COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006 (April 16, 2006 Update)

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On March 27, 2006, the Senate Judiciary Committee passed the Comprehensive Immigration Reform Act of 2006. The bill has been substantially modified as a result of the passage of three amendments and the inclusion of a number of compromises negotiated by Senators Hegel (R-NE) and Martinez (R-FL)

This is a summary of the provisions of this 615 page bill. The yellow highlights show changes from the original version of the bill introduced by Judiciary Committee Chairman Arlen Specter (R-PA). The green highlights show changes made since then. The Specter bill is currently being debated on the floor of the US Senate and is expected to be voted on by the Easter recess. If the bill passes, it will go to a conference committee with representatives of both the Senate and House of Representatives participating. The Senate bill and the House's H.R. 4337 would then have to be reconciled. If that difficult task is accomplished, a compromise bill would then be voted on by the House and Senate and if that happens, then the President would have to sign the bill. If the bill passes the Senate, we will modify this summary with any amendments agreed to by the body.

_____ = changes voted on during the Senate Markup
_____ = changes negotiated as part of the Hegel-Martinez compromise

Title I – Border Enforcement

Subtitle A – Assets for Controlling United States Borders

This section of the bill authorizes a number of new border protection officers and inspectors for a multiyear period. Purchases of a number of technological assets like new unmanned aerial planes are authorized. (Section 102). New ports of entry are also authorized. (Section 105). The final version of the bill increased the number of port inspectors from 250 in the original version to 500. (Section 101). The final version substantially increases the number of Border Patrol agents in each of the next six years as follows:

2006 – 2,000
2007 – 2,400
2008 – 2,400
2009 – 2,400
2010 – 2,400
2011 – 2,400

20% of the net increase shall be assigned to the US-Canada border. (Section 101).

One of the changes from the original version to the final version reported to the floor is in requiring that a report to be issued on the use of Defense Department equipment should assess the risks to US citizens associated with using the equipment. (Section 102). Also, the final language clarifies that the use of Defense Department equipment authorized in Section 102 does not alter the prohibition on using the Army or Air Force for border patrol work.

The final version reported to the floor contains a new Section 106 concerning strategic border fencing and vehicle barriers. The provision calls for the replacement of deteriorating fencing in various locations on the US border with double- and triple-layered fencing within a two year period.

New Section 116 added regarding deaths along the US-Mexican border. The Frist Amendment requires CBP to collect data on the causes of death and the total number of deaths. A report must be produced annually on this that analyzes trends and recommends actions.

Subtitle B – Border Security Plans, Strategies and Reports

This section requires the Department of Homeland Security to prepare various reports on border security. The final version of the bill reported to the floor added an additional requirement to assess the impact of new border security efforts on civil liberties and property rights. (Section 111).

The final version of the bill voted on by the Judiciary Committee included a new Section 115 that calls for creation of an interagency plan to connect databases used to prevent human smuggling, ensure adequate personnel training, effectively target smuggling networks and use tools like visas for victims.

Subtitle C – Other Border Security Initiatives

This section requires DHS to integrate biometric databases by October 1, 2007. (Section 121). It also mandates DHS submit a timeline for the extension of the US-VISIT exit-entry system to all ports of entry. (Section 124)

All immigration-status documents, other than interim documents, issued by DHS must be machine-readable, tamper resistant and incorporate biometrics by October 26, 2007. (Section 126).

Section 127 of this bill would expand Section 222(g) of the Immigration and Nationality Act concerning the cancellation of visas after an alien overstays an I-94. The new provision would void ALL visas in possession of the immigrant and not just the particular visa that was tied to the overstay. In other words, an overstay on a work I-94 would trigger the cancellation of a visitor visa that may also be in the passport. The provision would, however, now allow a person to reapply for the visa in the country of last residence and not just in the country of nationality (as is currently required).

Permanent residents would now be required to provide biometrics upon entry and exit from the US just like non-immigrants. Failure to comply will be a new ground for inadmissibility. (Section 128)

Finally, this section requires DHS to prepare a report on the impact of imposing a barrier along the southern border. (Section 129). A northern border study requirement was removed from Section 129. Amendments were added during the Chairman's mark to require the Inspector General of the Department of Homeland Security to review contacts with a value of more than $20,000,000 and to monitor implementation of the secure border initiative for financial wrongdoing as well as report on contracts with foreign companies relating to this initiative. (Section 130).

The controversy surrounding US ports being owned by foreign companies is addressed in the latest version of the bill. It requires a report be issued within 30 days of learning of a contract to manage a port by a foreign company describing the proposed purchase and security issues. (Section 129).

A new Section 131 added during the Chairman's mark ends the practice of "catch and release" and requires that all non-Mexicans caught entering the US illegally along the US border shall be detained until removed or a final decision is made granting admission. The provision takes effect October 1, 2006 and until that date, release is only possible if a determination is made that the person poses no security risk and they pay a bond of at least $5000. This provision does not limit the right to apply for asylum or relief from removal based on a fear of persecution and release is possible after DHS determines a credible fear of persecution. The provision also doesn't apply to people from countries in the Western Hemisphere with which the US doesn't have diplomatic relations (currently, only Cuba would be covered).

A new Section 132 subjects people who attempt to elude or fail to obey a command to stop issued by a US official at a port of entry or checkpoint to prison terms of three to ten years depending on whether violence is used or not.

A new Subtitle D is added to Title I that includes the Border Tunnel Prevention Act. The provisions in this section make it a crime to knowingly construct of finance the construction of a tunnel between the US and another country other than one lawfully constructed with the knowledge of the Department of Homeland Security. It would also prohibit knowingly or recklessly disregarding the construction or use of a tunnel on a person's land.

Title II. Interior Enforcement

Subtitle A – General Enforcement

This subtitle bars aliens inadmissible on terrorism-related grounds from receiving political asylum and also broadens the bar on availability of cancellation of removal, withholding of removal and voluntary departure as well as eligibility for admission for those found to be security threats. This section shall apply retroactively to those currently in removal and exclusion proceedings. (Section 201).

The Supreme Court decision in *Zadvydas v. Davis* is addressed. That decision strictly limits the ability of DHS to detain an alien ordered removed when the government has not managed to remove the alien (usually because the US does not have good relations with the home country). DHS would now have discretion with few limits to detain someone beyond the removal period. DHS would have to certify every six months that the alien is likely to be removed in the reasonably foreseeable future, the alien poses a threat to the public (either for health or safety reasons). The Commissioner of Immigration and Customs Enforcement must personally sign off on the certification. This section also makes it more difficult to be released after an order of removal has been issued and while criminal proceedings are under way. (Section 202).

This section makes various changes to laws surrounding aggravated felons. It broadens the definition of "aggravated felony" to include convictions even when the sentence that is the basis of being an aggravated felony is tied to recidivist or other enhancements. (Section 203). The Judiciary markup changed the earlier version of the bill and made clear that the changes are not retroactive. A provision that barred adjustment of aggravated felons under Section 209(c)(8) was removed during the Chairman's mark.

The definition of "aggravated felony" would be expanded in alien harboring and smuggling cases as well. Persons who knowingly hire at least ten individuals smuggled in to the US in a twelve month period would be guilty of an aggravated felony. Persons found guilty of buying or selling vehicles, vessels or aircraft used in alien smuggling would be guilty of an aggravated felony. (Section 203).

Marriage fraud and EB-5 fraud for which the term of imprisonment is at least a year would now be aggravated felonies. (Section 206).

Asylees convicted of aggravated felonies would no longer be eligible for waivers to adjust status to permanent residency. (Section 206).

"Good moral character" would not apply in cases where a person is convicted of a crime that is not defined as an aggravated felony at the time it occurs but is later classified as an aggravated felony unless the crime is more than ten years old and the applicant is granted a waiver by DHS.

Section 204 is modified from the original version which barred judicial review of naturalization denials based on good moral character. The new version passed by the Judiciary Committee preserves the right, but it must be exercised within 120 days of a final determination. An additional provision restores judicial review for cases held up in investigation by more than 180 days after an applicant's examinations and interviews are completed. USCIS must notify the applicant when such examinations and interviews are completed. The final committee language removes a provision that says that the law only naturalization applications filed after the date of enactment.

Any alien who a consular officer or a DHS officer "knows or has reason to believe" is a member of a criminal street gang or has participated in a gang's activities is inadmissible. (Section 205)

Responsibility for the Temporary Protected Status program is transferred from the Department of Justice to DHS. DHS will have the authority to terminate TPS status for any reason and DHS will be authorized to extend TPS status in increments of up to 18 months. Bars gang members from TPS status and clarifies that a TPS alien's immunity from detention only extends to detention based on immigration status and not other grounds. (Section 205).

Section 205(c) originally contained one of the more controversial sections of the Sensenbrenner bill. It would have criminalized providing material assistance to illegal aliens and would seemingly have made felons out of non-profit and religious organization workers who provide housing, travel, food and medical assistance to illegal aliens. Unlike the Sensenbrenner bill, the original Specter bill included a provision that said religious organizations shall not be guilty of alien smuggling if the minister or missionary has been a member of the denomination for at least a year. This has been expanded in the committee-passed bill to exempt individuals or organizations not previously convicted of a violation of this section who are providing humanitarian assistance.

The penalty for certain people found guilty of hiring unauthorized workers is increased shall be increased to 10 years.

The other most controversial section of the Sensenbrenner bill originally made it in to the Senate bill. Section 206(a) would have made it a felony to knowingly be in the US unlawfully whether by illegal entry or overstaying or violating the terms of a legal entry. The first violation would have been punishable by imprisonment of up to six months. The bill was amended in committee to eliminate criminal penalties for unlawful presence from the section.

The summary of the legislation provided by Senator Specter speaks to Section 206 (c) which would increase penalties for marriage and EB-5 fraud. However, the actual text of the legislation does not contain a Section 206(c).

Section 207 makes it tougher to avoid criminal sanctions for illegally reentering the US after a deportation order. For example, the standard to attack an underlying removal order is increased. And it makes it a crime to aid or abet illegal reentry. However, this does not include providing humanitarian services such as providing food or medicine or transporting someone to a place where they could receive either.

The Specter bill has provisions creating a new crime for trafficking in passports. Furthermore, "willfully" making false statements in a passport application is a felony. The current standard requires showing a higher standard of intent. (Section 208)

The misuse of any immigration document would be criminalized in a manner similar to the Sensenbrenner bill. (Section 208 and 209). In the committee markup, a provision was added that the new penalties would not apply to people who apply for asylum or for relief under the Convention Against Torture and successfully shows a credible fear of persecution. The final committee bill makes it clear that the conduct that is the subject of the prosecution must occur on or after the date of enactment.

Section 210 would allow states to hold illegal aliens for up to 14 days after completing criminal sentences in order to more easily transfer custody to Immigration and Customs Enforcement. The section would also extend the use of the Institutional Removal Program (IRP) which identifies removable aliens in Federal and State prisons.

Section 211 would tighten voluntary departure rules including shortening the affirmative voluntary departure period from 120 days to 60 days and the voluntary departure in removal proceedings from 60 to 45 days.

The statute of limitations for all immigration related crimes would be made a uniform ten years (Section 214).

The completion of any visa or status processing by DHS and the Justice Department will be barred while background and security clearances are pending. (Section 216). The Judiciary Committee approved an amendment to Section 216 that calls for DHS to allocate at least 40 full-time active duty Immigration and Customs Enforcement agents to each state. The provision also requires DHS to place at least 15 USCIS agents in each state to carry out immigration and naturalization adjudications. DHS has the authority to waive these provisions if a state has a population of less than 2,000,000.

Section 219, added in the Judiciary Committee markup, requires DHS to provide state and local law enforcement authorities with sufficient transportation and officers to take illegal aliens into custody for processing at a detention bill.

The Judiciary Committee added a number of new provisions to the original Specter bill (Sections 224 to 235). Section 224 requires DHS to reimburse state and local governments for training related to the enforcement of federal immigration laws.

Section 225 makes being convicted of a third drunk driving offense an aggravated felony. The new law applies retroactively.

Section 226 permanently authorizes the Conrad 30 J-1 waiver program for medical doctors. The program is set to begin to sunset June 1, 2006.

Section 227 expands the circumstances under which expedited removal is permitted.

Section 228 bars convicted sex offenders from petitioning for relatives to adjustment to permanent residency status under Section 245(a) of the Immigration and Nationality Act unless DHS determines the citizen poses no risk to the alien with respect to whom a petition is filed. The measure also extends to petitions by permanent residents and K visa applications.

Section 229 increases areas of cooperation between federal immigration enforcement authorities and the states. The section includes provisions grants states the inherent authority to arrest and transfer to Federal custody any alien for the purpose of assisting in the enforcing criminal immigration law provisions.

Section 230 adds alien smuggling and related activities to the list of crimes the financial proceeds of which are subject to money laundering statutes.

Within 180 days of enactment of the bill, Section 231 requires DHS to provide the National Crime Information Center information on deportations, voluntary departures and findings of unlawful presence. The NCIC must also promptly remove such information when an alien is granted lawful authority to remain legally in the US.

Section 232 requires DHS, within two years, to enter into cooperative enforcement agreements with at least one law enforcement agency in each state.

Section 233 requires DHS to construct twenty detention facilities in the US to house 10,000 individuals. The provision calls for DHS to consider closed military bases.

Section 234 requires within two years that US Attorneys determine the immigration status of defendants.

TITLE III – Unlawful Employment of Aliens

Section 301 of the Specter bill covers the unlawful employment of aliens. Employers would now be required to not only comply with I-9 rules, but also with a new Electronic Employment Verification System that is a permanent implementation of the basic pilot program that has been in existence for the last few years. Implementation of the electronic system will be rolled out over several years with the largest employers being required to participate first and then smaller employers later. DHS is also permitted to

charge employers taxes tied to use of the system. This section also recognizes DOL's authority to investigate employers under the Fair Labor Standards Act of 1938.

Knowingly hiring unauthorized workers carries tougher penalties than unknowingly hiring unauthorized workers. Employers who attempted in good faith to comply with the I-9 rules do have a defense, however, until electronic verification system participation is required.

Section 301 is amended to retroactively apply the new rule about making it unlawful for employers to use contract workers knowing that the workers are unlawful. But the language is loosened to exclude employers who did not know, but had reason to know. It also now creates a defense if an employer includes language in a contract that states that the contractor will comply with the employment verification rules and keeps proper records and that the employer "exercises reasonable diligence" to ensure compliance by the contractor.

Language requiring employers to "take all reasonable steps to verify" employment eligibility has been tightened to simply say that all employers "shall verify" employment authorization.

DHS may require an employer to certify employment verification compliance based on an internal review as an alternative to a DOL audit. An employer will be granted a 60 day deadline that may be extended in the discretion of DHS.

Under the employment verification system, only Social Security cards will be sufficient to demonstrate employment eligibility. Under the previous draft, DHS had the authority to recognize other documents.

The provision allowing for a non-REAL ID compliant driver's license to be an acceptable identification document if the state is not required to comply is removed.

The requirement that an employer maintain Social Security no-match letters is broadened to include any correspondence from a government agency relating to the employment status of workers.

Employers who receive a tentative non-confirmation notice under the new employment verification system will now be able to request a 180 day extension from USCIS if the employer can show it needs such time to locate documentation to address the basis for the non-confirmation notice. DHS will also be able to extend for 180 days when it is not able to issue final non-confirmation notices in a timely manner.

The new version of the bill contains a provision that will allow individuals to check their status in the electronic verification system in order to ensure it the information is correct or has been properly updated. And a new provision is added requiring DHS to keep the records as up to date as possible.

The original version of the bill required larger employers to comply first with the electronic reporting system and mid-size and smaller employers complying later. The new version requires all employers to comply within 18 months of DHS receiving funding to implement the program. The provision allowing DHS to waive the requirement for some employers is deleted.

The prior version of the section called on DHS to release an annually study on the new program. The latest version requires that the study be conducted by the General Accounting Office (GAO).

Additional language is added requiring the Social Security Administration to work with DHS to get its data into the new system and is required to disclose information to DHS on certain patterns of information that could indicate immigration violations. New privacy safeguards are also added. While the rest of Section 301 will take effect after 180 days, the disclosure rules take effect immediately.

Section 303 is changed to require at least 20% of worksite enforcement funds to be used for enforcement of Section 301 of this bill.

Section 304 mandates that false claims to either citizenship or nationality are grounds for inadmissibility. Currently, just the former is. This has been a defense in removal cases because the I-9 form asks if someone is a "citizen or national" of the US while immigration law only penalizes claims of false citizenship.

This section remained largely unchanged in the Judiciary Committee markup, but a section was added in Section 301(i)(2) that notes that the employer compliance provisions do not preempt state and local laws requiring employers to provide shelters or designated areas for day laborers at or near their place of business or take other steps that facilitate the employment of day laborers by others.

Title IV – Nonimmigrant and Immigrant Visa Reform

H-2C Visas

A new Section 401 states that any regulation that would increase the number of aliens eligible for legal status not take effect before 90 days after the date on which the Director of the Bureau of the Census submits a report to Congress. The report shall be made jointly with a number of departments of the Federal government and is to assess the impact of the bills increased immigrant numbers on the "infrastructure" and "quality of life in the United States." The report must be submitted to Congress within 90 days after enactment of the new law.

Section 402 creates a new H-2C visa. This visa appears targeted to workers either outside the US or currently in legal status in the US. A separate guest worker program targeted at out of status workers is outlined in Title VI.

The visa is available to those coming to the US temporarily to perform temporary labor or services other than labor or services covered in H-1B, H-1C, H-2A, H-2B, H-3, or L, O, P, or R visas. The applicant must have a residence in a foreign country which the applicant has not intention of abandoning. The visa will become available one year after the date of enactment of the law and shall apply to aliens outside the US on the effective date. Rules must be released by DOL within six months of the enactment of the law.

Section 403 outlines the H-2C requirements. The employer must be capable of performing the services that are the subject of the petition. The worker must show that the he or she has received a job offer from a qualified employer. The worker must pay a $500 visa issuance fee in addition to the cost of adjudicating the petition (and this is in addition to consular reciprocal fees). Workers must have a medical examination at the worker's expense. Workers must submit background information on health, criminal and security issues.

Changes of status to other visa categories are not permitted.

H-2Cs are available for an initial term of up to three years with a one time renewal for three more years. The earlier requirement that an alien be required to depart the US for one year in order to qualify for additional H-2C time was removed from the version of the bill approved by the Judiciary Committee. Commuters into the US are not subject to the time limits.

H-2C status will be lost if a worker is unemployed for 60 or more consecutive days (the original version of the bill stated 45 days) and the worker will be required to leave the US (the original version of the bill required a return to an alien's home country or country of last residence. DHS may waive the return requirement.

Travel in and out of the US is permitted and return on an unexpired I-94 is allowed even if the visa has expired. Time spent outside the US shall not extend the period of authorized admission in H-2C status.

H-2C holders who fail to depart within 10 days after the H-2C status terminates are barred from most immigration rights.

Anyone who enters or attempts to enter the US without inspection after enactment of the H-2C provisions will be barred for ten years receiving most immigration benefits.

The H-2C is portable and workers can move to new jobs as long as the new employer complies with the terms for H-2C employment.

The section of the original bill denying the appeal of the denial of H-2C status was removed from the version of the bill passed by the Judiciary Committee.

H-4 visas many be granted to spouses and children. The initial requirement that an H-2C visa holder pay a $500 family supplemental application fee was removed from the version of the bill passed by the Judiciary Committee. Dependents must also get medical exams and have background checks. The initial requirement that H-2C visa holders demonstrate adequate finances to support family members coming on H-4s was removed from the version of the bill passed by the Senate Judiciary Committee.

The version of the bill passed by the Judiciary Committee now contains a provision in Section 403 stating that the terms "employ," "employee," and "employer" have the meanings given under Section 3 of the Fair Labor Standards Act of 1938 (29 USC 203). The definition of "employer" included in the original version of the bill was removed.

Section 404 spells out an employer's obligations when hiring H-2C workers. Employers are required to pay the worker's filing fee.

Employers must also attest that

- Hiring the H-2C will not adversely wages and working conditions for US workers.
- The employer did not and will not cause US workers to lose their jobs by hiring the H-2C worker. There is a 90 day look back and look forward provision.
- The worker will be paid the higher of either the actual or prevailing wage. A provision allowing for the use of private wage data was deleted from the version of the bill passed by the Judiciary Committee.
- There is no strike or other form of work stoppage.
- The employer is covered by a state workers compensation program, the employer will provide at no cost to the worker insurance covering injury or illnesses arising due to the job. The insurance would need to be comparable to state workers compensation programs.
- Notice to workers is provided
- Unless DOL has precertified a shortage, the employer can show there are not sufficient workers able, willing and qualified and immediately available to perform the job. Good faith recruiting efforts must be undertaken in the three month period prior to filing (with recruiting ending at least 14 days prior to filing). The job must be advertised at the actual wage paid by the employer.
- The job must be bona fide.
- Employers must maintain public access files.
- The employer must notify DOL and DHS when an H-2C leaves the employer within three business days after the departure.
- The petition must be filed not more than 60 days before the date the services are needed.

Section 404 has a new provision added by the Judiciary Committee that states that a year after enactment, the H-2C visa will not be available to workers coming to perform services in metro areas in which the unemployment rate for unskilled or low-skilled workers during the most recently completed six month period averaged more than 11%.

DHS shall have the authority to audit employers to ensure compliance. Employers are required to retain records for five years from the date the petition is filed. (Section 403) They are also required to maintain records for at least one year that describe why US workers were not hired (Section 407).

Employers who misrepresent facts or fail to comply with the terms of the program can be barred for up to three years from sponsoring or employing H-2C workers. And punishing whistle blowing employees or former employees is prohibited.

Foreign labor contractors recruiting H-2C workers are required to disclose a variety of details to H-2C workers at the time of their recruitment including information on the proposed place of employment, the pay, the type of work, who is paying travel expenses, whether there is a strike or other similar labor dispute, whether the contractor is getting a commission based on the worker's services, details regarding insurance and worker's compensation coverage, and information on the risk of work related injuries. Foreign labor contractors are prohibited from charging the H-2C worker for their services.

Foreign labor contractors will be required to register with the Department of Labor and employers may only use the services of registered contractors. DOL will issue two year renewable certifications of these contractors. H-2C workers will also have the ability to lodge complaints against contractors with the DOL. The DOL will have the discretion to require contractors be bonded and may also deny certification if it determines the contractor lacks sufficient ties to the US to adequately enforce these rules.

Employers are subject to civil fines of $2000 up to $35,000 per worker depending on whether the violation is willful and whether a worker was harmed. Imprisonment of up to six months and additional fines of up to $35,000 are possible if a willful violation occurs and an individual suffers extreme physical or financial harm.

Under Section 404, DHS is required to set up an alien employment management system to manage and track the employment of H-2C immigrants. Employers shall be able to recruit and advertise employment opportunities through the system.

The Department of Labor must set up a web page linking to each state's electronic job registry information on job opportunities for US workers in order to ensure US workers are not being passed over in favor of foreign workers. And DOL must set up a publicly accessible web page that provide a single Internet link to each State workforce agency's electronic registry of jobs available throughout the US. (Section 407). An earlier requirement that recruitment occur for a minimum of 30 days was removed from Section 407.

The US shall negotiate bilateral treaties with countries sending H-2C workers requiring the countries to accept the return of nationals ordered removed from the US within three days of such removal. (Section 411).

Section 407(g) now contains numerical limitations on H-2C visas. The earlier version of the bill did not. The formula used is the same as used for the H-5B visa described in the Kennedy-McCain bill. The formula works as follows:

- In the first fiscal year after passage of the bill, up to 325,000 H-2C visas will be available.
- If the cap is hit within the first three months of the fiscal year, an additional 20% will be made available for the rest of the fiscal year.
- If the cap is hit in the second quarter of the fiscal year, an additional 15% will be available for the fiscal year.
- If the cap is hit in the third quarter of the fiscal year, an additional 10% will be available for the remainder of the fiscal year.
- If the cap is exhausted in the last quarter of the fiscal year, the cap will increase by 10% in the following fiscal year.
- If the numerical limit is not reached in a given year after the first year of the program (outside of issues with processing backlogs), the cap shall decreased by 10% for the following fiscal year).
- Visa caps in future years will continue to adjust upwards or downwards according to this formula.

H-2Cs may apply for permanent residency. Employment-based green card caps shall not apply to H-2Cs seeking adjustment of status if the following requirements are met:

- Employers of H-2Cs may apply for their workers to adjust to permanent residency status for workers who have maintained four years of cumulative H-2C status.
- H-2Cs may also self petition after four years in H-5A status.
- H-2C workers seeking to adjust status must be physically present in the US and they must meet the naturalization English language and civics requirements or show they are enrolled in a course to meet these requirements.
- Dual intent status for H-2Cs is noted in this section as well.
- H-2Cs can continue extend their H-2C status in one year increments if a labor certification application or I-140 petition is pending for the applicant.

The Labor Department is now directed to hire not less than 2,000 additional investigators annually to ensure compliance with the rules of the H-2C program.

H-1Bs

The H-1B cap is lifted for three years to 115,000. (Section 410). After that, the cap will remain at 115,000 but may rise up to 20% per year if the whole cap is used up in the prior year. If the cap is not reached, then the cap the next year will remain the same as the current year.

The Judiciary Committee added a new Section 412 expanding the S visa category. The S visa category is now available to those providing information on a criminal enterprise

undertaken by a foreign government, its agents, representatives or officials as well as to individuals with information on the development of weapons of mass destruction of foreign governments. The limit on S visas is raised from 200 to 1,000.

Senator Charles Grassley of Iowa's amendment on L visas is added to the bill at new Section 413. The provision adds a statutory requirement that a beneficiary coming to the US to open a new facility may only be approved for a year. It's not clear that this is different than the current regulation at 8 CFR 214.2(l)(7)(i)(A)(3) that appears to do the same thing. New office applicants must present a business plan, show that sufficient physical premises have been located, and the business has the financial ability to commence doing business (again, it is not clear how this differs from current USCIS regulations). An extension may be granted if the petitioner can show adequate progress along the lines described in the business plan. A provision is included which excuses the failure to make progress if there are extraordinary circumstances. Spouses may not get employment authorization during this restricted one year period. Finally, DHS and DOS must establish a program to work cooperatively to verify a company or facility's existence in the US and abroad.

Subtitle B codifies the "Fairness in Immigration Litigation Act of 2006" at Sections 421 through 424. The provisions put strict limits on appeals in criminal immigration cases and sets tight time limits on courts in the cases. The provisions attempt to remove the habeas relief declared available in the Supreme Court's St. Cyr case.

Title V – Backlog Reduction

Allows recapture of unused visa numbers and increases employment-based green cards from 140,000 to 450,000 per year from fiscal year 2007 to fiscal year 2016. The increase from the earlier bill version's 290,000 (which was an increase from the current law's 140,000) is to accommodate some of the undocumented workers who will now have to queue up behind the longer term residents (those over five years) as well as all persons currently awaiting employment based green cards either in the US or abroad). After FY 2016, the numbers will drop back down to 290,000 per year.

Visas for spouses and children shall not be counted against the numerical limits. Immediate relatives would no longer be counted against the 480,000 annual cap on family-based immigration. (Section 501).

The per country limits are raised from 7% to 10%. (Section 502).

The allocation of family-sponsored visas is shifted as follows (Section 503):

10% - F1 unmarried sons and daughters of citizens

50% - F-2 spouses, minor children and unmarried adult sons and daughters of permanent residents (77% of these go to spouses and minor children of permanent residents)
10% - married sons and daughters of US citizens
30% - brothers and sisters of citizens

The allocation of 290,000 employment-based visas is shifted as follows (Section 503):

15% for EB-1 (was 28.6% but presumably many will now qualify in the new uncapped category for certain advanced degree holders)
15% for EB-2
35% for EB-3
5% for investors (redesignated as EB-4)
30% for new EB-5 for other workers (old EB-3 unskilled workers).

Section 503 is amended to make clear that the 30% of employment-based green cards reserved for unskilled workers is to go first to people physically present in the US before January 4, 2004.

The immediate relative category is changed to let children of spouses and parents of US citizens to obtain legal status and travel to the US to be with their families.

Section 505 was added by amendment and exempts Schedule A occupations (nurses, physical therapists and Group II exceptional ability applicants) from employment-based green card caps until September 30, 2017. Spouses and children are included in the cap exemption.

New language has been added requiring an HHS report on the nursing shortage, the foreign nurse population in the US and the impact of nursing immigration on the supply of nurses in the countries the nurses are leaving.

Section 506 codifies the Widows and Orphans Act. The provisions of this section allow certain children and women outside the US who are at risk of harm and who are referred by US officials, international officials and certain non-governmental organizations to qualify as special immigrants.

Foreign Students

The section on student visas are was originally in Section 409 and 410 and was moved to Section 507 and 508.

The Spector bill makes important changes regarding student visas. First, F-1 optional practical training time is now extended from one year to 24 months. (Section 507). A new F-4 student visa is created for students pursuing advanced degrees in math, engineering, technology or the physical sciences. F-4 visas will be dual intent and are valid for the period of study plus one year after completion of the program if the alien is actively pursuing employment in his or her field. F-4 status will further be extended as long as

necessary to allow for the completion of labor certification and employment-based green card processing as long as the green card process is started within a year of completing the graduate program. A second provision allows adjustment of status of an F-4 (or one who would have qualified as an F-4 if they entered before the law was enacted) based on a filed I-140 petition, completion of a degree and payment of a $2000 fee. Applications filed in this category are subject to the normal employment-based green card caps.

Section 407 also would allow F-1 and F-4 students to accept off-campus jobs outside of the student's field if the student is enrolled and in good standing at their educational institution, an employer provides the school and the Labor Department with an attestation that it has spent 21 days unsuccessfully recruiting for the job and is paying the higher of the actual or prevailing wage, and the student will work no more than 20 hours during the academic term or 40 hours per week on vacations.

Section 508 exempts aliens who have earned advanced degrees in science, technology, engineering or math in the US and have been working in their fields under a non-immigrant visa in the three years prior to filing for adjustment, recipients of national interest waivers and immediate relatives of aliens granted employment-based immigrant visas are exempt from annual green card quotas.

Section 508 waives the labor certification recruitment requirement for those with advanced degrees in the sciences, technology, engineering or math from American universities.

Title VI – Conditional Nonimmigrant Workers

Title VI, Subtitle A is renamed "Access to Earned Adjustment and Mandatory Departure and Reentry." The subtitle **(Sections 601 to 610)** is now called the "Immigrant Accountability Act of 2006."

Substantial changes are made to this Title. First, a new Section 245B is created to deal with the adjustment of status of undocumented immigrants.

The Five Years+ Group

DHS shall adjust people who meet the following requirements:

1. Application filed and fine of $2000 paid (not applicable to minors) and normal adjustment application fees established by DHS.

2. The alien meets specific residency tests:

    a. The alien was physically present in the US on or before the date that is five years before April 5, 2006;

b. The alien was not legally present in the US on April 5, 2006 (non-immigrants who have violated any condition of his or her visa shall be considered not to be legally present in the US); and
c. The alien did not depart from the US during the five year period except for brief, casual and innocent departures.

3. The alien must not be inadmissible on health, criminal, security, polygamy and child abduction grounds. But several immigration violations that lead to inadmissibility will be excused. Other inadmissibility grounds may be waived by DHS on humanitarian grounds, to ensure family unity, or when it is in the public interest. Public charge inadmissibility grounds will not apply to those who have worked and shown the ability to support himself or herself without public cash assistance. Alien smuggling is not a ground for inadmissibility if the action was taken for humanitarian purposes. Illegally reentering after being removed or violating a voluntary departure order will not render a person ineligible to adjust under this section.

4. The alien shall be employed in the US for at least three years during the five year period ending on April 5, 2006 and at least six years after the date of enactment of this law. The three year employment requirement does not apply to people under 20 years of age when this law is enacted. The six year requirement will be reduced for those under 20 when the law passes by an amount equal to the time beginning on the date of enactment and ending on the date on which the individual turns 20. The six year employment requirement will be reduced for people with physical or mental disabilities or as a result of pregnancy. The three and six year employment requirements would be reduced by one year for each year of full-time post-secondary study in the US during the relevant period. Employment need not be with the same employer.

5. As evidence of employment, an alien must submit at least two of the following documents for each of the three and six year periods of employment:

a. Social Security records
b. Pay records or employer work verification
c. IRS records
d. Union or day labor center records
e. Any other government records (such as works compensation, disability records or business licensing records)

6. Aliens unable to meet the evidence test above can submit at least three of other types of documents including sworn declarations. Like the earlier bill version, there is a statement directing DHS to act liberally in implementing these requirements.

7. The burden of proof to prove employment is modified. Previously, the standard was that the alien must prove by a preponderance of the evidence that the alien

meets the requirements and that the burden shall be met by producing "sufficient evidence to demonstrate such employment as a matter of reasonable inference." The new standard is "just and reasonable inference." Once the burden is met, the burden shifts to DHS to disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the documentation.

8. All back state and federal income taxes must be paid and alien must prove that no tax liability exists or that the alien has entered into an agreement to pay all outstanding liabilities with the IRS or state revenue department.

9. Applicants must meet the citizenship English and civics tests. A discretionary exception is provided for the disabled and the elderly.

10. A security clearance must be met. The applicant must submit fingerprints and agencies are expected to complete security checks within 90 days of the submission of fingerprints.

11. The applicant has complied with Selective Service registration requirements.

12. No one will be allowed to adjust until the earlier of a) ALL pending applications on the date of enactment under INA Sections 201, 202, or 203 HAVE BEEN PROCESSED before an adjustment may be processed or b) eight years after the date of enactment.

13. Spouses and children under 21 on the day of enactment of the law may adjust. Exceptions are made for battered spouses and children. Inadmissibility rules that apply to principal applicants apply to spouses and children as well. Background checks as described above also apply.

14. Numerical green card limits do not apply to this group of applicants.

15. Principals and dependents with pending applications to adjust under this law are eligible for work and travel documents and shall not be subject to being detained, determined inadmissible, or removed unless the applicant commits an act which renders him or her ineligible to adjust under this law.

16. DHS will provide applicants with a document of authorization that reflects applicability for benefits under the law. The document will not be issued until security clearances are received and agencies are directed to ensure that a 90 day processing time is met.

17. People in deportation proceedings eligible for the law will have their proceedings terminated unless the proceedings are based on criminal or security grounds.

18. Aliens apprehended before the application period described above who can show prima facie eligibility to adjust under the new law (but for the fact that the alien

may not apply to adjust until the beginning of this period), shall not be removed until the alien has had the opportunity to file during the six months following the beginning of the period of eligibility (unless there are criminal or security grounds for removal).

19. It shall be a crime punishable by up to five years to commit fraud or knowingly create or supply false documents in support of an application under this section. Employers, unions and others are excepted from this if they provide incorrect data used by the alien in order to obtain such employment shall not be considered in violation of this provision.

20. Nothing shall preclude an alien from seeking permanent residency under any other provision of the law for which they may be eligible.

21. DHS shall provide a single level of appellate review. Only evidence on file at the time of the determination of the application or evidence newly discovered during the time of the appeal shall be considered. After denial of this appeal, the case may be reviewed by a District Court and then federal appellate courts. Removal may not take place until a final decision is rendered establishing ineligibility (unless removal is based on criminal or security grounds).

22. Employers are protected from liability relating to the employment of aliens adjusting under the new law. They are also insulated from liability for providing employment records to aliens seeking to adjust under the new law.

23. Anyone present on January 7, 2004 who seeks to adjust but doesn't meet the employment or continuous physical presence tests can apply under the departure and reentry section below.

24. DHS must issue regulations within 120 days of enactment of the law.

The Two to Five Year Group

DHS may grant Deferred Mandatory Departure status to people in the US illegally to allow such people to depart the US and seek readmission as a nonimmigrant or immigrant alien. Residency requirements for DMD status are as follows:

1. The alien was physically present in the US on January 7, 2004.

2. The alien has been continuously present in the US since this date, except for brief, casual, and innocent departures; and

3. The alien was not legally present in the US on the date of enactment under any non-immigrant status.

Employment requirements are as follows:

1. The alien was employed in the US, whether full-time, part-time, seasonally or self-employed before January 7, 2004; and

2. The alien has been continuously employed in the US since that date, except for brief periods of unemployment lasting not longer than 60 days.

3. Aliens may show employment by presenting Social Security, IRS or other government records, employment records, or union, day labor center or similar work assistance organization records. If such records cannot be produced, then two other types of documents must be presented including bank records, business records, sworn affidavits from non-relatives or remittance records. Like the five year group, DHS is directed to be reasonable.

Other requirements are as follows:

1. The alien must be admissible and have not engaged in persecution. Immigration violations are generally excused. Other inadmissibility provisions may be waived pursuant to Section 212. Persons ordered deported, removed or to depart voluntarily and those who failed to comply with such orders are INELIGIBLE for DMD status.

2. Medical exams may be required.

3. DMD status may be terminated if DHS determines that the alien was not eligible for such status or the alien commits an act that makes the person removable from the US.

4. DHS must create a new DMD application form. The form shall require an alien to waive judicial and administrative review or appeal.

5. DHS must interview applicants and use biometric authentication at the time of document issuance.

6. Applications for DMD must start no more than three months after the DMD application form is first made available. An alien must submit a DMD application no later than six months after the date on which the application form is first made available. Failure to file on time will render a person ineligible for DMD status.

7. DHS will ensure that all DMD applications are processed within 12 months after the date on which the application form is first made available.

8. DMD status may not be granted until background checks are completed.

9. Applicants must acknowledge unlawful presence and surrender any Social Security account number or card in their possession as well as any false or fraudulent documents. None of this information will be used in any criminal proceedings against the alien.

DHS will grant DMD for periods up to three years. The alien must depart the US before the expiration of DMD status. A DMD alien must register with DHS at the time of departure and surrender the DMD status document at that time.

Departure and Reentry requirements are as follows:

1. The DMD alien can apply for readmission as an immigrant or nonimmigrant either from within the US or outside the country, but shall not be granted admission until the person has departed.

2. Departure and immediate reentry will be permitted at any US-VISIT entry/exit ports of entry.

3. Consular interview requirements are waived.

4. Numerical limits applicable to non-immigrant categories like the new H-2C category are not applicable.

5. Spouses and children do NOT have to depart if the principal applicant meets the departure requirement. Derivative benefits associated with the immigrant or nonimmigrant visa granted to the principal alien will also not be subject to applicable caps.

6. The departure requirement may be waived if the alien is otherwise granted an immigrant or nonimmigrant visa and the alien can demonstrate a substantial hardship.

7. Aliens who timely depart under DMD are not subject to the unlawful presence bars.

8. People who fail to depart in a timely manner will be subject to a 10 year benefits bar and may be subject to fines of up to $3000.

9. DMD applicants must work and can only be excused from working for up to 60 days. Applicants will be granted Social Security cards at the time DMD status is granted.

10. Time spent in DMD status will not be counted as a period of physical presence in cancellation of removal cases unless DHS finds that an extreme hardship exists.

DHS will grant DMD-holders a machine-readable, tamper-resistant document with biometric identifiers. The document will be used for both travel and work. Traveling with the card will not trigger unlawful presence reentry bars. The person must get back into the US using the travel document before the DMD status has expired. And time spent outside the US will not extend the DMD period.

DMD-holders will be considered to be permanently residing in the US under color of law and shall be treated as a nonimmigrant. But the alien may be deemed ineligible for public assistance.

DMD-holders are not eligible to apply to change to another non-immigrant status in the US.

Adjustment will not be allowed until all INA Section 201, 202 and 203 applicants are processed or eight years have passed since the date of enactment of the law, whichever comes first. Applicants for DMD status must pay a $1000 fee.

Spouses and children are subject to the same conditions as the principal DMD-holder. But spouses and children pay a $500 fee.

Section 601 is modified to specifically exempt those who comply with the Deferred Mandatory Departure from the H-2C requirements.

Unlike the five years+ group, there are no appellate rights for this group.

The Under Two Year Group

Those who do not fall into either of the two groups described above must leave and reenter on H-2C status and will have to pursue a green card using conventional green card strategies. Since the unlawful presence bars are waived for H-2Cs for time out of status prior to passage of the law, this should be a possible strategy, though applicants will need to be careful to depart the US within six months of the law passing. Raised employment-based green card caps should enable much of this group to get lawful status after several years have passed.

Subtitle B – AgJobs (Sections 611 to 619)

Nearly 100 pages of the bill are taken up by the “Agricultural Job Opportunities, Benefits and Security Act of 2006” also known as AgJobs. AgJobs was added by amendment during the Judiciary Committee markup. The bill would apply to those agricultural workers who have already been working at least 150 days in an eighteen month period in the 24 month period ending December 31, 2005. They would be able to apply for a

temporary visa called a “blue card.” Up to 1,500,000 blue cards may be issued in a five year period beginning on the date of enactment of the bill.

If they then work at least 100 days per year during the five year period beginning on the date of enactment of this bill or 150 days per year during the three year period from enactment of the bill, they would earn the right to apply for permanent residency. An application must be submitted within seven years of the date of enactment of the bill. Green card caps do not apply to these applicants.

Workers participating in the program will be able to travel in and out of the US legally and will be able to accept additional jobs as long as they meet their obligations to work in agriculture. Family members may remain legally, though they will not be authorized to work until the principal applicant applies for permanent residency. Criminals and those who fail to meet the requirements of the program are subject to removal. Applicants will have to pay back taxes.

The bills also make modifications in the current H-2A visa program. H-2A workers would only be eligible to work up to ten months, down from the current 364 day a year limit. The new program would drop the labor certification requirement and replace it with a program that involves filing a labor condition application, much like the current H-1B visa program. The H-2A applications by employers would have to be adjudicated within seven days by the USCIS. Employers would still have to engage in recruiting including listing the job with a local job service for 28 days before bringing workers in to the US. There are also a number of modifications and clarifications of the work conditions applicable to H-2A workers. Regulations enacting H-2A provisions of the law would have to be in place within a year of the law passing. A housing allowance can be provided as an alternative to providing housing. Workers must be given a transportation allowance to get to the job.

DREAM Act

The DREAM Act is moved here from Sections 431-442 to 621-632.

New Subtitle C (Sections 621 to 632) codifies the DREAM Act. Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 would be repealed. That section of IIRAIRA limits eligibility for preferential treatment (i.e. in state tuition based on residency) for higher education benefits for aliens not lawfully present unless such benefits are available to all US citizens and permanent residents regardless of their residence.

DHS may cancel removal of and adjust status of an illegal alien if the individual has been in the US for a continuous period of at least five year preceding the date of enactment of this law and the individual was under age 16 at the time of initial entry. The alien must be a person of good moral character since the time of application. Applicants inadmissible because of criminal or security violations are not eligible to participate. Fraud violations will render a person ineligible if the violations occurred after age 16. The alien, at the

time of application, must be admitted to college or has earned a high school diploma or GED. And someone with a removal or deportation order is ineligible to participate unless the order was issued before the age of 16. DHS shall have 180 days to issue interim regulations implementing the provisions of the DREAM Act. DHS may not remove individuals with DREAM Act applications pending.

DREAM Act recipients will be granted conditional permanent residence for a period of six years. A petition to remove conditions must filed in the period beginning 180 days before and ending two years after the date that is six years from the granting of conditional permanent status. An applicant is considered to be in conditional status while the application is pending.

Conditions may be removed if the alien has demonstrated good moral character during the conditional period, the alien has not abandoned residency, and the alien has at least one of the following:

- received a college degree or completed two years of higher education, or
- has served two years in the military and, if discharged, has received an honorable discharge.

A hardship exception is available and upon a showing of good cause, DHS can extend conditional residency in order to meet the above requirements. Conditional status must be lifted before an alien can apply for naturalization.

The DREAM Act will be implemented retroactively and persons who meet the requirements at the time of enactment can file to adjust status and will get conditional residency that can be removed at the end of the residency period described above.

DHS shall stay removal proceedings against primary and secondary school students at least 12 years of age who meet the residency and good moral character requirements.

Employment may be engaged in for persons whose removal is stayed under the Act. But DREAM Act recipients are limited in their entitlement to federal student aid.

DREAM Act applications are to be considered on an expedited basis and without payment of a premium processing fee.

Citizenship changes

Section 644 was added in last week, but was not included in our earlier summary. It contains the “Strengthening American Citizenship Act of 2006.” The new program provides a grant of $500 to any legal permanent resident who declares an intent to apply for citizenship and needs the funds to help pay for a program to assist in preparing for the English exam. If not enough money is available for all applicants, Chief of the Office of Citizenship at USCIS shall give priority based on the financial need of the applicants.

Applicants for citizenship who can demonstrate English fluency will satisfy the residency requirements for citizenship after four years instead of five.

The new section also sets up a grant program to help fund citizenship classes focusing on civics, history and English. Grants under this program shall be distributed by a new United States Citizenship Foundation. Funding will come from naturalization fees. 1.5% of such fees are to be set aside to fund this program.

The bill creates a new uniform citizenship oath:

”I take this oath solemnly, freely, and without any mental reservation. I absolutely and entirely renounce any allegiance to any foreign state or power of which I have been a subject or citizen. My fidelity and allegiance from this day forward are to the United States of America. I will bear true faith and allegiance to the Constitution and laws of the United States, and will support and defend them against all enemies, foreign and domestic. I will bear arms, or perform noncombatant military or civilian service, on behalf of the United States when required by law. This I do solemnly swear, so help me God.”

Questions on the meaning of this oath may be incorporated into the history and government test.

The Department of State will notify the embassy of the country on which the new citizen was a citizen that the person has renounced citizenship to that country and sworn allegiance to the US.

This section will take effect six months after the date of enactment of the law.

The President will create a new national medal in recognition of outstanding contributions of an individual naturalized within the prior ten years. Up to ten medals may be awarded each year.

Title VII – Miscellaneous

Title VII was deleted for the most part by the Judiciary Committee due to controversy surrounding a provision to consolidate appeals at the Federal Circuit. That Title has been partially restored by this new Title with the controversial provision left out (except for requiring a study of the issue). A number of new sections are added as well.

Section 701 calls for the increase in trial attorneys in immigration matters by at least 100 per year for five years. 50 attorneys per year are to be added to the Office of Immigration Litigation. At least 50 attorneys are to be added each year for five years to handle immigration matters at the US Attorneys’ office.

The number of immigration judges is to be increased by 20 each year for the next five years. At least 80 people per year are to added as personnel to support the new immigration judges.

At least ten attorneys and ten support personnel are to be added each year for five years to the Board of Immigration Appeals.

At least 50 attorneys per year for five years are to be added to the Federal Defenders Program to litigate criminal immigration cases.

Section 702 provides that the BIA shall have a chair and 22 other immigration appeals judges appointed to six year, staggered terms. The BIA is barred from hearing appeals of decisions of immigration judges for orders of removal entered in absentia. Judges will sit in three member panels.

Section 703 govern immigration judges. Judges will serve for seven years, but can be selected to continue until a successor has been appointed. Section 704 protects immigration judges from being removed based on their exercise of independent judgment.

Section 707 calls for a GAO study within six months of enactment of the law. The report shall cover the appellate process in immigration appeals cases. Among the issues to consider is the consolidation of appeals into a single circuit court such as the US Court of Appeals for the Federal Circuit. Originally, the Senate bill provided for such consolidation and the item was pulled because it was so controversial.

Section 711 through 715 include the provisions of the Kendell Frederick Citizenship Assistance Act concerning citizenship assistance for members of the armed services. The fingerprint requirement is waived for soldiers pursuing naturalization under INA Section 328 or 329. Instead, the fingerprints given at the time on enlistment will be used. To qualify, an applicant must apply within twelve months after enlisting.

The Defense Department will provide a Citizenship Advocate at each Military Entry Processing Station to provide information and written materials on the naturalization process to members of the Armed Services. The armed forces will also provide a dedicated toll free telephone service for its members and their families to provide naturalization information.

Within 120 days, the Comptroller General shall deliver a report to Congress on Sections 328 and 329 naturalizations and within 180 days the Comptroller General shall deliver a second report on the changes made by this law.

Sections 721 to 724 include the State Court Interpreter Grant Program Act to provide grant funding to assist states in developing and improving court interpreter programs.

Sections 731 through 737 include the provisions of the Border Infrastructure and Technology Modernization Act. Section 733 calls for the Administrator of General Services to annually update a Port of Entry Infrastructure Assessment Study prepared by CBP. The report will cover port of entry infrastructure and technology improvement projects and projects identified in a National Land Border Security Plan (the NLBSP). The NLBSP shall include a vulnerability assessment for each port of entry at both borders. DHS will also establish one or more port security coordinators at each border.

Sections 741 through 746 include the provisions of the September 11 Family Humanitarian Relief and Patriotism Act. Section 742 calls for the adjustment of status to permanent residency of any applicant who is spouses and children of people lawfully in the US who were killed in the September 11th attacks. Applicants will have two years to apply from the date where DHS issues regulations implementing this section. Several provisions barring applicants from applying for adjustment such as having been previously ordered removed are waived for people applying under this section. Spouses and children of people killed in the September 11th attacks will also be eligible for cancellation of removal and those already ordered removed may file motions to reopen removal proceedings.

Section 751 states that individuals who are not US citizens shall not be denied the opportunity to apply for membership in the US Armed Forces. Individuals will be eligible for US citizenship after performing at least two years of honorable and satisfactory service on active duty and citizenship shall be granted within 90 days of application. The normal naturalization requirements are waived except that the applicant must demonstrate to his or military chain of command, proficiency in English, good moral character and knowledge of US government and history.

Section 752 broadens the rules for certain athletes seeking non-immigrant status. P visas will now be open to athletes and coaches who are part of a team or franchise located in the US and is a member of a foreign league or association of 15 or more amateur sports teams, if

1. the foreign league or association is the highest level of amateur performance of that sport in the relevant foreign country.
2. participation in such league or association renders players ineligible to earn a scholarship in or participate in that sport at a college or university in the US.
3. a significant number of the individuals who play in the league or association are drafted by a major sports league or a minor league affiliate of such a sports league.

The section also includes a provision now including professional and amateur performers in theatrical ice skating productions in the P athlete category.

Advisory opinions will no longer be required for members of a) professional leagues described in INA Section 204(i)(2) (applicable to leagues grossing more than

$10,000,000 and having at least six teams), b) members of foreign leagues described above and c) performers in theatrical ice skating productions.

Multiple athletes will now be able to apply under a single petition and only pay one fee.

A new provision is added that specifically states that athletes are not required to use the P category if they wish to pursue another visa strategy.

Section 753 extends the H-2B provisions from the REAL ID Act from 2005. That law allowed returning H-2B workers not to be counted against the annual H-2B cap. This provision would extend the provisions from 2006 to 2009.

Section 758 contains the provisions of the Initial Entry, Adjustment, and Citizenship Assistance Grant Act of 2006. USCIS will provide funding to community-based organizations to develop and implement programs to assist eligible applicants for the conditional nonimmigrant worker and adjustment of status program provided under this law. 50% of the funds are reserved for programs in the ten states with the highest percentage of foreign-born residents and 20% are reserved for all the other states. 2% of the fees for the H-2C and conditional nonimmigrant visas will be reserved to fund this program.

Section 763 modifies Section 504 to note that widows and orphans of US citizens who would are allowed to continue a petition as an immediate relative, may seek to be paroled back into the US if they have left the US or been removed and they will be permitted to apply to adjust status. Motions to reopen may be filed by people who were denied petitions but would have been eligible to adjust were this law in effect at the time of the denial. Such motions must be filed within two years of enactment.

Section 765 states that the unlawful presence bars and bars applicable to those subject to a bar due to reentering the country after being ordered removed may seek a waiver if they had a permanent residency petition on file before the date of the enactment of the new law. Applicants for such waivers must pay a $2000 fine.