENERAL.—An employer applying for workers under
4 section 218C(a) shall offer to pay, and shall pay, all workers in
5 the occupation for which the employer has applied for workers,
6 not less (and is not required to pay more) than the greater of
7 the prevailing wage in the occupation in the area of intended
8 employment or the adverse effect wage rate. No worker shall
9 be paid less than the greater of the hourly wage prescribed
10 under section 6(a)(1) of the Fair Labor Standards Act of 1938
11 (29 U.S.C. 206(a)(1)) or the applicable State minimum wage.

12 “(B) LIMITATION.—Effective on the date of the enactment of
13 the Agricultural Job Opportunities, Benefits, and Security Act of
14 2007 and continuing for 3 years thereafter, no adverse effect
15 wage rate for a State may be more than the adverse effect
16 wage rate for that State in effect on January 1, 2003, as
17 established by section 655.107 of title 20, Code of Federal
18 Regulations.

19 “(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

20 “(i) FIRST ADJUSTMENT.—If Congress does not set a new
21 wage standard applicable to this section before the first
22 March 1 that is not less than 3 years after the date of
23 enactment of this section, the adverse effect wage rate for
24 each State beginning on such March 1 shall be the wage
25 rate that would have resulted if the adverse effect wage
26 rate in effect on January 1, 2003, had been annually
27 adjusted, beginning on March 1, 2006, by the lesser of—

28 “(I) the 12-month percentage change in the
29 Consumer Price Index for All Urban Consumers
30 between December of the second preceding year and
31 December of the preceding year; and

32 “(II) 4 percent.

33 “(ii) SUBSEQUENT ANNUAL ADJUSTMENTS.—Beginning on the
34 first March 1 that is not less than 4 years after the date of
35 enactment of this section, and each March 1 thereafter,
36 the adverse effect wage rate then in effect for each State
37 shall be adjusted by the lesser of—

38 “(I) the 12-month percentage change in the
39 Consumer Price Index for All Urban Consumers
40 between December of the second preceding year and

1 December of the preceding year; and

2 "(II) 4 percent.

3 "(D) DEDUCTIONS.—The employer shall make only those
4 deductions from the worker's wages that are authorized by law
5 or are reasonable and customary in the occupation and area of
6 employment. The job offer shall specify all deductions not
7 required by law which the employer will make from the
8 worker's wages.

9 "(E) FREQUENCY OF PAY.—The employer shall pay the worker
10 not less frequently than twice monthly, or in accordance with
11 the prevailing practice in the area of employment, whichever is
12 more frequent.

13 "(F) HOURS AND EARNINGS STATEMENTS.—The employer shall
14 furnish to the worker, on or before each payday, in 1 or more
15 written statements—

16 "(i) the worker's total earnings for the pay period;

17 "(ii) the worker's hourly rate of pay, piece rate of pay, or
18 both;

19 "(iii) the hours of employment which have been offered
20 to the worker (broken out by hours offered in accordance
21 with and over and above the $\frac{3}{4}$ guarantee described in
22 paragraph (4);

23 "(iv) the hours actually worked by the worker;

24 "(v) an itemization of the deductions made from the
25 worker's wages; and

26 "(vi) if piece rates of pay are used, the units produced
27 daily.

28 "(G) REPORT ON WAGE PROTECTIONS.—Not later than December
29 31, 2009, the Comptroller General of the United States shall
30 prepare and transmit to the Secretary of Labor, the Committee
31 on the Judiciary of the Senate, and Committee on the Judiciary
32 of the House of Representatives, a report that addresses—

33 "(i) whether the employment of H-2A or unauthorized
34 aliens in the United States agricultural workforce has
35 depressed United States farm worker wages below the
36 levels that would otherwise have prevailed if alien farm
37 workers had not been employed in the United States;

38 "(ii) whether an adverse effect wage rate is necessary to
39 prevent wages of United States farm workers in

1 occupations in which H-2A workers are employed from
2 falling below the wage levels that would have prevailed in
3 the absence of the employment of H-2A workers in those
4 occupations;

5 "(iii) whether alternative wage standards, such as a
6 prevailing wage standard, would be sufficient to prevent
7 wages in occupations in which H-2A workers are employed
8 from falling below the wage level that would have
9 prevailed in the absence of H-2A employment;

10 "(iv) whether any changes are warranted in the current
11 methodologies for calculating the adverse effect wage rate
12 and the prevailing wage; and

13 "(v) recommendations for future wage protection under
14 this section.

15 "(H) COMMISSION ON WAGE STANDARDS.—

16 "(i) ESTABLISHMENT.—There is established the Commission
17 on Agricultural Wage Standards under the H-2A program
18 (in this subparagraph referred to as the 'Commission').

19 "(ii) COMPOSITION.—The Commission shall consist of 10
20 members as follows:

21 "(I) Four representatives of agricultural employers
22 and 1 representative of the Department of Agriculture,
23 each appointed by the Secretary of Agriculture.

24 "(II) Four representatives of agricultural workers and
25 1 representative of the Department of Labor, each
26 appointed by the Secretary of Labor.

27 "(iii) FUNCTIONS.—The Commission shall conduct a study
28 that shall address—

29 "(I) whether the employment of H-2A or
30 unauthorized aliens in the United States agricultural
31 workforce has depressed United States farm worker
32 wages below the levels that would otherwise have
33 prevailed if alien farm workers had not been employed
34 in the United States;

35 "(II) whether an adverse effect wage rate is
36 necessary to prevent wages of United States farm
37 workers in occupations in which H-2A workers are
38 employed from falling below the wage levels that
39 would have prevailed in the absence of the

1 employment of H-2A workers in those occupations;

2 "(III) whether alternative wage standards, such as a
3 prevailing wage standard, would be sufficient to
4 prevent wages in occupations in which H-2A workers
5 are employed from falling below the wage level that
6 would have prevailed in the absence of H-2A
7 employment;

8 "(IV) whether any changes are warranted in the
9 current methodologies for calculating the adverse
10 effect wage rate and the prevailing wage rate; and

11 "(V) recommendations for future wage protection
12 under this section.

13
14 "(iv) The Commission may for the purpose of carrying
15 out this section, hold such hearings, sit and act at such
16 times and places, take such testimony, and receive such
17 evidence as the Commission considers appropriate.

18
19 "(v) Interim Report—The Commission shall issue an
20 interim report, published in the Federal Register, with
21 opportunity and comment, for a period of at least 90 days.

22
23 "(vi) Final Report: After considering recommendations
24 from interested persons (including an opportunity for
25 comment from the public and affected States), the
26 Commission shall submit a report to the Congress setting
27 forth the findings of the study conducted under clause (iii)
28 not later than December 31, 2009.

29 "(vii) TERMINATION DATE.—The Commission shall terminate
30 upon submitting its final report.

31 "(4) GUARANTEE OF EMPLOYMENT.—

32 "(A) OFFER TO WORKER.—The employer shall guarantee to offer
33 the worker employment for the hourly equivalent of at least $\frac{3}{4}$
34 of the work days of the total period of employment, beginning
35 with the first work day after the arrival of the worker at the
36 place of employment and ending on the expiration date
37 specified in the job offer. For purposes of this subparagraph,
38 the hourly equivalent means the number of hours in the work
39 days as stated in the job offer and shall exclude the worker's
40 Sabbath and Federal holidays. If the employer affords the
41 United States or H-2A worker less employment than that

1 required under this paragraph, the employer shall pay such
2 worker the amount which the worker would have earned had
3 the worker, in fact, worked for the guaranteed number of
4 hours.

5 "(B) FAILURE TO WORK.—Any hours which the worker fails to
6 work, up to a maximum of the number of hours specified in
7 the job offer for a work day, when the worker has been offered
8 an opportunity to do so, and all hours of work actually
9 performed (including voluntary work in excess of the number
10 of hours specified in the job offer in a work day, on the
11 worker's Sabbath, or on Federal holidays) may be counted by
12 the employer in calculating whether the period of guaranteed
13 employment has been met.

14 "(C) ABANDONMENT OF EMPLOYMENT, TERMINATION FOR CAUSE.—If
15 the worker voluntarily abandons employment before the end of
16 the contract period, or is terminated for cause, the worker is
17 not entitled to the '¾ guarantee' described in subparagraph
18 (A).

19 "(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the
20 period of employment specified in the job offer, the services of
21 the worker are no longer required for reasons beyond the
22 control of the employer due to any form of natural disaster,
23 including a flood, hurricane, freeze, earthquake, fire, drought,
24 plant or animal disease or pest infestation, or regulatory
25 drought, before the guarantee in subparagraph (A) is fulfilled,
26 the employer may terminate the worker's employment. In the
27 event of such termination, the employer shall fulfill the
28 employment guarantee in subparagraph (A) for the work days
29 that have elapsed from the first work day after the arrival of
30 the worker to the termination of employment. In such cases,
31 the employer will make efforts to transfer the United States
32 worker to other comparable employment acceptable to the
33 worker. If such transfer is not effected, the employer shall
34 provide the return transportation required in paragraph (2)(D).

35 "(5) MOTOR VEHICLE SAFETY.—

36 "(A) MODE OF TRANSPORTATION SUBJECT TO COVERAGE.—

37 "(i) IN GENERAL.—Except as provided in clauses (iii) and
38 (iv), this subsection applies to any H-2A employer that
39 uses or causes to be used any vehicle to transport an H-
40 2A worker within the United States.

41 "(ii) DEFINED TERM.—In this paragraph, the term 'uses or

1 causes to be used'—

2 "(I) applies only to transportation provided by an H-
3 2A employer to an H-2A worker, or by a farm labor
4 contractor to an H-2A worker at the request or
5 direction of an H-2A employer; and

6 "(II) does not apply to—

7 "(aa) transportation provided, or transportation
8 arrangements made, by an H-2A worker, unless
9 the employer specifically requested or arranged
10 such transportation; or

11 "(bb) car pooling arrangements made by H-2A
12 workers themselves, using 1 of the workers' own
13 vehicles, unless specifically requested by the
14 employer directly or through a farm labor
15 contractor.

16 "(iii) CLARIFICATION.—Providing a job offer to an H-2A
17 worker that causes the worker to travel to or from the
18 place of employment, or the payment or reimbursement of
19 the transportation costs of an H-2A worker by an H-2A
20 employer, shall not constitute an arrangement of, or
21 participation in, such transportation.

22 "(iv) AGRICULTURAL MACHINERY AND EQUIPMENT EXCLUDED.—
23 This subsection does not apply to the transportation of an
24 H-2A worker on a tractor, combine, harvester, picker, or
25 other similar machinery or equipment while such worker is
26 actually engaged in the planting, cultivating, or harvesting
27 of agricultural commodities or the care of livestock or
28 poultry or engaged in transportation incidental thereto.

29 "(v) COMMON CARRIERS EXCLUDED.—This subsection does not
30 apply to common carrier motor vehicle transportation in
31 which the provider holds itself out to the general public as
32 engaging in the transportation of passengers for hire and
33 holds a valid certification of authorization for such
34 purposes from an appropriate Federal, State, or local
35 agency.

36 "(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE
37 REQUIREMENTS.—

38 "(i) IN GENERAL.—When using, or causing to be used, any
39 vehicle for the purpose of providing transportation to which
40 this subparagraph applies, each employer shall—

1 “(I) ensure that each such vehicle conforms to the
2 standards prescribed by the Secretary of Labor under
3 section 401(b) of the Migrant and Seasonal Agricultural
4 Worker Protection Act (29 U.S.C. 1841(b)) and other
5 applicable Federal and State safety standards;

6 “(II) ensure that each driver has a valid and
7 appropriate license, as provided by State law, to
8 operate the vehicle; and

9 “(III) have an insurance policy or a liability bond that
10 is in effect which insures the employer against liability
11 for damage to persons or property arising from the
12 ownership, operation, or causing to be operated, of
13 any vehicle used to transport any H-2A worker.

14 “(ii) AMOUNT OF INSURANCE REQUIRED.—The level of
15 insurance required shall be determined by the Secretary of
16 Labor pursuant to regulations to be issued under this
17 subsection.

18 “(iii) EFFECT OF WORKERS’ COMPENSATION COVERAGE.—If the
19 employer of any H-2A worker provides workers’
20 compensation coverage for such worker in the case of
21 bodily injury or death as provided by State law, the
22 following adjustments in the requirements of subparagraph
23 (B)(i)(III) relating to having an insurance policy or liability
24 bond apply:

25 “(I) No insurance policy or liability bond shall be
26 required of the employer, if such workers are
27 transported only under circumstances for which there
28 is coverage under such State law.

29 “(II) An insurance policy or liability bond shall be
30 required of the employer for circumstances under
31 which coverage for the transportation of such workers
32 is not provided under such State law.

33 “(c) Compliance With Labor Laws.—An employer shall assure that,
34 except as otherwise provided in this section, the employer will comply
35 with all applicable Federal, State, and local labor laws, including laws
36 affecting migrant and seasonal agricultural workers, with respect to all
37 United States workers and alien workers employed by the employer,
38 except that a violation of this assurance shall not constitute a violation
39 of the Migrant and Seasonal Agricultural Worker Protection Act (29
40 U.S.C. 1801 et seq.).

41 “(d) Copy of Job Offer.—The employer shall provide to the worker,

1 not later than the day the work commences, a copy of the employer's
2 application and job offer described in section 218C(a), or, if the
3 employer will require the worker to enter into a separate employment
4 contract covering the employment in question, such separate
5 employment contract.

6 "(e) Range Production of Livestock.—Nothing in this section, section
7 218C, or section 218E shall preclude the Secretary of Labor and the
8 Secretary from continuing to apply special procedures and
9 requirements to the admission and employment of aliens in
10 occupations involving the range production of livestock.

11 "(f) Evidence on Nonimmigrant Status.—Each H-2A nonimmigrant
12 shall be issued documentary evidence of nonimmigrant status, which—

13 "(1) shall be machine-readable, tamper-resistant, and shall
14 contain a digitized photograph and other biometric identifiers that
15 can be authenticated;

16 "(2) shall, during the alien's authorized period of admission as
17 an H-2A nonimmigrant, serve as a valid entry document for the
18 purpose of applying for admission to the United States—

19 "(A) instead of a passport and visa if the alien—

20 "(i) is a national of a foreign territory contiguous to the
21 United States; and

22 "(ii) is applying for admission at a land border port of
23 entry; or

24 "(B) in conjunction with a valid passport, if the alien is
25 applying for admission at an air or sea port of entry;

26 "(3) may be accepted during the period of its validity by an
27 employer as evidence of employment authorization and identity
28 under section 274A(b)(1)(B); and

29 "(4) shall be issued to the H-2A nonimmigrant by the Secretary
30 promptly after such alien's admission to the United States as an
31 H-2A nonimmigrant and reporting to the employer's worksite
32 under or, at the discretion of the Secretary, may be issued by the
33 Secretary of State at a consulate instead of a visa.

34 "SEC. 218E. PROCEDURE FOR ADMISSION AND EXTENSION OF STAY
35 OF H-2A WORKERS.

36 "(a) Petitioning for Admission.—An employer, or an association
37 acting as an agent or joint employer for its members, that seeks the
38 admission into the United States of an H-2A worker may file a petition
39 with the Secretary. The petition shall be accompanied by an accepted

1 and currently valid certification provided by the Secretary of Labor
2 under section 218C(e)(2)(B) covering the petitioner.

3 “(b) Expedited Adjudication by the Secretary.—The Secretary shall
4 establish a procedure for expedited adjudication of petitions filed under
5 subsection (a) and within 7 working days shall, by fax, cable, or other
6 means assuring expedited delivery, transmit a copy of notice of action
7 on the petition to the petitioner and, in the case of approved petitions,
8 to the appropriate immigration officer at the port of entry or United
9 States consulate (as the case may be) where the petitioner has
10 indicated that the alien beneficiary (or beneficiaries) will apply for a
11 visa or admission to the United States.

12 “(c) Criteria for Admissibility.—

13 “(1) IN GENERAL.—An H-2A worker shall be considered admissible
14 to the United States if the alien is otherwise admissible under this
15 section, section 218C, and section 218D, and the alien is not
16 ineligible under paragraph (2).

17 “(2) DISQUALIFICATION.—An alien shall be considered inadmissible
18 to the United States and ineligible for nonimmigrant status under
19 section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the
20 past 5 years—

21 “(A) violated a material provision of this section, including
22 the requirement to promptly depart the United States when
23 the alien’s authorized period of admission under this section
24 has expired; or

25 “(B) otherwise violated a term or condition of admission into
26 the United States as a nonimmigrant, including overstaying the
27 period of authorized admission as such a nonimmigrant.

28 “(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—

29 “(A) IN GENERAL.—An alien who has not previously been
30 admitted into the United States pursuant to this section, and
31 who is otherwise eligible for admission in accordance with
32 paragraphs (1) and (2), shall not be deemed inadmissible by
33 virtue of section 212(a)(9)(B). If an alien described in the
34 preceding sentence is present in the United States, the alien
35 may apply from abroad for H-2A status, but may not be
36 granted that status in the United States.

37 “(B) MAINTENANCE OF WAIVER.—An alien provided an initial
38 waiver of ineligibility pursuant to subparagraph (A) shall
39 remain eligible for such waiver unless the alien violates the
40 terms of this section or again becomes ineligible under section

1 212(a)(9)(B) by virtue of unlawful presence in the United
2 States after the date of the initial waiver of ineligibility
3 pursuant to subparagraph (A).

4 “(d) Period of Admission.—

5 “(1) IN GENERAL.—The alien shall be admitted for the period of
6 employment in the application certified by the Secretary of Labor
7 pursuant to section 218C(e)(2)(B), not to exceed 10 months
8 except as specified in paragraph (2), supplemented by a period of
9 not more than 1 week before the beginning of the period of
10 employment for the purpose of travel to the worksite and a period
11 of 14 days following the period of employment for the purpose of
12 departure or extension based on a subsequent offer of
13 employment, except that—

14 “(A) the alien is not authorized to be employed during such
15 14-day period except in the employment for which the alien
16 was previously authorized; and

17 “(B) the total period of employment, including such 14-day
18 period, may not exceed 10 months.

19 “(3) CONSTRUCTION.—Nothing in this subsection shall limit the
20 authority of the Secretary to extend the stay of the alien under
21 any other provision of this Act.

22 “(e) Abandonment of Employment.—

23 “(1) IN GENERAL.—An alien admitted or provided status under
24 section 101(a)(15)(H)(ii)(a) who abandons the employment which
25 was the basis for such admission or status shall be considered to
26 have failed to maintain nonimmigrant status as an H-2A worker
27 and shall depart the United States or be subject to removal under
28 section 237(a)(1)(C)(i).

29 “(2) REPORT BY EMPLOYER.—The employer, or association acting as
30 agent for the employer, shall notify the Secretary not later than 7
31 days after an H-2A worker prematurely abandons employment.

32 “(3) REMOVAL BY THE SECRETARY.—The Secretary shall promptly
33 remove from the United States any H-2A worker who violates any
34 term or condition of the worker’s nonimmigrant status.

35 “(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an
36 alien may voluntarily terminate his or her employment if the alien
37 promptly departs the United States upon termination of such
38 employment.

39 “(f) Replacement of Alien.—

1 “(1) IN GENERAL.—Upon presentation of the notice to the
2 Secretary required by subsection (e)(2), the Secretary of State
3 shall promptly issue a visa to, and the Secretary shall admit into
4 the United States, an eligible alien designated by the employer to
5 replace an H-2A worker—

6 “(A) who abandons or prematurely terminates employment;
7 or

8 “(B) whose employment is terminated after a United States
9 worker is employed pursuant to section 218C(b)(2)(H)(iii), if
10 the United States worker voluntarily departs before the end of
11 the period of intended employment or if the employment
12 termination is for a lawful job-related reason.

13 “(2) CONSTRUCTION.—Nothing in this subsection is intended to
14 limit any preference required to be accorded United States workers
15 under any other provision of this Act.

16 “(g) Identification Document.—

17 “(1) IN GENERAL.—Each alien authorized to be admitted under
18 section 101(a)(15)(H)(ii)(a) shall be provided an identification and
19 employment eligibility document to verify eligibility for
20 employment in the United States and verify the alien’s identity.

21 “(2) REQUIREMENTS.—No identification and employment eligibility
22 document may be issued which does not meet the following
23 requirements:

24 “(A) The document shall be capable of reliably determining
25 whether—

26 “(i) the individual with the identification and employment
27 eligibility document whose eligibility is being verified is in
28 fact eligible for employment;

29 “(ii) the individual whose eligibility is being verified is
30 claiming the identity of another person; and

31 “(iii) the individual whose eligibility is being verified is
32 authorized to be admitted into, and employed in, the
33 United States as an H-2A worker.

34 “(B) The document shall be in a form that is resistant to
35 counterfeiting and to tampering.

36 “(C) The document shall—

37 “(i) be compatible with other databases of the Secretary
38 for the purpose of excluding aliens from benefits for which
39 they are not eligible and determining whether the alien is

1 unlawfully present in the United States; and

2 "(ii) be compatible with law enforcement databases to
3 determine if the alien has been convicted of criminal
4 offenses.

5 "(h) Extension of Stay of H-2A Aliens in the United States.—

6 "(1) EXTENSION OF STAY.—If an employer seeks approval to employ
7 an H-2A alien who is lawfully present in the United States, the
8 petition filed by the employer or an association pursuant to
9 subsection (a), shall request an extension of the alien's stay and a
10 change in the alien's employment.

11 "(2) LIMITATION ON FILING A PETITION FOR EXTENSION OF STAY.—A
12 petition may not be filed for an extension of an alien's stay to a
13 date that is more than 10 months after the date of the alien's last
14 admission to the United States under this section.

15 "(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF
16 STAY.—

17 "(A) IN GENERAL.—An alien who is lawfully present in the
18 United States may commence the employment described in a
19 petition under paragraph (1) on the date on which the petition
20 is filed.

21 "(B) DEFINITION.—For purposes of subparagraph (A), the term
22 'file' means sending the petition by certified mail via the United
23 States Postal Service, return receipt requested, or delivered by
24 guaranteed commercial delivery which will provide the
25 employer with a documented acknowledgment of the date of
26 receipt of the petition.

27 "(C) HANDLING OF PETITION.—The employer shall provide a
28 copy of the employer's petition to the alien, who shall keep the
29 petition with the alien's identification and employment
30 eligibility document as evidence that the petition has been filed
31 and that the alien is authorized to work in the United States.

32 "(D) APPROVAL OF PETITION.—Upon approval of a petition for an
33 extension of stay or change in the alien's authorized
34 employment, the Secretary shall provide a new or updated
35 employment eligibility document to the alien indicating the
36 new validity date, after which the alien is not required to retain
37 a copy of the petition.

38 "(4) LIMITATION ON AN INDIVIDUAL'S STAY IN STATUS.—

39 "(A) MAXIMUM PERIOD.—The maximum continuous period of

1 authorized status as an H-2A worker (including any
2 extensions), other than a worker admitted pursuant to
3 subsection (d)(2), is 10 months.

4 "(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—

5 "(i) IN GENERAL.—Subject to clause (ii), in the case of an
6 alien outside the United States whose period of authorized
7 status as an H-2A worker (including any extensions) has
8 expired, the alien may not again apply for admission to the
9 United States as an H-2A worker unless the alien has
10 remained outside the United States for a continuous period
11 equal to at least 1/5 the duration of the alien's previous
12 period of authorized status as an H-2A worker (including
13 any extensions).

14 "(ii) EXCEPTION.—Clause (i) shall not apply in the case of
15 an alien if the alien's period of authorized status as an H-
16 2A worker (including any extensions) was for a period of
17 not more than 10 months and such alien has been outside
18 the United States for at least 2 months during the 12
19 months preceding the date the alien again is applying for
20 admission to the United States as an H-2A worker.

21 "(i) Special Rules for Aliens Employed as Dairy Workers.--
22 Notwithstanding any provision of this Act, an alien admitted under
23 section 101(a)(15)(H)(ii)(a) for employment as a dairy worker--

24 "(1) may be admitted for a period of up to 3 years;

25 "(2) may not be extended beyond 3 years; and

26 "(3) shall not be subject to the requirements of subsection (h)(4).

27 "SEC. 218F. WORKER PROTECTIONS AND LABOR STANDARDS
28 ENFORCEMENT.

29 "(a) Enforcement Authority.—

30 "(1) INVESTIGATION OF COMPLAINTS.—

31 "(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINTS.—The
32 Secretary of Labor shall establish a process for the receipt,
33 investigation, and disposition of complaints respecting a
34 petitioner's failure to meet a condition specified in section
35 218C(b), or an employer's misrepresentation of material facts
36 in an application under section 218C(a). Complaints may be
37 filed by any aggrieved person or organization (including

1 bargaining representatives). No investigation or hearing shall
2 be conducted on a complaint concerning such a failure or
3 misrepresentation unless the complaint was filed not later than
4 12 months after the date of the failure, or misrepresentation,
5 respectively. The Secretary of Labor shall conduct an
6 investigation under this subparagraph if there is reasonable
7 cause to believe that such a failure or misrepresentation has
8 occurred.

9 “(B) DETERMINATION ON COMPLAINT.—Under such process, the
10 Secretary of Labor shall provide, within 30 days after the date
11 such a complaint is filed, for a determination as to whether or
12 not a reasonable basis exists to make a finding described in
13 subparagraph (C), (D), (E), or (G). If the Secretary of Labor
14 determines that such a reasonable basis exists, the Secretary
15 of Labor shall provide for notice of such determination to the
16 interested parties and an opportunity for a hearing on the
17 complaint, in accordance with section 556 of title 5, United
18 States Code, within 60 days after the date of the
19 determination. If such a hearing is requested, the Secretary of
20 Labor shall make a finding concerning the matter not later
21 than 60 days after the date of the hearing. In the case of
22 similar complaints respecting the same applicant, the
23 Secretary of Labor may consolidate the hearings under this
24 subparagraph on such complaints.

25 “(C) FAILURES TO MEET CONDITIONS.—If the Secretary of Labor
26 finds, after notice and opportunity for a hearing, a failure to
27 meet a condition of paragraph (1)(A), (1)(B), (1)(D), (1)(F),
28 (2)(A), (2)(B), or (2)(G) of section 218C(b), a substantial
29 failure to meet a condition of paragraph (1)(C), (1)(E), (2)(C),
30 (2)(D), (2)(E), or (2)(H) of section 218C(b), or a material
31 misrepresentation of fact in an application under section
32 218C(a)—

33 “(i) the Secretary of Labor shall notify the Secretary of
34 such finding and may, in addition, impose such other
35 administrative remedies (including civil money penalties in
36 an amount not to exceed \$1,000 per violation) as the
37 Secretary of Labor determines to be appropriate; and

38 “(ii) the Secretary may disqualify the employer from the
39 employment of aliens described in section
40 101(a)(15)(H)(ii)(a) for a period of 1 year.

41 “(D) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the
42 Secretary of Labor finds, after notice and opportunity for

1 hearing, a willful failure to meet a condition of section
2 218C(b), a willful misrepresentation of a material fact in an
3 application under section 218C(a), or a violation of subsection
4 (d)(1)—

5 “(i) the Secretary of Labor shall notify the Secretary of
6 such finding and may, in addition, impose such other
7 administrative remedies (including civil money penalties in
8 an amount not to exceed \$5,000 per violation) as the
9 Secretary of Labor determines to be appropriate;

10 “(ii) the Secretary of Labor may seek appropriate legal or
11 equitable relief to effectuate the purposes of subsection
12 (d)(1); and

13 “(iii) the Secretary may disqualify the employer from the
14 employment of H-2A workers for a period of 2 years.

15 “(E) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary
16 of Labor finds, after notice and opportunity for hearing, a
17 willful failure to meet a condition of section 218C(b) or a willful
18 misrepresentation of a material fact in an application under
19 section 218C(a), in the course of which failure or
20 misrepresentation the employer displaced a United States
21 worker employed by the employer during the period of
22 employment on the employer’s application under section
23 218C(a) or during the period of 30 days preceding such period
24 of employment—

25 “(i) the Secretary of Labor shall notify the Secretary of
26 such finding and may, in addition, impose such other
27 administrative remedies (including civil money penalties in
28 an amount not to exceed \$15,000 per violation) as the
29 Secretary of Labor determines to be appropriate; and

30 “(ii) the Secretary may disqualify the employer from the
31 employment of H-2A workers for a period of 3 years.

32 “(F) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of
33 Labor shall not impose total civil money penalties with respect
34 to an application under section 218C(a) in excess of \$90,000.

35 “(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the
36 Secretary of Labor finds, after notice and opportunity for a
37 hearing, that the employer has failed to pay the wages, or
38 provide the housing allowance, transportation, subsistence
39 reimbursement, or guarantee of employment, required under
40 section 218D(b), the Secretary of Labor shall assess payment
41 of back wages, or other required benefits, due any United

1 States worker or H-2A worker employed by the employer in
2 the specific employment in question. The back wages or other
3 required benefits under section 218D(b) shall be equal to the
4 difference between the amount that should have been paid
5 and the amount that actually was paid to such worker.

6 “(2) STATUTORY CONSTRUCTION.—Nothing in this section shall be
7 construed as limiting the authority of the Secretary of Labor to
8 conduct any compliance investigation under any other labor law,
9 including any law affecting migrant and seasonal agricultural
10 workers, or, in the absence of a complaint under this section,
11 under section 218C or 218D.

12 “(b) Rights Enforceable by Private Right of Action.—H-2A workers
13 may enforce the following rights through the private right of action
14 provided in subsection (c), and no other right of action shall exist
15 under Federal or State law to enforce such rights:

16 “(1) The providing of housing or a housing allowance as required
17 under section 218D(b)(1).

18 “(2) The reimbursement of transportation as required under
19 section 218D(b)(2).

20 “(3) The payment of wages required under section 218D(b)(3)
21 when due.

22 “(4) The benefits and material terms and conditions of
23 employment expressly provided in the job offer described in
24 section 218C(a)(2), not including the assurance to comply with
25 other Federal, State, and local labor laws described in section
26 218D(c), compliance with which shall be governed by the
27 provisions of such laws.

28 “(5) The guarantee of employment required under section
29 218D(b)(4).

30 “(6) The motor vehicle safety requirements under section
31 218D(b)(5).

32 “(7) The prohibition of discrimination under subsection (d)(2).

33 “(c) Private Right of Action.—

34 “(1) MEDIATION.—Upon the filing of a complaint by an H-2A
35 worker aggrieved by a violation of rights enforceable under
36 subsection (b), and within 60 days of the filing of proof of service
37 of the complaint, a party to the action may file a request with the
38 Federal Mediation and Conciliation Service to assist the parties in
39 reaching a satisfactory resolution of all issues involving all parties

1 to the dispute. Upon a filing of such request and giving of notice to
2 the parties, the parties shall attempt mediation within the period
3 specified in subparagraph (B).

4 "(A) MEDIATION SERVICES.—The Federal Mediation and
5 Conciliation Service shall be available to assist in resolving
6 disputes arising under subsection (b) between H-2A workers
7 and agricultural employers without charge to the parties.

8 "(B) 90-DAY LIMIT.—The Federal Mediation and Conciliation
9 Service may conduct mediation or other nonbinding dispute
10 resolution activities for a period not to exceed 90 days
11 beginning on the date on which the Federal Mediation and
12 Conciliation Service receives the request for assistance unless
13 the parties agree to an extension of this period of time.

14 "(C) AUTHORIZATION.—

15 "(i) IN GENERAL.—Subject to clause (ii), there are
16 authorized to be appropriated to the Federal Mediation and
17 Conciliation Service \$500,000 for each fiscal year to carry
18 out this section.

19 "(ii) MEDIATION.—Notwithstanding any other provision of
20 law, the Director of the Federal Mediation and Conciliation
21 Service is authorized to conduct the mediation or other
22 dispute resolution activities from any other appropriated
23 funds available to the Director and to reimburse such
24 appropriated funds when the funds are appropriated
25 pursuant to this authorization, such reimbursement to be
26 credited to appropriations currently available at the time of
27 receipt.

28 "(2) MAINTENANCE OF CIVIL ACTION IN DISTRICT COURT BY AGGRIEVED
29 PERSON.—An H-2A worker aggrieved by a violation of rights
30 enforceable under subsection (b) by an agricultural employer or
31 other person may file suit in any district court of the United States
32 having jurisdiction over the parties, without regard to the amount
33 in controversy, without regard to the citizenship of the parties, and
34 without regard to the exhaustion of any alternative administrative
35 remedies under this Act, not later than 3 years after the date the
36 violation occurs.

37 "(3) ELECTION.—An H-2A worker who has filed an administrative
38 complaint with the Secretary of Labor may not maintain a civil
39 action under paragraph (2) unless a complaint based on the same
40 violation filed with the Secretary of Labor under subsection (a)(1)
41 is withdrawn before the filing of such action, in which case the

1 rights and remedies available under this subsection shall be
2 exclusive.

3 “(4) PREEMPTION OF STATE CONTRACT RIGHTS.—Nothing in this Act
4 shall be construed to diminish the rights and remedies of an H-2A
5 worker under any other Federal or State law or regulation or under
6 any collective bargaining agreement, except that no court or
7 administrative action shall be available under any State contract
8 law to enforce the rights created by this Act.

9 “(5) WAIVER OF RIGHTS PROHIBITED.—Agreements by employees
10 purporting to waive or modify their rights under this Act shall be
11 void as contrary to public policy, except that a waiver or
12 modification of the rights or obligations in favor of the Secretary of
13 Labor shall be valid for purposes of the enforcement of this Act.
14 The preceding sentence may not be construed to prohibit
15 agreements to settle private disputes or litigation.

16 “(6) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF.—

17 “(A) If the court finds that the respondent has intentionally
18 violated any of the rights enforceable under subsection (b), it
19 shall award actual damages, if any, or equitable relief.

20 “(B) Any civil action brought under this section shall be
21 subject to appeal as provided in chapter 83 of title 28, United
22 States Code.

23 “(C) In determining the amount of damages to be awarded
24 under subparagraph (A), the court is authorized to consider
25 whether an attempt was made to resolve the issues in dispute
26 before the resort to litigation.

27 “(7) WORKERS’ COMPENSATION BENEFITS.—

28 “(A) EXCLUSIVE REMEDY.—Notwithstanding any other provision
29 of this section, where a State’s workers’ compensation law is
30 applicable and coverage is provided for an H-2A worker, the
31 workers’ compensation benefits shall be the exclusive remedy
32 for the loss of such worker under this section in the case of
33 bodily injury or death in accordance with such State’s workers’
34 compensation law.

35 “(B) RELATIONSHIP TO OTHER RELIEF.—The exclusive remedy
36 prescribed in subparagraph (A) precludes the recovery under
37 paragraph (6) of actual damages for loss from an injury or
38 death but does not preclude other equitable relief, except that
39 such relief shall not include back or front pay or in any
40 manner, directly or indirectly, expand or otherwise alter or

1 affect—

2 “(i) a recovery under a State workers’ compensation law;
3 or

4 “(ii) rights conferred under a State workers’
5 compensation law.

6 “(C) CONSIDERATIONS.—In determining the amount of
7 damages to be awarded under subparagraph (A), a court may
8 consider whether an attempt was made to resolve the issues in
9 dispute prior to resorting to litigation.

10 “(8) TOLLING OF STATUTE OF LIMITATIONS.—If it is determined under a
11 State workers’ compensation law that the workers’ compensation
12 law is not applicable to a claim for bodily injury or death of an H-
13 2A worker, the statute of limitations for bringing an action for
14 actual damages for such injury or death under subsection (c) shall
15 be tolled for the period during which the claim for such injury or
16 death under such State workers’ compensation law was pending.
17 The statute of limitations for an action for actual damages or other
18 equitable relief arising out of the same transaction or occurrence
19 as the injury or death of the H-2A worker shall be tolled for the
20 period during which the claim for such injury or death was pending
21 under the State workers’ compensation law.

22 “(9) PRECLUSIVE EFFECT.—Any settlement by an H-2A worker and
23 an H-2A employer or any person reached through the mediation
24 process required under subsection (c)(1) shall preclude any right
25 of action arising out of the same facts between the parties in any
26 Federal or State court or administrative proceeding, unless
27 specifically provided otherwise in the settlement agreement.

28 “(10) SETTLEMENTS.—Any settlement by the Secretary of Labor
29 with an H-2A employer on behalf of an H-2A worker of a
30 complaint filed with the Secretary of Labor under this section or
31 any finding by the Secretary of Labor under subsection (a)(1)(B)
32 shall preclude any right of action arising out of the same facts
33 between the parties under any Federal or State court or
34 administrative proceeding, unless specifically provided otherwise in
35 the settlement agreement.

36 “(d) Discrimination Prohibited.—

37 “(1) IN GENERAL.—It is a violation of this subsection for any
38 person who has filed an application under section 218C(a), to
39 intimidate, threaten, restrain, coerce, blacklist, discharge, or in
40 any other manner discriminate against an employee (which term,
41 for purposes of this subsection, includes a former employee and an

1 applicant for employment) because the employee has disclosed
2 information to the employer, or to any other person, that the
3 employee reasonably believes evidences a violation of section
4 218C or 218D or any rule or regulation pertaining to section 218C
5 or 218D, or because the employee cooperates or seeks to
6 cooperate in an investigation or other proceeding concerning the
7 employer's compliance with the requirements of section 218C or
8 218D or any rule or regulation pertaining to either of such
9 sections.

10 "(2) DISCRIMINATION AGAINST H-2A WORKERS.—It is a violation of this
11 subsection for any person who has filed an application under
12 section 218C(a), to intimidate, threaten, restrain, coerce, blacklist,
13 discharge, or in any manner discriminate against an H-2A
14 employee because such worker has, with just cause, filed a
15 complaint with the Secretary of Labor regarding a denial of the
16 rights enumerated and enforceable under subsection (b) or
17 instituted, or caused to be instituted, a private right of action
18 under subsection (c) regarding the denial of the rights enumerated
19 under subsection (b), or has testified or is about to testify in any
20 court proceeding brought under subsection (c).

21 "(e) Authorization To Seek Other Appropriate Employment.—The
22 Secretary of Labor and the Secretary shall establish a process under
23 which an H-2A worker who files a complaint regarding a violation of
24 subsection (d) and is otherwise eligible to remain and work in the
25 United States may be allowed to seek other appropriate employment
26 in the United States for a period not to exceed the maximum period of
27 stay authorized for such nonimmigrant classification.

28 "(f) Role of Associations.—

29 "(1) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An employer on
30 whose behalf an application is filed by an association acting as its
31 agent is fully responsible for such application, and for complying
32 with the terms and conditions of sections 218C and 218D, as
33 though the employer had filed the application itself. If such an
34 employer is determined, under this section, to have committed a
35 violation, the penalty for such violation shall apply only to that
36 member of the association unless the Secretary of Labor
37 determines that the association or other member participated in,
38 had knowledge, or reason to know, of the violation, in which case
39 the penalty shall be invoked against the association or other
40 association member as well.

41 "(2) VIOLATIONS BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an
42 association filing an application as a sole or joint employer is

1 determined to have committed a violation under this section, the
2 penalty for such violation shall apply only to the association unless
3 the Secretary of Labor determines that an association member or
4 members participated in or had knowledge, or reason to know of
5 the violation, in which case the penalty shall be invoked against
6 the association member or members as well.

7 "SEC. 218G. DEFINITIONS.

8 "For purposes of this section and section 218C, 218D, 218E, and
9 218F:

10 "(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural
11 employment' means any service or activity that is considered to be
12 agricultural under section 3(f) of the Fair Labor Standards Act of
13 1938 (29 U.S.C. 203(f)) or agricultural labor under section
14 3121(g) of the Internal Revenue Code of 1986 or the performance
15 of agricultural labor or services described in section
16 101(a)(15)(H)(ii)(a).

17 "(2) BONA FIDE UNION.—The term 'bona fide union' means any
18 organization in which employees participate and which exists for
19 the purpose of dealing with employers concerning grievances,
20 labor disputes, wages, rates of pay, hours of employment, or other
21 terms and conditions of work for agricultural employees. Such
22 term does not include an organization formed, created,
23 administered, supported, dominated, financed, or controlled by an
24 employer or employer association or its agents or representatives.

25 "(3) DISPLACE.—The term 'displace', in the case of an application
26 with respect to 1 or more H-2A workers by an employer, means
27 laying off a United States worker from a job for which the H-2A
28 worker or workers is or are sought.

29 "(4) ELIGIBLE.—The term 'eligible', when used with respect to an
30 individual, means an individual who is not an unauthorized alien
31 (as defined in section 274A).

32 "(5) EMPLOYER.—The term 'employer' means any person or entity,
33 including any farm labor contractor and any agricultural
34 association, that employs workers in agricultural employment.

35 "(6) H-2A EMPLOYER.—The term 'H-2A employer' means an
36 employer who seeks to hire 1 or more nonimmigrant aliens
37 described in section 101(a)(15)(H)(ii)(a).

38 "(7) H-2A WORKER.—The term 'H-2A worker' means a
39 nonimmigrant described in section 101(a)(15)(H)(ii)(a).

40 "(8) JOB OPPORTUNITY.—The term 'job opportunity' means a job

1 opening for temporary or seasonal full-time employment at a place
2 in the United States to which United States workers can be
3 referred.

4 "(9) LAYING OFF.—

5 "(A) IN GENERAL.—The term 'laying off', with respect to a
6 worker—

7 "(i) means to cause the worker's loss of employment,
8 other than through a discharge for inadequate
9 performance, violation of workplace rules, cause, voluntary
10 departure, voluntary retirement, contract impossibility (as
11 described in section 218D(b)(4)(D)), or temporary
12 suspension of employment due to weather, markets, or
13 other temporary conditions; but

14 "(ii) does not include any situation in which the worker is
15 offered, as an alternative to such loss of employment, a
16 similar employment opportunity with the same employer
17 (or, in the case of a placement of a worker with another
18 employer under section 218C(b)(2)(E), with either
19 employer described in such section) at equivalent or higher
20 compensation and benefits than the position from which
21 the employee was discharged, regardless of whether or not
22 the employee accepts the offer.

23 "(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is
24 intended to limit an employee's rights under a collective
25 bargaining agreement or other employment contract.

26 "(10) REGULATORY DROUGHT.—The term 'regulatory drought' means
27 a decision subsequent to the filing of the application under section
28 218C by an entity not under the control of the employer making
29 such filing which restricts the employer's access to water for
30 irrigation purposes and reduces or limits the employer's ability to
31 produce an agricultural commodity, thereby reducing the need for
32 labor.

33 "(11) SEASONAL.--

34 "(A) IN GENERAL.--The term 'seasonal', with respect to the
35 performance of labor, means that the labor--

36 "(i) ordinarily pertains to or is of the kind exclusively
37 performed at certain seasons or periods of the year; and

1 ` ` (ii) because of the nature of the labor, cannot be
2 continuous or carried on throughout the year.

3 ` ` (B) EXCEPTION.--Labor performed on a dairy farm shall be
4 considered to be seasonal labor.

5 (12) SECRETARY.—Except as otherwise provided, the term
6 `Secretary' means the Secretary of Homeland Security.

7 “(13) TEMPORARY.—A worker is employed on a `temporary' basis
8 where the employment is intended not to exceed 10 months.

9 “(14) UNITED STATES WORKER.—The term `United States worker'
10 means any worker, whether a national of the United States, an
11 alien lawfully admitted for permanent residence, or any other
12 alien, who is authorized to work in the job opportunity within the
13 United States, except an alien admitted or otherwise provided
14 status under section 101(a)(15)(H)(ii)(a).”.

15 (b) Table of Contents.—The table of contents of the Immigration and
16 Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking the item
17 relating to section 218 and inserting the following:

18 “Sec.218C.H-2A employer applications.

19 “Sec.218D.H-2A employment requirements.

20 “Sec.218E.Procedure for admission and extension of stay of H-2A
21 workers.

22 “Sec.218F.Worker protections and labor standards enforcement.

23 “Sec.218G.Definitions.”.

24 (c) Conforming Amendment.--Section 101(a)(15)(H)(ii)(a) of the
25 Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is
26 amended by inserting ` ` or work on a dairy farm," after ` ` seasonal
27 nature,".

28 SEC. 405. DETERMINATION AND USE OF USER FEES.

29 (a) Schedule of Fees.—The Secretary shall establish and periodically
30 adjust a schedule of fees for the employment of aliens pursuant to the
31 amendment made by section 404(a) of this Act and a collection
32 process for such fees from employers. Such fees shall be the only fees
33 chargeable to employers for services provided under such amendment.

34 (b) Determination of Schedule.—

35 (1) IN GENERAL.—The schedule under subsection (a) shall reflect a
36 fee rate based on the number of job opportunities indicated in the

1 employer's application under section 218C of the Immigration and
2 Nationality Act, as amended by section 404 of this Act, and
3 sufficient to provide for the direct costs of providing services
4 related to an employer's authorization to employ aliens pursuant
5 to the amendment made by section 404(a) of this Act, to include
6 the certification of eligible employers, the issuance of
7 documentation, and the admission of eligible aliens.

8 (2) PROCEDURE.—

9 (A) IN GENERAL.—In establishing and adjusting such a
10 schedule, the Secretary shall comply with Federal cost
11 accounting and fee setting standards.

12 (B) PUBLICATION AND COMMENT.—The Secretary shall publish in
13 the Federal Register an initial fee schedule and associated
14 collection process and the cost data or estimates upon which
15 such fee schedule is based, and any subsequent amendments
16 thereto, pursuant to which public comment shall be sought and
17 a final rule issued.

18 (c) Use of Proceeds.—Notwithstanding any other provision of law, all
19 proceeds resulting from the payment of the fees pursuant to the
20 amendment made by section 404(a) of this Act shall be available
21 without further appropriation and shall remain available without fiscal
22 year limitation to reimburse the Secretary, the Secretary of State, and
23 the Secretary of Labor for the costs of carrying out sections 218C and
24 218E of the Immigration and Nationality Act, as amended and added,
25 respectively, by section 404 of this Act, and the provisions of this Act.

26 SEC. 406. REGULATIONS.

27 (a) Requirement for the Secretary To Consult.—The Secretary shall
28 consult with the Secretary of Labor and the Secretary of Agriculture
29 during the promulgation of all regulations to implement the duties of
30 the Secretary under this Act and the amendments made by this Act.

31 (b) Requirement for the Secretary of State To Consult.—The
32 Secretary of State shall consult with the Secretary, the Secretary of
33 Labor, and the Secretary of Agriculture on all regulations to implement
34 the duties of the Secretary of State under this Act and the
35 amendments made by this Act.

36 (c) Requirement for the Secretary of Labor To Consult.—The
37 Secretary of Labor shall consult with the Secretary of Agriculture and
38 the Secretary on all regulations to implement the duties of the
39 Secretary of Labor under this Act and the amendments made by this
40 Act.

1 (d) Deadline for Issuance of Regulations.—All regulations to
2 implement the duties of the Secretary, the Secretary of State, and the
3 Secretary of Labor created under sections 218C, 218D, 218E, 218F,
4 and 218G of the Immigration and Nationality Act, as amended or
5 added by section 404 of this Act, shall take effect on the effective date
6 of section 404 and shall be issued not later than 1 year after the date
7 of enactment of this Act, or the date such regulations are
8 promulgated, whichever is sooner.

9 SEC. 407. REPORTS TO CONGRESS.

10 (a) Annual Report.—Not later than September 30 of each year, the
11 Secretary shall submit a report to Congress that identifies, for the
12 previous year—

13 (1) the number of job opportunities approved for employment of
14 aliens admitted under section 101(a)(15)(H)(ii)(a) of the
15 Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)),
16 and the number of workers actually admitted, disaggregated by
17 State and by occupation;

18 (2) the number of such aliens reported to have abandoned
19 employment pursuant to subsection 218E(e)(2) of such Act;

20 (3) the number of such aliens who departed the United States
21 within the period specified in subsection 218E(d) of such Act;

22 (4) the number of aliens who applied for adjustment of status
23 pursuant to section 623;

24 (5) the number of such aliens whose status was adjusted under
25 section 623;

26 (6) the number of aliens who applied for permanent residence
27 pursuant to section 214A(j) of the Immigration and Nationality
28 Act, as amended by 623(b); and

29 (7) the number of such aliens who were approved for permanent
30 residence pursuant to section 214A(j) of the Immigration and
31 Nationality Act, as amended by 623(b).

32 (b) Implementation Report.—Not later than 180 days after the date
33 of the enactment of this Act, the Secretary shall prepare and submit to
34 Congress a report that describes the measures being taken and the
35 progress made in implementing this Act.

36 SEC. 408. EFFECTIVE DATE.

37 Except as otherwise provided, sections 404 and 405 shall take effect
38 1 year after the date of the enactment of this Act, or the date such
39 regulations are promulgated, whichever is sooner..

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SEC. 409. NUMERICAL LIMITATIONS.

Section 214(g) of the Act (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) by striking '(beginning with fiscal year 1992)';

(B) by striking subparagraph (B) and inserting the following:

(B) under section 101(a)(15)(Y)(i), may not exceed 200,000 for each fiscal year; or

(C) under section 101(a)(15)(Y)(iii), may not exceed twenty percent of the annual limit on admissions of aliens under section 101(a)(15)(Y)(i) for that fiscal year; or

(D) under section 101(a)(15)(Y)(ii)(II), may not exceed—

(i) 100,000 for the first fiscal year in which the program is implemented;

(ii) in any subsequent fiscal year, subject to clause (iii), the number for the previous fiscal year as adjusted in accordance with the method set forth in paragraph (2); and

(iii) 200,000 for any fiscal year.';

and

(2) by renumbering paragraph (2) as paragraph (3), and renumbering all subsequent paragraphs accordingly, and inserting the following as paragraph (2):

(2) Market-Based Adjustment.—With respect to the numerical limitation set in subparagraph (A)(ii) or (D)(ii) of paragraph (1)—

1 ` (A) if the total number of visas allocated for that fiscal
2 year are allotted within the first half of that fiscal year,
3 then an additional 15 percent of the allocated number shall
4 be made available immediately and the allocated amount
5 for the following fiscal year shall increase by 15 percent of
6 the original allocated amount in the prior fiscal year;
7

8 ` (B) if the total number of visas allocated for that fiscal
9 year are allotted within the second half of that fiscal year,
10 then the allocated amount for the following fiscal year shall
11 increase by 10 percent of the original allocated amount in
12 the prior fiscal year; and
13

14 ` (C) with the exception of the first subsequent fiscal year
15 to the fiscal year in which the program is implemented, if
16 fewer visas were allotted the previous fiscal year than the
17 number of visas allocated for that year and the reason was
18 not due to processing delays or delays in promulgating
19 regulations, then the allocated amount for the following
20 fiscal year shall decrease by 10 percent of the allocated
21 amount in the prior fiscal year.'
22

23 (3) in paragraph (9)(A) by striking `an alien who has already
24 been counted toward the numerical limitation of paragraph
25 (1)(B) during fiscal year 2004, 2005, or 2006 shall not again be
26 counted toward such limitation during fiscal year 2007.' and
27 inserting `an alien who has been present in the United States as
28 an H-2B nonimmigrant during any 1 of 3 fiscal years
29 immediately preceding the fiscal year of the approved start date
30 of a petition for a nonimmigrant worker described in section
31 101(a)(15)(H)(ii)(b) shall not be counted toward such limitation
32 for the fiscal year in which the petition is approved. Such alien
33 shall be considered a returning worker.'

34 **SEC. 410. REQUIREMENTS FOR PARTICIPATING COUNTRIES.**

35 (a) In General- The Secretary of State, in cooperation with the
36 Secretary and the Attorney General, may, as a condition of authorizing
37 the grant of nonimmigrant visas for Y nonimmigrants who are citizens
38 or nationals of any foreign country, negotiate with each such country
39 to enter into a bilateral agreement with the United States that
40 conforms to the requirements under subsection (b).
41

1 (b) Requirements of Bilateral Agreements- It is the sense of Congress
2 that each agreement negotiated under subsection (a) shall require the
3 participating home country to--
4

5 (1) accept the return of nationals who are ordered removed from
6 the United States within 3 days of such removal;
7

8 (2) cooperate with the United States Government to--
9

10 (A) identify, track, and reduce gang membership, violence,
11 and human trafficking and smuggling; and
12

13 (B) control illegal immigration;
14

15 (3) provide the United States Government with--
16

17 (A) passport information and criminal records of aliens who
18 are seeking admission to, or are present in, the United
19 States; and
20

21 (B) admission and entry data to facilitate United States
22 entry-exit data systems;
23

24 (4) educate nationals of the home country regarding United
25 States temporary worker programs to ensure that such nationals
26 are not exploited; and
27

28 (5) evaluate means to provide housing incentives in the alien's
29 home country for returning workers; and
30

31 (6) agree to such other terms as the Secretary of State
32 considers appropriate and necessary.

33 **SEC. 411. COMPLIANCE INVESTIGATORS.**

34 (a) The Secretary of Labor, subject to the availability of appropriations
35 for such purpose, shall increase, by not less than 200 per year for
36 each of the five fiscal years after the date of enactment of [name of
37 bill], the number of positions for compliance investigators and
38 attorneys dedicated to the enforcement of labor standards, including
39 those contained in sections 218A, 218B, and 218C, the Fair Labor
40 Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Occupational
41 Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) in geographic

1 and occupational areas in which a high percentage of workers are Y
2 nonimmigrants.

3 **SEC. 412. STANDING COMMISSION ON IMMIGRATION AND**
4 **LABOR MARKETS.**

5 (a) Establishment of Commission-

6 (1) IN GENERAL- There is established an independent
7 Federal agency within the Executive Branch to be known
8 as the Standing Commission on Immigration and Labor
9 Markets (referred to in this section as the `Commission').

10 [(2) PURPOSES- The purposes of the Commission are--

11 (A) to study nonimmigrant programs and the
12 numerical limits imposed by law on admission of
13 nonimmigrants;

14 (B) to study the numerical limits imposed by law on
15 immigrant visas;

16 (C) to study the allocation of immigrant visas
17 through the merit-based system;

18 (D) to make recommendations to the President and
19 Congress with respect to such programs.]

20 (3) MEMBERSHIP- The Commission shall be composed of--

21 (A) 6 voting members--

22 (i) who shall be appointed by the President,
23 with the advice and consent of the Senate, not
24 later than 6 months after the establishment of
25 the Y Nonimmigrant Worker Program;

26 (ii) who shall serve for 3-year staggered terms,
27 which can be extended for 1 additional 3-year
28 term;

29 (iii) who shall select a Chair from among the
30 voting members to serve a 2-year term, which
31 can be extended for 1 additional 2-year term;

32 (iv) who shall have expertise in economics,
33 demography, labor, business, or immigration
34 or other pertinent qualifications or experience;

35 (v) who may not be an employee of the
36 Federal Government or of any State or local
37 government; and

38 (vi) not more than 3 of whom may be
39 members of the same political party.

40 (B) 7 ex-officio members, including--

41 (i) the Secretary;

42 (ii) the Secretary of State;

- (iii) the Attorney General;
- (iv) the Secretary of Labor;
- (v) the Secretary of Commerce;
- (vi) the Secretary of Health and Human Services; and
- (vii) the Secretary of Agriculture.

(4) VACANCIES- Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) MEETINGS-

(A) INITIAL MEETING- The Commission shall meet and begin carrying out the duties described in subsection (b) as soon as practicable.

(B) SUBSEQUENT MEETINGS- After its initial meeting, the Commission shall meet at least once per quarter upon the call of the Chair or a majority of its members.

(C) QUORUM- Four voting members of the Commission shall constitute a quorum.

(b) Duties of the Commission- The Commission shall--

(1) examine and analyze--

(A) the development and implementation of the programs;

(B) the criteria for the admission of nonimmigrant workers;

(C) the formula for determining the annual numerical limitations of nonimmigrant workers;

(D) the impact of nonimmigrant workers on immigration;

(E) the impact of nonimmigrant workers on the economy, unemployment rate, wages, workforce, and businesses of the United States;

(F) the numerical limits imposed by law on immigrant visas and its effect on the economy, unemployment rate, wages, workforce, and businesses of the United States;

(G) the allocation of immigrant visas through the evaluation system established by Title V of this Act; and

(F) any other matters regarding the programs that the Commission considers appropriate;

(2) not later than 18 months after the date of enactment, and every year thereafter, submit a report to the President and Congress that--

1 (A) contains the findings of the analysis conducted
2 under paragraph (1);
3 (B) makes recommendations regarding the
4 necessary adjustments to the programs studied to
5 meet the labor market needs of the United States;
6 and
7 (C) makes other recommendations regarding the programs, including
8 legislative or administrative action, that the Commission determines to
9 be in the national interest.

10 (c) Information and Assistance From Federal Agencies-

11 (1) INFORMATION- The head of any Federal department or
12 agency that receives a request from the Commission for
13 information, including suggestions, estimates, and
14 statistics, as the Commission considers necessary to carry
15 out the provisions of this section, shall furnish such
16 information to the Commission, to the extent allowed by
17 law.

18 (2) ASSISTANCE-

19 (A) GENERAL SERVICES ADMINISTRATION- The
20 Administrator of General Services shall, on a
21 reimbursable basis, provide the Commission with
22 administrative support and other services for the
23 performance of the Commission's functions.

24 (B) OTHER FEDERAL AGENCIES- The departments
25 and agencies of the United States may provide the
26 Commission with such services, funds, facilities,
27 staff, and other support services as the heads of
28 such departments and agencies determine advisable
29 and authorized by law.

30 (d) Personnel Matters-

31 (1) STAFF-

32 (A) APPOINTMENT AND COMPENSATION- The Chair,
33 in accordance with rules agreed upon by the
34 Commission, may appoint and fix the compensation
35 of a staff director and such other personnel as may
36 be necessary to enable the Commission to carry out
37 its functions.

38 (B) FEDERAL EMPLOYEES-

39 (i) IN GENERAL- Except as provided under
40 clause (ii), the executive director and any
41 personnel of the Commission who are
42 employees shall be considered to be
43 employees under section 2105 of title 5, United

1 States Code, for purposes of chapters 63, 81,
2 83, 84, 85, 87, 89, and 90 of such title.

3 (ii) COMMISSION MEMBERS - Clause (i) shall
4 not apply to members of the Commission.

5 (2) DETAILEES- Any employee of the Federal Government
6 may be detailed to the Commission without reimbursement
7 from the Commission. Such detailee shall retain the rights,
8 status, and privileges of his or her regular employment
9 without interruption.

10 (3) CONSULTANT SERVICES- The Commission may
11 procure the services of experts and consultants in
12 accordance with section 3109 of title 5, United States
13 Code, at rates not to exceed the daily rate paid a person
14 occupying a position at level IV of the Executive Schedule
15 under section 5315 of such title 5.

16 (e) Compensation and Travel Expenses-

17 (1) COMPENSATION- Each voting member of the
18 Commission may be compensated at a rate not to exceed
19 the daily equivalent of the annual rate of basic pay in
20 effect for a position at level IV of the Executive Schedule
21 under section 5315 of title 5, United States Code, for each
22 day during which that member is engaged in the actual
23 performance of the duties of the Commission.

24 (2) TRAVEL EXPENSES- Members of the Commission shall
25 be allowed travel expenses, including per diem in lieu of
26 subsistence, under section 5703(b) of title 5, United States
27 Code, while away from their homes or regular places of
28 business in the performance of services for the
29 Commission.

30 (f) Funding- Fees and fines deposited into the Temporary Worker
31 Program Account under section 286(w) of the Immigration and
32 Nationality Act, as added by section 402 of [name of the Act],
33 may be used by the Commission to carry out its duties under
34 this section.

35 **SEC. 412. AGENCY REPRESENTATION AND COORDINATION.**

36 Section 274A(e) (8 U.S.C. 1324a(e)) is amended--

37
38 (1) in paragraph (2)--

39
40 (A) in subparagraph (A), by striking the comma at the end
41 and inserting a semicolon;
42

1 (B) in subparagraph (B), by striking ` , and' and inserting a
2 semicolon;

3
4 (C) in subparagraph (C), by striking ` paragraph (2).' And
5 inserting ` paragraph (1); and'; and

6
7 (D) by inserting after subparagraph (C) the following:

8
9 `(D) United States Immigration and Customs Enforcement
10 officials may not misrepresent to employees or employers
11 that they are a member of any agency or organization that
12 provides domestic violence services, enforces health and
13 safety law, provides health care services, or any other
14 services intended to protect life and safety.'

15 **SEC. 413. BILATERAL EFFORTS WITH MEXICO TO REDUCE**
16 **MIGRATION PRESSURES AND COSTS.**

17 (a) Findings- Congress makes the following findings:

18 (1) Migration from Mexico to the United States is directly linked
19 to the degree of economic opportunity and the standard of living
20 in Mexico.

21 (2) Mexico comprises a prime source of migration to the United
22 States.

23 (3) Remittances from Mexican citizens working in the United
24 States reached a record high of nearly \$17,000,000,000 in 2004.

25 (4) Migration patterns may be reduced from Mexico to the United
26 States by addressing the degree of economic opportunity
27 available to Mexican citizens.

28 (5) Many Mexican assets are held extra-legally and cannot be
29 readily used as collateral for loans.

30 (6) A majority of Mexican businesses are small or medium size
31 with limited access to financial capital.

32 (7) These factors constitute a major impediment to broad-based
33 economic growth in Mexico.

34 (8) Approximately 20 percent of Mexico's population works in
35 agriculture, with the majority of this population working on small
36 farms and few on large commercial enterprises.

37 (9) The Partnership for Prosperity is a bilateral initiative
38 launched jointly by the President of the United States and the
39 President of Mexico in 2001, which aims to boost the social and
40 economic standards of Mexican citizens, particularly in regions
41 where economic growth has lagged and emigration has
42 increased.

1 (10) The Presidents of Mexico and the United States and the
2 Prime Minister of Canada, at their trilateral summit on March 23,
3 2005, agreed to promote economic growth, competitiveness, and
4 quality of life in the agreement on Security and Prosperity
5 Partnership of North America.

6 (b) Sense of Congress Regarding Partnership for Prosperity- It is the
7 sense of Congress that the United States and Mexico should accelerate
8 the implementation of the Partnership for Prosperity to help generate
9 economic growth and improve the standard of living in Mexico, which
10 will lead to reduced migration, by--

11 (1) increasing access for poor and under served populations in
12 Mexico to the financial services sector, including credit unions;

13 (2) assisting Mexican efforts to formalize its extra-legal sector,
14 including the issuance of formal land titles, to enable Mexican
15 citizens to use their assets to procure capital;

16 (3) facilitating Mexican efforts to establish an effective rural
17 lending system for small- and medium-sized farmers that will--

18 (A) provide long term credit to borrowers;

19 (B) develop a viable network of regional and local
20 intermediary lending institutions; and

21 (C) extend financing for alternative rural economic
22 activities beyond direct agricultural production;

23 (4) expanding efforts to reduce the transaction costs of
24 remittance flows in order to increase the pool of savings
25 available to help finance domestic investment in Mexico;

26 (5) encouraging Mexican corporations to adopt internationally
27 recognized corporate governance practices, including anti-
28 corruption and transparency principles;

29 (6) enhancing Mexican efforts to strengthen governance at all
30 levels, including efforts to improve transparency and
31 accountability, and to eliminate corruption, which is the single
32 biggest obstacle to development;

33 (7) assisting the Government of Mexico in implementing all
34 provisions of the Inter-American Convention Against Corruption
35 (ratified by Mexico on May 27, 1997) and urging the Government
36 of Mexico to participate fully in the Convention's formal
37 implementation monitoring mechanism;

38 (8) helping the Government of Mexico to strengthen education
39 and training opportunities throughout the country, with a
40 particular emphasis on improving rural education; and

41 (9) encouraging the Government of Mexico to create incentives
42 for persons who have migrated to the United States to return to
43 Mexico.

1 (c) Sense of Congress Regarding Bilateral Partnership on Health Care-
2 It is the sense of Congress that the Government of the United States
3 and the Government of Mexico should enter into a partnership to
4 examine uncompensated and burdensome health care costs incurred
5 by the United States due to legal and illegal immigration, including--

6 (1) increasing health care access for poor and under served
7 populations in Mexico;

8 (2) assisting Mexico in increasing its emergency and trauma
9 health care facilities along the border, with emphasis on
10 expanding prenatal care in the United States-Mexico border
11 region;

12 (3) facilitating the return of stable, incapacitated workers
13 temporarily employed in the United States to Mexico in order to
14 receive extended, long-term care in their home country; and

15 (4) helping the Government of Mexico to establish a
16 program with the private sector to cover the health care
17 needs of Mexican nationals temporarily employed in the
18 United States.
19

20 **SEC. 414. WILLING WORKER-WILLING EMPLOYER ELECTRONIC**
21 **DATABASE.**

22 (a) ELECTRONIC JOB REGISTRY LINK
23

24 (1) The Secretary of Labor shall establish a publicly accessible
25 Web page on the internet website of the Department of Labor
26 that provides a single Internet link to each State workforce
27 agency's statewide electronic registry of jobs available
28 throughout the United States to United States workers.
29

30 (2) The Secretary of Labor shall promulgate regulations
31 regarding the maintenance of electronic job registry records by
32 the employer for the purpose of audit or investigations.
33

34 (3) The Secretary of Labor shall ensure that job opportunities
35 advertised on a State workforce agency statewide electronic job
36 registry established under this section are accessible --
37

38 (A) by the State workforce agencies, which may further
39 disseminate job opportunity information to interested
40 parties; and

41 (B) through the internet, for access by workers,
42 employers, labor organizations and other interested
43 parties.

1
2 (4) The Secretary of Labor may work with private companies and
3 nonprofit organizations in the development and operation of the
4 job registry link and system under paragraph (1).
5

6 (b) ELECTRONIC REGISTRY OF CERTIFIED APPLICATIONS
7

8 (1) The Secretary of Labor shall compile, on a current basis, a
9 registry (by employer and by occupational classification) of the
10 approved labor certification applications filed under this program.
11 Such registry shall include the wage rate, number of workers
12 sought, period of intended employment, and date of need. The
13 Secretary of Labor shall make such registry publicly available
14 through an Internet website.
15

16 (2) The Secretary of Labor may consult with the Secretary of
17 Homeland Security, and others as appropriate, in the
18 establishment of the registry described in paragraph (1) to
19 ensure its compatibility with any system designed to track Y
20 nonimmigrant employment that is operated and maintained by
21 the Secretary of Homeland Security.
22

23 (3) The Secretary of Labor shall ensure that job opportunities
24 advertised on the electronic job registry established under this
25 subsection are accessible by the State workforce agencies, which
26 may further disseminate job opportunity information to other
27 interested parties.
28

29 **SEC. 415. ENUMERATION OF SOCIAL SECURITY NUMBER.**

30 The Secretary of Homeland Security, in coordination with the
31 Commissioner of the Social Security Administration, shall implement a
32 system to allow for the prompt enumeration of a Social Security
33 number after the Secretary of Homeland Security has granted an alien
34 Y nonimmigrant status.

35 **SEC. 416. CONTRACTING.**

36 Nothing in this section shall be construed to limit the authority of the
37 Secretary of Homeland Security or Secretary of Labor to contract with
38 or license United States entities, as provided for in regulation, to
39 implement any provision of this title, either entirely or in part, to the
40 extent that each Secretary in his discretion determines that such
41 implementation is feasible, cost-effective, secure, and in the interest of

1 the United States. However, nothing in this provision shall be
2 construed to alter or amend any of the requirements of OMB Circular
3 A-76 or any other current law governing federal contracting. Any
4 inherently governmental work already performed by employees of the
5 Department of Homeland Security or the Department of Labor, or any
6 inherently governmental work generated by the requirements of this
7 legislation, shall continue to be performed by federal employees, and
8 any current commercial work, or new commercial work generated by
9 the requirements of this legislation, that is subject to public-private
10 competition under OMB Circular A-76 or any other relevant law shall
11 continue to be subject to public-private competition.

12 **SEC. 417. FEDERAL RULEMAKING REQUIREMENTS.**

13 (a) The Secretaries of Labor and Homeland Security shall each issue
14 an interim final rule within six months of the date of enactment of this
15 subtitle to implement this title and the amendments made by this
16 title. Each such interim final rule shall become effective immediately
17 upon publication in the Federal Register. Each such interim final rule
18 shall sunset two years after issuance unless the relevant
19 Secretary issues a final rule within two years of the issuance of the
20 interim final rule.

21 (b) The exemption provided under subsection (a) shall sunset no later
22 than two years after the date of enactment of this title, provided that,
23 such sunset shall not be construed to impose any requirements on, or
24 affect the validity of, any rule issued or other action taken by either
25 Secretary under such exemption.

26 27 28 **Subtitle C – Nonimmigrant Visa Reform**

29 30 **SEC. 418. STUDENT VISAS**

31
32 (a) IN GENERAL.— Section 101(a)(15)(F) of the Immigration and
33 Nationality Act (8 U.S.C. 1101(a)(15)(F)) is amended—

34
35 (1) in clause (i)—

36
37 (A) by striking "who is" and inserting, "who is--
38 "(I) ";

39
40 (B) by striking "consistent with section 214(l)" and
41 inserting "consistent with section 214(m) ";

1
2 (C) by striking the comma at the end and inserting the
3 following: "; or
4

5 "(II) engaged in temporary employment for optional
6 practical training for an aggregate period of not more
7 than 24 months and related to such alien's major
8 area of study, where such alien has been lawfully
9 enrolled on a full time basis as a nonimmigrant
10 under clause (i) or (iv) at a college, university,
11 conservatory, or seminary described in subclause
12 (i)(I) for one full academic year and such
13 employment occurs:
14

15 "(aa) during the student's annual vacation and
16 at other times when school is not in session, if
17 the student is currently enrolled, and is eligible
18 for registration and intends to register for the
19 next term or session;
20

21 "(bb) while school is in session, provided that
22 practical training does not exceed 20 hours a
23 week while school is in session; or
24

25 "(cc) within a 26-month period after
26 completion of all course requirements for the
27 degree (excluding thesis or equivalent); "; and
28

29 (D) by striking "Attorney General" the two times that
30 phrase appears and inserting "Secretary of
31 Homeland Security".
32

33 (2) in clause (ii)—
34

35 (A) by inserting "or (iv)" after "clause (i)"; and
36

37 (B) by striking ", and" and inserting a semicolon; and
38

39 (3) by adding at the end the following:
40

41 "(iv) an alien described in clause (i), except that the alien
42 is not required to have a residence in a foreign country
43 that the alien has no intention of abandoning, who has
44 been accepted at and plans to attend an accredited

1 graduate program in mathematics, engineering,
2 information technology, or the natural sciences in the
3 United States for the purpose of obtaining an advanced
4 degree; and

5
6 "(v) an alien who maintains actual residence and place of
7 abode in the alien's country of nationality, who is described
8 in clause (i), except that the alien's actual course of study
9 may involve a distance learning program, for which the
10 alien is temporarily visiting the United States for a period
11 not to exceed 30 days; ".
12

13 (b) OFF CAMPUS WORK AUTHORIZATION FOR FOREIGN STUDENTS-

14
15 (1) IN GENERAL- An alien admitted as a nonimmigrant student
16 described in section 101(a)(15)(F) of the Immigration and
17 Nationality Act (8 U.S.C. 1101(a)(15)(F)) may be employed in
18 an off-campus position unrelated to the alien's field of study if—
19

20 (A) the alien has enrolled full-time at the educational
21 institution and is maintaining good academic standing;
22

23 (B) the employer provides the educational institution and
24 the Secretary of Labor with an attestation that the
25 employer—
26

27 (i) has spent at least 21 days recruiting United
28 States workers to fill the position; and
29

30 (ii) will pay the alien and other similarly situated
31 workers at a rate equal to not less than the greater
32 of—
33

34 (I) the actual wage level for the occupation at
35 the place of employment; or
36

37 (II) the prevailing wage level for the
38 occupation in the area of employment; and
39

40 (C) the alien will not be employed more than—
41

42 (i) 20 hours per week during the academic term; or
43

1 (ii) 40 hours per week during vacation periods and
2 between academic terms.
3

4 (2) DISQUALIFICATION- If the Secretary of Labor determines that
5 an employer has provided an attestation under paragraph (1)(B)
6 that is materially false or has failed to pay wages in accordance
7 with the attestation, the employer, after notice and opportunity
8 for a hearing, may be disqualified for a period of no more than 5
9 years from employing an alien student under paragraph (1).
10

11 (3) SOCIAL SECURITY- Any employment engaged in by a student
12 pursuant to paragraph (1) of this subsection shall, for purposes
13 of section 210 of the Social Security Act (42 USC 410) and
14 section 3121 of the Internal Revenue Code (26 USC 3121), not
15 be considered to be for a purpose related to section
16 101(a)(15)(F) of the Immigration and Nationality Act.
17

18 (c) CLARIFYING THE IMMIGRANT INTENT PROVISION.— Subsection (b) of
19 section 214 of the Immigration and Nationality Act (8 U.S.C. 1184(b))
20 is amended—
21

22 (1) by striking the parenthetical phrase "(other than a
23 nonimmigrant described in subparagraph (L) or (V) of section
24 101(a)(15), and other than a nonimmigrant described in any
25 provision of section 101(a)(15)(H)(i) except subclause (b1) of
26 such section) " in the first sentence; and
27

28 (2) by striking "under section 101(a)(15)" and inserting in its
29 place "under the immigration laws."
30

31 (d) GRANTING DUAL INTENT TO CERTAIN NONIMMIGRANT STUDENTS.—
32 Subsection (h) of section 214 of the Immigration and Nationality Act
33 (8 U.S.C. 1184(h)) is amended—
34

35 (1) by inserting "(F)(iv)," following "(H)(i)(b) or (c),"; and
36

37 (2) by striking "if the alien had obtained a change of status" and
38 inserting in its place "if the alien had been admitted as, provided
39 status as, or obtained a change of status";
40

41 **SEC. 419. H-1B STREAMLINING AND SIMPLIFICATION** 42

43 (a) H-1B Amendments.- Section 214(g) of the Immigration and
44 Nationality Act (8 U.S.C. 1184(g)) is amended-

1
2 (1) in paragraph (1) by deleting clauses (i) through (vii) of
3 subparagraph (A) and inserting in their place --
4

5 "(i) 115,000 in fiscal year 2008;
6

7 "(ii) in any subsequent fiscal year, subject to clause (iii),
8 the number for the previous fiscal year as adjusted in
9 accordance with the method set forth in paragraph (2);
10 and
11

12 "(iii) 180,000 for any fiscal year; or"
13

14 (2) in paragraph (9), as renumbered by Section 405—
15

16 (A) by striking "The annual numeric limitations described
17 in clause (i) shall not exceed" from subclause (ii) of
18 subparagraph (B) and inserting the following: "Without
19 respect to the annual numeric limitation described in
20 clause (i), the Secretary may issue a visa or otherwise
21 grant nonimmigrant status pursuant to section
22 1101(a)(15)(H)(i)(b) in the following quantities:";
23

24 (B) by striking subparagraphs (B)(iv); and
25

26 (C) by striking subparagraph (D).
27

28 (b) REQUIRING A DEGREE.— Paragraph (2) of section 214(i) of the
29 Immigration and Nationality Act (8 U.S.C. 1184(i)) is amended—
30

31 (1) by deleting the comma at the end of subparagraph (A) and
32 inserting in its place "; and"; and
33

34 (2) by striking subparagraphs (B) and (C) and inserting the
35 following:
36

37 "(B) attainment of a bachelor's or higher degree in the
38 specific specialty from an educational institution in the
39 United States accredited by a nationally recognized
40 accrediting agency or association (or an equivalent degree
41 from a foreign educational institution that is equivalent to
42 such an institution) as a minimum for entry into the
43 occupation in the United States."
44

1 (c) PROVISION OF W-2 FORMS.— Section 214(g)(5) of the Immigration
2 and Nationality Act (8 U.S.C. 1184(g)(5)), as renumbered by Section
3 405, is amended to read as follows:
4

5 “(5) In the case of a nonimmigrant described in section
6 1101(a)(15)(H)(i)(b) of this title—
7

8 “(A) The period of authorized admission as such a nonimmigrant
9 may not exceed six years; [Provided that, this provision shall not
10 apply to such a nonimmigrant who has filed a petition for an
11 immigrant visa under section 203(b)(1), if 365 days or more
12 have elapsed since filing and it has not been denied, in which
13 case the Secretary of Homeland Security may extend the stay of
14 an alien in one-year increments until such time as a final
15 decision is made on the alien's lawful permanent residence];
16

17 “(B) If the alien is granted an initial period of admission less
18 than six years, any subsequent application for an extension of
19 stay for such alien must include the Form W-2 Wage and Tax
20 Statement filed by the employer for such employee, and such
21 other form or information relating to such employment as the
22 Secretary of Homeland Security may in his discretion specify,
23 with respect to such nonimmigrant alien employee for the period
24 of admission granted to the alien.
25

26 “(C) Notwithstanding section 6103 of title 26, United States
27 Code, or any other law, the Commissioner of Internal Revenue
28 or the Commissioner of the Social Security Administration shall
29 upon request of the Secretary confirm whether the Form W-2
30 Wage and Tax Statement filed by the employer under clause (i)
31 matches a Form W-2 Wage and Tax Statement filed with the
32 Internal Revenue Service or the Social Security Administration,
33 as the case may be.”
34

35 (d) EXTENSION OF H-1B STATUS FOR MERIT-BASED ADJUSTMENT APPLICANTS.—
36

37 (1) Section 214(g)(4) of the Immigration and Nationality Act (8
38 U.S.C. 1184(g)(4)) is amended by inserting before the period:
39

40 “; Provided that, this provision shall not apply to such a
41 nonimmigrant who has filed a petition for an immigrant
42 visa accompanied by a qualifying employer
43 recommendation under section 203(b)(1), if 365 days or
44 more have elapsed since filing and it has not been denied,

1 in which case the Secretary of Homeland Security may
2 extend the stay of an alien in one-year increments until
3 such time as a final decision is made on the alien's lawful
4 permanent residence.”
5

6 (2) Sections 106(a) and 106(b) of the American Competitiveness
7 in the Twenty-First Century Act of 2000 -- Immigration Services
8 and Infrastructure Improvements Act of 2000, Public Law 106-
9 313, are hereby repealed.

10
11 **SEC. 420. H-1B EMPLOYER REQUIREMENTS**
12

13 (a) Application of Nondisplacement and Good Faith Recruitment
14 Requirements to All H-1B Employers-

15 (1) AMENDMENTS- Section 212(n) of the Immigration and
16 Nationality Act (8 U.S.C. 1182(n)) is amended--

17 (A) in paragraph (1)--

18 (i) in subparagraph (E);

19 (I) in clause (i), by striking `(E)(i) In the
20 case of an application described in clause

21 (ii), the' and inserting `(E) The'; and

22 (II) by striking clause (ii);

23 (ii) in subparagraph (F), by striking `In the
24 case of' and all that follows through `where--'
25 and inserting the following: `The employer will
26 not place the nonimmigrant with another
27 employer if--'; and

28 (iii) in subparagraph (G), by striking `In the
29 case of an application described in
30 subparagraph (E)(ii), subject' and inserting
31 `Subject';

32 (B) in paragraph (2)--

33 (i) in subparagraph (E), by striking `If an H-
34 1B-dependent employer' and inserting `If an
35 employer that employs H-1B nonimmigrants';
36 and

37 (ii) in subparagraph (F), by striking `The
38 preceding sentence shall apply to an employer
39 regardless of whether or not the employer is
40 an H-1B-dependent employer.'; and

41 (C) by striking paragraph (3).

42 (2) EFFECTIVE DATE- The amendments made by
43 paragraph (1) shall apply to applications filed on or after
44 the date of the enactment of this Act.

1 (b) Nondisplacement Requirement-

2 (1) EXTENDING TIME PERIOD FOR NONDISPLACEMENT-
3 Section 212(n) of such Act, as amended by subsection (a),
4 is further amended--

5 (A) in paragraph (1)--

6 (i) in subparagraph (E), by striking `90 days'
7 each place it appears and inserting `180 days';
8 (ii) in subparagraph (F)(ii), by striking `90
9 days' each place it appears and inserting `180
10 days'; and

11 (B) in paragraph (2)(C)(iii), by striking `90 days'
12 each place it appears and inserting `180 days'.

13 (2) EFFECTIVE DATE- The amendments made by
14 paragraph (1)--

15 (A) shall apply to applications filed on or after the
16 date of the enactment of this Act; and

17 (B) shall not apply to displacements for periods
18 occurring more than 90 days before such date.

19 (c) H-1B Nonimmigrants Not Admitted for Jobs Advertised or
20 Offered Only to H-1B Nonimmigrants- Section 212(n)(1) of such
21 Act, as amended by this section, is further amended--

22 (1) by inserting after subparagraph (G) the following:

23 `(H)(i) The employer has not advertised the available jobs
24 specified in the application in an advertisement that states
25 or indicates that--

26 `(I) the job or jobs are only available to persons who
27 are or who may become H-1B nonimmigrants; or

28 `(II) persons who are or who may become H-1B
29 nonimmigrants shall receive priority or a preference
30 in the hiring process.

31 `(ii) The employer has not only recruited persons who are,
32 or who may become, H-1B nonimmigrants to fill the job or
33 jobs.'; and

34 (2) in the undesignated paragraph at the end, by striking
35 `The employer' and inserting the following:

36 `(K) The employer'.

37 (d) Limit on Percentage of H-1B Employees- Section 212(n)(1)
38 of such Act, as amended by this section, is further amended by
39 inserting after subparagraph (H), as added by subsection (d)(1),
40 the following:

41 `(I) If the employer employs not less than 50 employees
42 in the United States, not more than 50 percent of such
43 employees are H-1B nonimmigrants.'

1 **SEC. 421. H-1B GOVERNMENT AUTHORITY AND REQUIREMENTS.**

2 (a) Safeguards Against Fraud and Misrepresentation in
3 Application Review Process- Section 212(n)(1)(K) of the
4 Immigration and Nationality Act, as redesignated by section
5 2(d)(2), is amended--

6 (1) by inserting `and through the Department of Labor's
7 website, without charge.' after `D.C.';

8 (2) by inserting `, clear indicators of fraud,
9 misrepresentation of material fact,' after `completeness';

10 (3) by striking `or obviously inaccurate' and inserting `
11 presents clear indicators of fraud or misrepresentation of
12 material fact, or is obviously inaccurate';

13 (4) by striking `within 7 days of' and inserting `not later
14 than 14 days after'; and

15 (5) by adding at the end the following: `If the Secretary's
16 review of an application identifies clear indicators of fraud
17 or misrepresentation of material fact, the Secretary may
18 conduct an investigation and hearing under paragraph (2).

19 (b) Investigations by Department of Labor- Section 212(n)(2) of
20 such Act is amended--

21 (1) in subparagraph (A)--

22 (A) by striking `12 months' and inserting `24
23 months'; and

24 (B) by striking `The Secretary shall conduct' and all
25 that follows and inserting `Upon the receipt of such
26 a complaint, the Secretary may initiate an
27 investigation to determine if such a failure or
28 misrepresentation has occurred.';

29 (2) in subparagraph (C)(i)--

30 (A) by striking `a condition of paragraph (1)(B),
31 (1)(E), or (1)(F)' and inserting `a condition under
32 subparagraph (B), (C)(i), (E), (F), (H), (I), or (J) of
33 paragraph (1)'; and

34 (B) by striking `(1)(C)' and inserting `(1)(C)(ii)';

35 (3) in subparagraph (G)--

36 (A) in clause (i), by striking `if the Secretary' and all
37 that follows and inserting `with regard to the
38 employer's compliance with the requirements of this
39 subsection.';

40 (B) in clause (ii), by striking `and whose identity'
41 and all that follows through `failure or failures.' and
42 inserting `the Secretary of Labor may conduct an

1 investigation into the employer's compliance with the
2 requirements of this subsection.';

3 (C) in clause (iii), by striking the last sentence;

4 (D) by striking clauses (iv) and (v);

5 (E) by redesignating clauses (vi), (vii), and (viii) as
6 clauses (iv), (v), and (vi), respectively;

7 (F) in clause (iv), as redesignated, by striking 'meet
8 a condition described in clause (ii), unless the
9 Secretary of Labor receives the information not later
10 than 12 months' and inserting 'comply with the
11 requirements under this subsection, unless the
12 Secretary of Labor receives the information not later
13 than 24 months';

14 (G) by amending clause (v), as redesignated, to read
15 as follows:

16 '(v) The Secretary of Labor shall provide notice to an employer
17 of the intent to conduct an investigation. The notice shall be
18 provided in such a manner, and shall contain sufficient detail, to
19 permit the employer to respond to the allegations before an
20 investigation is commenced. The Secretary is not required to
21 comply with this clause if the Secretary determines that such
22 compliance would interfere with an effort by the Secretary to
23 investigate or secure compliance by the employer with the
24 requirements of this subsection. A determination by the
25 Secretary under this clause shall not be subject to judicial
26 review.'.

27 (H) in clause (vi), as redesignated, by striking 'An
28 investigation' and all that follows through 'the
29 determination.' and inserting 'If the Secretary of
30 Labor, after an investigation under clause (i) or (ii),
31 determines that a reasonable basis exists to make a
32 finding that the employer has failed to comply with
33 the requirements under this subsection, the
34 Secretary shall provide interested parties with notice
35 of such determination and an opportunity for a
36 hearing in accordance with section 556 of title 5,
37 United States Code, not later than 120 days after the
38 date of such determination.'; and

39 (I) by adding at the end the following:

40 '(vii) If the Secretary of Labor, after a hearing, finds a
41 reasonable basis to believe that the employer has violated the
42 requirements under this subsection, the Secretary may impose a
43 penalty under subparagraph (C).'; and

44 (4) by striking subparagraph (H).

1 (c) Information Sharing Between Department of Labor and
2 Department of Homeland Security- Section 212(n)(2) of such
3 Act, as amended by this section, is further amended by inserting
4 after subparagraph (G) the following:

5 (H) The Director of United States Citizenship and
6 Immigration Services shall provide the Secretary of Labor
7 with any information contained in the materials submitted
8 by H-1B employers as part of the adjudication process that
9 indicates that the employer is not complying with H-1B
10 visa program requirements. The Secretary may initiate and
11 conduct an investigation and hearing under this paragraph
12 after receiving information of noncompliance under this
13 subparagraph.'.

14 (d) Audits- Section 212(n)(2)(A) of such Act, as amended by this
15 section, is further amended by adding at the end the following:

16 'The Secretary may conduct surveys of the degree to which
17 employers comply with the requirements under this subsection
18 and may conduct annual compliance audits of employers that
19 employ H-1B nonimmigrants. The Secretary shall conduct annual
20 compliance audits of not less than 1 percent of the employers
21 that employ H-1B nonimmigrants during the applicable calendar
22 year.

23 (e) Penalties- Section 212(n)(2)(C) of such Act, as amended by
24 this section, is further amended--

25 (1) in clause (i)(I), by striking '\$1,000' and inserting
26 '\$2,000';

27 (2) in clause (ii)(I), by striking '\$5,000' and inserting
28 '\$10,000'; and

29 (3) in clause (vi)(III), by striking '\$1,000' and inserting
30 '\$2,000'.

31 (f) Information Provided to H-1B Nonimmigrants Upon Visa
32 Issuance- Section 212(n) of such Act, as amended by this
33 section, is further amended by inserting after paragraph (2) the
34 following:

35 '(3)(A) Upon issuing an H-1B visa to an applicant outside the
36 United States, the issuing office shall provide the applicant with-

37 -
38 (i) a brochure outlining the employer's obligations and
39 the employee's rights under Federal law, including labor
40 and wage protections; and

41 (ii) the contact information for Federal agencies that can
42 offer more information or assistance in clarifying employer
43 obligations and workers' rights.'.

1 (B) Upon the issuance of an H-1B visa to an alien inside the
2 United States, the officer of the Department of Homeland
3 Security shall provide the applicant with--
4 (i) a brochure outlining the employer's obligations and
5 the employee's rights under Federal law, including labor
6 and wage protections; and
7 (ii) the contact information for Federal agencies that can
8 offer more information or assistance in clarifying
9 employer's obligations and workers' rights.'

10 **SEC. 422. L-1 VISA FRAUD AND ABUSE PROTECTIONS**

11 (a) In General- Section 214(c)(2) of the Immigration and
12 Nationality Act (8 U.S.C. 1184(c)(2)) is amended--
13 (1) by striking 'Attorney General' each place it appears
14 and inserting 'Secretary of Homeland Security';
15 (2) in subparagraph (E), by striking 'In the case of an
16 alien spouse admitted under section 101(a)(15)(L), who'
17 and inserting 'Except as provided in subparagraph (H), if
18 an alien spouse admitted under section 101(a)(15)(L)';
19 and
20 (3) by adding at the end the following:
21 (G)(i) If the beneficiary of a petition under this subsection is
22 coming to the United States to open, or be employed in, a new
23 facility, the petition may be approved for up to 12 months only if
24 the employer operating the new facility has--
25 (I) a business plan;
26 (II) sufficient physical premises to carry out the proposed
27 business activities; and
28 (III) the financial ability to commence doing business
29 immediately upon the approval of the petition.
30 (ii) An extension of the approval period under clause (i) may
31 not be granted until the importing employer submits an
32 application to the Secretary of Homeland Security that contains--
33 (I) evidence that the importing employer meets the
34 requirements of this subsection;
35 (II) evidence that the beneficiary meets the requirements
36 under section 101(a)(15)(L);
37 (III) a statement summarizing the original petition;
38 (IV) evidence that the importing employer has fully
39 complied with the business plan submitted under clause
40 (i)(I);
41 (V) evidence of the truthfulness of any representations
42 made in connection with the filing of the original petition;

1 ` (VI) evidence that the importing employer, during the
2 preceding 12 months, has been doing business at the new
3 facility through regular, systematic, and continuous
4 provision of goods or services, or has otherwise been
5 taking commercially reasonable steps to establish the new
6 facility as a commercial enterprise;

7 ` (VII) a statement of the duties the beneficiary has
8 performed at the new facility during the preceding 12
9 months and the duties the beneficiary will perform at the
10 new facility during the extension period approved under
11 this clause;

12 ` (VIII) a statement describing the staffing at the new
13 facility, including the number of employees and the types
14 of positions held by such employees;

15 ` (IX) evidence of wages paid to employees;

16 ` (X) evidence of the financial status of the new facility;
17 and

18 ` (XI) any other evidence or data prescribed by the
19 Secretary.

20 ` (iii) Notwithstanding subclauses (I) through (VI) of clause (ii),
21 and subject to the maximum period of authorized admission set
22 forth in subparagraph (D), the Secretary of Homeland Security
23 may approve a petition subsequently filed on behalf of the
24 beneficiary to continue employment at the facility described in
25 this subsection for a period beyond the initially granted 12-
26 month period if the importing employer demonstrates that the
27 failure to satisfy any of the requirements described in those
28 subclauses was directly caused by extraordinary circumstances
29 beyond the control of the importing employer.

30 ` (iv) For purposes of determining the eligibility of an alien for
31 classification under section 101(a)(15)(L), the Secretary of
32 Homeland Security shall work cooperatively with the Secretary of
33 State to verify a company or facility's existence in the United
34 States and abroad.'

35 (b) Investigations and Audits by Department of Homeland
36 Security-

37 (1) DEPARTMENT OF HOMELAND SECURITY
38 INVESTIGATIONS- Section 214(c)(2) of such Act, as
39 amended by this section, is further amended by adding at
40 the end the following:

41 ` (I)(i) The Secretary of Homeland Security may initiate an
42 investigation of any employer that employs nonimmigrants
43 described in section 101(a)(15)(L) with regard to the employer's
44 compliance with the requirements of this subsection.

1 ` (ii) If the Secretary of Homeland Security receives specific
2 credible information from a source who is likely to have
3 knowledge of an employer's practices, employment conditions,
4 or compliance with the requirements under this subsection, the
5 Secretary may conduct an investigation into the employer's
6 compliance with the requirements of this subsection. The
7 Secretary may withhold the identity of the source from the
8 employer, and the source's identity shall not be subject to
9 disclosure under section 552 of title 5.

10 ` (iii) The Secretary of Homeland Security shall establish a
11 procedure for any person desiring to provide to the Secretary of
12 Homeland Security information described in clause (ii) that may
13 be used, in whole or in part, as the basis for the commencement
14 of an investigation described in such clause, to provide the
15 information in writing on a form developed and provided by the
16 Secretary of Homeland Security and completed by or on behalf
17 of the person.

18 ` (iv) No investigation described in clause (ii) (or hearing
19 described in clause (vi) based on such investigation) may be
20 conducted with respect to information about a failure to comply
21 with the requirements under this subsection, unless the
22 Secretary of Homeland Security receives the information not
23 later than 24 months after the date of the alleged failure.

24 ` (v) Before commencing an investigation of an employer under
25 clause (i) or (ii), the Secretary of Homeland Security shall
26 provide notice to the employer of the intent to conduct such
27 investigation. The notice shall be provided in such a manner, and
28 shall contain sufficient detail, to permit the employer to respond
29 to the allegations before an investigation is commenced. The
30 Secretary is not required to comply with this clause if the
31 Secretary determines that to do so would interfere with an effort
32 by the Secretary to investigate or secure compliance by the
33 employer with the requirements of this subsection. There shall
34 be no judicial review of a determination by the Secretary under
35 this clause.

36 ` (vi) If the Secretary of Homeland Security, after an
37 investigation under clause (i) or (ii), determines that a
38 reasonable basis exists to make a finding that the employer has
39 failed to comply with the requirements under this subsection, the
40 Secretary shall provide interested parties with notice of such
41 determination and an opportunity for a hearing in accordance
42 with section 556 of title 5, United States Code, not later than
43 120 days after the date of such determination. If such a hearing

1 is requested, the Secretary shall make a finding concerning the
2 matter by not later than 120 days after the date of the hearing.

3 ` (vii) If the Secretary of Homeland Security, after a hearing,
4 finds a reasonable basis to believe that the employer has
5 violated the requirements under this subsection, the Secretary
6 may impose a penalty under section 214(c)(2)(J).'

7 (2) AUDITS- Section 214(c)(2)(I) of such Act, as added by
8 paragraph (1), is amended by adding at the end the
9 following:

10 ` (viii) The Secretary of Homeland Security may conduct surveys
11 of the degree to which employers comply with the requirements
12 under this section and may conduct annual compliance audits of
13 employers that employ H-1B nonimmigrants. The Secretary shall
14 conduct annual compliance audits of not less than 1 percent of
15 the employers that employ nonimmigrants described in section
16 101(a)(15)(L) during the applicable calendar year.

17 (3) REPORTING REQUIREMENT- Section 214(c)(8) of such
18 Act is amended by inserting `(L),' after `(H).'

19 (c) Penalties- Section 214(c)(2) of such Act, as amended by this
20 section, is further amended by adding at the end the following:

21 ` (J)(i) If the Secretary of Homeland Security finds,
22 after notice and an opportunity for a hearing, a
23 failure by an employer to meet a condition under
24 subparagraph (F), (G), (H), (I), or (K) or a
25 misrepresentation of material fact in a petition to
26 employ 1 or more aliens as nonimmigrants described
27 in section 101(a)(15)(L)--

28 ` (I) the Secretary of Homeland Security may
29 impose such other administrative remedies
30 (including civil monetary penalties in an
31 amount not to exceed \$2,000 per violation) as
32 the Secretary determines to be appropriate;
33 and

34 ` (II) the Secretary of Homeland Security may
35 not, during a period of at least 1 year, approve
36 a petition for that employer to employ 1 or
37 more aliens as such nonimmigrants.

38 ` (ii) If the Secretary of Homeland Security finds,
39 after notice and an opportunity for a hearing, a
40 willful failure by an employer to meet a condition
41 under subparagraph (F), (G), (H), (I), or (K) or a
42 misrepresentation of material fact in a petition to
43 employ 1 or more aliens as nonimmigrants described
44 in section 101(a)(15)(L)--

1 (I) the Secretary of Homeland Security may
2 impose such other administrative remedies
3 (including civil monetary penalties in an
4 amount not to exceed \$10,000 per violation)
5 as the Secretary determines to be appropriate;
6 and

7 (II) the Secretary of Homeland Security may
8 not, during a period of at least 2 years,
9 approve a petition filed for that employer to
10 employ 1 or more aliens as such
11 nonimmigrants.

12 (iii) If the Secretary of Homeland Security finds,
13 after notice and an opportunity for a hearing, a
14 willful failure by an employer to meet a condition
15 under subparagraph (L)(i)--

16 (I) the Secretary of Homeland Security may
17 impose such other administrative remedies
18 (including civil monetary penalties in an
19 amount not to exceed \$10,000 per violation)
20 as the Secretary determines to be appropriate;
21 and

22 (II) the employer shall be liable to employees
23 harmed for lost wages and benefits.'.

24 25 **SEC. 423. WHISTLEBLOWER PROTECTIONS.**

26
27 (a) H-1B Whistleblower Protections- Section 212(n)(2)(C)(iv) of
28 the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(C)(iv))
29 is amended--

30 (1) by inserting 'take, fail to take, or threaten to take or
31 fail to take, a personnel action, or' before 'to intimidate';
32 and

33 (2) by adding at the end the following: 'An employer that
34 violates this clause shall be liable to the employees
35 harmed by such violation for lost compensation, including
36 back pay.'.

37 (b) L-1 Whistleblower Protections- Section 214(c)(2) of such Act,
38 as amended by section 4, is further amended by adding at the
39 end the following:

40 (L)(i) It is a violation of this subparagraph for an employer who
41 has filed a petition to import 1 or more aliens as nonimmigrants
42 described in section 101(a)(15)(L) to take, fail to take, or
43 threaten to take or fail to take, a personnel action, or to
44 intimidate, threaten, restrain, coerce, blacklist, discharge, or

1 discriminate in any other manner against an employee because
2 the employee--

3 (I) has disclosed information that the employee
4 reasonably believes evidences a violation of this
5 subsection, or any rule or regulation pertaining to this
6 subsection; or

7 (II) cooperates or seeks to cooperate with the
8 requirements of this subsection, or any rule or regulation
9 pertaining to this subsection.

10 (ii) An employer that violates this subparagraph shall be liable
11 to the employees harmed by such violation for lost wages and
12 benefits.

13 (iii) In this subparagraph, the term 'employee' includes--

14 (I) a current employee;

15 (II) a former employee; and

16 (III) an applicant for employment.'

17
18 **SEC. 424. LIMITATIONS ON APPROVAL OF L-1 PETITIONS FOR START-UP**
19 **COMPANIES**

20 Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C.
21 1184(c)(2)) is amended--

22 (a) by striking "Attorney General" each place it appears and inserting
23 "Secretary of Homeland Security";

24 (b) in subparagraph (E), by striking "In the case" and inserting "Except
25 as provided in subparagraph (H), in the case"; and

26 (c) by adding at the end the following:

27 "(G)(i) If the beneficiary of a petition under this subsection is
28 coming to the United States to be employed in a new office, the
29 petition may be approved for a period not to exceed 12 months
30 only if the alien has not been the beneficiary of two or more
31 petitions under this subparagraph within the immediately
32 preceding two years and only if the employer operating the new
33 office has--

34 "(I) an adequate business plan;

35 "(II) sufficient physical premises to carry out the
36 proposed business activities; and

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“(III) the financial ability to commence doing business immediately upon the approval of the petition.

“(ii) An extension of the approval period under clause (i) may not be granted until the importing employer submits to the Secretary of Homeland Security--

“(I) evidence that the importing employer meets the requirements of this subsection;

“(II) evidence that the beneficiary meets the requirements of section 101(a)(15)(L);

“(III) a statement summarizing the original petition;

“(IV) evidence that the importing employer has substantially complied with the business plan submitted under clause (i);

“(V) evidence of the truthfulness of any representations made in connection with the filing of the original petition if requested by the Secretary;

“(VI) evidence that the importing employer, from the date of petition approval under clause (i), has been doing business at the new office through regular, systematic, and continuous provision of goods or services;

“(VII) a statement of the duties the beneficiary has performed at the new office during the approval period under clause (i) and the duties the beneficiary will perform at the new office during the extension period approved under this clause;

“(VIII) a statement describing the staffing at the new office, including the number of employees and the types of positions held by such employees;

“(IX) evidence of wages paid to employees if the beneficiary will be employed in a managerial or executive capacity;

1 “(X) evidence of the financial status of the new
2 office; and

3 “(XI) any other evidence or data prescribed by the
4 Secretary.

5 “(iii) A new office employing the beneficiary of an L-1
6 petition approved under this subparagraph must do
7 business through regular, systematic, and continuous
8 provision of goods or services for the entire period of
9 petition approval.

10 “(iv) Notwithstanding clause (iii) or subclauses (I) through
11 (VI) of clause (ii), and subject to the maximum period of
12 authorized admission set forth in subparagraph (D), the
13 Secretary of Homeland Security may in his discretion
14 approve a subsequently filed petition on behalf of the
15 beneficiary to continue employment at the office described
16 in this subsection for a period beyond the initially granted
17 12-month period if the importing employer has been doing
18 business at the new office through regular, systematic, and
19 continuous provision of goods or services for the 6 months
20 immediately preceding the date of extension petition filing
21 and demonstrates that the failure to satisfy any of the
22 requirements described in those subclauses was directly
23 caused by extraordinary circumstances, as determined by
24 the Secretary in his discretion.

25 “(H)(i) The Secretary of Homeland Security may not authorize
26 the spouse of an alien described under section 101(a)(15)(L),
27 who is a dependent of a beneficiary under subparagraph (G), to
28 engage in employment in the United States during the initial 12-
29 month period described in subparagraph (G)(i).

30 “(ii) A spouse described in clause (i) may be provided
31 employment authorization upon the approval of an
32 extension under subparagraph (G)(ii).

33 “(I) For purposes of determining the eligibility of an alien for
34 classification under section 101(a)(15)(L) of this Act, the
35 Secretary of Homeland Security shall establish procedures with
36 the Department of State to verify a company or office's existence
37 in the United States and abroad.”

1 **SEC. 425. MEDICAL SERVICES IN UNDERSERVED AREAS**

2 (a) PERMANENT AUTHORIZATION OF THE CONRAD PROGRAM.—

3 (1) In General.-- Section 220(c) of the Immigration and
4 Nationality Technical Corrections Act of 1994 (8 U.S.C.
5 1182 note) ((as amended by section 1(a) of Public Law
6 108-441 and section 2 of Public Law 109-477)) is amended
7 by striking `and before June 1, 2008.'.

8 (2) Effective Date.—The amendment made by paragraph
9 (1) shall take effect as if enacted on June 1, 2007.

10 (b) PILOT PROGRAM REQUIREMENTS - Section 214(I) of the
11 Immigration and Nationality Act (8 U.S.C. 1184(I)) is amended—

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

13 “(4)(A) Notwithstanding paragraph (1)(B), the
14 Secretary of Homeland Security may grant up to a total of
15 50 waivers for a State under section 212(e) in a fiscal year
16 if, after the first 30 such waivers for the State are granted
17 in that fiscal year—

18 “(i) an interested State agency requests a waiver; and

19 “(ii) the requirements under subparagraph (B) are met.

20 “(B) The requirements under this subparagraph are met
21 if—

22 “(i) fewer than 20 percent of the physician vacancies in
23 the health professional shortage areas of the State, as
24 designated by the Secretary of Health and Human
25 Services, were filled in the most recent fiscal year;

26 “(ii) all of the waivers allotted for the State under
27 paragraph (1)(B)) were used in the most recent fiscal
28 year; and

29 “(iii) all underserved highly rural States—

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1 “(I) used the minimum guaranteed number of
2 waivers under section 212(e) in health professional
3 shortage areas in the most recent fiscal year; or
4

5 “(II) all agreed to waive the right to receive the
6 minimum guaranteed number of such waivers.
7

8 “(C) In this paragraph:
9

10 “(i) The term “health professional shortage area” has
11 the meaning given the term in section 332(a)(1) of the
12 Public Health Service Act (42 U.S.C. 254e(a)(1));
13

14 “(ii) The term “underserved highly rural State” means a
15 State with at least 30 counties with a population density of
16 not more than 10 people per square mile, based on the
17 latest available decennial census conducted by the Bureau
18 of Census.
19

20 “(iii) The term “minimum guaranteed number” means –
21

22 “(I) for the first fiscal year of the pilot program, 15;
23

24 “(II) for each subsequent fiscal year, the sum of—
25

26 (aa) the minimum guaranteed number for the
27 second fiscal year; and

28 (bb) 3, if any State received additional
29 waivers under this paragraph in the first fiscal
30 year.
31

32 “(III) for the third fiscal year, the sum of—
33

34 (aa) the minimum guaranteed number for the
35 second fiscal year; and

36 (bb) 3, if any State received additional waivers
37 under this paragraph in the first fiscal year.

38 (c) TERMINATION DATE – The authority provided by the
39 amendments made by subsection (b) shall expire on September
40 30, 2011.

41 (d) Section 212(j) of the Immigration and Nationality Act (8
42 U.S.C. 1182(j)) is amended by –

1
2 (1) revising the preamble of paragraph (2) to read "An
3 alien who has graduated from a medical school and who is
4 coming to the United States to practice primary care or
5 specialty medicine as a member of the medical profession
6 may not be admitted as a nonimmigrant under section
7 1101(a)(15)(H)(i)(b) of this title unless –"

8
9 (2) redesignating paragraph (2) as paragraph (3);

10
11 (3) adding new paragraph (2) to read—

12
13 "(2)(A) An alien who is coming to the United States to
14 receive graduate medical education or training (or seeks to
15 acquire status as a nonimmigrant under section
16 1101(a)(15)(J) to receive graduate medical education or
17 training) may not change status under section 1258 to a
18 nonimmigrant under section 1101(a)(15)(H)(i)(b) until the
19 alien graduates from the medical education or training
20 program and meets the requirements of paragraph (3)(B).

21
22 "(B) Any occupation that an alien described in paragraph
23 (2)(A) may be employed in while receiving graduate
24 medical education or training shall not be deemed a
25 "specialty occupation" within the meaning of section
26 1184(i) for purposes of section 1101(a)(15)(H)(i)(b)."

27
28 (e) Section 101(a)(15)(J) is amended by adding "(except an
29 alien coming to the United States to receive graduate medical
30 education or training)" after "abandoning".

31
32 (f) Section 214(h) of the Immigration and Nationality Act (8
33 U.S.C. 1184(h)) is amended by inserting "(E), (J) who is coming
34 to the United States to receive graduate medical education or
35 training," after "subparagraph" where that term first appears.

36
37 (g) **MEDICAL RESIDENTS INELIGIBLE FOR H-1B NONIMMIGRANT**
38 **STATUS** - Section 214(i) of the Immigration and Nationality Act
39 (8 U.S.C. 1184(i)) is amended to read –

40
41 "(1) Except as provided in paragraph (3), for purposes of
42 section 101(a)(15)(H)(i)(b), section 101(a)(15)(E)(iii), and
43 paragraph (2), the term "specialty occupation" –

44 "(A) means an occupation that requires-

1 “(i) theoretical and practical application of a
2 body of highly specialized knowledge, and
3 “(ii) attainment of a bachelor’s or higher
4 degree in the specific specialty (or its
5 equivalent) as a minimum for entry into the
6 occupation in the United States; and

7 “(B) shall not include graduate medical education or
8 training.”
9

10 (h) Section 214(l) of the Immigration and Nationality Act (8
11 U.S.C. 1184(l)) is amended—
12

13 (1) in paragraph (1)(C)(i) by striking “Attorney General”
14 and inserting “Secretary of Homeland Security”;

15
16 (2) in paragraph(1)(C) by striking subclause (ii) and
17 inserting the following:
18

19 “(ii) the alien has accepted employment with the health
20 facility or health care organization and agrees to continue
21 to work for a total of not less than 3 years; and
22

23 “(iii) the alien begins employment within 90 days of:

24 “(I) receiving such waiver; or
25

26 “(II) receiving nonimmigrant status or employment
27 authorization pursuant to an application filed under
28 paragraph (2)(A) (if such application is filed with 90
29 days of eligibility of completing graduate medical
30 education or training under a program approved
31 pursuant to section 212(j)(1));
32

33 “whichever is latest.”
34

35
36 (3) by striking at the end “.”, inserting “; or” and adding
37 new paragraph (1)(E) to read—
38

39 “(E) in the case of a request by an interested State
40 agency, the alien agrees to practice primary care or
41 specialty medicine care, for a continuous period of 2
42 years, only at a federally qualified health facility, health
43 care organization or center, or in a rural health clinic
44 that is located in:

1
2 “(i) a geographic area which is designated by the
3 Secretary of Health and Human Services as having a
4 shortage of health care professionals; and
5

6 “(ii) a State that utilized less than 10 of the total
7 allotted waivers for the State under paragraph (1)(B)
8 (excluding the number of waivers available pursuant
9 to paragraph (1)(D)(ii)) in the most recent fiscal
10 year.”
11

12 (4) in paragraph (2), by amending subparagraph (A) to
13 read as follows:
14

15 “(A) Notwithstanding section 248(a)(2), upon
16 submission of a request to an interested Federal
17 agency or an interested State agency for
18 recommendation of a waiver under this section by a
19 physician who is maintaining valid nonimmigrant
20 status under section 101(a)(15)(J), the Secretary of
21 Homeland Security may accept as properly filed an
22 application to change the status of such physician to
23 [any applicable nonimmigrant status]. Upon
24 favorable recommendation by the Secretary of State
25 of such request, and approval by the Secretary of
26 Homeland Security the waiver under this section, the
27 Secretary of Homeland Security may change the
28 status of such physician to that of [an appropriate
29 nonimmigrant status.]”
30

31 (5) in paragraph (3)(A) amended by inserting
32 “requirement of or” before “agreement entered into”.
33

34 (i) PERIOD OF AUTHORIZED ADMISSION FOR PHYSICIANS ON H-
35 1B VISAS WHO WORK IN MEDICALLY UNDERSERVED
36 COMMUNITIES

37
38 Section 214(g)(5), as renumbered by Section 405 and amended
39 by Section 719(c), is further amended by adding at the end the
40 following new subparagraph:
41

42 “(D) The period of authorized admission under subparagraph (A)
43 shall not apply to an alien physician who fulfills the requirements

1 of section 214(I)(1)(E) and who has practiced primary or
2 specialty care in a medically underserved community for a
3 continuous period of 5 years.”

4 **SEC. 426. B-1 VISITOR VISA GUIDELINES AND DATA TRACKING**
5 **SYSTEMS.**

6 (a) Guidelines.--

7 (1) IN GENERAL.--Not later than 6 months after the date of
8 enactment of this Act--

9 (A) the Secretary of State shall review existing regulations or
10 internal guidelines relating to the decisionmaking process with respect
11 to the issuance of B-1 visas by consular officers and determine
12 whether modifications are necessary to ensure that such officers make
13 decisions with respect to the issuance of B-1 visas as consistently as
14 possible while ensuring security and maintaining officer discretion over
15 such issuance determinations; and

16 (B) the Secretary of Homeland Security shall review existing
17 regulations or internal guidelines relating to the decisionmaking
18 process of Customs and Border Protection officers concerning whether
19 travelers holding a B-1 visitor visa are admissible to the United States
20 and the appropriate length of stay and shall determine whether
21 modifications are necessary to ensure that such officers make
22 decisions with respect to travelers admissibility and length of stay as
23 consistently as possible while ensuring security and maintaining officer
24 discretion over such determinations.

25 (2) MODIFICATION.--If after conducting the reviews under
26 paragraph (1), the Secretary of State or the Secretary of Homeland
27 Security determine that modifications to existing regulations or
28 internal guidelines, or the establishment of new regulations or
29 guidelines, are necessary, the relevant Secretary shall make such
30 modifications during the 6-month period referred to in such paragraph.

31 (3) CONSULTATIONS.--In making determinations and preparing
32 guidelines under paragraph (1), the Secretary of State and the
33 Secretary of Homeland Security shall consult with appropriate
34 stakeholders, including consular officials and immigration inspectors.

35 (b) Data Tracking Systems.--

1 (1) IN GENERAL.--Not later than 18 months after the date of
2 enactment of this Act--

3 (A) the Secretary of State shall develop and implement a system to
4 track aggregate data relating to the issuance of B-1 visitor visas in
5 order to ensure the consistent application of the guidelines established
6 under subsection (a)(1)(A); and

7 (B) the Secretary of Homeland Security shall develop and
8 implement a system to track aggregate data relating to admissibility
9 decision, and length of stays under, B-1 visitor visas in order to ensure
10 the consistent application of the guidelines established under
11 subsection (a)(1)(B).

12 (2) LIMITATION.--The systems implemented under paragraph (1)
13 shall not store or track personally identifiable information, except that
14 this paragraph shall not be construed to limit the application of any
15 other system that is being implemented by the Department of State or
16 the Department of Homeland Security to track travelers or travel to
17 the United States.

18 (c) Public Education.--The Secretary of State and the Secretary of
19 Homeland Security shall carry out activities to provide guidance and
20 education to the public and to visa applicants concerning the nature,
21 purposes, and availability of the B-1 visa for business travelers.

22 (d) Report.--Not later than 6 and 18 months after the date of
23 enactment of this Act, the Secretary of State and the Secretary of
24 Homeland Security shall submit to Congress, reports concerning the
25 status of the implementation of this section.

26 **SEC. 427. AUTHORIZATION OF APPROPRIATIONS.**

27 There are authorized to be appropriated such sums as may be
28 necessary to carry out this title, and the amendments made by this
29 title.

30

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3 **TITLE V—IMMIGRATION BENEFITS**

4 **SEC. 501. REBALANCING OF IMMIGRANT VISA ALLOCATION**

5 (a) FAMILY-SPONSORED IMMIGRANTS- Section 201(c) of the Immigration
6 and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:
7

8 “(c) Worldwide Level of Family-Sponsored Immigrants-

9
10 “(1) For each fiscal year until visas needed for petitions
11 described in section 503(f)(2) of the [Insert title of Act]
12 become available, the worldwide level of family-sponsored
13 immigrants under this subsection is 567,000 for petitions
14 for classifications under 203(a), plus any immigrant visas
15 not required for the class specified in (d).
16

17 “(2) Except as provided in paragraph (1), the worldwide
18 level of family-sponsored immigrants under this subsection
19 for a fiscal year is 127,000, plus any immigrant visas not
20 required for the class specified in (d).
21

22 (b) MERIT-BASED IMMIGRANTS- Section 201(d) of the Immigration and
23 Nationality Act (8 U.S.C. 1151(d)) is amended to read as follows:
24

25 “(d) Worldwide Level of Merit-Based, Special, and Employment
26 Creation Immigrants-

27
28 “(1) IN GENERAL- The worldwide level of merit-based,
29 special, and employment creation immigrants under this
30 subsection for a fiscal year—
31

32 “(A) for the first five fiscal years shall be equal to the
33 number of immigrant visas made available to aliens
34 seeking immigrant visas under section 203(b) of this
35 Act for fiscal year 2005, plus any immigrant visas
36 not required for the class specified in (c), of which:

37 (i) at least 10,000 will be for exceptional aliens
38 in nonimmigrant status under section

39 101(a)(15)(Y); and

40 (ii) 90,000 will be for aliens who were the
41 beneficiaries of an application that was pending
42 or approved at the time of the effective date of
43 this section, per Section 502(d) of the [Insert
44 title of Act].

1 “(B) stating in the sixth fiscal year, shall be equal to
2 140,000 for each fiscal year until aliens described in
3 section 101(a)(15)(Z) of this Act first become eligible
4 for an immigrant visa, plus any immigrant visas not
5 required for the class specified in (c), of which:

6 (i) at least 10,000 will be for exceptional aliens
7 in nonimmigrant status under section
8 101(a)(15)(Y); and

9 (ii) no more than 90,000 will be for aliens who
10 were the beneficiaries of an application that
11 was pending or approved at the time of the
12 effective date of this section, per Section
13 502(d) of the [Insert title of Act].

14 “(C)(i) 380,000, for each fiscal year starting in the
15 first fiscal year in which aliens described in section
16 101(a)(15)(Z) of this Act become eligible for an
17 immigrant visa, of which at least 10,000 will be for
18 exceptional aliens in nonimmigrant status under
19 section 101(a)(15)(Y), plus any immigrant visas not
20 required for the class specified in (c); plus

21
22 “(ii) the temporary supplemental allocation of
23 additional visas described in paragraph (2) for
24 nonimmigrants described in section 101(a)(15)(Z).

25
26 “(2) TEMPORARY SUPPLEMENTAL ALLOCATION- The
27 temporary supplemental allocation of visas described in
28 this paragraph is as follows:

29 “(A) for the first five fiscal years in which aliens
30 described in section 101(a)(15)(Z) of this Act are eligible
31 for an immigrant visa, the number calculated pursuant to
32 section 503(f)(2) of the [Insert title of Act];

33 “(B) in the sixth fiscal year in which aliens described
34 in section 101(a)(15)(Z) of this Act are eligible for an
35 immigrant visa, the number calculated pursuant to section
36 503(f)(3) of [Insert title of Act]; and

37 “(C) starting in the seventh fiscal year in which
38 aliens described in section 101(a)(15)(Z) of this Act are
39 eligible for an immigrant visa,, the number equal to the
40 number of Z nonimmigrants who became aliens admitted
41 for permanent residence based on the merit-based
42 evaluation system in the prior fiscal year until no further Z
43 nonimmigrants adjust status;

1 "(3) TERMINATION OF TEMPORARY SUPPLEMENTAL
2 ALLOCATION- The temporary supplemental allocation of
3 visas shall terminate when the number of visas calculated
4 pursuant to paragraph (2)(C) is zero.
5

6 "(4) LIMITATION- The temporary supplemental visas in
7 paragraph (2) shall not be awarded to any individual other
8 than an individual described in section 101(a)(15)(Z).
9

10 (c) EFFECTIVE DATE.—The amendments made by this section shall take
11 effect on the first day of the fiscal year subsequent to the fiscal year of
12 enactment.
13

14 **SEC. 502. INCREASING AMERICAN COMPETITIVENESS THROUGH A MERIT-
15 BASED EVALUATION SYSTEM FOR IMMIGRANTS**
16

17 (a) SENSE OF CONGRESS.— It is the sense of Congress that the United
18 States benefits from a work force that has diverse skills, experience
19 and training.
20

21 (b) CREATION OF MERIT-BASED EVALUATION SYSTEM FOR IMMIGRANTS AND
22 REALLOCATION OF VISAS- Section 203(b) of the Immigration and
23 Nationality Act (8 U.S.C. 1153(b)) is amended by—
24

25 (1) striking paragraphs (1), (2), and (3) and inserting the
26 following:
27

28 "(1) Merit-based Immigrants. – Visas shall first be made
29 available in a number not to exceed 95 percent of such
30 worldwide level, plus any visas not required for the classes in
31 paragraphs (2) and (3), to qualified immigrants selected through
32 a merit-based evaluation system.
33

34 "(A) The merit-based evaluation system shall initially
35 consist of the following criteria and weights:
36

Category	Description	Max pts
Employment <i>Occupation</i>	U.S. employment in Specialty Occupation (DoL definition) – 20 pts U.S. employment in High Demand Occupation (BLS largest 10-yr job growth, top 30)	47

<p><i>National interest/ critical infrastructure</i></p> <p><i>Employer endorsement</i></p> <p><i>Experience</i></p> <p><i>Age of worker</i></p>	<p>- 16 pts</p> <p>U.S. employment in STEM or health occupation, current for at least 1 year – 8 pts (extraordinary or ordinary)</p> <p>A U.S. employer willing to pay 50% of LPR application fee either 1) offers a job, or 2) attests for a current employee – 6 pts</p> <p>Years of work for U.S. firm – 2 pts/year (max 10 pts)</p> <p>Worker's age: 25-39 – 3 pts</p>	
<p>Education <i>(terminal degree)</i></p>	<p>M.D., M.B.A., Graduate degree, etc. – 20 pts</p> <p>Bachelor's degree – 16 pts</p> <p>Associate's degree – 10 pts</p> <p>High School diploma or GED – 6 pts</p> <p>Completed certified Perkins Vocational Education program – 5 pts</p> <p>Completed DoL Registered Apprenticeship – 8 pts</p> <p>STEM, assoc & above – 8 pts</p>	28
<p>English & civics</p>	<p>Native speaker of English or TOEFL score of 75 or higher – 15 pts</p> <p>TOEFL score of 60-74 – 10 pts</p> <p>Pass USCIS Citizenship Tests in English&Civics–6 pts</p>	15
<p>Extended family (Applied if threshold of 55 in above categories.)</p>	<p>Adult (21 or older) son or daughter of USC – 8 pts</p> <p>Adult (21 or older) son or daughter of LPR – 6 pts</p> <p>Sibling of USC or LPR – 4 pts</p> <p>If had applied for a family visa in any of the above categories after May 1, 2005– 2 pts</p>	10
		100

<u>Supplemental schedule for Zs</u>		
<i>Agriculture National Interest</i>	Worked in agriculture for 3 years, 150 days per year – 21 pts Worked in agriculture for 4 years (150 days for 3 years, 100 days for 1 year) – 23 pts Worked in agriculture for 5 years, 100 days per year – 25 points	25
<i>U.S. employment exp.</i>	Year of lawful employment – 1 pt	5
<i>Home ownership</i>	Own place of residence – 1 pt/year owned	5
<i>Medical Insurance</i>	Current medical insurance for entire family	

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“(B) The Secretary of Homeland Security, after consultation with the Secretaries of Commerce and Labor, shall establish procedures to adjudicate petitions filed pursuant to the merit-based evaluation system. The Secretary may establish a time period in a fiscal year in which such petitions must be submitted.

“(C) The Standing Commission on Immigration and Labor Markets established pursuant to Section 407 of the [Insert title of Act] shall submit recommendations to Congress concerning the establishment of procedures for modifying the selection criteria and relative weights accorded such criteria in order to ensure that the merit-based evaluation system corresponds to the current needs of the United States economy and the national interest.

“(D) No modifications to the selection criteria and relative weights accorded such criteria that are established by the [Insert title of Act] should take effect earlier than the sixth fiscal year in which aliens described in section 101(a)(15)(Z) of this Act are eligible for an immigrant visa.

1 “(E) The application of the selection criteria to any
2 particular visa petition or application pursuant to the
3 merit-based evaluation system shall be within the
4 Secretary’s sole and unreviewable discretion.
5

6 “(F) Any petition filed pursuant to this paragraph that has
7 not been found by the Secretary to have qualified in the
8 merit-based evaluation system shall be deemed denied on
9 the first day of the third fiscal year following the date of
10 such application. Such denial shall not preclude the
11 petitioner from filing a successive petition pursuant to this
12 paragraph. Notwithstanding this paragraph, the Secretary
13 may deny a petition when denial is appropriate under
14 other provisions of law, including but not limited to
15 sections 204(c).”
16

17 (2) redesignating paragraph (4) as paragraph (2), by striking
18 “7.1 percent” and inserting “4,200”, and striking “5,000” and
19 inserting “2,500”;
20

21 (3) redesignating paragraph (5) as paragraph (3), by striking
22 “7.1 percent” and inserting “2,800”, and striking “3,000” and
23 inserting “1,500”;
24

25 (4) redesignating paragraph (6) as paragraph (4).
26

27 (c) PROCEDURE FOR GRANTING IMMIGRANT STATUS.- Section 204(a)(1) of the
28 Immigration and Nationality Act (8 U.S.C. 1154(a)(1)) is amended by
29 striking subparagraphs (E) and (F).
30

31 (d) EFFECTIVE DATE.—
32

33 (1) IN GENERAL.—Subject to paragraph (2), the amendments
34 made by this section shall take effect on the first day of the
35 fiscal year subsequent to the fiscal year of enactment, unless
36 such date is less than 270 days after the date of enactment, in
37 which case the amendments shall take effect on the first day of
38 the following fiscal year.
39

40 (2) PENDING AND APPROVED PETITIONS AND APPLICATIONS.—Petitions
41 for an employment-based visa filed for classification under
42 section 203(b)(1), (2), or (3) of the Immigration and Nationality
43 Act (as such provisions existed prior to the enactment of this
44 section) that were filed prior to the date of the introduction of

1 the [Insert title of Act] and were pending or approved at the
2 time of the effective date of this section, shall be treated as if
3 such provision remained effective and an approved petition may
4 serve as the basis for issuance of an immigrant visa. Aliens with
5 applications for a labor certification pursuant to section
6 212(a)(5)(A) of the Immigration and Nationality Act shall
7 preserve the immigrant visa priority date accorded by the date
8 of filing of such labor certification application.
9

10 (e) CONFORMING AMENDMENTS.—

11
12 (1) Section 201 of the Immigration and Nationality Act (8 U.S.C.
13 1151) is amended by striking "employment-based" each place it
14 appears and inserting "merit-based".
15

16 (2) Section 202 of the Immigration and Nationality Act (8 U.S.C.
17 1152) is amended by striking "employment-based" each place it
18 appears and inserting "merit-based".
19

20 (3) Section 203(b) of the Immigration and Nationality Act (8
21 U.S.C. 1153(b)) is amended by:

22
23 (A) striking the heading and first sentence and inserting
24 the following:

25
26 "(b) Preference allocation for merit-based, special and
27 employment creation immigrants. Aliens subject to the
28 worldwide level specified in section 201(d) for merit-based,
29 special and employment creation immigrants in a fiscal
30 year shall be allotted visas as follows:";
31

32 (B) striking "employment based" and inserting "merit-
33 based" and striking "paragraphs (1), (2), and (3)" and
34 inserting "paragraph (1)" in subparagraph (6)(B)(i); and
35

36 (C) striking "employment based" and inserting "merit-
37 based" and striking "each of paragraphs (1) through (3)"
38 and inserting "paragraph (1)" in subparagraph (6)(B)(iii).
39

40 (4) Section 212(a)(4) of the Immigration and Nationality Act (8
41 U.S.C. 1182(a)(4)) is amended by striking subparagraph (D).
42

43 (5) Section 213A(f) of the Immigration and Nationality Act (8
44 U.S.C. 1183a(f)) is amended by:

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(A) striking subparagraph (4);

(B) striking subparagraph (5) and inserting the following:

“(4) Non-Petitioning Cases. Such term also includes an individual who does not meet the requirement of paragraph (1)(D) but who is a spouse, parent, mother in law, father in law, sibling, child (if at least 18 years of age), son, daughter, son in law, daughter in law, sister in law, brother in law, grandparent, or grandchild of a sponsored alien or a legal guardian of a sponsored alien, meets the requirements of paragraph (1) (other than subparagraph (D)), and executes an affidavit of support with respect to such alien in a case in which—

(A) the individual petitioning under section 204 for the classification of such alien died after the approval of such petition; and

(B) the Secretary of Homeland Security has determined for humanitarian reasons that revocation of such petition under section 205 would be inappropriate.”;

(C) redesignating subparagraph (6) as subparagraph (5);

and

(D) striking “(6)” and inserting “(5)” in subparagraph (1)(E).

(6) Section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) is amended by striking paragraph (5).

(7) Section 218(g)(3) of the Immigration and Nationality Act (8 U.S.C. 1188) is amended by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).

(8)(A) Section 207(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1157(c)(3)) is amended by striking “(5),” in the first sentence.

1 (B) Section 209(c) of the Immigration and Nationality Act
2 (8 U.S.C. 1159(c)) is amended by striking "(5)," in the
3 second sentence
4

5 (C) Section 210(c)(2)(A) of the Immigration and
6 Nationality Act (8 U.S.C. 1160(c)(2)(A)) is amended by
7 striking "paragraphs (5) and," and inserting "paragraph"
8

9 (D) Section 237(a)(1)(H)(i)(II) of the Immigration and
10 Nationality Act (8 U.S.C. 1227(a)(1)(H)(i)(II)) is amended
11 by striking "paragraphs (5) and," and inserting
12 "paragraph"
13

14 (E) Section 245(h)(2)(A) of the Immigration and
15 Nationality Act (8 U.S.C. 1255(h)(2)(A)) is amended by
16 striking "(5)(a), "
17

18 (F) Section 245A(d)(2)(A) of the Immigration and
19 Nationality Act (8 U.S.C. 1255a(d)(2)(A)) is amended by
20 striking "paragraphs (5) and," and inserting "paragraph"
21

22 (H) Section 286(s)(6) of the Immigration and Nationality
23 Act (8 U.S.C. 1356(s)(6)) is amended by striking "and
24 section 212(a)(5)(A)"
25

26 (f) REFERENCES TO SECRETARY OF HOMELAND SECURITY.—
27

28 (1) Section 203 of the Immigration and Nationality Act (8 U.S.C.
29 1153) is amended by striking "Attorney General" each place it
30 appears and inserting "Secretary of Homeland Security".
31

32 (2) Section 204 of the Immigration and Nationality Act (8 U.S.C.
33 1154) is amended by striking "Attorney General" each place it
34 appears, except for section 204(f)(4)(B), and inserting
35 "Secretary of Homeland Security".
36

37 **SEC. 503. REDUCING CHAIN MIGRATION AND PERMITTING PETITIONS BY**
38 **NATIONALS**
39

40 (a) CAP EXEMPT CATEGORIES.—Paragraph (1) of section 201(b) of the
41 Immigration and Nationality Act (8 U.S.C. 1151(b)) is amended by
42 adding the following two new subparagraphs at the end:
43

1 “(F) Aliens admitted under section 211(a) on the basis of a prior
2 issuance of a visa under section 203(a) to their accompanying
3 parent who is an immediate relative.
4

5 “(G) Aliens born to an alien lawfully admitted for permanent
6 residence during a temporary visit abroad.”
7

8 (b) IMMEDIATE RELATIVES.—
9

10 (1) Immediate Relative Redefined.--Paragraph (2) of section
11 201(b) of the Immigration and Nationality Act (8 U.S.C.
12 1151(b)) is amended to read as follows:
13

14 “(2) Immediate Relatives.—
15

16 “(A) In General.--For purposes of this subsection, the term
17 ‘immediate relative’ means a child or spouse of a citizen of
18 the United States (and each child of such child or spouse
19 who is accompanying or following to join the alien).
20

21 “(B) Spouse of a Deceased U.S. Citizen.--An alien who was
22 the spouse of a citizen of the United States and not legally
23 separated from the citizen at the time of the citizen's
24 death, who was married to the citizen for not less than 2
25 years at the time of the citizen's death (or, if married for
26 less than 2 years at the time of the citizen's death, who
27 proves by a preponderance of the evidence that the
28 marriage was entered into in good faith and not solely for
29 the purpose of obtaining an immigration benefit) , and
30 each child of such alien, may be considered, for purposes
31 of this subsection, to remain an immediate relative after
32 the date of the citizen's death if the spouse files a petition
33 under section 204(a)(1)(A)(ii) before the earlier of—
34

35 “(i) 2 years after such date; or
36

37 “(ii) the date on which the spouse remarries.
38

39 “(C) Battered Spouse or Child.--An alien who has filed a
40 petition under clause (iii) or (iv) of section 204(a)(1)(A)
41 remains an immediate relative if the United States citizen
42 spouse or parent loses United States citizenship on account
43 of the abuse.
44

1 (2) Petition- Section 204(a)(1)(A)(ii) of the Immigration and
2 Nationality Act (8 U.S.C. 1154(a)(1)(A)(ii)) is amended by
3 striking "in the second sentence of section 201(b)(2)(A)(i)" and
4 inserting "in section 201(b)(2)(B)".
5

6 (c) PREFERENCE CATEGORIES.— Section 203(a) of the Immigration and
7 Nationality Act (8 U.S.C. 1153(a)) is amended:
8

9 (1) By striking paragraph (1) and inserting the following:
10

11 "(1) Parents of a citizen of the United States if the citizen
12 is at least 21 years of age. Qualified immigrants who are
13 the parents of a citizen of the United States where the
14 citizen is at least 21 years of age shall be allocated visas in
15 a number not to exceed 40,000, plus any visas not
16 required for the classes specified in paragraph (3), or".
17

18 (2) By striking paragraph (2) and inserting the following:
19

20 "(2) Spouses or children of an alien lawfully admitted for
21 permanent residence or a national. Qualified immigrants
22 who are the spouses or children of an alien lawfully
23 admitted for permanent residence or a noncitizen national
24 of the United States as defined in section 101(a)(22)(B) of
25 this Act who is resident in the United States shall be
26 allocated visas in a number not to exceed 87,000, plus any
27 visas not required for the class specified in paragraph (1)".
28

29 (3) By striking paragraph (3) and inserting the following:
30

31 "(3) FAMILY-BASED VISA PETITIONS FILED BEFORE JANUARY 1,
32 2007, FOR WHICH VISAS WILL BE AVAILABLE BEFORE JANUARY
33 1, 2027.--

34 "(A) IN GENERAL.--The allocation of immigrant visas
described in paragraph (4) shall apply to an alien for whom--

35 "(i) a family-based visa petition was filed on or before January
36 1, 2007; and

37 "(ii) as of January 1, 2007, the Secretary of Homeland
38 Security calculates under subparagraph (B) that a visa can
39 reasonably be expected to become available before January 1,
40 2027.

1 “(B) REASONABLE EXPECTATION OF AVAILABILITY OF VISAS.-
2 -In calculating the date on which a family-based visa can
3 reasonably be expected to become available for an alien
4 described in subparagraph (A), the Secretary of Homeland
5 Security shall take into account--

6 “(i) the number of visas allocated annually for the family
7 preference class under which the alien's petition was filed;

8 “(ii) the effect of any per country ceilings applicable to the
9 alien's petition;

10 “(iii) the number of petitions filed before the alien's petition
11 was filed that were filed under the same family preference class;
12 and

13 “(iv) the rate at which visas made available in the family
14 preference class under which the alien's petition was filed were
15 unclaimed in previous years.

16 “(4) ALLOCATION OF FAMILY-BASED IMMIGRANT VISAS.--”
17 Immigrant visas totaling 440,000 shall be allotted visas as
18 follows:

19
20 “(A) Qualified immigrants who are the unmarried sons or
21 daughters of citizens of the United States shall be allocated
22 visas totaling 70,400 immigrant visas, plus any visas not
23 required for the class specified in (D).
24

25 “(B) Qualified immigrants who are the unmarried sons or
26 unmarried daughters of an alien lawfully admitted for
27 permanent residence, shall be allocated visas totaling
28 110,000 immigrant visas, plus any visas not required for
29 the class specified in (A).
30

31 “(C) Qualified immigrants who are the married sons or
32 married daughters of citizens of the United States shall be
33 allocated visas totaling 70,400 immigrant visas, plus any
34 visas not required for the class specified in (A) and (B).
35

36 “(D) Qualified immigrants who are the brothers or sisters
37 of citizens of the United States, if such citizens are at least
38 21 years of age, shall be allocated visas totaling 189,200

1 immigrant visas, plus any visas not required for the class
2 specified in (A), (B), and (C)."
3

4 (4) By striking paragraph (4).
5

6 (d) PETITION.— Section 204(a)(1)(A)(i) of the Immigration and
7 Nationality Act (8 U.S.C. 1154(a)(1)(A)(i)) is amended by striking “,
8 (3), or (4)” after “paragraph (1)”.
9

10 (e) EFFECTIVE DATE.—
11

12 (1) IN GENERAL.— The amendments made by this section shall
13 take effect on the first day of the fiscal year subsequent to the
14 fiscal year of enactment.
15

16 (2) PENDING AND APPROVED PETITIONS.—Petitions for a family-
17 sponsored visa filed for classification under section 203(a)(1),
18 (2)(B), (3), or (4) of the Immigration and Nationality Act (as
19 such provisions existed prior to the enactment of this section)
20 which were filed before May 1, 2005, regardless of whether the
21 petitions have been approved before May 1, 2005, shall be
22 treated as if such provision remained in effect, and an approved
23 petition may be the basis of an immigrant visa pursuant to
24 section 203(a)(3).
25

26 (f) DETERMINATIONS OF NUMBER OF INTENDING LAWFUL PERMANENT RESIDENTS
27

28 (1) SURVEY OF PENDING AND APPROVED FAMILY-BASED PETITIONS.—The
29 Secretary of Homeland Security may require a submission from
30 petitioners with approved or pending family-based petitions filed
31 for classification under section 203(a)(1), (2)(B), (3), or (4) of
32 the Immigration and Nationality Act (as such provisions existed
33 prior to the enactment of this section) filed on or before May 1,
34 2005 to determine that the petitioner and the beneficiary have a
35 continuing commitment to the petition for the alien relative
36 under the classification. In the event the Secretary requires a
37 submission pursuant to this section, the Secretary shall take
38 reasonable steps to provide notice of such a requirement. In the
39 event that the petitioner or beneficiary is no longer committed to
40 the beneficiary obtaining an immigrant visa under this
41 classification or if the petitioner does not respond to the request
42 for a submission, the Secretary of Homeland Security may deny
43 the petition if the petition has not been adjudicated or revoke

1 the petition without additional notice pursuant to section 205 if it
2 has been approved.
3

4 (2) FIRST SURVEY OF Z NONIMMIGRANTS INTENDING TO ADJUST STATUS.—
5 The Secretary shall establish procedures by which
6 nonimmigrants described in section 101(a)(15)(Z) who seek to
7 become aliens lawfully admitted for permanent residence under
8 the merit-based immigrant system shall establish their eligibility,
9 pay any applicable fees and penalties, and file their petitions.
10 No later than the conclusion of the eighth fiscal year after the
11 effective date of section 218D of the Immigration and Nationality
12 Act, the Secretary will determine the total number of qualified
13 applicants who have followed the procedures set forth in this
14 section. The number calculated pursuant to this paragraph shall
15 be 20 percent of the total number of qualified applicants. The
16 Secretary will calculate the number of visas needed per year.
17

18 (3) SECOND SURVEY OF Z NONIMMIGRANTS INTENDING TO ADJUST
19 STATUS.—No later than the conclusion of the thirteenth fiscal year
20 after the effective date of section 218D of the Immigration and
21 Nationality Act, the Secretary will determine the total number of
22 qualified applicants not described in paragraph (2) who have
23 followed the procedures set forth in this section. The number
24 calculated pursuant to this paragraph shall be the lesser of:
25 (A) the number of qualified applicants, as determined by
26 the Secretary pursuant to this paragraph; and
27 (B) the number calculated pursuant to paragraph (2).
28

29 (g) CONFORMING AMENDMENTS.—
30

31 (1) Section 212(d)(12)(B) of the Immigration and Nationality Act
32 (8 U.S.C. 1182(d)(12)(B)) is amended by striking "201(b)(2)(A)"
33 and inserting "201(b)(2)";
34

35 (2) Section 101(a)(15)(K) of the Immigration and Nationality Act
36 (8 U.S.C. 1101(a)(15)(K)) is amended by striking
37 "201(b)(2)(A)(i)" and inserting "201(b)(2)";
38

39 (3) Section 204(a) of the Immigration and Nationality Act (8
40 U.S.C. 1154(a)) is amended by striking "201(b)(2)(A)(i)" each
41 place it appears and inserting "201(b)(2)";
42

1 (4) Section 214(r)(3)(A) of the Immigration and Nationality Act
2 (8 U.S.C. 1184(r)(3)(A)) is amended by striking
3 "201(b)(2)(A)(i)" and inserting "201(b)(2)";
4

5 **SEC. 504. CREATION OF PROCESS FOR IMMIGRATION OF FAMILY MEMBERS**
6 **IN HARDSHIP CASES.**
7

8 (a) In General- The Immigration and Nationality Act (8 U.S.C. 1101 et
9 seq.) is amended by adding a new section 203A reading:
10

11 "SEC. 203A--. IMMIGRANT VISAS FOR HARDSHIP CASES.
12

13 "(a) In general. Immigrant visas under this section may not
14 exceed 5,000per fiscal year.
15

16 "(b) Determination of eligibility. The Secretary of Homeland
17 Security may grant an immigrant visa to an applicant who
18 satisfies the following qualifications:
19

20 "(1) Family relationship. Visas under this section will be
21 given to aliens who are:
22

23 "(A) the unmarried sons or daughters of citizens of
24 the United States;
25

26 "(B) the unmarried sons or the unmarried daughters
27 of aliens lawfully admitted for permanent residence;
28

29 "(C) the married sons or married daughters of
30 citizens of the United States; or
31

32 "(D) the brothers or sisters of citizens of the United
33 States, if such citizens are at least 21 years of age,
34

35 "(2) Necessary hardship. The petitioner must demonstrate
36 to the satisfaction of the Secretary of Homeland Security
37 that the lack of an immigrant visa under this clause would
38 result in extreme hardship to the petitioner or the
39 beneficiary that cannot be relieved by temporary visits as
40 a nonimmigrant.
41

42 "(3) Ineligibility to immigrate through other means. The
43 alien described in clause (1) must be ineligible to
44 immigrate or adjust status through other means, including

1 but not limited to obtaining an immigrant visa filed for
2 classification under section 201(b)(2)(A) or section 203(a)
3 or (b) of this Act, and obtaining cancellation of removal
4 under section 240A(b) of this Act. A determination under
5 this section that an alien is eligible to immigrate through
6 other means does not foreclose or restrict any later
7 determination on the question of eligibility by the
8 Secretary of Homeland Security or the Attorney General.
9

10 “(c) Processing of applications.

11
12 “(1) An alien selected for an immigrant visa pursuant to
13 this section shall remain eligible to receive such visa only if
14 the alien files an application for an immigrant visa or an
15 application for adjustment of status within the fiscal year
16 in which the visa becomes available, or at such reasonable
17 time as the Secretary may specify after the end of the
18 fiscal year for petitions approved in the last quarter of the
19 fiscal year.
20

21 “(2) All petitions for an immigrant visa under this section
22 shall automatically terminate if not granted within the
23 fiscal year in which they were filed . The Secretary may in
24 his discretion establish such reasonable application period
25 or other procedures for filing petitions as he may deem
26 necessary in order to ensure their orderly processing
27 within the fiscal year of filing.
28

29 “(3) The secretary may reserve up to 2,500of the
30 immigrant visas under this section for approval in the
31 period between March 31 and September 30 of a fiscal
32 year.
33

34 “(d) Decisions whether an alien qualifies for an immigrant visa
35 under this section are in the unreviewable discretion of the
36 Secretary.”
37

38 **SEC. 505. ELIMINATION OF DIVERSITY VISA PROGRAM**

39
40 (a) Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151)
41 is amended—

42
43 (1) in subsection (a)—
44

1 (A) by inserting "and" at the end of paragraph (1);

2
3 (B) by striking "; and" at the end of paragraph (2) and
4 inserting a period; and

5
6 (C) by striking paragraph (3); and

7
8 (2) by striking subsection (e).

9
10 (b) Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153)
11 is amended—

12
13 (1) by striking subsection (c);

14
15 (2) in subsection (d), by striking "(a), (b), or (c)," and inserting
16 "(a) or (b),";

17
18 (3) in subsection (e), by striking paragraph (2) and
19 redesignating paragraph (3) as paragraph (2);

20
21 (4) in subsection (f), by striking "(a), (b), or (c)" and inserting
22 "(a) or (b)"; and

23
24 (5) in subsection (g), by striking "(a), (b), and (c)" and inserting
25 "(a) and (b)".

26
27 (c) Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154)
28 is amended—

29
30 (1) by striking subsection (a)(1)(I);

31
32 (2) by redesignating subparagraphs (J), (K), and (L) of
33 subsection (a)(1) as subparagraphs (I), (J), and (K),
34 respectively; and

35
36 (3) in subsection (e), by striking "(a), (b), or (c)" and inserting
37 "(a) or (b)".

38
39 (d) REPEAL OF TEMPORARY REDUCTION IN VISAS FOR OTHER WORKERS.- Section
40 203(e) of the Nicaraguan Adjustment and Central American Relief Act,
41 as amended (Public Law 105-100; 8 U.S.C. 1153 note), is repealed.

42
43 (e) EFFECTIVE DATE.—

44

1 (1) The amendments made by this section shall take effect on
2 October 1, 2008;

3
4 (2) No alien may receive lawful permanent resident status based
5 on the diversity visa program on or after the effective date of
6 this section.

7
8 (g) CONFORMING AMENDMENTS.— Section 203 of the Immigration and
9 Nationality Act (8 U.S.C. 1153(a)) is amended by redesignating
10 paragraphs (d), (e), (f), (g), and (h) as paragraphs (c), (d), (e), (f),
11 and (g), respectively.

12
13 **SEC. 506. FAMILY VISITOR VISAS.**

14
15 (a) Section 101(a)(15)(B) of the Immigration and Nationality Act (8
16 U.S.C. 1101(a)(15)(B)) is amended to read as follows:

17
18 `` (B) an alien (other than one coming for the purpose of study
19 or of performing skilled or unskilled labor or as a representative
20 of foreign press, radio, film, or other foreign information media
21 coming to engage in such vocation) having a residence in a
22 foreign country which he or she has no intention of abandoning
23 and who is visiting the United States temporarily for business or
24 temporarily for pleasure. The requirement that the alien have a
25 residence in a foreign country which the alien has no intention of
26 abandoning shall not apply to an alien described in section
27 214(s) who is seeking to enter as a temporary visitor for
28 pleasure;”.

29
30 (b) Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184)
31 is amended by adding at the end the following new subsection:

32
33 `` (s) Parent Visitor Visas

34
35 `` (1) In General.--The parent of a United States citizen at least 21
36 years of age, or the spouse or child of an alien in nonimmigrant status
37 under 101(a)(15)(Y)(i), demonstrating satisfaction of the requirements
38 of this subsection may be granted a nonimmigrant visa under section
39 101(a)(15)(B) as a temporary visitor for pleasure.

40
41 `` (2) Requirements.—An alien seeking a nonimmigrant visa under this
42 subsection must demonstrate through presentation of such
43 documentation as the Secretary may by regulations prescribe, that—
44

1 `` (A) the alien's United States citizen son or daughter who is at
2 least 21 years of age or the alien's spouse or parent in
3 nonimmigrant status under 101(a)(15)(Y)(i), is sponsoring the
4 alien's visit to the United States;

5
6 `` (B) the sponsoring United States citizen, or spouse or parent
7 in nonimmigrant status under 101(a)(15)(Y)(i), has, according
8 to such procedures as the Secretary may by regulations
9 prescribe, posted on behalf of the alien a bond in the amount of
10 \$1,000, which shall be forfeit if the alien overstays the
11 authorized period of admission (except as provided in
12 subparagraph (5)(B)) or otherwise violates the terms and
13 conditions of his or her nonimmigrant status; and

14
15 `` (C) the alien, the sponsoring United States citizen son or
16 daughter, or the spouse or parent in nonimmigrant status under
17 101(a)(15)(Y)(i), possesses the ability and financial means to
18 return the alien to his or her country of residence.

19
20 `` (3) Terms and Conditions.—An alien admitted as a visitor for
21 pleasure under the provisions of this subsection—

22
23 `` (A) may not stay in the United States for an aggregate period
24 in excess of 30 days within any calendar year.

25
26 `` (B) must, according to such procedures as the Secretary may
27 by regulations prescribe, register with the Secretary upon
28 departure from the United States; and

29
30 `` (C) may not be issued employment authorization by the
31 Secretary or be employed.

32
33 `` (4) Certification.—

34
35 `` (A) Report.—No later than January 1 of each year, the
36 Secretary of Homeland Security shall submit a written report to
37 Congress estimating the percentage of aliens admitted to the
38 United States during the preceding fiscal year as visitors for
39 pleasure under the terms and conditions of this subsection who
40 have remained in the United States beyond their authorized
41 period of admission (except as provided in subparagraph
42 (5)(B)). When preparing this report, the Secretary shall
43 determine which countries, if any, have a disproportionately high

1 rate of nationals overstaying their period of authorized admission
2 under this subsection.

3
4 `` (B) Termination of Eligibility of Nationals of Certain
5 Countries.— Except as provided in subparagraph (C), if the
6 Secretary reports under subparagraph (A) for two consecutive
7 fiscal years that the percentage of aliens overstaying their period
8 of authorized admission exceeds 7%, the Secretary may, in his
9 discretion, determine that no more visas under this section may
10 be issued for those countries whose nationals have a
11 disproportionately high rate of aliens overstaying their period of
12 authorized admission under this subsection.

13
14 `` (C) Termination of the Program.— Notwithstanding
15 subparagraph (B), if the Secretary reports under subparagraph
16 (A) for two consecutive fiscal years that the percentage of aliens
17 overstaying their period of authorized admission under this
18 subsection exceeds 7% and the percentage is not significantly
19 affected by countries whose nationals have a disproportionately
20 high rate of aliens overstaying their period of authorized
21 admission, the Secretary may, in his discretion, determine that
22 no more visas may be issued under this subsection as of the
23 date of the second consecutive report described in subparagraph
24 (A) finding an overstay rate in excess of 7%

25
26 `` (D) Effect on Existing Visas.—In the event the Secretary
27 determines to that no more visas shall be issued under
28 subparagraphs (B) or (C), all visas previously issued under this
29 subsection and still valid on the date that the Secretary
30 determines that no more visas should be issued shall expire on
31 the visa's date of expiration or 12 months after the date of the
32 determination, whichever is soonest.

33
34 `` (5) Permanent Bars for Overstays.—

35
36 ``(A) In General.--Any alien admitted as a visitor for pleasure
37 under the terms and conditions of this subsection who remains in
38 the United States beyond his or her authorized period of
39 admission is permanently barred from any future immigration
40 benefits under the immigration laws, except—

41
42 ``(i) asylum under section 208(a);

43
44 ``(ii) withholding of removal under section 241(b)(3); or

1
2 “(iii) protection under the Convention Against Torture and
3 Other Cruel, Inhuman or Degrading Treatment or
4 Punishment, done at New York December 10, 1984.
5

6 “(B) Exception.—Overstay of the authorized period of admission
7 granted to aliens admitted as visitors for pleasure under the
8 terms and conditions of this subsection may be excused in the
9 discretion of the Secretary where it is demonstrated that:

10
11 “(i) the period of overstay was due to extraordinary
12 circumstances beyond the control of the applicant, and the
13 Secretary finds the period commensurate with the
14 circumstances; and

15
16 “(ii) the alien has not otherwise violated his or her
17 nonimmigrant status.
18

19 “(6) Bar on Sponsor of Overstay.—The United States citizen or Y-1
20 nonimmigrant sponsor of an alien—

21
22 “(A) admitted as a visitor for pleasure under the terms and
23 conditions of this subsection, and

24
25 “(B) who remains in the United States beyond his or her
26 authorized period of admission,
27

28 shall be permanently barred from sponsoring that alien or any other
29 alien for admission as a visitor for pleasure under the terms and
30 conditions of this subsection, and, in the case of a Y-1 nonimmigrant
31 sponsor, shall have his Y-1 nonimmigrant status terminated.
32

33 “(7) Construction.—Nothing in this subsection shall be construed,
34 except as provided in this subsection, to make inapplicable the
35 requirements for admissibility and eligibility, as well as the terms and
36 conditions of admission, as a nonimmigrant under section
37 101(a)(15)(B).”.

38
39 **SEC. 507. PREVENTION OF VISA FRAUD**

40
41 (a) Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154)
42 is amended by adding a paragraph at the end:
43

1 “(h) Fraud Prevention. – The Secretary of Homeland Security
2 may audit and evaluate the information furnished as part of the
3 applications filed under subsection (a) and refer evidence of
4 fraud to appropriate law enforcement agencies based on the
5 audit information.”.

6
7 (b) Sections 286(v)(2)(B) and (C) of the Immigration and Nationality
8 Act (8 U.S.C. 1356(v)(2)(B), (C)) are amended to read as follows:

9
10 “(B) Secretary of Homeland Security -- One-third of the
11 amounts deposited into the Fraud Prevention and Detection
12 Account shall remain available to the Secretary of Homeland
13 Security until expended for programs and activities to prevent
14 and detect immigration benefit fraud, including but not limited
15 to fraud with respect to petitions under paragraph (1) or (2)(A)
16 of section 214(c) to grant an alien nonimmigrant status
17 described in subparagraph (H)(i), (H)(ii), or (L) of section
18 101(a)(15).

19
20 “(C) Secretary of Labor - One third of the amounts deposited
21 into the Fraud Prevention and Detection Account shall remain
22 available to the Secretary of Labor until expended for
23 enforcement programs and activities described in section 212(n),
24 and for enforcement programs, and fraud detection and
25 prevention activities not otherwise authorized under 212(n), to
26 be conducted by the Secretary of Labor that focus on industries
27 likely to employ nonimmigrants.”.

28
29 **SEC. 508. INCREASING PER-COUNTRY LIMITS FOR FAMILY-BASED AND**
30 **EMPLOYMENT-BASED IMMIGRANTS**

31
32 (a) Section 202(a) of the Immigration and Nationality Act (8 U.S.C.
33 1152(a)) is amended by amending paragraph (2) to read as follows:

34
35 “(2) Per country levels for family-sponsored and merit-based
36 immigrants. – Subject to paragraphs (3), (4), (5), (6), and (7),
37 the total number of immigrant visas made available to natives of
38 any single foreign state or dependent area under subsections (a)
39 and (b) of section 203 in any fiscal year may not exceed 10
40 percent (in the case of a single foreign state) or 3 percent (in the
41 case of a dependent area) of the total number of such visas
42 made available under such subsections in that fiscal year;

1 (b) Section 202(a) of the Immigration and Nationality Act (8 U.S.C.
2 1152(a) is amended by adding at the end the following:

3
4 "(6) Rules for certain family-based petition filed before May 1,
5 2005.— In the event that the per country levels in paragraph (2)
6 prevent the use of otherwise available visas described in section
7 201(c)(1)(B), then the per country level will not apply for such
8 visas.

9
10 "(7) Exception for Z nonimmigrants.— Paragraph (2) shall not
11 apply to aliens who are nonimmigrants described in section
12 101(a)(15)(Z) of this Act who are eligible to seek lawful
13 permanent resident status based on a petition for classification
14 under section 203(b)(1) of this Act."

15
16 **SEC. 509. EXEMPTION FROM IMMIGRANT VISA LIMIT.**

17 Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended by inserting after
18 subparagraph (G), as added by section 503 of this Act, the following:

19 "(H) Aliens who are eligible for a visa under paragraph (1) or (3) of
20 section 203(a) and who have a parent who was naturalized pursuant to
21 section 405 of the Immigration Act of 1990 (8 U.S.C. 1440 note)."

1 **TITLE VI—NONIMMIGRANTS IN THE UNITED STATES**
2 **PREVIOUSLY IN UNLAWFUL STATUS**

3 **SEC. 601.**

4 (a) In General- Notwithstanding any other provision of law,
5 (including section 244(h) of the Immigration and Nationality Act
6 (hereinafter "the Act") (8 U.S.C. 1254a(h)), the Secretary may
7 permit an alien, or dependent of such alien, described in this
8 section, to remain lawfully in the United States under the
9 conditions set forth in this Title.

10
11 (b) Definition of Z nonimmigrants- Section 101(a)(15) of the Act
12 (8 U.S.C. 1101(a)(15)) is amended by inserting at the end the
13 following new subparagraph-

14
15 "(Z) subject to Title VI of the [Insert title of Act], an alien
16 who—

17
18 "(i) is physically present in the United States, has
19 maintained continuous physical presence in the United
20 States since January 1, 2007, is employed, and seeks to
21 continue performing labor, services or education; or

22
23 "(ii) is physically present in the United States, has
24 maintained continuous physical presence in the United
25 States since January 1, 2007, and

26
27 "(I) is the spouse or parent (65 years of age or older) of
28 an alien described in (i); or

29
30 "(II) was, within two years of the date on which [NAME
31 OF THIS ACT] was introduced, the spouse of an alien
32 who was subsequently classified as a Z nonimmigrant
33 under this section, or is eligible for such classification,
34 if—

35
36 "(aa) the termination of the relationship with such
37 spouse was connected to domestic violence; and

38
39 "(bb) the spouse has been battered or subjected to
40 extreme cruelty by the spouse or parent who is a Z
41 nonimmigrant.
42

1 “(iii) is under 18 years of age at the time of application for
2 nonimmigrant status under this subparagraph, is physically
3 present in the United States, has maintained continuous
4 physical presence in the United States since January 1,
5 2007, and was born to or legally adopted by at least one
6 parent who is at the time of application described in (i) or
7 (ii).”
8

9 (c) Presence in the United States-

10
11 (1) IN GENERAL- The alien shall establish that the alien
12 was not present in lawful status in the United States on
13 January 1, 2007, under any classification described in
14 section 101(a)(15) of the Act (8 U.S.C. 1101(a)(15)) or
15 any other immigration status made available under a
16 treaty or other multinational agreement that has been
17 ratified by the Senate.
18

19 (2) CONTINUOUS PRESENCE- For purposes of this section,
20 an absence from the United States without authorization
21 for a continuous period of 90 days or more than 180 days
22 in the aggregate shall constitute a break in continuous
23 physical presence.
24

25 (d) Other Criteria-

26
27 (1) GROUNDS OF INELIGIBILITY- An alien is ineligible for
28 Z nonimmigrant status if the Secretary determines that the
29 alien—
30

31 (A) (1) is inadmissible to the United States under
32 section 212(a) of the Act (8 U.S.C. 1182(a)), except
33 as provided in paragraph (2);
34

35 “(2) Nothing in this paragraph shall require the
36 Secretary to commence removal proceedings against
37 an alien.
38

39 (B) is subject to the execution of an outstanding
40 administratively final order of removal, deportation,
41 or exclusion;
42

43 (C) is described in or is subject to section 241(a)(5)
of the Act;

1 (D) has ordered, incited, assisted, or otherwise
2 participated in the persecution of any person on
3 account of race, religion, nationality, membership in
4 a particular social group, or political opinion;

5
6 (E) is an alien--

7
8 (i) for whom there are reasonable grounds for
9 believing that the alien has committed a
10 serious criminal offense as described in section
11 101(h) of the Act outside the United States
12 before arriving in the United States; or

13
14 (ii) for whom there are reasonable grounds for
15 regarding the alien as a danger to the security
16 of the United States; or

17
18 (F) has been convicted of—

19
20 (i) a felony;

21
22 (ii) an aggravated felony as defined at section
23 101(a)(43) of the Act;

24
25 (iii) 3 or more misdemeanors under Federal or
26 State law; or

27
28 (iv) a serious criminal offense as described in
29 section 101(h) of the Act;

30
31 (G) has entered or attempted to enter the United
32 States illegally on or after January 1, 2007; and

33
34 (H) with respect to an applicant for Z-2 or Z-3
35 nonimmigrant status, a Z-2 nonimmigrant, or a Z-3
36 nonimmigrant who is under 18 years of age, the
37 alien is ineligible for Z nonimmigrant status if the
38 principal Z-1 nonimmigrant or Z-1 nonimmigrant
39 status applicant is ineligible.

40
41 (I) The Secretary may in his discretion waive
42 ineligibility under subparagraph (B) or (C) if the alien
43 has not been physically removed from the United
44 States and if the alien demonstrates that his

1 departure from the United States would result in
2 extreme hardship to the alien or the alien's spouse,
3 parent or child.
4

5 (2) GROUNDS OF INADMISSIBILITY-

6
7 (A) In General.—In determining an alien's
8 admissibility under paragraph (1)(A)—
9

10 (i) paragraphs (6)(A)(i) (with respect to an
11 alien present in the United States without
12 being admitted or paroled before the date of
13 application, but not with respect to an alien
14 who has arrived in the United States on or
15 after January 1, 2007), (6)(B), (6)(C)(i),
16 (6)(C)(ii), (6)(D), (6)(F), (6)(G), (7), (9)(B),
17 (9)(C)(i)(I), and (10)(B) of section 212(a) of
18 the Act shall not apply, but only with respect to
19 conduct occurring or arising before the date of
20 application;

21
22 (ii) the Secretary may not waive--

23
24 (I) subparagraph (A), (B), (C), (D)(ii),
25 (E), (F), (G), (H), or (I) of section
26 212(a)(2) of the Act (relating to
27 criminals);

28 (II) section 212(a)(3) of the Act (relating
29 to security and related grounds);

30 (iii) with respect to an application for Z
31 nonimmigrant status, section
32 212(a)(6)(C)(i) of the Act;

33 (IV) paragraph (6)(A)(i) of section
34 212(a) of the Act (with respect to any
35 entries occurring on or after January 1,
36 2007);

37 (V) section 212(a)(9)(C)(i)(II);

38 (VI) subparagraph (A), (C), or (D) of
39 section 212(a)(10) of the Act (relating to
40 polygamists, child abductors, and
41 unlawful voters);
42

43 (iii) the Secretary may in his discretion waive
44 the application of any provision of section

1 212(a) of the Act not listed in subparagraph
2 (B) on behalf of an individual alien for
3 humanitarian purposes, to ensure family unity,
4 or if such waiver is otherwise in the public
5 interest; and
6

7 (B) Construction.—Nothing in this paragraph shall be
8 construed as affecting the authority of the Secretary
9 other than under this paragraph to waive the
10 provisions of section 212(a) of the Act.
11

12 (e) Eligibility Requirements.--To be eligible for Z nonimmigrant
13 status an alien shall meet the following and any other applicable
14 requirements set forth in this section:
15

16 (1) Eligibility- The alien must not fall within a class of
17 aliens ineligible for Z nonimmigrant status listed under
18 subsection (d)(1).
19

20 (2) Admissibility- The alien must not be inadmissible as a
21 nonimmigrant to the United States under section 212,
22 except as provided in subsection (d)(2), regardless of
23 whether the alien has previously been admitted to the
24 United States.
25

26 (3) Presence- To be eligible for Z-1 or Z-2 nonimmigrant
27 status, or for nonimmigrant status under section
28 101(a)(15)(Z)(iii)(I), the alien must—
29

30 (A) have been physically present in the United States
31 before January 1, 2007, and have maintained
32 continuous physical presence in the United States
33 since that date;
34

35 (B) be physically present in the United States on the
36 date of application for Z nonimmigrant status; and
37

38 (C) be on January 1, 2007, and on the date of
39 application for Z nonimmigrant status, not present in
40 lawful status in the United States under any
41 classification described in section 101(a)(15) of the
42 Immigration and Nationality Act (8 U.S.C.
43 1101(a)(15)) or any other immigration status made

1 available under a treaty or other multinational
2 agreement that has been ratified by the Senate.
3

4 (4) Employment- An alien seeking Z-1 nonimmigrant
5 status must be employed in the United States on the date
6 of filing of the application for Z-1 nonimmigrant status.
7

8 (6) Fees and Penalties-

9
10 (A) Processing Fees.—

11
12 (i) An alien making an initial application for Z
13 nonimmigrant status shall be required to pay a
14 processing fee in an amount sufficient to recover the
15 full cost of adjudicating the application, but no more
16 than \$1,500 for a single Z nonimmigrant.
17

18 (ii) An alien applying for extension of his Z
19 nonimmigrant status shall be required to pay a
20 processing fee in an amount sufficient to cover
21 administrative and other expenses associated with
22 processing the extension application, but no more
23 than \$1,500 for a single Z nonimmigrant.
24

25 (B) Penalties.—

26
27 (i) An alien making an initial application for Z-1
28 nonimmigrant status shall be required to pay, in
29 addition to the processing fee in subparagraph (A), a
30 penalty of \$1,000.
31

32 (ii) A Z-1 nonimmigrant making an initial application
33 for Z-1 nonimmigrant status shall be required to pay
34 a \$500 penalty for each alien seeking Z-2 or Z-3
35 nonimmigrant status derivative to the Z-1 applicant.
36

37 (iii) An alien who is a Z-2 or Z-3 nonimmigrant and
38 who has not previously been a Z-1 nonimmigrant,
39 and who changes status to that of a Z-1
40 nonimmigrant, shall in addition to processing fees be
41 required to pay the initial application penalties
42 applicable to Z-1 nonimmigrants.
43

1 (C) State Impact Assistance Fee- In addition to any
2 other amounts required to be paid under this
3 subsection, a Z-1 nonimmigrant making an initial
4 application for Z-1 nonimmigrant status shall be
5 required to pay a State impact assistance fee equal to
6 \$500.
7

8 (D) Deposit and Spending of Fees.—The processing fees
9 under subparagraph (A) shall be deposited and remain
10 available until expended as provided by sections
11 286(m) and (n).
12

13 (E) Deposit, Allocation, and Spending of Penalties.—
14

15 (i) Deposit of Penalties.--The penalty under
16 subparagraph (B) shall be deposited and remain
17 available as provided by section 286(w).
18

19 (ii) Deposit of State Impact Assistance Funds.—The
20 funds under subparagraph (C) shall be deposited and
21 remain available as provided by section 286(x).
22

23 (7) Interview- An applicant for Z nonimmigrant status
24 must appear to be interviewed.
25

26 (8) Military Selective Service.- The alien shall establish
27 that if the alien is within the age period required under the
28 Military Selective Service Act (50 U.S.C. App. 451 et seq.)
29 that such alien has registered under that Act.
30

31 (f) Application Procedures.—
32

33 (1) In General.--The Secretary of Homeland Security shall
34 prescribe by notice in the Federal Register, in accordance
35 with the procedures described in section 610 of the [NAME
36 OF THIS ACT], the procedures for an alien in the United
37 States to apply for Z nonimmigrant status and the
38 evidence required to demonstrate eligibility for such
39 status.
40

41 (2) Initial Receipt of Applications.--The Secretary of
42 Homeland Security, or such other entities as are
43 authorized by the Secretary to accept applications under
44 the procedures established under this subsection, shall

1 accept applications from aliens for Z nonimmigrant status
2 for a period of one year starting the first day of the first
3 month beginning no more than 180 days after the date of
4 enactment of this section. If, during the one-year initial
5 period for the receipt of applications for Z nonimmigrant
6 status, the Secretary of Homeland Security determines
7 that additional time is required to register applicants for Z
8 nonimmigrant status, the Secretary may in his discretion
9 extend the period for accepting applications by up to 12
10 months.

11
12 (3) Biometric Data.--Each alien applying for Z
13 nonimmigrant status must submit biometric data in
14 accordance with procedures established by the Secretary
15 of Homeland Security.

16
17 (g) Content of Application Filed by Alien.—

18
19 (1) Application Form.--The Secretary of Homeland Security
20 shall create an application form that an alien shall be
21 required to complete as a condition of obtaining Z
22 nonimmigrant status.

23
24 (2) Application Information-

25
26 (A) In General.--The application form shall request
27 such information as the Secretary deems necessary
28 and appropriate, including but not limited to,
29 information concerning the alien's physical and
30 mental health; complete criminal history, including
31 all arrests and dispositions; gang membership,
32 renunciation of gang affiliation; immigration history;
33 employment history; and claims to United States
34 citizenship.

35
36 (3) Security and Law Enforcement Background Checks-

37
38 (A) Submission of Fingerprints- The Secretary may
39 not accord Z nonimmigrant status unless the alien
40 submits fingerprints and other biometric data in
41 accordance with procedures established by the
42 Secretary.
43

1 (B) Background Checks- The Secretary shall utilize
2 fingerprints and other biometric data provided by the
3 alien to conduct appropriate background checks of
4 such alien to search for criminal, national security, or
5 other law enforcement actions that would render the
6 alien ineligible for classification under this section.
7

8 (h) Treatment of Applicants-

9
10 (1) IN GENERAL- An alien who files an application for Z
11 nonimmigrant status shall, upon submission of any
12 evidence required under paragraphs (f) and (g) and after
13 the Secretary has conducted appropriate background
14 checks, to include name and fingerprint checks, that have
15 not by the end of the next business day produced
16 information rendering the applicant ineligible -
17

18 (A) be granted probationary benefits in the form of
19 employment authorization pending final adjudication
20 of the alien's application;
21

22 (B) may in the Secretary's discretion receive
23 advance permission to re-enter the United States
24 pursuant to existing regulations governing advance
25 parole;
26

27 (C) may not be detained for immigration purposes,
28 determined inadmissible or deportable, or removed
29 pending final adjudication of the alien's application,
30 unless the alien is determined to be ineligible for Z
31 nonimmigrant status; and
32

33 (D) may not be considered an unauthorized alien (as
34 defined in section 274A(h)(3) of the Immigration and
35 Nationality Act (8 U.S.C. 1324a(h)(3))) unless
36 employment authorization under subparagraph (A) is
37 denied.
38

39 (2) Timing of Probationary Benefits.—No probationary
40 benefits shall be issued to an alien until the alien has
41 passed all appropriate background checks or the end of the
42 next business day, whichever is sooner.
43

44 (3) Construction. Nothing in this section shall be construed

1 to limit the Secretary's authority to conduct any
2 appropriate background and security checks subsequent to
3 issuance of evidence of probationary benefits under
4 paragraph (4).
5

6 (4) Probationary Authorization Document - The Secretary
7 shall provide each alien described in paragraph (1) with a
8 counterfeit-resistant document that reflects the benefits
9 and status set forth in paragraph (h) (1). The Secretary
10 may by regulation establish procedures for the issuance of
11 documentary evidence of probationary benefits and,
12 except as provided herein, the conditions under which such
13 documentary evidence expires, terminates, or is renewed.
14 All documentary evidence of probationary benefits shall
15 expire no later than six months after the date on which the
16 Secretary begins to approve applications for Z
17 nonimmigrant status.
18

19 (5) Before Application Period- If an alien is apprehended
20 between the date of enactment and the date on which the
21 period for initial registration closes under subsection (f)(2),
22 and the alien can establish prima facie eligibility for Z
23 nonimmigrant status, the Secretary shall provide the alien
24 with a reasonable opportunity to file an application under
25 this section after such regulations are promulgated.
26

27 (6) During Certain Proceedings- Notwithstanding any
28 provision of the Act, if the Secretary determines that an
29 alien who is in removal proceedings is prima facie eligible
30 for Z nonimmigrant status, then the Secretary shall
31 affirmatively communicate such determination to the
32 immigration judge. The immigration judge shall then
33 terminate or administratively close such proceedings and
34 permit the alien a reasonable opportunity to apply for such
35 classification.
36

37 (i) Adjudication of Application Filed by Alien.—
38

39 (1) In General.--The Secretary may approve the issuance
40 of documentation of status, as described in subsection (j),
41 to an applicant for a Z nonimmigrant visa who satisfies the
42 requirements of this section.

1 (2) Evidence of Continuous Physical Presence,
2 Employment, or Education.—

3 (A) Presumptive Documents- A Z nonimmigrant or
4 an applicant for Z nonimmigrant status may
5 presumptively establish satisfaction of each required
6 period of presence, employment, or study by
7 submitting records to the Secretary that
8 demonstrate such presence, employment, or study,
9 and that the Secretary verifies have been maintained
10 by the Social Security Administration, the Internal
11 Revenue Service, or any other Federal, State, or
12 local government agency.

13 (B) Verification.—Each Federal agency, and each
14 State or local government agency, as a condition of
15 receipt of any funds under Section 286(x), shall
16 within 90 days of enactment ensure that procedures
17 are in place under which such agency shall—

18 (i) consistent with all otherwise applicable
19 laws, including but not limited to laws
20 governing privacy, provide documentation to
21 an alien upon request to satisfy the
22 documentary requirements of this paragraph;
23 or

24 (ii) notwithstanding any other provision of law,
25 including section 6103 of title 26, United
26 States Code, provide verification to the
27 Secretary of documentation offered by an alien
28 as evidence of

29 (a) presence or employment required
30 under this section, or

31 (b) a requirement for any other benefit
32 under the immigration laws.

33 (C) Other Documents- A Z nonimmigrant or an
34 applicant for Z nonimmigrant status who is unable to
35 submit a document described in subparagraph (i)
36 may establish satisfaction of each required period of
37 presence, employment, or study by submitting to the

1 Secretary at least 2 other types of reliable
2 documents that provide evidence of employment,
3 including—
4

- 5 (I) bank records;
- 6 (II) business records;
- 7 (III) employer records;
- 8 (IV) records of a labor union or day labor
9 center; and
- 10 (V) remittance records.

11
12 (D) ADDITIONAL DOCUMENTS - The Secretary
13 may—

- 14 (i) designate additional documents to evidence
15 the required period of presence, employment,
16 or study; and
- 17 (ii) set such terms and conditions on the use of
18 affidavits as is necessary to verify and confirm
19 the identity of any affiant or otherwise prevent
20 fraudulent submissions.

21
22 (3) PAYMENT OF INCOME TAXES.--

23 (A) IN GENERAL.--Not later than the date on which
24 status is adjusted under this section, the alien establishes
25 the payment of any applicable Federal tax liability by
26 establishing that--

27 (i) no such tax liability exists;

28 (ii) all outstanding liabilities have been paid; or

29 (iii) the alien has entered into an agreement for
30 payment of all outstanding liabilities with the Internal
31 Revenue Service.

32 (B) APPLICABLE FEDERAL TAX LIABILITY.--For purposes
33 of clause (i), the term 'applicable Federal tax liability'
34 means liability for Federal taxes, including penalties and
35 interest, owed for any year during the period of
36 employment required by subparagraph (D)(i) for which the
37 statutory period for assessment of any deficiency for such
38 taxes has not expired.

1 (C) IRS COOPERATION.--The Secretary of the Treasury
2 shall establish rules and procedures under which the
3 Commissioner of Internal Revenue shall provide
4 documentation to an alien upon request to establish the
5 payment of all taxes required by this subparagraph.

6 (D) IN GENERAL.--The alien may satisfy such
7 requirement by establishing that--

8 (i) no such tax liability exists;

9 (ii) all outstanding liabilities have been met; or

10 (iii) the alien has entered into an agreement for
11 payment of all outstanding liabilities with the Internal
12 Revenue Service and with the department of revenue of
13 each State to which taxes are owed.

14
15 (4) BURDEN OF PROOF- An alien who is applying for a Z
16 nonimmigrant visa under this section shall prove, by a
17 preponderance of the evidence, that the alien has satisfied
18 the requirements of this section.

19
20 (5) DENIAL OF APPLICATION.—

21
22 (i) An alien who fails to satisfy the eligibility
23 requirements for a Z nonimmigrant visa shall have
24 his application denied and may not file additional
25 applications.

26
27 (ii) An alien who fails to submit requested initial
28 evidence, including requested biometric data, and
29 requested additional evidence by the date required
30 by the Secretary shall, except where the alien
31 demonstrates to the satisfaction of the Secretary
32 that such failure was reasonably excusable or was
33 not willful, have his application considered
34 abandoned. Such application shall be denied and the
35 alien may not file additional applications.

36
37 (j) Evidence of Nonimmigrant Status.—

38 (1) In General.--Documentary evidence of nonimmigrant
39 status shall be issued to each Z nonimmigrant.
40

1 (2) Features of Documentation.--Documentary evidence of
2 Z nonimmigrant status:

3
4 (A) shall be machine-readable, tamper-resistant, and
5 shall contain a digitized photograph and other
6 biometric identifiers that can be authenticated;

7 (B) shall be designed in consultation with U.S.
8 Immigration and Customs Enforcement's Forensic
9 Document Laboratory;

10 (C) shall, during the alien's authorized period of
11 admission under subsection (k), serve as a valid
12 travel and entry document for the purpose of
13 applying for admission to the United States where
14 the alien is applying for admission at a Port of Entry.

15 (D) may be accepted during the period of its validity
16 by an employer as evidence of employment
17 authorization and identity under section
18 274A(b)(1)(B); and

19 (E) shall be issued to the Z nonimmigrant by the
20 Secretary of Homeland Security promptly after final
21 adjudication of such alien's application for Z
22 nonimmigrant status, except that an alien may not
23 be granted permanent Z nonimmigrant status until
24 all appropriate background checks on the alien are
25 completed to the satisfaction of the Secretary of
26 Homeland Security.

27
28 (k) Period of Authorized Admission-

29
30 (1) Initial Period.—The initial period of authorized
31 admission as a Z nonimmigrant shall be four years.

32
33 (2) Extensions-

34 (A) In General.—Z nonimmigrants may seek an
35 indefinite number of four-year extensions of the
36 initial period of authorized admission.

37 (B) Requirements.—In order to be eligible for an
38 extension of the initial or any subsequent period of
39 authorized admission under this paragraph, an alien
40 must satisfy the following requirements:

1 (i) Eligibility.—The alien must demonstrate
2 continuing eligibility for Z nonimmigrant
3 status;

4 (ii) English Language and Civics.—

5
6 (I) Requirement at First Renewal.--At or
7 before the time of application for the first
8 extension of Z nonimmigrant status, an
9 alien who is 18 years of age or older
10 must demonstrate an attempt to gain an
11 understanding of the English language
12 and knowledge of United States civics by
13 taking the naturalization test described in
14 sections 312(a)(1) and (2) by
15 demonstrating enrollment in or
16 placement on a waiting list for English
17 classes.

18 (II) Requirement at Second Renewal.--
19 At or before the time of application for
20 the second extension of Z nonimmigrant
21 status, an alien who is 18 years of age or
22 older must pass the naturalization test
23 described in sections 312(a)(1) and (2).
24 The alien may make up to three
25 attempts to demonstrate such
26 understanding and knowledge but must
27 satisfy this requirement prior to the
28 expiration of the second extension of Z
29 nonimmigrant status.

30 (III) Exception.--The requirement of
31 subclauses (I) and (II) shall not apply to
32 any person who, on the date of the filing
33 of the person's application for an
34 extension of Z nonimmigrant status--

35
36 (aa) is unable because of physical
37 or developmental disability or
38 mental impairment to comply
39 therewith;

40
41 (bb) is over fifty years of age and
42 has been living in the United States

1 for periods totaling at least twenty
2 years, or

3
4 (cc) is over fifty-five years of age
5 and has been living in the United
6 States for periods totaling at least
7 fifteen years.
8

9 (iii) Employment.—With respect to an
10 extension of Z-1 or Z-3 nonimmigrant status
11 an alien must demonstrate satisfaction of the
12 employment or study requirements provided in
13 subsection (m) during the alien’s most recent
14 authorized period of stay as of the date of
15 application; and

16
17 (iv) Fees.—The alien must pay a processing fee
18 in an amount sufficient to recover the full cost
19 of adjudicating the application, but no more
20 than \$1,500 for a single Z nonimmigrant.
21

22 (C) Security and Law Enforcement Background
23 Checks.—An alien applying for extension of Z
24 nonimmigrant status may be required to submit to a
25 renewed security and law enforcement background
26 check that must be completed to the satisfaction of
27 the Secretary of Homeland Security before such
28 extension may be granted.
29

30 (D) Timely Filing and Maintenance of Status.

31
32 (i) In General.--An extension of stay under this
33 paragraph, or a change of status to another Z
34 nonimmigrant status under subsection (l), may
35 not be approved for an applicant who failed to
36 maintain Z nonimmigrant status or where such
37 status expired or terminated before the
38 application was filed.
39

40 (ii) Exception.--Failure to file before the period
41 of previously authorized status expired or
42 terminated may be excused in the discretion of
43 the Secretary and without separate application,

1 with any extension granted from the date the
2 previously authorized stay expired, where it is
3 demonstrated at the time of filing that:

4
5 (I) the delay was due to extraordinary
6 circumstances beyond the control of the
7 applicant, and the Secretary finds the
8 delay commensurate with the
9 circumstances; and

10
11 (II) the alien has not otherwise violated
12 his Z nonimmigrant status.

13
14 (iii) Exemptions from Penalty and Employment
15 Requirements.—An alien demonstrating
16 extraordinary circumstances under clause (ii),
17 including the spouse of a Z-1 nonimmigrant
18 who has been battered or has been the subject
19 of extreme cruelty perpetrated by the Z-1
20 nonimmigrant, and who is changing to Z-1
21 nonimmigrant status, may be exempted by the
22 Secretary, in his discretion, from—

23
24 (I) the requirements under subsection
25 (m) for a period of up to 180 days; and

26
27 (II) the penalty provisions of section
28 (e)(6)(B)(iii), except that the alien must
29 pay the penalty under section (e)(6)(B)
30 at the time of application for the alien's
31 first subsequent extension of Z-1
32 nonimmigrant status.

33
34 (E) Bars to Extension- Except as provided in
35 subparagraph (D), a Z nonimmigrant shall not be
36 eligible to extend such nonimmigrant status if:

37 (i) the alien has violated any term or condition
38 of his or her Z nonimmigrant status, including
39 but not limited to failing to comply with the
40 change of address reporting requirements
41 under section 265;

1 (ii) the period of authorized admission of the Z
2 nonimmigrant has been terminated for any
3 reason; or

4 (iii) with respect to a Z-2 or Z-3 nonimmigrant,
5 the principal alien's Z-1 nonimmigrant status
6 has been terminated.

7
8 (l) Change of Status.—

9
10 (1) Change from Z Nonimmigrant Status.—

11
12 (A) In General.--A Z nonimmigrant may not change
13 status under section 248 to another nonimmigrant
14 status, except another Z nonimmigrant status or
15 status under subparagraph (U) of section
16 101(a)(15).

17
18 (B) Change from Z-A Status.—A Z-A nonimmigrant
19 may change status to Z nonimmigrant status at the
20 time of renewal referenced in section 214A(j)(1)(C)
21 of the Immigration and Nationality Act.

22
23 (B) Limit on Changes.—A Z nonimmigrant may not
24 change status more than one time per 365-day
25 period. The Secretary may, in his discretion, waive
26 the application of this subparagraph to an alien if it is
27 established to the satisfaction of the Secretary that
28 application of this subparagraph would result in
29 extreme hardship to the alien.

30
31 (2) No Change to Z Nonimmigrant Status.--A
32 nonimmigrant under the immigration laws may not change
33 status under section 248 to Z nonimmigrant status.

34
35 (m) Employment.—

36
37 (1) Z-1 and Z-3 Nonimmigrants.—

38
39 (A) In General.--Z-1 and Z-3 nonimmigrants shall be
40 authorized to work in the United States.

41
42 (B) Continuous Employment Requirement.— All
43 requirements that an alien be employed or seeking

1 employment for purposes of this Title shall not apply
2 to an alien who is under 16 years or over 65 years of
3 age. A Z-1 or Z-3 nonimmigrant between 16 and 65
4 years of age must remain continuously employed full
5 time in the United States as a condition of such
6 nonimmigrant status, except where—
7

8 (i) the alien is pursuing a full course of study
9 at an established college, university, seminary,
10 conservatory, trade school, academic high
11 school, elementary school, or other academic
12 institution or language training program;
13

14 (ii) the alien is employed while also engaged in
15 study at an established college, university,
16 seminary, conservatory, academic high school,
17 elementary school, or other academic
18 institution or language training program;
19

20 (iii) the alien cannot demonstrate employment
21 because of a physical or mental disability (as
22 defined under section 3(2) of the Americans
23 with Disabilities Act of 1990 (42 U.S.C.
24 12102(2)) or as a result of pregnancy if such
25 condition is evidenced by the submission of
26 documentation prescribed by the Secretary; or
27

28 (iv) the alien's ability to work has been
29 temporarily interrupted by an event that the
30 Secretary has determined to be a force
31 majeure interruption.
32

33 (2) Z-2 Nonimmigrants.—Z-2 nonimmigrants shall be
34 authorized to work in the United States.
35

36 (3) Portability.— Nothing in this subsection shall be
37 construed to limit the ability of a Z nonimmigrant to
38 change employers during the alien's period of authorized
39 admission.
40

41 (n) Travel Outside the United States-

42 (1) In General- A Z nonimmigrant--
43
44

1 (A) may travel outside of the United States; and
2

3 (B) may be readmitted (if otherwise admissible)
4 without having to obtain a visa if:

5
6 (i) the alien's most recent period of authorized
7 admission has not expired;

8 (ii) the alien is the bearer of valid documentary
9 evidence of Z nonimmigrant status that
10 satisfies the conditions set forth in section (j);
11 and

12 (iii) the alien is not subject to the bars on
13 extension described in subsection (k)(2)(E).

14
15 (2) Admissibility- On seeking readmission to the United
16 States after travel outside the United States an alien
17 granted Z nonimmigrant status must establish that he or
18 she is not inadmissible, except as provided by subsection
19 (d)(2).

20
21 (3) Effect on Period of Authorized Admission- Time spent
22 outside the United States under paragraph (1) shall not
23 extend the most recent period of authorized admission in
24 the United States under subsection (k).

25
26 (o) Termination of Benefits-

27
28 (1) IN GENERAL- Any benefit provided to a Z
29 nonimmigrant or an applicant for Z nonimmigrant status
30 under this section shall terminate if—

31
32 (A) the Secretary determines that the alien is
33 ineligible for such classification and all review
34 procedures under section 603 of the [Insert title of
35 Act] have been exhausted or waived by the alien;

36
37 (B) (i) the alien is found removable from the United
38 States under section 237 of the Immigration and
39 Nationality Act (8 U.S.C. 1227); (ii) the alien
40 becomes inadmissible under section 212 (except as

1 provided in subsection (d)(2), or (iii) the alien
2 becomes ineligible under subsection (d)(1);
3

4 (C) the alien has used documentation issued under
5 this section for unlawful or fraudulent purposes;
6

7 (D) in the case of the spouse or child of an alien
8 applying for a Z nonimmigrant visa or classified as a
9 Z nonimmigrant under this section, the benefits for
10 the principal alien are terminated;
11

12 (E) with respect to a Z-1 or Z-3 nonimmigrant, the
13 employment or study requirements under subsection
14 (m) have been violated; or
15

16 (F) with respect to probationary benefits, the alien's
17 application for Z nonimmigrant status is denied.
18

19 (3) Denial of Immigrant Visa or Adjustment Application.—
20 Any application for an immigrant visa or adjustment of
21 status to lawful permanent resident status made under this
22 section by an alien whose Z nonimmigrant status is
23 terminated under paragraph (1) shall be denied.
24

25 (4) Departure from the United States- Any alien whose
26 period of authorized admission or probationary benefits is
27 terminated under paragraph (1), as well as the alien's Z-2
28 or Z-3 nonimmigrant dependents, shall depart the United
29 States immediately.

30
31 (5) Invalidation of Documentation- Any documentation
32 that is issued by the Secretary of Homeland Security under
33 subsection (j) or pursuant to subsection (h)(4) to any
34 alien, whose period of authorized admission terminates
35 under paragraph (1), shall automatically be rendered
36 invalid for any purpose except departure.

37
38 (p) Revocation.—If, at any time after an alien has obtained
39 status under section 601 of the [Insert title of Act] but not yet
40 adjusted such status to that of an alien lawfully admitted for
41 permanent residence under section 602, the Secretary may, for
42 good and sufficient cause, if it appears that the alien was not in

1 fact eligible for status under section 601, revoke the alien's
2 status following appropriate notice to the alien.
3

4 (q) Dissemination of Information on Z Program- During the 2
5 year period immediately after the issuance of regulations
6 implementing this title, the Secretary, in cooperation with
7 entities approved by the Secretary, shall broadly disseminate
8 information respecting Z classification under this section and the
9 requirements to be satisfied to obtain such classification. The
10 Secretary shall disseminate information to employers and labor
11 unions to advise them of the rights and protections available to
12 them and to workers who file applications under this section.
13 Such information shall be broadly disseminated, in no fewer than
14 the top five principal languages, as determined by the Secretary
15 in his discretion, spoken by aliens who would qualify for
16 classification under this section, including to television, radio,
17 and print media to which such aliens would have access.
18

19 (r) Definitions- In this title and section 214A of the Immigration
20 and Nationality Act:
21

22 (1) Z NONIMMIGRANT; Z NONIMMIGRANT WORKER- The
23 term 'Z nonimmigrant worker' means an alien admitted to
24 the United States under paragraph (Z) of subsection
25 101(a)(15). The term does not include aliens granted
26 probationary benefits under subsection (h) and whose
27 applications for nonimmigrant status under section
28 101(a)(15)(Z) of the Act have not yet been adjudicated.
29

30 (2) Z-1 NONIMMIGRANT; Z-1 WORKER- The term 'Z-1
31 nonimmigrant' or 'Z-1 worker' means an alien admitted to
32 the United States under paragraph (i)(I) of subsection
33 101(a)(15)(Z).
34

35 (3) Z-A NONIMMIGRANT; Z-A WORKER - The term 'Z-A
36 nonimmigrant' or 'Z-A worker' means an alien admitted to
37 the United States under paragraph (ii)(II) of subsection
38 101(a)(15)(Z).
39

40 (4) Z-2 NONIMMIGRANT- The term 'Z-2 nonimmigrant'
41 means an alien admitted to the United States under
42 paragraph (ii) of subsection 101(a)(15)(Z).
43

1 (5) Z-3 NONIMMIGRANT; Z-3 worker - The term 'Z-3
2 nonimmigrant' or 'Z-3 worker' means an alien admitted to
3 the United States under paragraph (iii) of subsection
4 101(a)(15)(Z).

5 **SEC. 602. EARNED ADJUSTMENT FOR Z STATUS ALIENS**

6 (a) Lawful Permanent Residence.—

7
8 (1) Z-1 Nonimmigrants.—

9
10 (A) Prohibition on Immigrant Visa. A Z-1 nonimmigrant
11 may not be issued an immigrant visa pursuant to sections
12 221 and 222.

13
14 (B) Adjustment.—Notwithstanding sections 245(a) and (c),
15 the status of any Z-1 nonimmigrant may be adjusted by
16 the Secretary of Homeland Security to that of an alien
17 lawfully admitted for permanent residence.

18
19 (C) Requirements.—A Z-1 nonimmigrant may adjust status
20 to that of an alien lawfully admitted for permanent
21 residence upon satisfying, in addition to all other
22 requirements imposed by law, including the merit
23 requirements set forth in section 203(b)(1)(A)[INSERT
24 CITE], the following requirements:

25
26 (i) Status.—The alien must be in valid Z-1
27 nonimmigrant status;

28
29 (ii) Consular Application.—

30
31 (I) In General.—A Z-1 nonimmigrant's
32 application for adjustment of status to that of
33 an alien lawfully admitted for permanent
34 residence must be filed in person with a United
35 States consulate abroad.

36
37 (II) Place of Application.—Unless otherwise
38 directed by the Secretary of State, a Z-1
39 nonimmigrant applying for adjustment of
40 status under this paragraph shall make an
41 application at a consular office in the alien's
42 country of origin. A consular office in a

1 country that is not a Z-1 nonimmigrant's
2 country of origin may as a matter of discretion,
3 or shall at the direction of the Secretary of
4 State, accept an application for adjustment of
5 status from such an alien.
6

7 (iii) Approved Petition.—The alien must be the
8 beneficiary of an approved petition under section 204
9 of the Act or have an approved petition that was filed
10 pursuant to the evaluation system under section
11 203(b)(1)(A) of the Act;
12

13 (iv) Admissibility.—The alien must not be
14 inadmissible under section 212(a), except for those
15 grounds previously waived under subsection (d)(2);
16

17 (v) Fees and Penalties.—In addition to the fees
18 payable to the Secretary of Homeland Security and
19 Secretary of State in connection with the filing of an
20 immigrant petition and application for adjustment of
21 status, a Z-1 head of household must pay a \$4,000
22 penalty at the time of submission of any immigrant
23 petition on his behalf, regardless of whether the alien
24 submits such petition on his own behalf or the alien
25 is the beneficiary of an immigrant petition filed by
26 another party; and
27

28 (D) EXEMPTIONS- Section 602(a)(1)(c)(ii) shall not apply
29 to an alien who, on the date on which the application for
30 adjustment of status is filed under this section, is
31 exempted from the employment requirements under
32 subsection (m)(1)(B)(iii).
33

34 (E) FAILURE TO ESTABLISH LAWFUL ADMISSION TO THE
35 UNITED STATES- Unless exempted under subparagraph
36 (D), a Z immigrant who fails to depart and reenter the
37 United States in accordance with paragraph (1) may not
38 become a lawful permanent resident under this section.
39

40 (2) Z-2 and Z-3 Nonimmigrants.—
41

42 (A) Restriction on Visa Issuance or Adjustment. An
43 application for an immigrant visa or for adjustment of
44 status to that of an alien lawfully admitted for permanent

1 residence of a Z-2 nonimmigrant or a Z-3 nonimmigrant
2 under 18 years of age may not be approved before the
3 adjustment of status of the alien's principal Z-1
4 nonimmigrant.
5

6 (B) Adjustment of Status.—
7

8 (i) Adjustment.—Notwithstanding sections 245(a)
9 and (c), the status of any Z-2 or Z-3 nonimmigrant
10 may be adjusted by the Secretary of Homeland
11 Security to that of an alien lawfully admitted for
12 permanent residence.
13

14 (ii) Requirements.— A Z-2 or Z-3 nonimmigrant may
15 adjust status to that of an alien lawfully admitted for
16 permanent residence upon satisfying, in addition to
17 all other requirements imposed by law, the following
18 requirements:
19

20 (I) Status.—The alien must be in valid Z-2 or
21 Z-3 nonimmigrant status;
22

23 (II) Approved Petition.—The alien must be the
24 beneficiary of an approved petition under
25 section 204 of the Act or have an approved
26 petition that was filed pursuant to the merit-
27 based evaluation system under section
28 203(b)(1)(A) of the Act;
29

30 (III) Admissibility.—The alien must not be
31 inadmissible under section 212(a), except for
32 those grounds previously waived under
33 subsection (d)(2);
34

35 (IV) Fees.—The alien must pay the fees
36 payable to the Secretary of Homeland Security
37 and Secretary of State in connection with the
38 filing of an immigrant petition and application
39 for an immigrant visa; and

40 (3) Maintenance of Waivers of Inadmissibility.—The grounds of
41 inadmissibility not applicable under section (d)(2) shall also be
42 considered inapplicable for purposes of admission as an
43 immigrant or adjustment pursuant to this subsection.

1 (4) APPLICATION OF OTHER LAW- In processing applications
2 under this subsection on behalf of aliens who have been battered
3 or subjected to extreme cruelty, the Secretary shall apply—
4

5 (A) the provisions under section 204(a)(1)(J) of the
6 Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(J));
7 and
8

9 (B) the protections, prohibitions, and penalties under
10 section 384 of the Illegal Immigration Reform and
11 Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).
12

13 (5) BACK OF THE LINE- An alien may not adjust status to that of
14 a lawful permanent resident under this section until 30 days
15 after an immigrant visa becomes available for approved petitions
16 filed under sections 201, 202, and 203 of the Act that were filed
17 before May 1, 2005.
18

19 (6) Ineligibility for Public Benefits- For purposes of section 403 of
20 the Personal Responsibility and Work Opportunity Reconciliation
21 Act of 1996 (8 U.S.C. 1613), an alien whose status has been
22 adjusted under this section shall not be eligible for any Federal
23 means-tested public benefit unless the alien meets the alien
24 eligibility criteria for such benefit under title IV of such Act (8
25 U.S.C. 1601 et seq.).
26

27 (7) Medical Examination- An applicant for earned adjustment
28 shall undergo an appropriate medical examination (including a
29 determination of immunization status) that conforms to
30 generally accepted professional standards of medical practice.
31

32 (8) Payment of Income Taxes-

33 (A) IN GENERAL- Not later than the date on which status is
34 adjusted under this section, the applicant shall satisfy any
35 applicable Federal tax liability accrued during the period of
36 Z status by establishing that—
37

- 38
39 (i) no such tax liability exists;
40 (ii) all outstanding liabilities have been paid; or
41 (iii) the applicant has entered into, and is in
42 compliance with, an agreement for payment of all
43 outstanding liabilities with the Internal Revenue
44 Service.

1
2 (B) IRS COOPERATION- The Secretary of the Treasury
3 shall establish rules and procedures under which the
4 Commissioner of Internal Revenue shall provide
5 documentation to—
6

7 (i) the applicant, upon request, to establish the
8 payment of all taxes required under this subsection;
9 or

10
11 (ii) the Secretary, upon request, regarding the
12 payment of Federal taxes by an alien applying for a
13 benefit under this section.
14

15 (9) DEPOSIT OF FEES- Fees collected under this paragraph shall
16 be deposited into the Immigration Examination Fee Account and
17 shall remain available as provided under subsections (m) and (n)
18 of section 286 of the Immigration and Nationality Act (8 U.S.C.
19 1356).
20

21 (10) DEPOSIT OF PENALTIES- Penalties collected under this
22 paragraph shall be deposited into the Temporary Worker
23 Program Account and shall remain available as provided under
24 section 286(w) of the Immigration and Nationality Act.
25

26 SEC. 603. ADMINISTRATIVE REVIEW, REMOVAL PROCEEDINGS, AND
27 JUDICIAL REVIEW FOR ALIENS WHO HAVE APPLIED FOR LEGAL
28 STATUS.
29

30 (a) Administrative Review for Aliens Who Have Applied for Status
31 Under this Title-

32
33 (1) Exclusive Review- Administrative review of a determination
34 respecting nonimmigrant status under this title shall be
35 conducted solely in accordance with this subsection.
36

37 (2) Administrative Appellate Review- Except as provided in
38 subparagraph (b)(2), an alien whose status under this title has
39 been denied, terminated, or revoked may file not more than one
40 appeal of the denial, termination, or rescission with the
41 Secretary not later than 30 calendar days after the date of the
42 decision or mailing thereof, whichever occurs later in time. The
43 Secretary shall establish an appellate authority to provide for a

1 single level of administrative appellate review of a denial,
2 termination, or rescission of status under [this Act].
3

4 (3) Standard for Review—Such administrative appellate review
5 shall be based solely upon the administrative record established
6 at the time of the determination on the application and upon
7 such additional newly discovered or previously unavailable
8 evidence as the administrative appellate review authority may
9 decide to consider at the time of the determination.
10

11 (4) Limitation on Motions To Reopen and Reconsider—During the
12 administrative appellate review process the alien may file not
13 more than one motion to reopen or to reconsider. The
14 Secretary’s decision whether to consider any such motion is
15 committed to the Secretary’s discretion.
16

17 (b) Removal of Aliens Who Have Been Denied Status Under this
18 Title.—
19

20 (1) Self-Initiated Removal—Any alien who receives a denial
21 under subsection (a) may request, not later than 30 calendar
22 days after the date of the denial or the mailing thereof,
23 whichever occurs later in time, that the Secretary place the alien
24 in removal proceedings. The Secretary shall place the alien in
25 removal proceedings to which the alien would otherwise be
26 subject, unless the alien is subject to an administratively final
27 order of removal, provided that no court shall have jurisdiction
28 to review the timing of the Secretary’s initiation of such
29 proceedings. If the alien is subject to an administratively final
30 order of removal, the alien may seek review of the denial under
31 this section pursuant to subsection 242(h) as though the order
32 of removal had been entered on the date of the denial, provided
33 that the court shall not review the order of removal except as
34 otherwise provided by law.
35

36 (2) Aliens Who Are Determined To Be Ineligible Due to Criminal
37 Convictions.
38

39 (i) Aggravated Felons. Notwithstanding any other provision
40 of this Act, an alien whose application for status under this
41 title has been denied or whose status has been terminated
42 or revoked by the Secretary under clause (1)(F)(ii) of
43 subsection 601(d) of [this Act] because the alien has been
44 convicted of an aggravated felony, as defined in paragraph

1 101(a)(43) of the INA, may be placed forthwith in
2 proceedings pursuant to section 238(b) of the INA.
3

4 (ii) Other Criminals. Notwithstanding any other provision
5 of this Act, any other alien whose application for status
6 under this title has been denied or whose status has been
7 terminated or revoked by the Secretary under clauses
8 (1)(F)(i), (iii), or (iv) of subsection [CITE: 601(d)] of [this
9 Act] may be placed forthwith in removal proceedings under
10 section 240 of the INA.
11

12 (iii) Final Denial, Termination or Rescission. The
13 Secretary's denial, termination, or rescission of the status
14 of any alien described in clauses (i) and (ii) of this
15 subparagraph shall be final for purposes of subparagraph
16 242(h)(3)(C) of the INA and shall represent the exhaustion
17 of all review procedures for purposes of subsections 601(h)
18 (relating to treatment of applicants) and 601(o) (relating
19 to termination of proceedings) of this Act, notwithstanding
20 paragraph (a)(2) of this section.
21

22 (3) Limitation on Motions To Reopen and Reconsider— During
23 the removal process under this subsection the alien may file not
24 more than one motion to reopen or to reconsider. The
25 Secretary's or Attorney General's decision whether to consider
26 any such motion is committed to the Attorney General's
27 discretion.
28

29 (c) Judicial Review-

30
31 Section 242 of the Immigration and Nationality Act is amended by
32 adding at the end the following subsection (h):
33

34 "(h) Judicial Review of Eligibility Determinations Relating to Status
35 Under Title VI of [this Act].
36

37 "(1) Exclusive Review- Notwithstanding any other provision of
38 law (statutory or nonstatutory), including section 2241 of title
39 28, or any other habeas corpus provision, and sections 1361 and
40 1651 of such title, and except as provided in this subsection, no
41 court shall have jurisdiction to review a determination respecting
42 an application for status under title VI of [this Act], including,
43 without limitation, a denial, termination, or rescission of such
44 status.

1
2 “(2) No Review for Late Filings- An alien may not file an
3 application for status under title VI of [this Act] beyond the
4 period for receipt of such applications established by subsection
5 601(f) thereof. The denial of any application filed beyond the
6 expiration of the period established by that subsection shall not
7 be subject to judicial review or remedy.
8

9 “(3) Review of a Denial, Termination, or Rescission of Status
10 Under Title VI of [this Act].- A denial, termination, or rescission
11 of status under subsection 601 of [this Act] may be reviewed
12 only in conjunction with the judicial review of an order of
13 removal under this section, provided that:
14

15 “(A) the venue provision set forth in (b)(2) shall govern;
16

17 “(B) the deadline for filing the petition for review in (b)(1)
18 shall control;
19

20 “(C) the alien has exhausted all administrative remedies
21 available to the alien as of right, including but not limited
22 to the timely filing of an administrative appeal pursuant to
23 subsection 603(a) of [this Act];
24

25 “(D) the court shall decide a challenge to the denial of
26 status only on the administrative record on which the
27 Secretary’s denial, termination, or rescission was based;
28

29 “(E) Limitation on Review.—Notwithstanding any other
30 provision of law (statutory or nonstatutory), including
31 section 2241 of title 28, or any other habeas corpus
32 provision, and sections 1361 and 1651 of such title, no
33 court reviewing a denial, termination, or rescission of
34 status under Title VI of [this Act] may review any
35 discretionary decision or action of the Secretary regarding
36 any application for or termination or rescission of such
37 status; and
38

39 “(F) Limitation on Motions To Reopen and Reconsider—
40 The alien may file not more than one motion to reopen or
41 to reconsider in proceedings brought under this section.
42

43 “(4) Standard for Judicial Review- Judicial review of the
44 Secretary’s denial, termination, or rescission of status under title

1 VI of [this Act] relating to any alien shall be based solely upon
2 the administrative record before the Secretary when he enters a
3 final denial, termination, or rescission. The administrative
4 findings of fact are conclusive unless any reasonable adjudicator
5 would be compelled to conclude to the contrary. The legal
6 determinations are conclusive unless manifestly contrary to law.
7

8 “(5) Challenges on Validity of the System—
9

10 “(A) In General.—Any claim that title VI of [this Act], or
11 any regulation, written policy, or written directive issued or
12 unwritten policy or practice initiated by or under the
13 authority of the Secretary of Homeland Security to
14 implement that title, violates the Constitution of the United
15 States or is otherwise in violation of law is available
16 exclusively in an action instituted in the United States
17 District Court for the District of Columbia in accordance
18 with the procedures prescribed in this paragraph. Nothing
19 in this subparagraph shall preclude an applicant for status
20 under title VI of [this Act] from asserting that an action
21 taken or decision made by the Secretary with respect to
22 his status under that title was contrary to law in a
23 proceeding under section 603 of [this Act] and paragraph
24 (b)(2) of this section.
25

26 “(B) Deadlines for Bringing Actions.— Any action instituted
27 under this paragraph,
28

29 (i) must, if it asserts a claim that title VI of [this Act]
30 or any regulation, written policy, or written directive issued
31 by or under the authority of the Secretary to implement
32 that title violates the Constitution or is otherwise unlawful,
33 be filed no later than one year after the date of the
34 publication or promulgation of the challenged regulation,
35 policy or directive or, in cases challenging the validity of
36 the Act, within one year of enactment; and

37 (ii) must, if it asserts a claim that an unwritten policy
38 or practice initiated by or under the authority of the
39 Secretary violates the Constitution or is otherwise
40 unlawful, be filed no later than one year after the plaintiff
41 knew or reasonably should have known of the unwritten
42 policy or practice.
43

1 “(C) Class Actions.—Any claim described in subparagraph
2 (A) that is brought as a class action shall be brought in
3 conformity with Public Law 109-2 and the Federal Rules of
4 Civil Procedure.”

5
6 “(D) Preclusive effect.—The final disposition of any claim
7 brought under subparagraph (5)(A) shall be preclusive of
8 any such claim asserted in a subsequent proceeding under
9 this subsection or under subsection 603 [of this Act].
10

11 “(E) Exhaustion and Stay of Proceedings.—No claim
12 brought under this paragraph shall require the plaintiff to
13 exhaust administrative remedies under subsection 603 of
14 [this Act], but nothing shall prevent the court from staying
15 proceedings under this paragraph to permit the Secretary
16 to evaluate an allegation of an unwritten policy or practice
17 or to take corrective action. In issuing such a stay, the
18 court shall take into account any harm the stay may cause
19 to the claimant. The court shall have no authority to stay
20 proceedings initiated under any other section of the INA.”
21

22 **SEC. 604. MANDATORY DISCLOSURE OF INFORMATION.**

23 (a) *In General.*--Except as otherwise provided in this section, no
24 Federal agency or bureau, or any officer or employee of such agency
25 or bureau, may--

26 (1) use the information furnished by the applicant pursuant to an
27 application filed under section 601 and 602, for any purpose, other
28 than to make a determination on the application;

29 (2) make any publication through which the information furnished
30 by any particular applicant can be identified; or

31 (3) permit anyone other than the sworn officers, employees or
32 contractors of such agency, bureau, or approved entity, as approved
33 by the Secretary of Homeland Security, to examine individual
34 applications that have been filed.

35 (b) *Required Disclosures.*--The Secretary of Homeland Security and
36 the Secretary of State shall provide the information furnished pursuant
37 to an application filed under section 601 and 602, and any other
38 information derived from such furnished information, to--

1 (1) a law enforcement entity, intelligence agency, national security
2 agency, component of the Department of Homeland Security, court, or
3 grand jury in connection with a criminal investigation or prosecution or
4 a national security investigation or prosecution, in each instance about
5 an individual suspect or group of suspects, when such information is
6 requested by such entity;

7 (2) a law enforcement entity, intelligence agency, national security
8 agency, or component of the Department of Homeland Security in
9 connection with a duly authorized investigation of a civil violation, in
10 each instance about an individual suspect or group of suspects, when
11 such information is requested by such entity; or

12 (3) an official coroner for purposes of affirmatively identifying a
13 deceased individual, whether or not the death of such individual
14 resulted from a crime.

15 (c) *Inapplicability After Denial.*--The limitations under subsection (a)--

16 (1) shall apply only until an application filed under section 601 and
17 602 is denied and all opportunities for administrative appeal of the
18 denial have been exhausted; and

19 (2) shall not apply to the use of the information furnished pursuant
20 to such application in any removal proceeding or other criminal or civil
21 case or action relating to an alien whose application has been granted
22 that is based upon any violation of law committed or discovered after
23 such grant.

24 (d) *Criminal Convictions.*--Notwithstanding any other provision of this
25 section, information concerning whether the applicant has at any time
26 been convicted of a crime may be used or released for immigration
27 enforcement and law enforcement purposes.

28 (e) *Auditing and Evaluation of Information.*--The Secretary may audit
29 and evaluate information furnished as part of any application filed
30 under sections 601 and 602, any application to extend such status
31 under section 601(k), or any application to adjust status to that of an
32 alien lawfully admitted for permanent residence under section 602, for
33 purposes of identifying fraud or fraud schemes, and may use any
34 evidence detected by means of audits and evaluations for purposes of
35 investigating, prosecuting or referring for prosecution, denying, or
36 terminating immigration benefits.

1 (f) *Use of Information in Petitions and Applications Subsequent to*
2 *Adjustment of Status.*--If the Secretary has adjusted an alien's status
3 to that of an alien lawfully admitted for permanent residence pursuant
4 to section 602, then at any time thereafter the Secretary may use the
5 information furnished by the alien in the application for adjustment of
6 status or in the applications for status pursuant to sections 601 or 602
7 to make a determination on any petition or application.

8 (g) *Criminal Penalty.*--Whoever knowingly uses, publishes, or permits
9 information to be examined in violation of this section shall be fined
10 not more than \$10,000.

11 (h) *Construction.*--Nothing in this section shall be construed to limit
12 the use, or release, for immigration enforcement purposes of
13 information contained in files or records of the Secretary or Attorney
14 General pertaining to an applications filed under sections 601 or 602,
15 other than information furnished by an applicant pursuant to the
16 application, or any other information derived from the application, that
17 is not available from any other source.

18 (i) *References.*--References in this section to section 601 or 602 are
19 references to sections 601 and 602 of this Act and the amendments
20 made by those sections.

21 **SEC. 605. EMPLOYER PROTECTIONS.**

22 (a) Copies of employment records or other evidence of employment
23 provided by an alien or by an alien's employer in support of an alien's
24 application for Z nonimmigrant status shall not be used in a
25 prosecution or investigation (civil or criminal) of that employer under
26 section 247A (8 U.S.C. 1324a) or the tax laws of the United States for
27 the prior unlawful employment of that alien, regardless of the
28 adjudication of such application or reconsideration by the Secretary of
29 such alien's prima facie eligibility determination.

30
31 (b) *Applicability of Other Law-* Nothing in this section may be used to
32 shield an employer from liability under section 274B of the
33 Immigration and Nationality Act (8 U.S.C. 1324b) or any other labor or
34 employment law.

35
36 **SEC. 606. ENUMERATION OF SOCIAL SECURITY NUMBER.**

37
38 The Secretary of Homeland Security, in coordination with the
39 Commissioner of the Social Security Administration, shall implement a

1 system to allow for the prompt enumeration of a Social Security
2 number after the Secretary of Homeland Security has granted an alien
3 Z nonimmigrant status or any probationary benefits based upon
4 application for such status.

5 **SEC. 607. PRECLUSION OF SOCIAL SECURITY CREDITS FOR**
6 **PERIODS WITHOUT WORK AUTHORIZATION.**

7 (a) Insured Status.--Section 214 of the Social Security Act (42 U.S.C.
8 414) is amended by striking subsection (c) and inserting the following
9 new subsections:

10 “(c)(1) Except as provided in paragraph (2), for purposes of
11 subsections (a) and (b), no quarter of coverage shall be credited for
12 any calendar year beginning on or after January 1, 2004, with respect
13 to an individual who is not a natural-born United States citizen, unless
14 the Commissioner of Social Security determines, on the basis of
15 information provided to the Commissioner in accordance with an
16 agreement entered into under subsection (d) or otherwise, that the
17 individual was authorized to be employed in the United States during
18 such quarter.

19 “(2) Paragraph (1) shall not apply to an individual who was
20 assigned a social security account number prior to January 1, 2004.

21 “(d) Not later than 180 days after the date of the enactment of
22 this subsection, the Secretary of Homeland Security shall enter into an
23 agreement with the Commissioner of Social Security to provide such
24 information as the Commissioner determines necessary to carry out
25 the limitation on crediting quarters of coverage under subsection (c).”.

26 (b) Benefit Computation.--Section 215(e) of the Social Security Act
27 (42 U.S.C. 415(e)) is amended--

28 (1) by striking “and” at the end of paragraph (1);

29 (2) by striking the period at the end of paragraph (2) and inserting
30 “; and”; and

31 (3) by adding at the end the following new paragraph:

32 “(3) in computing the average indexed monthly earnings of an
33 individual, there shall not be counted any wages or self-employment

1 income for any year for which no quarter of coverage may be credited
2 to such individual as a result of the application of section 214(c).".

3 (c) Effective Date.--The amendments made by this section shall apply
4 to benefit applications filed on or after the date that is 180 days after
5 the date of the enactment of this Act based on the wages or self-
6 employment income of an individual with respect to whom a primary
7 insurance amount has not been determined under title II of the Social
8 Security Act (42 U.S.C. 401 et seq.) before such date.

9 **SEC. 608. PAYMENT OF PENALTIES AND USE OF PENALTIES**
10 **COLLECTED.**

11 (a) The Secretary shall by regulation establish procedures allowing for
12 the payment of 80 percent of the penalties described in Section
13 601(e)(6)(B) and Section 602(a)(1)(C)(v) through an installment
14 payment plan.

15 (b) Any penalties received under this title with respect to an
16 application for Z-1 nonimmigrant status shall be used in the following
17 order of priority:

18 (1) shall be credited as offsetting collections to appropriations
19 provided pursuant to section 611 for the fiscal year in which this
20 Act is enacted and the subsequent fiscal year; and

21 (2) shall be deposited and remain available as otherwise
22 provided under this title.

23 **SEC. 609. LIMITATIONS ON ELIGIBILITY.**

24 (a) In General- An alien is not ineligible for any immigration benefit
25 under any provision of this title, or any amendment made by this title,
26 solely on the basis that the alien violated section 1543, 1544, or 1546
27 of title 18, United States Code, or any amendments made by the
28 [NAME OF THIS ACT], during the period beginning on the date of the
29 enactment of such Act and ending on the date on which the alien
30 applies for any benefits under this title, except with respect to any
31 forgery, fraud or misrepresentation on the application for Z
32 nonimmigrant status filed by the alien.

33
34 (b) Prosecution- An alien who commits a violation of section 1543,
35 1544, or 1546 of such title or any amendments made by the [NAME
36 OF THIS ACT], during the period beginning on the date of the

1 enactment of such Act and ending on the date that the alien applies
2 for eligibility for such benefit may be prosecuted for the violation if the
3 alien's application for such benefit is denied.

4 **SEC. 610. RULEMAKING.**

5 (a) The Secretary shall issue an interim final rule within six months of
6 the date of enactment of this subtitle to implement this title and the
7 amendments made by this title. The interim final rule shall become
8 effective immediately upon publication in the Federal Register. The
9 interim final rule shall sunset two years after issuance unless the
10 Secretary issues a final rule within two years of the issuance of the
11 interim final rule.

12 (b) The exemption provided under this section shall sunset no later
13 than two years after the date of enactment of this subtitle, provided
14 that, such sunset shall not be construed to impose any requirements
15 on, or affect the validity of, any rule issued or other action taken by
16 the Secretary under such exemptions.

17 **SEC. 611. AUTHORIZATION OF APPROPRIATIONS.**

18 (a) The first \$4,400,000,000 of such penalties shall be deposited into
19 the general fund of the Treasury as repayment of funds transferred
20 into the Immigration Security Account under section 286(z)(1) of the
21 Immigration and Nationality Act.

22
23 (b) Penalties in excess of \$4,400,000,000 shall be deposited and
24 remain available as otherwise provided under this Act.

25
26 (c) Sense of Congress- It is the sense of the Congress that funds
27 authorized to be appropriated under subsection (a) should be directly
28 appropriated so as to facilitate the orderly and timely commencement
29 of the processing of applications filed under sections 601 and 602.
30

31 **Subtitle B--DREAM Act**

32 **SEC. 612. SHORT TITLE.**

33 This subtitle may be cited as the `Development, Relief, and Education
34 for Alien Minors Act of 2007' or the `DREAM Act of 2007'.

35 **SEC. 613. DEFINITIONS.**

1 In this subtitle:

2
3 (1) INSTITUTION OF HIGHER EDUCATION- The term `institution
4 of higher education' has the meaning given that term in section
5 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

6
7 (2) UNIFORMED SERVICES- The term `uniformed services' has
8 the meaning given that term in section 101(a) of title 10, United
9 States Code.

10 **SEC. 614. ADJUSTMENT OF STATUS OF CERTAIN LONG-TERM**
11 **RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.**

12 (a) Special Rule for Certain Long-Term Residents Who Entered the
13 United States as Children-

14
15 (1) IN GENERAL- Notwithstanding any other provision of law and
16 except as otherwise provided in this subtitle, the Secretary may
17 beginning on the date that is three years after the date of
18 enactment of this Act adjust to the status of an alien lawfully
19 admitted for permanent residence an alien who is determined to
20 be eligible for or has been issued a probationary Z or Z
21 nonimmigrant visa if the alien demonstrates that—

22
23 (A) the alien has been physically present in the United
24 States for a continuous period since January 1, 2007, is
25 under 30 years of age on the date of enactment, and had
26 not yet reached the age of 16 years at the time of initial
27 entry;

28
29 (B) the alien has earned a high school diploma or obtained
30 a general education development certificate in the United
31 States;

32
33 (C) The alien has not abandoned the alien's residence in
34 the United States. The Secretary shall presume that the
35 alien has abandoned such residence if the alien is absent
36 from the United States for more than 365 days, in the
37 aggregate, during the period of conditional residence,
38 unless the alien demonstrates that alien has not
39 abandoned the alien's residence. An alien who is absent
40 from the United States due to active service in the
41 uniformed services has not abandoned the alien's

1 residence in the United States during the period of such
2 service.

3
4 (D) The alien has

5
6 (i) acquired a degree from an institution of higher
7 education in the United States or has completed at
8 least 2 years, in good standing, in a program for a
9 bachelor's degree or higher degree in the United
10 States; or

11
12 (ii) The alien has served in the uniformed services
13 for at least 2 years and, if discharged, has received
14 an honorable discharge.

15
16 (E) The alien has provided a list of all of the secondary
17 educational institutions that the alien attended in the
18 United States; and

19
20 (F) The alien is in compliance with the eligibility and
21 admissibility criteria set forth in section 601(d).

22
23 (b) Treatment Of Period For Purposes Of Naturalization.—Solely for
24 purposes of title III of the Immigration and Nationality Act (8 U.S.C.
25 1401 et seq.), an alien who has been granted probationary benefits
26 under section 601(h) or Z nonimmigrant status and has satisfied the
27 requirements of subparagraphs (a)(1)(A) through (F) shall beginning
28 on the date that is eight years after the date of enactment be
29 considered to have satisfied the requirements of Section 316(a)(1) of
30 the Act (8 U.S.C. 1427(a)(1)).

31
32 (c) Exemption From Numerical Limitations- Nothing in this section may
33 be construed to apply a numerical limitation on the number of aliens
34 who may be eligible for adjustment of status.

35
36 (d) Regulations-

37
38 (1) PROPOSED REGULATIONS- Not later than 180 days after the
39 date of enactment of this Act, the Secretary shall publish
40 proposed regulations implementing this section. Such regulations
41 shall be effective immediately on an interim basis, but are
42 subject to change and revision after public notice and
43 opportunity for a period for public comment.
44

1 (2) INTERIM, FINAL REGULATIONS- Within a reasonable time
2 after publication of the interim regulations in accordance with
3 paragraph (1), the Secretary shall publish final regulations
4 implementing this section.

5 **SEC. 615. EXPEDITED PROCESSING OF APPLICATIONS;**
6 **PROHIBITION ON FEES.**

7 Regulations promulgated under this subtitle shall provide that no
8 additional fee will be charged to an applicant for a Z nonimmigrant
9 visa for applying for benefits under this subtitle.

10 **SEC. 616. HIGHER EDUCATION ASSISTANCE.**

11 (a) Section 505 of the Illegal Immigration Reform and Immigrant
12 Responsibility Act of 1996 (8 U.S.C. 1623) shall have no force or effect
13 with respect to an alien who is a probationary Z or Z nonimmigrant.
14

15 (b) Notwithstanding any provision of the Higher Education Act of 1965
16 (20 U.S.C. 1001 et seq.), with respect to assistance provided under
17 title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.),
18 an alien who adjusts status to that of a lawful permanent resident
19 under this title, or who is a probationary Z or Z nonimmigrant under
20 this title and who meets the eligibility criteria set forth in section
21 614(a)(1)(A), (B), and (F), shall be eligible for the following assistance
22 under such title IV:
23

24 (1) Student loans under parts B, D, and E of such title IV (20
25 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.), subject to
26 the requirements of such parts.
27

28 (2) Federal work-study programs under part C of such title IV
29 (42 U.S.C. 2751 et seq.), subject to the requirements of such
30 part.
31

32 (3) Services under such title IV (20 U.S.C. 1070 et seq.), subject
33 to the requirements for such services.
34

35 **SEC. 617. DELAY OF FINES AND FEES.**
36

37 (a) Payment of the penalties and fees specified in section 601(e)(6)
38 shall not be required with respect to an alien who meets the eligibility
39 criteria set forth in section 614(a)(1)(A), (B), and (F) until the date
40 that is six years and six months after the date of enactment of this Act

1 or the alien reaches the age of 24, whichever is later. If the alien
2 makes all of the demonstrations specified in section 614(a)(1) by such
3 date, the penalties shall be waived. If the alien fails to make the
4 demonstrations specified in section 614(a)(1) by such date, the alien's
5 Z nonimmigrant status will be terminated unless the alien pays the
6 penalties and fees specified in section 601(e)(6) consistent with the
7 procedures set forth in section 608 within 90 days.

8
9 (b) With respect to an alien who meets the eligibility criteria set forth
10 in section 614(a)(1)(A) and (F), but not the eligibility criteria in section
11 614(a)(1)(B), the individual who pays the penalties specified in section
12 601(e)(6) shall be entitled to a refund when the alien makes all the
13 demonstrations specified in section 614(a)(1).

14 **SEC. 618. GAO REPORT.**

15 Seven years after the date of enactment of this Act, the Comptroller
16 General of the United States shall submit a report to the Committee on
17 the Judiciary of the Senate and the Committee on the Judiciary of the
18 House of Representatives, which sets forth—

19
20 (1) the number of aliens who were eligible for adjustment of
21 status under section 623(a);

22
23 (2) the number of aliens who applied for adjustment of status
24 under section 623(a); and

25
26 (3) the number of aliens who were granted adjustment of status
27 under section 623(a).

28 29 **SEC. 619. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION** 30 **OF APPROPRIATIONS.**

31 (a) Regulations.—The Secretary shall issue regulations to carry out the
32 amendments made by this subtitle not later than the first day of the
33 seventh month that begins after the date of enactment of this Act.
34

35 (b) Effective Date.—This subtitle shall take effect on the date that
36 regulations required by subsection (a) are issued, regardless of
37 whether such regulations are issued on an interim basis or on any
38 other basis.

39
40 (c) Authorization of Appropriations.—There are authorized to be

1 appropriated to the Secretary such sums as may be necessary to
2 implement this subtitle, including any sums needed for costs
3 associated with the initiation of such implementation.

4
5 **PART II—CORRECTION OF SOCIAL SECURITY RECORDS**

6 **SEC. 620. CORRECTION OF SOCIAL SECURITY RECORDS.**

7 (a) In General.—Section 208(e)(1) of the Social Security Act (42
8 U.S.C. 408(e)(1)) is amended—

9 (1) in subparagraph (B)(ii), by striking “or” at the end;

10 (2) in subparagraph (C), by inserting “or” at the end;

11 (3) by inserting after subparagraph (C) the following:

12 “(D) who is granted nonimmigrant status pursuant to section
13 101(a)(15)(Z–A) of the Immigration and Nationality Act,”; and

14 (4) by striking “1990.” and inserting “1990, or in the case of an
15 alien described in subparagraph (D), if such conduct is alleged to
16 have occurred before the date on which the alien was granted such
17 nonimmigrant status.”.

18 (b) Effective Date.—The amendments made by subsection (a) shall
19 take effect on the first day of the seventh month that begins after the
20 date of the enactment of this Act.

21
22 **Subtitle C—Agricultural Workers**

23 **SEC. 621. SHORT TITLE.**

24 This subtitle may be cited as the “Agricultural Job Opportunities,
25 Benefits, and Security Act of 2007” or the “AgJOBS Act of 2007”

26
27 **PART I—ADMISSION OF AGRICULTURAL WORKERS**

28 **SEC. 622. ADMISSION OF AGRICULTURAL WORKERS.**

29 (a) Z–A Nonimmigrant Visa Category.—

30 (1) ESTABLISHMENT.—Paragraph (15) of section 101(a) of the
31 Immigration and Nationality Act (8 U.S.C. 1101(a)), [as amended
32 by section 601(b), is further amended by adding at the end the
33 following new subparagraph:

34 “(Z–A)(i) an alien who is coming to the United States to
35 perform any service or activity that is considered to be
36 agricultural under section 3(f) of the Fair Labor Standards Act

1 of 1938 (29 U.S.C. 203(f)), agricultural labor under section
2 3121(g) of the Internal Revenue Code of 1986, or the
3 performance of agricultural labor or services described in
4 subparagraph (H)(ii)(a), who meets the requirements of
5 section 214A of this Act; or

6 "(ii) the spouse or minor child of an alien described in clause
7 (i) who is residing in the United States."

8 (b) Requirements for Issuance of Nonimmigrant Visa.—Chapter 2 of
9 title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.)
10 is amended by inserting after section 214 the following new section:

11 "SEC. 214A. ADMISSION OF AGRICULTURAL WORKERS.

12 "(a) Definitions.—In this section:

13 "(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural
14 employment' means any service or activity that is considered to be
15 agricultural under section 3(f) of the Fair Labor Standards Act of
16 1938 (29 U.S.C. 203(f)) or agricultural labor under section
17 3121(g) of the Internal Revenue Code of 1986 or the performance
18 of agricultural labor or services described in section
19 101(a)(15)(H)(ii)(a).

20 "(2) DEPARTMENT.—The term 'Department' means the Department
21 of Homeland Security.

22 "(3) EMPLOYER.—The term 'employer' means any person or entity,
23 including any farm labor contractor and any agricultural
24 association, that employs workers in agricultural employment.

25 "(4) QUALIFIED DESIGNATED ENTITY.—The term 'qualified designated
26 entity' means—

27 "(A) a qualified farm labor organization or an association of
28 employers designated by the Secretary; or

29 "(B) any such other person designated by the Secretary if
30 that Secretary determines such person is qualified and has
31 substantial experience, demonstrated competence, and has a
32 history of long-term involvement in the preparation and
33 submission of applications for adjustment of status under
34 section 209, 210, or 245, the Act entitled 'An Act to adjust the
35 status of Cuban refugees to that of lawful permanent residents
36 of the United States, and for other purposes', approved
37 November 2, 1966 (Public Law 89-732; 8 U.S.C. 1255 note),
38 Public Law 95-145 (8 U.S.C. 1255 note), or the Immigration
39 Reform and Control Act of 1986 (Public Law 99-603; 100 Stat.
40 3359) or any amendment made by that Act.

1 “(5) SECRETARY.—Except as otherwise provided, the term
2 ‘Secretary’ means the Secretary of Homeland Security.

3 “(6) TEMPORARY.—A worker is employed on a ‘temporary’ basis
4 when the employment is intended not to exceed 10 months.

5 “(7) WORK DAY.—The term ‘work day’ means any day in which the
6 individual is employed 5.75 or more hours in agricultural
7 employment.

8 “(8) Z–A DEPENDENT VISA.—The term ‘Z–A dependent visa’ means
9 a nonimmigrant visa issued pursuant to section 101(a)(15)(Z–
10 A)(ii).

11 “(9) Z–A VISA.—The term ‘Z–A visa’ means a nonimmigrant visa
12 issued pursuant to section 101(a)(15)(Z–A)(i).

13 “(b) Authorization for Presence, Employment, and Travel in the
14 United States.—

15 “(1) IN GENERAL.—An alien issued a Z–A visa or a Z–A dependent
16 visa may remain in, and be employed in, the United States during
17 the period such visa is valid.

18 “(2) AUTHORIZED EMPLOYMENT.—The Secretary shall provide an
19 alien who is granted a Z–A visa or a Z–A dependent visa an
20 employment authorized endorsement or other appropriate work
21 permit, in the same manner as an alien lawfully admitted for
22 permanent residence.

23 “(3) AUTHORIZED TRAVEL.—An alien who is granted a Z–A visa or a
24 Z–A dependent visa is authorized to travel outside the United
25 States (including commuting to the United States from a residence
26 in a foreign country) in the same manner as an alien lawfully
27 admitted for permanent residence.

28 “(c) Qualifications.—

29 “(1) Z–A VISA.—Notwithstanding any other provision of law, the
30 Secretary shall, pursuant to the requirements of this section, grant
31 a Z–A visa to an alien if the Secretary determines that the alien—

32 “(A) has performed agricultural employment in the United
33 States for at least 863 hours or 150 work days during the 24-
34 month period ending on December 31, 2006;

35 “(B) applied for such status during the 18-month application
36 period beginning on the first day of the seventh month that
37 begins after the date of enactment of this Act;

38 “(C) is admissible to the United States under section 212,
39 except as otherwise provided in paragraph (4);

1 “(D) has not been convicted of any felony or a misdemeanor,
2 an element of which involves bodily injury, threat of serious
3 bodily injury, or harm to property in excess of \$500; and

4 “(E) meets the requirements of paragraph (3).

5 “(2) Z–A DEPENDENT VISA.—Notwithstanding any other provision of
6 law, the Secretary shall grant a Z–A dependent visa to an alien
7 who is—

8 “(A) described in section 101(a)(15)(Z–A)(ii);

9 “(B) meets the requirements of paragraph (3); and

10 “(C) is admissible to the United States under section 212,
11 except as otherwise provided in paragraph (4).

12 “(3) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—

13 “(A) FINGERPRINTS.—An alien seeking a Z–A visa or a Z–A
14 dependent visa shall submit fingerprints to the Secretary at
15 such time and in manner as the Secretary may require.

16 “(B) BACKGROUND CHECKS.—The Secretary shall utilize
17 fingerprints provided under subparagraph (A) and other
18 biometric data provided by an alien to conduct a background
19 check of the alien, including searching the alien’s criminal
20 history and any law enforcement actions taken with respect to
21 the alien and ensuring that the alien is not a risk to national
22 security.

23 “(4) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the
24 determination of an alien’s eligibility for a Z–A visa or a Z–A
25 dependent visa the following shall apply:

26 “(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of
27 paragraphs (5), (6)(A), (7), and (9) of section 212(a) shall not
28 apply.

29 “(B) WAIVER OF OTHER GROUNDS.—

30 “(i) IN GENERAL.—Except as provided in clause (ii), the
31 Secretary may waive any provision of such section 212(a),
32 other than the paragraphs described in subparagraph (A),
33 in the case of individual aliens for humanitarian purposes,
34 to ensure family unity, or if such waiver is otherwise in the
35 public interest.

36 “(ii) GROUNDS THAT MAY NOT BE WAIVED.—Except as provided
37 in subparagraph (C), subparagraphs (A), (B), and (C) of
38 paragraph (2), and paragraphs (3) and (4) of section
39 212(a) may not be waived by the Secretary under clause

1 (i).

2 "(iii) CONSTRUCTION.—Nothing in this subparagraph shall
3 be construed as affecting the authority of the Secretary
4 other than under this subparagraph to waive provisions of
5 such section 212(a).

6 "(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien
7 is not ineligible for a Z–A visa or a Z–A dependent visa by
8 reason of a ground of inadmissibility under section 212(a)(4) if
9 the alien demonstrates a history of employment in the United
10 States evidencing self-support without reliance on public cash
11 assistance.

12 "(d) Application.—

13 "(1) IN GENERAL.—An alien seeking a Z–A visa shall submit an
14 application to the Secretary for such a visa, including information
15 regarding any Z–A dependent visa for the spouse of child of the
16 alien.

17 "(2) SUBMISSION.—Applications for a Z–A visa under may be
18 submitted—

19 "(A) to the Secretary if the applicant is represented by an
20 attorney or a nonprofit religious, charitable, social service, or
21 similar organization recognized by the Board of Immigration
22 Appeals under section 292.2 of title 8, Code of Federal
23 Regulations (or similar successor regulations); or

24 "(B) to a qualified designated entity if the applicant consents
25 to the forwarding of the application to the Secretary.

26 "(3) PROOF OF ELIGIBILITY.—

27 "(A) IN GENERAL.—An alien may establish that the alien meets
28 the requirement for a Z–A visa through government
29 employment records or records supplied by employers or
30 collective bargaining organizations, and other reliable
31 documentation as the alien may provide. The Secretary shall
32 establish special procedures to properly credit work in cases in
33 which an alien was employed under an assumed name.

34 "(B) DOCUMENTATION OF WORK HISTORY.—

35 "(i) BURDEN OF PROOF.—An alien applying for a Z–A visa or
36 applying for adjustment of status described in subsection
37 (j) has the burden of proving by a preponderance of the
38 evidence that the alien has performed the requisite
39 number of hours or days of agricultural employment

1 required for such application or adjustment of status, as
2 applicable.

3 "(ii) TIMELY PRODUCTION OF RECORDS.—If an employer or
4 farm labor contractor employing such an alien has kept
5 proper and adequate records respecting such employment,
6 the alien's burden of proof under clause (i) may be met by
7 securing timely production of such records under
8 regulations to be promulgated by the Secretary.

9 "(iii) SUFFICIENT EVIDENCE.—An alien may meet the burden
10 of proof under clause (i) to establish that the alien has
11 performed the requisite number of hours or days of
12 agricultural employment by producing sufficient evidence
13 to show the extent of that employment as a matter of just
14 and reasonable inference.

15 "(4) APPLICATIONS SUBMITTED TO QUALIFIED DESIGNATED ENTITIES.—

16 "(A) REQUIREMENTS.—Each qualified designated entity shall
17 agree—

18 "(i) to forward to the Secretary an application submitted
19 to that entity pursuant to paragraph (2)(B) if the alien for
20 whom the application is being submitted has consented to
21 such forwarding;

22 "(ii) not to forward to the Secretary any such application
23 if such an alien has not consented to such forwarding; and

24 "(iii) to assist an alien in obtaining documentation of the
25 alien's work history, if the alien requests such assistance.

26 "(B) NO AUTHORITY TO MAKE DETERMINATIONS.—No qualified
27 designated entity may make a determination required by this
28 section to be made by the Secretary.

29 "(5) APPLICATION FEES.—

30 "(A) FEE SCHEDULE.—The Secretary shall provide for a
31 schedule of fees that—

32 "(i) shall be charged for applying for a Z-A visa under
33 this section or for an adjustment of status described in
34 subsection (j); and

35 "(ii) may be charged by qualified designated entities to
36 help defray the costs of services provided to such aliens
37 making such an application.

38 "(B) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED
39 ENTITIES.—A qualified designated entity may not charge any fee

1 in excess of, or in addition to, the fees authorized under
2 subparagraph (A)(ii) for services provided to applicants.

3 “(6) LIMITATION ON ACCESS TO INFORMATION.—Files and records
4 collected or compiled by a qualified designated entity for the
5 purposes of this section are confidential and the Secretary shall
6 not have access to such a file or record relating to an alien without
7 the consent of the alien, except as allowed by a court order issued
8 pursuant to [___].

9 “(7) TREATMENT OF APPLICANTS.—

10 “(A) IN GENERAL.—An alien who files an application under this
11 section to receive a Z–A visa and any spouse or child of the
12 alien seeking a Z–A dependant visa, on the date described in
13 subparagraph (B)—

14 “(i) shall be granted probationary benefits in the form of
15 employment authorization pending final adjudication of the
16 alien’s application;

17 “(ii) may in the Secretary’s discretion receive advance
18 permission to re-enter the United States pursuant to
19 existing regulations governing advance parole;

20 “(iii) may not be detained for immigration purposes,
21 determined inadmissible or deportable, or removed
22 pending final adjudication of the alien’s application, unless
23 the alien is determined to be ineligible for Z–A visa; and

24 “(iv) may not be considered an unauthorized alien (as
25 defined in section 274A) until the date on which [the
26 alien’s application for a Z–A visa] is denied.

27 “(B) TIMING OF PROBATIONARY BENEFITS.—

28 “(i) IN GENERAL.—Subject to clause (ii), an alien who
29 submits an application for a Z–A visa under subsection (d),
30 including any evidence required under such subsection,
31 and any spouse or child of the alien seeking a Z–A
32 dependent visa shall receive the probationary benefits
33 described in clauses (i) through (iv) of subparagraph (A) at
34 the earlier of—

35 “(I) the date and time that the alien has passed all
36 appropriate background checks, including name and
37 fingerprint checks; or

38 “(II) the end of the next business day after the date
39 that the Secretary receives the alien’s application for

1 Z-A visa.

2 "(ii) EXCEPTION.—If the Secretary determines that the
3 alien fails the background checks referred to in clause
4 (i)(I), the alien may not be granted probationary benefits
5 described in clauses (i) through (iv) of subparagraph (A).

6 "(C) PROBATIONARY AUTHORIZATION DOCUMENT.—The Secretary
7 shall provide each alien granted probationary benefits
8 described in clauses (i) through (iv) of subparagraph (A) with
9 a counterfeit-resistant document that reflects the benefits and
10 status set forth in subparagraph (A). The Secretary may by
11 regulation establish procedures for the issuance of
12 documentary evidence of probationary benefits and, except as
13 provided herein, the conditions under which such documentary
14 evidence expires, terminates, or is renewed.

15 "(D) CONSTRUCTION.—Nothing in this section may be
16 construed to limit the Secretary's authority to conduct any
17 appropriate background and security checks subsequent to
18 issuance of evidence of probationary benefits under this
19 paragraph.

20 "(8) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN
21 APPLICANTS.—

22 "(A) BEFORE APPLICATION PERIOD.—Beginning on the date of
23 enactment of the AgJOBS Act of 2007, the Secretary shall
24 provide that, in the case of an alien who is apprehended prior
25 to the first date of the application period described in
26 subsection (c)(1)(B) and who can establish a nonfrivolous case
27 of eligibility for a Z-A visa (but for the fact that the alien may
28 not apply for such status until the beginning of such period),
29 the alien—

30 "(i) may not be removed; and

31 "(ii) shall be granted authorization to engage in
32 employment in the United States and be provided an
33 employment authorized endorsement or other appropriate
34 work permit for such purpose.

35 "(B) DURING APPLICATION PERIOD.—The Secretary shall provide
36 that, in the case of an alien who presents a nonfrivolous
37 application for Z-A visa during the application period described
38 in subsection (c)(1)(B), including an alien who files such an
39 application within 30 days of the alien's apprehension, and
40 until a final determination on the application has been made in
41 accordance with this section, the alien—

1 “(i) may not be removed; and

2 “(ii) shall be granted authorization to engage in
3 employment in the United States and be provided an
4 employment authorized endorsement or other appropriate
5 work permit for such purpose.

6 “(e) Numerical Limitations.—

7 “(1) Z–A VISA.—The Secretary may not issue more than
8 1,500,000 Z–A visas.

9 “(2) Z–A DEPENDENT VISA.—The Secretary may not count any Z–A
10 dependent visa issued against the numerical limitation described in
11 paragraph (1).

12 “(f) Evidence of Nonimmigrant Status.—

13 “(1) IN GENERAL.—Documentary evidence of nonimmigrant status
14 shall be issued to each alien granted a Z–A visa or a Z–A
15 dependent visa.

16 “(2) FEATURES OF DOCUMENTATION.—Documentary evidence of a Z–A
17 visa or a Z–A dependent visa—

18 “(A) shall be machine-readable, tamper-resistant, and shall
19 contain a digitized photograph and other biometric identifiers
20 that can be authenticated;

21 “(B) shall be designed in consultation with U.S. Immigration
22 and Customs Enforcement’s Forensic Document Laboratory;

23 “(C) shall serve as a valid travel and entry document for an
24 alien granted a Z–A visa or a Z–A dependent visa for the
25 purpose of applying for admission to the United States where
26 the alien is applying for admission at a port of entry;

27 “(D) may be accepted during the period of its validity by an
28 employer as evidence of employment authorization and
29 identity under section 274A; and

30 “(E) shall be issued to the alien granted the visa by the
31 Secretary promptly after final adjudication of such alien’s
32 application for the visa, except that an alien may not be
33 granted a Z–A visa or a Z–A dependent visa until all
34 appropriate background checks on each alien are completed to
35 the satisfaction of the Secretary.

36 “(g) Fine.—An alien granted a Z–A visa shall pay a fine of \$100 to
37 the Secretary.

38 “(h) Treatment of Aliens Granted a Z–A Visa.—

1 “(1) IN GENERAL.—Except as otherwise provided under this
2 subsection, an alien granted a Z–A visa or a Z–A dependent visa
3 shall be considered to be an alien lawfully admitted for permanent
4 residence for purposes of any law other than any provision of this
5 Act.

6 “(2) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An
7 alien granted a Z–A visa shall not be eligible, by reason of such
8 status, for any form of assistance or benefit described in section
9 403(a) of the Personal Responsibility and Work Opportunity
10 Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after
11 the date on which the alien is granted an adjustment of status
12 under subsection (d).

13 “(3) TERMS OF EMPLOYMENT.—

14 “(A) PROHIBITION.—No alien granted a Z–A visa may be
15 terminated from employment by any employer during the
16 period of a Z–A visa except for just cause.

17 “(B) TREATMENT OF COMPLAINTS.—

18 “(i) ESTABLISHMENT OF PROCESS.—The Secretary shall
19 establish a process for the receipt, initial review, and
20 disposition of complaints by aliens granted a Z–A visa who
21 allege that they have been terminated without just cause.
22 No proceeding shall be conducted under this subparagraph
23 with respect to a termination unless the Secretary
24 determines that the complaint was filed not later than 6
25 months after the date of the termination.

26 “(ii) INITIATION OF ARBITRATION.—If the Secretary finds that
27 an alien has filed a complaint in accordance with clause (i)
28 and there is reasonable cause to believe that the alien was
29 terminated from employment without just cause, the
30 Secretary shall initiate binding arbitration proceedings by
31 requesting the Federal Mediation and Conciliation Service
32 to appoint a mutually agreeable arbitrator from the roster
33 of arbitrators maintained by such Service for the
34 geographical area in which the employer is located. The
35 procedures and rules of such Service shall be applicable to
36 the selection of such arbitrator and to such arbitration
37 proceedings. The Secretary shall pay the fee and expenses
38 of the arbitrator, subject to the availability of
39 appropriations for such purpose.

40 “(iii) ARBITRATION PROCEEDINGS.—The arbitrator shall
41 conduct the proceeding under this subparagraph in

1 accordance with the policies and procedures promulgated
2 by the American Arbitration Association applicable to
3 private arbitration of employment disputes. The arbitrator
4 shall make findings respecting whether the termination
5 was for just cause. The arbitrator may not find that the
6 termination was for just cause unless the employer so
7 demonstrates by a preponderance of the evidence. If the
8 arbitrator finds that the termination was not for just cause,
9 the arbitrator shall make a specific finding of the number
10 of days or hours of work lost by the employee as a result
11 of the termination. The arbitrator shall have no authority
12 to order any other remedy, including reinstatement, back
13 pay, or front pay to the affected employee. Not later than
14 30 days after the date of the conclusion of the arbitration
15 proceeding, the arbitrator shall transmit the findings in the
16 form of a written opinion to the parties to the arbitration
17 and the Secretary. Such findings shall be final and
18 conclusive, and no official or court of the United States
19 shall have the power or jurisdiction to review any such
20 findings.

21 "(iv) EFFECT OF ARBITRATION FINDINGS.—If the Secretary
22 receives a finding of an arbitrator that an employer has
23 terminated the employment of an alien who is granted a
24 Z-A visa without just cause, the Secretary shall credit the
25 alien for the number of days of work not performed during
26 such period of termination for the purpose of determining
27 if the alien meets the qualifying employment requirement
28 of subsection (f)(2).

29 "(v) TREATMENT OF ATTORNEY'S FEES.—Each party to an
30 arbitration under this subparagraph shall bear the cost of
31 their own attorney's fees for the arbitration.

32 "(vi) NONEXCLUSIVE REMEDY.—The complaint process
33 provided for in this subparagraph is in addition to any
34 other rights an employee may have in accordance with
35 applicable law.

36 "(vii) EFFECT ON OTHER ACTIONS OR PROCEEDINGS.—Any
37 finding of fact or law, judgment, conclusion, or final order
38 made by an arbitrator in the proceeding before the
39 Secretary shall not be conclusive or binding in any
40 separate or subsequent action or proceeding between the
41 employee and the employee's current or prior employer
42 brought before an arbitrator, administrative agency, court,

1 or judge of any State or the United States, regardless of
2 whether the prior action was between the same or related
3 parties or involved the same facts, except that the
4 arbitrator's specific finding of the number of days or hours
5 of work lost by the employee as a result of the
6 employment termination may be referred to the Secretary
7 pursuant to clause (iv).

8 "(4) RECORD OF EMPLOYMENT.—

9 "(A) IN GENERAL.—Each employer of an alien who is granted a
10 Z-A visa shall annually—

11 "(i) provide a written record of employment to the alien;
12 and

13 "(ii) provide a copy of such record to the Secretary.

14 "(B) CIVIL PENALTIES.—

15 "(i) IN GENERAL.—If the Secretary finds, after notice and
16 opportunity for a hearing, that an employer of an alien
17 granted a Z-A visa has failed to provide the record of
18 employment required under subparagraph (A) or has
19 provided a false statement of material fact in such a
20 record, the employer shall be subject to a civil money
21 penalty in an amount not to exceed \$1,000 per violation.

22 "(ii) LIMITATION.—The penalty applicable under clause (i)
23 for failure to provide records shall not apply unless the
24 alien has provided the employer with evidence of
25 employment authorization granted under this subsection.

26 "(i) Termination of a Grant of Z-A Visa.—

27 "(1) IN GENERAL.—The Secretary may terminate a Z-A visa or a
28 Z-A dependent visa granted to an alien only if the Secretary
29 determines that the alien is deportable.

30 "(2) GROUNDS FOR TERMINATION.—Prior to the date that an alien
31 granted a Z-A visa or a Z-A dependent visa becomes eligible for
32 adjustment of status described in subsection (j), the Secretary
33 may deny adjustment to permanent resident status and provide
34 for termination of the alien's Z-A visa or Z-A dependent visa if—

35 "(A) the Secretary finds, by a preponderance of the
36 evidence, that the grant of a Z-A visa was the result of fraud
37 or willful misrepresentation (as described in section
38 212(a)(6)(C)(i)); or

39 "(B) the alien—

1 “(i) commits an act that makes the alien inadmissible to
2 the United States as an immigrant, except as provided
3 under subsection (c)(4);

4 “(ii) is convicted of a felony or 3 or more misdemeanors
5 committed in the United States;

6 “(iii) is convicted of an offense, an element of which
7 involves bodily injury, threat of serious bodily injury, or
8 harm to property in excess of \$500; or

9 “(iv) in the case of an alien granted a Z-A visa, fails to
10 perform the agricultural employment described in
11 subsection (j)(1)(A) unless the alien was unable to work in
12 agricultural employment due to the extraordinary
13 circumstances described in subsection (j)(1)(A)(iii).

14
15 “(3) REPORTING REQUIREMENT.—The Secretary shall promulgate
16 regulations to ensure that the alien granted a Z-A visa complies
17 with the qualifying agricultural employment described in
18 subsection (j)(1)(A) at the end of the 5 year work period, which
19 may include submission of an application pursuant to this
20 subsection.

21 “(j) Adjustment to Permanent Residence.—

22 “(1) Z-A VISA.—Except as provided in this subsection, the
23 Secretary shall award the maximum number of points available
24 pursuant to section 203(b)(1) and adjust the status of an alien
25 granted a Z-A visa to that of an alien lawfully admitted for
26 permanent residence under this Act, if the Secretary determines
27 that the following requirements are satisfied:

28 “(A) QUALIFYING EMPLOYMENT.—

29 “(i) IN GENERAL.—Subject to clauses (ii) and (iii), the alien
30 has performed at least—

31 “(I) 5 years of agricultural employment in the United
32 States for at least 100 work days per year, during the
33 5-year period beginning on the date of enactment of
34 the AgJobs Act of 2007; or

35 “(II) 3 years of agricultural employment in the
36 United States for at least 150 work days per year,
37 during the 3-year period beginning on such date of
38 enactment.

39 “(ii) FOUR YEAR PERIOD OF EMPLOYMENT.—An alien shall be
40 considered to meet the requirements of clause (i) if the

1 alien has performed 4 years of agricultural employment in
2 the United States for at least 150 work days during 3 years
3 of those 4 years and at least 100 work days during the
4 remaining year, during the 4-year period beginning on
5 such date of enactment.

6 "(iii) EXTRAORDINARY CIRCUMSTANCES.—In determining
7 whether an alien has met the requirement of clause (i),
8 the Secretary may credit the alien with not more than 12
9 additional months to meet the requirement of that clause if
10 the alien was unable to work in agricultural employment
11 due to—

12 "(I) pregnancy, injury, or disease, if the alien can
13 establish such pregnancy, disabling injury, or disease
14 through medical records;

15 "(II) illness, disease, or other special needs of a
16 minor child, if the alien can establish such illness,
17 disease, or special needs through medical records; or

18 "(III) severe weather conditions that prevented the
19 alien from engaging in agricultural employment for a
20 significant period of time.

21 "(B) PROOF.—An alien may demonstrate compliance with the
22 requirements of subparagraph (A) by submitting—

23 "(i) the record of employment described in subsection
24 (h)(4); or

25 "(ii) such documentation as may be submitted under
26 subsection (d)(3).

27 "(C) APPLICATION PERIOD.—Not later than 8 years after the
28 date of the enactment of the AgJOBS Act of 2007, the alien
29 must—

30 "(i) apply for adjustment of status; or

31 "(ii) renew the alien's Z visa status as described in
32 section 601(k)(2).

33 "(D) FINE.—The alien pays to the Secretary a fine of \$400; or

34 "(2) SPOUSES AND MINOR CHILDREN.—Notwithstanding any other
35 provision of law, the Secretary shall confer the status of lawful
36 permanent resident on the spouse and minor child of an alien
37 granted any adjustment of status under paragraph (1), including
38 any individual who was a minor child on the date such alien was
39 granted a Z-A visa, if the spouse or minor child applies for such

1 status, or if the principal alien includes the spouse or minor child in
2 an application for adjustment of status to that of a lawful
3 permanent resident.

4 “(3) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary
5 may deny an alien granted a Z–A visa or a Z–A dependent visa an
6 adjustment of status under this Act and provide for termination of
7 such visa if—

8 “(A) the Secretary finds by a preponderance of the evidence
9 that grant of the Z–A visa was the result of fraud or willful
10 misrepresentation (as described in section 212(a)(6)(C)(i)); or

11 “(B) the alien—

12 “(i) commits an act that makes the alien inadmissible to
13 the United States under section 212, except as provided
14 under subsection (c)(4);

15 “(ii) is convicted of a felony or 3 or more misdemeanors
16 committed in the United States; or

17 “(iii) is convicted of an offense, an element of which
18 involves bodily injury, threat of serious bodily injury, or
19 harm to property in excess of \$500.

20 “(4) GROUNDS FOR REMOVAL.—Any alien granted Z–A visa status
21 who does not apply for adjustment of status or renewal of Z status
22 under section 601(k)(2) prior to the expiration of the application
23 period described in subsection (c)(1)(B) or who fails to meet the
24 other requirements of paragraph (1) by the end of the application
25 period, is deportable and may be removed under section 240.

26 “(5) PAYMENT OF TAXES.—

27 “(A) IN GENERAL.—Not later than the date on which an alien’s
28 status is adjusted as described in this subsection, the alien
29 shall establish that the alien does not owe any applicable
30 Federal tax liability by establishing that—

31 “(i) no such tax liability exists;

32 “(ii) all such outstanding tax liabilities have been paid; or

33 “(iii) the alien has entered into an agreement for
34 payment of all outstanding liabilities with the Internal
35 Revenue Service.

36 “(B) APPLICABLE FEDERAL TAX LIABILITY.—In this paragraph, the
37 term ‘applicable Federal tax liability’ means liability for Federal
38 taxes, including penalties and interest, owed for any year
39 during the period of employment required under paragraph

1 (1)(A) for which the statutory period for assessment of any
2 deficiency for such taxes has not expired.

3 "(C) IRS COOPERATION.—The Secretary of the Treasury shall
4 establish rules and procedures under which the Commissioner
5 of Internal Revenue shall provide documentation to an alien
6 upon request to establish the payment of all taxes required by
7 this subsection.
8

9 "(6) English Language.—

10 "(A) In General.—Not later than the date on which a Z-A
11 nonimmigrant's status is adjusted or renewed under
12 section 601(k)(2), a Z-A nonimmigrant who is 18 years of
13 age or older must pass the naturalization test described in
14 sections 312(a)(1) and (2).

15 "(B) Exception.--The requirement of subparagraph (A)
16 shall not apply to any person who, on the date of the filing
17 of the person's application for an extension of Z-A
18 nonimmigrant status--

19
20 (i) is unable because of physical or developmental
21 disability or mental impairment to comply therewith;
22

23 (ii) is over fifty years of age and has been living in
24 the United States for periods totaling at least twenty
25 years, or
26

27 (iii) is over fifty-five years of age and has been living
28 in the United States for periods totaling at least
29 fifteen years.
30

31 "(7) PRIORITY OF APPLICATIONS.—

32 "(A) BACK OF LINE.—An alien may not adjust status to that of
33 a lawful permanent resident under this subsection until 30
34 days after the date on which an immigrant visa becomes
35 available for approved petitions filed under sections 201, 202,
36 and 203 of the Act that were filed before May 1, 2005
37 (referred to in this paragraph as the 'processing date').

38 "(B) OTHER APPLICANTS.—The processing of applications for an
39 adjustment of status under this subsection shall be processed
40 not later than 1 year after the processing date.
41

1 “(C) CONSULAR APPLICATION.—
2

3 (i) In General.—A Z-A nonimmigrant’s application for
4 adjustment of status to that of an alien lawfully admitted
5 for permanent residence must be filed in person with a
6 United States consulate abroad.
7

8 (ii) Place of Application.—Unless otherwise directed by
9 the Secretary of State, a Z-A nonimmigrant applying for
10 adjustment of status under this paragraph shall make an
11 application at a consular office in the alien’s country of
12 origin. The Secretary of State shall direct a consular
13 office in a country that is not a Z-A nonimmigrant’s
14 country of origin to accept an application for adjustment
15 of status from such an alien, where the Z-A
16 nonimmigrant’s country of origin is not contiguous to the
17 United States, and as consular resources make possible.

18 “(k) Confidentiality of Information.— Applicants for Z-A
19 nonimmigrant status under this subtitle shall be afforded
20 confidentiality as provided under section 604.

21 “(l) Penalties for False Statements in Applications.—

22 “(1) CRIMINAL PENALTY.—Any person who—

23 “(A) applies for a Z-A visa or a Z-A dependent visa under
24 this section or an adjustment of status described in subsection
25 (j) and knowingly and willfully falsifies, conceals, or covers up
26 a material fact or makes any false, fictitious, or fraudulent
27 statements or representations, or makes or uses any false
28 writing or document knowing the same to contain any false,
29 fictitious, or fraudulent statement or entry; or

30 “(B) creates or supplies a false writing or document for use
31 in making such an application,

32 shall be fined in accordance with title 18, United States Code,
33 imprisoned not more than 5 years, or both.

34 “(2) INADMISSIBILITY.—An alien who is convicted of a crime under
35 paragraph (1) shall be considered to be inadmissible to the United
36 States on the ground described in section 212(a)(6)(C)(i).

37 “(m) Eligibility for Legal Services.—Section 504(a)(11) of Public Law
38 104-134 (110 Stat. 1321-53 et seq.) shall not be construed to
39 prevent a recipient of funds under the Legal Services Corporation Act
40 (42 U.S.C. 2996 et seq.) from providing legal assistance directly
41 related to an application for a Z-A visa under subsection (b) or an

1 adjustment of status under subsection (j).

2 "(n) Administrative and Judicial Review.— Administrative or judicial
3 review of a determination on an application for a Z–A visa shall be
4 such as is provided under section 603.

5 "(o) Public Outreach.—Beginning not later than the first day of the
6 application period described in subsection (c)(1)(B), the Secretary
7 shall cooperate with qualified designated entities to broadly
8 disseminate information regarding the availability of Z–A visas, the
9 benefits of such visas, and the requirements to apply for and be
10 granted such a visa."

11 (c) Numerical Limitations.—

12 (1) WORLDWIDE LEVEL OF IMMIGRATION.—Section 201(b)(1) of the
13 Immigration and Nationality Act (8 U.S.C. 1151(b)(1)), as
14 amended by [____], is further amended—

15 (A) in subparagraph (A), by striking "subparagraph (A) or
16 (B)" and inserting "subparagraph (A), (B), or (N)"; and

17 (B) by adding at the end, the following new subparagraph:

18 "(N) Aliens issued a Z–A visa or a Z–A dependent visa (as those
19 terms are defined in section 214A) who receive an adjustment of
20 status to that of an alien lawfully admitted for permanent
21 residence."

22 (2) NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.—Section
23 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152) is
24 amended by adding at the end the following new paragraph:

25 "(6) SPECIAL RULE FOR Z–A NONIMMIGRANTS.—An immigrant visa may
26 be made available to an alien issued a Z–A visa or a Z–A
27 dependent visa (as those terms are defined in section 214A)
28 without regard to the numerical limitations of this section."

29 (d) Clerical Amendment.—The table of contents of the Immigration
30 and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting
31 after the item relating to section 214 the following:

32 "Sec.214A.Admission of agricultural worker."

33

34 **SEC. 623. AGRICULTURAL WORKER IMMIGRATION STATUS**
35 **ADJUSTMENT ACCOUNT.**

36 Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356)
37 is amended by adding at the end the following new subsection:

38 "(y) Agricultural Worker Immigration Status Adjustment Account.—

1 “(1) ESTABLISHMENT.—There is established in the general fund of
2 the Treasury a separate account, which shall be known as the
3 ‘Agricultural Worker Immigration Status Adjustment Account’.
4 Notwithstanding any other provision of law, there shall be
5 deposited as offsetting receipts into the account all fees collected
6 under section 214A.

7 “(2) USE OF FEES.—The fees deposited into the Agricultural Worker
8 Immigration Status Adjustment Account shall be used by the
9 Secretary of Homeland Security for processing applications made
10 by aliens seeking nonimmigrant status under section
11 101(a)(15)(Z–A) or for processing applications made by such an
12 alien who is seeking an adjustment of status

13 “(3) AVAILABILITY OF FUNDS.—All amounts deposited in the
14 Agricultural Worker Immigration Status Adjustment Account under
15 this subsection shall remain available until expended.”.

16
17 **SEC. 624. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION**
18 **OF APPROPRIATIONS.**

19 (a) Regulations.—The Secretary shall issue regulations to carry out
20 the amendments made by this subtitle not later than the first day of
21 the seventh month that begins after the date of enactment of this Act.

22 (b) Effective Date.—This subtitle shall take effect on the date that
23 regulations required by subsection (a) are issued, regardless of
24 whether such regulations are issued on an interim basis or on any
25 other basis.

26 (c) Authorization of Appropriations.—There are authorized to be
27 appropriated to the Secretary such sums as may be necessary to
28 implement this subtitle, including any sums needed for costs
29 associated with the initiation of such implementation.

30 **SEC. 625. LIMITATION ON CLAIMING EARNED INCOME TAX**
31 **CREDIT.**

32 Any alien who is unlawfully present in the United States, receives
33 adjustment of status under section 601 of this Act (relating to aliens
34 who were illegally present in the United States prior to January 1,
35 2007), or enters the United States to work on a Y visa under section
36 402 of this Act, shall not be eligible for the tax credit provided under
37 section 32 of the Internal Revenue Code (relating to earned income)
38 until such alien has his or her status adjusted to legal permanent
39 resident status.

1 **SEC. 626 EARNED INCOME TAX CREDIT.**

2 Nothing in this Act, or the amendments made by this Act, may
3 be construed to modify any provision of the Internal Revenue Code of
4 1986 which prohibits illegal aliens from qualifying for earned income
5 tax credit under section 32 of such Code.

6 **PART II—CORRECTION OF SOCIAL SECURITY RECORDS**

7 **SEC. 627. CORRECTION OF SOCIAL SECURITY RECORDS.**

8 (a) In General.—Section 208(e)(1) of the Social Security Act (42
9 U.S.C. 408(e)(1)) is amended—

10 (1) in subparagraph (B)(ii), by striking “or” at the end;

11 (2) in subparagraph (C), by inserting “or” at the end;

12 (3) by inserting after subparagraph (C) the following:

13 “(D) who is granted nonimmigrant status pursuant to section
14 101(a)(15)(Z–A) of the Immigration and Nationality Act,”; and

15 (4) by striking “1990.” and inserting “1990, or in the case of an
16 alien described in subparagraph (D), if such conduct is alleged to
17 have occurred before the date on which the alien was granted such
18 nonimmigrant status.”.

19 (b) Effective Date.—The amendments made by subsection (a) shall
20 take effect on the first day of the seventh month that begins after the
21 date of the enactment of this Act.

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1 **TITLE VII – MISCELLANEOUS**

2 **Subtitle A – Miscellaneous Immigration Reform.**

3
4 **Sec. 701. Waiver of Requirement for Fingerprints for Members**
5 **of the Armed Forces.**

6
7 Notwithstanding any other provision of law or any regulation, for aliens
8 currently serving in the U.S. Armed Forces overseas and applying for
9 naturalization from overseas, the Secretary of Defense shall provide in
10 a form designated by the Secretary of Homeland Security, and the
11 Secretary of Homeland Security shall use the fingerprints provided by
12 the Secretary of Defense for such individuals, if the individual –

13
14 (a) may be naturalized pursuant to section 328 or 329 of the
15 Immigration and Nationality Act (8 U.S.C. 1439 or 1440);

16 (b) was fingerprinted in accordance with the requirements of the
17 Secretary of Defense at the time the individual enlisted in the
18 Armed Forces; and

19 (c) submits the application to become a naturalized citizen of the
20 United States not later than 12 months after the date the
21 applicant is fingerprinted.

22 **SEC. 702. ENGLISH AS NATIONAL LANGUAGE.**

23 (a) *Short Title.*--This section may be cited as the ``S.I. Hayakawa
24 National Language Amendment Act of 2007''.

25 (b) *In General.*--Title 4, United States Code, is amended by adding at the
26 end the following new chapter:

27 ``CHAPTER 6--LANGUAGE OF THE GOVERNMENT

28 `` Sec.

29 `` 161..Declaration of national language.

30 `` 162..Preserving and enhancing the role of the national language.

31 `` 163..Use of language other than English.

32 `` **SEC. 161. DECLARATION OF NATIONAL LANGUAGE.**

33 `` English shall be the national language of the Government of the United
34 States.

1 ` ` **SEC. 162. PRESERVING AND ENHANCING THE ROLE OF THE**
2 **NATIONAL LANGUAGE.**

3 ` `(a) *In General.*--The Government of the United States shall preserve
4 and enhance the role of English as the national language of the United States
5 of America.

6 ` `(b) *Exception.*--Unless specifically provided by statute, no person has a
7 right, entitlement, or claim to have the Government of the United States or
8 any of its officials or representatives act, communicate, perform or provide
9 services, or provide materials in any language other than English. If an
10 exception is made with respect to the use of a language other than English,
11 the exception does not create a legal entitlement to additional services in
12 that language or any language other than English.

13 ` `(c) *Forms.*--If any form is issued by the Federal Government in a
14 language other than English (or such form is completed in a language other
15 than English), the English language version of the form is the sole authority
16 for all legal purposes.

17 ` ` **SEC. 163. USE OF LANGUAGE OTHER THAN ENGLISH.**

18 ` ` Nothing in this chapter shall prohibit the use of a language other than
19 English."

20 (c) *Conforming Amendment.*--The table of chapters for title 4, United
21 States Code, is amended by adding at the end the following new item:

22 ` ` 6. Language of the Government
23 161".

24 **SEC. 703. DECLARATION OF ENGLISH AS LANGUAGE.**

25 (a) *In General.*--English is the common language of the United States.

26 (b) *Preserving and Enhancing the Role of the English Language.*--The
27 Government of the United States shall preserve and enhance the role of
28 English as the language of the United States. Nothing in this Act shall
29 diminish or expand any existing rights under the laws of the United States
30 relative to services or materials provided by the Government of the United
31 States in any language other than English

32 (c) *Definition of Law.*--For purposes of this section, the term ` ` laws of the
33 United States" includes the Constitution of the United States, any provision
34 of Federal statute, or any rule or regulation issued under such statute, any

1 judicial decisions interpreting such statute, or any Executive Order of the
2 President.

3 **Sec. 704. Pilot Project Regarding Immigration Practitioner**
4 **Complaints.**

5
6 (a) Within 180 days of the enactment of this Act, the Secretary of
7 Homeland Security, in consultation with the Attorney General, shall
8 institute a three-year pilot project to—

9
10 (1) Encourage alien victims of immigration practitioner fraud,
11 and related crimes, to come forward and file practitioner fraud
12 complaints with the Department of Homeland Security by
13 utilizing existing statutory and administrative authority;

14
15 (2) Cooperate with federal, state, and local law enforcement
16 officials who are responsible for investigating and prosecuting
17 such crimes; and

18
19 (3) Increase public awareness regarding the problem of
20 immigration practitioner fraud.

21
22 (b) Reporting.—Not later than 1 year after the end of the three-year
23 pilot period, the Secretary of Homeland Security shall submit to
24 Congress a report that includes information concerning—

25
26 (1) the number of individuals who file practitioner fraud
27 complaints via the pilot program;

28 (2) the demographic characteristics, nationality, and immigration
29 status of the complainants;

30 (3) the number of indictments that result from the pilot; and

31 (4) the number of successful fraud prosecutions that result from
32 the pilot.

33

34 Subtitle B –Assimilation and Naturalization

35

36 **SEC. 705. The Office of Citizenship and Integration**

37

38 Section 451(f) of the Homeland Security Act of 2002, Pub. L. 107-296
39 (6 U.S.C. 271(f)), is amended by –

40

1 (a) inserting "and Integration" after "Office of Citizenship" the two
2 times that phrase appears; and
3 (b) in paragraph (f)(2), striking "instruction and training on citizenship
4 responsibilities" and inserting "civic integration, and instruction and
5 training on citizenship responsibilities and requirements for
6 citizenship".
7

8 **SEC. 706. Special Provisions for Elderly Immigrants**
9

10 Section 312(b) of the Immigration and Nationality Act (8 U.S.C. 1423(b)) is
11 amended by adding at the end the following: "(4) The requirements of
12 subsection (a) of this section shall not apply to a person who is over 75
13 years of age on the date of filing an application for naturalization; Provided
14 that, the person expresses, in English or in the applicant's native language,
15 at the time of examination for naturalization that the person understands
16 and agrees to the elements of the oath required by section 337 of this Act."
17

18 **SEC. 707. Funding for the Office of Citizenship and Integration.**
19

20 (a) Authorization of Appropriations- There is authorized to be appropriated
21 to the Secretary of Homeland Security the sum of **[\$100]** million to carry
22 out the mission and operations of the Office of Citizenship and Integration in
23 U.S. Citizenship and Immigration Services, including the patriotic integration
24 of prospective citizens into--
25

26 (1) American common values and traditions, including an
27 understanding of American history and the principles of the
28 Constitution of the United States; and
29

30 (2) civic traditions of the United States, including the Pledge of
31 Allegiance, respect for the flag of the United States, and voting in
32 public elections.
33

34 **SEC. 708. Citizenship and Integration Councils**
35

36 "(a) Grants authorized.—The Office of Citizenship and Immigrant Integration
37 shall provide grants to states and municipalities for effective integration of
38 immigrants into American society through the creation of New Americans
39 Integrations Councils.
40

41 "(b) Use of funds.—
42

43 "(1) In general.—Grants awarded under this section shall be used

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“(A) To report on the status of new immigrants, lawful permanent residents, and citizens within the state or municipality;

“(B) To conduct a needs assessment, including the availability of and demand for English language services and instruction classes, for new immigrants, lawful permanent residents, Z non-immigrants, and citizens;

“(C) To convene public hearings and meetings to assist in the development of a comprehensive plan to integrate new immigrants, lawful permanent residents, Z non-immigrants, and citizens; and

“(D) To develop a comprehensive plan to integrate new immigrants, lawful permanent residents, Z non-immigrants, and citizens into states and municipalities.

“(2) Membership of integration councils.—New Americans Integration Councils established under this section shall consist of no less than ten and no more than fifteen individuals from the following sectors:

“(A) State and local government;

“(B) Business;

“(C) Faith-based organizations;

“(D) Civic organizations;

“(E) Philanthropic leaders; and

“(F) Nonprofit organizations with experience working with immigrant communities.

“(c) Reporting.—The Government Accountability Office, in coordination with the Office of Citizenship and Immigrant Integration, shall conduct an annual evaluation of the grant program conducted under this section. Such evaluation shall be used by the Office of Citizenship and Immigrant Integration—

“(1) To determine and improve upon the program’s effectiveness;

1 “(2) To develop recommended best practices for states and
2 municipalities who receive grant awards; and
3

4 “(3) To further define the program’s goals and objectives.
5

6 “(d) Authorization of appropriations.—There are authorized to be
7 appropriated to the Office of Citizenship and Immigrant Integration such
8 sums as may be necessary for each of the fiscal years 2008 through 2012 to
9 carry out this section.]

10 **SEC. 709. PRESIDENTIAL AWARD FOR BUSINESS LEADERSHIP IN**
11 **PROMOTING AMERICAN CITIZENSHIP.**

12 (a) *Establishment.*--There is established the Presidential Award for
13 Business Leadership in Promoting American Citizenship, which shall be
14 awarded to companies and other organizations that make extraordinary
15 efforts in assisting their employees and members to learn English and
16 increase their understanding of American history and civics.

17 (b) *Selection and Presentation of Award.*--

18 (1) **SELECTION.**--The President, upon recommendations from the
19 Secretary, the Secretary of Labor, and the Secretary of Education, shall
20 periodically award the Citizenship Education Award to large and small
21 companies and other organizations described in subsection (a).

22 (2) **PRESENTATION.**--The presentation of the award shall be made by
23 the President, or designee of the President, in conjunction with an
24 appropriate ceremony.

25 **SEC. 710. History and Government Test.**
26

27 (a) History and Government Test- The Secretary shall incorporate a
28 knowledge and understanding of the meaning of the Oath of Allegiance
29 provided by section 337 of the Immigration and Nationality Act (8 U.S.C.
30 1448) into the history and government test given to applicants for
31 citizenship. Nothing in this Act, other than the amendment made by this
32 subsection, shall be construed to influence the naturalization test redesign
33 process currently underway under the direction of U.S. Citizenship and
34 Immigration Services.
35

36 **SEC. 711. English Learning Program.**

37 (a) The Secretary of Education shall develop an open source electronic
38 program, useable on personal computers and through the Internet,
39 that teaches the English language at various levels of proficiency, up

1 to and including the ability to pass the Test of English as a Foreign
2 Language, to individuals inside the United States whose primary
3 language is a language other than English. The Secretary shall make
4 the program available to the public for free, including by placing it on
5 the Department of Education website, and shall ensure that it is readily
6 accessible to public libraries throughout the United States. The
7 program shall be fully accessible, at a minimum, to speakers of the top
8 five foreign languages spoken inside the United States.

9 (b) Authorization of Appropriations- There is authorized to be
10 appropriated to the Secretary of Education such sums as are necessary
11 to carry out the purposes of this section.
12

13 **SEC. 712. GAO Study on the Appellate Process for Immigration**
14 **Appeals.**

15 (a) In General- The Comptroller General of the United States shall, not
16 later than 180 days after enactment of this Act, conduct a study on the
17 appellate process for immigration appeals.
18

19 (b) Requirements- In conducting the study under subsection (a), the
20 Comptroller General shall consider the possibility of consolidating all
21 appeals from the Board of Immigration Appeals and habeas corpus
22 petitions in immigration cases into 1 United States Court of Appeals,
23 by--

24 (1) consolidating all such appeals into an existing circuit court,
25 such as the United States Court of Appeals for the Federal
26 Circuit;

27 (2) consolidating all such appeals into a centralized appellate
28 court consisting of active circuit court judges temporarily
29 assigned from the various circuits, in a manner similar to the
30 Foreign Intelligence Surveillance Court or the Temporary
31 Emergency Court of Appeals; or

32 (3) implementing a mechanism by which a panel of active circuit
33 court judges shall have the authority to reassign such appeals
34 from circuits with relatively high caseloads to circuits with
35 relatively low caseloads.
36

37 (c) Factors To Consider- In conducting the study under subsection (a),
38 the Comptroller General, in consultation with the Attorney General, the
39 Secretary, and the Judicial Conference of the United States, shall
40 consider--

41 (1) the resources needed for each alternative, including judges,
42 attorneys and other support staff, case management techniques

1 including technological requirements, physical infrastructure, and
2 other procedural and logistical issues as appropriate;
3 (2) the impact of each plan on various circuits, including their
4 caseload in general and caseload per panel;
5 (3) the possibility of utilizing case management techniques to
6 reduce the impact of any consolidation option, such as requiring
7 certificates of reviewability, similar to procedures for habeas and
8 existing summary dismissal procedures in local rules of the
9 courts of appeals;
10 (4) the effect of reforms in this Act on the ability of the circuit
11 courts to adjudicate such appeals;
12 (5) potential impact, if any, on litigants; and
13 (6) other reforms to improve adjudication of immigration
14 matters, including appellate review of motions to reopen and
15 reconsider, and attorney fee awards with respect to review of
16 final orders of removal.

17 Subtitle C--American Competitiveness Scholarship Program

18 **SEC. 713. AMERICAN COMPETITIVENESS SCHOLARSHIP PROGRAM.**

19 (a) *Establishment.*--The Director of the National Science Foundation
20 (referred to in this section as the "Director") shall award scholarships to
21 eligible individuals to enable such individuals to pursue associate,
22 undergraduate, or graduate level degrees in mathematics, engineering,
23 health care, or computer science.

24 (b) *Eligibility.*--

25 (1) IN GENERAL.--To be eligible to receive a scholarship under this
26 section, an individual shall--

27 (A) be a citizen of the United States, a national of the United States (as
28 defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C.
29 1101(a)), an alien admitted as a refugee under section 207 of such Act (8
30 U.S.C. 1157), or an alien lawfully admitted to the United States for
31 permanent residence;

32 (B) prepare and submit to the Director an application at such time, in such
33 manner, and containing such information as the Director may require; and

34 (C) certify to the Director that the individual intends to use amounts
35 received under the scholarship to enroll or continue enrollment at an
36 institution of higher education (as defined in section 101(a) of the Higher
37 Education Act of 1965 (20 U.S.C. 1001(a)) in order to pursue an associate,
38 undergraduate, or graduate level degree in mathematics, engineering,

1 computer science, nursing, medicine, or other clinical medical program, or
2 technology, or science program designated by the Director.

3 (2) ABILITY.--Awards of scholarships under this section shall be made by
4 the Director solely on the basis of the ability of the applicant, except that in
5 any case in which 2 or more applicants for scholarships are deemed by the
6 Director to be possessed of substantially equal ability, and there are not
7 sufficient scholarships available to grant one to each of such applicants, the
8 available scholarship or scholarships shall be awarded to the applicants in a
9 manner that will tend to result in a geographically wide distribution
10 throughout the United States of recipients' places of permanent residence.

11 (c) *Amount of Scholarship; Renewal.*--

12 (1) AMOUNT OF SCHOLARSHIP.--The amount of a scholarship awarded
13 under this section shall be \$15,000 per year, except that no scholarship shall
14 be greater than the annual cost of tuition and fees at the institution of higher
15 education in which the scholarship recipient is enrolled or will enroll.

16 (2) RENEWAL.--The Director may renew a scholarship under this section
17 for an eligible individual for not more than 4 years.

18 (d) *Funding.*--The Director shall carry out this section only with funds
19 made available under section 286(x) of the Immigration and Nationality Act
20 (as added by section 712) (8 U.S.C. 1356).

21 (e) *Federal Register.*--Not later than 60 days after the date of enactment
22 of this Act, the Director shall publish in the Federal Register a list of eligible
23 programs of study for a scholarship under this section.

24 **SEC. 714. SUPPLEMENTAL H-1B NONIMMIGRANT PETITIONER**
25 **ACCOUNT.**

26 Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) (as
27 amended by this Act) is further amended by inserting after subsection (w)
28 the following:

29 `` (x) *Supplemental H-1B Nonimmigrant Petitioner Account.*--

30 `` (1) IN GENERAL.--There is established in the general fund of the
31 Treasury a separate account, which shall be known as the `Supplemental H-
32 1B Nonimmigrant Petitioner Account'. Notwithstanding any other section of
33 this Act, there shall be deposited as offsetting receipts into the account all
34 fees collected under section 214(c)(15).

35 `` (2) USE OF FEES FOR AMERICAN COMPETITIVENESS
36 SCHOLARSHIP PROGRAM.--The amounts deposited into the Supplemental

1 H-1B Nonimmigrant Petitioner Account shall remain available to the Director
2 of the National Science Foundation until expended for scholarships described
3 in section 711 of the Secure Borders, Economic Opportunity and Immigration
4 Reform Act of 2007 for students enrolled in a program of study leading to a
5 degree in mathematics, engineering, health care, or computer science."

6 **SEC. 715. SUPPLEMENTAL FEES.**

7 Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c))
8 is amended by adding at the end the following:

9 (15)(A) In each instance where the Attorney General, the Secretary of
10 Homeland Security, or the Secretary of State is required to impose a fee
11 pursuant to paragraph (9) or (11), the Attorney General, the Secretary of
12 Homeland Security, or the Secretary of State, as appropriate, shall impose a
13 supplemental fee on the employer in addition to any other fee required by
14 such paragraph or any other provision of law, in the amount determined
15 under subparagraph (B).

16 (B) The amount of the supplemental fee shall be \$3,500, except that
17 the fee shall be 1/2 that amount for any employer with not more than 25
18 full-time equivalent employees who are employed in the United States
19 (determined by including any affiliate or subsidiary of such employer).

20 (C) Fees collected under this paragraph shall be deposited in the
21 Treasury in accordance with section 286(x)."

22

23 **TITLE VIII – MISCELLANEOUS**

24 **Subtitle A – Unaccompanied Alien Child Protection Act of 2007**

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

26 (a) Short Title- This Act may be cited as the 'Unaccompanied
27 Alien Child Protection Act of 2007'.

28 (b) Table of Contents- The table of contents for this Act is as
29 follows:

30 Sec. 1. Short title; table of contents.

31 Sec. 2. Definitions.

32 **TITLE I--CUSTODY, RELEASE, FAMILY REUNIFICATION, AND**
33 **DETENTION**

34 Sec. 101. Procedures when encountering unaccompanied
35 alien children.

- 1 Sec. 102. Family reunification for unaccompanied alien
- 2 children with relatives in the United States.
- 3 Sec. 103. Appropriate conditions for detention of
- 4 unaccompanied alien children.
- 5 Sec. 104. Repatriated unaccompanied alien children.
- 6 Sec. 105. Establishing the age of an unaccompanied alien
- 7 child.
- 8 Sec. 106. Effective date.

9 **TITLE II--ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO**
10 **CHILD ADVOCATES AND COUNSEL**

- 11 Sec. 201. Child advocates.
- 12 Sec. 202. Counsel.
- 13 Sec. 203. Effective date; applicability.

14 **TITLE III--STRENGTHENING POLICIES FOR PERMANENT**
15 **PROTECTION OF ALIEN CHILDREN**

- 16 Sec. 301. Special immigrant juvenile classification.
- 17 Sec. 302. Training for officials and certain private parties
- 18 who come into contact with unaccompanied alien children.
- 19 Sec. 303. Report.

20 **TITLE IV--CHILDREN REFUGEE AND ASYLUM SEEKERS**

- 21 Sec. 401. Guidelines for children's asylum claims.
- 22 Sec. 402. Unaccompanied refugee children.
- 23 Sec. 403. Exceptions for unaccompanied alien children in
- 24 asylum and refugee-like circumstances.

25 **TITLE V--AMENDMENTS TO THE HOMELAND SECURITY ACT OF**
26 **2002**

- 27 Sec. 501. Additional responsibilities and powers of the
- 28 Office of Refugee Resettlement with respect to
- 29 unaccompanied alien children.
- 30 Sec. 502. Technical corrections.
- 31 Sec. 503. Effective date.

32 **TITLE VI--AUTHORIZATION OF APPROPRIATIONS**

- 33 Sec. 601. Authorization of appropriations.

1 **SEC. 2. DEFINITIONS.**

2 (a) In General- In this Act:

3 (1) COMPETENT- The term `competent', in reference to
4 counsel, means an attorney, or a representative authorized
5 to represent unaccompanied alien children in immigration
6 proceedings or matters, who--

7 (A) complies with the duties set forth in this Act;

8 (B) is--

9 (i) properly qualified to handle matters

10 involving unaccompanied alien children; or

11 (ii) working under the auspices of a qualified
12 nonprofit organization that is experienced in
13 handling such matters; and

14 (C) if an attorney--

15 (i) is a member in good standing of the bar of
16 the highest court of any State, possession,
17 territory, Commonwealth, or the District of
18 Columbia; and

19 (ii) is not under any order of any court
20 suspending, enjoining, restraining, disbaring,
21 or otherwise restricting the attorney in the
22 practice of law.

23 (2) DEPARTMENT- The term `Department' means the
24 Department of Homeland Security.

25 (3) DIRECTOR- The term `Director' means the Director of
26 the Office.

27 (4) OFFICE- The term `Office' means the Office of Refugee
28 Resettlement established by section 411 of the
29 Immigration and Nationality Act (8 U.S.C. 1521).

30 (5) SECRETARY- The term `Secretary' means the
31 Secretary of Homeland Security.

32 (6) UNACCOMPANIED ALIEN CHILD- The term
33 `unaccompanied alien child' has the meaning given the
34 term in 101(a)(51) of the Immigration and Nationality Act,
35 as added by subsection (b).

36 (7) VOLUNTARY AGENCY- The term `voluntary agency'
37 means a private, nonprofit voluntary agency with expertise
38 in meeting the cultural, developmental, or psychological
39 needs of unaccompanied alien children, as certified by the
40 Director.

41 (b) Amendments to the Immigration and Nationality Act- Section
42 101(a) of the Immigration and Nationality Act (8 U.S.C.
43 1101(a)) is amended by adding at the end the following:

1 ` (51) The term `unaccompanied alien child' means a child who--
2 ` (A) has no lawful immigration status in the United States;
3 ` (B) has not attained 18 years of age; and
4 ` (C) with respect to whom--
5 ` (i) there is no parent or legal guardian in the United
6 States; or
7 ` (ii) no parent or legal guardian in the United States
8 is available to provide care and physical custody.

9 ` (52) The term `unaccompanied refugee children' means
10 persons described in paragraph (42) who--
11 ` (A) have not attained 18 years of age; and
12 ` (B) with respect to whom there are no parents or legal
13 guardians available to provide care and physical custody.'.

14 (c) Rule of Construction-

15 (1) STATE COURTS ACTING IN LOCO PARENTIS- A
16 department or agency of a State, or an individual or entity
17 appointed by a State court or a juvenile court located in
18 the United States, acting in loco parentis, shall not be
19 considered a legal guardian for purposes of section 462 of
20 the Homeland Security Act of 2002 (6 U.S.C. 279) or this
21 Act.

22 (2) CLARIFICATION OF THE DEFINITION OF
23 UNACCOMPANIED ALIEN CHILD- For the purposes of
24 section 462(g)(2) of the Homeland Security Act of 2002 (6
25 U.S.C. 279(g)(2)) and this Act, a parent or legal guardian
26 shall not be considered to be available to provide care and
27 physical custody of an alien child unless such parent is in
28 the physical presence of, and able to exercise parental
29 responsibilities over, such child at the time of such child's
30 apprehension and during the child's detention.

31 **TITLE I--CUSTODY, RELEASE, FAMILY REUNIFICATION, AND**
32 **DETENTION**

33 **SEC. 101. PROCEDURES WHEN ENCOUNTERING**
34 **UNACCOMPANIED ALIEN CHILDREN.**

35 (a) Unaccompanied Children Found Along the United States
36 Border or at United States Ports of Entry-

37 (1) IN GENERAL- Subject to paragraph (2), an immigration
38 officer who finds an unaccompanied alien child described in
39 paragraph (2) at a land border or port of entry of the
40 United States and determines that such child is

1 inadmissible under the Immigration and Nationality Act (8
2 U.S.C. 1101 et seq.) shall--

3 (A) permit such child to withdraw the child's
4 application for admission pursuant to section
5 235(a)(4) of the Immigration and Nationality Act (8
6 U.S.C. 1225(a)(4)); and

7 (B) return such child to the child's country of
8 nationality or country of last habitual residence.

9 (2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES-

10 (A) IN GENERAL- Any child who is a national or
11 habitual resident of a country, which is contiguous
12 with the United States and has an agreement in
13 writing with the United States that provides for the
14 safe return and orderly repatriation of
15 unaccompanied alien children who are nationals or
16 habitual residents of such country, shall be treated in
17 accordance with paragraph (1) if the Secretary
18 determines, on a case-by-case basis, that--

19 (i) such child is a national or habitual resident
20 of a country described in this subparagraph;

21 (ii) such child does not have a fear of returning
22 to the child's country of nationality or country
23 of last habitual residence owing to a fear of
24 persecution;

25 (iii) the return of such child to the child's
26 country of nationality or country of last
27 habitual residence would not endanger the life
28 or safety of such child; and

29 (iv) the child is able to make an independent
30 decision to withdraw the child's application for
31 admission due to age or other lack of capacity.

32 (B) RIGHT OF CONSULTATION- Any child described
33 in subparagraph (A) shall have the right, and shall
34 be informed of that right in the child's native
35 language--

36 (i) to consult with a consular officer from the
37 child's country of nationality or country of last
38 habitual residence prior to repatriation; and

39 (ii) to consult, telephonically, with the Office.

40 (3) RULE FOR APPREHENSIONS AT THE BORDER- The
41 custody of unaccompanied alien children not described in
42 paragraph (2) who are apprehended at the border of the
43 United States or at a United States port of entry shall be
44 treated in accordance with subsection (b).

1 (b) Care and Custody of Unaccompanied Alien Children Found in
2 the Interior of the United States-

3 (1) ESTABLISHMENT OF JURISDICTION-

4 (A) IN GENERAL- Except as otherwise provided
5 under subparagraphs (B) and (C) and subsection (a),
6 the care and custody of all unaccompanied alien
7 children, including responsibility for their detention,
8 where appropriate, shall be under the jurisdiction of
9 the Office.

10 (B) EXCEPTION FOR CHILDREN WHO HAVE
11 COMMITTED CRIMES- Notwithstanding subparagraph
12 (A), the Department of Justice shall retain or assume
13 the custody and care of any unaccompanied alien
14 who is--

15 (i) in the custody of the Department of Justice
16 pending prosecution for a Federal crime other
17 than a violation of the Immigration and
18 Nationality Act; or

19 (ii) serving a sentence pursuant to a conviction
20 for a Federal crime.

21 (C) EXCEPTION FOR CHILDREN WHO THREATEN
22 NATIONAL SECURITY- Notwithstanding subparagraph
23 (A), the Department shall retain or assume the
24 custody and care of an unaccompanied alien child if
25 the Secretary has substantial evidence, based on an
26 individualized determination, that such child could
27 personally endanger the national security of the
28 United States.

29 (2) NOTIFICATION-

30 (A) IN GENERAL- Each department or agency of the
31 Federal Government shall promptly notify the Office
32 upon--

33 (i) the apprehension of an unaccompanied
34 alien child;

35 (ii) the discovery that an alien in the custody
36 of such department or agency is an
37 unaccompanied alien child;

38 (iii) any claim by an alien in the custody of
39 such department or agency that such alien is
40 younger than 18 years of age; or

41 (iv) any suspicion that an alien in the custody
42 of such department or agency who has claimed
43 to be at least 18 years of age is actually
44 younger than 18 years of age.

1 (B) SPECIAL RULE- The Director shall--
2 (i) make an age determination for an alien
3 described in clause (iii) or (iv) of subparagraph
4 (A) in accordance with section 105; and
5 (ii) take whatever other steps are necessary to
6 determine whether such alien is eligible for
7 treatment under section 462 of the Homeland
8 Security Act of 2002 (6 U.S.C. 279) or under
9 this Act.

10 (3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN-

11 (A) TRANSFER TO THE OFFICE- Any Federal
12 department or agency that has an unaccompanied
13 alien child in its custody shall transfer the custody of
14 such child to the Office--

15 (i) not later than 72 hours after a
16 determination is made that such child is an
17 unaccompanied alien, if the child is not
18 described in subparagraph (B) or (C) of
19 paragraph (1);

20 (ii) if the custody and care of the child has
21 been retained or assumed by the Attorney
22 General under paragraph (1)(B) or by the
23 Department under paragraph (1)(C), following
24 a determination that the child no longer meets
25 the description set forth in such
26 subparagraphs; or

27 (iii) if the child was previously released to an
28 individual or entity described in section
29 102(a)(1), upon a determination by the
30 Director that such individual or entity is no
31 longer able to care for the child.

32 (B) TRANSFER TO THE DEPARTMENT- The Director
33 shall transfer the care and custody of an
34 unaccompanied alien child in the custody of the
35 Office or the Department of Justice to the
36 Department upon determining that the child is
37 described in subparagraph (B) or (C) of paragraph
38 (1).

39 (C) PROMPTNESS OF TRANSFER- If a child needs to
40 be transferred under this paragraph, the sending
41 office shall make prompt arrangements to transfer
42 such child and the receiving office shall make prompt
43 arrangements to receive such child.

1 (c) Age Determinations- If the age of an alien is in question and
2 the resolution of questions about the age of such alien would
3 affect the alien's eligibility for treatment under section 462 of the
4 Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a
5 determination of whether or not such alien meets such age
6 requirements shall be made in accordance with section 105,
7 unless otherwise specified in subsection (b)(2)(B).

8 (d) Access to Alien- The Secretary and the Attorney General
9 shall permit the Office to have reasonable access to aliens in the
10 custody of the Secretary or the Attorney General to ensure a
11 prompt determination of the age of such alien, if necessary
12 under subsection (b)(2)(B).

13 **SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED**
14 **ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.**

15 (a) Placement of Released Children-

16 (1) ORDER OF PREFERENCE- Subject to the discretion of
17 the Director under paragraph (4), section 103(a)(2), and
18 section 462(b)(2) of the Homeland Security Act of 2002 (6
19 U.S.C. 279(b)(2)), an unaccompanied alien child in the
20 custody of the Office shall be promptly placed with 1 of the
21 following individuals or entities in the following order of
22 preference:

23 (A) A parent who seeks to establish custody under
24 paragraph (3)(A).

25 (B) A legal guardian who seeks to establish custody
26 under paragraph (3)(A).

27 (C) An adult relative.

28 (D) An individual or entity designated by the parent
29 or legal guardian that is capable and willing to care
30 for the well being of the child.

31 (E) A State-licensed family foster home, small group
32 home, or juvenile shelter willing to accept custody of
33 the child.

34 (F) A qualified adult or entity, as determined by the
35 Director by regulation, seeking custody of the child if
36 the Director determines that no other likely
37 alternative to long-term detention exists and family
38 reunification does not appear to be a reasonable
39 alternative.

40 (2) SUITABILITY ASSESSMENT-

41 (A) GENERAL REQUIREMENTS- Notwithstanding
42 paragraph (1), and subject to the requirements of

1 subparagraph (B), an unaccompanied alien child may
2 not be placed with a person or entity described in
3 any of subparagraphs (A) through (F) of paragraph
4 (1) unless the Director provides written certification
5 that the proposed custodian is capable of providing
6 for the child's physical and mental well-being, based
7 on--

8 (i) with respect to an individual custodian--

9 (I) verification of such individual's
10 identity and employment;

11 (II) a finding that such individual has not
12 engaged in any activity that would
13 indicate a potential risk to the child,
14 including the people and activities
15 described in paragraph (4)(A)(i);

16 (III) a finding that such individual is not
17 the subject of an open investigation by a
18 State or local child protective services
19 authority due to suspected child abuse or
20 neglect;

21 (IV) verification that such individual has
22 a plan for the provision of care for the
23 child;

24 (V) verification of familial relationship of
25 such individual, if any relationship is
26 claimed; and

27 (VI) verification of nature and extent of
28 previous relationship;

29 (ii) with respect to a custodial entity,
30 verification of such entity's appropriate
31 licensure by the State, county, or other
32 applicable unit of government; and

33 (iii) such other information as the Director
34 determines appropriate.

35 (B) HOME STUDY-

36 (i) IN GENERAL- The Director shall place a
37 child with any custodian described in any of
38 subparagraphs (A) through (F) of paragraph
39 (1) unless the Director determines that a home
40 study with respect to such custodian is
41 necessary.

42 (ii) SPECIAL NEEDS CHILDREN- A home study
43 shall be conducted to determine if the
44 custodian can properly meet the needs of--

1 (I) a special needs child with a disability
2 (as defined in section 3 of the Americans
3 with Disabilities Act of 1990 (42 U.S.C.
4 12102(2)); or

5 (II) a child who has been the object of
6 physical or mental injury, sexual abuse,
7 negligent treatment, or maltreatment
8 under circumstances which indicate that
9 the child's health or welfare has been
10 harmed or threatened.

11 (iii) FOLLOW-UP SERVICES- The Director shall
12 conduct follow-up services for at least 90 days
13 on custodians for whom a home study was
14 conducted under this subparagraph.

15 (C) CONTRACT AUTHORITY- The Director may, by
16 grant or contract, arrange for some or all of the
17 activities under this section to be carried out by--

18 (i) an agency of the State of the child's
19 proposed residence;

20 (ii) an agency authorized by such State to
21 conduct such activities; or

22 (iii) an appropriate voluntary or nonprofit
23 agency.

24 (D) DATABASE ACCESS- In conducting suitability
25 assessments, the Director shall have access to all
26 relevant information in the appropriate Federal,
27 State, and local law enforcement and immigration
28 databases.

29 (3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY
30 OF UNACCOMPANIED ALIEN CHILD-

31 (A) PLACEMENT WITH PARENT OR LEGAL

32 GUARDIAN- If an unaccompanied alien child is
33 placed with any person or entity other than a parent
34 or legal guardian, and subsequent to that placement
35 a parent or legal guardian seeks to establish
36 custody, the Director shall--

37 (i) assess the suitability of placing the child
38 with the parent or legal guardian; and

39 (ii) make a written determination regarding the
40 child's placement within 30 days.

41 (B) RULE OF CONSTRUCTION- Nothing in this Act
42 shall be construed to--

1 (i) supersede obligations under any treaty or
2 other international agreement to which the
3 United States is a party, including--

4 (I) the Convention on the Civil Aspects of
5 International Child Abduction, done at
6 The Hague, October 25, 1980 (TIAS
7 11670);

8 (II) the Vienna Declaration and Program
9 of Action, adopted at Vienna, June 25,
10 1993; and

11 (III) the Declaration of the Rights of the
12 Child, adopted at New York, November
13 20, 1959; or

14 (ii) limit any right or remedy under such
15 international agreement.

16 (4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS-

17 (A) POLICIES AND PROGRAMS-

18 (i) IN GENERAL- The Director shall establish
19 policies and programs to ensure that
20 unaccompanied alien children are protected
21 from smugglers, traffickers, or other persons
22 seeking to victimize or otherwise engage such
23 children in criminal, harmful, or exploitative
24 activity.

25 (ii) WITNESS PROTECTION PROGRAMS
26 INCLUDED- Programs established pursuant to
27 clause (i) may include witness protection
28 programs.

29 (B) CRIMINAL INVESTIGATIONS AND
30 PROSECUTIONS- Any officer or employee of the
31 Office or of the Department, and any grantee or
32 contractor of the Office or of the Department, who
33 suspects any individual of involvement in any activity
34 described in subparagraph (A) shall report such
35 individual to Federal or State prosecutors for criminal
36 investigation and prosecution.

37 (C) DISCIPLINARY ACTION- Any officer or employee
38 of the Office or the Department, and any grantee or
39 contractor of the Office, who believes that a
40 competent attorney or representative has been a
41 participant in any activity described in subparagraph
42 (A), shall report the attorney to the State bar
43 association of which the attorney is a member, or to
44 other appropriate disciplinary authorities, for

1 appropriate disciplinary action, including private or
2 public admonition or censure, suspension, or
3 disbarment of the attorney from the practice of law.

4 (5) GRANTS AND CONTRACTS- The Director may award
5 grants to, and enter into contracts with, voluntary
6 agencies to carry out this section or section 462 of the
7 Homeland Security Act of 2002 (6 U.S.C. 279).

8 (b) Confidentiality-

9 (1) IN GENERAL- All information obtained by the Office
10 relating to the immigration status of a person described in
11 subparagraphs (A), (B), and (C) of subsection (a)(1) shall
12 remain confidential and may only be used to determine
13 such person's qualifications under subsection (a)(1).

14 (2) NONDISCLOSURE OF INFORMATION- In consideration
15 of the needs and privacy of unaccompanied alien children
16 in the custody of the Office or its agents, and the necessity
17 to guarantee the confidentiality of such children's
18 information in order to facilitate their trust and
19 truthfulness with the Office, its agents, and clinicians, the
20 Office shall maintain the privacy and confidentiality of all
21 information gathered in the course of the care, custody,
22 and placement of unaccompanied alien children, consistent
23 with its role and responsibilities under the Homeland
24 Security Act to act as guardian in loco parentis in the best
25 interest of the unaccompanied alien child, by not disclosing
26 such information to other government agencies or
27 nonparental third parties.

28 (c) Required Disclosure- The Secretary or the Secretary of
29 Health and Human Services shall provide the information
30 furnished under this section, and any other information derived
31 from such furnished information, to--

32 (1) a duly recognized law enforcement entity in connection
33 with an investigation or prosecution of an offense
34 described in paragraph (2) or (3) of section 212(a) of the
35 Immigration and Nationality Act (8 U.S.C. 1182(a)), when
36 such information is requested in writing by such entity; or
37 (2) an official coroner for purposes of affirmatively
38 identifying a deceased individual (whether or not such
39 individual is deceased as a result of a crime).

40 (d) Penalty- Any person who knowingly uses, publishes, or
41 permits information to be examined in violation of this section
42 shall be fined not more than \$10,000.

1 **SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF**
2 **UNACCOMPANIED ALIEN CHILDREN.**

3 (a) Standards for Placement-

4 (1) ORDER OF PREFERENCE- An unaccompanied alien child
5 who is not released pursuant to section 102(a)(1) shall be
6 placed in the least restrictive setting possible in the
7 following order of preference:

8 (A) Licensed family foster home.

9 (B) Small group home.

10 (C) Juvenile shelter.

11 (D) Residential treatment center.

12 (E) Secure detention.

13 (2) PROHIBITION OF DETENTION IN CERTAIN FACILITIES-

14 Except as provided under paragraph (3), an
15 unaccompanied alien child shall not be placed in an adult
16 detention facility or a facility housing delinquent children.

17 (3) DETENTION IN APPROPRIATE FACILITIES- An
18 unaccompanied alien child who has exhibited violent or
19 criminal behavior that endangers others may be detained
20 in conditions appropriate to such behavior in a facility
21 appropriate for delinquent children.

22 (4) STATE LICENSURE- A child shall not be placed with an
23 entity described in section 102(a)(1)(E), unless the entity
24 is licensed by an appropriate State agency to provide
25 residential, group, child welfare, or foster care services for
26 dependent children.

27 (5) CONDITIONS OF DETENTION-

28 (A) IN GENERAL- The Director and the Secretary
29 shall promulgate regulations incorporating standards
30 for conditions of detention in placements described in
31 paragraph (1) that provide for--

32 (i) educational services appropriate to the
33 child;

34 (ii) medical care;

35 (iii) mental health care, including treatment of
36 trauma, physical and sexual violence, and
37 abuse;

38 (iv) access to telephones;

39 (v) access to legal services;

40 (vi) access to interpreters;

41 (vii) supervision by professionals trained in the
42 care of children, taking into account the special

1 cultural, linguistic, and experiential needs of
2 children in immigration proceedings;
3 (viii) recreational programs and activities;
4 (ix) spiritual and religious needs; and
5 (x) dietary needs.

6 (B) NOTIFICATION OF CHILDREN- Regulations
7 promulgated under subparagraph (A) shall provide
8 that all children in such placements are notified of
9 such standards orally and in writing in the child's
10 native language.

11 (b) Prohibition of Certain Practices- The Director and the
12 Secretary shall develop procedures prohibiting the unreasonable
13 use of--

- 14 (1) shackling, handcuffing, or other restraints on children;
15 (2) solitary confinement; or
16 (3) pat or strip searches.

17 (c) Rule of Construction- Nothing in this section shall be
18 construed to supersede procedures favoring release of children
19 to appropriate adults or entities or placement in the least secure
20 setting possible, as described in paragraph 23 of the Stipulated
21 Settlement Agreement under Flores v. Reno.

22 **SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.**

23 (a) Country Conditions-

24 (1) SENSE OF CONGRESS- It is the sense of Congress
25 that, to the extent consistent with the treaties and other
26 international agreements to which the United States is a
27 party, and to the extent practicable, the United States
28 Government should undertake efforts to ensure that it
29 does not repatriate children in its custody into settings that
30 would threaten the life and safety of such children.

31 (2) ASSESSMENT OF CONDITIONS-

32 (A) IN GENERAL- The Secretary of State shall
33 include, in the annual Country Reports on Human
34 Rights Practices, an assessment of the degree to
35 which each country protects children from smugglers
36 and traffickers.

37 (B) FACTORS FOR ASSESSMENT- The Secretary shall
38 consult the Country Reports on Human Rights
39 Practices and the Trafficking in Persons Report in
40 assessing whether to repatriate an unaccompanied
41 alien child to a particular country.

42 (b) Report on Repatriation of Unaccompanied Alien Children-

1 (1) IN GENERAL- Not later than 18 months after the date
2 of the enactment of this Act, and annually thereafter, the
3 Secretary shall submit a report to the Committee on the
4 Judiciary of the Senate and the Committee on the Judiciary
5 of the House of Representatives on efforts to repatriate
6 unaccompanied alien children.

7 (2) CONTENTS- The report submitted under paragraph (1)
8 shall include--

9 (A) the number of unaccompanied alien children
10 ordered removed and the number of such children
11 actually removed from the United States;

12 (B) a description of the type of immigration relief
13 sought and denied to such children;

14 (C) a statement of the nationalities, ages, and
15 gender of such children;

16 (D) a description of the procedures used to effect the
17 removal of such children from the United States;

18 (E) a description of steps taken to ensure that such
19 children were safely and humanely repatriated to
20 their country of origin; and

21 (F) any information gathered in assessments of
22 country and local conditions pursuant to subsection
23 (a)(2).

24 **SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED**
25 **ALIEN CHILD.**

26 (a) Procedures-

27 (1) IN GENERAL- The Director, in consultation with the
28 Secretary, shall develop procedures to make a prompt
29 determination of the age of an alien, which procedures
30 shall be used--

31 (A) by the Secretary, with respect to aliens in the
32 custody of the Department;

33 (B) by the Director, with respect to aliens in the
34 custody of the Office; and

35 (C) by the Attorney General, with respect to aliens in
36 the custody of the Department of Justice.

37 (2) EVIDENCE- The procedures developed under paragraph
38 (1) shall--

39 (A) permit the presentation of multiple forms of
40 evidence, including testimony of the alien, to
41 determine the age of the unaccompanied alien for

1 purposes of placement, custody, parole, and
2 detention; and
3 (B) allow the appeal of a determination to an
4 immigration judge.

5 (b) Prohibition on Sole Means of Determining Age- Radiographs
6 or the attestation of an alien may not be used as the sole means
7 of determining age for the purposes of determining an alien's
8 eligibility for treatment under this Act or section 462 of the
9 Homeland Security Act of 2002 (6 U.S.C. 279).

10 (c) Rule of Construction- Nothing in this section may be
11 construed to place the burden of proof in determining the age of
12 an alien on the Government.

13 **SEC. 106. EFFECTIVE DATE.**

14 This title shall take effect on the date which is 90 days after the
15 date of the enactment of this Act.

16 **TITLE II--ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO**
17 **CHILD ADVOCATES AND COUNSEL**

18 **SEC. 201. CHILD ADVOCATES.**

19 (a) Establishment of Child Advocate Program-

20 (1) APPOINTMENT- The Director may appoint a child
21 advocate, who meets the qualifications described in
22 paragraph (2), for an unaccompanied alien child. The
23 Director is encouraged, if practicable, to contract with a
24 voluntary agency for the selection of an individual to be
25 appointed as a child advocate under this paragraph.

26 (2) QUALIFICATIONS OF CHILD ADVOCATE-

27 (A) IN GENERAL- A person may not serve as a child
28 advocate unless such person--

29 (i) is a child welfare professional or other
30 individual who has received training in child
31 welfare matters;

32 (ii) possesses special training on the nature of
33 problems encountered by unaccompanied alien
34 children; and

35 (iii) is not an employee of the Department, the
36 Department of Justice, or the Department of
37 Health and Human Services.

38 (B) INDEPENDENCE OF CHILD ADVOCATE-

1 (i) INDEPENDENCE FROM AGENCIES OF
2 GOVERNMENT- The child advocate shall act
3 independently of any agency of government in
4 making and reporting findings or making
5 recommendations with respect to the best
6 interests of the child. No agency shall
7 terminate, reprimand, de-fund, intimidate, or
8 retaliate against any person or entity
9 appointed under paragraph (1) because of the
10 findings and recommendations made by such
11 person relating to any child.

12 (ii) PROHIBITION OF CONFLICT OF INTEREST-
13 No person shall serve as a child advocate for a
14 child if such person is providing legal services
15 to such child.

16 (3) DUTIES- The child advocate of a child shall--

17 (A) conduct interviews with the child in a manner
18 that is appropriate, taking into account the child's
19 age;

20 (B) investigate the facts and circumstances relevant
21 to the child's presence in the United States, including
22 facts and circumstances--

23 (i) arising in the country of the child's

24 nationality or last habitual residence; and

25 (ii) arising subsequent to the child's departure
26 from such country;

27 (C) work with counsel to identify the child's eligibility
28 for relief from removal or voluntary departure by
29 sharing with counsel relevant information collected
30 under subparagraph (B);

31 (D) develop recommendations on issues relative to
32 the child's custody, detention, release, and
33 repatriation;

34 (E) take reasonable steps to ensure that--

35 (i) the best interests of the child are promoted
36 while the child participates in, or is subject to,
37 proceedings or matters under the Immigration
38 and Nationality Act (8 U.S.C. 1101 et seq.);

39 (ii) the child understands the nature of the
40 legal proceedings or matters and
41 determinations made by the court, and that all
42 information is conveyed to the child in an age-
43 appropriate manner;

1 (F) report factual findings and recommendations
2 consistent with the child's best interests relating to
3 the custody, detention, and release of the child
4 during the pendency of the proceedings or matters,
5 to the Director and the child's counsel;

6 (G) in any proceeding involving an alien child in
7 which a complaint has been filed with any
8 appropriate disciplinary authority against an attorney
9 or representative for criminal, unethical, or
10 unprofessional conduct in connection with the
11 representation of the alien child, provide the
12 immigration judge with written recommendations or
13 testimony on any information the child advocate may
14 have regarding the conduct of the attorney; and
15 (H) in any proceeding involving an alien child in
16 which the safety of the child upon repatriation is at
17 issue, and after the immigration judge has
18 considered and denied all applications for relief other
19 than voluntary departure, provide the immigration
20 judge with written recommendations or testimony on
21 any information the child advocate may have
22 regarding the child's safety upon repatriation.

23 (4) TERMINATION OF APPOINTMENT- The child advocate
24 shall carry out the duties described in paragraph (3) until
25 the earliest of the date on which--

- 26 (A) those duties are completed;
27 (B) the child departs from the United States;
28 (C) the child is granted permanent resident status in
29 the United States;
30 (D) the child reaches 18 years of age; or
31 (E) the child is placed in the custody of a parent or
32 legal guardian.

33 (5) POWERS- The child advocate--

- 34 (A) shall have reasonable access to the child,
35 including access while such child is being held in
36 detention or in the care of a foster family;
37 (B) shall be permitted to review all records and
38 information relating to such proceedings that are not
39 deemed privileged or classified;
40 (C) may seek independent evaluations of the child;
41 (D) shall be notified in advance of all hearings or
42 interviews involving the child that are held in
43 connection with proceedings or matters under the
44 Immigration and Nationality Act (8 U.S.C. 1101 et

1 seq.), and shall be given a reasonable opportunity to
2 be present at such hearings or interviews;
3 (E) shall be permitted to accompany and consult
4 with the child during any hearing or interview
5 involving such child; and
6 (F) shall be provided at least 24 hours advance
7 notice of a transfer of that child to a different
8 placement, absent compelling and unusual
9 circumstances warranting the transfer of such child
10 before such notification.

11 (b) Training-

12 (1) IN GENERAL- The Director shall provide professional
13 training for all persons serving as child advocates under
14 this section.

15 (2) TRAINING TOPICS- The training provided under
16 paragraph (1) shall include training in--

17 (A) the circumstances and conditions faced by
18 unaccompanied alien children; and

19 (B) various immigration benefits for which such alien
20 child might be eligible.

21 (c) Pilot Program-

22 (1) IN GENERAL- Not later than 180 days after the date of
23 the enactment of this Act, the Director shall establish and
24 begin to carry out a pilot program to test the
25 implementation of subsection (a). Any pilot program
26 existing before the date of the enactment of this Act shall
27 be deemed insufficient to satisfy the requirements of this
28 subsection.

29 (2) PURPOSE- The purpose of the pilot program
30 established pursuant to paragraph (1) is to--

31 (A) study and assess the benefits of providing child
32 advocates to assist unaccompanied alien children

33 involved in immigration proceedings or matters;

34 (B) assess the most efficient and cost-effective
35 means of implementing the child advocate provisions
36 under this section; and

37 (C) assess the feasibility of implementing such
38 provisions on a nationwide basis for all
39 unaccompanied alien children in the care of the
40 Office.

41 (3) SCOPE OF PROGRAM-

42 (A) SELECTION OF SITE- The Director shall select 3
43 sites at which to operate the pilot program
44 established under paragraph (1).

1 (B) NUMBER OF CHILDREN- Each site selected under
2 subparagraph (A) should have not less than 25
3 children held in immigration custody at any given
4 time, to the greatest extent possible.

5 (4) REPORT TO CONGRESS- Not later than 1 year after the
6 date on which the first pilot program site is established
7 under paragraph (1), the Director shall submit a report on
8 the achievement of the purposes described in paragraph
9 (2) to the Committee on the Judiciary of the Senate and
10 the Committee on the Judiciary of the House of
11 Representatives.

12 (5) AUTHORIZATION OF APPROPRIATIONS- There are
13 authorized to be appropriated such sums as may be
14 necessary to carry out this section.

15 **SEC. 202. COUNSEL.**

16 (a) Access to Counsel-

17 (1) IN GENERAL- The Director shall ensure, to the greatest
18 extent practicable, that all unaccompanied alien children in
19 the custody of the Office or the Department, who are not
20 described in section 101(a)(2), have competent counsel to
21 represent them in immigration proceedings or matters.

22 (2) PRO BONO REPRESENTATION- To the greatest extent
23 practicable, the Director shall--

24 (A) make every effort to utilize the services of
25 competent pro bono counsel who agree to provide
26 representation to such children without charge; and
27 (B) ensure that placements made under
28 subparagraphs (D), (E), and (F) of section 102(a)(1)
29 are in cities in which there is a demonstrated
30 capacity for competent pro bono representation.

31 (3) DEVELOPMENT OF NECESSARY INFRASTRUCTURES
32 AND SYSTEMS- The Director shall develop the necessary
33 mechanisms to identify and recruit entities that are
34 available to provide legal assistance and representation
35 under this subsection.

36 (4) CONTRACTING AND GRANT MAKING AUTHORITY-

37 (A) IN GENERAL- The Director shall enter into
38 contracts with, or award grants to, nonprofit
39 agencies with relevant expertise in the delivery of
40 immigration-related legal services to children in
41 order to carry out the responsibilities of this Act,
42 including providing legal orientation, screening cases

1 for referral, recruiting, training, and overseeing pro
2 bono attorneys.

3 (B) SUBCONTRACTING- Nonprofit agencies may
4 enter into subcontracts with, or award grants to,
5 private voluntary agencies with relevant expertise in
6 the delivery of immigration-related legal services to
7 children in order to carry out this subsection.

8 (C) CONSIDERATIONS REGARDING GRANTS AND
9 CONTRACTS- In awarding grants and entering into
10 contracts with agencies under this paragraph, the
11 Director shall take into consideration the capacity of
12 the agencies in question to properly administer the
13 services covered by such grants or contracts without
14 an undue conflict of interest.

15 (5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF
16 CHILDREN-

17 (A) DEVELOPMENT OF GUIDELINES- The Director of
18 the Executive Office for Immigration Review of the
19 Department of Justice, in consultation with voluntary
20 agencies and national experts, shall develop model
21 guidelines for the legal representation of alien
22 children in immigration proceedings. Such guidelines
23 shall be based on the children's asylum guidelines,
24 the American Bar Association Model Rules of
25 Professional Conduct, and other relevant domestic or
26 international sources.

27 (B) PURPOSE OF GUIDELINES- The guidelines
28 developed under subparagraph (A) shall be designed
29 to help protect each child from any individual
30 suspected of involvement in any criminal, harmful, or
31 exploitative activity associated with the smuggling or
32 trafficking of children, while ensuring the fairness of
33 the removal proceeding in which the child is
34 involved.

35 (C) IMPLEMENTATION- Not later than 180 days after
36 the date of the enactment of this Act, the Director of
37 the Executive Office for Immigration Review shall--

38 (i) adopt the guidelines developed under
39 subparagraph (A); and

40 (ii) submit the guidelines for adoption by
41 national, State, and local bar associations.

42 (b) Duties- Counsel under this section shall--

- 1 (1) represent the unaccompanied alien child in all
2 proceedings and matters relating to the immigration status
3 of the child or other actions involving the Department;
4 (2) appear in person for all individual merits hearings
5 before the Executive Office for Immigration Review and
6 interviews involving the Department; and
7 (3) owe the same duties of undivided loyalty,
8 confidentiality, and competent representation to the child
9 as is due to an adult client.

10 (c) Access to Child-

- 11 (1) IN GENERAL- Counsel under this section shall have
12 reasonable access to the unaccompanied alien child,
13 including access while the child is--
14 (A) held in detention;
15 (B) in the care of a foster family; or
16 (C) in any other setting that has been determined by
17 the Office.
18 (2) RESTRICTION ON TRANSFERS- Absent compelling and
19 unusual circumstances, a child who is represented by
20 counsel may not be transferred from the child's placement
21 to another placement unless advance notice of at least 24
22 hours is made to counsel of such transfer.

23 (d) Notice to Counsel During Immigration Proceedings-

- 24 (1) IN GENERAL- Except when otherwise required in an
25 emergency situation involving the physical safety of the
26 child, counsel shall be given prompt and adequate notice
27 of all immigration matters affecting or involving an
28 unaccompanied alien child, including adjudications,
29 proceedings, and processing, before such actions are
30 taken.
31 (2) OPPORTUNITY TO CONSULT WITH COUNSEL- An
32 unaccompanied alien child in the custody of the Office may
33 not give consent to any immigration action, including
34 consenting to voluntary departure, unless first afforded an
35 opportunity to consult with counsel.

36 (e) Access to Recommendations of Child Advocate- Counsel shall
37 be given an opportunity to review the recommendations of the
38 child advocate affecting or involving a client who is an
39 unaccompanied alien child.

40 (f) Counsel for Unaccompanied Alien Children- Nothing in this
41 Act may be construed to require the Government of the United
42 States to pay for counsel to any unaccompanied alien child.

43 **SEC. 203. EFFECTIVE DATE; APPLICABILITY.**

1 (a) Effective Date- This title shall take effect on the date which is
2 180 days after the date of the enactment of this Act.
3 (b) Applicability- The provisions of this title shall apply to all
4 unaccompanied alien children in Federal custody before, on, or
5 after the effective date of this title.

6 **TITLE III--STRENGTHENING POLICIES FOR PERMANENT**
7 **PROTECTION OF ALIEN CHILDREN**

8 **SEC. 301. SPECIAL IMMIGRANT JUVENILE CLASSIFICATION.**

9 (a) J Classification-

10 (1) IN GENERAL- Section 101(a)(27)(J) of the Immigration
11 and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended
12 to read as follows:

13 (J) an immigrant, who is 18 years of age or younger on
14 the date of application for classification as a special
15 immigrant and present in the United States--

16 (i) who, by a court order supported by written
17 findings of fact, which shall be binding on the
18 Secretary of Homeland Security for purposes of
19 adjudications under this subparagraph--

20 (I) was declared dependent on a juvenile
21 court located in the United States or has been
22 legally committed to, or placed under the
23 custody of, a department or agency of a State,
24 or an individual or entity appointed by a State
25 or juvenile court located in the United States;
26 and

27 (II) should not be reunified with his or her
28 parents due to abuse, neglect, abandonment,
29 or a similar basis found under State law;

30 (ii) for whom it has been determined by written
31 findings of fact in administrative or judicial
32 proceedings that it would not be in the alien's best
33 interest to be returned to the alien's or parent's
34 previous country of nationality or country of last
35 habitual residence; and

36 (iii) with respect to a child in Federal custody, for
37 whom the Office of Refugee Resettlement of the
38 Department of Health and Human Services has
39 certified to the Director of U.S. Citizenship and
40 Immigration Services that the classification of an
41 alien as a special immigrant under this subparagraph

1 has not been made solely to provide an immigration
2 benefit to that alien.'

3 (2) RULE OF CONSTRUCTION- Nothing in subparagraph (J)
4 of section 101(a)(27) of the Immigration and Nationality
5 Act, as amended by paragraph (1), shall be construed to
6 grant, to any natural parent or prior adoptive parent of any
7 alien provided special immigrant status under such
8 subparagraph, by virtue of such parentage, any right,
9 privilege, or status under such Act.

10 (b) Adjustment of Status- Section 245(h)(2)(A) of the
11 Immigration and Nationality Act (8 U.S.C. 1255(h)(2)(A)) is
12 amended to read as follows:

13 (A) paragraphs (4), (5)(A), (6)(A), (7)(A), 9(B),
14 and 9(C)(i)(I) of section 212(a) shall not apply; and'

15 (c) Eligibility for Assistance-

16 (1) IN GENERAL- A child who has been certified under
17 section 101(a)(27)(J) of the Immigration and Nationality
18 Act, as amended by subsection (a)(1), and who was in the
19 custody of the Office at the time a dependency order was
20 granted for such child, shall be eligible for placement and
21 services under section 412(d) of such Act (8 U.S.C.
22 1522(d)) until the earlier of--

23 (A) the date on which the child reaches the age
24 designated in section 412(d)(2)(B) of such Act (8
25 U.S.C. 1522(d)(2)(B)); or

26 (B) the date on which the child is placed in a
27 permanent adoptive home.

28 (2) STATE REIMBURSEMENT- If foster care funds are
29 expended on behalf of a child who is not described in
30 paragraph (1) and has been granted relief under section
31 101(a)(27)(J) of the Immigration and Nationality Act, the
32 Federal Government shall reimburse the State in which the
33 child resides for such expenditures by the State.

34 (d) Transition Rule- Notwithstanding any other provision of law,
35 a child described in section 101(a)(27)(J) of the Immigration and
36 Nationality Act, as amended by subsection (a)(1), may not be
37 denied such special immigrant juvenile classification after the
38 date of the enactment of this Act based on age if the child--

39 (1) filed an application for special immigrant juvenile
40 classification before the date of the enactment of this Act
41 and was 21 years of age or younger on the date such
42 application was filed; or

43 (2) was younger than 21 years of age on the date on
44 which the child applied for classification as a special

1 immigrant juvenile and can demonstrate exceptional
2 circumstances warranting relief.

3 (e) Rulemaking- Not later than 90 days after the date of the
4 enactment of this Act, the Secretary shall promulgate rules to
5 carry out this section.

6 (f) Effective Date- The amendments made by this section shall
7 apply to all aliens who were in the United States before, on, or
8 after the date of enactment of this Act.

9 **SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE**
10 **PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED**
11 **ALIEN CHILDREN.**

12 (a) Training of State and Local Officials and Certain Private
13 Parties-

14 (1) IN GENERAL- The Secretary of Health and Human
15 Services, acting jointly with the Secretary, shall provide
16 appropriate training materials, and upon request, direct
17 training, to State and county officials, child welfare
18 specialists, teachers, public counsel, and juvenile judges
19 who come into contact with unaccompanied alien children.

20 (2) CURRICULUM- The training required under paragraph
21 (1) shall include education on the processes pertaining to
22 unaccompanied alien children with pending immigration
23 status and on the forms of relief potentially available. The
24 Director shall establish a core curriculum that can be
25 incorporated into education, training, or orientation
26 modules or formats that are currently used by these
27 professionals.

28 (3) VIDEO CONFERENCING- Direct training requested
29 under paragraph (1) may be conducted through video
30 conferencing.

31 (b) Training of Department Personnel- The Secretary, acting
32 jointly with the Secretary of Health and Human Services, shall
33 provide specialized training to all personnel of the Department
34 who come into contact with unaccompanied alien children.

35 Training for agents of the Border Patrol and immigration
36 inspectors shall include specific training on identifying--

37 (1) children at the international borders of the United
38 States or at United States ports of entry who have been
39 victimized by smugglers or traffickers; and

40 (2) children for whom asylum or special immigrant relief
41 may be appropriate, including children described in section
42 101(a)(2)(A).

1 **SEC. 303. REPORT.**

2 Not later than 1 year after the date of the enactment of this Act,
3 and annually thereafter, the Secretary of Health and Human
4 Services shall submit a report to the Committee on the Judiciary
5 of the Senate and the Committee on the Judiciary of the House
6 of Representatives that contains, for the most recently concluded
7 fiscal year--

8 (1) data related to the implementation of section 462 of
9 the Homeland Security Act (6 U.S.C. 279);

10 (2) data regarding the care and placement of children
11 under this Act;

12 (3) data regarding the provision of child advocate and
13 counsel services under this Act; and

14 (4) any other information that the Director or the
15 Secretary of Health and Human Services determines to be
16 appropriate.

17 **TITLE IV--CHILDREN REFUGEE AND ASYLUM SEEKERS**

18 **SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.**

19 (a) Sense of Congress- Congress--

20 (1) commends the former Immigration and Naturalization
21 Service for its `Guidelines for Children's Asylum Claims',
22 issued in December 1998;

23 (2) encourages and supports the Department to implement
24 such guidelines to facilitate the handling of children's
25 affirmative asylum claims;

26 (3) commends the Executive Office for Immigration Review
27 of the Department of Justice for its `Guidelines for
28 Immigration Court Cases Involving Unaccompanied Alien
29 Children', issued in September 2004;

30 (4) encourages and supports the continued implementation
31 of such guidelines by the Executive Office for Immigration
32 Review in its handling of children's asylum claims before
33 immigration judges; and

34 (5) understands that the guidelines described in paragraph
35 (3)--

36 (A) do not specifically address the issue of asylum
37 claims; and

38 (B) address the broader issue of unaccompanied
39 alien children.

40 (b) Training-

1 (1) IMMIGRATION OFFICERS- The Secretary shall provide
2 periodic comprehensive training under the `Guidelines for
3 Children's Asylum Claims' to asylum officers and
4 immigration officers who have contact with children in
5 order to familiarize and sensitize such officers to the needs
6 of children asylum seekers.

7 (2) IMMIGRATION JUDGES- The Director of the Executive
8 Office for Immigration Review shall--

9 (A) provide periodic comprehensive training under
10 the `Guidelines for Immigration Court Cases
11 Involving Unaccompanied Alien Children' and the
12 `Guidelines for Children's Asylum Claims' to
13 immigration judges and members of the Board of
14 Immigration Appeals; and

15 (B) redistribute the `Guidelines for Children's Asylum
16 Claims' to all immigration courts as part of its
17 training of immigration judges.

18 (3) USE OF VOLUNTARY AGENCIES- Voluntary agencies
19 shall be allowed to assist in the training described in this
20 subsection.

21 (c) Statistics and Reporting-

22 (1) STATISTICS-

23 (A) DEPARTMENT OF JUSTICE- The Attorney General
24 shall compile and maintain statistics on the number
25 of cases in immigration court involving
26 unaccompanied alien children, which shall include,
27 with respect to each such child, information about--

28 (i) the age;

29 (ii) the gender;

30 (iii) the country of nationality;

31 (iv) representation by counsel;

32 (v) the relief sought; and

33 (vi) the outcome of such cases.

34 (B) DEPARTMENT OF HOMELAND SECURITY- The
35 Secretary shall compile and maintain statistics on the
36 instances of unaccompanied alien children in the
37 custody of the Department, which shall include, with
38 respect to each such child, information about--

39 (i) the age;

40 (ii) the gender;

41 (iii) the country of nationality; and

42 (iv) the length of detention.

43 (2) REPORTS TO CONGRESS- Not later than 90 days after
44 the date of the enactment of this Act and annually,

1 thereafter, the Attorney General, in consultation with the
2 Secretary, Secretary of Health and Human Services, and
3 any other necessary government official, shall submit a
4 report to the Committee on the Judiciary of the Senate and
5 the Committee on the Judiciary House of Representatives
6 on the number of alien children in Federal custody during
7 the most recently concluded fiscal year. Information
8 contained in the report, with respect to such children, shall
9 be categorized by--

- 10 (A) age;
- 11 (B) gender;
- 12 (C) country of nationality;
- 13 (D) length of time in custody;
- 14 (E) the department or agency with custody; and
- 15 (F) treatment as an unaccompanied alien child.

16 **SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.**

17 (a) Identifying Unaccompanied Refugee Children- Section 207(e)
18 of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is
19 amended--

20 (1) by redesignating paragraphs (3), (4), (5), (6), and (7)
21 as paragraphs (4), (5), (6), (7), and (8), respectively; and

22 (2) by inserting after paragraph (2) the following:

23 ` (3) An analysis of the worldwide situation faced by
24 unaccompanied refugee children, categorized by region,
25 which shall include an assessment of--

26 ` (A) the number of unaccompanied refugee children;

27 ` (B) the capacity of the Department of State to
28 identify such refugees;

29 ` (C) the capacity of the international community to
30 care for and protect such refugees;

31 ` (D) the capacity of the voluntary agency
32 community to resettle such refugees in the United
33 States;

34 ` (E) the degree to which the United States plans to
35 resettle such refugees in the United States in the
36 following fiscal year; and

37 ` (F) the fate that will befall such unaccompanied
38 refugee children for whom resettlement in the United
39 States is not possible.'.

40 (b) Training on the Needs of Unaccompanied Refugee Children-
41 Section 207(f)(2) of the Immigration and Nationality Act (8
42 U.S.C. 1157(f)(2)) is amended--

1 (1) by striking `and' after `countries,'; and
2 (2) by inserting `, and instruction on the needs of
3 unaccompanied refugee children' before the period at the
4 end.

5 **SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN**
6 **IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.**

7 (a) Placement in Removal Proceedings- Any unaccompanied
8 alien child apprehended by the Department, except for an
9 unaccompanied alien child subject to exceptions under
10 paragraph (1)(A) or (2) of section (101)(a), shall be placed in
11 removal proceedings under section 240 of the Immigration and
12 Nationality Act (8 U.S.C. 1229a).

13 (b) Exception From Time Limit for Filing Asylum Application-
14 Section 208 of the Immigration and Nationality Act (8 U.S.C.
15 1158(a)(2)) is amended--

16 (1) in subsection (a)(2), by adding at the end the
17 following:

18 `(E) APPLICABILITY- Subparagraphs (A) and (B)
19 shall not apply to an unaccompanied alien child.';
20 and

21 (2) in subsection (b)(3), by adding at the end the
22 following:

23 `(C) INITIAL JURISDICTION- United States
24 Citizenship and Immigration Services shall have
25 initial jurisdiction over any asylum application filed
26 by an unaccompanied alien child.'

27 **TITLE V--AMENDMENTS TO THE HOMELAND SECURITY ACT OF**
28 **2002**

29 **SEC. 501. ADDITIONAL RESPONSIBILITIES AND POWERS OF**
30 **THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO**
31 **UNACCOMPANIED ALIEN CHILDREN.**

32 (a) Additional Responsibilities of the Director- Section 462(b)(1)
33 of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is
34 amended--

35 (1) in subparagraph (K), by striking `and' at the end;
36 (2) in subparagraph (L), by striking the period at the end
37 and inserting `, including regular follow-up visits to such
38 facilities, placements, and other entities, to assess the
39 continued suitability of such placements; and'; and

1 (3) by adding at the end the following:

2 (M) ensuring minimum standards of care for all
3 unaccompanied alien children--

4 (i) for whom detention is necessary; and

5 (ii) who reside in settings that are alternative
6 to detention.'.

7 (b) Additional Authority of the Director- Section 462(b) of the
8 Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by
9 adding at the end the following:

10 (4) AUTHORITY- In carrying out the duties under
11 paragraph (3), the Director may--

12 (A) contract with service providers to perform the
13 services described in sections 102, 103, 201, and
14 202 of the Unaccompanied Alien Child Protection Act
15 of 2007; and

16 (B) compel compliance with the terms and
17 conditions set forth in section 103 of such Act, by--

18 (i) declaring providers to be in breach and
19 seek damages for noncompliance;

20 (ii) terminating the contracts of providers that
21 are not in compliance with such conditions; or

22 (iii) reassigning any unaccompanied alien
23 child to a similar facility that is in compliance
24 with such section.'.

25 **SEC. 502. TECHNICAL CORRECTIONS.**

26 Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C.
27 279(b)), as amended by section 501, is further amended--

28 (1) in paragraph (3), by striking 'paragraph (1)(G)' and
29 inserting 'paragraph (1)'; and

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

31 (5) RULE OF CONSTRUCTION- Nothing in paragraph
32 (2)(B) may be construed to require that a bond be posted
33 for unaccompanied alien children who are released to a
34 qualified sponsor.'.

35 **SEC. 503. EFFECTIVE DATE.**

36 The amendments made by this title shall take effect as if
37 included in the Homeland Security Act of 2002 (6 U.S.C. 101 et
38 seq.).

39 **TITLE VI--AUTHORIZATION OF APPROPRIATIONS**

1 **SEC. 601. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) In General- There are authorized to be appropriated to the
3 Department, the Department of Justice, and the Department of
4 Health and Human Services, such sums as may be necessary to
5 carry out--

6 (1) the provisions of section 462 of the Homeland Security
7 Act of 2002 (6 U.S.C. 279); and

8 (2) the provisions of this Act.

9 (b) Availability of Funds- Amounts appropriated pursuant to
10 subsection (a) shall remain available until expended.

11

12

13 **TITLE IX --STUDY OF WARTIME TREATMENT OF CERTAIN PEOPLE**

14 **SEC. 901. SHORT TITLE.**

15 This title may be cited as the ``Wartime Treatment Study Act''.

16 **SEC. __902. FINDINGS.**

17 Congress makes the following findings:

18 (1) During World War II, the United States Government deemed as
19 ``enemy aliens'' more than 600,000 Italian-born and 300,000 German-born
20 United States resident aliens and their families and required them to carry
21 Certificates of Identification and limited their travel and personal property
22 rights. At that time, these groups were the 2 largest foreign-born groups in
23 the United States.

24 (2) During World War II, the United States Government arrested,
25 interned, or otherwise detained thousands of European Americans, some
26 remaining in custody for years after cessation of World War II hostilities, and
27 repatriated, exchanged, or deported European Americans, including
28 American-born children, to European Axis nations, many to be exchanged for
29 Americans held in those nations.

30 (3) Pursuant to a policy coordinated by the United States with Latin
31 American nations, many European Latin Americans, including German and
32 Austrian Jews, were arrested, brought to the United States, and interned.
33 Many were later expatriated, repatriated, or deported to European Axis
34 nations during World War II, many to be exchanged for Americans and Latin
35 Americans held in those nations.

36 (4) Millions of European Americans served in the armed forces and
37 thousands sacrificed their lives in defense of the United States.

1 (5) The wartime policies of the United States Government were
2 devastating to the Italian American and German American communities,
3 individuals, and their families. The detrimental effects are still being
4 experienced.

5 (6) Prior to and during World War II, the United States restricted the entry
6 of Jewish refugees who were fleeing persecution or genocide and sought
7 safety in the United States. During the 1930's and 1940's, the quota system,
8 immigration regulations, visa requirements, and the time required to process
9 visa applications affected the number of Jewish refugees, particularly those
10 from Germany and Austria, who could gain admittance to the United States.

11 (7) The United States Government should conduct an independent review
12 to fully assess and acknowledge these actions. Congress has previously
13 reviewed the United States Government's wartime treatment of Japanese
14 Americans through the Commission on Wartime Relocation and Internment of
15 Civilians. An independent review of the treatment of German Americans and
16 Italian Americans and of Jewish refugees fleeing persecution and genocide
17 has not yet been undertaken.

18 (8) Time is of the essence for the establishment of commissions, because
19 of the increasing danger of destruction and loss of relevant documents, the
20 advanced age of potential witnesses and, most importantly, the advanced
21 age of those affected by the United States Government's policies. Many who
22 suffered have already passed away and will never know of this effort.

23 **SEC. 903. DEFINITIONS.**

24 In this title:

25 (1) DURING WORLD WAR II.--The term ``during World War II'' refers to
26 the period between September 1, 1939, through December 31, 1948.

27 (2) EUROPEAN AMERICANS.--

28 (A) IN GENERAL.--The term ``European Americans'' refers to United
29 States citizens and resident aliens of European ancestry, including Italian
30 Americans, German Americans, Hungarian Americans, Romanian Americans,
31 and Bulgarian Americans.

32 (B) ITALIAN AMERICANS.--The term ``Italian Americans'' refers to United
33 States citizens and resident aliens of Italian ancestry.

34 (C) GERMAN AMERICANS.--The term ``German Americans'' refers to
35 United States citizens and resident aliens of German ancestry.

1 (3) EUROPEAN LATIN AMERICANS.--The term ``European Latin
2 Americans" refers to persons of European ancestry, including Italian or
3 German ancestry, residing in a Latin American nation during World War II.

4 (4) LATIN AMERICAN NATION.--The term ``Latin American nation" refers
5 to any nation in Central America, South America, or the Carribean.

6 **Subtitle A--Commission on Wartime Treatment of European**
7 **Americans**

8 **SEC. __911. ESTABLISHMENT OF COMMISSION ON WARTIME**
9 **TREATMENT OF EUROPEAN AMERICANS.**

10 (a) *In General.*--There is established the Commission on Wartime
11 Treatment of European Americans (referred to in this subtitle as the
12 ``European American Commission").

13 (b) *Membership.*--The European American Commission shall be composed
14 of 7 members, who shall be appointed not later than 90 days after the date
15 of enactment of this Act as follows:

16 (1) Three members shall be appointed by the President.

17 (2) Two members shall be appointed by the Speaker of the House of
18 Representatives, in consultation with the minority leader.

19 (3) Two members shall be appointed by the majority leader of the Senate,
20 in consultation with the minority leader.

21 (c) *Terms.*--The term of office for members shall be for the life of the
22 European American Commission. A vacancy in the European American
23 Commission shall not affect its powers, and shall be filled in the same
24 manner in which the original appointment was made.

25 (d) *Representation.*--The European American Commission shall include 2
26 members representing the interests of Italian Americans and 2 members
27 representing the interests of German Americans.

28 (e) *Meetings.*--The President shall call the first meeting of the European
29 American Commission not later than 120 days after the date of enactment of
30 this Act.

31 (f) *Quorum.*--Four members of the European American Commission shall
32 constitute a quorum, but a lesser number may hold hearings.

1 (g) *Chairman*.--The European American Commission shall elect a
2 Chairman and Vice Chairman from among its members. The term of office of
3 each shall be for the life of the European American Commission.

4 (h) *Compensation*.--

5 (1) IN GENERAL.--Members of the European American Commission shall
6 serve without pay.

7 (2) REIMBURSEMENT OF EXPENSES.--All members of the European
8 American Commission shall be reimbursed for reasonable travel and
9 subsistence, and other reasonable and necessary expenses incurred by them
10 in the performance of their duties.

11 **SEC. __912. DUTIES OF THE EUROPEAN AMERICAN COMMISSION.**

12 (a) *In General*.--It shall be the duty of the European American
13 Commission to review the United States Government's wartime treatment of
14 European Americans and European Latin Americans as provided in subsection
15 (b).

16 (b) *Scope of Review*.--The European American Commission's review shall
17 include the following:

18 (1) A comprehensive review of the facts and circumstances surrounding
19 United States Government actions during World War II with respect to
20 European Americans and European Latin Americans pursuant to the Alien
21 Enemies Acts (50 U.S.C. 21 et seq.), Presidential Proclamations 2526, 2527,
22 2655, 2662, and 2685, Executive Orders 9066 and 9095, and any directive of
23 the United States Government pursuant to such law, proclamations, or
24 executive orders respecting the registration, arrest, exclusion, internment,
25 exchange, or deportation of European Americans and European Latin
26 Americans. This review shall include an assessment of the underlying
27 rationale of the United States Government's decision to develop related
28 programs and policies, the information the United States Government
29 received or acquired suggesting the related programs and policies were
30 necessary, the perceived benefit of enacting such programs and policies, and
31 the immediate and long-term impact of such programs and policies on
32 European Americans and European Latin Americans and their communities.

33 (2) A comprehensive review of United States Government action during
34 World War II with respect to European Americans and European Latin
35 Americans pursuant to the Alien Enemies Acts (50 U.S.C. 21 et seq.),
36 Presidential Proclamations 2526, 2527, 2655, 2662, and 2685, Executive
37 Orders 9066 and 9095, and any directive of the United States Government
38 pursuant to such law, proclamations, or executive orders, including
39 registration requirements, travel and property restrictions, establishment of
40 restricted areas, raids, arrests, internment, exclusion, policies relating to the

1 families and property that excludées and internees were forced to abandon,
2 internee employment by American companies (including a list of such
3 companies and the terms and type of employment), exchange, repatriation,
4 and deportation, and the immediate and long-term effect of such actions,
5 particularly internment, on the lives of those affected. This review shall
6 include a list of--

7 (A) all temporary detention and long-term internment facilities in the
8 United States and Latin American nations that were used to detain or intern
9 European Americans and European Latin Americans during World War II (in
10 this paragraph referred to as ``World War II detention facilities");

11 (B) the names of European Americans and European Latin Americans who
12 died while in World War II detention facilities and where they were buried;

13 (C) the names of children of European Americans and European Latin
14 Americans who were born in World War II detention facilities and where they
15 were born; and

16 (D) the nations from which European Latin Americans were brought to the
17 United States, the ships that transported them to the United States and their
18 departure and disembarkation ports, the locations where European
19 Americans and European Latin Americans were exchanged for persons held in
20 European Axis nations, and the ships that transported them to Europe and
21 their departure and disembarkation ports.

22 (3) A brief review of the participation by European Americans in the United
23 States Armed Forces including the participation of European Americans
24 whose families were excluded, interned, repatriated, or exchanged.

25 (4) A recommendation of appropriate remedies, including how civil
26 liberties can be protected during war, or an actual, attempted, or threatened
27 invasion or incursion, an assessment of the continued viability of the Alien
28 Enemies Acts (50 U.S.C. 21 et seq.), and public education programs related
29 to the United States Government's wartime treatment of European Americans
30 and European Latin Americans during World War II.

31 (c) *Field Hearings*.--The European American Commission shall hold public
32 hearings in such cities of the United States as it deems appropriate.

33 (d) *Report*.--The European American Commission shall submit a written
34 report of its findings and recommendations to Congress not later than 18
35 months after the date of the first meeting called pursuant to section
36 __011(e).

37 **SEC. __913. POWERS OF THE EUROPEAN AMERICAN COMMISSION.**

1 (a) *In General.*--The European American Commission or, on the
2 authorization of the Commission, any subcommittee or member thereof,
3 may, for the purpose of carrying out the provisions of this subtitle, hold such
4 hearings and sit and act at such times and places, and request the
5 attendance and testimony of such witnesses and the production of such
6 books, records, correspondence, memorandum, papers, and documents as
7 the Commission or such subcommittee or member may deem advisable. The
8 European American Commission may request the Attorney General to invoke
9 the aid of an appropriate United States district court to require, by subpoena
10 or otherwise, such attendance, testimony, or production.

11 (b) *Government Information and Cooperation.*--The European American
12 Commission may acquire directly from the head of any department, agency,
13 independent instrumentality, or other authority of the executive branch of
14 the Government, available information that the European American
15 Commission considers useful in the discharge of its duties. All departments,
16 agencies, and independent instrumentalities, or other authorities of the
17 executive branch of the Government shall cooperate with the European
18 American Commission and furnish all information requested by the European
19 American Commission to the extent permitted by law, including information
20 collected under the Commission on Wartime and Internment of Civilians Act
21 (Public Law 96-317; 50 U.S.C. App. 1981 note) and the Wartime Violation of
22 Italian Americans Civil Liberties Act (Public Law 106-451; 50 U.S.C. App.
23 1981 note). For purposes of section 552a(b)(9) of title 5, United States Code
24 (commonly known as the ``Privacy Act of 1974''), the European American
25 Commission shall be deemed to be a committee of jurisdiction.

26 **SEC. __914. ADMINISTRATIVE PROVISIONS.**

27 The European American Commission is authorized to--

28 (1) appoint and fix the compensation of such personnel as may be
29 necessary, without regard to the provisions of title 5, United States Code,
30 governing appointments in the competitive service, and without regard to the
31 provisions of chapter 51 and subchapter III of chapter 53 of such title
32 relating to classification and General Schedule pay rates, except that the
33 compensation of any employee of the Commission may not exceed a rate
34 equivalent to the rate payable under GS-15 of the General Schedule under
35 section 5332 of such title;

36 (2) obtain the services of experts and consultants in accordance with the
37 provisions of section 3109 of such title;

38 (3) obtain the detail of any Federal Government employee, and such detail
39 shall be without reimbursement or interruption or loss of civil service status
40 or privilege;

1 (4) enter into agreements with the Administrator of General Services for
2 procurement of necessary financial and administrative services, for which
3 payment shall be made by reimbursement from funds of the Commission in
4 such amounts as may be agreed upon by the Chairman of the Commission
5 and the Administrator;

6 (5) procure supplies, services, and property by contract in accordance with
7 applicable laws and regulations and to the extent or in such amounts as are
8 provided in appropriation Acts; and

9 (6) enter into contracts with Federal or State agencies, private firms,
10 institutions, and agencies for the conduct of research or surveys, the
11 preparation of reports, and other activities necessary to the discharge of the
12 duties of the Commission, to the extent or in such amounts as are provided
13 in appropriation Acts.

14 **SEC. __915. FUNDING.**

15 Of the amounts authorized to be appropriated to the Department of
16 Justice, \$600,000 shall be available to carry out this subtitle.

17 **SEC. __916. SUNSET.**

18 The European American Commission shall terminate 60 days after it
19 submits its report to Congress.

20

21 Subtitle B--Commission on Wartime Treatment of Jewish Refugees

22 **SEC. __921. ESTABLISHMENT OF COMMISSION ON WARTIME**
23 **TREATMENT OF JEWISH REFUGEES.**

24 (a) *In General.*--There is established the Commission on Wartime
25 Treatment of Jewish Refugees (referred to in this subtitle as the ``Jewish
26 Refugee Commission").

27 (b) *Membership.*--The Jewish Refugee Commission shall be composed of 7
28 members, who shall be appointed not later than 90 days after the date of
29 enactment of this Act as follows:

30 (1) Three members shall be appointed by the President.

31 (2) Two members shall be appointed by the Speaker of the House of
32 Representatives, in consultation with the minority leader.

1 (3) Two members shall be appointed by the majority leader of the Senate,
2 in consultation with the minority leader.

3 (c) *Terms.*--The term of office for members shall be for the life of the
4 Jewish Refugee

5 Commission. A vacancy in the Jewish Refugee Commission shall not affect its
6 powers, and shall be filled in the same manner in which the original
7 appointment was made.

8 (d) *Representation.*--The Jewish Refugee Commission shall include 2
9 members representing the interests of Jewish refugees.

10 (e) *Meetings.*--The President shall call the first meeting of the Jewish
11 Refugee Commission not later than 120 days after the date of enactment of
12 this Act.

13 (f) *Quorum.*--Four members of the Jewish Refugee Commission shall
14 constitute a quorum, but a lesser number may hold hearings.

15 (g) *Chairman.*--The Jewish Refugee Commission shall elect a Chairman
16 and Vice Chairman from among its members. The term of office of each shall
17 be for the life of the Jewish Refugee Commission.

18 (h) *Compensation.*--

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

21 (2) REIMBURSEMENT OF EXPENSES.--All members of the Jewish Refugee
22 Commission shall be reimbursed for reasonable travel and subsistence, and
23 other reasonable and necessary expenses incurred by them in the
24 performance of their duties.

25 **SEC. __922. DUTIES OF THE JEWISH REFUGEE COMMISSION.**

26 (a) *In General.*--It shall be the duty of the Jewish Refugee Commission to
27 review the United States Government's refusal to allow Jewish and other
28 refugees fleeing persecution or genocide in Europe entry to the United States
29 as provided in subsection (b).

30 (b) *Scope of Review.*--The Jewish Refugee Commission's review shall
31 cover the period between January 1, 1933, through December 31, 1945, and
32 shall include, to the greatest extent practicable, the following:

33 (1) A review of the United States Government's decision to deny Jewish
34 and other refugees fleeing persecution or genocide entry to the United

1 States, including a review of the underlying rationale of the United States
2 Government's decision to refuse the Jewish and other refugees entry, the
3 information the United States Government received or acquired suggesting
4 such refusal was necessary, the perceived benefit of such refusal, and the
5 impact of such refusal on the refugees.

6 (2) A review of Federal refugee law and policy relating to those fleeing
7 persecution or genocide, including recommendations for making it easier in
8 the future for victims of persecution or genocide to obtain refuge in the
9 United States.

10 (c) *Field Hearings.*--The Jewish Refugee Commission shall hold public
11 hearings in such cities of the United States as it deems appropriate.

12 (d) *Report.*--The Jewish Refugee Commission shall submit a written report
13 of its findings and recommendations to Congress not later than 18 months
14 after the date of the first meeting called pursuant to section __ 021(e).

15 **SEC. __923. POWERS OF THE JEWISH REFUGEE COMMISSION.**

16 (a) *In General.*--The Jewish Refugee Commission or, on the authorization
17 of the Commission, any subcommittee or member thereof, may, for the
18 purpose of carrying out the provisions of this subtitle, hold such hearings and
19 sit and act at such times and places, and request the attendance and
20 testimony of such witnesses and the production of such books, records,
21 correspondence, memorandum, papers, and documents as the Commission
22 or such subcommittee or member may deem advisable. The Jewish Refugee
23 Commission may request the Attorney General to invoke the aid of an
24 appropriate United States district court to require, by subpoena or otherwise,
25 such attendance, testimony, or production.

26 (b) *Government Information and Cooperation.*--The Jewish Refugee
27 Commission may acquire directly from the head of any department, agency,
28 independent instrumentality, or other authority of the executive branch of
29 the Government, available information that the Jewish Refugee Commission
30 considers useful in the discharge of its duties. All departments, agencies, and
31 independent instrumentalities, or other authorities of the executive branch of
32 the Government shall cooperate with the Jewish Refugee Commission and
33 furnish all information requested by the Jewish Refugee Commission to the
34 extent permitted by law, including information collected as a result of the
35 Commission on Wartime and Internment of Civilians Act (Public Law 96-317;
36 50 U.S.C. App. 1981 note) and the Wartime Violation of Italian Americans
37 Civil Liberties Act (Public Law 106-451; 50 U.S.C. App. 1981 note). For
38 purposes of section 552a(b)(9) of title 5, United States Code (commonly
39 known as the ``Privacy Act of 1974''), the Jewish Refugee Commission shall
40 be deemed to be a committee of jurisdiction.

41 **SEC. __924. ADMINISTRATIVE PROVISIONS.**

1 The Jewish Refugee Commission is authorized to--

2 (1) appoint and fix the compensation of such personnel as may be
3 necessary, without regard to the provisions of title 5, United States Code,
4 governing appointments in the competitive service, and without regard to the
5 provisions of chapter 51 and subchapter III of chapter 53 of such title
6 relating to classification and General Schedule pay rates, except that the
7 compensation of any employee of the Commission may not exceed a rate
8 equivalent to the rate payable under GS-15 of the General Schedule under
9 section 5332 of such title;

10 (2) obtain the services of experts and consultants in accordance with the
11 provisions of section 3109 of such title;

12 (3) obtain the detail of any Federal Government employee, and such detail
13 shall be without reimbursement or interruption or loss of civil service status
14 or privilege;

15 (4) enter into agreements with the Administrator of General Services for
16 procurement of necessary financial and administrative services, for which
17 payment shall be made by reimbursement from funds of the Commission in
18 such amounts as may be agreed upon by the Chairman of the Commission
19 and the Administrator;

20 (5) procure supplies, services, and property by contract in accordance with
21 applicable laws and regulations and to the extent or in such amounts as are
22 provided in appropriation Acts; and

23 (6) enter into contracts with Federal or State agencies, private firms,
24 institutions, and agencies for the conduct of research or surveys, the
25 preparation of reports, and other activities necessary to the discharge of the
26 duties of the Commission, to the extent or in such amounts as are provided
27 in appropriation Acts.

28 **SEC. __925. FUNDING.**

29 Of the amounts authorized to be appropriated to the Department of
30 Justice, \$600,000 shall be available to carry out this subtitle.

31 **SEC. __926. SUNSET.**

32 The Jewish Refugee Commission shall terminate 60 days after it submits
33 its report to Congress

34