

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 1348

To provide for comprehensive immigration reform and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the following:
2

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007”.
6

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Effective date triggers.
- Sec. 3. Reference to the Immigration and Nationality Act.
- Sec. 4. Definitions.

Sec. 5. Severability.

TITLE I—BORDER ENFORCEMENT

Subtitle A—Assets for Controlling United States Borders

Sec. 101. Enforcement personnel.

Sec. 102. Technological assets.

Sec. 103. Infrastructure.

Sec. 104. Ports of entry.

Subtitle B—Other Border Security Initiatives

Sec. 111. Biometric entry-exit system.

Sec. 112. Unlawful flight from immigration or customs controls.

Sec. 113. Release of aliens from noncontiguous countries.

Sec. 114. Seizure of conveyance with concealed compartment: expanding the definition of conveyances with hidden compartments subject to forfeiture.

Subtitle C—Other Measures

Sec. 121. Deaths at United States-Mexico border.

Sec. 122. Border security on certain Federal land.

Sec. 123. Secure communication.

Sec. 124. Unmanned aircraft systems.

Sec. 125. Surveillance technologies programs.

Sec. 126. Surveillance plan.

Sec. 127. National strategy for border security.

Sec. 128. Border patrol training capacity review.

Sec. 129. Biometric data enhancements.

Sec. 130. US-VISIT system.

Sec. 131. Document fraud detection.

Sec. 132. Border relief grant program.

Sec. 133. Port of entry infrastructure assessment study.

Sec. 134. National land border security plan.

Sec. 135. Port of entry technology demonstration program.

Sec. 136. Combating human smuggling.

Sec. 137. Increase of Federal detention space and the utilization of facilities identified for closures as a result of the Defense Base Closure Realignment Act of 1990.

Sec. 138. United States-Mexico border enforcement review commission.

TITLE II—INTERIOR ENFORCEMENT

Sec. 201. Additional immigration personnel.

Sec. 202. Detention and removal of aliens ordered removed.

Sec. 203. Aggravated felony.

Sec. 204. Increased criminal penalties related to gang violence and removal.

Sec. 205. Illegal entry.

Sec. 206. Illegal reentry.

Sec. 207. Reform of passport, visa, and immigration fraud offenses.

Sec. 208. Inadmissibility and removal for passport and immigration fraud offenses.

Sec. 209. Incarceration of criminal aliens.

Sec. 210. Encouraging aliens to depart voluntarily.

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- Sec. 211. Deterring aliens ordered removed from remaining in the United States unlawfully.
- Sec. 212. Prohibition of the sale of firearms to, or the possession of firearms by certain aliens.
- Sec. 213. Uniform statute of limitations for certain immigration, passport, and naturalization offenses.
- Sec. 214. Diplomatic security service.
- Sec. 215. Streamlined processing of background checks conducted for immigration benefits.
- Sec. 216. State criminal alien assistance program.
- Sec. 217. Transportation and processing of illegal aliens apprehended by State and local law enforcement officers.
- Sec. 218. Reducing illegal immigration and alien smuggling on tribal lands.
- Sec. 219. Alternatives to detention.
- Sec. 220. State and local enforcement of Federal immigration laws.
- Sec. 221. Protecting immigrants from convicted sex offenders.
- Sec. 222. Law enforcement authority of States and political subdivisions and transfer to Federal custody.
- Sec. 223. Laundering of monetary instruments.
- Sec. 224. Cooperative enforcement programs.
- Sec. 225. Expansion of the justice prisoner and alien transfer system.
- Sec. 226. Directive to the United States Sentencing Commission.
- Sec. 227. Cancellation of visas.

TITLE III—WORKSITE ENFORCEMENT

- Sec. 301. Purposes.
- Sec. 302. Unlawful employment of aliens.
- Sec. 303. Effective date.
- Sec. 304. Disclosure of certain taxpayer information to assist in immigration enforcement.
- Sec. 305. Increasing security and integrity of social security cards.
- Sec. 306. Increasing security and integrity of identity documents.
- Sec. 307. Voluntary advanced verification program to combat identity theft.
- Sec. 308. Responsibilities of the Social Security Administration.
- Sec. 309. Immigration enforcement support by the Internal Revenue Service and the Social Security Administration.
- Sec. 310. Authorization of appropriations.

TITLE IV—NEW TEMPORARY WORKER PROGRAM

Subtitle A—Seasonal Non-Agricultural and Year-Round Nonimmigrant
Temporary Workers

- Sec. 401. Nonimmigrant temporary worker.
- Sec. 402. Admission of nonimmigrant workers.
- Sec. 403. General Y nonimmigrant employer obligations.

Subtitle B—Seasonal Agricultural Nonimmigrant Temporary Workers

- Sec. 404. Amendment to the Immigration and Nationality Act.
- Sec. 405. Determination and use of user fees.
- Sec. 406. Regulations.
- Sec. 407. Reports to Congress.
- Sec. 408. Effective date.
- Sec. 409. Numerical limitations.
- Sec. 410. Requirements for participating countries.

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- Sec. 411. Compliance investigators.
- Sec. 412. Standing commission on immigration and labor markets.
- Sec. 413. Agency representation and coordination.
- Sec. 414. Bilateral efforts with Mexico to reduce migration pressures and costs.
- Sec. 415. Willing worker-willing employer electronic database.
- Sec. 416. Enumeration of Social Security number.
- Sec. 417. Contracting.
- Sec. 418. Federal rulemaking requirements.

Subtitle C—Nonimmigrant Visa Reform

- Sec. 419. Student visas.
- Sec. 420. H-1B streamlining and simplification.
- Sec. 421. H-1B employer requirements.
- Sec. 422. H-1B government authority and requirements.
- Sec. 423. L-1 visa fraud and abuse protections.
- Sec. 424. Whistleblower protections.
- Sec. 425. Limitations on approval of L-1 petitions for start-up companies.
- Sec. 426. Medical services in underserved areas.
- Sec. 427. Authorization of appropriations.

TITLE V—IMMIGRATION BENEFITS

- Sec. 501. Rebalancing of immigrant visa allocation.
- Sec. 502. Increasing American competitiveness through a merit-based evaluation system for immigrants.
- Sec. 503. Reducing chain migration and permitting petitions by nationals.
- Sec. 504. Creation of process for immigration of family members in hardship cases.
- Sec. 505. Elimination of diversity visa program.
- Sec. 506. Family visitor visas.
- Sec. 507. Prevention of visa fraud.
- Sec. 508. Increasing per-country limits for family-based and employment-based immigrants.

TITLE VI—NONIMMIGRANTS IN THE UNITED STATES PREVIOUSLY IN UNLAWFUL STATUS

Subtitle A—Z Nonimmigrants

- Sec. 601. Z nonimmigrants.
- Sec. 602. Earned adjustment for Z status aliens.
- Sec. 603. Administrative review, removal proceedings, and judicial review for aliens who have applied for legal status.
- Sec. 604. Mandatory disclosure of information.
- Sec. 605. Employer protections.
- Sec. 606. Enumeration of social security number.
- Sec. 607. Preclusion of social security credits for years prior to enumeration.
- Sec. 608. Payment of penalties and use of penalties collected.
- Sec. 609. Limitations on eligibility.
- Sec. 610. Rulemaking.
- Sec. 611. Authorization of appropriations.

Subtitle B—Dream Act

- Sec. 620. Short title.
- Sec. 621. Definitions.

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- Sec. 622. Adjustment of status of certain long-term residents who entered the United States as children.
- Sec. 623. Expedited processing of applications; prohibition on fees.
- Sec. 624. Higher education assistance.
- Sec. 625. Delay of fines and fees.
- Sec. 626. GAO report.
- Sec. 627. Regulations, effective date, authorization of appropriations.

Subtitle C—Agricultural Workers

- Sec. 630. Short title.

PART I—ADMISSION

- Sec. 631. Admission of agricultural workers.
- Sec. 632. Agricultural worker immigration status adjustment account.
- Sec. 633. Regulations, effective date, authorization of appropriations.

PART II—CORRECTION OF SOCIAL SECURITY RECORDS

- Sec. 640. Correction of social security records.

TITLE VII—MISCELLANEOUS

Subtitle A—Miscellaneous Immigration Reform

- Sec. 701. Waiver of requirement for fingerprints for members of the Armed Forces.
- Sec. 702. Declaration of English.
- Sec. 703. Pilot project regarding immigration practitioner complaints.

Subtitle B—Assimilation and Naturalization

- Sec. 711. The Office of Citizenship and Integration.
- Sec. 712. Special provisions for elderly immigrants.
- Sec. 713. Funding for the Office of Citizenship and Immigrant Integration.
- Sec. 714. Citizenship and Integration Councils.
- Sec. 715. History and government test.
- Sec. 716. English learning program.
- Sec. 717. GAO study on the appellate process for immigration appeals.

1 **SEC. 2. EFFECTIVE DATE TRIGGERS.**

2 (a) ESTABLISHMENT OF TRIGGERS.—

- 3 (1) IN GENERAL.—Except as provided in para-
- 4 graph (2), the programs established by title IV, or
- 5 any amendment made by title IV, the programs es-
- 6 tablished by title VI, or any amendment made by
- 7 title VI, that grant legal status to any individual or
- 8 adjust the immigration status of any individual who

1 is unlawfully present in the United States to that of
2 an alien lawfully admitted for permanent residence
3 shall become effective on the date that the Secretary
4 submits to the President and Congress a written cer-
5 tification that the following border security and
6 other measures are funded, in place, and in oper-
7 ation:

8 (A) BORDER PATROL.—The U.S. Customs
9 and Border Protection Border Patrol has, in its
10 continued effort to increase the number of
11 agents and support staff, hired a total of
12 18,000 agents.

13 (B) STRONG BORDER BARRIERS.—The
14 United States has installed at least 200 miles
15 of vehicle barriers, 370 miles of fencing, and 70
16 ground-based radar and camera towers along
17 the southern land border of the United States,
18 and has deployed 4 unmanned aerial vehicles
19 and supporting systems that are used for pur-
20 poses related to border security.

21 (C) CATCH AND RETURN.—The Secretary
22 is detaining all removable aliens apprehended
23 crossing such southern land border, except as
24 specifically mandated by law or humanitarian
25 circumstances, and U.S. Immigration and Cus-

1 toms Enforcement has the resources to continue
2 to detain all such aliens, including resources to
3 detain up to 27,500 aliens per day on an an-
4 nual basis.

5 (D) WORKSITE ENFORCEMENT TOOLS.—
6 The Secretary has established and is using se-
7 cure and effective identification tools to prevent
8 unauthorized workers from obtaining jobs in
9 the United States as required by title III and
10 the amendments made by title III. Such tools
11 shall include establishing—

12 (i) strict standards for identification
13 documents that must be presented in the
14 hiring process, including the use of secure
15 documentation that contains a photograph
16 or other biometric identifier, or, if appro-
17 priate, complies with the requirements for
18 such documentation under the REAL ID
19 Act of 2005 (division B of Public Law
20 109–13; 119 Stat. 302) or any amendment
21 made by that Act; and

22 (ii) an electronic employment eligi-
23 bility verification system that queries Fed-
24 eral and State databases to restrict fraud,
25 identity theft, and use of false social secu-

1 rity account numbers in the hiring process
2 by electronically providing a digitized
3 version of the photograph on the employ-
4 ee’s original Federal or State issued docu-
5 ment or documents for verification of the
6 employee’s identity and work eligibility.

7 (E) PROCESSING APPLICATIONS OF
8 ALIENS.—The Secretary has received, and is
9 processing and adjudicating in a timely manner,
10 applications for aliens seeking nonimmigrant
11 status pursuant to section 101(a)(15)(Z) of the
12 Immigration and Nationality Act, as added by
13 title VI of this Act, including conducting all
14 background and security checks required by the
15 provisions of title VI of this Act.

16 (2) EXCEPTION.—Paragraph (1) shall not
17 apply to—

18 (A) the probationary benefits conferred by
19 section 601(h);

20 (B) the provisions of subtitle C of title IV;
21 and

22 (C) the admission of aliens under section
23 101(a)(15)(H)(ii) of the Immigration and Na-
24 tionality Act (8 U.S.C. 1101(a)(15)(H)(ii)), in
25 a manner consistent with the Immigration and

1 Nationality Act (8 U.S.C. 1101 et seq.), as
2 amended the by title IV.

3 (b) SENSE OF CONGRESS.—It is the sense of Con-
4 gress that the border security and other measures de-
5 scribed in paragraphs (A) through (E) of subsection (a)(1)
6 can and should be completed not later than 18 months
7 after the date of the enactment of this Act, subject to the
8 necessary appropriations.

9 (c) REPORTS.—

10 (1) REQUIREMENT.—Not later than 90 days
11 after the date of the enactment of this Act, and once
12 during every 90-day period thereafter until the cer-
13 tification referred to in subsection (a)(1) is sub-
14 mitted, the President shall submit to Congress a re-
15 port detailing the progress made in funding, appro-
16 priating, contractual agreements reached, and spe-
17 cific progress on each of the border security and
18 other measures described in subparagraphs (A)
19 through (E) of subsection (a)(1).

20 (2) RECOMMENDATIONS.—If, during a report-
21 ing period described in paragraph (1), the President
22 determines that sufficient progress is not being
23 made with respect to each of the border security and
24 other measures described in subparagraphs (A)
25 through (E) of subsection (a)(1), the President shall

1 include in the next report required by paragraph (1)
2 specific funding recommendations, authorization
3 needed, or other actions that are being undertaken
4 by the Department with respect to such measures.

5 **SEC. 3. REFERENCE TO THE IMMIGRATION AND NATION-**
6 **ALITY ACT.**

7 Except as otherwise expressly provided, whenever in
8 this Act an amendment or repeal is expressed in terms
9 of an amendment to, or repeal of, a section or other provi-
10 sion, the reference shall be considered to be made to a
11 section or other provision of the Immigration and Nation-
12 ality Act (8 U.S.C. 1101 et seq.).

13 **SEC. 4. DEFINITIONS.**

14 In this Act:

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

18 (2) SECRETARY.—Except as otherwise provided,
19 the term “Secretary” means the Secretary of Home-
20 land Security.

21 **SEC. 5. SEVERABILITY.**

22 If any provision of this Act, any amendment made
23 by this Act, or the application of such provision or amend-
24 ment to any person or circumstance is held to be invalid
25 for any reason, the remainder of this Act, the amendments

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

4 Strike all after the enacting clause and insert the fol-
5 lowing:

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

10 **SEC. 101. ENFORCEMENT PERSONNEL.**

11 (a) **ADDITIONAL PERSONNEL.—**

12 (1) **U.S. CUSTOMS AND BORDER PROTECTION**
13 **OFFICERS.—**In each of the fiscal years 2008 through
14 2012, the Secretary shall, subject to the availability
15 of appropriations, increase by not less than 500 the
16 number of positions for full-time active duty U.S.
17 Customs and Border Protection officers and provide
18 appropriate training, equipment, and support to
19 such additional officers.

20 (2) **INVESTIGATIVE PERSONNEL.—**

21 (A) **IMMIGRATION AND CUSTOMS EN-**
22 **FORCEMENT INVESTIGATORS.—**Section 5203 of
23 the Intelligence Reform and Terrorism Preven-
24 tion Act of 2004 (Public Law 108–458; 118

1 Stat. 3734) is amended by striking “800” and
2 inserting “1000”.

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

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

20 (4) RECRUITMENT OF FORMER MILITARY PER-
21 SONNEL.—

22 (A) IN GENERAL.—The Commissioner of
23 United States Customs and Border Protection,
24 in conjunction with the Secretary of Defense or
25 a designee of the Secretary of Defense, shall es-

1 tabish a program to actively recruit members
2 of the Army, Navy, Air Force, Marine Corps,
3 and Coast Guard who have elected to separate
4 from active duty.

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

13 (b) AUTHORIZATION OF APPROPRIATIONS.—

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

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

24 (3) BORDER PATROL AGENTS.—Section 5202 of
25 the Intelligence Reform and Terrorism Prevention

1 Act of 2004 (118 Stat. 3734) is amended to read as
2 follows:

3 **“SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL**
4 **AGENTS.**

5 “(a) ANNUAL INCREASES.—The Secretary of Home-
6 land Security shall, subject to the availability of appropria-
7 tions for such purpose, increase the number of positions
8 for full-time active-duty border patrol agents within the
9 Department of Homeland Security (above the number of
10 such positions for which funds were appropriated for the
11 preceding fiscal year), by not less than—

12 “(1) 2,000 in fiscal year 2007;

13 “(2) 2,400 in fiscal year 2008;

14 “(3) 2,400 in fiscal year 2009;

15 “(4) 2,400 in fiscal year 2010;

16 “(5) 2,400 in fiscal year 2011; and

17 “(6) 2,400 in fiscal year 2012.

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

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

5 **SEC. 102. TECHNOLOGICAL ASSETS.**

6 (a) ACQUISITION.—Subject to the availability of ap-
7 propriations for such purpose, the Secretary shall procure
8 additional unmanned aerial vehicles, cameras, poles, sen-
9 sors, and other technologies necessary to achieve oper-
10 ational control of the borders of the United States.

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

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

1 **SEC. 103. INFRASTRUCTURE.**

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

5 (1) in subsection (a), by striking “Attorney
6 General, in consultation with the Commissioner of
7 Immigration and Naturalization,” and inserting
8 “Secretary of Homeland Security”; and

9 (2) in subsection (b)—

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

13 (B) by inserting before paragraph (2), as
14 redesignated, the following:

15 “(1) FENCING NEAR SAN DIEGO, CALI-
16 FORNIA.—In carrying out subsection (a), the Sec-
17 retary shall provide for the construction along the
18 14 miles of the international land border of the
19 United States, starting at the Pacific Ocean and ex-
20 tending eastward, of second and third fences, in ad-
21 dition to the existing reinforced fence, and for roads
22 between the fences.”.

23 **SEC. 104. PORTS OF ENTRY.**

24 Section 102 of the Illegal Immigration Reform and
25 Immigrant Responsibility Act of 1996 (division C of Pub-
26 lic Law 104–208; 110 Stat. 3009-554) is amended by the

1 addition, at the end of that section, of the following new
2 subsection:

3 “(e) CONSTRUCTION AND IMPROVEMENTS.—The
4 Secretary is authorized to—

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

8 “(2) make necessary improvements to the ports
9 of entry.”.

10 **Subtitle B—Other Border Security** 11 **Initiatives**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (2) in subsection (l)—

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

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

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

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

12 **SEC. 112. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUS-**
13 **TOMS CONTROLS.**

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

16 **“758. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUS-**
17 **TOMS CONTROLS.**

18 “(a) EVADING A CHECKPOINT.—Any person who,
19 while operating a motor vehicle or vessel, knowingly flees
20 or evades a checkpoint operated by the Department of
21 Homeland Security or any other Federal law enforcement
22 agency, and then knowingly or recklessly disregards or dis-
23 obeys the lawful command of any law enforcement agent,
24 shall be fined under this title, imprisoned not more than
25 5 years, or both.

1 “(b) FAILURE TO STOP.—Any person who, while op-
2 erating a motor vehicle, aircraft, or vessel, knowingly or
3 recklessly disregards or disobeys the lawful command of
4 an officer of the Department of Homeland Security en-
5 gaged in the enforcement of the immigration, customs, or
6 maritime laws, or the lawful command of any law enforce-
7 ment agent assisting such officer, shall be fined under this
8 title, imprisoned not more than 2 years, or both.

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

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

15 “(A) in excess of the applicable or posted
16 speed limit;

17 “(B) in excess of the rated capacity of the
18 motor vehicle, aircraft, or vessel; or

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

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

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

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

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

11 “(e) FORFEITURE.—Any property, real or personal,
12 constituting or traceable to the gross proceeds of the of-
13 fense and any property, real or personal, used or intended
14 to be used to commit or facilitate the commission of the
15 offense shall be subject to forfeiture.

16 “(f) FORFEITURE PROCEDURES.—Seizures and for-
17 feitures under this section shall be governed by the provi-
18 sions of chapter 46 of this title, relating to civil forfeitures,
19 including section 981(d) of such title, except that such du-
20 ties as are imposed upon the Secretary of the Treasury
21 under the customs laws described in that section shall be
22 performed by such officers, agents, and other persons as
23 may be designated for that purpose by the Secretary of
24 Homeland Security or the Attorney General. Nothing in
25 this section shall limit the authority of the Secretary to

1 seize and forfeit motor vehicles, aircraft, or vessels under
2 the Customs laws or any other laws of the United States.

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

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

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

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

17 “(4) The term ‘motor vehicle’ means any mo-
18 torized or self-propelled means of terrestrial trans-
19 portation.

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

22 **SEC. 113. RELEASE OF ALIENS FROM NONCONTIGUOUS**
23 **COUNTRIES.**

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

1 (1) by striking “on”;

2 (2) in subparagraph (A)—

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

6 (B) by striking “or” at the end;

7 (3) by redesignating subparagraph (B) as sub-
8 paragraph (C); and

9 (4) by inserting after subparagraph (A) the fol-
10 lowing:

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

15 “(i) is a national of a noncontiguous
16 country;

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

19 “(iii) was apprehended within 100
20 miles of the international border of the
21 United States or presents a flight risk, as
22 determined by the Secretary of Homeland
23 Security; or”.

1 **SEC. 114. SEIZURE OF CONVEYANCE WITH CONCEALED**
2 **COMPARTMENT: EXPANDING THE DEFINI-**
3 **TION OF CONVEYANCES WITH HIDDEN COM-**
4 **PARTMENTS SUBJECT TO FORFEITURE.**

5 Section 3 of the Act of August 5, 1935 (49 Stat. 518;
6 chapter 438; 19 U.S.C. 1703) is amended—

7 (1) in subsections (a) and (b), by inserting “,
8 vehicle, other conveyance, or instrument of inter-
9 national traffic” after “vessel” each place it appears;
10 and

11 (2) by amending subsection (c) to read as fol-
12 lows:

13 “(c) For the purposes of this section, the following
14 shall constitute prima facie evidence that a conveyance is
15 being, has been, or is attempted to be, employed in smug-
16 gling or to defraud the revenue of the United States:

17 “(1) In the case of a vessel, the fact that the
18 vessel has become subject to pursuit as provided in
19 section 581 of the Tariff Act of 1930 (19 U.S.C.
20 1581), or is a hovering vessel, or that the vessel
21 fails, at any place within the customs waters of the
22 United States or within a customs-enforcement area,
23 to display light as required by law.

24 “(2) In the case of a vehicle, other conveyance
25 or instrument of international traffic, the fact that
26 the vehicle, other conveyance, or instrument of inter-

1 national traffic has any compartment or equipment
2 that is built or fitted out for smuggling.”.

3 **Subtitle C—Other Measures**

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

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

9 (1) the causes of the deaths; and

10 (2) the total number of deaths.

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

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

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

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

21 (a) DEFINITIONS.—In this section:

22 (1) PROTECTED LAND.—The term “protected
23 land” means land under the jurisdiction of the Sec-
24 retary concerned.

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

3 (A) with respect to land under the jurisdic-
4 tion of the Secretary of Agriculture, the Sec-
5 retary of Agriculture; and

6 (B) with respect to land under the jurisdic-
7 tion of the Secretary of the Interior, the Sec-
8 retary of the Interior.

9 (b) SUPPORT FOR BORDER SECURITY NEEDS.—

10 (1) IN GENERAL.—To gain operational control
11 over the international land borders of the United
12 States and to prevent the entry of terrorists, unlaw-
13 ful aliens, narcotics, and other contraband into the
14 United States, the Secretary, in cooperation with the
15 Secretary concerned, shall provide—

16 (A) increased U.S. Customs and Border
17 Protection personnel to secure protected land
18 along the international land borders of the
19 United States;

20 (B) Federal land resource training for
21 U.S. Customs and Border Protection agents
22 dedicated to protected land; and

23 (C) unmanned aerial vehicles, aerial assets,
24 remote video surveillance camera systems, and
25 sensors on protected land that is directly adja-

1 cent to the international land border of the
2 United States.

3 (2) COORDINATION.—In providing training for
4 Customs and Border Protection agents under para-
5 graph (1)(B), the Secretary shall coordinate with the
6 Secretary concerned to ensure that the training is
7 appropriate to the mission of the National Park
8 Service, the United States Fish and Wildlife Service,
9 the Forest Service, or the relevant agency of the De-
10 partment of the Interior or the Department of Agri-
11 culture to minimize the adverse impact on natural
12 and cultural resources from border protection activi-
13 ties.

14 (c) ANALYSIS OF DAMAGE TO PROTECTED LANDS.—
15 The Secretary and Secretaries concerned shall develop an
16 analysis of damage to protected lands relating to illegal
17 border activity, including the cost of equipment, training,
18 recurring maintenance, construction of facilities, restora-
19 tion of natural and cultural resources, recapitalization of
20 facilities, and operations.

21 (d) RECOMMENDATIONS.—The Secretary shall—

22 (1) develop joint recommendations with the Na-
23 tional Park Service, the United States Fish and
24 Wildlife Service, and the Forest Service for an ap-

1 appropriate cost-recovery mechanism relating to items
2 identified in subsection (c); and

3 (2) not later than 1 year after the date of the
4 enactment of this Act, submit to the appropriate
5 congressional committees (as defined in section 2 of
6 the Homeland Security Act of 2002 (6 U.S.C. 101)),
7 including the Subcommittee on National Parks of
8 the Senate and the Subcommittee on National
9 Parks, Recreation and Public Lands of the House of
10 Representatives, the recommendations developed
11 under paragraph (1).

12 (e) **BORDER PROTECTION STRATEGY.**—The Sec-
13 retary, the Secretary of the Interior, and the Secretary
14 of Agriculture shall jointly develop a border protection
15 strategy that supports the border security needs of the
16 United States in the manner that best protects the home-
17 land, including—

18 (1) units of the National Park System;

19 (2) National Forest System land;

20 (3) land under the jurisdiction of the United
21 States Fish and Wildlife Service; and

22 (4) other relevant land under the jurisdiction of
23 the Department of the Interior or the Department
24 of Agriculture.

1 **SEC. 123. SECURE COMMUNICATION.**

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

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

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

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

13 **SEC. 124. UNMANNED AIRCRAFT SYSTEMS.**

14 (a) UNMANNED AIRCRAFT AND ASSOCIATED INFRA-
15 STRUCTURE.—The Secretary shall acquire and maintain
16 unmanned aircraft systems for use on the border, includ-
17 ing 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
22 support.

23 (b) AUTHORIZATION OF APPROPRIATIONS.—

24 (1) IN GENERAL.—There are authorized to be
25 appropriated to the Secretary to carry out sub-
26 section (a)—

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

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

3 (2) AVAILABILITY OF FUNDS.—Amounts appro-
4 priated pursuant to paragraph (1) shall remain
5 available until expended.

6 **SEC. 125. SURVEILLANCE TECHNOLOGIES PROGRAMS.**

7 (a) AERIAL SURVEILLANCE PROGRAM.—

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

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

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

3 (B) assess the feasibility and advisability
4 of utilizing such technologies to address border
5 threats, including an assessment of the tech-
6 nologies considered best suited to address re-
7 spective threats;

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

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

17 (3) ADDITIONAL REQUIREMENTS.—

18 (A) IN GENERAL.—The program developed
19 under this subsection shall include the use of a
20 variety of aerial surveillance technologies in a
21 variety of topographies and areas, including
22 populated and unpopulated areas located on or
23 near an international border of the United
24 States, in order to evaluate, for a range of cir-
25 cumstances—

1 (i) the significance of previous experi-
2 ences with such technologies in border se-
3 curity or critical infrastructure protection;

4 (ii) the cost and effectiveness of var-
5 ious technologies for border security, in-
6 cluding varying levels of technical com-
7 plexity; and

8 (iii) liability, safety, and privacy con-
9 cerns relating to the utilization of such
10 technologies for border security.

11 (4) CONTINUED USE OF AERIAL SURVEILLANCE
12 TECHNOLOGIES.—The Secretary may continue the
13 operation of aerial surveillance technologies while as-
14 sessing the effectiveness of the utilization of such
15 technologies.

16 (5) REPORT TO CONGRESS.—Not later than
17 180 days after implementing the program under this
18 subsection, the Secretary shall submit a report to
19 Congress regarding the program developed under
20 this subsection. The Secretary shall include in the
21 report a description of the program together with
22 such recommendations as the Secretary finds appro-
23 priate for enhancing the program.

1 (6) AUTHORIZATION OF APPROPRIATIONS.—

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

4 (b) INTEGRATED AND AUTOMATED SURVEILLANCE
5 PROGRAM.—

6 (1) REQUIREMENT FOR PROGRAM.—Subject to
7 the availability of appropriations, the Secretary shall
8 establish a program to procure additional unmanned
9 aerial vehicles, cameras, poles, sensors, satellites,
10 radar coverage, and other technologies necessary to
11 achieve operational control of the international bor-
12 ders of the United States and to establish a security
13 perimeter known as a “virtual fence” along such
14 international borders to provide a barrier to illegal
15 immigration. Such program shall be known as the
16 Integrated and Automated Surveillance Program.

17 (2) PROGRAM COMPONENTS.—The Secretary
18 shall ensure, to the maximum extent feasible, the In-
19 tegrated and Automated Surveillance Program is
20 carried out in a manner that—

21 (A) the technologies utilized in the Pro-
22 gram are integrated and function cohesively in
23 an automated fashion, including the integration
24 of motion sensor alerts and cameras, whereby a
25 sensor alert automatically activates a cor-

1 responding camera to pan and tilt in the direc-
2 tion of the triggered sensor;

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

5 (C) such camera views and positions are
6 not fixed;

7 (D) surveillance video taken by such cam-
8 eras can be viewed at multiple designated com-
9 munications centers;

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

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

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

22 (H) plans are developed under the Pro-
23 gram to streamline site selection, site valida-
24 tion, and environmental assessment processes to

1 minimize delays of installing surveillance tech-
2 nology infrastructure;

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

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

13 (3) REPORT TO CONGRESS.—Not later than 1
14 year after the initial implementation of the Inte-
15 grated and Automated Surveillance Program, the
16 Secretary shall submit to Congress a report regard-
17 ing the Program. The Secretary shall include in the
18 report a description of the Program together with
19 any recommendation that the Secretary finds appro-
20 priate for enhancing the program.

21 (4) EVALUATION OF CONTRACTORS.—

22 (A) REQUIREMENT FOR STANDARDS.—The
23 Secretary shall develop appropriate standards
24 to evaluate the performance of any contractor

1 providing goods or services to carry out the In-
2 tegrated and Automated Surveillance Program.

3 (B) REVIEW BY THE INSPECTOR GEN-
4 ERAL.—The Inspector General of the Depart-
5 ment shall timely review each new contract re-
6 lated to the Program that has a value of more
7 than \$5,000,000, to determine whether such
8 contract fully complies with applicable cost re-
9 quirements, performance objectives, program
10 milestones, and schedules. The Inspector Gen-
11 eral shall report the findings of such review to
12 the Secretary in a timely manner. Not later
13 than 30 days after the date the Secretary re-
14 ceives a report of findings from the Inspector
15 General, the Secretary shall submit to the Com-
16 mittee on Homeland Security and Govern-
17 mental Affairs of the Senate and the Committee
18 on Homeland Security of the House of Rep-
19 resentatives a report of such findings and a de-
20 scription of any the steps that the Secretary
21 has taken or plans to take in response to such
22 findings.

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

1 **SEC. 126. SURVEILLANCE PLAN.**

2 (a) **REQUIREMENT FOR PLAN.**—The Secretary shall
3 develop a comprehensive plan for the systematic surveil-
4 lance of the international land and maritime borders of
5 the United States.

6 (b) **CONTENT.**—The plan required by subsection (a)
7 shall include the following:

8 (1) An assessment of existing technologies em-
9 ployed on the international land and maritime bor-
10 ders of the United States.

11 (2) A description of the compatibility of new
12 surveillance technologies with surveillance tech-
13 nologies in use by the Secretary on the date of the
14 enactment of this Act.

15 (3) A description of how the Commissioner of
16 the United States Customs and Border Protection of
17 the Department is working, or is expected to work,
18 with the Under Secretary for Science and Tech-
19 nology of the Department to identify and test sur-
20 veillance technology.

21 (4) A description of the specific surveillance
22 technology to be deployed.

23 (5) Identification of any obstacles that may im-
24 pede such deployment.

1 (6) A detailed estimate of all costs associated
2 with such deployment and with continued mainte-
3 nance of such technologies.

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

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

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

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

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

22 (1) The implementation schedule for the com-
23 prehensive plan for systematic surveillance described
24 in section 136.

1 (2) An assessment of the threat posed by ter-
2 rorists and terrorist groups that may try to infiltrate
3 the United States at locations along the inter-
4 national land and maritime borders of the United
5 States.

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

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

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

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

21 (5) An assessment of the most appropriate,
22 practical, and cost-effective means of defending the
23 international land and maritime borders of the
24 United States against threats to security and illegal
25 transit, including intelligence capacities, technology,

1 equipment, personnel, and training needed to ad-
2 dress security vulnerabilities.

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

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

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

23 (9) A prioritized list of research and develop-
24 ment objectives to enhance the security of the inter-

1 national land and maritime borders of the United
2 States.

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

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

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

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

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

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

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

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

13 (e) SUBMISSION TO CONGRESS.—

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

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

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

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

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

4 (a) IN GENERAL.—The Comptroller General of the
5 United States shall conduct a review of the basic training
6 provided to Border Patrol agents by the Secretary to en-
7 sure that such training is provided as efficiently and cost-
8 effectively as possible.

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

11 (1) An evaluation of the length and content of
12 the basic training curriculum provided to new Bor-
13 der Patrol agents by the Federal Law Enforcement
14 Training Center, including a description of how such
15 curriculum has changed since September 11, 2001,
16 and an evaluation of language and cultural diversity
17 training programs provided within such curriculum.

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

22 (3) A comparison, based on the review and
23 breakdown under paragraph (2), of the costs, effec-
24 tiveness, scope, and quality, including geographic
25 characteristics, with other similar training programs

1 provided by State and local agencies, nonprofit orga-
2 nizations, universities, and the private sector.

3 (4) An evaluation of whether utilizing com-
4 parable non-Federal training programs, proficiency
5 testing, and long-distance learning programs may af-
6 fect—

7 (A) the cost-effectiveness of increasing the
8 number of Border Patrol agents trained per
9 year;

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

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

15 **SEC. 129. BIOMETRIC DATA ENHANCEMENTS.**

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

17 (1) in consultation with the Attorney General,
18 enhance connectivity between the Automated Bio-
19 metric Fingerprint Identification System (IDENT)
20 of the Department and the Integrated Automated
21 Fingerprint Identification System (IAFIS) of the
22 Federal Bureau of Investigation to ensure more ex-
23 peditious data searches; and

24 (2) in consultation with the Secretary of State,
25 collect all fingerprints from each alien required to

1 provide fingerprints during the alien's initial enroll-
2 ment in the integrated entry and exit data system
3 described in section 110 of the Illegal Immigration
4 Reform and Immigrant Responsibility Act of 1996
5 (8 U.S.C. 1365a).

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

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

11 (1) equipping all land border ports of entry of
12 the United States with the US-Visitor and Immi-
13 grant Status Indicator Technology (US-VISIT) sys-
14 tem implemented under section 110 of the Illegal
15 Immigration Reform and Immigrant Responsibility
16 Act of 1996 (8 U.S.C. 1365a);

17 (2) developing and deploying at such ports of
18 entry the exit component of the US-VISIT system;
19 and

20 (3) making interoperable all immigration
21 screening systems operated by the Secretary.

22 **SEC. 131. DOCUMENT FRAUD DETECTION.**

23 (a) TRAINING.—Subject to the availability of appro-
24 priations, the Secretary shall provide all U.S. Customs and
25 Border Protection officers with training in identifying and

1 detecting fraudulent travel documents. Such training shall
2 be developed in consultation with the head of the Forensic
3 Document Laboratory of the U.S. Immigration and Customs
4 Enforcement.

5 (b) FORENSIC DOCUMENT LABORATORY.—The Secretary shall provide all U.S. Customs and Border Protection
6 officers with access to the Forensic Document Laboratory.
7
8

9 (c) ASSESSMENT.—

10 (1) REQUIREMENT FOR ASSESSMENT.—The Inspector General of the Department shall conduct an
11 independent assessment of the accuracy and reliability of the Forensic Document Laboratory.
12
13

14 (2) REPORT TO CONGRESS.—Not later than 6
15 months after the date of the enactment of this Act,
16 the Inspector General shall submit to Congress the
17 findings of the assessment required by paragraph
18 (1).

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

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

24 (a) GRANTS AUTHORIZED.—

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

5 (A) criminal activity that occurs in the ju-
6 risdiction of such agency by virtue of such
7 agency’s proximity to the United States border;
8 and

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

11 (2) DURATION.—Grants may be awarded under
12 this subsection during fiscal years 2008 through
13 2012.

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

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

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

23 (i) Canada; or

24 (ii) Mexico.

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

6 (1) to obtain equipment;

7 (2) to hire additional personnel;

8 (3) to upgrade and maintain law enforcement
9 technology;

10 (4) to cover operational costs, including over-
11 time and transportation costs; and

12 (5) such other resources as are available to as-
13 sist that agency.

14 (c) APPLICATION.—

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

20 (2) CONTENTS.—Each application submitted
21 pursuant to paragraph (1) shall—

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

24 (B) provide such additional assurances as
25 the Secretary determines to be essential to en-

1 sure compliance with the requirements of this
2 section.

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

4 (1) ELIGIBLE LAW ENFORCEMENT AGENCY.—

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

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

9 (i) Canada; or

10 (ii) Mexico; or

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

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

18 (A) whether local law enforcement agencies
19 in that county have the resources to protect the
20 lives, property, safety, or welfare of the resi-
21 dents of that county;

22 (B) the relationship between any lack of
23 security along the United States border and the
24 rise, if any, of criminal activity in that county;
25 and

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

4 (e) AUTHORIZATION OF APPROPRIATIONS.—

5 (1) IN GENERAL.—There are authorized to be
6 appropriated \$50,000,000 for each of fiscal years
7 2008 through 2012 to carry out the provisions of
8 this section.

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

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

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

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

22 **SEC. 133. PORT OF ENTRY INFRASTRUCTURE ASSESSMENT**
23 **STUDY.**

24 (a) REQUIREMENT TO UPDATE.—Not later than
25 January 31 of each year, the Administrator of General

1 Services, in consultation with U.S. Customs and Border
2 Protection, shall update the Port of Entry Infrastructure
3 Assessment Study prepared by U.S. Customs and Border
4 Protection in accordance with the matter relating to the
5 ports of entry infrastructure assessment that is set out
6 in the joint explanatory statement in the conference report
7 accompanying H.R. 2490 of the 106th Congress, 1st ses-
8 sion (House of Representatives Rep. No. 106–319, on
9 page 67) and submit such updated study to Congress.

10 (b) CONSULTATION.—In preparing the updated stud-
11 ies required in subsection (a), the Administrator of Gen-
12 eral Services shall consult with the Director of the Office
13 of Management and Budget, the Secretary, and the Com-
14 missioner.

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

17 (1) identify port of entry infrastructure and
18 technology improvement projects that would enhance
19 border security and facilitate the flow of legitimate
20 commerce if implemented;

21 (2) include the projects identified in the Na-
22 tional Land Border Security Plan required by sec-
23 tion; and

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

4 (A) fulfill immediate security requirements;

5 and

6 (B) facilitate trade across the borders of
7 the United States.

8 (d) **PROJECT IMPLEMENTATION.**—The Commissioner
9 shall implement the infrastructure and technology im-
10 provement projects described in subsection (c) in the order
11 of priority assigned to each project under subsection
12 (c)(3).

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

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

20 (a) **IN GENERAL.**—Not later than 1 year after the
21 date of the enactment of this Act, and annually thereafter,
22 the Secretary, after consultation with representatives of
23 Federal, State, and local law enforcement agencies and
24 private entities that are involved in international trade
25 across the northern border or the southern border, shall

1 submit a National Land Border Security Plan to Con-
2 gress.

3 (b) VULNERABILITY ASSESSMENT.—

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

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

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

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

16 (a).

17 **SEC. 135. PORT OF ENTRY TECHNOLOGY DEMONSTRATION**
18 **PROGRAM.**

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

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

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

25 (3) train personnel under realistic conditions.

1 (b) TECHNOLOGY AND FACILITIES.—

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

6 (A) inspections;

7 (B) communications;

8 (C) port tracking;

9 (D) identification of persons and cargo;

10 (E) sensory devices;

11 (F) personal detection;

12 (G) decision support; and

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

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

21 (A) cross-training among agencies;

22 (B) advanced law enforcement training;

23 and

24 (C) equipment orientation.

25 (c) DEMONSTRATION SITES.—

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

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

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

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

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

24 (d) RELATIONSHIP WITH OTHER AGENCIES.—The
25 Secretary shall permit personnel from an appropriate Fed-

1 eral or State agency to utilize a demonstration site de-
2 scribed in subsection (c) to test technologies that enhance
3 port of entry operations, including technologies described
4 in subparagraphs (A) through (H) of subsection (b)(1).

5 (e) REPORT.—

6 (1) REQUIREMENT.—Not later than 1 year
7 after the date of the enactment of this Act, and an-
8 nually thereafter, the Secretary shall submit to Con-
9 gress a report on the activities carried out at each
10 demonstration site under the technology demonstra-
11 tion program established under this section.

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

17 **SEC. 136. COMBATING HUMAN SMUGGLING.**

18 (a) REQUIREMENT FOR PLAN.—The Secretary shall
19 develop and implement a plan to improve coordination be-
20 tween the U.S. Immigration and Customs Enforcement
21 and the U.S. Customs and Border Protection of the De-
22 partment and any other Federal, State, local, or tribal au-
23 thorities, as determined appropriate by the Secretary, to
24 improve coordination efforts to combat human smuggling.

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

3 (1) the interoperability of databases utilized to
4 prevent human smuggling;

5 (2) adequate and effective personnel training;

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

8 (4) effective utilization of—

9 (A) visas for victims of trafficking and
10 other crimes; and

11 (B) investigatory techniques, equipment,
12 and procedures that prevent, detect, and pros-
13 ecute international money laundering and other
14 operations that are utilized in smuggling;

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

19 (6) other measures that the Secretary considers
20 appropriate to combating human smuggling.

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

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

4 **SEC. 137. INCREASE OF FEDERAL DETENTION SPACE AND**
5 **THE UTILIZATION OF FACILITIES IDENTIFIED**
6 **FOR CLOSURES AS A RESULT OF THE DE-**
7 **FENSE BASE CLOSURE REALIGNMENT ACT**
8 **OF 1990.**

9 (a) CONSTRUCTION OR ACQUISITION OF DETENTION
10 FACILITIES.—

11 (1) IN GENERAL.—The Secretary shall con-
12 struct or acquire, in addition to existing facilities for
13 the detention of aliens, at least 20 detention facili-
14 ties in the United States that have the capacity to
15 detain a combined total of not less than 20,000 indi-
16 viduals at any time for aliens detained pending re-
17 moval or a decision on removal of such aliens from
18 the United States subject to available appropria-
19 tions.

20 (b) CONSTRUCTION OF OR ACQUISITION OF DETEN-
21 TION FACILITIES.—

22 (1) REQUIREMENT TO CONSTRUCT OR AC-
23 QUIRE.—The Secretary shall construct or acquire
24 additional detention facilities in the United States to
25 accommodate the detention beds required by section

1 5204(a) of the Intelligence Reform and Terrorism
2 Protection Act of 2004, as amended by subsection
3 (a), subject to available appropriations.

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

11 (3) USE OF INSTALLATIONS UNDER BASE CLO-
12 SURE LAWS.—In acquiring additional detention fa-
13 cilities under this subsection, the Secretary shall
14 consider the transfer of appropriate portions of mili-
15 tary installations approved for closure or realign-
16 ment under the Defense Base Closure and Realign-
17 ment Act of 1990 (part A of title XXIX of Public
18 Law 101-510; 10 U.S.C. 2687 note) for use in ac-
19 cordance with subsection (a).

20 (4) DETERMINATION OF LOCATION.—The loca-
21 tion of any detention facility constructed or acquired
22 in accordance with this subsection shall be deter-
23 mined, with the concurrence of the Secretary, by the
24 senior officer responsible for Detention and Removal
25 Operations in the Department. The detention facili-

1 ties shall be located so as to enable the officers and
2 employees of the Department to increase to the max-
3 imum extent practicable the annual rate and level of
4 removals of illegal aliens from the United States.

5 (c) ANNUAL REPORT TO CONGRESS.—Not later than
6 1 year after the date of the enactment of this Act, and
7 annually thereafter, in consultation with the heads of
8 other appropriate Federal agencies, the Secretary shall
9 submit to Congress an assessment of the additional deten-
10 tion facilities and bed space needed to detain unlawful
11 aliens apprehended at the United States ports of entry or
12 along the international land borders of the United States.

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

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

19 **SEC. 138. UNITED STATES-MEXICO BORDER ENFORCEMENT**
20 **REVIEW COMMISSION.**

21 (a) ESTABLISHMENT OF COMMISSION.—

22 (1) IN GENERAL.—There is established an inde-
23 pendent commission to be known as the United
24 States-Mexico Border Enforcement Review Commis-

1 sion (referred to in this section as the “Commis-
2 sion”).

3 (2) PURPOSES.—The purposes of the Commis-
4 sion are—

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

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

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

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

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

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

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

24 (B) Two nonvoting members, of whom—

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

3 (ii) 1 shall be appointed by the Attor-
4 ney General; and

5 (iii) 1 shall be appointed by the Sec-
6 retary of State.

7 (4) QUALIFICATIONS.—

8 (A) IN GENERAL.—Members of the Com-
9 mission shall be—

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

16 (ii) representative of a broad cross
17 section of perspectives from the region
18 along the international border between the
19 United States and Mexico;

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

24 (C) NONGOVERNMENTAL APPOINTEES.—
25 An individual appointed as a voting member to

1 the Commission may not be an officer or em-
2 ployee of the Federal Government.

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

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

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

16 (8) MEETINGS.—

17 (A) INITIAL MEETING.—The Commission
18 shall meet and begin the operations of the Com-
19 mission as soon as practicable.

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

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

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

5 (b) DUTIES.—The Commission shall review, examine,
6 and make recommendations regarding border enforcement
7 policies, strategies, and programs, including recommenda-
8 tions regarding—

9 (1) the protection of human and civil rights of
10 community residents and migrants along the inter-
11 national border between the United States and Mex-
12 ico;

13 (2) the adequacy and effectiveness of human
14 and civil rights training of enforcement personnel on
15 such border;

16 (3) the adequacy of the complaint process with-
17 in the agencies and programs of the Department
18 that are employed when an individual files a griev-
19 ance;

20 (4) the effect of the operations, technology, and
21 enforcement infrastructure along such border on
22 the—

23 (A) environment;

24 (B) cross border traffic and commerce; and

1 (C) the quality of life of border commu-
2 nities;

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

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

8 (c) INFORMATION AND ASSISTANCE FROM FEDERAL
9 AGENCIES.—

10 (1) INFORMATION FROM FEDERAL AGENCIES.—

11 The Commission may seek directly from any depart-
12 ment or agency of the United States such informa-
13 tion, including suggestions, estimates, and statistics,
14 as allowed by law and as the Commission considers
15 necessary to carry out the provisions of this section.
16 Upon request of the Commission, the head of such
17 department or agency shall furnish such information
18 to the Commission.

19 (2) ASSISTANCE FROM FEDERAL AGENCIES.—

20 The Administrator of General Services shall, on a
21 reimbursable basis, provide the Commission with ad-
22 ministrative support and other services for the per-
23 formance of the Commission's functions. The depart-
24 ments and agencies of the United States may pro-
25 vide the Commission with such services, funds, facili-

1 ties, staff, and other support services as they deter-
2 mine advisable and as authorized by law.

3 (d) COMPENSATION.—

4 (1) IN GENERAL.—Members of the Commission
5 shall serve without pay.

6 (2) REIMBURSEMENT OF EXPENSES.—All mem-
7 bers of the Commission shall be reimbursed for rea-
8 sonable travel expenses and subsistence, and other
9 reasonable and necessary expenses incurred by them
10 in the performance of their duties.

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

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

17 (2) recommendations regarding border enforce-
18 ment policies, strategies, and programs;

19 (3) suggestions for the implementation of the
20 Commission's recommendations; and

21 (4) a recommendation as to whether the Com-
22 mission should continue to exist after the date of
23 termination described in subsection (g), and if so, a
24 description of the purposes and duties recommended
25 to be carried out by the Commission after such date.

1 (f) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out this section.

4 (g) SUNSET.—Unless the Commission is reauthorized
5 by Congress, the Commission shall terminate on the date
6 that is 90 days after the date the Commission submits
7 the report described in subsection (e).

8 **TITLE II—INTERIOR** 9 **ENFORCEMENT**

10 **SEC. 201. ADDITIONAL IMMIGRATION PERSONNEL.**

11 (a) DEPARTMENT OF HOMELAND SECURITY.—

12 (1) TRIAL ATTORNEYS.—In each of the fiscal
13 years 2008 through 2012, the Secretary, subject to
14 the availability of appropriations for such purpose,
15 shall increase the number of positions for attorneys
16 in the Office of General Counsel of the Department
17 who represent the Department in immigration mat-
18 ters by not less than 100 compared to the number
19 of such positions for which funds were made avail-
20 able during the preceding fiscal year.

21 (2) USCIS ADJUDICATORS.—In each of the fis-
22 cal years 2008 through 2012, the Secretary, subject
23 to the availability of appropriations for such pur-
24 pose, shall increase the number of positions for adju-

1 indicators in the United States Citizenship and Immi-
2 gration Service by not less than 100 compared to
3 the number of such positions for which funds were
4 made available during the preceding fiscal year.

5 (3) AUTHORIZATION OF APPROPRIATIONS.—

6 There are authorized to be appropriated to the Sec-
7 retary for each of the fiscal years 2008 through
8 2012 such sums as may be necessary to carry out
9 paragraphs (1) and (2).

10 (b) DEPARTMENT OF JUSTICE.—

11 (1) JUDICIAL CLERKS.—The Attorney General
12 shall, subject to the availability of appropriations for
13 such purpose, appoint necessary law clerks for immi-
14 gration judges and Board of Immigration Appeals
15 members of no less than 1 per judge and member.
16 A law clerk appointed under this section shall be ex-
17 empt from the provisions of subchapter I of chapter
18 63 of title 5, United States Code.

19 (2) LITIGATION ATTORNEYS.—In each of the
20 fiscal years 2008 through 2012, the Attorney Gen-
21 eral, subject to the availability of appropriations for
22 such purpose, shall increase the number of positions
23 for attorneys in the Office of Immigration Litigation
24 by not less than 50 compared to the number of such

1 positions for which funds were made available during
2 the preceding fiscal year.

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

12 (4) IMMIGRATION JUDGES.—In each of the fis-
13 cal years 2008 through 2012, the Attorney General,
14 subject to the availability of appropriations for such
15 purpose, shall—

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

21 (B) increase by not less than 80 the num-
22 ber of positions for personnel to support the im-
23 migration judges described in subparagraph (A)
24 compared to the number of such positions for

1 which funds were made available during the
2 preceding fiscal year.

3 (5) BOARD OF IMMIGRATION APPEALS MEM-
4 BERS.—The Attorney General shall, subject to the
5 availability of appropriations, increase by 10 the
6 number of members of the Board of Immigration
7 Appeals over the number of members serving on the
8 date of the enactment of this Act.

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

13 (A) increase the number of positions for
14 full-time staff attorneys in the Board of Immi-
15 gration Appeals by not less than 20 compared
16 to the number of such positions for which funds
17 were made available during the preceding fiscal
18 year; and

19 (B) increase the number of positions for
20 personnel to support the staff attorneys de-
21 scribed in subparagraph (A) by not less than 10
22 compared to the number of such positions for
23 which funds were made available during the
24 preceding fiscal year.

1 (7) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated to the At-
3 torney General for each of the fiscal years 2008
4 through 2012 such sums as may be necessary to
5 carry out this subsection, including the hiring of
6 necessary support staff.

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

16 (d) LEGAL ORIENTATION PROGRAM.—

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

24 (2) AUTHORIZATION OF APPROPRIATIONS.—

25 There are authorized to be appropriated such sums

1 as may be necessary to carry out such legal orienta-
2 tion program.

3 **SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED**
4 **REMOVED.**

5 (a) IN GENERAL.—

6 (1) AMENDMENTS.—Section 241(a) (8 U.S.C.
7 1231(a)) is amended—

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

12 (B) by striking “Attorney General” any
13 other place it appears and inserting “Sec-
14 retary”;

15 (C) in paragraph (1)—

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

18 “(ii) If a court, the Board of Immi-
19 gration Appeals, or an immigration judge
20 orders a stay of the removal of the alien,
21 the expiration date of the stay of re-
22 moval.”;

23 (ii) by amending subparagraph (C) to
24 read as follows:

1 “(C) EXTENSION OF PERIOD.—The re-
2 removal period shall be extended beyond a period
3 of 90 days and the alien may remain in deten-
4 tion during such extended period if the alien
5 fails or refuses to—

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

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

16 (iii) by adding at the end the fol-
17 lowing:

18 “(D) TOLLING OF PERIOD.—If, at the
19 time described in subparagraph (B), the alien is
20 not in the custody of the Secretary under the
21 authority of this Act, the removal period shall
22 not begin until the alien is taken into such cus-
23 tody. If the Secretary lawfully transfers custody
24 of the alien during the removal period to an-
25 other Federal agency or to a State or local gov-

1 (F) in paragraph (6), by striking “removal
2 period and, if released,” and inserting “removal
3 period, in the discretion of the Secretary, with-
4 out any limitations other than those specified in
5 this section, until the alien is removed. If an
6 alien is released, the alien”;

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

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

11 “(7) PAROLE.—If an alien detained pursuant to
12 paragraph (6) is an applicant for admission, the
13 Secretary of Homeland Security, in the Secretary’s
14 discretion, may parole the alien under section
15 212(d)(5) and may provide, notwithstanding section
16 212(d)(5), that the alien shall not be returned to
17 custody unless either the alien violates the conditions
18 of the alien’s parole or the alien’s removal becomes
19 reasonably foreseeable, provided that in no cir-
20 cumstance shall such alien be considered admitted.

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

24 “(A) DETENTION REVIEW PROCESS FOR
25 ALIENS WHO HAVE EFFECTED AN ENTRY AND

1 FULLY COOPERATE WITH REMOVAL.—The Sec-
2 retary of Homeland Security shall establish an
3 administrative review process to determine
4 whether an alien described in subparagraph (B)
5 should be detained or released after the removal
6 period in accordance with this paragraph.

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

9 “(i) has effected an entry into the
10 United States;

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

13 “(iii) has cooperated fully with the
14 Secretary’s efforts to establish the alien’s
15 identity and to carry out the removal
16 order, including making timely application
17 in good faith for travel or other documents
18 necessary for the alien’s departure; and

19 “(iv) has not conspired or acted to
20 prevent removal.

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

23 “(i) shall consider any evidence sub-
24 mitted by the alien;

1 “(ii) may consider any other evidence,
2 including—

3 “(I) any information or assist-
4 ance provided by the Department of
5 State or other Federal agency; and

6 “(II) any other information avail-
7 able to the Secretary pertaining to the
8 ability to remove the alien.

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

17 “(E) AUTHORITY TO DETAIN FOR ADDI-
18 TIONAL PERIOD.—The Secretary, in the exer-
19 cise of the Secretary’s discretion and without
20 any limitations other than those specified in
21 this section, may detain an alien beyond the 90-
22 day period authorized under subparagraph (D)
23 until the alien is removed, if the Secretary—

24 “(i) determines that there is a signifi-
25 cant likelihood that the alien will be re-

1 moved in the reasonably foreseeable future;

2 or

3 “(ii) certifies in writing—

4 “(I) in consultation with the Sec-
5 retary of Health and Human Services,
6 that the alien has a highly contagious
7 disease that poses a threat to public
8 safety;

9 “(II) after receipt of a written
10 recommendation from the Secretary of
11 State, that the release of the alien
12 would likely have serious adverse for-
13 eign policy consequences for the
14 United States;

15 “(III) based on information avail-
16 able to the Secretary (including classi-
17 fied, sensitive, or national security in-
18 formation, and regardless of the
19 grounds upon which the alien was or-
20 dered removed), that there is reason
21 to believe that the release of the alien
22 would threaten the national security
23 of the United States;

24 “(IV) that—

1 “(aa) the release of the alien
2 would threaten the safety of the
3 community or any person, and
4 conditions of release cannot rea-
5 sonably be expected to ensure the
6 safety of the community or any
7 person; and

8 “(bb) the alien—

9 “(AA) has been con-
10 victed of 1 or more aggra-
11 vated felonies (as defined in
12 section 101(a)(43)(A)), or of
13 1 or more attempts or con-
14 spiracies to commit any such
15 aggravated felonies for an
16 aggregate term of imprison-
17 ment of at least 5 years; or

18 “(BB) has committed a
19 crime of violence (as defined
20 in section 16 of title 18,
21 United States Code, but not
22 including a purely political
23 offense) and, because of a
24 mental condition or person-
25 ality disorder and behavior

1 associated with that condi-
2 tion or disorder, is likely to
3 engage in acts of violence in
4 the future; or

5 “(V) that—

6 “(aa) the release of the alien
7 would threaten the safety of the
8 community or any person, not-
9 withstanding conditions of release
10 designed to ensure the safety of
11 the community or any person;
12 and

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

20 “(F) ATTORNEY GENERAL REVIEW.—If
21 the Secretary authorizes an extension of deten-
22 tion under subparagraph (E), the alien may
23 seek review of that determination before the At-
24 torney General. If the Attorney General con-
25 cludes that the alien should be released, then

1 the Secretary shall release the alien pursuant to
2 subparagraph (I). The Attorney General, in
3 consultation with the Secretary, shall promul-
4 gate regulations governing review under this
5 paragraph.

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

16 “(H) RENEWAL AND DELEGATION OF CER-
17 TIFICATION.—

18 “(i) RENEWAL.—The Secretary may
19 renew a certification under subparagraph
20 (E)(ii) every 6 months, without limitation,
21 after providing the alien with an oppor-
22 tunity to request reconsideration of the
23 certification and to submit documents or
24 other evidence in support of that request.
25 If the Secretary does not renew such cer-

1 tification, the Secretary shall release the
2 alien, pursuant to subparagraph (I). If the
3 Secretary authorizes an extension of deten-
4 tion under paragraph (E), the alien may
5 seek review of that determination before
6 the Attorney General. If the Attorney Gen-
7 eral concludes that the alien should be re-
8 leased, then the Secretary shall release the
9 alien pursuant to subparagraph (I).

10 “(ii) DELEGATION.—Notwithstanding
11 any other provision of law, the Secretary
12 may not delegate the authority to make or
13 renew a certification described in subclause
14 (II), (III), or (V) of subparagraph (E)(ii)
15 below the level of the Assistant Secretary
16 for Immigration and Customs Enforce-
17 ment.

18 “(iii) HEARING.—The Secretary may
19 request that the Attorney General, or a
20 designee of the Attorney General, provide
21 for a hearing to make the determination
22 described in subitem (BB) of subpara-
23 graph (E)(ii)(IV)(bb).

24 “(I) RELEASE ON CONDITIONS.—If it is
25 determined that an alien should be released

1 from detention, the Secretary may, in the Sec-
2 retary's discretion, impose conditions on release
3 in accordance with the regulations prescribed
4 pursuant to paragraph (3).

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

10 “(i) the alien fails to comply with the
11 conditions of release;

12 “(ii) the alien fails to continue to sat-
13 isfy the conditions described in subpara-
14 graph (B); or

15 “(iii) upon reconsideration, the Sec-
16 retary determines that the alien can be de-
17 tained under subparagraph (E).

18 “(K) APPLICABILITY.—This paragraph
19 and paragraphs (6) and (7) shall apply to any
20 alien returned to custody under subparagraph
21 (I) as if the removal period terminated on the
22 day of the redetention.

23 “(L) DETENTION REVIEW PROCESS FOR
24 ALIENS WHO HAVE EFFECTED AN ENTRY AND
25 FAIL TO COOPERATE WITH REMOVAL.—The

1 Secretary shall detain an alien until the alien
2 makes all reasonable efforts to comply with a
3 removal order and to cooperate fully with the
4 Secretary's efforts, if the alien—

5 “(i) has effected an entry into the
6 United States; and

7 “(ii)(I) the alien faces a significant
8 likelihood that the alien will be removed in
9 the reasonably foreseeable future, or would
10 have been removed if the alien had not—

11 “(aa) failed or refused to make
12 all reasonable efforts to comply with a
13 removal order;

14 “(bb) failed or refused to fully
15 cooperate with the Secretary's efforts
16 to establish the alien's identity and
17 carry out the removal order, including
18 the failure to make timely application
19 in good faith for travel or other docu-
20 ments necessary to the alien's depar-
21 ture; or

22 “(cc) conspired or acted to pre-
23 vent removal; or

24 “(II) the Secretary makes a certifi-
25 cation as specified in subparagraph (E), or

1 the renewal of a certification specified in
2 subparagraph (H).

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

12 “(9) JUDICIAL REVIEW.—Judicial review of any
13 action or decision made pursuant to paragraph (6),
14 (7), or (8) shall be available exclusively in a habeas
15 corpus proceeding brought in a United States dis-
16 trict court and only if the alien has exhausted all ad-
17 ministrative remedies (statutory and nonstatutory)
18 available to the alien as of right.”.

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

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

23 (B) shall apply to—

24 (i) any alien subject to a final admin-
25 istrative removal, deportation, or exclusion

1 order that was issued before, on, or after
2 the date of the enactment of this Act, un-
3 less (a) that order was issued and the alien
4 was subsequently released or paroled be-
5 fore the enactment of this Act and (b) the
6 alien has complied with and remains in
7 compliance with the terms and conditions
8 of that release or parole; and

9 (ii) any act or condition occurring or
10 existing before, on, or after the date of the
11 enactment of this Act.

12 **SEC. 203. AGGRAVATED FELONY.**

13 (a) DEFINITION OF AGGRAVATED FELONY.—Section
14 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

15 (1) by striking “The term ‘aggravated felony’
16 means—” and inserting “Notwithstanding any other
17 provision of law, the term ‘aggravated felony’ applies
18 to an offense described in this paragraph, whether in
19 violation of Federal or State law, and to such an of-
20 fense in violation of the law of a foreign country for
21 which the term of imprisonment was completed with-
22 in the previous 15 years, and regardless of whether
23 the conviction was entered before, on, or after Sep-
24 tember 30, 1996, and means—”;

1 (2) in subparagraph (A), by striking “murder,
2 rape, or sexual abuse of a minor”; and inserting
3 “murder, rape, or sexual abuse of a minor, whether
4 or not the minority of the victim is established by
5 evidence contained in the record of conviction or by
6 evidence extrinsic to the record of conviction;”;

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

9 (4) by striking the undesignated matter fol-
10 lowing subparagraph (U).

11 (b) EFFECTIVE DATE AND APPLICATION.—

12 (1) IN GENERAL.—The amendments made by
13 subsection (a) shall—

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

16 (B) apply to any conviction that occurred
17 on or after the date of the enactment of this
18 Act.

19 (2) APPLICATION OF HIRAIRA AMENDMENTS.—

20 The amendments to section 101(a)(43) of the Immi-
21 gration and Nationality Act made by section 321 of
22 the Illegal Immigration Reform and Immigrant Re-
23 sponsibility Act of 1996 (division C of Public Law
24 104–208; 110 Stat. 3009–627) shall continue to

1 apply, whether the conviction was entered before, on,
2 or after September 30, 1996.

3 **SEC. 204. INCREASED CRIMINAL PENALTIES RELATED TO**
4 **GANG VIOLENCE AND REMOVAL.**

5 (a) DEFINITION OF CRIMINAL GANG.—Section
6 101(a) (8 U.S.C. 1101(a)) is amended by inserting after
7 subparagraph (51) the following:

8 “(52)(A) The term ‘criminal gang’ means an
9 ongoing group, club, organization, or association of
10 5 or more persons—

11 “(i) that has as 1 of its primary purposes
12 the commission of 1 or more of the criminal of-
13 fenses described in paragraph (B); and

14 “(ii) the members of which engage, or have
15 engaged within the past 5 years, in a con-
16 tinuing series of offenses described in para-
17 graph (B).

18 “(B) Offenses described in this subparagraph,
19 whether in violation of Federal or State law or in
20 violation of the law of a foreign country, and regard-
21 less of whether charged, are the following:

22 “(i) a ‘felony drug offense’ (as defined in
23 section 102 of the Controlled Substances Act
24 (21 U.S.C. 802));

1 “(ii) a felony offense involving firearms or
2 explosives or in violation of section 931 of title
3 18, United States Code (relating to purchase,
4 ownership, or possession of body armor by vio-
5 lent felons);

6 “(iii) an offense under section 274 (relat-
7 ing to bringing in and harboring certain aliens),
8 section 277 (relating to aiding or assisting cer-
9 tain aliens to enter the United States), or sec-
10 tion 278 (relating to the importation of an alien
11 for immoral purpose);

12 “(iv) a felony crime of violence as defined
13 in section 16 of title 18, United States Code,
14 which is punishable by a sentence of imprison-
15 ment of 5 years or more;

16 “(v) a crime involving obstruction of jus-
17 tice; tampering with or retaliating against a
18 witness, victim, or informant; or burglary;

19 “(vi) any conduct punishable under sec-
20 tions 1028 and 1029 of title 18, United States
21 (relating to fraud and related activity in con-
22 nection with identification documents or access
23 devices), sections 1581 through 1594 of such
24 title 18 (relating to peonage, slavery, and traf-
25 ficking in persons), section 1952 of such title

1 18 (relating to interstate and foreign travel or
2 transportation in aid of racketeering enter-
3 prises), section 1956 of such title 18 (relating
4 to the laundering of monetary instruments),
5 section 1957 of such title 18 (relating to engag-
6 ing in monetary transactions in property de-
7 rived from specified unlawful activity), or sec-
8 tions 2312 through 2315 of such title 18 (relat-
9 ing to interstate transportation of stolen motor
10 vehicles or stolen property); and

11 “(vii) a conspiracy to commit an offense
12 described in clause (i) through (vi).

13 “(C) Notwithstanding any other provision of
14 law (including any effective date), the term applies
15 regardless of whether the conduct occurred before,
16 on, or after the date of enactment of this provi-
17 sion.”.

18 (b) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C.
19 1182(a)(2)) is amended—

20 (1) by redesignating subparagraph (F) as sub-
21 paragraph (J); and

22 (2) by inserting after subparagraph (E) the fol-
23 lowing:

24 “(F) ALIENS ASSOCIATED WITH CRIMINAL
25 GANGS.—Unless the Secretary of Homeland Se-

1 security or the Attorney General waives the appli-
2 cation of this subparagraph, any alien who a
3 consular officer, the Attorney General, or the
4 Secretary of Homeland Security knows or has
5 reason to believe has participated in a criminal
6 gang (as defined in section 101(a)(52)), know-
7 ing or having reason to know that such partici-
8 pation promoted, furthered, aided, or supported
9 the illegal activity of the criminal gang, is inad-
10 missible.”.

11 (c) DEPORTABILITY.—Section 237(a)(2) (8 U.S.C.
12 1227(a)(2)) is amended by adding at the end the fol-
13 lowing:

14 “(F) ALIENS ASSOCIATED WITH CRIMINAL
15 GANGS.—Any alien, in or admitted to the
16 United States, who at any time has participated
17 in a criminal gang (as defined in section
18 101(a)(52)), knowing or having reason to know
19 that such participation will promote, further,
20 aid, or support the illegal activity of the crimi-
21 nal gang is deportable. The Secretary of Home-
22 land Security or the Attorney General may in
23 Secretary’s or Attorney General’s discretion
24 waive this subparagraph.”.

1 (d) TEMPORARY PROTECTED STATUS.—Section 244
2 (8 U.S.C. 1254a) is amended—

3 (1) by striking “Attorney General” each place
4 it appears and inserting “Secretary of Homeland Se-
5 curity”;

6 (2) in subparagraph (c)(2)(B), by adding at the
7 end:

8 “(iii) the alien participates in, or at
9 any time after admission has participated
10 in, the activities of a criminal gang (as de-
11 fined in section 101(a)(52)), knowing or
12 having reason to know that such participa-
13 tion will promote, further, aid, or support
14 the illegal activity of the criminal gang.”;
15 and

16 (3) in subsection (d)—

17 (A) by striking paragraph (3); and

18 (B) in paragraph (4), by adding at the end
19 the following: “The Secretary of Homeland Se-
20 curity may detain an alien provided temporary
21 protected status under this section whenever
22 appropriate under any other provision.”

23 (e) PENALTIES RELATED TO REMOVAL.—Section
24 243 (8 U.S.C. 1253) is amended—

25 (1) in subsection (a)(1)—

1 (A) in the matter preceding subparagraph
2 (A), by inserting “212(a) or” after “section”;
3 and

4 (B) in the matter following subparagraph
5 (D)—

6 (i) by striking “or imprisoned not
7 more than four years” and inserting “and
8 imprisoned for not more than 5 years”;
9 and

10 (ii) by striking “, or both”; and

11 (2) in subsection (b), by striking “not more
12 than \$1000 or imprisoned for not more than one
13 year, or both” and inserting “under title 18, United
14 States Code, and imprisoned for not more than 5
15 years (or for not more than 10 years if the alien is
16 a member of any of the classes described in para-
17 graphs (1)(E), (2), (3), and (4) of section 237(a)).”.

18 (f) PROHIBITING CARRYING OR USING A FIREARM
19 DURING AND IN RELATION TO AN ALIEN SMUGGLING
20 CRIME.—Section 924(c) of title 18, United States Code,
21 is amended—

22 (1) in paragraph (1)—

23 (A) in subparagraph (A), by inserting “,
24 alien smuggling crime,” after “any crime of vio-
25 lence”;

1 (B) in subparagraph (A), by inserting “,
2 alien smuggling crime,” after “such crime of vi-
3 olence”; and

4 (C) in subparagraph (D)(ii), by inserting
5 “, alien smuggling crime,” after “crime of vio-
6 lence”; and

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

8 “(6) For purposes of this subsection, the term
9 ‘alien smuggling crime’ means any felony punishable
10 under section 274(a), 277, or 278 of the Immigra-
11 tion and Nationality Act (8 U.S.C. 1324(a), 1327,
12 and 1328).”.

13 **SEC. 205. ILLEGAL ENTRY.**

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

16 **“SEC. 275. ILLEGAL ENTRY.**

17 “(a) IN GENERAL.—

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

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

1 “(B) knowingly eludes examination or in-
2 spection by an immigration officer (including
3 failing to stop at the command of such officer),
4 or a customs or agriculture inspection at a port
5 of entry; or

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

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

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

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

23 “(C) if the violation occurred after the
24 alien had been convicted of 3 or more mis-
25 demeanors or for a felony, shall be fined under

1 such title, imprisoned not more than 10 years,
2 or both;

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

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

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

22 “(A) alleged in the indictment or informa-
23 tion; and

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

1 “(4) DURATION OF OFFENSE.—An offense
2 under this subsection continues until the alien is dis-
3 covered within the United States by an immigration
4 officer.

5 “(5) ATTEMPT.—Whoever attempts to commit
6 any offense under this section shall be punished in
7 the same manner as for a completion of such of-
8 fense.

9 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
10 ALTIES.—Any alien who is apprehended while entering, at-
11 tempting to enter, or knowingly crossing or attempting to
12 cross the border to the United States at a time or place
13 other than as designated by immigration officers shall be
14 subject to a civil penalty, in addition to any criminal or
15 other civil penalties that may be imposed under any other
16 provision of law, in an amount equal to—

17 “(1) not less than \$50 or more than \$250 for
18 each such entry, crossing, attempted entry, or at-
19 tempted crossing; or

20 “(2) twice the amount specified in paragraph
21 (1) if the alien had previously been subject to a civil
22 penalty under this subsection.”.

23 (b) CLERICAL AMENDMENT.—The table of contents
24 is amended by striking the item relating to section 275
25 and inserting the following:

“Sec. 275. Illegal entry.”.

1 (c) **EFFECTIVE DATE.**—Subsection (a)(4) of section
2 275 of the Immigration and Nationality Act, as amended
3 by subsection (a), shall apply only to violations of sub-
4 section (a)(1) of such section 275 committed on or after
5 the date of the enactment of this Act.

6 **SEC. 206. ILLEGAL REENTRY.**

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

9 **“SEC. 276. REENTRY OF REMOVED ALIEN.**

10 “(a) **REENTRY AFTER REMOVAL.**—Any alien who
11 has been denied admission, excluded, deported, or re-
12 moved, or who has departed the United States while an
13 order of exclusion, deportation, or removal is outstanding,
14 and subsequently enters, attempts to enter, crosses the
15 border to, attempts to cross the border to, or is at any
16 time found in the United States, shall be fined under title
17 18, United States Code, imprisoned not more than 2
18 years, or both.

19 “(b) **REENTRY OF CRIMINAL OFFENDERS.**—Not-
20 withstanding the penalty provided in subsection (a), if an
21 alien described in that subsection—

22 “(1) was convicted for 3 or more misdemeanors
23 or a felony before such removal or departure, the
24 alien shall be fined under title 18, United States
25 Code, imprisoned not more than 10 years, or both;

1 “(2) was convicted for a felony before such re-
2 moval or departure for which the alien was sen-
3 tenced to a term of imprisonment of not less than
4 30 months, the alien shall be fined under such title,
5 imprisoned not more than 15 years, or both;

6 “(3) was convicted for a felony before such re-
7 moval or departure for which the alien was sen-
8 tenced to a term of imprisonment of not less than
9 60 months, the alien shall be fined under such title,
10 imprisoned not more than 20 years, or both;

11 “(4) was convicted for 3 felonies before such re-
12 moval or departure, the alien shall be fined under
13 such title, imprisoned not more than 20 years, or
14 both; or

15 “(5) was convicted, before such removal or de-
16 parture, for murder, rape, kidnaping, or a felony of-
17 fense described in chapter 77 (relating to peonage
18 and slavery) or 113B (relating to terrorism) of such
19 title, the alien shall be fined under such title, impris-
20 oned not more than 20 years, or both.

21 “(c) REENTRY AFTER REPEATED REMOVAL.—Any
22 alien who has been denied admission, excluded, deported,
23 or removed 3 or more times and thereafter enters, at-
24 tempts to enter, crosses the border to, attempts to cross
25 the border to, or is at any time found in the United States,

1 shall be fined under title 18, United States Code, impris-
2 oned not more than 10 years, or both.

3 “(d) PROOF OF PRIOR CONVICTIONS.—The prior
4 convictions described in subsection (b) are elements of the
5 crimes described in that subsection, and the penalties in
6 that subsection shall apply only in cases in which the con-
7 viction or convictions that form the basis for the additional
8 penalty are—

9 “(1) alleged in the indictment or information;
10 and

11 “(2) proven beyond a reasonable doubt at trial
12 or admitted by the defendant.

13 “(e) AFFIRMATIVE DEFENSES.—It shall be an af-
14 firmative defense to a violation of this section that—

15 “(1) prior to the alleged violation, the alien had
16 sought and received the express consent of the Sec-
17 retary of Homeland Security to reapply for admis-
18 sion into the United States;

19 “(2) with respect to an alien previously denied
20 admission and removed, the alien—

21 “(A) was not required to obtain such ad-
22 vance consent under the Immigration and Na-
23 tionality Act or any prior Act; and

1 “(B) had complied with all other laws and
2 regulations governing the alien’s admission into
3 the United States; or

4 “(3) at the time of the prior exclusion, deporta-
5 tion, removal, or denial of admission alleged in the
6 violation, the alien—

7 “(A) was under the age of 18; and

8 “(B) had not been convicted of a crime or
9 adjudicated a delinquent minor by a court of
10 the United States, or a court of a State or ter-
11 ritory, for conduct that would constitute a fel-
12 ony if committed by an adult.

13 “(f) LIMITATION ON COLLATERAL ATTACK ON UN-
14 DERLYING REMOVAL ORDER.—In a criminal proceeding
15 under this section, an alien may not challenge the validity
16 of any prior removal order concerning the alien unless the
17 alien demonstrates by clear and convincing evidence
18 that—

19 “(1) the alien exhausted all administrative rem-
20 edies that may have been available to seek relief
21 against the order;

22 “(2) the removal proceedings at which the order
23 was issued improperly deprived the alien of the op-
24 portunity for judicial review; and

1 “(3) the entry of the order was fundamentally
2 unfair.

3 “(g) REENTRY OF ALIEN REMOVED PRIOR TO COM-
4 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
5 moved pursuant to section 241(a)(4) who enters, attempts
6 to enter, crosses the border to, attempts to cross the bor-
7 der to, or is at any time found in, the United States shall
8 be incarcerated for the remainder of the sentence of im-
9 prisonment which was pending at the time of deportation
10 without any reduction for parole or supervised release un-
11 less the alien affirmatively demonstrates that the Sec-
12 retary of Homeland Security has expressly consented to
13 the alien’s reentry. Such alien shall be subject to such
14 other penalties relating to the reentry of removed aliens
15 as may be available under this section or any other provi-
16 sion of law.

17 “(h) LIMITATION.—It is not aiding and abetting a
18 violation of this section for an individual to provide an
19 alien with emergency humanitarian assistance, including
20 emergency medical care and food, or to transport the alien
21 to a location where such assistance can be rendered with-
22 out compensation or the expectation of compensation.

23 “(i) DEFINITIONS.—In this section:

24 “(1) FELONY.—The term ‘felony’ means any
25 criminal offense punishable by a term of imprison-

1 ment of more than 1 year under the laws of the
2 United States, any State, or a foreign government.

3 “(2) MISDEMEANOR.—The term ‘misdemeanor’
4 means any criminal offense punishable by a term of
5 imprisonment of not more than 1 year under the ap-
6 plicable laws of the United States, any State, or a
7 foreign government.

8 “(3) REMOVAL.—The term ‘removal’ includes
9 any denial of admission, exclusion, deportation, or
10 removal, or any agreement by which an alien stipu-
11 lates or agrees to exclusion, deportation, or removal.

12 “(4) STATE.—The term ‘State’ means a State
13 of the United States, the District of Columbia, and
14 any commonwealth, territory, or possession of the
15 United States.”.

16 **SEC. 207. REFORM OF PASSPORT, VISA, AND IMMIGRATION**
17 **FRAUD OFFENSES.**

18 (a) PASSPORT, VISA, AND IMMIGRATION FRAUD.—

19 (1) IN GENERAL.—Chapter 75 of title 18,
20 United States Code, is amended to read as follows:

21 **“CHAPTER 75—PASSPORT, VISA, AND**
22 **IMMIGRATION FRAUD**

“Sec.

“1541. Trafficking in passports.

“1542. False statement in an application for a passport.

“1543. Forgery and unlawful production of a passport.

“1544. Misuse of a passport.

“1545. Schemes to defraud aliens.

“1546. Immigration and visa fraud.

- “1547. Marriage fraud.
- “1548. Attempts and conspiracies.
- “1549. Alternative penalties for certain offenses.
- “1550. Seizure and forfeiture.
- “1551. Additional jurisdiction.
- “1552. Definitions.
- “1553. Authorized law enforcement activities.

1 **“§ 1541. Trafficking in passports**

2 “(a) MULTIPLE PASSPORTS.—Any person who, dur-
3 ing any period of 3 years or less, knowingly—

4 “(1) and without lawful authority produces,
5 issues, or transfers 10 or more passports;

6 “(2) forges, counterfeits, alters, or falsely
7 makes 10 or more passports;

8 “(3) secures, possesses, uses, receives, buys,
9 sells, or distributes 10 or more passports, knowing
10 the passports to be forged, counterfeited, altered,
11 falsely made, stolen, procured by fraud, or produced
12 or issued without lawful authority; or

13 “(4) completes, mails, prepares, presents, signs,
14 or submits 10 or more applications for a United
15 States passport, knowing the applications to contain
16 any false statement or representation,

17 shall be fined under this title, imprisoned not more than
18 20 years, or both.

19 “(b) PASSPORT MATERIALS.—Any person who know-
20 ingly and without lawful authority produces, buys, sells,
21 possesses, or uses any official material (or counterfeit of
22 any official material) used to make a passport, including

1 any distinctive paper, seal, hologram, image, text, symbol,
2 stamp, engraving, or plate, shall be fined under this title,
3 imprisoned not more than 20 years, or both.

4 **“§ 1542. False statement in an application for a pass-**
5 **port**

6 “(a) IN GENERAL.—Any person who knowingly
7 makes any false statement or representation in an applica-
8 tion for a United States passport, or mails, prepares, pre-
9 sents, or signs an application for a United States passport
10 knowing the application to contain any false statement or
11 representation, shall be fined under this title, imprisoned
12 not more than 15 years, or both.

13 “(b) VENUE.—

14 “(1) An offense under subsection (a) may be
15 prosecuted in any district,

16 “(A) in which the false statement or rep-
17 resentation was made or the application for a
18 United States passport was prepared or signed,
19 or

20 “(B) in which or to which the application
21 was mailed or presented.

22 “(2) An offense under subsection (a) involving
23 an application prepared and adjudicated outside the
24 United States may be prosecuted in the district in

1 which the resultant passport was or would have been
2 produced.

3 “(c) SAVINGS CLAUSE.—Nothing in this section may
4 be construed to limit the venue otherwise available under
5 sections 3237 and 3238 of this title.

6 **“§ 1543. Forgery and unlawful production of a pass-**
7 **port**

8 “(a) FORGERY.—Any person who—

9 “(1) knowingly forges, counterfeits, alters, or
10 falsely makes any passport; or

11 “(2) knowingly transfers any passport knowing
12 it to be forged, counterfeited, altered, falsely made,
13 stolen, or to have been produced or issued without
14 lawful authority,

15 shall be fined under this title, imprisoned not more than
16 15 years, or both.

17 “(b) UNLAWFUL PRODUCTION.—Any person who
18 knowingly and without lawful authority—

19 “(1) produces, issues, authorizes, or verifies a
20 passport in violation of the laws, regulations, or
21 rules governing the issuance of the passport;

22 “(2) produces, issues, authorizes, or verifies a
23 United States passport for or to any person, know-
24 ing or in reckless disregard of the fact that such
25 person is not entitled to receive a passport; or

1 “(3) transfers or furnishes a passport to any
2 person for use by any person other than the person
3 for whom the passport was issued or designed,
4 shall be fined under this title, imprisoned not more than
5 15 years, or both.

6 **“§ 1544. Misuse of a passport**

7 “Any person who knowingly—

8 “(1) uses any passport issued or designed for
9 the use of another;

10 “(2) uses any passport in violation of the condi-
11 tions or restrictions therein contained, or in violation
12 of the laws, regulations, or rules governing the
13 issuance and use of the passport;

14 “(3) secures, possesses, uses, receives, buys,
15 sells, or distributes any passport knowing it to be
16 forged, counterfeited, altered, falsely made, procured
17 by fraud, or produced or issued without lawful au-
18 thority; or

19 “(4) violates the terms and conditions of any
20 safe conduct duly obtained and issued under the au-
21 thority of the United States,

22 shall be fined under this title, imprisoned not more than
23 15 years, or both

1 **“§ 1545. Schemes to defraud aliens**

2 “(a) IN GENERAL.—Any person who knowingly exe-
3 cutes a scheme or artifice, in connection with any matter
4 that is authorized by or arises under Federal immigration
5 laws or any matter the offender claims or represents is
6 authorized by or arises under Federal immigration laws,
7 to—

8 “(1) defraud any person, or

9 “(2) obtain or receive money or anything else of
10 value from any person, by means of false or fraudu-
11 lent pretenses, representations, or promises,
12 shall be fined under this title, imprisoned not more than
13 15 years, or both.

14 “(b) MISREPRESENTATION.—Any person who know-
15 ingly and falsely represents that such person is an attor-
16 ney or accredited representative (as that term is defined
17 in section 1292.1 of title 8, Code of Federal Regulations
18 (or any successor regulation to such section)) in any mat-
19 ter arising under Federal immigration laws shall be fined
20 under this title, imprisoned not more than 15 years, or
21 both.

22 **“§ 1546. Immigration and visa fraud**

23 “(a) IN GENERAL.—Any person who knowingly—

24 “(1) uses any immigration document issued or
25 designed for the use of another;

1 “(2) forges, counterfeits, alters, or falsely
2 makes any immigration document;

3 “(3) completes, mails, prepares, presents, signs,
4 or submits any immigration document knowing it to
5 contain any materially false statement or representa-
6 tion;

7 “(4) secures, possesses, uses, transfers, re-
8 ceives, buys, sells, or distributes any immigration
9 document knowing it to be forged, counterfeited, al-
10 tered, falsely made, stolen, procured by fraud, or
11 produced or issued without lawful authority;

12 “(5) adopts or uses a false or fictitious name to
13 evade or to attempt to evade the immigration laws;
14 or

15 “(6) transfers or furnishes, without lawful au-
16 thority, an immigration document to another person
17 for use by a person other than the person for whom
18 the immigration document was issued or designed,
19 shall be fined under this title, imprisoned not more than
20 15 years, or both.

21 “(b) MULTIPLE OFFENSES.—Any person who, dur-
22 ing any period of 3 years or less, knowingly—

23 “(1) and without lawful authority produces,
24 issues, or transfers 10 or more immigration docu-
25 ments;

1 “(2) forges, counterfeits, alters, or falsely
2 makes 10 or more immigration documents;

3 “(3) secures, possesses, uses, buys, sells, or dis-
4 tributes 10 or more immigration documents, know-
5 ing the immigration documents to be forged, coun-
6 terfeited, altered, stolen, falsely made, procured by
7 fraud, or produced or issued without lawful author-
8 ity; or

9 “(4) completes, mails, prepares, presents, signs,
10 or submits 10 or more immigration documents
11 knowing the documents to contain any materially
12 false statement or representation,

13 shall be fined under this title, imprisoned not more than
14 20 years, or both.

15 “(c) IMMIGRATION DOCUMENT MATERIALS.—Any
16 person who knowingly and without lawful authority pro-
17 duces, buys, sells, or possesses any official material (or
18 counterfeit of any official material) used to make an immi-
19 gration document, including any distinctive paper, seal,
20 hologram, image, text, symbol, stamp, engraving, or plate,
21 shall be fined under this title, imprisoned not more than
22 20 years, or both.

23 “(d) EMPLOYMENT DOCUMENTS.—Whoever uses—

1 “(1) an identification document, knowing (or
2 having reason to know) that the document was not
3 issued lawfully for the use of the possessor;

4 “(2) an identification document knowing (or
5 having reason to know) that the document is false;
6 or

7 “(3) a false attestation,
8 for the purpose of satisfying a requirement of section
9 274A(b) of the Immigration and Nationality Act (8 U.S.C.
10 1324a(b)), shall be fined under this title, imprisoned not
11 more than 5 years, or both.

12 **“§ 1547. Immigration and visa fraud**

13 “(a) EVASION OR MISREPRESENTATION.—Any per-
14 son who—

15 “(1) knowingly enters into a marriage for the
16 purpose of evading any provision of the immigration
17 laws; or

18 “(2) knowingly misrepresents the existence or
19 circumstances of a marriage—

20 “(A) in an application or document author-
21 ized by the immigration laws; or

22 “(B) during any immigration proceeding
23 conducted by an administrative adjudicator (in-
24 cluding an immigration officer or examiner, a

1 consular officer, an immigration judge, or a
2 member of the Board of Immigration Appeals),
3 shall be fined under this title, imprisoned not more
4 than 10 years, or both.

5 “(b) MULTIPLE MARRIAGES.—Any person who—

6 “(1) knowingly enters into 2 or more marriages
7 for the purpose of evading any immigration law; or

8 “(2) knowingly arranges, supports, or facilitates
9 2 or more marriages designed or intended to evade
10 any immigration law,

11 shall be fined under this title, imprisoned not more than
12 20 years, or both.

13 “(c) COMMERCIAL ENTERPRISE.—Any person who
14 knowingly establishes a commercial enterprise for the pur-
15 pose of evading any provision of the immigration laws
16 shall be fined under this title, imprisoned for not more
17 than 10 years, or both.

18 “(d) DURATION OF OFFENSE.—

19 “(1) IN GENERAL.—An offense under sub-
20 section (a) or (b) continues until the fraudulent na-
21 ture of the marriage or marriages is discovered by
22 an immigration officer.

23 “(2) COMMERCIAL ENTERPRISE.—An offense
24 under subsection (c) continues until the fraudulent
25 nature of the commercial enterprise is discovered by

1 an immigration officer or other law enforcement offi-
2 cer.

3 **“§ 1548. Attempts and conspiracies**

4 “Any person who attempts or conspires to violate any
5 section of this chapter shall be punished in the same man-
6 ner as a person who completed a violation of that section.

7 **“§ 1549. Alternative penalties for certain offenses**

8 “Notwithstanding any other provision of this title,
9 the maximum term of imprisonment that may be imposed
10 for an offense under this chapter—

11 “(1) if committed to facilitate a drug traf-
12 ficking crime (as defined in 929(a)) is 20 years; and

13 “(2) if committed to facilitate an act of inter-
14 national terrorism (as defined in section 2331) is 25
15 years.

16 **“§ 1550. Seizure and forfeiture**

17 “(a) FORFEITURE.—Any property, real or personal,
18 used to commit or facilitate the commission of a violation
19 of any section of this chapter, the gross proceeds of such
20 violation, and any property traceable to such property or
21 proceeds, shall be subject to forfeiture.

22 “(b) APPLICABLE LAW.—Seizures and forfeitures
23 under this section shall be governed by the provisions of
24 chapter 46 relating to civil forfeitures, except that such
25 duties as are imposed upon the Secretary of the Treasury

1 under the customs laws described in section 981(d) shall
2 be performed by such officers, agents, and other persons
3 as may be designated for that purpose by the Secretary
4 of Homeland Security, the Secretary of State, or the At-
5 torney General.

6 **“§ 1551. Additional jurisdiction**

7 “(a) IN GENERAL.—Any person who commits an of-
8 fense under this chapter within the special maritime and
9 territorial jurisdiction of the United States shall be pun-
10 ished as provided under this chapter.

11 “(b) EXTRATERRITORIAL JURISDICTION.—Any per-
12 son who commits an offense under this chapter outside
13 the United States shall be punished as provided under this
14 chapter if—

15 “(1) the offense involves a United States pass-
16 port or immigration document (or any document
17 purporting to be such a document) or any matter,
18 right, or benefit arising under or authorized by Fed-
19 eral immigration laws;

20 “(2) the offense is in or affects foreign com-
21 merce;

22 “(3) the offense affects, jeopardizes, or poses a
23 significant risk to the lawful administration of Fed-
24 eral immigration laws, or the national security of the
25 United States;

1 “(4) the offense is committed to facilitate an
2 act of international terrorism (as defined in section
3 2331) or a drug trafficking crime (as defined in sec-
4 tion 929(a)(2)) that affects or would affect the na-
5 tional security of the United States;

6 “(5) the offender is a national of the United
7 States or an alien lawfully admitted for permanent
8 residence in the United States (as those terms are
9 defined in section 101(a) of the Immigration and
10 Nationality Act (8 U.S.C. 1101(a))); or

11 “(6) the offender is a stateless person whose
12 habitual residence is in the United States.

13 **“§ 1552. Definitions**

14 “As used in this chapter:

15 “(1) The term ‘falsely make’ means to prepare
16 or complete an immigration document with knowl-
17 edge or in reckless disregard of the fact that the
18 document—

19 “(A) contains a statement or representa-
20 tion that is false, fictitious, or fraudulent;

21 “(B) has no basis in fact or law; or

22 “(C) otherwise fails to state a fact which
23 is material to the purpose for which the docu-
24 ment was created, designed, or submitted.

1 “(2) The term ‘application for a United States
2 passport’ includes any document, photograph, or
3 other piece of evidence attached to or submitted in
4 support of the application.

5 “(3) The term ‘false statement or representa-
6 tion’ includes a personation or an omission.

7 “(4) The term ‘immigration document’—

8 “(A) means any application, petition, affi-
9 davit, declaration, attestation, form, visa, iden-
10 tification card, alien registration document, em-
11 ployment authorization document, border cross-
12 ing card, certificate, permit, order, license,
13 stamp, authorization, grant of authority, or
14 other official document, arising under or au-
15 thorized by the immigration laws of the United
16 States; and

17 “(B) includes any document, photograph,
18 or other piece of evidence attached to or sub-
19 mitted in support of an immigration document.

20 “(5) The term ‘immigration laws’ includes—

21 “(A) the laws described in section
22 101(a)(17) of the Immigration and Nationality
23 Act (8 U.S.C. 1101(a)(17));

24 “(B) the laws relating to the issuance and
25 use of passports; and

1 “(C) the regulations prescribed under the
2 authority of any law described in paragraphs
3 (A) and (B).

4 “(6) The term ‘immigration proceeding’ in-
5 cludes an adjudication, interview, hearing, or review.

6 “(7) A person does not exercise ‘lawful author-
7 ity’ if the person abuses or improperly exercises law-
8 ful authority the person otherwise holds.

9 “(8) The term ‘passport’ means—

10 “(A) a travel document attesting to the
11 identity and nationality of the bearer that is
12 issued under the authority of the Secretary of
13 State, a foreign government, or an international
14 organization; or

15 “(B) any instrument purporting to be a
16 document described in subparagraph (A).

17 “(9) The term ‘to present’ means to offer or
18 submit for official processing, examination, or adju-
19 dication. Any such presentation continues until the
20 official processing, examination, or adjudication is
21 complete.

22 “(10) The term ‘proceeds’ includes any prop-
23 erty or interest in property obtained or retained as
24 a consequence of an act or omission in violation of
25 this section.

1 “(11) The term ‘produce’ means to make, pre-
2 pare, assemble, issue, print, authenticate, or alter.

3 “(12) The term ‘State’ means a State of the
4 United States, the District of Columbia, or any com-
5 monwealth, territory, or possession of the United
6 States.

7 “(13) The ‘use’ of a passport or an immigration
8 document referred to in section 1541(a), section
9 1543(b), section 1544, section 1546(a), and section
10 1546(b) of this chapter includes any officially au-
11 thorized use; use to travel; use to demonstrate iden-
12 tity, residence, nationality, citizenship, or immigra-
13 tion status; use to seek or maintain employment; or
14 use in any matter within the jurisdiction of the Fed-
15 eral Government or of a State government.

16 **“§ 1553. Authorized law enforcement activities**

17 “(a) RELATIONSHIP TO OTHER LAWS.—Nothing in
18 this chapter shall prohibit any lawfully authorized inves-
19 tigative, protective, or intelligence activity of a law en-
20 forcement agency of the United States, a State, or a polit-
21 ical subdivision of a State, or an intelligence agency of
22 the United States, or any activity authorized under title
23 V of the Organized Crime Control Act of 1970 (84 Stat.
24 933).

1 “(b) PROTECTION FOR LEGITIMATE REFUGEES AND
2 ASYLUM SEEKERS.—

3 “(1) PROSECUTION GUIDELINES.—The Attor-
4 ney General, in consultation with the Secretary of
5 Homeland Security, shall develop binding prosecu-
6 tion guidelines for Federal prosecutors to ensure
7 that any prosecution of an alien seeking entry into
8 the United States by fraud is consistent with the ob-
9 ligations of the United States under Article 31(1) of
10 the Convention Relating to the Status of Refugees,
11 done at Geneva July 28, 1951 (as made applicable
12 by the Protocol Relating to the Status of Refugees,
13 done at New York January 31, 1967 (19 UST
14 6223)).

15 “(2) NO PRIVATE RIGHT OF ACTION.—The
16 guidelines required by subparagraph (1), and any in-
17 ternal office procedures adopted pursuant thereto,
18 are intended solely for the guidance of attorneys for
19 the United States. This section, the guidelines re-
20 quired by paragraph (1), and the process for deter-
21 mining such guidelines are not intended to, do not,
22 and may not be relied upon to create any right or
23 benefit, substantive or procedural, enforceable at law
24 by any party in any administrative, civil, or criminal
25 matter.”.

1 **SEC. 208. INADMISSIBILITY AND REMOVAL FOR PASSPORT**
2 **AND IMMIGRATION FRAUD OFFENSES.**

3 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8
4 U.S.C. 1182(a)(2)(A)(i)) is amended—

5 (1) in subclause (I), by striking “, or” at the
6 end and inserting a semicolon;

7 (2) in subclause (II), by striking the comma at
8 the end and inserting “; or”; and

9 (3) by inserting after subclause (II) the fol-
10 lowing:

11 “(III) a violation of (or a con-
12 spiracy or attempt to violate) section
13 1541, 1545, subsection (b) of section
14 1546, or subsection (b) of section
15 1547 of title 18, United States
16 Code,”.

17 (b) REMOVAL.—Section 237(a)(3)(B)(iii) (8 U.S.C.
18 1227(a)(3)(B)(iii)) is amended to read as follows:

19 “(iii) a violation of (or a conspiracy or
20 attempt to violate) section 1541, 1545,
21 1546, or subsection (b) of section 1547 of
22 title 18, United States Code,”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 subsections (a) and (b) shall apply to proceedings pending
25 on or after the date of the enactment of this Act, with
26 respect to conduct occurring on or after that date.

1 **SEC. 209. INCARCERATION OF CRIMINAL ALIENS.**

2 (a) INSTITUTIONAL REMOVAL PROGRAM.—

3 (1) CONTINUATION.—The Secretary shall con-
4 tinue to operate the Institutional Removal Program
5 (referred to in this section as the “Program”) or
6 shall develop and implement another program to—

7 (A) identify removable criminal aliens in
8 Federal and State correctional facilities;

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

11 (C) remove such aliens from the United
12 States after the completion of their sentences.

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

15 (b) TECHNOLOGY USAGE.—Technology, such as
16 videoconferencing, shall be used to the maximum extent
17 practicable to make the Program available in remote loca-
18 tions. Mobile access to Federal databases of aliens, such
19 as IDENT, and live scan technology shall be used to the
20 maximum extent practicable to make these resources
21 available to State and local law enforcement agencies in
22 remote locations.

23 (c) REPORT TO CONGRESS.—Not later than 6
24 months after the date of the enactment of this Act, and
25 annually thereafter, the Secretary shall submit a report

1 to Congress on the participation of States in the Program
2 and in any other program authorized under subsection (a).

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

7 **SEC. 210. ENCOURAGING ALIENS TO DEPART VOLUN-**
8 **TARILY.**

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

11 (1) in subsection (a)—

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

14 “(1) INSTEAD OF REMOVAL PROCEEDINGS.—If
15 an alien is not described in paragraph (2)(A)(iii) or
16 (4) of section 237(a), the Secretary of Homeland Se-
17 curity may permit the alien to voluntarily depart the
18 United States at the alien’s own expense under this
19 subsection instead of being subject to proceedings
20 under section 240.”;

21 (B) by striking paragraph (3);

22 (C) by redesignating paragraph (2) as
23 paragraph (3);

24 (D) by adding after paragraph (1) the fol-
25 lowing:

1 “(2) BEFORE THE CONCLUSION OF REMOVAL
2 PROCEEDINGS.—If an alien is not described in para-
3 graph (2)(A)(iii) or (4) of section 237(a), the Attor-
4 ney General may permit the alien to voluntarily de-
5 part the United States at the alien’s own expense
6 under this subsection after the initiation of removal
7 proceedings under section 240 and before the con-
8 clusion of such proceedings before an immigration
9 judge.”

10 (E) in paragraph (3), as redesignated—

11 (i) by amending subparagraph (A) to
12 read as follows:

13 “(A) INSTEAD OF REMOVAL.—Subject to
14 subparagraph (C), permission to voluntarily de-
15 part under paragraph (1) shall not be valid for
16 any period in excess of 120 days. The Secretary
17 may require an alien permitted to voluntarily
18 depart under paragraph (1) to post a voluntary
19 departure bond, to be surrendered upon proof
20 that the alien has departed the United States
21 within the time specified.”.

22 (ii) by redesignating subparagraphs
23 (B), (C), and (D) as paragraphs (C), (D),
24 and (E), respectively;

1 (iii) by adding after subparagraph (A)
2 the following:

3 “(B) BEFORE THE CONCLUSION OF RE-
4 MOVAL PROCEEDINGS.—Permission to volun-
5 tarily depart under paragraph (2) shall not be
6 valid for any period in excess of 60 days, and
7 may be granted only after a finding that the
8 alien has the means to depart the United States
9 and intends to do so. An alien permitted to vol-
10 untarily depart under paragraph (2) shall post
11 a voluntary departure bond, in an amount nec-
12 essary to ensure that the alien will depart, to be
13 surrendered upon proof that the alien has de-
14 parted the United States within the time speci-
15 fied. An immigration judge may waive the re-
16 quirement to post a voluntary departure bond
17 in individual cases upon a finding that the alien
18 has presented compelling evidence that the
19 posting of a bond will pose a serious financial
20 hardship and the alien has presented credible
21 evidence that such a bond is unnecessary to
22 guarantee timely departure.”;

23 (iv) in subparagraph (C), as redesign-
24 nated, by striking “subparagraphs (C) and

1 (D)(ii)” and inserting “subparagraphs (D)
2 and (E)(ii)”;

3 (v) in subparagraph (D), as redesign-
4 nated, by striking “subparagraph (B)”
5 each place that term appears and inserting
6 “subparagraph (C)”;

7 (vi) in subparagraph (E), as redesign-
8 nated, by striking “subparagraph (B)”
9 each place that term appears and inserting
10 “subparagraph (C)”;

11 (F) in paragraph (4), by striking “para-
12 graph (1)” and inserting “paragraphs (1) and
13 (2)”;

14 (2) in subsection (b)(2), by striking “a period
15 exceeding 60 days” and inserting “any period in ex-
16 cess of 45 days”;

17 (3) by amending subsection (c) to read as fol-
18 lows:

19 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

20 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

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

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

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

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

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

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

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

23 “(C) subject to an alternate order of re-
24 moval if voluntary departure was granted under
25 subsection (a)(2) or (b);”;

1 (4) by amending subsection (d) to read as fol-
2 lows:

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

9 “(1) CIVIL PENALTY.—The alien shall be liable
10 for a civil penalty of \$3,000. The order allowing vol-
11 untary departure shall specify the amount of the
12 penalty, which shall be acknowledged by the alien on
13 the record. If the Secretary thereafter establishes
14 that the alien failed to depart voluntarily within the
15 time allowed, no further procedure will be necessary
16 to establish the amount of the penalty, and the Sec-
17 retary may collect the civil penalty at any time
18 thereafter and by whatever means provided by law.
19 An alien will be ineligible for any benefits under this
20 chapter until this civil penalty is paid.

21 “(2) INELIGIBILITY FOR RELIEF.—The alien
22 shall be ineligible during the time the alien remains
23 in the United States and for a period of 10 years
24 after the alien’s departure for any further relief
25 under this section and sections 240A, 245, 248, and

1 249. The order permitting the alien to depart volun-
2 tarily shall inform the alien of the penalties under
3 this subsection.

4 “(3) REOPENING.—The alien shall be ineligible
5 to reopen the final order of removal that took effect
6 upon the alien’s failure to depart, or upon the alien’s
7 other violations of the conditions for voluntary de-
8 parture, during the period described in paragraph
9 (2). This paragraph does not preclude a motion to
10 reopen to seek withholding of removal under section
11 241(b)(3) or protection against torture, if the mo-
12 tion—

13 “(A) presents material evidence of changed
14 country conditions arising after the date of the
15 order granting voluntary departure in the coun-
16 try to which the alien would be removed; and

17 “(B) makes a sufficient showing to the sat-
18 isfaction of the Attorney General that the alien
19 is otherwise eligible for such protection.”;

20 (5) by amending subsection (e) to read as fol-
21 lows:

22 “(e) ELIGIBILITY.—

23 “(1) PRIOR GRANT OF VOLUNTARY DEPAR-
24 TURE.—An alien shall not be permitted to volun-
25 tarily depart under this section if the Secretary of

1 Homeland Security or the Attorney General pre-
2 viously permitted the alien to depart voluntarily.

3 “(2) RULEMAKING.—The Secretary may pro-
4 mulgate regulations to limit eligibility or impose ad-
5 ditional conditions for voluntary departure under
6 subsection (a)(1) for any class of aliens. The Sec-
7 retary or Attorney General may by regulation limit
8 eligibility or impose additional conditions for vol-
9 untary departure under subsections (a)(2) or (b) of
10 this section for any class or classes of aliens.”; and

11 (6) in subsection (f), by adding at the end the
12 following: “Notwithstanding section 242(a)(2)(D) of
13 this Act, sections 1361, 1651, and 2241 of title 28,
14 United States Code, any other habeas corpus provi-
15 sion, and any other provision of law (statutory or
16 nonstatutory), no court shall have jurisdiction to af-
17 fect, reinstate, enjoin, delay, stay, or toll the period
18 allowed for voluntary departure under this section.”.

19 (b) RULEMAKING.—The Secretary shall promulgate
20 regulations to provide for the imposition and collection of
21 penalties for failure to depart under section 240B(d) of
22 the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

23 (c) EFFECTIVE DATES.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), the amendments made by this section

1 shall apply with respect to all orders granting vol-
2 untary departure under section 240B of the Immi-
3 gration and Nationality Act (8 U.S.C. 1229c) made
4 on or after the date that is 180 days after the enact-
5 ment of this Act.

6 (2) EXCEPTION.—The amendment made by
7 subsection (a)(6) shall take effect on the date of the
8 enactment of this Act and shall apply with respect
9 to any petition for review which is filed on or after
10 such date.

11 **SEC. 211. DETERRING ALIENS ORDERED REMOVED FROM**
12 **REMAINING IN THE UNITED STATES UNLAW-**
13 **FULLY.**

14 (a) INADMISSIBLE ALIENS.—Section 212(a)(9)(A) (8
15 U.S.C. 1182(a)(9)(A)) is amended—

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

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

1 date of the aliens departure or removal (or not later
2 than 20 years after”.

3 (b) BAR ON DISCRETIONARY RELIEF.—Section 274D
4 (8 U.S.C. 1324d) is amended—

5 (1) in subsection (a), by striking “Commis-
6 sioner” and inserting “Secretary of Homeland Secu-
7 rity”; and

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

9 “(c) INELIGIBILITY FOR RELIEF.—

10 “(1) IN GENERAL.—Unless a timely motion to
11 reconsider under section 240(c)(6) or a timely mo-
12 tion to reopen under section 240(c)(7) is granted, an
13 alien described in subsection (a) shall be ineligible
14 for any discretionary relief from removal (including
15 cancellation of removal and adjustment of status)
16 during the time the alien remains in the United
17 States and for a period of 10 years after the alien’s
18 departure from the United States.

19 “(2) SAVINGS PROVISION.—Nothing in para-
20 graph (1) shall preclude a motion to reopen to seek
21 withholding of removal under section 241(b)(3) or
22 protection against torture, if the motion—

23 “(A) presents material evidence of changed
24 country conditions arising after the date of the

1 final order of removal in the country to which
2 the alien would be removed; and

3 “(B) makes a sufficient showing to the sat-
4 isfaction of the Attorney General that the alien
5 is otherwise eligible for such protection.”.

6 (c) EFFECTIVE DATES.—The amendments made by
7 this section shall take effect on the date of the enactment
8 of this Act with respect to aliens who are subject to a final
9 order of removal entered on or after such date.

10 **SEC. 212. PROHIBITION OF THE SALE OF FIREARMS TO, OR**
11 **THE POSSESSION OF FIREARMS BY CERTAIN**
12 **ALIENS.**

13 Section 922 of title 18, United States Code, is
14 amended—

15 (1) in subparagraph (B) of subsection (d)(5),
16 by striking “(y)(2)” and all that follows and insert-
17 ing “(y), is in the United States not as an alien law-
18 fully admitted for permanent residence”;

19 (2) in subparagraph (B) of subsection (g)(5),
20 by striking “(y)(2)” and all that follows and insert-
21 ing “(y), is in the United States not as an alien law-
22 fully admitted for permanent residence”; and

23 (3) in subsection (y)—

24 (A) in the header, by striking “Admitted
25 Under Nonimmigrant Visas” and inserting “not

1 Lawfully Admitted for Permanent Residence”;
2 and

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

5 “(B) the term ‘lawfully admitted for per-
6 manent residence’ has the same meaning as in
7 section 101(a)(20) of the Immigration and Na-
8 tionality Act (8 U.S.C. 1101(a)(20));”;

9 (C) in paragraph (2), by striking “under a
10 nonimmigrant visa” and inserting “but not law-
11 fully admitted for permanent residence”; and

12 (D) in paragraph (3)(A), by striking “ad-
13 mitted to the United States under a non-
14 immigrant visa” and inserting “lawfully admit-
15 ted to the United States but not as an alien
16 lawfully admitted for permanent residence”.

17 **SEC. 213. UNIFORM STATUTE OF LIMITATIONS FOR CER-**
18 **TAIN IMMIGRATION, PASSPORT, AND NATU-**
19 **RALIZATION OFFENSES.**

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

22 **“SEC. 3291. IMMIGRATION, PASSPORT, AND NATURALIZA-**
23 **TION OFFENSES.**

24 “No person shall be prosecuted, tried, or punished
25 for a violation of any section of chapters 69 (relating to

1 nationality and citizenship offenses), 75 (relating to pass-
2 port, visa, and immigration offenses), or for a violation
3 of any criminal provision under section 243, 266, 274,
4 275, 276, 277, or 278 of the Immigration and Nationality
5 Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and
6 1328), or for an attempt or conspiracy to violate any such
7 section, unless the indictment is returned or the informa-
8 tion filed not later than 10 years after the commission
9 of the offense.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 for chapter 213 of title 18, United States Code, is amend-
12 ed by striking the item relating to section 3291 and insert-
13 ing the following:

“3291. Immigration, passport, and naturalization offenses.”.

14 **SEC. 214. DIPLOMATIC SECURITY SERVICE.**

15 (a) AUTHORITIES OF SPECIAL AGENTS.—Section
16 37(a)(1) of the State Department Basic Authorities Act
17 of 1956 (22 U.S.C. 2709(a)(1)) is amended to read as
18 follows:

19 “(1) conduct investigations concerning—

20 “(A) illegal passport or visa issuance or
21 use;

22 “(B) identity theft or document fraud af-
23 fecting or relating to the programs, functions,
24 and authorities of the Department of State;

1 “(C) violations of chapter 77 of title 18,
2 United States Code; and

3 “(D) Federal offenses committed within
4 the special maritime and territorial jurisdiction
5 defined in paragraph (9) of section 7 of title
6 18, United States Code, except as that jurisdic-
7 tion relates to the premises of United States
8 military missions and related residences;”.

9 (b) CONSTRUCTION.—Nothing in the amendment
10 made by subsection (a) shall be construed to limit the in-
11 vestigative authority of any other Federal department or
12 agency.

13 **SEC. 215. STREAMLINED PROCESSING OF BACKGROUND**
14 **CHECKS CONDUCTED FOR IMMIGRATION**
15 **BENEFITS.**

16 (a) INFORMATION SHARING; INTERAGENCY TASK
17 FORCE.—Section 105 (8 U.S.C. 1105) is amended by add-
18 ing at the end the following:

19 “(e) INTERAGENCY TASK FORCE.—

20 “(1) IN GENERAL.—The Secretary of Homeland
21 Security and the Attorney General shall establish an
22 interagency task force to resolve cases in which an
23 application or petition for an immigration benefit
24 conferred under this Act has been delayed due to an
25 outstanding background check investigation for more

1 than 2 years after the date on which such applica-
2 tion or petition was initially filed.

3 “(2) MEMBERSHIP.—The interagency task
4 force established under paragraph (1) shall include
5 representatives from Federal agencies with immigra-
6 tion, law enforcement, or national security respon-
7 sibilities under this Act.”.

8 (b) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated to the Director of the
10 Federal Bureau of Investigation such sums as are nec-
11 essary for each fiscal year, 2008 through 2012 for en-
12 hancements to existing systems for conducting background
13 and security checks necessary to support immigration se-
14 curity and orderly processing of applications.

15 (c) REPORT ON BACKGROUND AND SECURITY
16 CHECKS.—

17 (1) IN GENERAL.—Not later than 180 days
18 after the date of the enactment of this Act, the Di-
19 rector of the Federal Bureau of Investigation shall
20 submit to the Committee on the Judiciary of the
21 Senate and the Committee on the Judiciary of the
22 House of Representatives a report on the back-
23 ground and security checks conducted by the Fed-
24 eral Bureau of Investigation on behalf of United
25 States Citizenship and Immigration Services.

1 (2) CONTENT.—The report required under
2 paragraph (1) shall include—

3 (A) a description of the background and
4 security check program;

5 (B) a statistical breakdown of the back-
6 ground and security check delays associated
7 with different types of immigration applications;

8 (C) a statistical breakdown of the back-
9 ground and security check delays by applicant
10 country of origin; and

11 (D) the steps that the Director of the Fed-
12 eral Bureau of Investigation is taking to expe-
13 dite background and security checks that have
14 been pending for more than 180 days.

15 **SEC. 216. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

16 (a) REIMBURSEMENT FOR COSTS ASSOCIATED WITH
17 PROCESSING CRIMINAL ILLEGAL ALIENS.—The Secretary
18 may reimburse States and units of local government for
19 costs associated with processing undocumented criminal
20 aliens through the criminal justice system, including—

21 (1) indigent defense;

22 (2) criminal prosecution;

23 (3) autopsies;

24 (4) translators and interpreters; and

25 (5) courts costs.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—

2 (1) PROCESSING CRIMINAL ILLEGAL ALIENS.—

3 There are authorized to be appropriated
4 \$400,000,000 for each of the fiscal years 2008
5 through 2013 to carry out subsection (a).

6 (2) COMPENSATION UPON REQUEST.—Section
7 241(i)(5) (8 U.S.C. 1231(i)) is amended to read as
8 follows:

9 “(5) There are authorized to be appropriated to
10 carry out this subsection—

11 “(A) such sums as may be necessary for
12 fiscal year 2008;

13 “(B) \$750,000,000 for fiscal year 2009;

14 “(C) \$850,000,000 for fiscal year 2010;

15 and

16 “(D) \$950,000,000 for each of the fiscal
17 years 2011 through 2013.”.

18 (c) TECHNICAL AMENDMENT.—Section 501 of the
19 Immigration Reform and Control Act of 1986 (8 U.S.C.
20 1365) is amended by striking “Attorney General” each
21 place it appears and inserting “Secretary of Homeland Se-
22 curity”.

1 **SEC. 217. TRANSPORTATION AND PROCESSING OF ILLEGAL**
2 **ALIENS APPREHENDED BY STATE AND LOCAL**
3 **LAW ENFORCEMENT OFFICERS.**

4 (a) IN GENERAL.—The Secretary may provide suffi-
5 cient transportation and officers to take illegal aliens ap-
6 prehended by State and local law enforcement officers into
7 custody for processing at a detention facility operated by
8 the Department.

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

13 **SEC. 218. REDUCING ILLEGAL IMMIGRATION AND ALIEN**
14 **SMUGGLING ON TRIBAL LANDS.**

15 (a) GRANTS AUTHORIZED.—The Secretary may
16 award grants to Indian tribes with lands adjacent to an
17 international border of the United States that have been
18 adversely affected by illegal immigration.

19 (b) USE OF FUNDS.—Grants awarded under sub-
20 section (a) may be used for—

- 21 (1) law enforcement activities;
- 22 (2) health care services;
- 23 (3) environmental restoration; and
- 24 (4) the preservation of cultural resources.

25 (c) REPORT.—Not later than 180 days after the date
26 of the enactment of this Act, the Secretary shall submit

1 a report to the Committee on the Judiciary of the Senate
2 and the Committee on the Judiciary of the House of Rep-
3 resentatives that—

4 (1) describes the level of access of Border Pa-
5 trol agents on tribal lands;

6 (2) describes the extent to which enforcement of
7 immigration laws may be improved by enhanced ac-
8 cess to tribal lands;

9 (3) contains a strategy for improving such ac-
10 cess through cooperation with tribal authorities; and

11 (4) identifies grants provided by the Depart-
12 ment for Indian tribes, either directly or through
13 State or local grants, relating to border security ex-
14 penses.

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

19 **SEC. 219. ALTERNATIVES TO DETENTION.**

20 The Secretary shall conduct a study of—

21 (1) the effectiveness of alternatives to detention,
22 including electronic monitoring devices and intensive
23 supervision programs, in ensuring alien appearance
24 at court and compliance with removal orders;

1 (2) the effectiveness of the Intensive Super-
2 vision Appearance Program and the costs and bene-
3 fits of expanding that program to all States; and

4 (3) other alternatives to detention, including—

5 (A) release on an order of recognizance;

6 (B) appearance bonds; and

7 (C) electronic monitoring devices.

8 **SEC. 220. STATE AND LOCAL ENFORCEMENT OF FEDERAL**
9 **IMMIGRATION LAWS.**

10 (a) IN GENERAL.—Section 287(g) (8 U.S.C.
11 1357(g)) is amended—

12 (1) in paragraph (2), by adding at the end the
13 following: “If such training is provided by a State or
14 political subdivision of a State to an officer or em-
15 ployee of such State or political subdivision of a
16 State, the cost of such training (including applicable
17 overtime costs) shall be reimbursed by the Secretary
18 of Homeland Security.”; and

19 (2) in paragraph (4), by adding at the end the
20 following: “The cost of any equipment required to be
21 purchased under such written agreement and nec-
22 essary to perform the functions under this sub-
23 section shall be reimbursed by the Secretary of
24 Homeland Security.”.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary such
3 sums as may be necessary to carry out this section and
4 the amendments made by this section.

5 **SEC. 221. PROTECTING IMMIGRANTS FROM CONVICTED**
6 **SEX OFFENDERS.**

7 (a) IMMIGRANTS.—Section 204(a)(1) (8 U.S.C.
8 1154(a)(1)), is amended—

9 (1) in subparagraph (A), by amending clause
10 (viii) to read as follows:

11 “(viii) clause (i) shall not apply to a
12 citizen of the United States who has been
13 convicted of an offense described in sub-
14 paragraph (A), (I), or (K) of section
15 101(a)(43), unless the Secretary of Home-
16 land Security, in the Secretary’s sole and
17 unreviewable discretion, determines that
18 the citizen poses no risk to the alien with
19 respect to whom a petition described in
20 clause (i) is filed.”; and

21 (2) in subparagraph (B)(i), by amending sub-
22 clause (II) to read as follows:

23 “(II) subclause (I) shall not
24 apply in the case of an alien admitted
25 for permanent residence who has been

1 convicted of an offense described in
2 subparagraph (A), (I), or (K) of sec-
3 tion 101(a)(43), unless the Secretary
4 of Homeland Security, in the Sec-
5 retary's sole and unreviewable discre-
6 tion, determines that the alien law-
7 fully admitted for permanent resi-
8 dence poses no risk to the alien with
9 respect to whom a petition described
10 in subclause (I) is filed.”.

11 (b) NONIMMIGRANTS.—Section 101(a)(15)(K) (8
12 U.S.C. 1101(a)(15)(K)), is amended by inserting “(other
13 than a citizen described in section 204(a)(1)(A)(viii))”
14 after “citizen of the United States” each place that phrase
15 appears.

16 **SEC. 222. LAW ENFORCEMENT AUTHORITY OF STATES AND**
17 **POLITICAL SUBDIVISIONS AND TRANSFER TO**
18 **FEDERAL CUSTODY.**

19 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)
20 is amended by adding after section 240C the following new
21 section:

1 **“SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES**
2 **AND POLITICAL SUBDIVISIONS AND TRANS-**
3 **FER OF ALIENS TO FEDERAL CUSTODY.**

4 “(a) TRANSFER.—If the head of a law enforcement
5 entity of a State (or, if appropriate, a political subdivision
6 of the State) exercising authority with respect to the ap-
7 prehension or arrest of an alien submits a request to the
8 Secretary of Homeland Security that the alien be taken
9 into Federal custody, the Secretary of Homeland Secu-
10 rity—

11 “(1) shall—

12 “(A) deem the request to include the in-
13 quiry to verify immigration status described in
14 section 642(c) of the Illegal Immigration Re-
15 form and Immigrant Responsibility Act of 1996
16 (8 U.S.C. 1373(c)), and expeditiously inform
17 the requesting entity whether such individual is
18 an alien lawfully admitted to the United States
19 or is otherwise lawfully present in the United
20 States; and

21 “(B) if the individual is an alien who is not
22 lawfully admitted to the United States or other-
23 wise is not lawfully present in the United
24 States—

1 “(i) take the illegal alien into the cus-
2 tody of the Federal Government not later
3 than 72 hours after—

4 “(I) the conclusion of the State
5 charging process or dismissal process;
6 or

7 “(II) the illegal alien is appre-
8 hended, if no State charging or dis-
9 missal process is required; or

10 “(ii) request that the relevant State or
11 local law enforcement agency temporarily
12 detain or transport the alien to a location
13 for transfer to Federal custody; and

14 “(2) shall designate at least 1 Federal, State,
15 or local prison or jail or a private contracted prison
16 or detention facility within each State as the central
17 facility for that State to transfer custody of aliens
18 to the Department of Homeland Security.

19 “(b) REIMBURSEMENT.—

20 “(1) IN GENERAL.—The Secretary of Homeland
21 Security shall reimburse a State, or a political sub-
22 division of a State, for expenses, as verified by the
23 Secretary, incurred by the State or political subdivi-
24 sion in the detention and transportation of an alien

1 as described in subparagraphs (A) and (B) of sub-
2 section (c)(1).

3 “(2) COST COMPUTATION.—Compensation pro-
4 vided for costs incurred under subparagraphs (A)
5 and (B) of subsection (c)(1) shall be—

6 “(A) the product of—

7 “(i) the average daily cost of incarceration
8 ation of a prisoner in the relevant State, as
9 determined by the chief executive officer of
10 a State (or, as appropriate, a political sub-
11 division of the State); multiplied by

12 “(ii) the number of days that the alien
13 was in the custody of the State or political
14 subdivision; plus

15 “(B) the cost of transporting the alien
16 from the point of apprehension or arrest to the
17 location of detention, and if the location of de-
18 tention and of custody transfer are different, to
19 the custody transfer point; plus

20 “(C) the cost of uncompensated emergency
21 medical care provided to a detained alien during
22 the period between the time of transmittal of
23 the request described in subsection (c) and the
24 time of transfer into Federal custody.

1 “(c) REQUIREMENT FOR APPROPRIATE SECURITY.—

2 The Secretary of Homeland Security shall ensure that—

3 “(1) aliens incarcerated in a Federal facility
4 pursuant to this section are held in facilities which
5 provide an appropriate level of security; and

6 “(2) if practicable, aliens detained solely for
7 civil violations of Federal immigration law are sepa-
8 rated within a facility or facilities.

9 “(d) REQUIREMENT FOR SCHEDULE.—In carrying
10 out this section, the Secretary of Homeland Security shall
11 establish a regular circuit and schedule for the prompt
12 transportation of apprehended aliens from the custody of
13 those States, and political subdivisions of States, which
14 routinely submit requests described in subsection (c), into
15 Federal custody.

16 “(e) AUTHORITY FOR CONTRACTS.—

17 “(1) IN GENERAL.—The Secretary of Homeland
18 Security may enter into contracts or cooperative
19 agreements with appropriate State and local law en-
20 forcement and detention agencies to implement this
21 section.

22 “(2) DETERMINATION BY SECRETARY.—Prior
23 to entering into a contract or cooperative agreement
24 with a State or political subdivision of a State under
25 paragraph (1), the Secretary shall determine wheth-

1 er the State, or if appropriate, the political subdivi-
2 sion in which the agencies are located, has in place
3 any formal or informal policy that violates section
4 642 of the Illegal Immigration Reform and Immig-
5 rant Responsibility Act of 1996 (8 U.S.C. 1373).
6 The Secretary shall not allocate any of the funds
7 made available under this section to any State or po-
8 litical subdivision that has in place a policy that vio-
9 lates such section.”.

10 (b) AUTHORIZATION OF APPROPRIATIONS FOR THE
11 DETENTION AND TRANSPORTATION TO FEDERAL CUS-
12 TODY OF ALIENS NOT LAWFULLY PRESENT.—There are
13 authorized to be appropriated \$850,000,000 for fiscal year
14 2008 and each subsequent fiscal year for the detention
15 and removal of aliens not lawfully present in the United
16 States under the Immigration and Nationality Act (8
17 U.S.C. 1101 et seq.).

18 **SEC. 223. LAUNDERING OF MONETARY INSTRUMENTS.**

19 Section 1956(c)(7)(D) of title 18, United States
20 Code, is amended—

21 (1) by inserting “section 1590 (relating to traf-
22 ficking with respect to peonage, slavery, involuntary
23 servitude, or forced labor),” after “section 1363 (re-
24 lating to destruction of property within the special
25 maritime and territorial jurisdiction),”; and

1 (2) by inserting “section 274(a) of the Immi-
2 gration and Nationality Act (8 U.S.C. 1324(a)) (re-
3 lating to bringing in and harboring certain aliens),”
4 after “section 590 of the Tariff Act of 1930 (19
5 U.S.C. 1590) (relating to aviation smuggling),”.

6 **SEC. 224. COOPERATIVE ENFORCEMENT PROGRAMS.**

7 Not later than 2 years after the date of the enact-
8 ment of this Act, the Secretary shall negotiate and exe-
9 cute, where practicable, a cooperative enforcement agree-
10 ment described in section 287(g) of the Immigration and
11 Nationality Act (8 U.S.C. 1357(g)) with at least 1 law
12 enforcement agency in each State, to train law enforce-
13 ment officers in the detection and apprehension of individ-
14 uals engaged in transporting, harboring, sheltering, or en-
15 couraging aliens in violation of section 274 of such Act
16 (8 U.S.C. 1324).

17 **SEC. 225. EXPANSION OF THE JUSTICE PRISONER AND**
18 **ALIEN TRANSFER SYSTEM.**

19 Not later than 60 days after the date of enactment
20 of this Act, the Attorney General shall issue a directive
21 to expand the Justice Prisoner and Alien Transfer System
22 (JPATS) so that such System provides additional services
23 with respect to aliens who are illegally present in the
24 United States. Such expansion should include—

1 (1) increasing the daily operations of such Sys-
2 tem with buses and air hubs in 3 geographic regions;

3 (2) allocating a set number of seats for such
4 aliens for each metropolitan area;

5 (3) allowing metropolitan areas to trade or give
6 some of seats allocated to them under the System
7 for such aliens to other areas in their region based
8 on the transportation needs of each area; and

9 (4) requiring an annual report that analyzes of
10 the number of seats that each metropolitan area is
11 allocated under this System for such aliens and
12 modifies such allocation if necessary.

13 **SEC. 226. DIRECTIVE TO THE UNITED STATES SENTENCING**
14 **COMMISSION.**

15 (a) IN GENERAL.—Pursuant to the authority under
16 section 994 of title 28, United States Code, the United
17 States Sentencing Commission shall promulgate or amend
18 the sentencing guidelines, policy statements, and official
19 commentaries related to passport fraud offenses, including
20 the offenses described in chapter 75 of title 18, United
21 States Code, as amended by section 208 of this Act, to
22 reflect the serious nature of such offenses.

23 (b) REPORT.—Not later than 1 year after the date
24 of the enactment of this Act, the United States Sentencing
25 Commission shall submit to the Committee on the Judici-

1 ary of the Senate and the Committee on the Judiciary of
2 the House of Representatives a report on the implementa-
3 tion of this section.

4 **SEC. 227. CANCELLATION OF VISAS.**

5 Section 222(g) (8 U.S.C. 1202(g)) is amended—

6 (1) in paragraph (1)—

7 (A) by striking “Attorney General” and in-
8 sserting “Secretary”;

9 (B) by inserting “or otherwise violated any
10 of the terms of the nonimmigrant classification
11 in which the alien was admitted,” before “such
12 visa”;

13 (C) by inserting “and any other non-
14 immigrant visa issued by the United States that
15 is in the possession of the alien” after “such
16 visa”; and

17 (2) in paragraph (2)(A), by striking “(other
18 than the visa described in paragraph (1)) issued in
19 a consular office located in the country of the alien’s
20 nationality” and inserting “(other than a visa de-
21 scribed in paragraph (1)) issued in a consular office
22 located in the country of the alien’s nationality or
23 foreign residence”.

1 **TITLE III—WORKSITE**
2 **ENFORCEMENT**

3 **SEC. 301. PURPOSES.**

4 The purposes of this title and the amendments made
5 by this title are as follows:

6 (1) To continue to prohibit the hiring, recruit-
7 ment, or referral of unauthorized aliens.

8 (2) To require that each employer take reason-
9 able steps to verify the identity and work authoriza-
10 tion status of all its employees, without regard to
11 national origin and citizenship status.

12 (3) To authorize the Secretary to access records
13 of other Federal agencies for the purposes of con-
14 firming identity, authenticating lawful presence, and
15 preventing identity theft and fraud related to unlaw-
16 ful employment.

17 (4) To ensure that the Commissioner of Social
18 Security has the necessary authority to provide in-
19 formation to the Secretary that would assist in the
20 enforcement of the immigration laws.

21 (5) To authorize the Secretary to confirm
22 issuance of State identity documents, including driv-
23 er's licenses, and to obtain and transmit individual
24 photographic images held by States for identity au-
25 thentication purposes.

1 (6) To collect information on employee hires.

2 (7) To electronically secure a social security
3 number in the Employment Eligibility Verification
4 System (EEVS) at the request of an individual who
5 has been confirmed to be the holder of that number,
6 and to prevent fraudulent use of the number by oth-
7 ers.

8 (8) To provide for record retention of EEVS in-
9 quiries, to prevent identity fraud and employment
10 authorization fraud.

11 (9) To employ fast track regulatory and pro-
12 curement procedures to expedite implementation of
13 this title and pertinent sections of the Immigration
14 and Nationality Act for a period of 2 years from en-
15 actment.

16 (10) To establish the following:

17 (A) A document verification process requir-
18 ing employers to inspect, copy, and retain iden-
19 tity and work authorization documents.

20 (B) An EEVS requiring employers to ob-
21 tain confirmation of an individual's identity and
22 work authorization.

23 (C) Procedures for employers to register
24 for the EEVS and to confirm work eligibility
25 through the EEVS.

1 (D) A streamlined enforcement procedure
2 to ensure efficient adjudication of violations of
3 this title.

4 (E) A system for the imposition of civil
5 penalties and their enforcement, remission, or
6 mitigation.

7 (F) An enhancement of criminal and civil
8 penalties.

9 (G) Increased coordination of information
10 and enforcement between the Internal Revenue
11 Service and the Department of Homeland Secu-
12 rity regarding employers who have violations re-
13 lated to the employment of unauthorized aliens.

14 (H) Increased penalties under the Internal
15 Revenue Code for employers who have viola-
16 tions relating to the employment of unauthor-
17 ized aliens.

18 **SEC. 302. UNLAWFUL EMPLOYMENT OF ALIENS.**

19 Section 274A (8 U.S.C. 1324a) is amended to read
20 as follows:

21 “(a) MAKING EMPLOYMENT OF UNAUTHORIZED
22 ALIENS UNLAWFUL.—

23 “(1) IN GENERAL.—It is unlawful for an em-
24 ployer—

1 “(A) to hire, or to recruit or refer for a
2 fee, an alien for employment in the United
3 States knowing or with reckless disregard that
4 the alien is an unauthorized alien (as defined in
5 subsection (b)(1)) with respect to such employ-
6 ment; or

7 “(B) to hire, or to recruit or refer for a
8 fee, for employment in the United States an in-
9 dividual without complying with the require-
10 ments of subsections (c) and (d).

11 “(2) CONTINUING EMPLOYMENT.—It is unlaw-
12 ful for an employer, after hiring an alien for employ-
13 ment, to continue to employ the alien in the United
14 States knowing or with reckless disregard that the
15 alien is (or has become) an unauthorized alien with
16 respect to such employment.

17 “(3) USE OF LABOR THROUGH CONTRACT.—
18 For purposes of this section, an employer who uses
19 a contract, subcontract, or exchange to obtain the
20 labor of an alien in the United States knowing that
21 the alien is an unauthorized alien (as defined in sub-
22 section (b)(1)) with respect to performing such
23 labor, shall be considered to have hired the alien for
24 employment in the United States in violation of
25 paragraph (1)(A).

1 “(A) By regulation, the Secretary may re-
2 quire, for purposes of ensuring compliance with
3 the immigration laws, that an employer include
4 in a written contract, subcontract, or exchange
5 an effective and enforceable requirement that
6 the contractor or subcontractor adhere to the
7 immigration laws of the United States, includ-
8 ing use of EEVS.

9 “(B) The Secretary may establish proce-
10 dures by which an employer may obtain con-
11 firmation from the Secretary that the con-
12 tractor or subcontractor has registered with the
13 EEVS and is utilizing the EEVS to verify its
14 employees.

15 “(C) The Secretary may establish such
16 other requirements for employers using contrac-
17 tors or subcontractors as the Secretary deems
18 necessary to prevent knowing violations of this
19 paragraph.

20 “(4) APPLICATION TO FEDERAL GOVERN-
21 MENT.—For purposes of this section, the term ‘em-
22 ployer’ includes entities in any branch of the Federal
23 Government.

24 “(5) DEFENSE.—An employer that establishes
25 that it has complied in good faith with the require-

1 ments of subsections (c)(1) through (c)(4), per-
2 taining to document verification requirements, and
3 subsection (d) has established an affirmative defense
4 that the employer has not violated paragraph (1)(A)
5 with respect to such hiring, recruiting, or referral,
6 however—

7 “(A) until such time as the Secretary has
8 required an employer to participate in the
9 EEVS or such participation is permitted on a
10 voluntary basis pursuant to subsection (d), a
11 defense is established without a showing of
12 compliance with subsection (d); and

13 “(B) to establish a defense, the employer
14 must also be in compliance with any additional
15 requirements that the Secretary may promul-
16 gate by regulation pursuant to subsections (c),
17 (d), and (k).

18 “(6) An employer is presumed to have acted
19 with knowledge or reckless disregard if the employer
20 fails to comply with written standards, procedures,
21 or instructions issued by the Secretary. Such stand-
22 ards, procedures, or instructions shall be objective
23 and verifiable.

24 “(b) DEFINITIONS.—In this section:

1 “(1) UNAUTHORIZED ALIEN.—The term ‘unau-
2 thorized alien’ means, with respect to the employ-
3 ment of an alien at a particular time, that the alien
4 is not at that time either—

5 “(A) an alien lawfully admitted for perma-
6 nent residence; or

7 “(B) authorized to be so employed by this
8 Act or by the Secretary.

9 “(2) EMPLOYER.—The term ‘employer’ means
10 any person or entity hiring, recruiting, or referring
11 an individual for employment in the United States.

12 “(3) SECRETARY.—Except as otherwise pro-
13 vided, the term ‘Secretary’ means the Secretary of
14 Homeland Security.

15 “(c) DOCUMENT VERIFICATION REQUIREMENTS.—
16 Any employer hiring, recruiting, or referring an individual
17 for employment in the United States shall take all reason-
18 able steps to verify that the individual is authorized to
19 work in the United States, including the requirements of
20 subsection (d) and the following paragraphs:

21 “(1) ATTESTATION AFTER EXAMINATION OF
22 DOCUMENTATION.—

23 “(A) IN GENERAL.—The employer must
24 attest, under penalty of perjury and on a form
25 prescribed by the Secretary, that it has verified

1 the identity and work authorization status of
2 the individual by examining—

3 “(i) a document described in subpara-
4 graph (B); or

5 “(ii) a document described in sub-
6 paragraph (C) and a document described
7 in subparagraph (D).

8 Such attestation may be manifested by a hand-
9 written or electronic signature. An employer has
10 complied with the requirement of this para-
11 graph with respect to examination of docu-
12 mentation if the employer has followed applica-
13 ble regulations and any written procedures or
14 instructions provided by the Secretary and if a
15 reasonable person would conclude that the doc-
16 umentation is genuine and establishes the em-
17 ployee’s identity and authorization to work, tak-
18 ing into account any information provided to
19 the employer by the Secretary, including photo-
20 graphs.

21 “(B) DOCUMENTS ESTABLISHING BOTH
22 EMPLOYMENT AUTHORIZATION AND IDEN-
23 TITY.—A document described in this subpara-
24 graph is an individual’s—

1 “(i) United States passport, or pass-
2 port card issued pursuant to the Secretary
3 of State’s authority under section 1 of the
4 Act of July 3, 1926 (44 Stat. 887 chapter
5 772; 22 U.S.C. 211a);

6 “(ii) permanent resident card or other
7 document issued by the Secretary or Sec-
8 retary of State to aliens authorized to work
9 in the United States, if the document—

10 “(I) contains a photograph of the
11 individual, biometric data, such as fin-
12 gerprints, or such other personal iden-
13 tifying information relating to the in-
14 dividual as the Secretary finds, by
15 regulation, sufficient for the purposes
16 of this subsection;

17 “(II) is evidence of authorization
18 for employment in the United States;
19 and

20 “(III) contains security features
21 to make it resistant to tampering,
22 counterfeiting, and fraudulent use; or

23 “(iii) a temporary interim benefits
24 card valid under section 218C(c) of this
25 Act, as amended by section 602 of the Se-

1 cure Borders, Economic Opportunity, and
2 Immigration Reform Act of 2007, bearing
3 a photograph and an expiration date, and
4 issued by the Secretary to aliens applying
5 for temporary worker status under the Z
6 visa.

7 “(C) DOCUMENTS ESTABLISHING IDEN-
8 TITY OF INDIVIDUAL.—A document described in
9 this subparagraph includes—

10 “(i) an individual’s driver’s license or
11 identity card issued by a State, the Com-
12 monwealth of the Northern Mariana Is-
13 lands, or an outlying possession of the
14 United States, provided that the issuing
15 State or entity has certified to the Sec-
16 retary that it is in compliance with the
17 minimum standards required under section
18 202 of the REAL ID Act of 2005 (division
19 B of Public Law 109–13; 49 U.S.C. 30301
20 note) and implementing regulations issued
21 by the Secretary once those requirements
22 become effective;

23 “(ii) an individual’s driver’s license or
24 identity card issued by a State, the Com-
25 monwealth of the Northern Mariana Is-

1 lands, or an outlying possession of the
2 United States which is not compliant with
3 section 202 of the REAL ID Act of 2005
4 if—

5 “(I) the driver’s license or iden-
6 tity card contains the individual’s pho-
7 tograph as well as the individual’s
8 name, date of birth, gender, height,
9 eye color, and address;

10 “(II) the card has been approved
11 for this purpose in accordance with
12 timetables and procedures established
13 by the Secretary pursuant to sub-
14 section (c)(1)(F) of this section; and

15 “(III) the card is presented by
16 the individual and examined by the
17 employer in combination with a
18 United States birth certificate, or a
19 Certificate of Naturalization, or a
20 Certificate of Citizenship, or such
21 other documents as may be prescribed
22 by the Secretary;

23 “(iii) for individuals under 16 years of
24 age who are unable to present a document
25 listed in clause (i) or (ii), documentation of

1 personal identity of such other type as the
2 Secretary finds provides a reliable means
3 of identification, provided it contains secu-
4 rity features to make it resistant to tam-
5 pering, counterfeiting, and fraudulent use;
6 or

7 “(iv) other documentation evidencing
8 identity as identified by the Secretary in
9 his discretion, with notice to the public
10 provided in the Federal Register, to be ac-
11 ceptable for purposes of this section, pro-
12 vided that the document, including any
13 electronic security measures linked to the
14 document, contains security features that
15 make the document as resistant to tam-
16 pering, counterfeiting, and fraudulent use
17 as the documents listed in clause (i) of (ii)
18 of subparagraph (B) or clause (i) of this
19 subparagraph.

20 “(D) DOCUMENTS EVIDENCING EMPLOY-
21 MENT AUTHORIZATION.—The following docu-
22 ments may be accepted as evidence of employ-
23 ment authorization—

24 “(i) a social security account number
25 card issued by the Commissioner of Social

1 Security (other than a card which specifies
2 on its face that the card is not valid for
3 employment in the United States). The
4 Secretary, in consultation with the Com-
5 missioner of Social Security, may require
6 by publication of a notice in the Federal
7 Register that only a social security account
8 number card described in section 305 of
9 this title be accepted for this purpose; or

10 “(ii) any other documentation evidenc-
11 ing authorization of employment in the
12 United States which the Secretary de-
13 clares, by publication in the Federal Reg-
14 ister, to be acceptable for purposes of this
15 section, provided that the document, in-
16 cluding any electronic security measures
17 linked to the document contains security
18 features to make it resistant to tampering,
19 counterfeiting, and fraudulent use.

20 “(E) AUTHORITY TO PROHIBIT USE OF
21 CERTAIN DOCUMENTS.—If the Secretary finds
22 that any document or class of documents de-
23 scribed in subparagraph (B), (C), or (D) as es-
24 tablishing employment authorization or identity
25 does not reliably establish such authorization or

1 identity or is being used fraudulently to an un-
2 acceptable degree, the Secretary shall, with no-
3 tice to the public provided in the Federal Reg-
4 ister, prohibit or restrict the use of that docu-
5 ment or class of documents for purposes of this
6 subsection.

7 “(F) After June 1, 2013, no driver’s li-
8 cense or State identity card may be accepted if
9 it does not comply with the REAL ID Act of
10 2005. This subparagraph shall have no effect
11 on subsections (c)(1)(B), (c)(1)(C)(iii),
12 (c)(1)(C)(iv), or (c)(1)(D).

13 “(2) INDIVIDUAL ATTESTATION OF EMPLOY-
14 MENT AUTHORIZATION.—The individual must attest,
15 under penalty of perjury on the form prescribed by
16 the Secretary, that the individual is a citizen or na-
17 tional of the United States, an alien lawfully admit-
18 ted for permanent residence, or an alien who is au-
19 thorized under this Act or by the Secretary to be
20 hired, recruited, or referred for such employment.
21 Such attestation may be manifested by either a
22 handwritten or electronic signature.

23 “(3) RETENTION OF VERIFICATION FORM.—
24 After completion of such form in accordance with
25 paragraphs (1) and (2), the employer must retain a

1 paper, microfiche, microfilm, or electronic version of
2 the form and make it available for inspection by offi-
3 cers of the Department of Homeland Security (or
4 persons designated by the Secretary), the Special
5 Counsel for Immigration-Related Unfair Employ-
6 ment Practices, or the Department of Labor during
7 a period beginning on the date of the hiring, recruit-
8 ing, or referral of the individual and ending—

9 “(A) in the case of the recruiting or refer-
10 ral for a fee (without hiring) of an individual,
11 7 years after the date of the recruiting or refer-
12 ral; and

13 “(B) in the case of the hiring of an indi-
14 vidual—

15 “(i) 7 years after the date of such hir-
16 ing; or

17 “(ii) 2 years after the date the indi-
18 vidual’s employment is terminated, which-
19 ever is earlier.

20 “(4) COPYING OF DOCUMENTATION AND REC-
21 ORDKEEPING REQUIRED.—

22 “(A) Notwithstanding any other provision
23 of law, the employer shall copy all documents
24 presented by an individual pursuant to this sub-
25 section and shall retain a paper, microfiche,

1 microfilm, or electronic copy as prescribed in
2 paragraph (3), but only (except as otherwise
3 permitted under law) for the purposes of com-
4 plying with the requirements of this subsection.
5 Such copies shall reflect the signatures of the
6 employer and the employee, as well as the date
7 of receipt.

8 “(B) The employer shall also maintain
9 records of Social Security Administration cor-
10 respondence regarding name and number
11 mismatches or no-matches and the steps taken
12 to resolve such issues.

13 “(C) The employer shall maintain records
14 of all actions and copies of any correspondence
15 or action taken by the employer to clarify or re-
16 solve any issue that raises reasonable doubt as
17 to the validity of the alien’s identity or work au-
18 thorization.

19 “(D) The employer shall maintain such
20 records as prescribed in this subsection. The
21 Secretary may prescribe the manner of record-
22 keeping and may require that additional records
23 be kept or that additional documents be copied
24 and maintained. The Secretary may require
25 that these documents be transmitted electroni-

1 cally, and may develop automated capabilities to
2 request such documents.

3 “(5) PENALTIES.—An employer that fails to
4 comply with any requirement of this subsection shall
5 be penalized under subsection (e)(4)(B).

6 “(6) NO AUTHORIZATION OF NATIONAL IDENTIFI-
7 CATION CARDS.—Nothing in this section shall be
8 construed to authorize, directly or indirectly, the
9 issuance or use of national identification cards or
10 the establishment of a national identification card.

11 “(7) The employer shall use the procedures for
12 document verification set forth in this paragraph for
13 all employees without regard to national origin or
14 citizenship status.

15 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
16 TEM.—

17 “(1) IN GENERAL.—The Secretary, in coopera-
18 tion and consultation with the Secretary of State,
19 the Commissioner of Social Security, and the States,
20 shall implement and specify the procedures for
21 EEVS. The participating employers shall timely reg-
22 ister with EEVS and shall use EEVS as described
23 in subsection (d)(5).

24 “(2) IMPLEMENTATION SCHEDULE.—

1 “(A) As of the date of enactment of this
2 section, the Secretary in his discretion, with no-
3 tice to the public provided in the Federal Reg-
4 ister, is authorized to require any employer or
5 industry which the Secretary determines to be
6 part of the critical infrastructure, a Federal
7 contractor, or directly related to the national
8 security or homeland security of the United
9 States to participate in the EEVS. This re-
10 quirement may be applied to both newly hired
11 and current employees. The Secretary shall no-
12 tify employers subject to this subparagraph 30
13 days prior to EEVS.

14 “(B) No later than 6 months after the
15 date of enactment of this section, the Secretary
16 shall require additional employers or industries
17 to participate in the EEVS. This requirement
18 shall be applied to new employees hired, and
19 current employees subject to reverification be-
20 cause of expiring work authorization docu-
21 mentation or expiration of immigration status,
22 on or after the date on which the requirement
23 takes effect. The Secretary, by notice in the
24 Federal Register, shall designate these employ-
25 ers or industries, in his discretion, based upon

1 risks to critical infrastructure, national security,
2 immigration enforcement, or homeland security
3 needs.

4 “(C) No later than 18 months after the
5 date of enactment of this section, the Secretary
6 shall require all employers to participate in the
7 EEVS with respect to newly hired employees
8 and current employees subject to reverification
9 because of expiring work authorization docu-
10 mentation or expiration of immigration status.

11 “(D) No later than 3 years after the date
12 of enactment of this section, all employers shall
13 participate in the EEVS with respect to new
14 employees, all employees whose identity and em-
15 ployment authorization have not been previously
16 verified through EEVS, and all employees in Z
17 status who have not previously presented a se-
18 cure document evidencing their Z status. The
19 Secretary may specify earlier dates for partici-
20 pation in the EEVS in his discretion for some
21 or all classes of employer or employee.

22 “(E) The Secretary shall create the nec-
23 essary systems and processes to monitor the
24 functioning of the EEVS, including the volume
25 of the workflow, the speed of processing of que-

1 ries, and the speed and accuracy of responses.
2 These systems and processes shall be audited
3 by the Government Accountability Office 9
4 months after the date of enactment of this sec-
5 tion and 24 months after the date of enactment
6 of this section. The Government Accountability
7 Office shall report the results of the audits to
8 Congress.

9 “(3) PARTICIPATION IN EEVS.—The Secretary
10 has the following discretionary authority to require
11 or to permit participation in the EEVS—

12 “(A) to permit any employer that is not re-
13 quired to participate in the EEVS to do so on
14 a voluntary basis; and

15 “(B) to require any employer that is re-
16 quired to participate in the EEVS with respect
17 to its newly hired employees also to do so with
18 respect to its current workforce if the Secretary
19 has reasonable cause to believe that the em-
20 ployer has engaged in any violation of the immi-
21 gration laws.

22 “(4) CONSEQUENCE OF FAILURE TO PARTICI-
23 PATE.—If an employer is required under this sub-
24 section to participate in the EEVS and fails to com-

1 ply with the requirements of such program with re-
2 spect to an individual—

3 “(A) such failure shall be treated as a vio-
4 lation of subsection (a)(1)(B) of this section
5 with respect to that individual; and

6 “(B) a rebuttable presumption is created
7 that the employer has violated subsection
8 (a)(1)(A) or (a)(2) of this section.

9 Subparagraph (B) shall not apply in any prosecution
10 under subsection 274A(f)(1).

11 “(5) PROCEDURES FOR PARTICIPANTS IN THE
12 EEVS.—

13 “(A) IN GENERAL.—An employer partici-
14 pating in the EEVS must register in the EEVS
15 and conform to the following procedures in the
16 event of hiring, recruiting, or referring any in-
17 dividual for employment in the United States:

18 “(i) REGISTRATION OF EMPLOYERS.—

19 The Secretary, through notice in the Fed-
20 eral Register, shall prescribe procedures
21 that employers must follow to register in
22 the EEVS. In prescribing these proce-
23 dures, the Secretary shall have authority to
24 require employers to provide—

25 “(I) employer’s name;

1 “(II) employer’s Employment
2 Identification Number (EIN);

3 “(III) company address;

4 “(IV) name, position, and social
5 security number of the employer’s em-
6 ployees accessing the EEVS; and

7 “(V) such other information as
8 the Secretary deems necessary to en-
9 sure proper use and security of the
10 EEVS.

11 The Secretary shall require employers to
12 undergo such training as the Secretary
13 deems necessary to ensure proper use and
14 security of the EEVS. To the extent prac-
15 ticable, such training shall be made avail-
16 able electronically.

17 “(ii) PROVISION OF ADDITIONAL IN-
18 FORMATION.—The employer shall obtain
19 from the individual (and the individual
20 shall provide) and shall record in such
21 manner as the Secretary may specify—

22 “(I) an individual’s social secu-
23 rity account number;

24 “(II) if the individual does not
25 attest to United States nationality

1 under subsection (c)(2) of this section,
2 such identification or authorization
3 number established by the Depart-
4 ment of Homeland Security as the
5 Secretary shall specify; and

6 “(III) such other information as
7 the Secretary may require to deter-
8 mine the identity and work authoriza-
9 tion of an employee.

10 “(iii) PRESENTATION OF DOCUMENTA-
11 TION.—The employer, and the individual
12 whose identity and employment eligibility
13 are being confirmed, shall fulfill the re-
14 quirements of subsection (c) of this sec-
15 tion.

16 “(iv) PRESENTATION OF BIO-
17 METRICS.—Employers who are enrolled in
18 the Voluntary Advanced Verification Pro-
19 gram to Combat Identity Theft under sec-
20 tion 307 of this title shall, in addition to
21 documentary evidence of identity and work
22 eligibility, electronically provide the finger-
23 prints of the individual to the Department
24 of Homeland Security.

25 “(B) SEEKING CONFIRMATION.—

1 “(i) IN GENERAL.—The employer
2 shall use the EEVS to provide to the Sec-
3 retary all required information in order to
4 obtain confirmation of the identity and em-
5 ployment eligibility of any individual no
6 earlier than the date of hire and no later
7 than on the first day of employment (or re-
8 cruitment or referral, as the case may be).
9 An employer may not, however, make the
10 starting date of an individual’s employ-
11 ment contingent on the receipt of a con-
12 firmation of the identity and employment
13 eligibility.

14 “(ii) For reverification of an employee
15 with a limited period of work authorization
16 (including Z cardholder), all required
17 verification procedures must be complete
18 on the date the employee’s work authoriza-
19 tion expires.

20 “(iii) For initial verification of an em-
21 ployee hired before the employer is subject
22 to the employment eligibility verification
23 system, all required procedures must be
24 complete on such date as the Secretary

1 shall specify in accordance with subpara-
2 graph (d)(2)(D).

3 “(iv) The Secretary shall provide, and
4 the employer shall utilize, as part of
5 EEVS, a method of communicating notices
6 and requests for information or action on
7 the part of the employer with respect to
8 expiring work authorization or status and
9 other matters. Additionally, the Secretary
10 shall provide a method of notifying employ-
11 ers of a confirmation, nonconfirmation, or
12 a notice that further action is required
13 (‘further action notice’). The employer
14 shall communicate to the individual that is
15 the subject of the verification all informa-
16 tion provided to the employer by the EEVS
17 for communication to the individual.

18 “(C) CONFIRMATION OR NONCONFIRMA-
19 TION.—

20 “(i) INITIAL RESPONSE.—The
21 verification system shall provide a con-
22 firmation, a nonconfirmation, or a further
23 action notice of an individual’s identity and
24 employment eligibility at the time of the
25 inquiry, unless for technological reasons or

1 due to unforeseen circumstances, the
2 EEVS is unable to provide such confirma-
3 tion or further action notice. In such situa-
4 tions, the system shall provide confirma-
5 tion or further action notice within 3 busi-
6 ness days of the initial inquiry. If pro-
7 viding confirmation or further action no-
8 tice, the EEVS shall provide an appro-
9 priate code indicating such confirmation or
10 such further action notice.

11 “(ii) CONFIRMATION UPON INITIAL
12 INQUIRY.—When the employer receives an
13 appropriate confirmation of an individual’s
14 identity and work eligibility under the
15 EEVS, the employer shall record the con-
16 firmation in such manner as the Secretary
17 may specify.

18 “(iii) FURTHER ACTION NOTICE UPON
19 INITIAL INQUIRY AND SECONDARY
20 VERIFICATION.—

21 “(I) FURTHER ACTION NO-
22 TICE.—If the employer receives a fur-
23 ther action notice of an individual’s
24 identity or work eligibility under the
25 EEVS, the employer shall inform the

1 individual without delay for whom the
2 confirmation is sought of the further
3 action notice and any procedures spec-
4 ified by the Secretary for addressing
5 the further action notice. The em-
6 ployee must acknowledge in writing
7 the receipt of the further action notice
8 from the employer.

9 “(II) CONTEST.—Within 10 busi-
10 ness days from the date of notification
11 to the employee, the employee must
12 contact the appropriate agency to con-
13 test the further action notice and, if
14 the Secretary so requires, appear in
15 person at the appropriate Federal or
16 State agency for purposes of verifying
17 the individual’s identity and employ-
18 ment authorization. The Secretary, in
19 consultation with the Commissioner of
20 Social Security and other appropriate
21 Federal and State agencies, shall
22 specify an available secondary
23 verification procedure to confirm the
24 validity of information provided and
25 to provide a final confirmation or non-

1 confirmation. An individual contesting
2 a further action notice must attest
3 under penalty of perjury to his iden-
4 tity and employment authorization.

5 “(III) NO CONTEST.—If the indi-
6 vidual does not contest the further ac-
7 tion notice within the period specified
8 in subparagraph (5)(C)(iii)(II), a final
9 nonconfirmation shall issue. The em-
10 ployer shall then record the noncon-
11 firmation in such manner as the Sec-
12 retary may specify.

13 “(IV) FINALITY.—The EEVS
14 shall provide a final confirmation or
15 nonconfirmation within 10 business
16 days from the date of the employee’s
17 contesting of the further action notice.
18 As long as the employee is taking the
19 steps required by the Secretary and
20 the agency that the employee has con-
21 tacted to resolve a further action no-
22 tice, the Secretary shall extend the pe-
23 riod of investigation until the sec-
24 ondary verification procedure allows
25 the Secretary to provide a final con-

1 firmation or nonconfirmation. If the
2 employee fails to take the steps re-
3 quired by the Secretary and the ap-
4 propriate agency, a final nonconfirma-
5 tion may be issued to that employee.

6 “(V) REEXAMINATION.—Nothing
7 in this section shall prevent the Sec-
8 retary from reexamining a case where
9 a final confirmation has been provided
10 if subsequently received information
11 indicates that the individual may not
12 be work authorized.

13 In no case shall an employer terminate em-
14 ployment of an individual solely because of
15 a failure of the individual to have identity
16 and work eligibility confirmed under this
17 section until a nonconfirmation becomes
18 final and the period to timely file an ad-
19 ministrative appeal has passed, and in the
20 case where an administrative appeal has
21 been denied, the period to timely file a pe-
22 tition for judicial review has passed. When
23 final confirmation or nonconfirmation is
24 provided, the confirmation system shall
25 provide an appropriate code indicating

1 such confirmation or nonconfirmation. An
2 individual's failure to contest a further ac-
3 tion notice shall not be considered an ad-
4 mission of guilt with respect to any viola-
5 tion of this section or any provision of law.

6 “(D) CONSEQUENCES OF NONCONFIRMA-
7 TION.—

8 “(i) TERMINATION OF CONTINUED
9 EMPLOYMENT.—If the employer has re-
10 ceived a final nonconfirmation regarding
11 an individual, the employer shall terminate
12 employment (or recruitment or referral) of
13 the individual, unless the individual files
14 an administrative appeal of a final noncon-
15 firmation notice under paragraph (7) with-
16 in the time period prescribed in that para-
17 graph and the Secretary or the Commis-
18 sioner stays the final nonconfirmation no-
19 tice pending the resolution of the adminis-
20 trative appeal.

21 “(ii) CONTINUED EMPLOYMENT
22 AFTER FINAL NONCONFIRMATION.—If the
23 employer continues to employ (or to recruit
24 or refer) an individual after receiving final
25 nonconfirmation (unless the individual filed

1 an administrative appeal of a final noncon-
2 firmation notice under paragraph (7) with-
3 in the time period prescribed in that para-
4 graph and the Secretary of the Commis-
5 sioner stayed the final nonconfirmation no-
6 tice pending the resolution of the adminis-
7 trative appeal), a rebuttable presumption is
8 created that the employer has violated sub-
9 sections (a)(1)(A) and (a)(2) of this sec-
10 tion. The previous sentence shall not apply
11 in any prosecution under subsection (f)(1)
12 of this section.

13 “(E) OBLIGATION TO RESPOND TO QUE-
14 RIES AND ADDITIONAL INFORMATION.—

15 “(i) Employers are required to comply
16 with requests from the Secretary through
17 EEVS for information, including queries
18 concerning current and former employees
19 that relate to the functioning of the EEVS,
20 the accuracy of the responses provided by
21 the EEVS, and any suspected fraud or
22 identity theft in the use of the EEVS.
23 Failure to comply with such a request is a
24 violation of section (a)(1)(B).

1 “(ii) Individuals being verified
2 through EEVS may be required to take
3 further action to address irregularities
4 identified in the documents relied upon for
5 purposes of employment verification. The
6 employer shall communicate to the indi-
7 vidual any such requirement for further ac-
8 tions and shall record the date and manner
9 of such communication. The individual
10 must acknowledge in writing the receipt of
11 this communication from the employer.
12 Failure to communicate such a require-
13 ment is a violation of section (a)(1)(B).

14 “(iii) The Secretary is authorized,
15 with notice to the public provided in the
16 Federal Register, to implement, clarify,
17 and supplement the requirements of this
18 paragraph in order to facilitate the func-
19 tioning of the EEVS or to prevent fraud or
20 identity theft in the use of the EEVS.

21 “(F) IMPERMISSIBLE USE OF THE EEVS.—

22 “(i) An employer may not use the
23 EEVS to verify an individual prior to ex-
24 tending to the individual an offer of em-
25 ployment.

1 “(ii) An employer may not require an
2 individual to verify the individual’s own
3 employment eligibility through the EEVS
4 as a condition of extending to that indi-
5 vidual an offer of employment. Nothing in
6 this paragraph shall be construed to pre-
7 vent an employer from encouraging an em-
8 ployee or a prospective employee from
9 verifying the employee’s or a prospective
10 employee’s own employment eligibility prior
11 to obtaining employment pursuant to para-
12 graph (5)(H).

13 “(iii) An employer may not terminate
14 an individual’s employment solely because
15 that individual has been issued a further
16 action notice.

17 “(iv) An employer may not take the
18 following actions solely because an indi-
19 vidual has been issued a further action no-
20 tice:

21 “(I) Reduce salary, bonuses, or
22 other compensation due to the em-
23 ployee.

24 “(II) Suspend the employee with-
25 out pay.

1 “(III) Reduce the hours that the
2 employee is required to work if such
3 reduction is accompanied by a reduc-
4 tion in salary, bonuses, or other com-
5 pensation due to the employee, except
6 that, with the agreement of the em-
7 ployee, an employer may provide an
8 employee with reasonable time off
9 without pay in order to contest and
10 resolve the further action notice re-
11 ceived by the employee.

12 “(IV) Deny the employee the
13 training necessary to perform the em-
14 ployment duties for which the em-
15 ployee has been hired.

16 “(v) An employer may not, in the
17 course of utilizing the procedures for docu-
18 ment verification set forth in subsection
19 (c), require that a prospective employee
20 present additional documents or different
21 documents than those prescribed under
22 that subsection.

23 “(vi) The Secretary shall develop the
24 necessary policies and procedures to mon-
25 itor employers’ use of the EEVS and their

1 compliance with the requirements set forth
2 in this section. Employers are required to
3 comply with requests from the Secretary
4 for information related to any monitoring,
5 audit, or investigation undertaken pursu-
6 ant to this subparagraph.

7 “(vii) The Secretary, in consultation
8 with the Secretary of Labor, shall establish
9 and maintain a process by which any em-
10 ployee (or any prospective employee who
11 would otherwise have been hired) who has
12 reason to believe that an employer has vio-
13 lated subparagraphs (i) through (v) may
14 file a complaint against the employer.

15 “(viii) Any employer found to have
16 violated subparagraphs (i) through (v)
17 shall pay a civil penalty of up to \$10,000
18 for each violation.

19 “(ix) This paragraph is not intended
20 to, and does not, create any right, benefit,
21 trust, or responsibility, whether substantive
22 or procedural, enforceable at law or equity
23 by a party against the United States, its
24 departments, agencies, instrumentalities,
25 entities, officers, employees, or agents, or

1 any person, nor does it create any right of
2 review in a judicial proceeding.

3 “(x) No later than 3 months after the
4 date of enactment of this section, the Sec-
5 retary, in cooperation with the Secretary of
6 Labor and the Administrator of the Small
7 Business Administration, shall conduct a
8 campaign to disseminate information re-
9 specting the rights and remedies prescribed
10 under this section. Such campaign shall be
11 aimed at increasing the knowledge of em-
12 ployers, employees, and the general public
13 concerning employer and employee rights,
14 responsibilities, and remedies under this
15 section.

16 “(I) In order to carry out the
17 campaign under this paragraph, the
18 Secretary may, to the extent deemed
19 appropriate and subject to the avail-
20 ability of appropriations, contract with
21 public and private organizations for
22 outreach activities under the cam-
23 paign.

24 “(II) There are authorized to be
25 appropriated to carry out this para-

1 graph \$40,000,000 for each fiscal
2 year 2007 through 2009.

3 “(G) Based on a regular review of the
4 EEVS and the document verification proce-
5 dures to identify fraudulent use and to assess
6 the security of the documents being used to es-
7 tablish identity or employment authorization,
8 the Secretary in consultation with the Commis-
9 sioner of Social Security may modify by notice
10 published in the Federal Register the docu-
11 ments that must be presented to the employer,
12 the information that must be provided to EEVS
13 by the employer, and the procedures that must
14 be followed by employers with respect to any as-
15 pect of the EEVS if the Secretary in the Sec-
16 retary’s discretion concludes that the modifica-
17 tion is necessary to ensure that EEVS accu-
18 rately and reliably determines the work author-
19 ization of employees while providing protection
20 against fraud and identity theft.

21 “(H) Subject to appropriate safeguards to
22 prevent misuse of the system, the Secretary in
23 consultation with the Commissioner of Social
24 Security, shall establish secure procedures to
25 permit an individual who seeks to verify the in-

1 dividual’s own employment eligibility prior to
2 obtaining or changing employment, to contact
3 the appropriate agency and, in a timely man-
4 ner, correct or update the information used by
5 the EEVS.

6 “(6) PROTECTION FROM LIABILITY FOR AC-
7 TIONS TAKEN ON THE BASIS OF INFORMATION PRO-
8 VIDED BY THE CONFIRMATION SYSTEM.—No em-
9 ployer participating in the EEVS shall be liable
10 under any law for any employment-related action
11 taken with respect to the employee in good faith reli-
12 ance on information provided through the confirma-
13 tion system.

14 “(7) ADMINISTRATIVE REVIEW.—

15 “(A) IN GENERAL.—An individual who re-
16 ceives a final nonconfirmation notice may, not
17 later than 15 days after the date that such no-
18 tice is received, file an administrative appeal of
19 such final notice. An individual who did not
20 timely contest a further action notice may not
21 avail himself of this paragraph. Unless the Sec-
22 retary, in consultation with the Commissioner
23 of Social Security, specifies otherwise, all ad-
24 ministrative appeals shall be filed as follows:

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1 “(i) NATIONALS OF THE UNITED
2 STATES.—An individual claiming to be a
3 national of the United States shall file the
4 administrative appeal with the Commis-
5 sioner.

6 “(ii) ALIENS.—An individual claiming
7 to be an alien authorized to work in the
8 United States shall file the administrative
9 appeal with the Secretary.

10 “(B) REVIEW FOR ERROR.—The Secretary
11 and the Commissioner shall each develop proce-
12 dures for resolving administrative appeals re-
13 garding final nonconfirmations based upon the
14 information that the individual has provided, in-
15 cluding any additional evidence that was not
16 previously considered. Appeals shall be resolved
17 within 30 days after the individual has sub-
18 mitted all evidence relevant to the appeal. The
19 Secretary and the Commissioner may, on a
20 case, by-case basis for good cause, extend this
21 period in order to ensure accurate resolution of
22 an appeal before him. Administrative review
23 under this paragraph (7) shall be limited to
24 whether the final nonconfirmation notice is sup-
25 ported by the weight of the evidence.

1 “(C) ADMINISTRATIVE RELIEF.—The relief
2 available under this paragraph (7) is limited to
3 an administrative order upholding, reversing,
4 modifying, amending, or setting aside the final
5 nonconfirmation notice. The Secretary or the
6 Commissioner shall stay the final nonconfirma-
7 tion notice pending the resolution of the admin-
8 istrative appeal unless the Secretary or the
9 Commissioner determines that the administra-
10 tive appeal is frivolous, unlikely to succeed on
11 the merits, or filed for purposes of delay and
12 terminates the stay.

13 “(D) DAMAGES, FEES, AND COSTS.—No
14 money damages, fees, or costs may be awarded
15 in the administrative review process, and no
16 court shall have jurisdiction to award any dam-
17 ages, fees, or costs relating to such administra-
18 tive review under the Equal Access to Justice
19 Act or any other law.

20 “(8) JUDICIAL REVIEW.—

21 “(A) EXCLUSIVE PROCEDURE.—Notwith-
22 standing any other provision of law (statutory
23 or nonstatutory) including sections 1361 and
24 1651 of title 28, no court shall have jurisdiction
25 to consider any claim against the United States,

1 or any of its agencies, officers, or employees,
2 challenging or otherwise relating to a final non-
3 confirmation notice or to the EEVS, except as
4 specifically provided by this paragraph. Judicial
5 review of a final nonconfirmation notice is gov-
6 erned only by chapter 158 of title 28, United
7 States Code, except as provided below.

8 “(B) REQUIREMENTS FOR REVIEW OF A
9 FINAL NONCONFIRMATION NOTICE.—With re-
10 spect to review of a final nonconfirmation notice
11 under subsection (a), the following requirements
12 apply:

13 “(i) DEADLINE.—The petition for re-
14 view must be filed no later than 30 days
15 after the date of the completion of the ad-
16 ministrative appeal.

17 “(ii) VENUE AND FORMS.—The peti-
18 tion for review shall be filed with the
19 United States Court of Appeals for the ju-
20 dicial circuit wherein the petitioner resided
21 when the final nonconfirmation notice was
22 issued. The record and briefs do not have
23 to be printed. The court of appeals shall
24 review the proceeding on a typewritten
25 record and on typewritten briefs.

1 “(iii) SERVICE.—The respondent is ei-
2 ther the Secretary or the Commissioner of
3 Social Security, but not both, depending
4 upon who issued (or affirmed) the final
5 nonconfirmation notice. In addition to
6 serving the respondent, the petitioner must
7 also serve the Attorney General.

8 “(iv) PETITIONER’S BRIEF.—The pe-
9 titioner shall serve and file a brief in con-
10 nection with a petition for judicial review
11 not later than 40 days after the date on
12 which the administrative record is avail-
13 able, and may serve and file a reply brief
14 not later than 14 days after service of the
15 brief of the respondent, and the court may
16 not extend these deadlines, except for good
17 cause shown. If a petitioner fails to file a
18 brief within the time provided in this para-
19 graph, the court shall dismiss the appeal
20 unless a manifest injustice would result.
21 The court of appeals may set an expedited
22 briefing schedule.

23 “(v) SCOPE AND STANDARD FOR RE-
24 VIEW.—The court of appeals shall decide
25 the petition only on the administrative

1 record on which the final nonconfirmation
2 order is based. The burden shall be on the
3 petitioner to show that the final noncon-
4 firmation decision was arbitrary, capri-
5 cious, not supported by substantial evi-
6 dence, or otherwise not in accordance with
7 law. Administrative findings of fact are
8 conclusive unless any reasonable adjudi-
9 cator would be compelled to conclude to
10 the contrary.

11 “(vi) STAY.—The court of appeals
12 shall stay the final nonconfirmation notice
13 pending its decision on the petition for re-
14 view unless the court determines that the
15 petition for review is frivolous, unlikely to
16 succeed on the merits, or filed for purposes
17 of delay.

18 “(C) EXHAUSTION OF ADMINISTRATIVE
19 REMEDIES.—A court may review a final non-
20 confirmation order only if—

21 “(i) the petitioner has exhausted all
22 administrative remedies available to the
23 alien as of right; and

24 “(ii) another court has not decided
25 the validity of the order, unless the review-

1 ing court finds that the petition presents
2 grounds that could not have been pre-
3 sented in the prior judicial proceeding or
4 that the remedy provided by the prior pro-
5 ceeding was inadequate or ineffective to
6 test the validity of the order.

7 “(D) LIMIT ON INJUNCTIVE RELIEF.—Re-
8 gardless of the nature of the action or claim or
9 of the identity of the party or parties bringing
10 the action, no court (other than the Supreme
11 Court) shall have jurisdiction or authority to
12 enjoin or restrain the operation of the provi-
13 sions in this section, other than with respect to
14 the application of such provisions to an indi-
15 vidual petitioner.

16 “(9) MANAGEMENT OF EMPLOYMENT ELIGI-
17 BILITY VERIFICATION SYSTEM.—

18 “(A) IN GENERAL.—The Secretary is au-
19 thorized to establish, manage, and modify an
20 EEVS that shall—

21 “(i) respond to inquiries made by par-
22 ticipating employers at any time through
23 the Internet concerning an individual’s
24 identity and whether the individual is au-
25 thorized to be employed;

1 “(ii) maintain records of the inquiries
2 that were made, of confirmations provided
3 (or not provided), and of the codes pro-
4 vided to employers as evidence of their
5 compliance with their obligations under the
6 EEVS; and

7 “(iii) provide information to, and re-
8 quest action by, employers and individuals
9 using the system, including notifying em-
10 ployers of the expiration or other relevant
11 change in an employee’s employment au-
12 thorization, and directing an employer to
13 convey to the employee a request to con-
14 tact the appropriate Federal or State agen-
15 cy.

16 “(B) DESIGN AND OPERATION OF SYS-
17 TEM.—The EEVS shall be designed and oper-
18 ated—

19 “(i) to maximize its reliability and
20 ease of use by employers consistent with
21 insulating and protecting the privacy and
22 security of the underlying information;

23 “(ii) to respond accurately to all in-
24 quiries made by employers on whether in-
25 dividuals are authorized to be employed

1 and to register any times when the system
2 is unable to receive inquiries;

3 “(iii) to maintain appropriate admin-
4 istrative, technical, and physical safeguards
5 to prevent unauthorized disclosure of per-
6 sonal information;

7 “(iv) to allow for auditing use of the
8 system to detect fraud and identify theft,
9 and to preserve the security of the infor-
10 mation in all of the system, including—

11 “(I) developing and using algo-
12 rithms to detect potential identity
13 theft, such as multiple uses of the
14 same identifying information or docu-
15 ments;

16 “(II) developing and using algo-
17 rithms to detect misuse of the system
18 by employers and employees;

19 “(III) developing capabilities to
20 detect anomalies in the use of the sys-
21 tem that may indicate potential fraud
22 or misuse of the system; and

23 “(IV) auditing documents and in-
24 formation submitted by potential em-
25 ployees to employers, including au-

1 thority to conduct interviews with em-
2 ployers and employees;

3 “(v) to confirm identity and work au-
4 thorization through verification of records
5 maintained by the Secretary, other Federal
6 departments, States, the Commonwealth of
7 the Northern Mariana Islands, or an out-
8 lying possession of the United States, as
9 determined necessary by the Secretary, in-
10 cluding—

11 “(I) records maintained by the
12 Social Security Administration as
13 specified in subparagraph (D);

14 “(II) birth and death records
15 maintained by vital statistics agencies
16 of any State or other United States
17 jurisdiction;

18 “(III) passport and visa records
19 (including photographs) maintained
20 by the United States Department of
21 State; and

22 “(IV) State driver’s license or
23 identity card information (including
24 photographs) maintained by State de-
25 partment of motor vehicles; and

1 “(vi) to confirm electronically the
2 issuance of the employment authorization
3 or identity document and to display the
4 digital photograph that the issuer placed
5 on the document so that the employer can
6 compare the photograph displayed to the
7 photograph on the document presented by
8 the employee. If in exceptional cases a pho-
9 tograph is not available from the issuer,
10 the Secretary shall specify a temporary al-
11 ternative procedure for confirming the au-
12 thenticity of the document.

13 “(C) The Secretary is authorized, with no-
14 tice to the public provided in the Federal Reg-
15 ister, to issue regulations concerning oper-
16 ational and technical aspects of the EEVS and
17 the efficiency, accuracy, and security of the
18 EEVS.

19 “(D) ACCESS TO INFORMATION.—

20 “(i) Notwithstanding any other provi-
21 sion of law, the Secretary shall have access
22 to relevant records described at paragraph
23 (9)(B)(v), for the purposes of preventing
24 identity theft and fraud in the use of the
25 EEVS and enforcing the provisions of this

1 section governing employment verification.
2 A State or other non-Federal jurisdiction
3 that does not provide such access shall not
4 be eligible for any grant or other program
5 of financial assistance administered by the
6 Secretary.

7 “(ii) The Secretary, in consultation
8 with the Commissioner of Social Security
9 and other appropriate Federal and State
10 agencies, shall develop policies and proce-
11 dures to ensure protection of the privacy
12 and security of personally identifiable in-
13 formation and identifiers contained in the
14 records accessed pursuant to this para-
15 graph and paragraph (d)(5)(E)(i). The
16 Secretary, in consultation with the Com-
17 missioner and other appropriate Federal
18 and State agencies, shall develop and de-
19 ploy appropriate privacy and security
20 training for the Federal and State employ-
21 ees accessing the records pursuant to this
22 paragraph and paragraph (d)(5)(E)(i).

23 “(iii) The Chief Privacy Officer of the
24 Department of Homeland Security shall
25 conduct regular privacy audits of the poli-

1 cies and procedures established under
2 paragraph (9)(D)(ii), including any collec-
3 tion, use, dissemination, and maintenance
4 of personally identifiable information and
5 any associated information technology sys-
6 tems, as well as scope of requests for this
7 information. The Chief Privacy Officer
8 shall review the results of the audits and
9 recommend to the Secretary and the Pri-
10 vacy and Civil Liberties Oversight Board
11 any changes necessary to improve the pri-
12 vacy protections of the program.

13 “(E) RESPONSIBILITIES OF THE SEC-
14 RETARY.—

15 “(i) As part of the EEVS, the Sec-
16 retary shall establish a reliable, secure
17 method, which, operating through the
18 EEVS and within the time periods speci-
19 fied, compares the name, alien identifica-
20 tion or authorization number, or other rel-
21 evant information provided in an inquiry
22 against such information maintained or
23 accessed by the Secretary in order to con-
24 firm (or not confirm) the validity of the in-
25 formation provided, the correspondence of

1 the name and number, whether the alien is
2 authorized to be employed in the United
3 States (or, to the extent that the Secretary
4 determines to be feasible and appropriate,
5 whether the Secretary's records verify
6 United States citizenship), and such other
7 information as the Secretary may pre-
8 scribe.

9 “(ii) As part of the EEVS, the Sec-
10 retary shall establish a reliable, secure
11 method, which, operating through the
12 EEVS, displays the digital photograph de-
13 scribed in subsection (d)(9)(B)(vi).

14 “(iii) The Secretary shall have author-
15 ity to prescribe when a confirmation, non-
16 confirmation, or further action notice shall
17 be issued.

18 “(iv) The Secretary shall perform reg-
19 ular audits under the EEVS, as described
20 in subsection (d)(9)(B)(iv) of this section
21 and shall utilize the information obtained
22 from such audits, as well as any informa-
23 tion obtained from the Commissioner of
24 Social Security pursuant to section 304 of
25 the Secure Borders, Economic Oppor-

1 tunity, and Immigration Reform Act of
2 2007, for the purposes of this title and of
3 immigration enforcement in general.

4 “(v) The Secretary shall make appro-
5 priate arrangements to allow employers
6 who are otherwise unable to access the
7 EEVS to use Federal Government facilities
8 or public facilities in order to utilize the
9 EEVS.

10 “(F) RESPONSIBILITIES OF THE SEC-
11 RETARY OF STATE.—As part of the EEVS, the
12 Secretary of State shall provide to the Sec-
13 retary access to passport and visa information
14 as needed to confirm that a passport or pass-
15 port card presented under subsection (c)(1)(B)
16 belongs to the subject of the EEVS check, or
17 that a passport or visa photograph matches an
18 individual.

19 “(G) UPDATING INFORMATION.—The
20 Commissioner of Social Security and the Secre-
21 taries of Homeland Security and State shall up-
22 date their information in a manner that pro-
23 motes maximum accuracy and shall provide a
24 process for the prompt correction of erroneous
25 information.

1 “(10) LIMITATION ON USE OF THE EMPLOY-
2 MENT ELIGIBILITY VERIFICATION SYSTEM.—Not-
3 withstanding any other provision of law, nothing in
4 this subsection shall be construed to permit or allow
5 any department, bureau, or other agency of the
6 United States Government to utilize any informa-
7 tion, database, or other records assembled under this
8 subsection for any purpose other than for the en-
9 forcement and administration of the immigration
10 laws, antiterrorism laws, or for enforcement of Fed-
11 eral criminal law related to the functions of the
12 EEVS, including prohibitions on forgery, fraud, and
13 identity theft.

14 “(11) UNAUTHORIZED USE OR DISCLOSURE OF
15 INFORMATION.—Any employee of the Department of
16 Homeland Security or another Federal or State
17 agency who knowingly uses or discloses the informa-
18 tion assembled under this subsection for a purpose
19 other than one authorized under this section shall
20 pay a civil penalty of \$5,000 to \$50,000 for each
21 violation.

22 “(12) CONFORMING AMENDMENT.—Sections
23 401 through 405 of the Illegal Immigration Reform
24 and Immigrant Responsibility Act (division C of
25 Public Law 104–208; 8 U.S.C. 1324a note) are re-

1 pealed, provided that nothing in this subsection shall
2 be construed to limit the authority of the Secretary
3 to allow or continue to allow the participation of
4 Basic Pilot employers in the EEVS established by
5 this subsection.

6 “(13) FUNDS.—In addition to any appropriated
7 funds, the Secretary is authorized to use funds pro-
8 vided in subsections (n) and (m) of section 286, for
9 the maintenance and operation of the EEVS. EEVS
10 shall be considered an immigration adjudication
11 service for purposes of subsections (n) and (m) of
12 sections 286.

13 “(14) PROHIBITION ON CONSIDERATION.—The
14 employer shall use the procedures for EEVS speci-
15 fied in this section for all employees without regard
16 to national origin or citizenship status.

17 “(e) COMPLIANCE.—

18 “(1) COMPLAINTS AND INVESTIGATIONS.—The
19 Secretary shall establish procedures—

20 “(A) for individuals and entities to file
21 complaints respecting potential violations of
22 subsection (a) or (g)(1);

23 “(B) for the investigation of those com-
24 plaints which the Secretary deems it appro-
25 priate to investigate; and

1 “(C) for the investigation of such other
2 violations of subsection (a) or (g)(1) as the Sec-
3 retary determines to be appropriate.

4 “(2) AUTHORITY IN INVESTIGATIONS.—In con-
5 ducting investigations and hearings under this sub-
6 section—

7 “(A) immigration officers shall have rea-
8 sonable access to examine evidence of any em-
9 ployer being investigated; and

10 “(B) immigration officers designated by
11 the Secretary may compel by subpoena the at-
12 tendance of witnesses and the production of evi-
13 dence at any designated place in an investiga-
14 tion or case under this subsection. In case of
15 contumacy or refusal to obey a subpoena law-
16 fully issued under this paragraph, the Secretary
17 may request that the Attorney General apply in
18 an appropriate district court of the United
19 States for an order requiring compliance with
20 such subpoena, and any failure to obey such
21 order may be punished by such court as a con-
22 tempt thereof. Failure to cooperate with such
23 subpoena shall be subject to further penalties,
24 including but not limited to further fines and
25 the voiding of any mitigation of penalties or ter-

1 mination of proceedings under subsection
2 (e)(3)(B).

3 “(3) COMPLIANCE PROCEDURES.—

4 “(A) PREPENALTY NOTICE.—If the Sec-
5 retary has reasonable cause to believe that
6 there has been a civil violation of this section or
7 the requirements of this section, including but
8 not limited to subsections (b), (c), (d), and (k),
9 and determines that further proceedings are
10 warranted, the Secretary shall issue to the em-
11 ployer concerned a written notice of the Depart-
12 ment’s intention to issue a claim for a monetary
13 or other penalty. Such prepenalty notice shall—

14 “(i) describe the violation;

15 “(ii) specify the laws and regulations
16 allegedly violated;

17 “(iii) disclose the material facts which
18 establish the alleged violation; and

19 “(iv) inform such employer that he or
20 she shall have a reasonable opportunity to
21 make representations as to why a claim for
22 a monetary or other penalty should not be
23 imposed.

24 “(B) REMISSION OR MITIGATION OF PEN-
25 ALTIES.—

1 participation in, or agreement to partici-
2 pate in, the EEVS, if not otherwise re-
3 quired.

4 “(ii) APPLICATION.—This subpara-
5 graph shall not apply to an employer that
6 has or is engaged in a pattern or practice
7 of violations of subsection (a)(1)(A),
8 (a)(1)(B), or (a)(2) or of any other re-
9 quirements of this section.

10 “(C) PENALTY CLAIM.—After considering
11 evidence and representations, if any, offered by
12 the employer pursuant to subparagraph (B),
13 the Secretary shall determine whether there was
14 a violation and promptly issue a written final
15 determination setting forth the findings of fact
16 and conclusions of law on which the determina-
17 tion is based. If the Secretary determines that
18 there was a violation, the Secretary shall issue
19 the final determination with a written penalty
20 claim. The penalty claim shall specify all
21 charges in the information provided under
22 clauses (i) through (iii) of subparagraph (A)
23 and any mitigation or remission of the penalty
24 that the Secretary deems appropriate.

25 “(4) CIVIL PENALTIES.—

1 “(A) Hiring or continuing to employ unau-
2 thorized aliens. Any employer that violates any
3 provision of subsection (a)(1)(A) or (a)(2)
4 shall—

5 “(i) pay a civil penalty of \$5,000 for
6 each unauthorized alien with respect to
7 which each violation of either subsection
8 (a)(1)(A) or (a)(2) occurred;

9 “(ii) if an employer has previously
10 been fined under subsection (e)(4)(A), pay
11 a civil penalty of \$10,000 for each unau-
12 thorized alien with respect to which a vio-
13 lation of either subsection (a)(1)(A) or
14 (a)(2) occurred;

15 “(iii) if an employer has previously
16 been fined more than once under sub-
17 section (e)(4), pay a civil penalty of
18 \$25,000 for each unauthorized alien with
19 respect to which a violation of either sub-
20 section has occurred. This penalty shall
21 apply, in addition to any penalties pre-
22 viously assessed, to employers who fail to
23 comply with a previously issued and final
24 order under this section;

1 “(iv) if an employer has previously
2 been fined more than twice under sub-
3 section (e)(4)(A), pay a civil penalty of
4 \$75,000 for each alien with respect to
5 which a violation of either subsection
6 (a)(1) or (a)(2) occurred; and

7 “(v) in addition to any penalties pre-
8 viously assessed, an employer who fails to
9 comply with a previously issued and final
10 order under this section shall be fined
11 \$75,000 for each violation.

12 “(B) RECORDKEEPING OR VERIFICATION
13 PRACTICES.—Any employer that violates or fails
14 to comply with any requirement of subsection
15 (b), (c), and (d), shall pay a civil penalty as fol-
16 lows:

17 “(i) Pay a civil penalty of \$1,000 for
18 each violation.

19 “(ii) If an employer has previously
20 been fined under subsection (e)(4)(B), pay
21 a civil penalty of \$2,000 for each violation.

22 “(iii) If an employer has previously
23 been fined more than once under sub-
24 section (e)(4), pay a civil penalty of \$5,000
25 for each violation. This penalty shall apply,

1 in addition to any penalties previously as-
2 sessed, to employers who fail to comply
3 with a previously issued and final order
4 under this section.

5 “(iv) If an employer has previously
6 been fined more than twice under sub-
7 section (e)(4)(B), pay a civil penalty of
8 \$15,000 for each violation.

9 “(v) In addition to any penalties pre-
10 viously assessed, an employer who fails to
11 comply with a previously issued and final
12 order under this section shall be fined
13 \$15,000 for each violation.

14 “(C) OTHER PENALTIES.—The Secretary
15 may impose additional penalties for violations,
16 including cease and desist orders, specially de-
17 signed compliance plans to prevent further vio-
18 lations, suspended fines to take effect in the
19 event of a further violation, and in appropriate
20 cases, the remedy provided by subsection (g)(2).
21 All penalties in this section may be adjusted
22 every 4 years to account for inflation as pro-
23 vided by law.

24 “(D) The Secretary is authorized to reduce
25 or mitigate penalties imposed upon employers,

1 based upon factors including, but not limited to,
2 the employer's hiring volume, compliance his-
3 tory, good faith implementation of a compliance
4 program, participation in a temporary worker
5 program, and voluntary disclosure of violations
6 of this subsection to the Secretary.

7 “(5) ORDER OF INTERNAL REVIEW AND CER-
8 TIFICATION OF COMPLIANCE.—If the Secretary has
9 reasonable cause to believe that an employer has
10 failed to comply with this section, the Secretary is
11 authorized, at any time, to require that the employer
12 certify that it is in compliance with this section, or
13 has instituted a program to come into compliance.
14 Within 60 days of receiving a notice from the Sec-
15 retary requiring such a certification, the employer's
16 chief executive officer or similar official with respon-
17 sibility for, and authority to bind the company on,
18 all hiring and immigration compliance notices shall
19 certify under penalty of perjury that the employer is
20 in conformance with the requirements of paragraphs
21 (1) through (4) of subsection (c), pertaining to docu-
22 ment verification requirements, and with subsection
23 (d), pertaining to the EEVS (once that system is
24 implemented according to the requirements of
25 (d)(1)), and with any additional requirements that

1 the Secretary may promulgate by regulation pursu-
2 ant to subsections (c), (d), and (k), or that the em-
3 ployer has instituted a program to come into compli-
4 ance with these requirements. At the request of the
5 employer, the Secretary may extend the 60-day
6 deadline for good cause. The Secretary is authorized
7 to publish in the Federal Register standards or
8 methods for such certification, require specific rec-
9 ordkeeping practices with respect to such certifi-
10 cations, and audit the records thereof at any time.
11 This authority shall not be construed to diminish or
12 qualify any other penalty provided by this section.

13 “(6) JUDICIAL REVIEW.—

14 “(A) Notwithstanding any other provision
15 of law (statutory or nonstatutory) including sec-
16 tions 1361 and 1651 of title 28, United States
17 Code, no court shall have jurisdiction to con-
18 sider a final determination or penalty claim
19 issued under subparagraph (3)(C), except as
20 specifically provided by this paragraph. Judicial
21 review of a final determination under subsection
22 (e)(4) is governed only by chapter 158 of such
23 title 28, except as specifically provided below.
24 The filing of a petition as provided in this para-
25 graph shall stay the Secretary’s determination

1 until entry of judgment by the court. The Sec-
2 retary is authorized to require that the peti-
3 tioner provide, prior to filing for review, secu-
4 rity for payment of fines and penalties through
5 bond or other guarantee of payment acceptable
6 to the Secretary.

7 “(B) REQUIREMENTS FOR REVIEW OF A
8 FINAL DETERMINATION.—With respect to judi-
9 cial review of a final determination or penalty
10 claim issued under subparagraph (3)(C), the
11 following requirements apply:

12 “(i) DEADLINE.—The petition for re-
13 view must be filed no later than 30 days
14 after the date of the final determination or
15 penalty claim issued under subparagraph
16 (3)(C).

17 “(ii) VENUE AND FORMS.—The peti-
18 tion for review shall be filed with the court
19 of appeals for the judicial circuit wherein
20 the employer resided when the final deter-
21 mination or penalty claim was issued. The
22 record and briefs do not have to be print-
23 ed. The court of appeals shall review the
24 proceeding on a typewritten record and on
25 typewritten briefs.

1 “(iii) SERVICE.—The respondent is ei-
2 ther the Secretary or the Commissioner of
3 Social Security, but not both, depending
4 upon who issued (or affirmed) the final
5 nonconfirmation notice. In addition to
6 serving the respondent, the petitioner must
7 also serve the Attorney General.

8 “(iv) PETITIONER’S BRIEF.—The pe-
9 titioner shall serve and file a brief in con-
10 nection with a petition for judicial review
11 not later than 40 days after the date on
12 which the administrative record is avail-
13 able, and may serve and file a reply brief
14 not later than 14 days after service of the
15 brief of the respondent, and the court may
16 not extend these deadlines, except for good
17 cause shown. If a petitioner fails to file a
18 brief within the time provided in this para-
19 graph, the court shall dismiss the appeal
20 unless a manifest injustice would result.

21 “(v) SCOPE AND STANDARD FOR RE-
22 VIEW.—The court of appeals shall decide
23 the petition only on the administrative
24 record on which the final determination is
25 based. The burden shall be on the peti-

1 tioner to show that the final determination
2 was arbitrary, capricious, not supported by
3 substantial evidence, or otherwise not in
4 accordance with law. Administrative find-
5 ings of fact are conclusive unless any rea-
6 sonable adjudicator would be compelled to
7 conclude to the contrary.

8 “(C) EXHAUSTION OF ADMINISTRATIVE
9 REMEDIES.—A court may review a final deter-
10 mination under paragraph (3)(C) only if—

11 “(i) the petitioner has exhausted all
12 administrative remedies available to the pe-
13 titioner as of right; and

14 “(ii) another court has not decided
15 the validity of the order, unless the review-
16 ing court finds that the petition presents
17 grounds that could not have been pre-
18 sented in the prior judicial proceeding or
19 that the remedy provided by the prior pro-
20 ceeding was inadequate or ineffective to
21 test the validity of the order.

22 “(D) LIMIT ON INJUNCTIVE RELIEF.—Re-
23 gardless of the nature of the action or claim or
24 of the identity of the party or parties bringing
25 the action, no court (other than the Supreme

1 Court) shall have jurisdiction or authority to
2 enjoin or restrain the operation of the provi-
3 sions in this section, other than with respect to
4 the application of such provisions to an indi-
5 vidual petitioner.

6 “(7) ENFORCEMENT OF ORDERS.—If an em-
7 ployer fails to comply with a final determination
8 issued against that employer under this subsection,
9 and the final determination is not subject to review
10 as provided in paragraph (6), the Attorney General
11 may file suit to enforce compliance with the final de-
12 termination in any appropriate district court of the
13 United States. In any such suit, the validity and ap-
14 propriateness of the final determination shall not be
15 subject to review.

16 “(8) LIENS.—

17 “(A) CREATION OF LIEN.—If any employer
18 liable for a fee or penalty under this section ne-
19 glects or refuses to pay such liability and fails
20 to file a petition for review (if applicable) as
21 provided in paragraph (6) of this subsection,
22 such liability is a lien in favor of the United
23 States on all property and rights to property of
24 such person as if the liability of such person
25 were a liability for a tax assessed under the In-

1 ternal Revenue Code of 1986. If a petition for
2 review is filed as provided in paragraph (6) of
3 this subsection, the lien (if any) shall arise
4 upon the entry of a final judgment by the court.
5 The lien continues for 20 years or until the li-
6 ability is satisfied, remitted, set aside, or is ter-
7 minated.

8 “(B) EFFECT OF FILING NOTICE OF
9 LIEN.—Upon filing of a notice of lien in the
10 manner in which a notice of tax lien would be
11 filed under section 6323(f)(1) and (2) of the In-
12 ternal Revenue Code of 1986, the lien shall be
13 valid against any purchaser, holder of a security
14 interest, mechanic’s lien, or judgment lien cred-
15 itor, except with respect to properties or trans-
16 actions specified in subsection (b), (c), or (d) of
17 section 6323 of the Internal Revenue Code of
18 1986 for which a notice of tax lien properly
19 filed on the same date would not be valid. The
20 notice of lien shall be considered a notice of lien
21 for taxes payable to the United States for the
22 purpose of any State or local law providing for
23 the filing of a notice of a tax lien. A notice of
24 lien that is registered, recorded, docketed, or in-
25 dexed in accordance with the rules and require-

1 ments relating to judgments of the courts of the
2 State where the notice of lien is registered, re-
3 corded, docketed, or indexed shall be considered
4 for all purposes as the filing prescribed by this
5 section. The provisions of section 3201(e) of
6 chapter 176 of title 28, United States Code,
7 shall apply to liens filed as prescribed by this
8 section.

9 “(C) ENFORCEMENT OF A LIEN.—A lien
10 obtained through this process shall be consid-
11 ered a debt as defined by section 3002 of title
12 28, United States Code, and enforceable pursu-
13 ant to the Federal Debt Collection Procedures
14 Act.

15 “(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR
16 PATTERN OR PRACTICE VIOLATIONS.—

17 “(1) CRIMINAL PENALTY.—Any employer which
18 engages in a pattern or practice of knowing viola-
19 tions of paragraph (1)(A) or (2) of subsection (a)
20 shall be fined not more than \$75,000 for each unau-
21 thorized alien with respect to whom such a violation
22 occurs, imprisoned for not more than 6 months for
23 the entire pattern or practice, or both.

24 “(2) ENJOINING OF PATTERN OR PRACTICE
25 VIOLATIONS.—Whenever the Secretary or the Attor-

1 ney General has reasonable cause to believe that an
2 employer is engaged in a pattern or practice of em-
3 ployment, recruitment, or referral in violation of
4 paragraph (1)(A) or (2) of subsection (a), the Attor-
5 ney General may bring a civil action in the appro-
6 priate district court of the United States requesting
7 such relief, including a permanent or temporary in-
8 junction, restraining order, or other order against
9 the employer, as the Secretary deems necessary.

10 “(g) PROHIBITION OF INDEMNITY BONDS.—

11 “(1) PROHIBITION.—It is unlawful for an em-
12 ployer, in the hiring, recruiting, or referring for em-
13 ployment of any individual, to require the individual
14 to post a bond or security, to pay or agree to pay
15 an amount, or otherwise to provide a financial guar-
16 antee or indemnity, against any potential liability
17 arising under this section relating to such hiring, re-
18 cruiting, or referring of the individual.

19 “(2) CIVIL PENALTY.—Any employer which is
20 determined, after notice and opportunity for mitiga-
21 tion of the monetary penalty under subsection (e), to
22 have violated paragraph (1) of this subsection shall
23 be subject to a civil penalty of \$10,000 for each vio-
24 lation and to an administrative order requiring the
25 return of any amounts received in violation of such

1 paragraph to the employee or, if the employee can-
2 not be located, to the general fund of the Treasury.

3 “(h) GOVERNMENT CONTRACTS.—

4 “(1) EMPLOYERS.—Whenever an employer who
5 does not hold Federal contracts, grants, or coopera-
6 tive agreements is determined by the Secretary to be
7 a repeat violator of this section or is convicted of a
8 crime under this section, the employer shall be sub-
9 ject to debarment from the receipt of Federal con-
10 tracts, grants, or cooperative agreements for a pe-
11 riod of up to 2 years in accordance with the proce-
12 dures and standards prescribed by the Federal Ac-
13 quisition Regulations. The Secretary or the Attorney
14 General shall advise the Administrator of General
15 Services of any such debarment, and the Adminis-
16 trator of General Services shall list the employer on
17 the List of Parties Excluded from Federal Procure-
18 ment and Nonprocurement Programs for the period
19 of the debarment. The Administrator of General
20 Services, in consultation with the Secretary and At-
21 torney General, may waive operation of this sub-
22 section or may limit the duration or scope of the de-
23 barment.

24 “(2) CONTRACTORS AND RECIPIENTS.—When-
25 ever an employer who holds Federal contracts,

1 grants, or cooperative agreements is determined by
2 the Secretary to be a repeat violator of this section
3 or is convicted of a crime under this section, the em-
4 ployer shall be subject to debarment from the receipt
5 of Federal contracts, grants, or cooperative agree-
6 ments for a period of up to 2 years in accordance
7 with the procedures and standards prescribed by the
8 Federal Acquisition Regulations. Prior to debarring
9 the employer, the Secretary, in cooperation with the
10 Administrator of General Services, shall advise all
11 agencies holding contracts, grants, or cooperative
12 agreements with the employer of the proceedings to
13 debar the employer from the receipt of new Federal
14 contracts, grants, or cooperative agreements for a
15 period of up to 2 years. After consideration of the
16 views of agencies holding contracts, grants, or coop-
17 erative agreements with the employer, the Secretary
18 may, in lieu of proceedings to debar the employer
19 from the receipt of new Federal contracts, grants, or
20 cooperative agreements for a period of up to 2 years,
21 waive operation of this subsection, limit the duration
22 or scope of the proposed debarment, or may refer to
23 an appropriate lead agency the decision of whether
24 to seek debarment of the employer, for what dura-
25 tion, and under what scope in accordance with the

1 procedures and standards prescribed by the Federal
2 Acquisition Regulation. However, any proposed de-
3 barment predicated on an administrative determina-
4 tion of liability for civil penalty by the Secretary or
5 the Attorney General shall not be reviewable in any
6 debarment proceeding.

7 “(3) Indictments for violations of this section or
8 adequate evidence of actions that could form the
9 basis for debarment under this subsection shall be
10 considered a cause for suspension under the proce-
11 dures and standards for suspension prescribed by
12 the Federal Acquisition Regulation.

13 “(4) Inadvertent violations of recordkeeping or
14 verification requirements, in the absence of any
15 other violations of this section, shall not be a basis
16 for determining that an employer is a repeat violator
17 for purposes of this subsection.

18 “(i) MISCELLANEOUS PROVISIONS.—

19 “(1) DOCUMENTATION.—In providing docu-
20 mentation or endorsement of authorization of aliens
21 (other than aliens lawfully admitted for permanent
22 residence) authorized to be employed in the United
23 States, the Secretary shall provide that any limita-
24 tions with respect to the period or type of employ-

1 ment or employer shall be conspicuously stated on
2 the documentation or endorsement.

3 “(2) PREEMPTION.—The provisions of this sec-
4 tion preempt any State or local law that requires the
5 use of the EEVS in a fashion that conflicts with
6 Federal policies, procedures, or timetables, or that
7 imposes civil or criminal sanctions (other than
8 through licensing and similar laws) upon those who
9 employ, or recruit or refer for a fee for employment,
10 unauthorized aliens.

11 “(j) DEPOSIT OF AMOUNTS RECEIVED.—Except as
12 otherwise specified, civil penalties collected under this sec-
13 tion shall be deposited by the Secretary into the general
14 fund of the Treasury.

15 “(k) NO MATCH NOTICE.—For the purpose of this
16 subsection, a no match notice is written notice from the
17 Social Security Administration (SSA) to an employer re-
18 porting earnings on a Form W-2 that employees’ names
19 or corresponding social security account numbers fail to
20 match SSA records. The Secretary, in consultation with
21 the Commissioner of the Social Security Administration,
22 is authorized to establish by regulation requirements for
23 verifying the identity and work authorization of employees
24 who are the subject of no-match notices. The Secretary
25 shall establish by regulation a reasonable period during

1 which an employer must allow an employee who is subject
2 to a no-match notice to resolve the no match notice with
3 no adverse employment consequences to the employee. The
4 Secretary may also establish penalties for noncompliance
5 by regulation.

6 “(1) CHALLENGES TO VALIDITY.—

7 “(1) IN GENERAL.—Any right, benefit, or claim
8 not otherwise waived or limited pursuant to this sec-
9 tion is available in an action instituted in the United
10 States District Court for the District of Columbia,
11 but shall be limited to determinations of—

12 “(A) whether this section, or any regula-
13 tion issued to implement this section, violates
14 the Constitution of the United States; or

15 “(B) whether such a regulation issued by
16 or under the authority of the Secretary to im-
17 plement this section, is contrary to applicable
18 provisions of this section or was issued in viola-
19 tion of chapter 5 of title 5, United States Code.

20 “(2) DEADLINES FOR BRINGING ACTIONS.—

21 Any action instituted under this paragraph must be
22 filed no later than 90 days after the date the chal-
23 lenged section or regulation described in clause (i) or
24 (ii) of subparagraph (A) is first implemented.

1 “(3) CLASS ACTIONS.—The court may not cer-
2 tify a class under Rule 23 of the Federal Rules of
3 Civil Procedure in any action under this section.

4 “(4) RULE OF CONSTRUCTION.—In determining
5 whether the Secretary’s interpretation regarding any
6 provision of this section is contrary to law, a court
7 shall accord to such interpretation the maximum
8 deference permissible under the Constitution.

9 “(5) NO ATTORNEYS’ FEES.—Notwithstanding
10 any other provision of law, the court shall not award
11 fees or other expenses to any person or entity based
12 upon any action relating to this title brought pursu-
13 ant to this subsection.”.

14 **SEC. 303. EFFECTIVE DATE.**

15 This title shall become effective on the date of the
16 enactment of this Act.

17 **SEC. 304. DISCLOSURE OF CERTAIN TAXPAYER INFORMA-**
18 **TION TO ASSIST IN IMMIGRATION ENFORCE-**
19 **MENT.**

20 (a) **DISCLOSURE OF CERTAIN TAXPAYER IDENTITY**
21 **INFORMATION.—**

22 (1) **IN GENERAL.—**Section 6103(l) of the Inter-
23 nal Revenue Code of 1986 is amended by adding at
24 the end the following new paragraph:

1 match the records maintained by the
2 Commissioner of Social Security; or

3 “(II) 2 (or any greater number
4 the Secretary shall request) names,
5 and addresses of employees (within
6 the meaning of such section), with the
7 same taxpayer identifying number,
8 and the taxpayer identity of each such
9 employee; and

10 “(ii) the taxpayer identity of each per-
11 son who has filed an information return re-
12 quired by reason of section 6051 after cal-
13 endar year 2005 and before the date speci-
14 fied in subparagraph (D) which contains
15 the taxpayer identifying number (assigned
16 under section 6109) of an employee (within
17 the meaning of section 6051)—

18 “(I) who is under the age of 14
19 (or any lesser age the Secretary shall
20 request), according to the records
21 maintained by the Commissioner of
22 Social Security;

23 “(II) whose date of death, ac-
24 cording to the records so maintained,
25 occurred in a calendar year preceding

1 the calendar year for which the infor-
2 mation return was filed;

3 “(III) whose taxpayer identifying
4 number is contained in more than 1
5 (or any greater number the Secretary
6 shall request) information return filed
7 in such calendar year; or

8 “(IV) who is not authorized to
9 work in the United States, according
10 to the records maintained by the
11 Commissioner of Social Security, and
12 the taxpayer identity and date of birth
13 of each such employee.

14 “(B) REIMBURSEMENT.—The Secretary
15 shall transfer to the Commissioner the funds
16 necessary to cover the additional cost directly
17 incurred by the Commissioner in carrying out
18 the searches or manipulations requested by the
19 Secretary.”.

20 (2) COMPLIANCE BY DHS CONTRACTORS WITH
21 CONFIDENTIALITY SAFEGUARDS.—

22 (A) IN GENERAL.—Section 6103(p) of
23 such Code is amended by adding at the end the
24 following new paragraph:

1 “(9) DISCLOSURE TO DHS CONTRACTORS.—
2 Notwithstanding any other provision of this section,
3 no return or return information shall be disclosed to
4 any contractor of the Department of Homeland Se-
5 curity unless such Department, to the satisfaction of
6 the Secretary—

7 “(A) has requirements in effect which re-
8 quire each such contractor which would have
9 access to returns or return information to pro-
10 vide safeguards (within the meaning of para-
11 graph (4)) to protect the confidentiality of such
12 returns or return information;

13 “(B) agrees to conduct an on-site review
14 every 3 years (midpoint review in the case of
15 contracts or agreements of less than 3 years in
16 duration) of each contractor to determine com-
17 pliance with such requirements;

18 “(C) submits the findings of the most re-
19 cent review conducted under subparagraph (B)
20 to the Secretary as part of the report required
21 by paragraph (4)(E); and

22 “(D) certifies to the Secretary for the most
23 recent annual period that such contractor is in
24 compliance with all such requirements.

1 The certification required by subparagraph (D) shall
2 include the name and address of each contractor, a
3 description of the contract or agreement with such
4 contractor, and the duration of such contract or
5 agreement.”.

6 (3) CONFORMING AMENDMENTS.—

7 (A) Section 6103(a)(3) of such Code is
8 amended by striking “or (20)” and inserting
9 “(20), or (21)”.

10 (B) Section 6103(p)(3)(A) of such Code is
11 amended by adding at the end the following
12 new sentence: “The Commissioner of Social Se-
13 curity shall provide to the Secretary such infor-
14 mation as the Secretary may require in carrying
15 out this paragraph with respect to return infor-
16 mation inspected or disclosed under the author-
17 ity of subsection (l)(21).”.

18 (C) Section 6103(p)(4) of such Code is
19 amended—

20 (i) by striking “or (17)” both places it
21 appears and inserting “(17), or (21)”; and

22 (ii) by striking “or (20)” each place it
23 appears and inserting “(20), or (21)”.

1 (D) Section 6103(p)(8)(B) of such Code is
2 amended by inserting “or paragraph (9)” after
3 “subparagraph (A)”.

4 (E) Section 7213(a)(2) of such Code is
5 amended by striking “or (20)” and inserting
6 “(20), or (21)”.

7 (b) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to the Secretary such
9 sums as are necessary to carry out the amendments made
10 by this section.

11 (c) REPEAL OF REPORTING REQUIREMENTS.—

12 (1) REPORT ON EARNINGS OF ALIENS NOT AU-
13 THORIZED TO WORK.—Subsection (c) of section 290
14 of the Immigration and Nationality Act (8 U.S.C.
15 1360) is repealed.

16 (2) REPORT ON FRAUDULENT USE OF SOCIAL
17 SECURITY ACCOUNT NUMBERS.—Subsection (b) of
18 section 414 of the Illegal Immigration Reform and
19 Immigrant Responsibility Act of 1996 (division C of
20 Public Law 104–208; 8 U.S.C. 1360 note) is re-
21 pealed.

22 (d) EFFECTIVE DATES.—

23 (1) IN GENERAL.—The amendments made by
24 subsection (a) shall apply to disclosures made after
25 the date of the enactment of this Act.

1 (2) CERTIFICATIONS.—The first certification
2 under section 6103(p)(9)(D) of the Internal Revenue
3 Code of 1986, as added by subsection (a)(2), shall
4 be made with respect to calendar year 2007.

5 (3) REPEALS.—The repeals made by subsection
6 (c) shall take effect on the date of the enactment of
7 this Act.

8 **SEC. 305. INCREASING SECURITY AND INTEGRITY OF SO-**
9 **CIAL SECURITY CARDS.**

10 (a) FRAUD-RESISTANT, TAMPER-RESISTANT AND
11 WEAR-RESISTANT, SOCIAL SECURITY CARDS.—

12 (1) ISSUANCE.—

13 (A) PRELIMINARY WORK.—Not later than
14 180 days after the date of enactment of this
15 title, the Commissioner of Social Security shall
16 begin work to administer and issue fraud-resist-
17 ant, tamper-resistant Social Security cards.

18 (B) COMPLETION.—Not later than 2 years
19 after the date of enactment of this title, the
20 Commissioner of Social Security shall only issue
21 fraud-resistant, tamper-resistant, and wear-re-
22 sistant Social Security cards.

23 (2) AMENDMENT.—Section 205(c)(2)(G) of the
24 Social Security Act (42 U.S.C. 405(c)(2)(G)) is
25 amended to read—

1 for requiring the issuance of the replace-
2 ment document is legitimate.”.

3 **SEC. 306. INCREASING SECURITY AND INTEGRITY OF IDEN-**
4 **TITY DOCUMENTS.**

5 (a) PURPOSE.—The Secretary, shall establish the
6 State Records Improvement Grant Program (referred to
7 in this section as the “Program”), under which the Sec-
8 retary may award grants to States for the purpose of ad-
9 vancing the purposes of this Act and of issuing or imple-
10 menting plans to issue driver’s license and identity cards
11 that can be used for purposes of verifying identity under
12 this title and that comply with the State license require-
13 ments in section 202 of the REAL ID Act of 2005 (divi-
14 sion B of Public Law 109–13; 49 U.S.C. 30301 note).

15 (b) ELIGIBILITY.—States that do not certify their in-
16 tent to comply with the REAL ID Act of 2005 and imple-
17 menting regulations or that do not submit a compliance
18 plan acceptable to the Secretary are not eligible for grants
19 under the Program. Driver’s license or identification cards
20 issued by States that do not comply with REAL ID may
21 not be used to verify identity under this title except under
22 conditions approved by the Secretary.

23 (c) GRANTS AND CONTRACTS AUTHORIZED.—

24 (1) IN GENERAL.—The Secretary is authorized
25 to award grants, subject to the availability of appro-

1 priations, to a State to provide assistance to such
2 State agency to meet the deadlines for the issuance
3 of a driver's license which meets the requirements of
4 section 202 of the REAL ID Act of 2005 (division
5 B of Public Law 109–13; 49 U.S.C. 30301 note).

6 (2) DURATION.—Grants may be awarded under
7 this subsection during fiscal years 2007 through
8 2011.

9 (3) COMPETITIVE BASIS.—The Secretary shall
10 give priority to States whose REAL ID implementa-
11 tion plan is compatible with the employment
12 verification systems, processes, and implementation
13 schedules set forth in section 302, as determined by
14 the Secretary. Minimum standards for compatibility
15 will include the ability of the State to promptly
16 verify the document and provide access to the digital
17 photograph displayed on the document.

18 (4) USE OF GRANT FUNDS.—Where the Sec-
19 retary determines that compliance with the REAL
20 ID Act of 2005 and with the requirements of the
21 employment verification system can best be met by
22 awarding grants or contracts to a State, a group of
23 States, a government agency, or a private entity, the
24 Secretary may utilize Program funds to award such
25 a grant, grants, contract, or contracts.

1 (5) IMPROVEMENT OF STATE RECORDS.—On an
2 expedited basis, the Secretary shall award grants or
3 contracts for the purpose of improving the accuracy
4 and electronic availability of States' records of
5 births, deaths, driver's licenses, and of other records
6 necessary for implementation of EEVS and as other-
7 wise necessary to advance the purposes of this Act.

8 (d) USE OF FUNDS.—Grants or contracts awarded
9 pursuant to the Program may be used to assist State com-
10 pliance with the requirements of the REAL ID Act of
11 2005 including—

- 12 (1) upgrade and maintain technology;
13 (2) obtain equipment;
14 (3) hire additional personnel;
15 (4) cover operational costs, including overtime;
16 and
17 (5) such other resources as are available to as-
18 sist that agency.

19 (e) APPLICATION.—

20 (1) IN GENERAL.—Each eligible State seeking a
21 grant under this section shall submit an application
22 to the Secretary at such time, in such manner, and
23 accompanied by such information as the Secretary
24 may reasonably require.

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

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

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

9 (f) CONDITIONS.—All grants under the Program
10 shall be conditioned on the recipient providing REAL ID
11 compliance certification and implementation plans accept-
12 able to the Secretary which include—

13 (1) adopting appropriate security measures to
14 protect against improper issuance of driver's licenses
15 and identity cards, tampering with electronic
16 issuance systems, and identity theft as the Secretary
17 may prescribe;

18 (2) ensuring introduction and maintenance of
19 such security features and other measures necessary
20 to make the documents issued by recipient resistant
21 to tampering, counterfeiting, and fraudulent use as
22 the Secretary may prescribe;

23 (3) ensuring implementation and maintenance
24 of such safeguards for the security of the informa-

1 tion contained on these documents as the Secretary
2 may prescribe;

3 (4) agreeing to adhere to the timetables and
4 procedures for issuing REAL ID driver's licenses
5 and identification cards as specified in section
6 274A(c)(1)(F) of the Immigration and Nationality
7 Act, as amended by section 301; and

8 (5) agreeing to implement the requirements of
9 this Act and any implementing regulations to the
10 satisfaction of the Secretary.

11 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
12 authorized to be appropriated \$300,000,000 for each of
13 fiscal years 2007 through 2011 to carry out the provisions
14 of this section.

15 (h) SUPPLEMENT NOT SUPPLANT.—Amounts appro-
16 priated for grants under this section shall be used to sup-
17 plement and not supplant other State and local public
18 funds obligated for the purposes provided under this title.

19 (i) ADDITIONAL USES.—Amounts authorized under
20 this section may also be used to assist in sharing of law
21 enforcement information between States and the Depart-
22 ment for purposes of implementing section 602(c), at the
23 discretion of the Secretary.

1 **SEC. 307. VOLUNTARY ADVANCED VERIFICATION PROGRAM**
2 **TO COMBAT IDENTITY THEFT.**

3 (a) VOLUNTARY ADVANCED VERIFICATION PRO-
4 GRAM.—The Secretary shall establish and make available
5 a voluntary program allowing employers to submit and
6 verify an employee's fingerprints for purposes of deter-
7 mining the identity and work authorization of the em-
8 ployee.

9 (1) IMPLEMENTATION DATE.—No later than 18
10 months after the date of the enactment of this Act,
11 the Secretary shall implement the voluntary ad-
12 vanced verification program and make it available to
13 employers willing to volunteer in the program.

14 (2) VOLUNTARY PARTICIPATION.—The finger-
15 print verification program is voluntary and employ-
16 ers are not required to participate in it.

17 (b) LIMITED RETENTION PERIOD FOR FINGER-
18 PRINTS.—

19 (1) The Secretary shall only maintain finger-
20 print records of a United States Citizen that were
21 submitted by an employer through the EEVS for 10
22 business days, upon which such records shall be
23 purged from any EEVS-related system unless the
24 fingerprints have been ordered to be retained for
25 purposes of a fraud or similar investigation by a

1 government agency with criminal or other investiga-
2 tive authority.

3 (2) EXCEPTION.—For purposes of preventing
4 identity theft or other harm, a United States citizen
5 employee may request in writing that such citizen’s
6 fingerprint records be retained for employee
7 verification purposes by the Secretary. In such in-
8 stances of written consent, the Secretary may retain
9 such fingerprint records until notified in writing by
10 the United States citizen of the withdrawal of such
11 citizen’s consent, at which time the Secretary must
12 purge such fingerprint records within 10 business
13 days unless the fingerprints have been ordered to be
14 retained for purposes of a fraud or similar investiga-
15 tion by a government agency with an independent
16 criminal or other investigative authority.

17 (c) LIMITED USE OF FINGERPRINTS SUBMITTED
18 FOR PROGRAM.—The Secretary and the employer may use
19 any fingerprints taken from the employee and transmitted
20 for querying the EEVS solely for the purposes of verifying
21 identity and employment eligibility during the employee
22 verification process. Such transmitted fingerprints may
23 not be used for any other purpose. This provision does
24 not alter any other provisions regarding the use of non-
25 fingerprint information in the EEVS.

1 in an inquiry against such information
2 maintained by the Commissioner in
3 order to confirm (or not confirm) the
4 validity of the information provided
5 regarding an individual whose identity
6 and employment eligibility must be
7 confirmed;

8 “(II) the correspondence of the
9 name, number, and any other identi-
10 fying information;

11 “(III) whether the name and
12 number belong to an individual who is
13 deceased;

14 “(IV) whether an individual is a
15 national of the United States (when
16 available); and

17 “(V) whether the individual has
18 presented a social security account
19 number that is not valid for employ-
20 ment.

21 The EEVS shall not disclose or release so-
22 cial security information to employers
23 through the confirmation system (other
24 than such confirmation or nonconfirma-
25 tion).

1 “(ii) SOCIAL SECURITY ADMINISTRA-
2 TION DATABASE IMPROVEMENTS.—For
3 purposes of preventing identity theft, pro-
4 tecting employees, and reducing burden on
5 employers, and notwithstanding section
6 6103 of title 26, United States Code, the
7 Commissioner of Social Security, in con-
8 sultation with the Secretary, shall review
9 the Social Security Administration data-
10 bases and information technology to iden-
11 tify any deficiencies and discrepancies re-
12 lated to name, birth date, citizenship sta-
13 tus, or death records of the social security
14 accounts and social security account hold-
15 ers likely to contribute to fraudulent use of
16 documents, or identity theft, or to affect
17 the proper functioning of the EEVS and
18 shall correct any identified errors. The
19 Commissioner shall ensure that a system
20 for identifying and correcting such defi-
21 ciencies and discrepancies is adopted to en-
22 sure the accuracy of the Social Security
23 Administration’s databases.

24 “(iii) NOTIFICATION TO ‘FREEZE’ USE
25 OF SOCIAL SECURITY NUMBER.—The Com-

1 missioner of Social Security, in consulta-
2 tion with the Secretary of Homeland Secu-
3 rity, shall establish a secure process where-
4 by an individual can request that the Com-
5 missioner preclude any confirmation under
6 the EEVS based on that individual's Social
7 Security number until it is reactivated by
8 that individual.”.

9 **SEC. 309. IMMIGRATION ENFORCEMENT SUPPORT BY THE**
10 **INTERNAL REVENUE SERVICE AND THE SO-**
11 **CIAL SECURITY ADMINISTRATION.**

12 (a) TIGHTENING REQUIREMENTS FOR THE PROVI-
13 SION OF SOCIAL SECURITY NUMBERS ON FORM W-2
14 WAGE AND TAX STATEMENTS.—Section 6724 of the In-
15 ternal Revenue Code of 1986 (relating to waiver; defini-
16 tions and special rules) is amended by adding at the end
17 the following new subsection:

18 “(f) SPECIAL RULES WITH RESPECT TO SOCIAL SE-
19 CURITY NUMBERS ON WITHHOLDING EXEMPTION CER-
20 TIFICATES.—

21 “(1) REASONABLE CAUSE WAIVER NOT TO
22 APPLY.—Subsection (a) shall not apply with respect
23 to the social security account number of an employee
24 furnished under section 6051 (a)(2).

25 “(2) EXCEPTION.—

1 by an employer pursuant to section 6051
2 either fail to include an employee's social
3 security account number or include an in-
4 correct social security account number; or
5 “(ii) with respect to any employer who
6 has received written notification under sec-
7 tion 205(c)(2)(1) of the Social Security
8 Act during each of the 3 preceding taxable
9 years that the social security account num-
10 bers in the wage records provided to the
11 Social Security Administration by such em-
12 ployer with respect to 10 more employees
13 do not match relevant records otherwise
14 maintained by the Social Security Adminis-
15 tration.”.

16 (b) ENFORCEMENT.—

17 (1) IN GENERAL.—Not later than 90 days after
18 the date of the enactment of this Act, the Secretary
19 of the Treasury, in consultation with the Secretary,
20 shall establish a unit within the Criminal Investiga-
21 tion office of the Internal Revenue Service to inves-
22 tigate violations of the Internal Revenue Code of
23 1986 related to the employment of individuals who
24 are not authorized to work in the United States.

1 (2) SPECIAL AGENTS; SUPPORT STAFF.—The
2 Secretary of the Treasury shall assign to the unit a
3 minimum of 10 full-time special agents and nec-
4 essary support staff and is authorized to employ up
5 to 200 full time special agents for this unit based on
6 investigative requirements and workload.

7 (3) REPORTS.—During each of the first 5 cal-
8 endar years beginning after the establishment of
9 such unit and biennially thereafter, the unit shall
10 transmit to Congress a report that describes its ac-
11 tivities and includes the number of investigations
12 and cases referred for prosecution.

13 (c) INCREASE IN PENALTY ON EMPLOYER FAILING
14 TO FILE CORRECT INFORMATION RETURNS.—Section
15 6721 of such Code (relating to failure to file correct infor-
16 mation returns) is amended as follows—

17 (1) in subsection (a)(1)—

18 (A) by striking “\$50” and inserting
19 “\$200”; and

20 (B) by striking “\$250,000” and inserting
21 “\$1,000,000”;

22 (2) in subsection (b)(1)(A), by striking “\$15 in
23 lieu of \$50” and inserting “\$60 in lieu of \$200”;

24 (3) in subsection (b)(1)(B), by striking
25 “\$75,000” and inserting “\$300,000”;

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1 (4) in subsection (b)(2)(A), by striking “\$30 in
2 lieu of \$50” and inserting “\$120 in lieu of \$200”;

3 (5) in subsection (b)(2)(B), by striking
4 “\$150,000” and inserting “\$600,000”;

5 (6) in subsection (d) (A) in paragraph (1)—

6 (A) by striking “\$100,000 for \$250,000”
7 and inserting “\$400,000 for \$1,000,000” in
8 subparagraph (A);

9 (B) by striking “\$25,000 for \$75,000” and
10 inserting “\$100,000 for \$300,000” in subpara-
11 graph (B);

12 (C) by striking “\$50,000 for \$150,000”
13 and inserting “\$200,000 for \$600,000” in sub-
14 paragraph (C);

15 (D) in paragraph (2)(A), by striking
16 “\$5,000,000” and inserting “\$2,000,000”; and

17 (E) in the heading, by striking
18 “\$5,000,000” and inserting “\$2,000,000”;

19 (7) in subsection (e)(2)—

20 (A) by striking “\$100” and inserting
21 “\$400”;

22 (B) by striking “\$25,000” and inserting
23 “\$100,000” in subparagraph (C)(i); and

24 (C) by striking “\$100,000” and inserting
25 “\$400,000” in subparagraph (C)(ii); and

1 (8) in subsection (e)(3)(A), by striking
2 “\$250,000” and inserting “\$1,000,000”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 subsections (b) and (c) shall apply to failures occurring
5 after December 31, 2006.

6 **SEC. 310. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) TO THE SECRETARY.—There are authorized to
8 be appropriated to the Secretary such sums as may be
9 necessary to carry out the provisions of this Act, and the
10 amendments made by this Act, including the following ap-
11 propriations:

12 (1) In each of the 5 years beginning on the date
13 of the enactment of this Act, the appropriations nec-
14 essary to increase to a level not less than 4,500 the
15 number of personnel of the Department assigned ex-
16 clusively or principally to an office or offices dedi-
17 cated to monitoring and enforcing compliance with
18 sections 274A and 274C of the Immigration and
19 Nationality Act (8 U.S.C. 1324a and 1324e), includ-
20 ing compliance with the requirements of the EEVS.
21 These personnel shall perform the following compli-
22 ance and monitoring activities:

23 (A) Verify Employment Identification
24 Numbers of employers participating in the
25 EEVS.

1 (B) Verify compliance of employers partici-
2 pating in the EEVS with the requirements for
3 participation that are prescribed by the Sec-
4 retary.

5 (C) Monitor the EEVS for multiple uses of
6 Social Security Numbers and any immigration
7 identification numbers for evidence that could
8 indicate identity theft or fraud.

9 (D) Monitor the EEVS to identify dis-
10 crimatory practices.

11 (E) Monitor the EEVS to identify employ-
12 ers who are not using the system properly, in-
13 cluding employers who fail to make appropriate
14 records with respect to their queries and any
15 notices of confirmation, nonconfirmation, or
16 further action.

17 (F) Identify instances where employees al-
18 lege that an employer violated their privacy
19 rights.

20 (G) Analyze and audit the use of the
21 EEVS and the data obtained through the
22 EEVS to identify fraud trends, including fraud
23 trends across industries, geographical areas, or
24 employer size.

1 (H) Analyze and audit the use of the
2 EEVS and the data obtained through the
3 EEVS to develop compliance tools as necessary
4 to respond to changing patterns of fraud.

5 (I) Provide employers with additional
6 training and other information on the proper
7 use of the EEVS.

8 (J) Perform threshold evaluation of cases
9 for referral to the United States Immigration
10 and Customs Enforcement and to liaise with
11 the United States Immigration and Customs
12 Enforcement with respect to these referrals.

13 (K) Any other compliance and monitoring
14 activities that, in the Secretary's judgment, are
15 necessary to ensure the functioning of the
16 EEVS.

17 (L) Investigate identity theft and fraud de-
18 tected through the EEVS and undertake the
19 necessary enforcement actions.

20 (M) Investigate use of fraudulent docu-
21 ments or access to fraudulent documents
22 through local facilitation and undertake the
23 necessary enforcement actions.

24 (N) Provide support to the U.S. Citizen-
25 ship and Immigration Services with respect to

1 the evaluation of cases for referral to the U.S.
2 Immigration and Customs Enforcement.

3 (O) Perform any other investigations that,
4 in the Secretary's judgment, are necessary to
5 ensure the functioning of the EEVS, and un-
6 dertake any enforcement actions necessary as a
7 result of these investigations.

8 (2) The appropriations necessary to acquire, in-
9 stall, and maintain technological equipment nec-
10 essary to support the functioning of the EEVS and
11 the connectivity between U.S. Citizenship and Immi-
12 gration Services and the U.S. Immigration and Cus-
13 toms Enforcement with respect to the sharing of in-
14 formation to support the EEVS and related immi-
15 gration enforcement actions.

16 (b) TO THE COMMISSIONER OF SOCIAL SECURITY.—
17 There are authorized to be appropriated to the Commis-
18 sioner of Social Security such sums as may be necessary
19 to carry out the provisions of this Act, including section
20 308 of this Act.

1 **TITLE IV—NEW TEMPORARY**
2 **WORKER PROGRAM**
3 **Subtitle A—Seasonal Non-Agricultural and Year-Round Non-**
4 **immigrant Temporary Workers**

6 **SEC. 401. NONIMMIGRANT TEMPORARY WORKER.**

7 (a) IN GENERAL.—Section 101(a)(15) (8 U.S.C.
8 1101(a)(15)) is amended—

9 (1) in subparagraph (H)—

10 (A) by striking clause (ii)(b);

11 (B) by striking “or (iii)” and inserting
12 “(iii)”; and

13 (C) by striking “; and the alien spouse”
14 and inserting “; or (iv) the alien spouse”;

15 (2) by striking “or” at the end of subparagraph
16 (U);

17 (3) by striking the period at the end of sub-
18 paragraph (V) and inserting a semicolon; and

19 (4) by inserting at the end the following:

20 “(W) [Reserved];

21 “(X) [Reserved]; or

22 “(Y) subject to section 218A, an alien hav-
23 ing a residence in a foreign country which the
24 alien has no intention of abandoning and who
25 is coming temporarily to the United States—

1 “(i) to perform temporary labor or
2 services other than the labor or services
3 described in clause (i)(b), (i)(b1), (i)(c), or
4 (iii) of subparagraph of (H), subparagraph
5 (D), (E), (I), (L), (O), (P), or (R), or sec-
6 tion 214(e) (if United States workers who
7 are able, willing, and qualified to perform
8 such labor or services cannot be found in
9 the United States);

10 “(ii) to perform seasonal non-agricul-
11 tural labor or services; or

12 “(iii) as the spouse or child of an
13 alien described in clause (i) or (ii).”.

14 (b) REFERENCES.—All references in the immigration
15 laws of the United States as amended by this title to sec-
16 tion 101(a)(15)(H)(ii)(b) of the Immigration and Nation-
17 ality Act shall be considered a reference to both that sec-
18 tion of the Act and to section 101(a)(15)(Y)(ii) of the Act.

19 (c) EFFECTIVE DATE.—The effective date of the
20 amendment made by subsection (a)(1)(A) shall be the date
21 on which the Secretary makes the certification described
22 in section 1(a) of this Act.

1 **SEC. 402. ADMISSION OF NONIMMIGRANT WORKERS.**

2 (a) NEW WORKERS.—Chapter 2 of title II (8 U.S.C.
3 1181 et seq.) is amended by inserting after section 218
4 the following:

5 **“SEC. 218A. ADMISSION OF Y NONIMMIGRANTS.**

6 “(a) APPLICATION PROCEDURES.—

7 “(1) LABOR CERTIFICATION.—The Secretary of
8 Labor shall prescribe by regulation the procedures
9 for a United States employer to obtain a labor cer-
10 tification of a job opportunity under the terms set
11 forth in section 218B.

12 “(2) PETITION.—The Secretary shall prescribe
13 by regulation the procedures for a United States em-
14 ployer to petition to the Secretary for authorization
15 to employ an alien as a Y nonimmigrant worker and
16 the evidence required to demonstrate eligibility for
17 such authorization under the terms set forth in sub-
18 section (c).

19 “(3) Y NONIMMIGRANT VISA.—The Secretary of
20 State and the Secretary, as appropriate, shall pre-
21 scribe by regulation the procedures for an alien to
22 apply for a Y nonimmigrant visa and the evidence
23 required to demonstrate eligibility for such visa
24 under the terms set forth in subsection (e).

1 “(4) REGULATIONS.—The regulations ref-
2 erenced in paragraphs (1), (2), and (3) shall de-
3 scribe, at a minimum—

4 “(A) the procedures for collection and
5 verification of biometric data from an alien
6 seeking a Y nonimmigrant visa or admission in
7 Y nonimmigrant status; and

8 “(B) the procedure and standards for vali-
9 dating an employment arrangement between a
10 United States employer and an alien seeking a
11 visa or admission described in (A).

12 “(b) APPLICATION FOR CERTIFICATION OF A JOB
13 OPPORTUNITY OFFERED TO Y NONIMMIGRANT WORK-
14 ERS.—An employer desiring to employ a Y nonimmigrant
15 worker shall, with respect to a specific opening that the
16 employer seeks to fill with such a Y nonimmigrant, submit
17 an application for labor certification of the job opportunity
18 filed in accordance with the procedures established by sec-
19 tion 218B.

20 “(c) PETITION TO EMPLOY Y NONIMMIGRANT
21 WORKERS.—

22 “(1) IN GENERAL.—An employer that seeks au-
23 thorization to employ a Y nonimmigrant worker
24 shall file a petition with the Secretary. The petition
25 shall be accompanied by—

1 “(A) evidence that the employer has ob-
2 tained a certification under section 218B from
3 the Secretary of Labor for the position sought
4 to be filled by a Y nonimmigrant worker and
5 that such certification remains valid;

6 “(B) evidence that the job offer was and
7 remains valid;

8 “(C) the name and other biographical in-
9 formation of the alien beneficiary and any ac-
10 companying spouse or child; and

11 “(D) any biometrics from the beneficiary
12 that the Secretary may require by regulation.

13 “(2) TIMING OF FILING.—

14 “(A) IN GENERAL.—A petition under this
15 subsection shall be filed with the Secretary
16 within 180 days of the date of certification
17 under section 218B by the Secretary of Labor
18 of the job opportunity.

19 “(B) EXPIRATION OF CERTIFICATION.—If
20 a labor certification is not filed in support of a
21 petition under this subsection with the Sec-
22 retary within 180 days of the date of certifi-
23 cation by the Secretary of Labor, then the cer-
24 tification expires and may not support a Y non-

1 immigrant petition or be the basis for Y non-
2 immigrant visa issuance.

3 “(3) ABILITY TO REQUEST DOCUMENTATION.—

4 The Secretary may request information to verify the
5 attestations the employer made during the labor cer-
6 tification process, and any other fact relevant to the
7 adjudication of the petition.

8 “(4) ADJUDICATION OF PETITION.—

9 “(A) POST-ADJUDICATION ACTION.—After
10 review of the petition, if the Secretary—

11 “(i) is satisfied that the petition meets
12 all of the requirements of paragraph (1),
13 and any other requirements the Secretary
14 has prescribed in regulations, the Sec-
15 retary may approve the petition and by
16 fax, cable, electronic, or any other means
17 assuring expedited delivery—

18 “(I) transmit a copy of the notice
19 of action on the petition to the peti-
20 tioner; and

21 “(II) in the case of approved pe-
22 titions, transmit notice of the approval
23 to the Secretary of State;

1 appropriate law enforcement agencies
2 based on the audit information.

3 “(B) VALIDITY OF APPROVED PETITION.—

4 An approved petition shall have the same period
5 of validity as the certification described in sub-
6 section (c)(1)(A) and shall expire on the same
7 date that the certification expires, except that
8 the Secretary may terminate, in the discretion
9 of the Secretary, an approved petition—

10 “(i) when the Secretary determines
11 that any material fact, including, but not
12 limited to the proffered wage rate, the geo-
13 graphic location of employment, or the du-
14 ties of the position, has changed in a way
15 that would invalidate the recruitment ac-
16 tions; or

17 “(ii) when the Secretary or the Sec-
18 retary of Labor makes a finding of fraud
19 or misrepresentation concerning the facts
20 on the petition or any other representation
21 made by the employer before the Secretary
22 of Labor or Secretary.

23 “(C) ADMINISTRATIVE REVIEW.—The Sec-
24 retary shall authorize a single level of adminis-
25 trative review with the United States Citizen-

1 ship and Immigration Services Administrative
2 Appeals Office of a petition denial or termi-
3 nation.

4 “(d) AUTHORIZATION TO GRANT Y NONIMMIGRANT
5 VISA.—

6 “(1) IN GENERAL.—A consular officer may
7 grant a single-entry temporary visa to a Y non-
8 immigrant who demonstrates an intent to perform
9 labor or services in the United States (other than
10 the labor or services described in clause (i)(b),
11 (i)(b1), (i)(c), or (iii) of section 101(a)(15)(H), sub-
12 paragraph (D), (E), (I), (L), (O), (P), or (R) of sec-
13 tion 101(a)(15), or section 214(e) (if United States
14 workers who are able, willing, and qualified to per-
15 form such labor or services cannot be found in the
16 United States).

17 “(2) APPLICANTS FROM CANADA.—Notwith-
18 standing any waivers of the visa requirement under
19 section 212(a)(7)(B)(i)(II), a national of Canada
20 seeking admission as a Y nonimmigrant will be inad-
21 missible if not in possession of—

22 “(A) a valid Y nonimmigrant visa; or

23 “(B) documentation of Y nonimmigrant
24 status, as described in subsection (m).

1 “(e) REQUIREMENTS FOR ADMISSION.—An alien
2 shall be eligible for Y nonimmigrant status if the alien
3 meets the following requirements:

4 “(1) ELIGIBILITY TO WORK.—The alien shall
5 establish that the alien is capable of performing the
6 labor or services required for an occupation de-
7 scribed in section 101(a)(15)(Y)(i) or (Y)(ii).

8 “(2) EVIDENCE OF EMPLOYMENT OFFER.—The
9 alien’s evidence of employment shall be provided in
10 accordance with the requirements issued by the Sec-
11 retary of State, in consultation with the Secretary of
12 Labor. In carrying out this paragraph, the Secretary
13 may consider evidence from employers, employer as-
14 sociations, and labor representatives.

15 “(3) FEES.—

16 “(A) PROCESSING FEES.—An alien making
17 an application for a Y nonimmigrant visa shall
18 be required to pay, in addition to any fees
19 charged by the Department of State for proc-
20 essing and adjudicating such visa application, a
21 processing fee in an amount sufficient to re-
22 cover the full cost to the Secretary of adminis-
23 trative and other expenses associated with proc-
24 essing the alien’s participation in the Y non-
25 immigrant program, including the costs of pro-

1 duction of documentation of evidence under
2 subsection (m).

3 “(B) STATE IMPACT FEE.—Aliens making
4 an application for a Y–1 nonimmigrant visa
5 shall pay a State impact fee of \$500 and an ad-
6 ditional \$250 for each dependent accompanying
7 or following to join the alien, not to exceed
8 \$1500 per family.

9 “(C) DEPOSIT AND SPENDING OF FEES.—
10 The processing fees under subparagraph (A)
11 shall be deposited and remain available until ex-
12 pended as provided under subsections (m) and
13 (n) of section 286.

14 “(D) DEPOSIT AND DISPOSITION OF STATE
15 IMPACT ASSISTANCE FUNDS.—The funds de-
16 scribed in subparagraph (B) shall be deposited
17 and remain available as provided under section
18 286(x).

19 “(E) CONSTRUCTION.—Nothing in this
20 paragraph shall be construed to affect consular
21 procedures for collection of machine-readable
22 visa fees or reciprocal fees for the issuance of
23 the visa.

24 “(4) MEDICAL EXAMINATION.—The alien shall
25 undergo a medical examination (including a deter-

1 mination of immunization status), at the alien’s ex-
2 pense, that conforms to generally accepted standards
3 of medical practice.

4 “(5) APPLICATION CONTENT AND WAIVER.—

5 “(A) APPLICATION FORM.—The alien shall
6 submit to the Secretary of State a completed
7 application, which contains evidence that the re-
8 quirements under paragraphs (1) and (2) have
9 been met.

10 “(B) CONTENT.—In addition to any other
11 information that the Secretary requires to de-
12 termine an alien’s eligibility for Y non-
13 immigrant status, the Secretary of State shall
14 require an alien to provide information con-
15 cerning the alien’s—

16 “(i) physical and mental health;

17 “(ii) criminal history, including all ar-
18 rests and dispositions, and gang member-
19 ship;

20 “(iii) immigration history; and

21 “(iv) involvement with groups or indi-
22 viduals that have engaged in terrorism,
23 genocide, persecution, or who seek the
24 overthrow of the United States Govern-
25 ment.

1 “(C) KNOWLEDGE.—The alien shall in-
2 clude with the application submitted under this
3 paragraph a signed certification in which the
4 alien certifies that—

5 “(i) the alien has read and under-
6 stands all of the questions and statements
7 on the application form;

8 “(ii) the alien certifies under penalty
9 of perjury under the laws of the United
10 States that the application, and any evi-
11 dence submitted with it, are all true and
12 correct; and

13 “(iii) the applicant authorizes the re-
14 lease of any information contained in the
15 application and any attached evidence for
16 law enforcement purposes.

17 “(6) SHALL NOT BE INELIGIBLE.—The alien
18 shall not fall within a class of aliens ineligible for Y
19 nonimmigrant status listed under subsection (h).

20 “(7) SHALL NOT BE INADMISSIBLE.—The alien
21 shall not be inadmissible as a nonimmigrant to the
22 United States under section 212, except as provided
23 under subsection (f).

24 “(8) SPOUSE OR CHILD OF Y NON-
25 IMMIGRANT.—An alien seeking admission as a deriv-

1 ative Y–3 nonimmigrant shall demonstrate, in addi-
2 tion to satisfaction of the requirements of para-
3 graphs (2) through (6)—

4 “(A) that the annual wage of the principal
5 Y nonimmigrant paid by the principal non-
6 immigrant’s United States employer, combined
7 with the annual wage of the principal Y non-
8 immigrant’s spouse where the Y–3 non-
9 immigrant is a child and the Y nonimmigrant’s
10 spouse is a member of the principal Y non-
11 immigrant’s household, is equal to or greater
12 than 150 percent of the United States poverty
13 level for a household size equal in size to that
14 of the principal alien (including all dependents,
15 family members supported by the principal
16 alien, and the spouse or child seeking to accom-
17 pany or join the principal alien), as determined
18 by the Secretary of Health and Human Services
19 for the fiscal year in which the spouse or child’s
20 application for a nonimmigrant visa is filed;
21 and

22 “(B) that the alien’s cost of medical care
23 is covered by medical insurance, valid in the
24 United States, carried by the principal Y non-
25 immigrant alien, the principal Y non-

1 immigrant’s spouse (where the Y–3 non-
2 immigrant is a child), or the principal Y non-
3 immigrant alien’s employer.

4 “(f) GROUNDS OF INADMISSIBILITY.—

5 “(1) WAIVED GROUNDS OF INADMISSIBILITY.—

6 In determining an alien’s admissibility as a Y non-
7 immigrant, such alien shall be found to be inadmis-
8 sible if the alien would be subject to the grounds of
9 inadmissibility under section 601(d)(2) of the Secure
10 Borders, Economic Opportunity, and Immigration
11 Reform Act of 2007.

12 “(2) WAIVER.—The Secretary may, in the dis-
13 cretion of the Secretary, waive the application of any
14 provision of section 212(a) not listed in section
15 601(d)(2) of such Act on behalf of an individual
16 alien for humanitarian purposes, to ensure family
17 unity, or if such waiver is otherwise in the public in-
18 terest.

19 “(3) CONSTRUCTION.—Nothing in this sub-
20 section shall be construed as affecting the authority
21 of the Secretary other than under this subsection to
22 waive the provisions of section 212(a).

23 “(g) BACKGROUND CHECKS.—The Secretary shall
24 not admit, and the Secretary of State shall not issue a
25 visa to, an alien seeking Y nonimmigrant visa or status

1 unless all appropriate background checks have been com-
2 pleted to the satisfaction of the Secretary of State and
3 the Secretary.

4 “(h) GROUNDS OF INELIGIBILITY.—

5 “(1) IN GENERAL.—An alien is ineligible for a
6 Y nonimmigrant visa or Y nonimmigrant status if
7 the alien is described in section 601(d)(1)(A), (D),
8 (E), (F), or (G) of the Secure Borders, Economic
9 Opportunity, and Immigration Reform Act of 2007.

10 “(2) INELIGIBILITY OF DERIVATIVE Y-3 NON-
11 IMMIGRANTS.—An alien is ineligible for derivative
12 Y-3 nonimmigrant status if the principal Y non-
13 immigrant is ineligible under paragraph (1).

14 “(3) APPLICABILITY TO GROUNDS OF INADMIS-
15 SIBILITY.—Nothing in this subsection shall be con-
16 strued to limit the applicability of any ground of in-
17 admissibility under section 212.

18 “(i) PERIOD OF AUTHORIZED ADMISSION.—

19 “(1) IN GENERAL.—Aliens admitted to the
20 United States as Y nonimmigrants shall be granted
21 the following periods of admission:

22 “(A) Y-1 NONIMMIGRANTS.—Except as
23 provided in (2), aliens granted admission as Y-
24 1 nonimmigrants shall be granted an authorized
25 period of admission of 2 years. Subject to para-

1 graph (4), such 2-year period of admission may
2 be extended for 2 additional 2-year periods.

3 “(B) Y-2B NONIMMIGRANTS.—Aliens
4 granted admission as Y-2B nonimmigrants
5 shall be granted an authorized period of admis-
6 sion of 10 months.

7 “(2) Y-1 NONIMMIGRANTS WITH Y-3 DEPEND-
8 ENTS.—A Y-1 nonimmigrant who has accompanying
9 or following-to-join family members in derivative Y-
10 3 nonimmigrant status shall be limited to 2 2-year
11 periods of admission. If the family members accom-
12 pany the Y-1 nonimmigrant during the alien’s first
13 period of admission the family members may not ac-
14 company or join the Y-1 nonimmigrant during the
15 alien’s second period of admission. If the Y-1 non-
16 immigrant’s family members accompany or follow to
17 join the Y-1 nonimmigrant during the alien’s second
18 period of admission, but not the Y-1 non-
19 immigrant’s first period of admission, the Y-1 non-
20 immigrant shall not be granted any additional peri-
21 ods of admission in Y nonimmigrant status. The pe-
22 riod of authorized admission of a Y-3 nonimmigrant
23 shall expire on the same date as the period of au-
24 thorized admission of the principal Y-1 non-
25 immigrant worker.

1 “(3) SUPPLEMENTARY PERIODS.—Each period
2 of authorized admission described in paragraph (1)
3 shall be supplemented by a period of not more than
4 1 week before the beginning of the period of employ-
5 ment for the purpose of travel to the worksite and,
6 except where such period of authorized admission
7 has been terminated under subsection (j), a period
8 of 14 days following the period of employment for
9 the purpose of departure or extension based on a
10 subsequent offer of employment, except that—

11 “(A) the alien is not authorized to be em-
12 ployed during such 14-day period except in the
13 employment for which the alien was previously
14 authorized; and

15 “(B) the total period of employment, in-
16 cluding such 14-day period, may not exceed the
17 maximum applicable period of admission under
18 paragraph (1).

19 “(4) EXTENSIONS OF THE PERIOD OF ADMIS-
20 SION.—

21 “(A) IN GENERAL.—The periods of author-
22 ized admission described in paragraph (1) may
23 not, except as provided in paragraph (1)(C)(2),
24 be extended beyond the maximum period of ad-
25 mission set forth in that paragraph.

1 “(B) EXTENSION OF Y-1 NONIMMIGRANT
2 STATUS.—A Y-1 nonimmigrant described in
3 paragraph (1)(A) who has spent 24 months in
4 the United States in Y-1 nonimmigrant status
5 may not seek extension or be readmitted to the
6 United States as a Y-1 nonimmigrant unless
7 the alien has resided and been physically
8 present outside the United States for the imme-
9 diately preceding 12 months.

10 “(5) LIMITATION ON ADMISSION.—

11 “(A) Y-1 NONIMMIGRANTS.—An alien who
12 has been admitted to the United States in Y-
13 1 nonimmigrant status for a period of 2 years
14 under paragraph (1)(B), or as the Y-3 non-
15 immigrant spouse or child of such a Y-1 non-
16 immigrant, may not be readmitted to the
17 United States as a Y-1 or Y-3 nonimmigrant
18 after expiration of such period of authorized ad-
19 mission, regardless of whether the alien was
20 employed or present in the United States for all
21 or a part of such period.

22 “(B) Y-2B NONIMMIGRANTS.—An alien
23 who has been admitted to the United States in
24 Y-2B nonimmigrant status may not, after expi-
25 ration of the alien’s period of authorized admis-

1 sion, be readmitted to the United States as a
2 Y nonimmigrant after expiration of the alien’s
3 period of authorized admission, regardless of
4 whether the alien was employed or present in
5 the United States for all or only a part of such
6 period, unless the alien has resided and been
7 physically present outside the United States for
8 the immediately preceding 2 months.

9 “(C) READMISSION WITH NEW EMPLOY-
10 MENT.—Nothing in this paragraph shall be con-
11 strued to prevent a Y nonimmigrant, whose pe-
12 riod of authorized admission has not yet expired
13 or been terminated under subsection (j), and
14 who leaves the United States in a timely fash-
15 ion after completion of the employment de-
16 scribed in the petition of the Y nonimmigrant’s
17 most recent employer, from reentering the
18 United States as a Y nonimmigrant to work for
19 a new employer, if the alien and the new em-
20 ployer have complied with all applicable require-
21 ments of this section and section 218B.

22 “(6) INTERNATIONAL COMMUTERS.—An alien
23 who maintains actual residence and place of abode
24 outside the United States and commutes, on days
25 the alien is working, into the United States to work

1 as a Y-1 nonimmigrant, shall be granted an author-
2 ized period of admission of 3 years. The limitations
3 described in paragraphs (3) and (4) shall not apply
4 to commuters described in this paragraph.

5 “(j) TERMINATION.—

6 “(1) IN GENERAL.—The period of authorized
7 admission of a Y nonimmigrant shall terminate im-
8 mediately if—

9 “(A) the Secretary determines that the
10 alien was not eligible for such Y nonimmigrant
11 status at the time of visa application or admis-
12 sion;

13 “(B)(i) the alien commits an act that
14 makes the alien removable from the United
15 States under section 237;

16 “(ii) the alien becomes inadmissible under
17 section 212 (except as provided in subsection
18 (f)); or

19 “(iii) the alien becomes ineligible under
20 subsection (h);

21 “(C) the alien uses the documentation of
22 the alien’s Y nonimmigrant status issued under
23 subsection (m) for unlawful or fraudulent pur-
24 poses;

1 “(D) subject to paragraph (2), the alien is
2 unemployed within the United States for—

3 “(i) 60 or more consecutive days;

4 “(ii) in the case of a Y–1 non-
5 immigrant, an aggregate period of 120
6 days, if the alien’s 14-day period to law-
7 fully depart the United States shall not be
8 considered to begin until the date that the
9 alien has been provided notice of the termi-
10 nation; or

11 “(iii) in the case of a Y–2B non-
12 immigrant, an aggregate period of 30 days,
13 if the alien’s 14-day period to lawfully de-
14 part the United States shall not be consid-
15 ered to begin until the date that the alien
16 has been provided notice of the termi-
17 nation;

18 “(iv) or;

19 “(E) the alien is a Y–3 nonimmigrant
20 whose spouse or parent in Y–1 nonimmigrant
21 status is an alien described in subparagraphs
22 (A), (B), (C), or (D).

23 “(2) EXCEPTION.—The period of authorized
24 admission of a Y nonimmigrant shall not terminate
25 for unemployment under subparagraph (1)(D) if the

1 alien submits documentation to the Secretary that
2 establishes that such unemployment was caused
3 by—

4 “(A) a period of physical or mental dis-
5 ability of the alien or the spouse, son, daughter,
6 or parent (as defined in section 101 of the
7 Family and Medical Leave Act of 1993 (29
8 U.S.C. 2611)) of the alien;

9 “(B) a period of vacation, medical leave,
10 maternity leave, or similar leave from employ-
11 ment authorized by employer policy, State law,
12 or Federal law; or

13 “(C) any other period of temporary unem-
14 ployment that is the direct result of a force
15 majeure event.

16 “(3) RETURN TO FOREIGN RESIDENCE.—Any
17 alien whose period of authorized admission termi-
18 nates under paragraph (1) shall be required to leave
19 the United States immediately and register such de-
20 parture at a designated port of departure in a man-
21 ner to be prescribed by the Secretary.

22 “(4) INVALIDATION OF DOCUMENTATION.—Any
23 documentation that is issued by the Secretary under
24 subsection (m) to any alien, whose period of author-
25 ized admission terminates under paragraph (1), shall

1 automatically be rendered invalid for any purpose
2 except departure.

3 “(k) VISITS OUTSIDE THE UNITED STATES.—

4 “

5 “(A) IN GENERAL.—Under regulations es-
6 tablished by the Secretary, a Y nonimmigrant—

7 “(i) may travel outside of the United
8 States; and

9 “(ii) may be readmitted for a period
10 not more than the remaining time left until
11 the alien accrues the maximum period of
12 admission set forth in subsection (i), and
13 without having to obtain a new visa if—

14 “(I) the period of authorized ad-
15 mission has not expired or been termi-
16 nated;

17 “(II) the alien is the bearer of
18 valid documentary evidence of Y non-
19 immigrant status that satisfies the
20 conditions set forth in subsection (m);
21 and

22 “(III) the alien is not subject to
23 the bars on extension or admission de-
24 scribed in subsection (l).

1 “(B) EFFECT ON PERIOD OF AUTHORIZED
2 ADMISSION.—Time spent outside the United
3 States under subparagraph (A) shall not extend
4 the most recent period of authorized admission
5 in the United States.

6 “(1) BARS TO EXTENSION OR ADMISSION.—An alien
7 may not be granted Y nonimmigrant status if—

8 “(1) the alien has violated any material term or
9 condition of such status granted previously, includ-
10 ing failure to comply with the change of address re-
11 porting requirements under section 265;

12 “(2) the alien is inadmissible as a non-
13 immigrant, except for those grounds previously
14 waived under subsection (f); or

15 “(3) the granting of such status would allow
16 the alien to exceed limitations on stay in the United
17 States in Y nonimmigrant status described in sub-
18 section (i).

19 “(m) EVIDENCE OF NONIMMIGRANT STATUS.—Each
20 Y nonimmigrant shall be issued documentary evidence of
21 nonimmigrant status, which—

22 “(1) shall be machine-readable, tamper-resist-
23 ant, and shall contain a digitized photograph and
24 other biometric identifiers that can be authenticated;

1 “(2) shall, during the alien’s authorized period
2 of admission under subsection (i), serve as a valid
3 entry document for the purpose of applying for ad-
4 mission to the United States—

5 “(A) instead of a passport and visa if the
6 alien—

7 “(i) is a national of a foreign territory
8 contiguous to the United States; and

9 “(ii) is applying for admission at a
10 land border port of entry; and

11 “(B) in conjunction with a valid passport,
12 if the alien is applying for admission at an air
13 or sea port of entry;

14 “(3) may be accepted during the period of its
15 validity by an employer as evidence of employment
16 authorization and identity under section
17 274A(b)(1)(B); and

18 “(4)(A) shall be issued to the Y nonimmigrant
19 by the Secretary promptly after such alien’s admis-
20 sion to the United States as a Y nonimmigrant and
21 reporting to the employer’s worksite under sub-
22 section (q); or

23 “(B) at the discretion of the Secretary, may be
24 issued by the Secretary of State at a consulate in-
25 stead of a visa.

1 “(n) PERMANENT BARS FOR OVERSTAYS.—

2 “(1) IN GENERAL.—Any Y nonimmigrant who
3 remains beyond such nonimmigrant’s initial author-
4 ized period of admission is permanently barred from
5 any future benefits under the immigration laws, ex-
6 cept—

7 “(A) asylum under section 208(a);

8 “(B) withholding of removal under section
9 241(b)(3); or

10 “(C) protection under the Convention
11 Against Torture.

12 “(2) EXCEPTION.—Overstay of the authorized
13 period of admission may be excused in the discretion
14 of the Secretary where it is demonstrated that:

15 “(A) the period of overstay was due to ex-
16 traordinary circumstances beyond the control of
17 the applicant, and the Secretary finds the pe-
18 riod commensurate with the circumstances; and

19 “(B) the alien has not otherwise violated
20 the alien’s Y nonimmigrant status.

21 “(o) PENALTY FOR ILLEGAL ENTRY OR OVER-
22 STAY.—

23 “(1) ILLEGAL ENTRY.—Any alien who after the
24 date of the enactment of this section, unlawfully en-
25 ters, attempts to enter, or crosses the border, and is

1 physically present in the United States after such
2 date in violation of the immigration laws, is barred
3 permanently from any future benefits under the im-
4 migration laws, except as provided in paragraph (3)
5 or (4).

6 “(2) OVERSTAY.—Any alien, other than a Y
7 nonimmigrant, who, after the date of the enactment
8 of this section remains unlawfully in the United
9 States beyond the period of authorized admission, is
10 barred for a period of ten years from any future
11 benefits under the immigration laws, except as pro-
12 vided in paragraph (3) or (4).

13 “(3) RELIEF.—Notwithstanding the bar in
14 paragraph (1) or (2), an alien may apply for—

15 “(A) asylum under section 208(a);

16 “(B) withholding of removal under section
17 241(b)(3); or

18 “(C) protection under the Convention
19 Against Torture.

20 “(4) EXCEPTION.—Overstay of the authorized
21 period of admission may be excused in the discretion
22 of the Secretary where it is demonstrated that—

23 “(A)(i) the period of overstay was due to
24 extraordinary circumstances beyond the control
25 of the applicant; and

1 “(ii) the Secretary finds the period com-
2 mensurate with the circumstances; and

3 “(B) the alien has not otherwise violated
4 the alien’s nonimmigrant status.

5 “(p) PORTABILITY.—A Y nonimmigrant worker, who
6 was previously issued a visa or otherwise provided Y non-
7 immigrant status, may accept a new offer of employment
8 with a subsequent employer, if—

9 “(1) the position being offered the Y non-
10 immigrant has been certified by the Secretary of
11 Labor under section 218B and the employer com-
12 plies with all requirements of this section and sec-
13 tion 218B;

14 “(2) the alien, after lawful admission to the
15 United States, did not work without authorization;
16 and

17 “(3) the subsequent employer has notified the
18 Secretary under subsection (q) of the Y non-
19 immigrant’s change of employment.

20 “(q) REPORTING OF START AND TERMINATION OF
21 EMPLOYMENT.—

22 “(1) START OF Y WORKER EMPLOYMENT.—A Y
23 nonimmigrant shall report in the manner prescribed
24 by the Secretary to the employer whose job offer was
25 the basis for issuance of the alien’s Y nonimmigrant

1 visa not later than 7 days after admission into the
2 United States.

3 “(2) EMPLOYER NOTIFICATION REQUIRE-
4 MENT.—An employer shall within 3 days make noti-
5 fication in the manner prescribed by the Secretary,
6 of the following events:

7 “(A) A Y nonimmigrant worker has re-
8 ported for work pursuant to paragraph (1)
9 after admission in Y nonimmigrant status.

10 “(B) A Y nonimmigrant worker has
11 changed jobs under subsection (r) and started
12 employment with the employer.

13 “(C) The employment of a Y non-
14 immigrant worker has terminated.

15 “(D) A Y nonimmigrant worker on whose
16 behalf the employer has filed a petition under
17 this subsection that has been approved by the
18 Secretary has failed to report for work within
19 3 days of the employment start date agreed
20 upon between the employer and the Y non-
21 immigrant.

22 “(3) VERIFICATION.—Upon request of the Sec-
23 retary, an employer shall provide verification that an
24 alien who has been granted admission as a Y non-

1 immigrant worker was or continues to be employed
2 by the employer.

3 “(4) FINE.—Any employer that fails to comply
4 with the notification requirements under this sub-
5 section shall pay to the Secretary a fine, in an
6 amount and under procedures established by the
7 Secretary in regulation.

8 “(r) NO THREATENING OF EMPLOYEES.—It shall be
9 a violation of this section for an employer who has filed
10 a petition under this section to threaten the alien bene-
11 ficiary of such petition with the withdrawal of such a peti-
12 tion in retaliation for the beneficiary’s exercise of a right
13 protected by section 218B.

14 “(s) CHANGE OF STATUS.—

15 “(1) IN GENERAL.—A Y nonimmigrant may
16 apply to change status to another nonimmigrant sta-
17 tus, subject to section 248 and if otherwise eligible.

18 “(2) LIMITATIONS.—No alien admitted to the
19 United States under the immigration laws in a clas-
20 sification other than Y nonimmigrant status may
21 change status to Y nonimmigrant status. An alien in
22 Y nonimmigrant status may not change status to
23 any other Y nonimmigrant status.

24 “(3) CONSTRUCTION.—Nothing in this sub-
25 section shall be construed to prevent an alien who is

1 precluded from changing status to a particular Y
2 nonimmigrant classification under paragraph (2)
3 from leaving the United States and applying at a
4 United States consulate for the desired non-
5 immigrant visa, subject to all applicable eligibility
6 requirements, in the appropriate Y classification.

7 “(t) VISITATION OF Y NONIMMIGRANT BY SPOUSE
8 OR CHILD OF WITHOUT A Y-3 NONIMMIGRANT VISA.—
9 Nothing in this section shall be construed to prohibit the
10 spouse or child of a Y nonimmigrant worker to be admit-
11 ted to the United States under any other existing legal
12 basis for which the spouse or child may qualify.

13 “(u) CHANGE OF ADDRESS.—A Y nonimmigrant
14 shall comply with the change of address reporting require-
15 ments under section 265 through electronic or paper noti-
16 fication.”.

17 (b) CONFORMING AMENDMENT REGARDING CRE-
18 ATION OF TREASURY ACCOUNTS.—Section 286 (8 U.S.C.
19 1356) is amended by adding at the end the following:

20 “(w) TEMPORARY WORKER PROGRAM ACCOUNT.—

21 “(1) IN GENERAL.—There is established in the
22 general fund of the Treasury a separate account,
23 which shall be known as the ‘Temporary Worker
24 Program Account’. Notwithstanding any other provi-
25 sion of this Act, there shall be deposited into the ac-

1 count all fines and civil penalties collected under sec-
2 tions 218A, 218B, or 218F, and title VI of the Se-
3 cure Borders, Economic Opportunity, and Immigra-
4 tion Reform Act of 2007, except as specifically pro-
5 vided otherwise in such sections.

6 “(2) USE OF FUNDS.—Amounts deposited into
7 the Temporary Worker Program Account shall re-
8 main available until expended, and shall be allo-
9 cated—

10 “(A) to the Standing Commission on Im-
11 migration and Labor Markets, established
12 under section 409 of the Secure Borders, Eco-
13 nomic Opportunity, and Immigration Reform
14 Act of 2007, to the extent such amounts are
15 needed for the administrative expenses of such
16 commission; and

17 “(B) to the Secretary of Labor and to the
18 Secretary of Homeland Security, after deduct-
19 ing the amounts allocated pursuant to subpara-
20 graph (A), by allocating—

21 “(i) $\frac{1}{3}$ of the remaining balance to
22 the Secretary of Labor to carry out the
23 Secretary of Labor’s functions and respon-
24 sibilities, including enforcement of labor
25 standards under sections 218A, 218B, and

1 218F, and under applicable labor laws in-
2 cluding the Fair Labor Standards Act of
3 1938 (29 U.S.C. 201 et seq.) and the Oc-
4 cupational Safety and Health Act of 1970
5 (29 U.S.C. 651 et seq.), including random
6 audits of employers that participate in the
7 Y visa program; and

8 “(ii) $\frac{2}{3}$ of the remaining balance to
9 the Secretary of Homeland Security to im-
10 prove immigration services and enforce-
11 ment.

12 “(x) STATE IMPACT ASSISTANCE ACCOUNT.—

13 “(1) IN GENERAL.—There is established in the
14 general fund of the Treasury a separate account,
15 which shall be known as the ‘State Impact Assist-
16 ance Account’.

17 “(2) SOURCE OF FUNDS.—Notwithstanding any
18 other provision under this Act, there shall be depos-
19 ited as offsetting receipts into the State Impact As-
20 sistance Account all State Impact Assistance fees
21 collected under section 218A(e)(3)(B) and section
22 601(e)(6)(C) of the Secure Borders, Economic Op-
23 portunity, and Immigration Reform Act of 2007.

24 “(3) USE OF FUNDS.—Amounts deposited into
25 the State Impact Assistance Account may only be

1 used to carry out the State Impact Assistance Grant
2 Program established under paragraph (4).

3 “(4) STATE IMPACT ASSISTANCE GRANT PRO-
4 GRAM.—

5 “(A) ESTABLISHMENT.—The Secretary of
6 Health and Human Services, in consultation
7 with the Secretary of Education, shall establish
8 the State Impact Assistance Grant Program
9 (referred to in this subsection as the ‘Pro-
10 gram’), under which the Secretary may award
11 grants to States to provide health and edu-
12 cation services to noncitizens in accordance with
13 this paragraph.

14 “(B) STATE ALLOCATIONS.—The Sec-
15 retary of Health and Human Services shall an-
16 nually allocate the amounts available in the
17 State Impact Assistance Account among the
18 States as follows:

19 “(i) NONCITIZEN POPULATION.—
20 Eighty percent of such amounts shall be
21 allocated so that each State receives the
22 greater of—

23 “(I) \$5,000,000; or

24 “(II) after adjusting for alloca-
25 tions under subclause (I), the percent-

1 age of the amount to be distributed
2 under this clause that is equal to the
3 noncitizen resident population of the
4 State divided by the noncitizen resi-
5 dent population of all States, based on
6 the most recent data available from
7 the Bureau of the Census.

8 “(ii) HIGH GROWTH RATES.—Twenty
9 percent of such amounts shall be allocated
10 among the 20 States with the largest
11 growth rates in noncitizen resident popu-
12 lation, as determined by the Secretary of
13 Health and Human Services, so that each
14 such State receives the percentage of the
15 amount distributed under this clause that
16 is equal to—

17 “(I) the growth rate in the non-
18 citizen resident population of the
19 State during the most recent 3-year
20 period for which data is available from
21 the Bureau of the Census; divided by

22 “(II) the average growth rate in
23 noncitizen resident population for the
24 20 States during such 3-year period.

1 “(iii) LEGISLATIVE APPROPRIA-
2 TIONS.—The use of grant funds allocated
3 to States under this paragraph shall be
4 subject to appropriation by the legislature
5 of each State in accordance with the terms
6 and conditions under this paragraph.

7 “(C) FUNDING FOR LOCAL GOVERN-
8 MENT.—

9 “(i) DISTRIBUTION CRITERIA.—Grant
10 funds received by States under this para-
11 graph shall be distributed to units of local
12 government based on need and function.

13 “(ii) MINIMUM DISTRIBUTION.—Ex-
14 cept as provided in clause (iii), a State
15 shall distribute not less than 30 percent of
16 the grant funds received under this para-
17 graph to units of local government not
18 later than 180 days after receiving such
19 funds.

20 “(iii) EXCEPTION.—If an eligible unit
21 of local government that is available to
22 carry out the activities described in sub-
23 paragraph (D) cannot be found in a State,
24 the State does not need to comply with
25 clause (ii).

1 “(iv) UNEXPENDED FUNDS.—Any
2 grant funds distributed by a State to a
3 unit of local government that remain unex-
4 pended as of the end of the grant period
5 shall revert to the State for redistribution
6 to another unit of local government.

7 “(D) USE OF FUNDS.—States and units of
8 local government shall use grant funds received
9 under this paragraph to provide health services,
10 educational services, and related services to
11 noncitizens within their jurisdiction directly, or
12 through contracts with eligible services pro-
13 viders, including—

14 “(i) health care providers;

15 “(ii) local educational agencies; and

16 “(iii) charitable and religious organi-
17 zations.

18 “(E) STATE DEFINED.—In this paragraph,
19 the term ‘State’ means each of the several
20 States of the United States, the District of Co-
21 lumbia, the Commonwealth of Puerto Rico, the
22 Virgin Islands, Guam, American Samoa, and
23 the Commonwealth of the Northern Mariana Is-
24 lands.

1 “(F) CERTIFICATION.—In order to receive
 2 a payment under this subsection, the State
 3 shall provide the Secretary of Health and
 4 Human Services with a certification that the
 5 State’s proposed uses of the fund are consistent
 6 with subparagraph (D).

7 “(G) ANNUAL REPORT.—The Secretary of
 8 Health and Human Services shall inform the
 9 States annually of the amount of funds avail-
 10 able to each State under the Program.”.

11 (c) CLERICAL AMENDMENT.—The table of contents
 12 (8 U.S.C. 1101 note) is amended by inserting after the
 13 item relating to section 218 the following:

“Sec. 218A. Admission of Y nonimmigrants.”.

14 **SEC. 403. GENERAL Y NONIMMIGRANT EMPLOYER OBLIGA-**
 15 **TIONS.**

16 (a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.)
 17 is amended by inserting after section 218A, as added by
 18 section 402, the following:

19 **“SEC. 218B. GENERAL Y NONIMMIGRANT EMPLOYER OBLI-**
 20 **GATIONS.**

21 “(a) GENERAL REQUIREMENTS.—Each employer
 22 who seeks to employ a Y nonimmigrant shall—

23 “(1) file, in accordance with subsection (b), an
 24 application for labor certification of the position that

1 the employer seeks to fill with a Y nonimmigrant
2 that contains—

3 “(A) the attestation described in sub-
4 section (c);

5 “(B) a description of the nature and loca-
6 tion of the work to be performed;

7 “(C) the anticipated period (expected be-
8 ginning and ending dates) for which the work-
9 ers will be needed; and

10 “(D) the number of job opportunities in
11 which the employer seeks to employ the work-
12 ers;

13 “(2) include with the application filed under
14 paragraph (1) a copy of the job offer describing the
15 wages and other terms and conditions of employ-
16 ment and the bona fide occupational qualifications
17 that shall be possessed by a worker to be employed
18 in the job opportunity in question; and

19 “(3) be required to pay, with respect to an ap-
20 plication to employ a Y-1 worker—

21 “(A) an application processing fee for each
22 alien, in an amount sufficient to recover the full
23 cost to the Secretary of Labor of administrative
24 and other expenses associated with adjudicating
25 the application; and

1 “(B) a secondary fee, if the employer does
2 not provide health insurance coverage for its Y
3 nonimmigrant employees, to be deposited in the
4 Treasury in accordance with section 286(x),
5 of—

6 “(i) \$500, in the case of an employer
7 employing 25 employees or less;

8 “(ii) \$750, in the case of an employer
9 employing between 26 and 150 employees,
10 inclusive;

11 “(iii) \$1000, in the case of an em-
12 ployer employing between 151 and 500 em-
13 ployees, inclusive; or

14 “(iv) \$1,250, in the case of an em-
15 ployer employing more than 500 employ-
16 ees.

17 “(b) REQUIRED PROCEDURE.—Except where the
18 Secretary of Labor has determined that there is a shortage
19 of United States workers in the occupation and area of
20 intended employment to which the Y nonimmigrant is
21 sought, each employer of Y nonimmigrants shall comply
22 with the following requirements:

23 “(1) EFFORTS TO RECRUIT UNITED STATES
24 WORKERS.—The employer involved shall recruit

1 United States workers for the position for which
2 labor certification is sought under this section—

3 “(A) not later than 90 days before the
4 date on which an application is filed under sub-
5 section (a)(1), by—

6 “(i) submitting a copy of the job op-
7 portunity, including a description of the
8 wages and other terms and conditions of
9 employment and the minimum education,
10 training, experience and other require-
11 ments of the job, to the designated State
12 agency;

13 “(ii) authorizing the designated State
14 agency to post the job opportunity on the
15 Internet website established under section
16 414 of the Secure Borders, Economic Op-
17 portunity, and Immigration Reform Act of
18 2007, with local job banks, and with unem-
19 ployment agencies and other labor referral
20 and recruitment sources pertinent to the
21 job involved; and

22 “(iii) authorizing the designated State
23 agency to notify labor organizations in the
24 State in which the job is located and, if ap-
25 plicable, the office of the local union which

1 represents the employees in the same or
2 substantially equivalent job classification of
3 the job opportunity;

4 “(B) posting the availability of the job op-
5 portunity for which the employer is seeking a
6 worker in conspicuous locations at the place of
7 employment for all employees to see for a pe-
8 riod of time beginning not later than 90 days
9 before the date on which an application is filed
10 under subsection (a)(1) and ending no earlier
11 than 14 days before such filing date;

12 “(C) advertising the availability of the job
13 opportunity for which the employer is seeking a
14 worker in 1 of the 3 highest circulation publica-
15 tions in the labor market that is likely to be pa-
16 tronized by a potential worker for not fewer
17 than 10 consecutive days during the period of
18 time beginning not later than 90 days before
19 the date on which an application is filed under
20 subsection (a)(1) and ending no earlier than 14
21 days before such filing date; and

22 “(D) advertising the availability of the job
23 opportunity in professional, trade, or ethnic
24 publications that are likely to be patronized by
25 a potential worker, as recommended by the des-

1 “(B) did not and will not cause the separa-
2 tion from employment of a United States work-
3 er employed by the employer within the 180-day
4 period beginning 90 days before the date on
5 which the petition is filed.

6 “(2) WAGES.—

7 “(A) IN GENERAL.—The Y nonimmigrant
8 worker will be paid not less than the greater
9 of—

10 “(i) the actual wage level paid by the
11 employer to all other individuals with simi-
12 lar experience and qualifications for the
13 specific employment in question; or

14 “(ii) the prevailing competitive wage
15 level for the occupational classification in
16 the area of employment, taking into ac-
17 count experience and skill levels of employ-
18 ees.

19 “(B) CALCULATION.—The wage levels
20 under subparagraph (A) shall be calculated
21 based on the best information available at the
22 time of the filing of the application.

23 “(C) PREVAILING COMPETITIVE WAGE
24 LEVEL.—For purposes of clause (A)(ii), the

1 prevailing competitive wage level shall be deter-
2 mined as follows:

3 “(i) If the job opportunity is covered
4 by a collective bargaining agreement be-
5 tween a union and the employer, the pre-
6 vailing competitive wage shall be the wage
7 rate set forth in the collective bargaining
8 agreement.

9 “(ii) If the job opportunity is not cov-
10 ered by such an agreement and it is on a
11 project that is covered by a wage deter-
12 mination under a provision of subchapter
13 IV of chapter 31 of title 40, United States
14 Code, or the Service Contract Act of 1965
15 (41 U.S.C. 351 et seq.), the prevailing
16 competitive wage level shall be the appro-
17 priate statutory wage.

18 “(iii) If the job opportunity is not cov-
19 ered by such an agreement and it is not on
20 a project covered by a wage determination
21 under a provision of subchapter IV of
22 chapter 31 of title 40, United States Code,
23 or the Service Contract Act of 1965 (41
24 U.S.C. 351 et seq.), the prevailing com-
25 petitive wage level shall be based on pub-

1 lished wage data for the occupation from
2 the Bureau of Labor Statistics, including
3 the Occupational Employment Statistics
4 survey, Current Employment Statistics
5 data, National Compensation Survey, and
6 Occupational Employment Projections pro-
7 gram. If the Bureau of Labor Statistics
8 does not have wage data applicable to such
9 occupation, the employer may base the pre-
10 vailing competitive wage level on data from
11 another wage survey approved by the State
12 workforce agency under regulations pro-
13 mulgated by the Secretary of Labor. Such
14 regulations shall require, among other
15 things, that such surveys are statistically
16 valid and recently conducted.

17 “(3) LABOR DISPUTE.—There is not a strike,
18 lockout, or work stoppage in the course of a labor
19 dispute in the occupation at the place of employment
20 at which the Y nonimmigrant will be employed. If
21 such strike, lockout, or work stoppage occurs fol-
22 lowing submission of the application, the employer
23 will provide notification in accordance with regula-
24 tions promulgated by the Secretary of Labor.

1 “(4) PROVISION OF INSURANCE.—If the posi-
2 tion for which the Y nonimmigrant is sought is not
3 covered by the State workers’ compensation law, the
4 employer will provide, at no cost to the Y non-
5 immigrant, insurance covering injury and disease
6 arising out of, and in the course of, the worker’s em-
7 ployment, which will provide benefits at least equal
8 to those provided under the State workers’ com-
9 pensation law for comparable employment.

10 “(5) NOTICE TO EMPLOYEES.—

11 “(A) IN GENERAL.—The employer has pro-
12 vided notice of the filing of the application to
13 the bargaining representative of the employer’s
14 employees in the occupational classification and
15 area of employment for which the Y non-
16 immigrant is sought.

17 “(B) NO BARGAINING REPRESENTATIVE.—

18 If there is no such bargaining representative,
19 the employer has—

20 “(i) posted a notice of the filing of the
21 application in a conspicuous location at the
22 place or places of employment for which
23 the Y nonimmigrant is sought; or

24 “(ii) electronically disseminated such
25 a notice to the employer’s employees in the

1 occupational classification for which the Y
2 nonimmigrant is sought.

3 “(6) RECRUITMENT.—Except where the Sec-
4 retary of Labor has determined that there is a
5 shortage of United States workers in the occupation
6 and area of intended employment for which the Y
7 nonimmigrant is sought—

8 “(A) there are not sufficient workers who
9 are able, willing, and qualified, and who will be
10 available at the time and place needed, to per-
11 form the labor or services described in the ap-
12 plication; and

13 “(B) good faith efforts have been taken to
14 recruit United States workers, in accordance
15 with regulations promulgated by the Secretary
16 of Labor, which efforts included—

17 “(i) the completion of recruitment
18 during the period beginning on the date
19 that is 90 days before the date on which
20 the application was filed with the Depart-
21 ment of Labor and ending on the date that
22 is 14 days before such filing date; and

23 “(ii) the wages that the employer
24 would be required by law to provide for the

1 Y nonimmigrant were used in conducting
2 recruitment.

3 “(7) INELIGIBILITY.—The employer is not cur-
4 rently ineligible from using the Y nonimmigrant pro-
5 gram described in this section.

6 “(8) BONAFIDE OFFER OF EMPLOYMENT.—The
7 job for which the Y nonimmigrant is sought is a
8 bona fide job—

9 “(A) for which the employer needs labor or
10 services;

11 “(B) which has been and is clearly open to
12 any United States worker; and

13 “(C) for which the employer will be able to
14 place the Y nonimmigrant on the payroll.

15 “(9) PUBLIC AVAILABILITY AND RECORDS RE-
16 TENTION.—A copy of each application filed under
17 this section and documentation supporting each at-
18 testation, in accordance with regulations promul-
19 gated by the Secretary of Labor, will—

20 “(A) be provided to every Y nonimmigrant
21 employed under the petition;

22 “(B) be made available for public examina-
23 tion at the employer’s place of business or work
24 site;

1 “(C) be made available to the Secretary of
2 Labor during any audit; and

3 “(D) remain available for examination for
4 5 years after the date on which the application
5 is filed.

6 “(10) NOTIFICATION UPON SEPARATION FROM
7 OR TRANSFER OF EMPLOYMENT.—The employer will
8 notify the Secretary of Labor and the Secretary of
9 a Y nonimmigrant’s separation from employment or
10 transfer to another employer not more than 3 busi-
11 ness days after the date of such separation or trans-
12 fer, in accordance with section 218A(q)(2).

13 “(11) ACTUAL NEED FOR LABOR OR SERV-
14 ICES.—The application was filed not more than 60
15 days before the date on which the employer needed
16 labor or services for which the Y nonimmigrant is
17 sought.

18 “(d) AUDIT OF ATTESTATIONS.—

19 “(1) REFERRALS BY SECRETARY.—The Sec-
20 retary shall refer all petitions approved under sec-
21 tion 218A to the Secretary of Labor for potential
22 audit.

23 “(2) AUDITS AUTHORIZED.—The Secretary of
24 Labor may audit any approved petition referred pur-

1 suant to paragraph (1), in accordance with regula-
2 tions promulgated by the Secretary of Labor.

3 “(e) INELIGIBLE EMPLOYERS.—

4 “(1) IN GENERAL.—In addition to any other
5 applicable penalties under law, the Secretary of
6 Labor and the Secretary shall not, for the period de-
7 scribed in paragraph (2), approve an employer’s pe-
8 tition or application for a labor certification under
9 any immigrant or nonimmigrant program if the Sec-
10 retary of Labor determines, after notice and an op-
11 portunity for a hearing, that the employer submit-
12 ting such documents—

13 “(A) has, with respect to the application
14 required under subsection (a), including attesta-
15 tions required under subsection (b)—

16 “(i) misrepresented a material fact;

17 “(ii) made a fraudulent statement; or

18 “(iii) failed to comply with the terms
19 of such attestations; or

20 “(B) failed to cooperate in the audit proc-
21 ess in accordance with regulations promulgated
22 by the Secretary of Labor;

23 “(C) has been convicted of any of the of-
24 fenses codified in Chapter 77 of Title 18 of the
25 United States Code (slave labor) or any con-

1 spiracy to commit such offenses, or any human
2 trafficking offense under State or territorial
3 law;

4 “(D) has, within 3 years prior to the date
5 of application:

6 “(i) committed any hazardous occupa-
7 tion orders violation resulting in injury or
8 death under the child labor provisions con-
9 tained in section 12 of the Fair Labor
10 Standards Act (29 U.S.C. 212) and any
11 regulation thereunder;

12 “(ii) been assessed a civil money pen-
13 alty for any repeated or willful violation of
14 the minimum wage provisions of section 6
15 of the Fair Labor Standards Act of 1938
16 (29 U.S.C. 206); or

17 “(iii) been assessed a civil money pen-
18 alty for any repeated or willful violation of
19 the overtime provisions of section 7 of the
20 Fair Labor Standards Act of 1938 (29
21 U.S.C. 207) or any regulations thereunder,
22 other than a repeated violation that is self-
23 reported; or

24 “(E) has, within 3 years prior to the date
25 of application, received a citation for:

1 “(i) a willful violation; or

2 “(ii) repeated serious violations involv-
3 ing injury or death of section 5 of the Oc-
4 cupational Safety and Health Act of 1970
5 (29 U.S.C. 654), or any standard, rule, or
6 order promulgated pursuant to section 6 of
7 such Act (29 U.S.C. 655). This subsection
8 shall also apply to equivalent violations of
9 a plan approved under section 18 of such
10 Act (29 U.S.C. 667).

11 “(2) LENGTH OF INELIGIBILITY.—An employer
12 described in paragraph (1) shall be ineligible to par-
13 ticipate in the labor certification programs of the
14 Secretary of Labor for not less than the time period
15 determined by the Secretary, not to exceed 3 years.
16 An employer who has been convicted of any of the
17 offenses codified in Chapter 77 of Title 18 of the
18 United States Code (slave labor) or any conspiracy
19 to commit such offenses, or any human trafficking
20 offense under State or territorial law shall be perma-
21 nently ineligible to participate in the labor certifi-
22 cation programs.

23 “(3) EMPLOYERS IN HIGH UNEMPLOYMENT
24 AREAS.—The Secretary of Labor may not approve
25 any employer’s application under subsection (b) if

1 the work to be performed by the Y nonimmigrant is
2 not agriculture based and is located in a county
3 where the unemployment rate during the most re-
4 cently completed year is more than 7 percent. An
5 employer in a high unemployment area may petition
6 the Secretary for a waiver of this provision. The Sec-
7 retary shall promulgate regulations for the expedi-
8 tious review of such waivers, which shall specify that
9 the employer shall satisfy the requirements of sec-
10 tion (b) above and in addition shall provide docu-
11 mentation of its recruitment efforts, including proof
12 that it has advertised the position in 1 of the 3 pub-
13 lications that have the highest circulation in the
14 labor market that is likely to be patronized by a po-
15 tential worker for not fewer than 20 consecutive
16 days under the rules and conditions set forth in sec-
17 tion (b). An employer who has provided proof of ad-
18 vertising in accordance with this section shall be
19 deemed to be in compliance with the requirements of
20 subsection (b)(1)(D). The Secretary shall provide for
21 a process to promptly respond to all waiver requests,
22 and shall maintain on the Department of Labor's
23 website an annual list of counties to which this sub-
24 section applies.

1 “(4) INELIGIBILITY FOR PETITIONS.—The Sec-
2 retary of Labor shall inform the Secretary of a de-
3 termination under paragraph (1) with respect to a
4 specific employer. The Secretary shall not, for the
5 period described in paragraph (2), approve the peti-
6 tions or applications of any such employer for any
7 immigrant or nonimmigrant program, regardless of
8 whether such application or petition requires a labor
9 certification.

10 “(f) PROHIBITION OF INDEPENDENT CONTRAC-
11 TORS.—

12 “(1) COVERAGE.—Notwithstanding any other
13 provision of law—

14 “(A) a Y nonimmigrant is prohibited from
15 being treated as an independent contractor
16 under any Federal or State law;

17 “(B) no person, including an employer or
18 labor contractor and any persons who are affili-
19 ated with or contract with an employer or labor
20 contractor, may treat a Y nonimmigrant as an
21 independent contractor; and

22 “(C) this provision shall not be construed
23 to prevent employers who operate as inde-
24 pendent contractors from employing Y non-
25 immigrants as employees.

1 “(2) APPLICABILITY OF LAWS.—A Y non-
2 immigrant shall not be denied any right or any reme-
3 dy under Federal, State, or local labor or employ-
4 ment law that would be applicable to a United
5 States worker employed in a similar position with
6 the employer because of the alien’s status as a non-
7 immigrant worker.

8 “(3) TAX RESPONSIBILITIES.—With respect to
9 each employed Y nonimmigrant, an employer shall
10 comply with all applicable Federal, State, and local
11 tax and revenue laws.

12 “(g) EMPLOYEE PROTECTION.—

13 “(1) WHISTLEBLOWER PROTECTION.—

14 “(A) PROHIBITED ACTIVITIES.—It shall be
15 unlawful for an employer or a labor contractor
16 of a Y nonimmigrant to intimidate, threaten,
17 restrain, coerce, retaliate, discharge, or in any
18 other manner, discriminate against an employee
19 or former employee because the employee or
20 former employee—

21 “(i) discloses information to the em-
22 ployer or any other person that the em-
23 ployee or former employee reasonably be-
24 lieves demonstrates a violation of this Act
25 or the Secure Borders, Economic Oppor-

1 tunity, and Immigration Reform Act of
2 2007; or

3 “(ii) cooperates or seeks to cooperate
4 in an investigation or other proceeding
5 concerning compliance with the require-
6 ments of this Act or the Secure Borders,
7 Economic Opportunity, and Immigration
8 Reform Act of 2007.

9 “(B) RULEMAKING.—The Secretary of
10 Labor shall promulgate regulations that estab-
11 lish a process by which a nonimmigrant alien
12 described in section 101(a)(15)(Y) or
13 101(a)(15)(H) who files a nonfrivolous com-
14 plaint (as defined by the Federal Rules of Civil
15 Procedure) regarding a violation of this Act, the
16 Secure Borders, Economic Opportunity, and
17 Immigration Reform Act of 2007, any other
18 Federal labor or employment law, or any other
19 rule or regulation pertaining to such laws and
20 is otherwise eligible to remain and work in the
21 United States prior to the expiration of the
22 maximum period of stay authorized for that
23 nonimmigrant classification for a period of 120
24 consecutive days or such additional time period
25 as the Secretary shall determine through rule-

1 making is necessary to collect information or
2 take evidence from the nonimmigrant alien re-
3 garding a complaint or agency investigation.
4 This period shall be allowed to exceed the max-
5 imum period of stay authorized for that non-
6 immigrant classification if the Secretary of
7 Labor has designated the nonimmigrant alien
8 as a necessary witness.

9 “(2) COLLECTIVE BARGAINING.—Nothing in
10 this section is intended to limit an employee’s rights
11 under a collective bargaining agreement or other em-
12 ployment contract.

13 “(h) LABOR RECRUITERS.—

14 “(1) IN GENERAL.—Each employer that en-
15 gages in foreign labor contracting activity and each
16 foreign labor contractor shall ascertain and disclose,
17 to each Y nonimmigrant worker who is recruited for
18 employment at the time of the worker’s recruit-
19 ment—

20 “(A) the place of employment;

21 “(B) the compensation for the employ-
22 ment;

23 “(C) a description of employment activi-
24 ties;

25 “(D) the period of employment;

1 “(E) any other employee benefit to be pro-
2 vided and any costs to be charged for each ben-
3 efit;

4 “(F) any travel or transportation expenses
5 to be assessed;

6 “(G) the existence of any labor organizing
7 effort, strike, lockout, or other labor dispute at
8 the place of employment;

9 “(H) the existence of any arrangement
10 with any owner, employer, foreign contractor,
11 or its agent where such person receives a com-
12 mission from the provision of items or services
13 to workers;

14 “(I) the extent to which workers will be
15 compensated through workers’ compensation,
16 private insurance, or otherwise for injuries or
17 death, including—

18 “(i) work related injuries and death
19 during the period of employment;

20 “(ii) the name of the State workers’
21 compensation insurance carrier or the
22 name of the policyholder of the private in-
23 surance;

1 “(iii) the name and the telephone
2 number of each person who shall be noti-
3 fied of an injury or death; and

4 “(iv) the time period within which
5 such notice shall be given;

6 “(J) any education or training to be pro-
7 vided or required, including—

8 “(i) the nature and cost of such train-
9 ing;

10 “(ii) the entity that will pay such
11 costs; and

12 “(iii) whether the training is a condi-
13 tion of employment, continued employ-
14 ment, or future employment; and

15 “(K) a statement, in a form specified by
16 the Secretary of Labor, describing the protec-
17 tions of this Act and of the Trafficking Victims
18 Protection Act of 2000 (Public Law 106–486),
19 for workers recruited abroad.

20 “(2) FALSE OR MISLEADING INFORMATION.—

21 No foreign labor contractor or employer who en-
22 gages in foreign labor contracting activity shall
23 knowingly provide materially false or misleading in-
24 formation to any worker concerning any matter re-
25 quired to be disclosed in paragraph (1).

1 “(3) LANGUAGES.—The information required to
2 be disclosed under paragraph (1) shall be provided
3 in writing in English or, as necessary and reason-
4 able, in the language of the worker being recruited.
5 The Secretary of Labor shall make forms available
6 in English, Spanish, and other languages, as nec-
7 essary and reasonable, which may be used in pro-
8 viding workers with information required under this
9 section.

10 “(4) FEES.—A person conducting a foreign
11 labor contracting activity shall not assess any fee to
12 a worker for such foreign labor contracting activity.

13 “(5) TERMS.—No employer or foreign labor
14 contractor shall, without justification, violate the
15 terms of any agreement related to the requirements
16 of this section made by that contractor or employer
17 regarding employment under this program.

18 “(6) TRAVEL COSTS.—If the foreign labor con-
19 tractor or employer charges the employee for trans-
20 portation, such transportation costs shall be reason-
21 able.

22 “(7) OTHER WORKER PROTECTIONS.—

23 “(A) NOTIFICATION.—Not less frequently
24 than once every year, each employer shall notify
25 the Secretary of Labor of the identity of any

1 foreign labor contractor engaged by the em-
2 ployer in any foreign labor contractor activity
3 for, or on behalf of, the employer.

4 “(B) REGISTRATION OF FOREIGN LABOR
5 CONTRACTORS.—

6 “(i) IN GENERAL.—No person shall
7 engage in foreign labor recruiting activity
8 unless such person has a certificate of reg-
9 istration from the Secretary of Labor
10 specifying the activities that such person is
11 authorized to perform. An employer who
12 retains the services of a foreign labor con-
13 tractor shall only use those foreign labor
14 contractors who are registered under this
15 subparagraph.

16 “(ii) ISSUANCE.—The Secretary shall
17 promulgate regulations to establish an effi-
18 cient electronic process for the investiga-
19 tion and approval of an application for a
20 certificate of registration of foreign labor
21 contractors not later than 14 days after
22 such application is filed, including—

23 “(I) requirements under para-
24 graphs (1), (4), and (5) of section 102
25 of the Migrant and Seasonal Agricul-

1 tural Worker Protection Act (29
2 U.S.C. 1812);

3 “(II) an expeditious means to up-
4 date registrations and renew certifi-
5 cates; and

6 “(III) any other requirements
7 that the Secretary may prescribe.

8 “(iii) TERM.—Unless suspended or re-
9 voked, a certificate under this subpara-
10 graph shall be valid for 2 years.

11 “(iv) REFUSAL TO ISSUE; REVOCA-
12 TION; SUSPENSION.—In accordance with
13 regulations promulgated by the Secretary
14 of Labor, the Secretary may refuse to issue
15 or renew, or may suspend or revoke, a cer-
16 tificate of registration under this subpara-
17 graph if—

18 “(I) the application or holder of
19 the certification has knowingly made a
20 material misrepresentation in the ap-
21 plication for such certificate;

22 “(II) the applicant for, or holder
23 of, the certification is not the real
24 party in interest in the application or

1 certificate of registration and the real
2 party in interest—

3 “(aa) is a person who has
4 been refused issuance or renewal
5 of a certificate;

6 “(bb) has had a certificate
7 suspended or revoked; or

8 “(cc) does not qualify for a
9 certificate under this paragraph;
10 or

11 “(III) the applicant for or holder
12 of the certification has failed to com-
13 ply with this Act.

14 “(C) REMEDY FOR VIOLATIONS.—An em-
15 ployer engaging in foreign labor contracting ac-
16 tivity and a foreign labor contractor that vio-
17 lates the provisions of this subsection shall be
18 subject to remedies for foreign labor contractor
19 violations under subsections (j) and (k). If a
20 foreign labor contractor who is an agent of an
21 employer violates any provision of this sub-
22 section when acting within the scope of its
23 agency, the employer shall be subject to rem-
24 edies under subsections (j) and (k). An em-
25 ployer shall not be subject to remedies for viola-

1 tions committed by a foreign labor contractor
2 when such contractor is acting in direct con-
3 travention of an express, written contractual
4 provision contained in the agreement between
5 the employer and the foreign labor contractor.
6 An employer that violates a provision of this
7 subsection relating to employer obligations shall
8 be subject to remedies under subsections (j)
9 and (k).

10 “(D) EMPLOYER NOTIFICATION.—An em-
11 ployer shall notify the Secretary of Labor if the
12 employer becomes aware of a violation of this
13 subsection by a foreign labor recruiter.

14 “(E) WRITTEN AGREEMENTS.—A foreign
15 labor contractor may not violate the terms of
16 any written agreements made with an employer
17 relating to any contracting activity or worker
18 protection under this subsection.

19 “(F) BONDING REQUIREMENT.—The Sec-
20 retary of Labor may require a foreign labor
21 contractor to post a bond in an amount suffi-
22 cient to ensure the protection of individuals re-
23 cruited by the foreign labor contractor. The
24 Secretary may consider the extent to which the
25 foreign labor contractor has sufficient ties to

1 the United States to adequately enforce this
2 subsection.

3 “(i) WAIVER OF RIGHTS PROHIBITED.—A Y non-
4 immigrant may not be required to waive any rights or pro-
5 tections under this Act. Nothing under this subsection
6 shall be construed to affect the interpretation of other
7 laws.

8 “(j) ENFORCEMENT.—

9 “(1) IN GENERAL.—The Secretary of Labor
10 shall promulgate regulations for the receipt, inves-
11 tigation, and disposition of complaints by an ag-
12 grievied person respecting a violation of this section.

13 “(2) FILING DEADLINE.—No investigation or
14 hearing shall be conducted on a complaint con-
15 cerning a violation under this section unless the
16 complaint was filed not later than 12 months after
17 the date of such violation.

18 “(3) REASONABLE BASIS.—The Secretary of
19 Labor shall conduct an investigation under this sub-
20 section if there is reasonable basis to believe that a
21 violation of this section has occurred. The process
22 established under this subsection shall provide that,
23 not later than 30 days after a complaint is filed, the
24 Secretary shall determine if there is reasonable
25 cause to find such a violation.

1 “(4) NOTICE AND HEARING.—

2 “(A) IN GENERAL.—Not later than 60
3 days after the Secretary of Labor makes a de-
4 termination of reasonable basis under para-
5 graph (3), the Secretary shall issue a notice to
6 the interested parties and offer an opportunity
7 for a hearing on the complaint, in accordance
8 with section 556 of title 5, United States Code.

9 “(B) COMPLAINT.—If the Secretary of
10 Labor, after receiving a complaint under this
11 subsection, does not offer the aggrieved person
12 or organization an opportunity for a hearing
13 under subparagraph (A), the Secretary shall no-
14 tify the aggrieved person or organization of
15 such determination and the aggrieved person or
16 organization may seek a hearing on the com-
17 plaint under procedures established by the Sec-
18 retary which comply with the requirements of
19 section 556.

20 “(C) HEARING DEADLINE.—Not later than
21 60 days after the date of a hearing under this
22 paragraph, the Secretary of Labor shall make a
23 finding on the matter in accordance with para-
24 graph (5).

1 “(5) ATTORNEY’S FEES.—A complainant who
2 prevails in an action under this section with respect
3 to a claim related to wages or compensation for em-
4 ployment, or a claim for a violation of subsection (j),
5 shall be entitled to an award of reasonable attorney’s
6 fees and costs.

7 “(6) POWER OF THE SECRETARY.—The Sec-
8 retary may bring an action in any court of com-
9 petent jurisdiction—

10 “(A) to seek remedial action, including in-
11 junctive relief;

12 “(B) to recover the damages described in
13 subsection (k); or

14 “(C) to ensure compliance with terms and
15 conditions described in subsection (g).

16 “(7) SOLICITOR OF LABOR.—Except as pro-
17 vided in section 518(a) of title 28, United States
18 Code, the Solicitor of Labor may appear for and rep-
19 resent the Secretary of Labor in any civil litigation
20 brought under this subsection. All such litigation
21 shall be subject to the direction and control of the
22 Attorney General.

23 “(8) PROCEDURES IN ADDITION TO OTHER
24 RIGHTS OF EMPLOYEES.—The rights and remedies
25 provided to workers under this section are in addi-

1 States worker was harmed, a fine in an
2 amount not more than \$25,000 per viola-
3 tion per affected worker;

4 “(B) for a violation of subsection (h)—

5 “(i) a fine in an amount not less than
6 \$500 and not more than \$4,000 per viola-
7 tion per affected worker;

8 “(ii) if the violation was willful, a fine
9 in an amount not less than \$2,000 and not
10 more than \$5,000 per violation per af-
11 fected worker; and

12 “(iii) if the violation was willful and if
13 in the course of such violation a United
14 States worker was harmed, a fine in an
15 amount not less than \$6,000 and not more
16 than \$35,000 per violation per affected
17 worker; and

18 “(C) for knowingly or recklessly failing to
19 comply with the terms of representations made
20 in petitions, applications, certifications, or at-
21 testations under any immigrant or non-
22 immigrant program, or with representations
23 made in materials required by section (h) (con-
24 cerning labor recruiters) —

1 “(i) a fine in an amount not more
2 than \$4,000 per affected worker; and

3 “(ii) upon the occasion of a third of-
4 fense of failure to comply with representa-
5 tions, a fine in an amount not to exceed
6 \$5,000 per affected worker and designa-
7 tion as an ineligible employer, recruiter, or
8 broker for purposes of any immigrant or
9 nonimmigrant program.

10 “(3) USE OF CIVIL PENALTIES.—All penalties
11 collected under this subsection shall be deposited in
12 the Treasury in accordance with section 286(w).

13 “(4) CRIMINAL PENALTIES.—If a willful and
14 knowing violation of subsection (g) causes extreme
15 physical or financial harm to an individual, the per-
16 son in violation of such subsection may be impris-
17 oned for not more than 6 months, fined in an
18 amount not more than \$35,000, or both.

19 “(l) DEFINITIONS.—Unless otherwise provided, in
20 this section and section 218A:

21 “(1) AGGRIEVED PERSON.—The term ‘ag-
22 grieved person’ means a person adversely affected by
23 an alleged violation of this section, including—

1 “(A) a worker whose job, wages, or work-
2 ing conditions are adversely affected by the vio-
3 lation; and

4 “(B) a representative authorized by a
5 worker whose jobs, wages, or working condi-
6 tions are adversely affected by the violation who
7 brings a complaint on behalf of such worker.

8 “(2) AREA OF EMPLOYMENT.—The terms ‘area
9 of employment’ and ‘area of intended employment’
10 mean the area within normal commuting distance of
11 the worksite or physical location at which the work
12 of the Y worker is or will be performed. If such
13 worksite or location is within a Metropolitan Statis-
14 tical Area, any place within such area is deemed to
15 be within the area of employment.

16 “(3) CONVENTION AGAINST TORTURE.—The
17 term ‘Convention Against Torture’ shall refer to the
18 United Nations Convention Against Torture and
19 Other Cruel, Inhuman or Degrading Treatment or
20 Punishment, subject to any reservations, under-
21 standings, declarations, and provisos contained in
22 the United States Senate resolution of ratification of
23 the Convention, as implemented by section 2242 of
24 the Foreign Affairs Reform and Restructuring Act

1 of 1998 (Public Law 105–277, 112 Stat. 2681,
2 2681–821).

3 “(4) DERIVATIVE Y–3 NONIMMIGRANT.—The
4 term ‘derivative Y–3 nonimmigrant’ means an alien
5 described at paragraph (Y)(iii) of subsection
6 101(a)(15).

7 “(5) ELIGIBLE; ELIGIBLE INDIVIDUAL.—The
8 term ‘eligible,’ when used with respect to an indi-
9 vidual, or ‘eligible individual,’ means, with respect to
10 employment, an individual who is not an unauthor-
11 ized alien (as defined in section 274A) with respect
12 to that employment.

13 “(6) EMPLOY; EMPLOYEE; EMPLOYER.—The
14 terms ‘employ,’ ‘employee,’ and ‘employer’ have the
15 meanings given such terms in section 3 of the Fair
16 Labor Standards Act of 1938 (29 U.S.C. 203).

17 “(7) FELONY.—The term ‘felony,’ with regard
18 to a conviction in a foreign jurisdiction, means a
19 crime for which a sentence of 1 year or longer in
20 prison may be imposed.

21 “(8) FORCE MAJEURE EVENT.—The term ‘force
22 majeure event’ shall mean an event that is beyond
23 the control of either party, including, without limita-
24 tion, hurricanes, earthquakes, act of terrorism, war,

1 fire, civil disorder or other events of a similar or dif-
2 ferent kind.

3 “(9) FOREIGN LABOR CONTRACTOR.—The term
4 ‘foreign labor contractor’ means any person who for
5 any compensation or other valuable consideration
6 paid or promised to be paid, performs any foreign
7 labor contracting activity.

8 “(10) FOREIGN LABOR CONTRACTING ACTIV-
9 ITY.—The term ‘foreign labor contracting activity’
10 means recruiting, soliciting, hiring, employing, or
11 furnishing, an individual who resides outside of the
12 United States for employment in the United States
13 as a nonimmigrant alien described in section
14 101(a)(15)(H)(ii)(c).

15 “(11) FULL TIME.—The term ‘full time’, with
16 respect to a job in agricultural labor or services,
17 means any job in which the individual is employed
18 5.75 or more hours per day; and for any job, means
19 in any period of authorized admission or portion of
20 such period, employment or study for at least 90%
21 of the total number of work-hours in such period,
22 calculated at a rate of 1,575 work-hours per year
23 (1,438 work-hours per year for agricultural employ-
24 ment). Each credit-hour of study shall be counted as
25 the equivalent of 50 work-hours.

1 “(16) SECRETARY.—Except as otherwise pro-
2 vided, the term ‘Secretary’ means the Secretary of
3 Homeland Security.

4 “(17) SEPARATION FROM EMPLOYMENT.—The
5 term ‘separation from employment’ means the work-
6 er’s loss of employment, other than through a dis-
7 charge for inadequate performance, violation of
8 workplace rules, cause, voluntary departure, vol-
9 untary retirement, or the expiration of a grant or
10 contract. The term does not include any situation in
11 which the worker is offered, as an alternative to
12 such loss of employment, a similar employment op-
13 portunity with the same employer at equivalent or
14 higher compensation and benefits than the position
15 from which the employee was discharged, regardless
16 of whether the employee accepts the offer. Nothing
17 in this paragraph shall limit an employee’s rights
18 under a collective bargaining agreement or other em-
19 ployment contract.

20 “(18) UNITED STATES WORKER.—The term
21 ‘United States worker’ means an employee who is—

22 “(A) a citizen or national of the United
23 States; or

24 “(B) an alien who is—

1 “(i) lawfully admitted for permanent
2 residence;

3 “(ii) admitted as a refugee under sec-
4 tion 207;

5 “(iii) granted asylum under section
6 208; or

7 “(iv) otherwise authorized, under this
8 Act or by the Secretary of Homeland Secu-
9 rity, to be employed in the United States.

10 “(19) Y NONIMMIGRANT; Y NONIMMIGRANT
11 WORKER.—

12 “(A) The term ‘Y nonimmigrant’ means an
13 alien admitted to the United States under para-
14 graph (Y)(i) or (Y)(ii) of subsection 101(a)(15),
15 or the spouse or child of such nonimmigrant in
16 derivative status under (Y)(iii);

17 “(B) The term ‘Y nonimmigrant worker’
18 means an alien admitted to the United States
19 under paragraph (Y)(i) or (Y)(ii) of subsection
20 101(a)(15); and

21 “(20) Y-1 NONIMMIGRANT; Y-1 WORKER.—The
22 term ‘Y-1 nonimmigrant’ or ‘Y-1 worker’ means an
23 alien admitted to the United States under paragraph
24 (i) of subsection 101(a)(15)(Y).

1 “(21) Y-2B NONIMMIGRANT; Y-2B WORKER.—
2 The term ‘Y-2B nonimmigrant’ or ‘Y-2B worker’
3 means an alien admitted to the United States under
4 paragraph (ii) of subsection 101(a)(15)(Y).

5 “(22) Y-3 NONIMMIGRANT.—The term ‘Y-3
6 nonimmigrant’ means an alien admitted to the
7 United States under paragraph (iii) of subsection
8 101(a)(15)(Y).”.

9 (b) CLERICAL AMENDMENT.—The table of contents
10 is amended by inserting after the item relating to section
11 218A, as added by section 402, the following:

 “Sec. 218B. Employer obligations.”.

12 **Subtitle B—Seasonal Agricultural**
13 **Nonimmigrant Temporary Workers**

14 **SEC. 404. AMENDMENT TO THE IMMIGRATION AND NATION-**
15 **ALITY ACT.**

16 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)
17 is amended by inserting after section 218B the following:

18 **“SEC. 218C. H-2A EMPLOYER APPLICATIONS.**

19 “(a) APPLICATIONS TO THE SECRETARY OF
20 LABOR.—

21 “(1) IN GENERAL.—No alien may be admitted
22 to the United States as an H-2A worker, or other-
23 wise provided status as an H-2A worker, unless the
24 employer has filed with the Secretary of Labor an
25 application containing—

1 “(A) the assurances described in sub-
2 section (b);

3 “(B) a description of the nature and loca-
4 tion of the work to be performed;

5 “(C) the anticipated period (expected be-
6 ginning and ending dates) for which the work-
7 ers will be needed; and

8 “(D) the number of job opportunities in
9 which the employer seeks to employ the work-
10 ers.

11 “(2) ACCOMPANIED BY JOB OFFER.—Each ap-
12 plication filed under paragraph (1) shall be accom-
13 panied by a copy of the job offer describing the
14 wages and other terms and conditions of employ-
15 ment and the bona fide occupational qualifications
16 that shall be possessed by a worker to be employed
17 in the job opportunity in question.

18 “(b) ASSURANCES FOR INCLUSION IN APPLICA-
19 TIONS.—The assurances referred to in subsection (a)(1)
20 are the following:

21 “(1) JOB OPPORTUNITIES COVERED BY COL-
22 LECTIVE BARGAINING AGREEMENTS.—With respect
23 to a job opportunity that is covered under a collec-
24 tive bargaining agreement:

1 “(A) UNION CONTRACT DESCRIBED.—The
2 job opportunity is covered by a union contract
3 which was negotiated at arm’s length between a
4 bona fide union and the employer.

5 “(B) STRIKE OR LOCKOUT.—The specific
6 job opportunity for which the employer is re-
7 questing an H-2A worker is not vacant because
8 the former occupant is on strike or being locked
9 out in the course of a labor dispute.

10 “(C) NOTIFICATION OF BARGAINING REP-
11 RESENTATIVES.—The employer, at the time of
12 filing the application, has provided notice of the
13 filing under this paragraph to the bargaining
14 representative of the employer’s employees in
15 the occupational classification at the place or
16 places of employment for which aliens are
17 sought.

18 “(D) TEMPORARY OR SEASONAL JOB OP-
19 PORTUNITIES.—The job opportunity is tem-
20 porary or seasonal.

21 “(E) OFFERS TO UNITED STATES WORK-
22 ERS.—The employer has offered or will offer
23 the job to any eligible United States worker
24 who applies and is equally or better qualified
25 for the job for which the nonimmigrant is, or

1 the nonimmigrants are, sought and who will be
2 available at the time and place of need.

3 “(F) PROVISION OF INSURANCE.—If the
4 job opportunity is not covered by the State
5 workers’ compensation law, the employer will
6 provide, at no cost to the worker, insurance cov-
7 ering injury and disease arising out of, and in
8 the course of, the worker’s employment which
9 will provide benefits at least equal to those pro-
10 vided under the State’s workers’ compensation
11 law for comparable employment.

12 “(2) JOB OPPORTUNITIES NOT COVERED BY
13 COLLECTIVE BARGAINING AGREEMENTS.—With re-
14 spect to a job opportunity that is not covered under
15 a collective bargaining agreement:

16 “(A) STRIKE OR LOCKOUT.—The specific
17 job opportunity for which the employer has ap-
18 plied for an H-2A worker is not vacant because
19 the former occupant is on strike or being locked
20 out in the course of a labor dispute.

21 “(B) TEMPORARY OR SEASONAL JOB OP-
22 PORTUNITIES.—The job opportunity is tem-
23 porary or seasonal.

24 “(C) BENEFIT, WAGE, AND WORKING CON-
25 DITIONS.—The employer will provide, at a min-

1 imum, the benefits, wages, and working condi-
2 tions required by section 218E to all workers
3 employed in the job opportunities for which the
4 employer has applied for an H-2A worker
5 under subsection (a) and to all other workers in
6 the same occupation at the place of employ-
7 ment.

8 “(D) NONDISPLACEMENT OF UNITED
9 STATES WORKERS.—The employer did not dis-
10 place and will not displace a United States
11 worker employed by the employer during the
12 period of employment and for a period of 30
13 days preceding the period of employment in the
14 occupation at the place of employment for
15 which the employer has applied for an H-2A
16 worker.

17 “(E) REQUIREMENTS FOR PLACEMENT OF
18 THE NONIMMIGRANT WITH OTHER EMPLOY-
19 ERS.—The employer will not place the non-
20 immigrant with another employer unless—

21 “(i) the nonimmigrant performs du-
22 ties in whole or in part at 1 or more work-
23 sites owned, operated, or controlled by
24 such other employer;

1 “(ii) there are indicia of an employ-
2 ment relationship between the non-
3 immigrant and such other employer; and

4 “(iii) the employer has inquired of the
5 other employer as to whether, and has no
6 actual knowledge or notice that, during the
7 period of employment and for a period of
8 30 days preceding the period of employ-
9 ment, the other employer has displaced or
10 intends to displace a United States worker
11 employed by the other employer in the oc-
12 cupation at the place of employment for
13 which the employer seeks approval to em-
14 ploy H-2A workers.

15 “(F) STATEMENT OF LIABILITY.—The ap-
16 plication form shall include a clear statement
17 explaining the liability under subparagraph (E)
18 of an employer if the other employer described
19 in such subparagraph displaces a United States
20 worker as described in such subparagraph.

21 “(G) PROVISION OF INSURANCE.—If the
22 job opportunity is not covered by the State
23 workers’ compensation law, the employer will
24 provide, at no cost to the worker, insurance cov-
25 ering injury and disease arising out of and in

1 the course of the worker’s employment which
2 will provide benefits at least equal to those pro-
3 vided under the State’s workers’ compensation
4 law for comparable employment.

5 “(H) EMPLOYMENT OF UNITED STATES
6 WORKERS.—

7 “(i) RECRUITMENT.—The employer
8 has taken, or will take, the following steps
9 to recruit United States workers for the
10 job opportunities for which the H-2A
11 worker is, or H-2A workers are, sought:

12 “(I) CONTACTING FORMER
13 WORKERS.—The employer shall make
14 reasonable efforts through the sending
15 of a letter by United States Postal
16 Service mail, or otherwise, to contact
17 any United States worker the em-
18 ployer employed during the previous
19 season in the occupation at the place
20 of intended employment for which the
21 employer is applying for workers and
22 has made the availability of the em-
23 ployer’s job opportunities in the occu-
24 pation at the place of intended em-
25 ployment known to such previous

1 workers, unless the worker was termi-
2 nated from employment by the em-
3 ployer for a lawful job-related reason
4 or abandoned the job before the work-
5 er completed the period of employ-
6 ment of the job opportunity for which
7 the worker was hired.

8 “(II) FILING A JOB OFFER WITH
9 THE LOCAL OFFICE OF THE STATE
10 EMPLOYMENT SECURITY AGENCY.—
11 Not later than 28 days before the
12 date on which the employer desires to
13 employ an H-2A worker in a tem-
14 porary or seasonal agricultural job op-
15 portunity, the employer shall submit a
16 copy of the job offer described in sub-
17 section (a)(2) to the local office of the
18 State workforce agency which serves
19 the area of intended employment and
20 authorize the posting of the job oppor-
21 tunity on its electronic job registry,
22 except that nothing in this subclause
23 shall require the employer to file an
24 interstate job order under section 653

1 of title 20, Code of Federal Regula-
2 tions.

3 “(III) ADVERTISING OF JOB OP-
4 PORTUNITIES.—Not later than 14
5 days before the date on which the em-
6 ployer desires to employ an H-2A
7 worker in a temporary or seasonal ag-
8 ricultural job opportunity, the em-
9 ployer shall advertise the availability
10 of the job opportunities for which the
11 employer is seeking workers in a pub-
12 lication in the local labor market that
13 is likely to be patronized by potential
14 farm workers.

15 “(IV) EMERGENCY PROCE-
16 DURES.—The Secretary of Labor
17 shall, by regulation, provide a proce-
18 dure for acceptance and approval of
19 applications in which the employer
20 has not complied with the provisions
21 of this subparagraph because the em-
22 ployer’s need for H-2A workers could
23 not reasonably have been foreseen.

24 “(ii) JOB OFFERS.—The employer has
25 offered or will offer the job to any eligible

1 United States worker who applies and is
2 equally or better qualified for the job for
3 which the nonimmigrant is, or non-
4 immigrants are, sought and who will be
5 available at the time and place of need.

6 “(iii) PERIOD OF EMPLOYMENT.—The
7 employer will provide employment to any
8 qualified United States worker who applies
9 to the employer during the period begin-
10 ning on the date on which the H-2A work-
11 er departs for the employer’s place of em-
12 ployment and ending on the date on which
13 50 percent of the period of employment for
14 which the H-2A worker who is in the job
15 was hired has elapsed, subject to the fol-
16 lowing requirements:

17 “(I) PROHIBITION.—No person
18 or entity shall willfully and knowingly
19 withhold United States workers before
20 the arrival of H-2A workers in order
21 to force the hiring of United States
22 workers under this clause.

23 “(II) COMPLAINTS.—Upon re-
24 ceipt of a complaint by an employer
25 that a violation of subclause (I) has

1 occurred, the Secretary of Labor shall
2 immediately investigate. The Sec-
3 retary of Labor shall, within 36 hours
4 of the receipt of the complaint, issue
5 findings concerning the alleged viola-
6 tion. If the Secretary of Labor finds
7 that a violation has occurred, the Sec-
8 retary of Labor shall immediately sus-
9 pend the application of this clause
10 with respect to that certification for
11 that date of need.

12 “(III) PLACEMENT OF UNITED
13 STATES WORKERS.—Before referring
14 a United States worker to an em-
15 ployer during the period described in
16 the matter preceding subclause (I),
17 the Secretary of Labor shall make all
18 reasonable efforts to place the United
19 States worker in an open job accept-
20 able to the worker, if there are other
21 job offers pending with the job service
22 that offer similar job opportunities in
23 the area of intended employment.

24 “(iv) STATUTORY CONSTRUCTION.—
25 Nothing in this subparagraph shall be con-

1 strued to prohibit an employer from using
2 such legitimate selection criteria relevant
3 to the type of job that are normal or cus-
4 tomary to the type of job involved so long
5 as such criteria are not applied in a dis-
6 criminatory manner.

7 “(v) UNITED STATES WORKER.—For
8 purpose of this subparagraph, the term
9 ‘United States worker’ means an alien de-
10 scribed in section 218G(14) except an alien
11 admitted or otherwise provided status
12 under section 101(a)(15)(Z).

13 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
14 OF EMPLOYER MEMBERS.—

15 “(1) IN GENERAL.—An agricultural association
16 may file an application under subsection (a) on be-
17 half of 1 or more of its employer members that the
18 association certifies in its application has or have
19 agreed in writing to comply with the requirements of
20 this section and sections 218E, 218F, and 218G.

21 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
22 EMPLOYERS.—If an association filing an application
23 under paragraph (1) is a joint or sole employer of
24 the temporary or seasonal agricultural workers re-
25 quested on the application, the certifications granted

1 under subsection (e)(2)(B) to the association may be
2 used for the certified job opportunities of any of its
3 producer members named on the application, and
4 such workers may be transferred among such pro-
5 ducer members to perform the agricultural services
6 of a temporary or seasonal nature for which the cer-
7 tifications were granted.

8 “(d) WITHDRAWAL OF APPLICATIONS.—

9 “(1) IN GENERAL.—An employer may withdraw
10 an application filed pursuant to subsection (a), ex-
11 cept that if the employer is an agricultural associa-
12 tion, the association may withdraw an application
13 filed pursuant to subsection (a) with respect to 1 or
14 more of its members. To withdraw an application,
15 the employer or association shall notify the Sec-
16 retary of Labor in writing, and the Secretary of
17 Labor shall acknowledge in writing the receipt of
18 such withdrawal notice. An employer who withdraws
19 an application under subsection (a), or on whose be-
20 half an application is withdrawn, is relieved of the
21 obligations undertaken in the application.

22 “(2) LIMITATION.—An application may not be
23 withdrawn while any alien provided status under sec-
24 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
25 tion is employed by the employer.

1 “(3) OBLIGATIONS UNDER OTHER STATUTES.—

2 Any obligation incurred by an employer under any
3 other law or regulation as a result of the recruit-
4 ment of United States workers or H-2A workers
5 under an offer of terms and conditions of employ-
6 ment required as a result of making an application
7 under subsection (a) is unaffected by withdrawal of
8 such application.

9 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

10 “(1) RESPONSIBILITY OF EMPLOYERS.—The
11 employer shall make available for public examina-
12 tion, within 1 working day after the date on which
13 an application under subsection (a) is filed, at the
14 employer’s principal place of business or worksite, a
15 copy of each such application (and such accom-
16 panying documents as are necessary).

17 “(2) RESPONSIBILITY OF THE SECRETARY OF
18 LABOR.—

19 “(A) COMPILATION OF LIST.—The Sec-
20 retary of Labor shall compile, on a current
21 basis, a list (by employer and by occupational
22 classification) of the applications filed under
23 subsection (a). Such list shall include the wage
24 rate, number of workers sought, period of in-
25 tended employment, and date of need. The Sec-

1 retary of Labor shall make such list available
2 for examination in the District of Columbia.

3 “(B) REVIEW OF APPLICATIONS.—The
4 Secretary of Labor shall review such an applica-
5 tion only for completeness and obvious inae-
6 curacies. Unless the Secretary of Labor finds
7 that the application is incomplete or obviously
8 inaccurate, the Secretary of Labor shall certify
9 that the intending employer has filed with the
10 Secretary of Labor an application as described
11 in subsection (a). Such certification shall be
12 provided within 7 days of the filing of the appli-
13 cation.

14 **“SEC. 218D. H-2A EMPLOYMENT REQUIREMENTS.**

15 “(a) PREFERENTIAL TREATMENT OF ALIENS PRO-
16 HIBITED.—Employers seeking to hire United States work-
17 ers shall offer the United States workers no less than the
18 same benefits, wages, and working conditions that the em-
19 ployer is offering, intends to offer, or will provide to H-
20 2A workers. Conversely, no job offer may impose on
21 United States workers any restrictions or obligations
22 which will not be imposed on the employer’s H-2A work-
23 ers.

24 “(b) MINIMUM BENEFITS, WAGES, AND WORKING
25 CONDITIONS.—Except in cases where higher benefits,

1 wages, or working conditions are required by the provi-
2 sions of subsection (a), in order to protect similarly em-
3 ployed United States workers from adverse effects with
4 respect to benefits, wages, and working conditions, every
5 job offer which shall accompany an application under sec-
6 tion 218C(b)(2) shall include each of the following benefit,
7 wage, and working condition provisions:

8 “(1) REQUIREMENT TO PROVIDE HOUSING OR A
9 HOUSING ALLOWANCE.—

10 “(A) IN GENERAL.—An employer applying
11 under section 218C(a) for H-2A workers shall
12 offer to provide housing at no cost to all work-
13 ers in job opportunities for which the employer
14 has applied under that section and to all other
15 workers in the same occupation at the place of
16 employment, whose place of residence is beyond
17 normal commuting distance.

18 “(B) TYPE OF HOUSING.—In complying
19 with subparagraph (A), an employer may, at
20 the employer’s election, provide housing that
21 meets applicable Federal standards for tem-
22 porary labor camps or secure housing that
23 meets applicable local standards for rental or
24 public accommodation housing or other sub-
25 stantially similar class of habitation, or in the

1 absence of applicable local standards, State
2 standards for rental or public accommodation
3 housing or other substantially similar class of
4 habitation. In the absence of applicable local or
5 State standards, Federal temporary labor camp
6 standards shall apply.

7 “(C) FAMILY HOUSING.—If it is the pre-
8 vailing practice in the occupation and area of
9 intended employment to provide family housing,
10 family housing shall be provided to workers
11 with families who request it.

12 “(D) WORKERS ENGAGED IN THE RANGE
13 PRODUCTION OF LIVESTOCK.—The Secretary of
14 Labor shall issue regulations that address the
15 specific requirements for the provision of hous-
16 ing to workers engaged in the range production
17 of livestock.

18 “(E) LIMITATION.—Nothing in this para-
19 graph shall be construed to require an employer
20 to provide or secure housing for persons who
21 were not entitled to such housing under the
22 temporary labor certification regulations in ef-
23 fect on June 1, 1986.

24 “(F) CHARGES FOR HOUSING.—

1 “(i) CHARGES FOR PUBLIC HOUS-
2 ING.—If public housing provided for mi-
3 grant agricultural workers under the aus-
4 pices of a local, county, or State govern-
5 ment is secured by an employer, and use of
6 the public housing unit normally requires
7 charges from migrant workers, such
8 charges shall be paid by the employer di-
9 rectly to the appropriate individual or enti-
10 ty affiliated with the housing’s manage-
11 ment.

12 “(ii) DEPOSIT CHARGES.—Charges in
13 the form of deposits for bedding or other
14 similar incidentals related to housing shall
15 not be levied upon workers by employers
16 who provide housing for their workers. An
17 employer may require a worker found to
18 have been responsible for damage to such
19 housing which is not the result of normal
20 wear and tear related to habitation to re-
21 imburse the employer for the reasonable
22 cost of repair of such damage.

23 “(G) HOUSING ALLOWANCE AS ALTER-
24 NATIVE.—

1 “(i) IN GENERAL.—If the requirement
2 under clause (ii) is satisfied, the employer
3 may provide a reasonable housing allow-
4 ance instead of offering housing under sub-
5 paragraph (A). Upon the request of a
6 worker seeking assistance in locating hous-
7 ing, the employer shall make a good faith
8 effort to assist the worker in identifying
9 and locating housing in the area of in-
10 tended employment. An employer who of-
11 fers a housing allowance to a worker, or
12 assists a worker in locating housing which
13 the worker occupies, pursuant to this
14 clause shall not be deemed a housing pro-
15 vider under section 203 of the Migrant and
16 Seasonal Agricultural Worker Protection
17 Act (29 U.S.C. 1823) solely by virtue of
18 providing such housing allowance. No
19 housing allowance may be used for housing
20 which is owned or controlled by the em-
21 ployer.

22 “(ii) CERTIFICATION.—The require-
23 ment under this clause is satisfied if the
24 Governor of the State certifies to the Sec-
25 retary of Labor that there is adequate

1 housing available in the area of intended
2 employment for migrant farm workers and
3 H-2A workers who are seeking temporary
4 housing while employed in agricultural
5 work. Such certification shall expire after 3
6 years unless renewed by the Governor of
7 the State.

8 “(iii) AMOUNT OF ALLOWANCE.—

9 “(I) NONMETROPOLITAN COUN-
10 TIES.—If the place of employment of
11 the workers provided an allowance
12 under this subparagraph is a non-
13 metropolitan county, the amount of
14 the housing allowance under this sub-
15 paragraph shall be equal to the state-
16 wide average fair market rental for
17 existing housing for nonmetropolitan
18 counties for the State, as established
19 by the Secretary of Housing and
20 Urban Development pursuant to sec-
21 tion 8(c) of the United States Hous-
22 ing Act of 1937 (42 U.S.C. 1437f(c)),
23 based on a 2-bedroom dwelling unit
24 and an assumption of 2 persons per
25 bedroom.

1 “(II) METROPOLITAN COUN-
2 TIES.—If the place of employment of
3 the workers provided an allowance
4 under this paragraph is in a metro-
5 politan county, the amount of the
6 housing allowance under this subpara-
7 graph shall be equal to the statewide
8 average fair market rental for existing
9 housing for metropolitan counties for
10 the State, as established by the Sec-
11 retary of Housing and Urban Devel-
12 opment pursuant to section 8(c) of
13 the United States Housing Act of
14 1937 (42 U.S.C. 1437f(c)), based on
15 a 2-bedroom dwelling unit and an as-
16 sumption of 2 persons per bedroom.

17 “(2) REIMBURSEMENT OF TRANSPORTATION.—

18 “(A) TO PLACE OF EMPLOYMENT.—A
19 worker who completes 50 percent of the period
20 of employment of the job opportunity for which
21 the worker was hired shall be reimbursed by the
22 employer for the cost of the worker’s transpor-
23 tation and subsistence from the place from
24 which the worker came to work for the em-
25 ployer (or place of last employment, if the

1 worker traveled from such place) to the place of
2 employment.

3 “(B) FROM PLACE OF EMPLOYMENT.—A
4 worker who completes the period of employment
5 for the job opportunity involved shall be reim-
6 bursed by the employer for the cost of the
7 worker’s transportation and subsistence from
8 the place of employment to the place from
9 which the worker, disregarding intervening em-
10 ployment, came to work for the employer, or to
11 the place of next employment, if the worker has
12 contracted with a subsequent employer who has
13 not agreed to provide or pay for the worker’s
14 transportation and subsistence to such subse-
15 quent employer’s place of employment.

16 “(C) LIMITATION.—

17 “(i) AMOUNT OF REIMBURSEMENT.—
18 Except as provided in clause (ii), the
19 amount of reimbursement provided under
20 subparagraph (A) or (B) to a worker or
21 alien shall not exceed the lesser of—

22 “(I) the actual cost to the worker
23 or alien of the transportation and sub-
24 sistence involved; or

1 “(II) the most economical and
2 reasonable common carrier transpor-
3 tation charges and subsistence costs
4 for the distance involved.

5 “(ii) DISTANCE TRAVELED.—No reim-
6 bursement under subparagraph (A) or (B)
7 shall be required if the distance traveled is
8 100 miles or less, or the worker is not re-
9 siding in employer-provided housing or
10 housing secured through an allowance as
11 provided in paragraph (1)(G).

12 “(D) EARLY TERMINATION.—If the worker
13 is laid off or employment is terminated for con-
14 tract impossibility (as described in paragraph
15 (4)(D)) before the anticipated ending date of
16 employment, the employer shall provide the
17 transportation and subsistence required by sub-
18 paragraph (B) and, notwithstanding whether
19 the worker has completed 50 percent of the pe-
20 riod of employment, shall provide the transpor-
21 tation reimbursement required by subparagraph
22 (A).

23 “(E) TRANSPORTATION BETWEEN LIVING
24 QUARTERS AND WORKSITE.—The employer
25 shall provide transportation between the work-

1 er’s living quarters and the employer’s worksite
2 without cost to the worker, and such transpor-
3 tation will be in accordance with applicable laws
4 and regulations.

5 “(3) REQUIRED WAGES.—

6 “(A) IN GENERAL.—An employer applying
7 for workers under section 218C(a) shall offer to
8 pay, and shall pay, all workers in the occupa-
9 tion for which the employer has applied for
10 workers, not less (and is not required to pay
11 more) than the greater of the prevailing wage
12 in the occupation in the area of intended em-
13 ployment or the adverse effect wage rate. No
14 worker shall be paid less than the greater of the
15 hourly wage prescribed under section 6(a)(1) of
16 the Fair Labor Standards Act of 1938 (29
17 U.S.C. 206(a)(1)) or the applicable State min-
18 imum wage.

19 “(B) LIMITATION.—Effective on the date
20 of the enactment of the Agricultural Job Op-
21 portunities, Benefits, and Security Act of 2007
22 and continuing for 3 years thereafter, no ad-
23 verse effect wage rate for a State may be more
24 than the adverse effect wage rate for that State
25 in effect on January 1, 2003, as established by

1 section 655.107 of title 20, Code of Federal
2 Regulations.

3 “(C) REQUIRED WAGES AFTER 3-YEAR
4 FREEZE.—

5 “(i) FIRST ADJUSTMENT.—If Con-
6 gress does not set a new wage standard
7 applicable to this section before the first
8 March 1 that is not less than 3 years after
9 the date of enactment of this section, the
10 adverse effect wage rate for each State be-
11 ginning on such March 1 shall be the wage
12 rate that would have resulted if the ad-
13 verse effect wage rate in effect on January
14 1, 2003, had been annually adjusted, be-
15 ginning on March 1, 2006, by the lesser
16 of—

17 “(I) the 12-month percentage
18 change in the Consumer Price Index
19 for All Urban Consumers between De-
20 cember of the second preceding year
21 and December of the preceding year;
22 and

23 “(II) 4 percent.

24 “(ii) SUBSEQUENT ANNUAL ADJUST-
25 MENTS.—Beginning on the first March 1

1 that is not less than 4 years after the date
2 of enactment of this section, and each
3 March 1 thereafter, the adverse effect
4 wage rate then in effect for each State
5 shall be adjusted by the lesser of—

6 “(I) the 12-month percentage
7 change in the Consumer Price Index
8 for All Urban Consumers between De-
9 cember of the second preceding year
10 and December of the preceding year;
11 and

12 “(II) 4 percent.

13 “(D) DEDUCTIONS.—The employer shall
14 make only those deductions from the worker’s
15 wages that are authorized by law or are reason-
16 able and customary in the occupation and area
17 of employment. The job offer shall specify all
18 deductions not required by law which the em-
19 ployer will make from the worker’s wages.

20 “(E) FREQUENCY OF PAY.—The employer
21 shall pay the worker not less frequently than
22 twice monthly, or in accordance with the pre-
23 vailing practice in the area of employment,
24 whichever is more frequent.

360

1 “(F) HOURS AND EARNINGS STATE-
2 MENTS.—The employer shall furnish to the
3 worker, on or before each payday, in 1 or more
4 written statements—

5 “(i) the worker’s total earnings for
6 the pay period;

7 “(ii) the worker’s hourly rate of pay,
8 piece rate of pay, or both;

9 “(iii) the hours of employment which
10 have been offered to the worker (broken
11 out by hours offered in accordance with
12 and over and above the $\frac{3}{4}$ guarantee de-
13 scribed in paragraph (4);

14 “(iv) the hours actually worked by the
15 worker;

16 “(v) an itemization of the deductions
17 made from the worker’s wages; and

18 “(vi) if piece rates of pay are used,
19 the units produced daily.

20 “(G) REPORT ON WAGE PROTECTIONS.—

21 Not later than December 31, 2009, the Comp-
22 troller General of the United States shall pre-
23 pare and transmit to the Secretary of Labor,
24 the Committee on the Judiciary of the Senate,

1 and Committee on the Judiciary of the House
2 of Representatives, a report that addresses—

3 “(i) whether the employment of H-2A
4 workers or unauthorized aliens in the
5 United States agricultural workforce has
6 depressed United States farm worker
7 wages below the levels that would other-
8 wise have prevailed if alien farm workers
9 had not been employed in the United
10 States;

11 “(ii) whether an adverse effect wage
12 rate is necessary to prevent wages of
13 United States farm workers in occupations
14 in which H-2A workers are employed from
15 falling below the wage levels that would
16 have prevailed in the absence of the em-
17 ployment of H-2A workers in those occu-
18 pations;

19 “(iii) whether alternative wage stand-
20 ards, such as a prevailing wage standard,
21 would be sufficient to prevent wages in oc-
22 cupations in which H-2A workers are em-
23 ployed from falling below the wage level
24 that would have prevailed in the absence of
25 such H-2A workers;

1 “(iv) whether any changes are war-
2 ranted in the current methodologies for
3 calculating the adverse effect wage rate
4 and the prevailing wage; and

5 “(v) recommendations for future wage
6 protection under this section.

7 “(H) COMMISSION ON WAGE STAND-
8 ARDS.—

9 “(i) ESTABLISHMENT.—There is es-
10 tablished the Commission on Agricultural
11 Wage Standards under the H-2A program
12 (referred to in this subparagraph as the
13 ‘Commission’).

14 “(ii) COMPOSITION.—The Commission
15 shall consist of 10 members as follows:

16 “(I) Four representatives of agri-
17 cultural employers and 1 representa-
18 tive of the Department of Agriculture,
19 each appointed by the Secretary of
20 Agriculture.

21 “(II) Four representatives of ag-
22 ricultural workers and 1 representa-
23 tive of the Department of Labor, each
24 appointed by the Secretary of Labor.

1 “(iii) FUNCTIONS.—The Commission
2 shall conduct a study that addresses—

3 “(I) whether the employment of
4 H–2A workers or unauthorized aliens
5 in the United States agricultural
6 workforce has depressed United
7 States farm worker wages below the
8 levels that would otherwise have pre-
9 vailed if alien farm workers had not
10 been employed in the United States;

11 “(II) whether an adverse effect
12 wage rate is necessary to prevent
13 wages of United States farm workers
14 in occupations in which H–2A work-
15 ers are employed from falling below
16 the wage levels that would have pre-
17 vailed in the absence of the employ-
18 ment of H–2A workers in those occu-
19 pations;

20 “(III) whether alternative wage
21 standards, such as a prevailing wage
22 standard, would be sufficient to pre-
23 vent wages in occupations in which
24 H–2A workers are employed from fall-
25 ing below the wage level that would

1 have prevailed in the absence of H-2A
2 workers;

3 “(IV) whether any changes are
4 warranted in the current methodolo-
5 gies for calculating the adverse effect
6 wage rate and the prevailing wage
7 rate; and

8 “(V) recommendations for future
9 wage protection under this section.

10 “(iv) MISSING.—The Commission may
11 for the purpose of carrying out this sec-
12 tion, hold such hearings, sit and act at
13 such times and places, take such testi-
14 mony, and receive such evidence as the
15 Commission considers appropriate.

16 “(v) INTERIM REPORT.—The Commis-
17 sion shall issue an interim report, pub-
18 lished in the Federal Register, with oppor-
19 tunity and comment, for a period of at
20 least 90 days.

21 “(vi) FINAL REPORT.—After consid-
22 ering recommendations from interested
23 persons (including an opportunity for com-
24 ment from the public and affected States),
25 the Commission shall submit a report to

1 the Congress setting forth the findings of
2 the study conducted under clause (iii) not
3 later than December 31, 2009.

4 “(vii) TERMINATION DATE.—The
5 Commission shall terminate upon submit-
6 ting its final report.

7 “(4) GUARANTEE OF EMPLOYMENT.—

8 “(A) OFFER TO WORKER.—The employer
9 shall guarantee to offer the worker employment
10 for the hourly equivalent of at least $\frac{3}{4}$ of the
11 work days of the total period of employment,
12 beginning with the first work day after the ar-
13 rival of the worker at the place of employment
14 and ending on the expiration date specified in
15 the job offer. For purposes of this subpara-
16 graph, the hourly equivalent means the number
17 of hours in the work days as stated in the job
18 offer and shall exclude the worker’s Sabbath
19 and Federal holidays. If the employer affords
20 the United States or H-2A worker less employ-
21 ment than that required under this paragraph,
22 the employer shall pay such worker the amount
23 which the worker would have earned had the
24 worker, in fact, worked for the guaranteed
25 number of hours.

1 “(B) FAILURE TO WORK.—Any hours
2 which the worker fails to work, up to a max-
3 imum of the number of hours specified in the
4 job offer for a work day, when the worker has
5 been offered an opportunity to do so, and all
6 hours of work actually performed (including vol-
7 untary work in excess of the number of hours
8 specified in the job offer in a work day, on the
9 worker’s Sabbath, or on Federal holidays) may
10 be counted by the employer in calculating
11 whether the period of guaranteed employment
12 has been met.

13 “(C) ABANDONMENT OF EMPLOYMENT,
14 TERMINATION FOR CAUSE.—If the worker vol-
15 untarily abandons employment before the end
16 of the contract period, or is terminated for
17 cause, the worker is not entitled to the ‘ $\frac{3}{4}$
18 guarantee’ described in subparagraph (A).

19 “(D) CONTRACT IMPOSSIBILITY.—If, be-
20 fore the expiration of the period of employment
21 specified in the job offer, the services of the
22 worker are no longer required for reasons be-
23 yond the control of the employer due to any
24 form of natural disaster, including a flood, hur-
25 ricane, freeze, earthquake, fire, drought, plant

1 or animal disease or pest infestation, or regu-
2 latory drought, before the guarantee in sub-
3 paragraph (A) is fulfilled, the employer may
4 terminate the worker's employment. In the
5 event of such termination, the employer shall
6 fulfill the employment guarantee in subpara-
7 graph (A) for the work days that have elapsed
8 from the first work day after the arrival of the
9 worker to the termination of employment. In
10 such cases, the employer will make efforts to
11 transfer the United States worker to other com-
12 parable employment acceptable to the worker. If
13 such transfer is not effected, the employer shall
14 provide the return transportation required in
15 paragraph (2)(D).

16 “(5) MOTOR VEHICLE SAFETY.—

17 “(A) MODE OF TRANSPORTATION SUBJECT
18 TO COVERAGE.—

19 “(i) IN GENERAL.—Except as pro-
20 vided in clauses (iii) and (iv), this sub-
21 section applies to any H-2A employer that
22 uses or causes to be used any vehicle to
23 transport an H-2A worker within the
24 United States.

1 “(ii) DEFINED TERM.—In this para-
2 graph, the term ‘uses or causes to be
3 used’—

4 “(I) applies only to transpor-
5 tation provided by an H-2A employer
6 to an H-2A worker, or by a farm
7 labor contractor to an H-2A worker
8 at the request or direction of an H-
9 2A employer; and

10 “(II) does not apply to—

11 “(aa) transportation pro-
12 vided, or transportation arrange-
13 ments made, by an H-2A work-
14 er, unless the employer specifi-
15 cally requested or arranged such
16 transportation; or

17 “(bb) car pooling arrange-
18 ments made by H-2A workers
19 themselves, using 1 of the work-
20 ers’ own vehicles, unless specifi-
21 cally requested by the employer
22 directly or through a farm labor
23 contractor.

24 “(iii) CLARIFICATION.—Providing a
25 job offer to an H-2A worker that causes

1 the worker to travel to or from the place
2 of employment, or the payment or reim-
3 bursement of the transportation costs of
4 an H-2A worker by an H-2A employer,
5 shall not constitute an arrangement of, or
6 participation in, such transportation.

7 “(iv) AGRICULTURAL MACHINERY AND
8 EQUIPMENT EXCLUDED.—This subsection
9 does not apply to the transportation of an
10 H-2A worker on a tractor, combine, har-
11 vester, picker, or other similar machinery
12 or equipment while such worker is actually
13 engaged in the planting, cultivating, or
14 harvesting of agricultural commodities or
15 the care of livestock or poultry or engaged
16 in transportation incidental thereto.

17 “(v) COMMON CARRIERS EX-
18 CLUDED.—This subsection does not apply
19 to common carrier motor vehicle transpor-
20 tation in which the provider holds itself out
21 to the general public as engaging in the
22 transportation of passengers for hire and
23 holds a valid certification of authorization
24 for such purposes from an appropriate
25 Federal, State, or local agency.

1 “(B) APPLICABILITY OF STANDARDS, LI-
2 CENSING, AND INSURANCE REQUIREMENTS.—

3 “(i) IN GENERAL.—When using, or
4 causing to be used, any vehicle for the pur-
5 pose of providing transportation to which
6 this subparagraph applies, each employer
7 shall—

8 “(I) ensure that each such vehi-
9 cle conforms to the standards pre-
10 scribed by the Secretary of Labor
11 under section 401(b) of the Migrant
12 and Seasonal Agricultural Worker
13 Protection Act (29 U.S.C. 1841(b))
14 and other applicable Federal and
15 State safety standards;

16 “(II) ensure that each driver has
17 a valid and appropriate license, as
18 provided by State law, to operate the
19 vehicle; and

20 “(III) have an insurance policy
21 or a liability bond that is in effect
22 which insures the employer against li-
23 ability for damage to persons or prop-
24 erty arising from the ownership, oper-
25 ation, or causing to be operated, of

1 any vehicle used to transport any H-
2 2A worker.

3 “(ii) AMOUNT OF INSURANCE RE-
4 QUIRED.—The level of insurance required
5 shall be determined by the Secretary of
6 Labor pursuant to regulations to be issued
7 under this subsection.

8 “(iii) EFFECT OF WORKERS’ COM-
9 PENSATION COVERAGE.—If the employer
10 of any H-2A worker provides workers’
11 compensation coverage for such worker in
12 the case of bodily injury or death as pro-
13 vided by State law, the following adjust-
14 ments in the requirements of subparagraph
15 (B)(i)(III) relating to having an insurance
16 policy or liability bond apply:

17 “(I) No insurance policy or liabil-
18 ity bond shall be required of the em-
19 ployer, if such workers are trans-
20 ported only under circumstances for
21 which there is coverage under such
22 State law.

23 “(II) An insurance policy or li-
24 ability bond shall be required of the
25 employer for circumstances under

1 which coverage for the transportation
2 of such workers is not provided under
3 such State law.

4 “(c) COMPLIANCE WITH LABOR LAWS.—An em-
5 ployer shall assure that, except as otherwise provided in
6 this section, the employer will comply with all applicable
7 Federal, State, and local labor laws, including laws affect-
8 ing migrant and seasonal agricultural workers, with re-
9 spect to all United States workers and alien workers em-
10 ployed by the employer, except that a violation of this as-
11 surance shall not constitute a violation of the Migrant and
12 Seasonal Agricultural Worker Protection Act (29 U.S.C.
13 1801 et seq.).

14 “(d) COPY OF JOB OFFER.—The employer shall pro-
15 vide to the worker, not later than the day the work com-
16 mences, a copy of the employer’s application and job offer
17 described in section 218C(a), or, if the employer will re-
18 quire the worker to enter into a separate employment con-
19 tract covering the employment in question, such separate
20 employment contract.

21 “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing
22 in this section, section 218C, or section 218E shall pre-
23 clude the Secretary of Labor and the Secretary from con-
24 tinuing to apply special procedures and requirements to

1 the admission and employment of aliens in occupations in-
2 volving the range production of livestock.

3 “(f) EVIDENCE ON NONIMMIGRANT STATUS.—Each
4 H–2A nonimmigrant shall be issued documentary evidence
5 of nonimmigrant status, which—

6 “(1) shall be machine-readable, tamper-resist-
7 ant, and shall contain a digitized photograph and
8 other biometric identifiers that can be authenticated;

9 “(2) shall, during the alien’s authorized period
10 of admission as an H–2A nonimmigrant, serve as a
11 valid entry document for the purpose of applying for
12 admission to the United States—

13 “(A) instead of a passport and visa if the
14 alien—

15 “(i) is a national of a foreign territory
16 contiguous to the United States; and

17 “(ii) is applying for admission at a
18 land border port of entry; or

19 “(B) in conjunction with a valid passport,
20 if the alien is applying for admission at an air
21 or sea port of entry;

22 “(3) may be accepted during the period of its
23 validity by an employer as evidence of employment
24 authorization and identity under section
25 274A(b)(1)(B); and

1 “(4) shall be issued to the H–2A nonimmigrant
2 by the Secretary promptly after such alien’s admis-
3 sion to the United States as an H–2A nonimmigrant
4 and reporting to the employer’s worksite under or,
5 at the discretion of the Secretary, may be issued by
6 the Secretary of State at a consulate instead of a
7 visa.

8 **“SEC. 218E. PROCEDURE FOR ADMISSION AND EXTENSION**
9 **OF STAY OF H-2A WORKERS.**

10 “(a) PETITIONING FOR ADMISSION.—An employer,
11 or an association acting as an agent or joint employer for
12 its members, that seeks the admission into the United
13 States of an H–2A worker may file a petition with the
14 Secretary. The petition shall be accompanied by an accept-
15 ed and currently valid certification provided by the Sec-
16 retary of Labor under section 218C(e)(2)(B) covering the
17 petitioner.

18 “(b) EXPEDITED ADJUDICATION BY THE SEC-
19 RETARY.—The Secretary shall establish a procedure for
20 expedited adjudication of petitions filed under subsection
21 (a) and within 7 working days shall, by fax, cable, or other
22 means assuring expedited delivery, transmit a copy of no-
23 tice of action on the petition to the petitioner and, in the
24 case of approved petitions, to the appropriate immigration
25 officer at the port of entry or United States consulate (as

1 the case may be) where the petitioner has indicated that
2 the alien beneficiary (or beneficiaries) will apply for a visa
3 or admission to the United States.

4 “(c) CRITERIA FOR ADMISSIBILITY.—

5 “(1) IN GENERAL.—An H-2A worker shall be
6 considered admissible to the United States if the
7 alien is otherwise admissible under this section, sec-
8 tion 218C, and section 218D, and the alien is not
9 ineligible under paragraph (2).

10 “(2) DISQUALIFICATION.—An alien shall be
11 considered inadmissible to the United States and in-
12 eligible for nonimmigrant status under section
13 101(a)(15)(H)(ii)(a) if the alien has, at any time
14 during the past 5 years—

15 “(A) violated a material provision of this
16 section, including the requirement to promptly
17 depart the United States when the alien’s au-
18 thorized period of admission under this section
19 has expired; or

20 “(B) otherwise violated a term or condition
21 of admission into the United States as a non-
22 immigrant, including overstaying the period of
23 authorized admission as such a nonimmigrant.

24 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
25 FUL PRESENCE.—

1 “(A) IN GENERAL.—An alien who has not
2 previously been admitted into the United States
3 pursuant to this section, and who is otherwise
4 eligible for admission in accordance with para-
5 graphs (1) and (2), shall not be deemed inad-
6 missible by virtue of section 212(a)(9)(B). If an
7 alien described in the preceding sentence is
8 present in the United States, the alien may
9 apply from abroad for nonimmigrant status as
10 an H-2A worker, but may not be granted that
11 status in the United States.

12 “(B) MAINTENANCE OF WAIVER.—An
13 alien provided an initial waiver of ineligibility
14 pursuant to subparagraph (A) shall remain eli-
15 gible for such waiver unless the alien violates
16 the terms of this section or again becomes ineli-
17 gible under section 212(a)(9)(B) by virtue of
18 unlawful presence in the United States after
19 the date of the initial waiver of ineligibility pur-
20 suant to subparagraph (A).

21 “(d) PERIOD OF ADMISSION.—

22 “(1) IN GENERAL.—The alien shall be admitted
23 for the period of employment in the application cer-
24 tified by the Secretary of Labor pursuant to section
25 218C(e)(2)(B), not to exceed 10 months except as

1 specified in paragraph (2), supplemented by a period
2 of not more than 1 week before the beginning of the
3 period of employment for the purpose of travel to
4 the worksite and a period of 14 days following the
5 period of employment for the purpose of departure
6 or extension based on a subsequent offer of employ-
7 ment, except that—

8 “(A) the alien is not authorized to be em-
9 ployed during such 14-day period except in the
10 employment for which the alien was previously
11 authorized; and

12 “(B) the total period of employment, in-
13 cluding such 14-day period, may not exceed 10
14 months.

15 “(2) OPTIONAL PERIOD FOR NON-SEASONAL
16 AGRICULTURAL WORKERS.—Notwithstanding any
17 other provision of law, an alien being admitted to
18 perform agricultural non-seasonal work may, at the
19 employer’s option, be admitted for the period and
20 pursuant to the terms specified in section
21 218A(i)(1)(A), including the rules and limitations
22 specified in section 218A(i)(2), (3), (4), and (5).
23 The spouse and children of an alien admitted pursu-
24 ant to the terms of this paragraph may be admitted

1 only in accordance with the terms set forth in sec-
2 tion 218A(e)(8).

3 “(3) OTHER WORKERS.—Notwithstanding any
4 other provision of law, an alien admitted to perform
5 agricultural non-seasonal work as an sheep herder,
6 goat herder, horse worker, or dairy worker may, at
7 the option of the employer, be admitted for a period
8 not to exceed 3 years. An alien admitted pursuant
9 to the terms of this paragraph may not be accom-
10 panied or subsequently joined by dependents, includ-
11 ing a spouse or child in derivative nonimmigrant sta-
12 tus.

13 “(4) CONSTRUCTION.—Nothing in this sub-
14 section shall limit the authority of the Secretary to
15 extend the stay of the alien under any other provi-
16 sion of this Act.

17 “(e) ABANDONMENT OF EMPLOYMENT.—

18 “(1) IN GENERAL.—An alien admitted or pro-
19 vided status under section 101(a)(15)(H)(ii)(a) who
20 abandons the employment which was the basis for
21 such admission or status shall be considered to have
22 failed to maintain nonimmigrant status as an H-2A
23 worker and shall depart the United States or be sub-
24 ject to removal under section 237(a)(1)(C)(i).

1 “(2) REPORT BY EMPLOYER.—The employer, or
2 association acting as agent for the employer, shall
3 notify the Secretary not later than 7 days after an
4 H–2A worker prematurely abandons employment.

5 “(3) REMOVAL BY THE SECRETARY.—The Sec-
6 retary shall promptly remove from the United States
7 any H–2A worker who violates any term or condi-
8 tion of the worker’s nonimmigrant status.

9 “(4) VOLUNTARY TERMINATION.—Notwith-
10 standing paragraph (1), an alien may voluntarily
11 terminate the alien’s employment if the alien
12 promptly departs the United States upon termi-
13 nation of such employment.

14 “(f) REPLACEMENT OF ALIEN.—

15 “(1) IN GENERAL.—Upon presentation of the
16 notice to the Secretary required by subsection (e)(2),
17 the Secretary of State shall promptly issue a visa to,
18 and the Secretary shall admit into the United
19 States, an eligible alien designated by the employer
20 to replace an H–2A worker—

21 “(A) who abandons or prematurely termi-
22 nates employment; or

23 “(B) whose employment is terminated
24 after a United States worker is employed pur-
25 suant to section 218C(b)(2)(H)(iii), if the

1 United States worker voluntarily departs before
2 the end of the period of intended employment
3 or if the employment termination is for a lawful
4 job-related reason.

5 “(2) CONSTRUCTION.—Nothing in this sub-
6 section is intended to limit any preference required
7 to be accorded United States workers under any
8 other provision of this Act.

9 “(g) IDENTIFICATION DOCUMENT.—

10 “(1) IN GENERAL.—Each alien authorized to be
11 admitted under section 101(a)(15)(H)(ii)(a) shall be
12 provided an identification and employment eligibility
13 document to verify eligibility for employment in the
14 United States and verify the alien’s identity.

15 “(2) REQUIREMENTS.—No identification and
16 employment eligibility document may be issued
17 which does not meet the following requirements:

18 “(A) The document shall be capable of re-
19 liably determining whether—

20 “(i) the individual with the identifica-
21 tion and employment eligibility document
22 whose eligibility is being verified is in fact
23 eligible for employment;

1 “(ii) the individual whose eligibility is
2 being verified is claiming the identity of
3 another person; and

4 “(iii) the individual whose eligibility is
5 being verified is authorized to be admitted
6 into, and employed in, the United States
7 as an H-2A worker.

8 “(B) The document shall be in a form that
9 is resistant to counterfeiting and to tampering.

10 “(C) The document shall—

11 “(i) be compatible with other data-
12 bases of the Secretary for the purpose of
13 excluding aliens from benefits for which
14 they are not eligible and determining
15 whether the alien is unlawfully present in
16 the United States; and

17 “(ii) be compatible with law enforce-
18 ment databases to determine if the alien
19 has been convicted of criminal offenses.

20 “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE
21 UNITED STATES.—

22 “(1) EXTENSION OF STAY.—If an employer
23 seeks approval to employ an H-2A alien who is law-
24 fully present in the United States, the petition filed
25 by the employer or an association pursuant to sub-

1 section (a), shall request an extension of the alien's
2 stay and a change in the alien's employment.

3 “(2) LIMITATION ON FILING A PETITION FOR
4 EXTENSION OF STAY.—A petition may not be filed
5 for an extension of an alien's stay to a date that is
6 more than 10 months after the date of the alien's
7 last admission to the United States under this sec-
8 tion.

9 “(3) WORK AUTHORIZATION UPON FILING A
10 PETITION FOR EXTENSION OF STAY.—

11 “(A) IN GENERAL.—An alien who is law-
12 fully present in the United States may com-
13 mence the employment described in a petition
14 under paragraph (1) on the date on which the
15 petition is filed.

16 “(B) DEFINITION.—For purposes of sub-
17 paragraph (A), the term ‘file’ means sending
18 the petition by certified mail via the United
19 States Postal Service, return receipt requested,
20 or delivered by guaranteed commercial delivery
21 which will provide the employer with a docu-
22 mented acknowledgment of the date of receipt
23 of the petition.

24 “(C) HANDLING OF PETITION.—The em-
25 ployer shall provide a copy of the employer's pe-

1 status as an H-2A worker (including any
2 extensions) has expired, the alien may not
3 again apply for admission to the United
4 States as an H-2A worker unless the alien
5 has remained outside the United States for
6 a continuous period equal to at least $\frac{1}{5}$
7 the duration of the alien's previous period
8 of authorized status as an H-2A worker
9 (including any extensions).

10 “(ii) EXCEPTION.—Clause (i) shall
11 not apply in the case of an alien if the
12 alien's period of authorized status as an
13 H-2A worker (including any extensions)
14 was for a period of not more than 10
15 months and such alien has been outside
16 the United States for at least 2 months
17 during the 12 months preceding the date
18 the alien again is applying for admission to
19 the United States as an H-2A worker.

20 **“SEC. 218F. WORKER PROTECTIONS AND LABOR STAND-**
21 **ARDS ENFORCEMENT.**

22 “(a) ENFORCEMENT AUTHORITY.—

23 “(1) INVESTIGATION OF COMPLAINTS.—

24 “(A) AGGRIEVED PERSON OR THIRD-PARTY
25 COMPLAINTS.—The Secretary of Labor shall es-

1 tabish a process for the receipt, investigation,
2 and disposition of complaints respecting a peti-
3 tioner’s failure to meet a condition specified in
4 section 218C(b), or an employer’s misrepresen-
5 tation of material facts in an application under
6 section 218C(a). Complaints may be filed by
7 any aggrieved person or organization (including
8 bargaining representatives). No investigation or
9 hearing shall be conducted on a complaint con-
10 cerning such a failure or misrepresentation un-
11 less the complaint was filed not later than 12
12 months after the date of the failure, or mis-
13 representation, respectively. The Secretary of
14 Labor shall conduct an investigation under this
15 subparagraph if there is reasonable cause to be-
16 lieve that such a failure or misrepresentation
17 has occurred.

18 “(B) DETERMINATION ON COMPLAINT.—
19 Under such process, the Secretary of Labor
20 shall provide, within 30 days after the date
21 such a complaint is filed, for a determination as
22 to whether or not a reasonable basis exists to
23 make a finding described in subparagraph (C),
24 (D), (E), or (G). If the Secretary of Labor de-
25 termines that such a reasonable basis exists,

1 the Secretary of Labor shall provide for notice
2 of such determination to the interested parties
3 and an opportunity for a hearing on the com-
4 plaint, in accordance with section 556 of title 5,
5 United States Code, within 60 days after the
6 date of the determination. If such a hearing is
7 requested, the Secretary of Labor shall make a
8 finding concerning the matter not later than 60
9 days after the date of the hearing. In the case
10 of similar complaints respecting the same appli-
11 cant, the Secretary of Labor may consolidate
12 the hearings under this subparagraph on such
13 complaints.

14 “(C) FAILURES TO MEET CONDITIONS.—If
15 the Secretary of Labor finds, after notice and
16 opportunity for a hearing, a failure to meet a
17 condition of paragraph (1)(A), (1)(B), (1)(D),
18 (1)(F), (2)(A), (2)(B), or (2)(G) of section
19 218C(b), a substantial failure to meet a condi-
20 tion of paragraph (1)(C), (1)(E), (2)(C),
21 (2)(D), (2)(E), or (2)(H) of section 218C(b), or
22 a material misrepresentation of fact in an appli-
23 cation under section 218C(a)—

24 “(i) the Secretary of Labor shall no-
25 tify the Secretary of such finding and may,

1 in addition, impose such other administra-
2 tive remedies (including civil money pen-
3 alties in an amount not to exceed \$1,000
4 per violation) as the Secretary of Labor
5 determines to be appropriate; and

6 “(ii) the Secretary may disqualify the
7 employer from the employment of aliens
8 described in section 101(a)(15)(H)(ii)(a)
9 for a period of 1 year.

10 “(D) WILLFUL FAILURES AND WILLFUL
11 MISREPRESENTATIONS.—If the Secretary of
12 Labor finds, after notice and opportunity for
13 hearing, a willful failure to meet a condition of
14 section 218C(b), a willful misrepresentation of
15 a material fact in an application under section
16 218C(a), or a violation of subsection (d)(1)—

17 “(i) the Secretary of Labor shall no-
18 tify the Secretary of such finding and may,
19 in addition, impose such other administra-
20 tive remedies (including civil money pen-
21 alties in an amount not to exceed \$5,000
22 per violation) as the Secretary of Labor
23 determines to be appropriate;

24 “(ii) the Secretary of Labor may seek
25 appropriate legal or equitable relief to ef-

1 fectuate the purposes of subsection (d)(1);
2 and

3 “(iii) the Secretary may disqualify the
4 employer from the employment of H-2A
5 workers for a period of 2 years.

6 “(E) DISPLACEMENT OF UNITED STATES
7 WORKERS.—If the Secretary of Labor finds,
8 after notice and opportunity for hearing, a will-
9 ful failure to meet a condition of section
10 218C(b) or a willful misrepresentation of a ma-
11 terial fact in an application under section
12 218C(a), in the course of which failure or mis-
13 representation the employer displaced a United
14 States worker employed by the employer during
15 the period of employment on the employer’s ap-
16 plication under section 218C(a) or during the
17 period of 30 days preceding such period of em-
18 ployment—

19 “(i) the Secretary of Labor shall no-
20 tify the Secretary of such finding and may,
21 in addition, impose such other administra-
22 tive remedies (including civil money pen-
23 alties in an amount not to exceed \$15,000
24 per violation) as the Secretary of Labor
25 determines to be appropriate; and

1 “(ii) the Secretary may disqualify the
2 employer from the employment of H-2A
3 workers for a period of 3 years.

4 “(F) LIMITATIONS ON CIVIL MONEY PEN-
5 ALTIES.—The Secretary of Labor shall not im-
6 pose total civil money penalties with respect to
7 an application under section 218C(a) in excess
8 of \$90,000.

9 “(G) FAILURES TO PAY WAGES OR RE-
10 QUIRED BENEFITS.—If the Secretary of Labor
11 finds, after notice and opportunity for a hear-
12 ing, that the employer has failed to pay the
13 wages, or provide the housing allowance, trans-
14 portation, subsistence reimbursement, or guar-
15 antee of employment, required under section
16 218D(b), the Secretary of Labor shall assess
17 payment of back wages, or other required bene-
18 fits, due any United States worker or H-2A
19 worker employed by the employer in the specific
20 employment in question. The back wages or
21 other required benefits under section 218D(b)
22 shall be equal to the difference between the
23 amount that should have been paid and the
24 amount that actually was paid to such worker.

1 “(2) STATUTORY CONSTRUCTION.—Nothing in
2 this section shall be construed as limiting the au-
3 thority of the Secretary of Labor to conduct any
4 compliance investigation under any other labor law,
5 including any law affecting migrant and seasonal ag-
6 ricultural workers, or, in the absence of a complaint
7 under this section, under section 218C or 218D.

8 “(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF
9 ACTION.—H-2A workers may enforce the following rights
10 through the private right of action provided in subsection
11 (c), and no other right of action shall exist under Federal
12 or State law to enforce such rights:

13 “(1) The providing of housing or a housing al-
14 lowance as required under section 218D(b)(1).

15 “(2) The reimbursement of transportation as
16 required under section 218D(b)(2).

17 “(3) The payment of wages required under sec-
18 tion 218D(b)(3) when due.

19 “(4) The benefits and material terms and con-
20 ditions of employment expressly provided in the job
21 offer described in section 218C(a)(2), not including
22 the assurance to comply with other Federal, State,
23 and local labor laws described in section 218D(c),
24 compliance with which shall be governed by the pro-
25 visions of such laws.

1 “(5) The guarantee of employment required
2 under section 218D(b)(4).

3 “(6) The motor vehicle safety requirements
4 under section 218D(b)(5).

5 “(7) The prohibition of discrimination under
6 subsection (d)(2).

7 “(c) PRIVATE RIGHT OF ACTION.—

8 “(1) MEDIATION.—

9 “(A) IN GENERAL.—Upon the filing of a
10 complaint by an H-2A worker aggrieved by a
11 violation of rights enforceable under subsection
12 (b), and not later than 60 days after the filing
13 of proof of service of the complaint, a party to
14 the action may file a request with the Federal
15 Mediation and Conciliation Service to assist the
16 parties in reaching a satisfactory resolution of
17 all issues involving all parties to the dispute.
18 Upon a filing of such request and giving of no-
19 tice to the parties, the parties shall attempt me-
20 diation within the period specified in subpara-
21 graph (C).

22 “(B) MEDIATION SERVICES.—The Federal
23 Mediation and Conciliation Service shall be
24 available to assist in resolving disputes arising
25 under subsection (b) between H-2A workers

1 and agricultural employers without charge to
2 the parties.

3 “(C) 90-DAY LIMIT.—The Federal Medi-
4 ation and Conciliation Service may conduct me-
5 diation or other nonbinding dispute resolution
6 activities for a period not to exceed 90 days be-
7 ginning on the date on which the Federal Medi-
8 ation and Conciliation Service receives the re-
9 quest for assistance unless the parties agree to
10 an extension of this period of time.

11 “(D) AUTHORIZATION.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), there are authorized to be appro-
14 priated to the Federal Mediation and Con-
15 ciliation Service \$500,000 for each fiscal
16 year to carry out this section.

17 “(ii) MEDIATION.—Notwithstanding
18 any other provision of law, the Director of
19 the Federal Mediation and Conciliation
20 Service is authorized to conduct the medi-
21 ation or other dispute resolution activities
22 from any other appropriated funds avail-
23 able to the Director and to reimburse such
24 appropriated funds when the funds are ap-
25 propriated pursuant to this authorization,

1 such reimbursement to be credited to ap-
2 propriations currently available at the time
3 of receipt.

4 “(2) MAINTENANCE OF CIVIL ACTION IN DIS-
5 TRICT COURT BY AGGRIEVED PERSON.—An H-2A
6 worker aggrieved by a violation of rights enforceable
7 under subsection (b) by an agricultural employer or
8 other person may file suit in any district court of the
9 United States having jurisdiction over the parties,
10 without regard to the amount in controversy, with-
11 out regard to the citizenship of the parties, and
12 without regard to the exhaustion of any alternative
13 administrative remedies under this Act, not later
14 than 3 years after the date the violation occurs.

15 “(3) ELECTION.—An H-2A worker who has
16 filed an administrative complaint with the Secretary
17 of Labor may not maintain a civil action under
18 paragraph (2) unless a complaint based on the same
19 violation filed with the Secretary of Labor under
20 subsection (a)(1) is withdrawn before the filing of
21 such action, in which case the rights and remedies
22 available under this subsection shall be exclusive.

23 “(4) PREEMPTION OF STATE CONTRACT
24 RIGHTS.—Nothing in this Act shall be construed to
25 diminish the rights and remedies of an H-2A worker

1 under any other Federal or State law or regulation
2 or under any collective bargaining agreement, except
3 that no court or administrative action shall be avail-
4 able under any State contract law to enforce the
5 rights created by this Act.

6 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-
7 ments by employees purporting to waive or modify
8 their rights under this Act shall be void as contrary
9 to public policy, except that a waiver or modification
10 of the rights or obligations in favor of the Secretary
11 of Labor shall be valid for purposes of the enforce-
12 ment of this Act. The preceding sentence may not
13 be construed to prohibit agreements to settle private
14 disputes or litigation.

15 “(6) AWARD OF DAMAGES OR OTHER EQUI-
16 TABLE RELIEF.—

17 “(A) If the court finds that the respondent
18 has intentionally violated any of the rights en-
19 forceable under subsection (b), it shall award
20 actual damages, if any, or equitable relief.

21 “(B) Any civil action brought under this
22 section shall be subject to appeal as provided in
23 chapter 83 of title 28, United States Code.

24 “(C) In determining the amount of dam-
25 ages to be awarded under subparagraph (A),

1 the court is authorized to consider whether an
2 attempt was made to resolve the issues in dis-
3 pute before the resort to litigation.

4 “(7) WORKERS’ COMPENSATION BENEFITS.—

5 “(A) EXCLUSIVE REMEDY.—Notwith-
6 standing any other provision of this section, if
7 a State’s workers’ compensation law is applica-
8 ble and coverage is provided for an H-2A work-
9 er, the workers’ compensation benefits shall be
10 the exclusive remedy for the loss of such worker
11 under this section in the case of bodily injury
12 or death in accordance with such State’s work-
13 ers’ compensation law.

14 “(B) RELATIONSHIP TO OTHER RELIEF.—

15 The exclusive remedy prescribed in subpara-
16 graph (A) precludes the recovery under para-
17 graph (6) of actual damages for loss from an
18 injury or death but does not preclude other eq-
19 uitable relief, except that such relief shall not
20 include back or front pay or in any manner, di-
21 rectly or indirectly, expand or otherwise alter or
22 affect—

23 “(i) a recovery under a State workers’
24 compensation law; or

1 “(ii) rights conferred under a State
2 workers’ compensation law.

3 “(C) CONSIDERATIONS.—In determining
4 the amount of damages to be awarded under
5 subparagraph (A), a court may consider wheth-
6 er an attempt was made to resolve the issues in
7 dispute prior to resorting to litigation.

8 “(8) TOLLING OF STATUTE OF LIMITATIONS.—
9 If it is determined under a State workers’ compensa-
10 tion law that the workers’ compensation law is not
11 applicable to a claim for bodily injury or death of an
12 H-2A worker, the statute of limitations for bringing
13 an action for actual damages for such injury or
14 death under subsection (c) shall be tolled for the pe-
15 riod during which the claim for such injury or death
16 under such State workers’ compensation law was
17 pending. The statute of limitations for an action for
18 actual damages or other equitable relief arising out
19 of the same transaction or occurrence as the injury
20 or death of the H-2A worker shall be tolled for the
21 period during which the claim for such injury or
22 death was pending under the State workers’ com-
23 pensation law.

24 “(9) PRECLUSIVE EFFECT.—Any settlement by
25 an H-2A worker and an H-2A employer or any per-

1 son reached through the mediation process required
2 under subsection (c)(1) shall preclude any right of
3 action arising out of the same facts between the par-
4 ties in any Federal or State court or administrative
5 proceeding, unless specifically provided otherwise in
6 the settlement agreement.

7 “(10) SETTLEMENTS.—Any settlement by the
8 Secretary of Labor with an H-2A employer on be-
9 half of an H-2A worker of a complaint filed with the
10 Secretary of Labor under this section or any finding
11 by the Secretary of Labor under subsection
12 (a)(1)(B) shall preclude any right of action arising
13 out of the same facts between the parties under any
14 Federal or State court or administrative proceeding,
15 unless specifically provided otherwise in the settle-
16 ment agreement.

17 “(d) DISCRIMINATION PROHIBITED.—

18 “(1) IN GENERAL.—It is a violation of this sub-
19 section for any person who has filed an application
20 under section 218C(a), to intimidate, threaten, re-
21 strain, coerce, blacklist, discharge, or in any other
22 manner discriminate against an employee (which
23 term, for purposes of this subsection, includes a
24 former employee and an applicant for employment)
25 because the employee has disclosed information to

1 the employer, or to any other person, that the em-
2 ployee reasonably believes evidences a violation of
3 section 218C or 218D or any rule or regulation per-
4 taining to section 218C or 218D, or because the em-
5 ployee cooperates or seeks to cooperate in an inves-
6 tigation or other proceeding concerning the employ-
7 er's compliance with the requirements of section
8 218C or 218D or any rule or regulation pertaining
9 to either of such sections.

10 “(2) DISCRIMINATION AGAINST H-2A WORK-
11 ERS.—It is a violation of this subsection for any per-
12 son who has filed an application under section
13 218C(a), to intimidate, threaten, restrain, coerce,
14 blacklist, discharge, or in any manner discriminate
15 against an H-2A employee because such worker has,
16 with just cause, filed a complaint with the Secretary
17 of Labor regarding a denial of the rights enumer-
18 ated and enforceable under subsection (b) or insti-
19 tuted, or caused to be instituted, a private right of
20 action under subsection (c) regarding the denial of
21 the rights enumerated under subsection (b), or has
22 testified or is about to testify in any court pro-
23 ceeding brought under subsection (c).

24 “(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE
25 EMPLOYMENT.—The Secretary of Labor and the Sec-

1 retary shall establish a process under which an H-2A
2 worker who files a complaint regarding a violation of sub-
3 section (d) and is otherwise eligible to remain and work
4 in the United States may be allowed to seek other appro-
5 priate employment in the United States for a period not
6 to exceed the maximum period of stay authorized for such
7 nonimmigrant classification.

8 “(f) ROLE OF ASSOCIATIONS.—

9 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
10 TION.—An employer on whose behalf an application
11 is filed by an association acting as its agent is fully
12 responsible for such application, and for complying
13 with the terms and conditions of sections 218C and
14 218D, as though the employer had filed the applica-
15 tion itself. If such an employer is determined, under
16 this section, to have committed a violation, the pen-
17 alty for such violation shall apply only to that mem-
18 ber of the association unless the Secretary of Labor
19 determines that the association or other member
20 participated in, had knowledge, or reason to know,
21 of the violation, in which case the penalty shall be
22 invoked against the association or other association
23 member as well.

24 “(2) VIOLATIONS BY AN ASSOCIATION ACTING
25 AS AN EMPLOYER.—If an association filing an appli-

1 cation as a sole or joint employer is determined to
2 have committed a violation under this section, the
3 penalty for such violation shall apply only to the as-
4 sociation unless the Secretary of Labor determines
5 that an association member or members participated
6 in or had knowledge, or reason to know of the viola-
7 tion, in which case the penalty shall also be invoked
8 against the association member or members.

9 **“SEC. 218G. DEFINITIONS.**

10 “For purposes of this section and section 218C,
11 218D, 218E, and 218F:

12 “(1) AGRICULTURAL EMPLOYMENT.—The term
13 ‘agricultural employment’ means any service or ac-
14 tivity that is considered to be agricultural under sec-
15 tion 3(f) of the Fair Labor Standards Act of 1938
16 (29 U.S.C. 203(f)) or agricultural labor under sec-
17 tion 3121(g) of the Internal Revenue Code of 1986
18 or the performance of agricultural labor or services
19 described in section 101(a)(15)(H)(ii)(a).

20 “(2) BONA FIDE UNION.—The term ‘bona fide
21 union’ means any organization in which employees
22 participate and which exists for the purpose of deal-
23 ing with employers concerning grievances, labor dis-
24 putes, wages, rates of pay, hours of employment, or
25 other terms and conditions of work for agricultural

1 employees. Such term does not include an organiza-
2 tion formed, created, administered, supported, domi-
3 nated, financed, or controlled by an employer or em-
4 ployer association or its agents or representatives.

5 “(3) DISPLACE.—The term ‘displace’, in the
6 case of an application with respect to 1 or more H-
7 2A workers by an employer, means laying off a
8 United States worker from a job for which the H-
9 2A worker or workers is or are sought.

10 “(4) ELIGIBLE.—The term ‘eligible’, when used
11 with respect to an individual, means an individual
12 who is not an unauthorized alien (as defined in sec-
13 tion 274A).

14 “(5) EMPLOYER.—The term ‘employer’ means
15 any person or entity, including any farm labor con-
16 tractor and any agricultural association, that em-
17 ploys workers in agricultural employment.

18 “(6) H-2A EMPLOYER.—The term ‘H-2A em-
19 ployer’ means an employer who seeks to hire 1 or
20 more nonimmigrant aliens described in section
21 101(a)(15)(H)(ii)(a).

22 “(7) H-2A WORKER.—The term ‘H-2A worker’
23 means a nonimmigrant described in section
24 101(a)(15)(H)(ii)(a).

1 “(8) **JOB OPPORTUNITY.**—The term ‘job oppor-
2 tunity’ means a job opening for temporary or sea-
3 sonal full-time employment at a place in the United
4 States to which United States workers can be re-
5 ferred.

6 “(9) **LAYING OFF.**—

7 “(A) **IN GENERAL.**—The term ‘laying off’,
8 with respect to a worker—

9 “(i) means to cause the worker’s loss
10 of employment, other than through a dis-
11 charge for inadequate performance, viola-
12 tion of workplace rules, cause, voluntary
13 departure, voluntary retirement, contract
14 impossibility (as described in section
15 218D(b)(4)(D)), or temporary suspension
16 of employment due to weather, markets, or
17 other temporary conditions; but

18 “(ii) does not include any situation in
19 which the worker is offered, as an alter-
20 native to such loss of employment, a simi-
21 lar employment opportunity with the same
22 employer (or, in the case of a placement of
23 a worker with another employer under sec-
24 tion 218C(b)(2)(E), with either employer
25 described in such section) at equivalent or

1 higher compensation and benefits than the
2 position from which the employee was dis-
3 charged, regardless of whether or not the
4 employee accepts the offer.

5 “(B) STATUTORY CONSTRUCTION.—Noth-
6 ing in this paragraph is intended to limit an
7 employee’s rights under a collective bargaining
8 agreement or other employment contract.

9 “(10) REGULATORY DROUGHT.—The term ‘reg-
10 ulatory drought’ means a decision subsequent to the
11 filing of the application under section 218C by an
12 entity not under the control of the employer making
13 such filing which restricts the employer’s access to
14 water for irrigation purposes and reduces or limits
15 the employer’s ability to produce an agricultural
16 commodity, thereby reducing the need for labor.

17 “(11) SEASONAL.—Labor is performed on a
18 ‘seasonal’ basis if—

19 “(A) ordinarily, it pertains to or is of the
20 kind exclusively performed at certain seasons or
21 periods of the year; and

22 “(B) from its nature, it may not be contin-
23 uous or carried on throughout the year.

1 “(12) SECRETARY.—Except as otherwise pro-
2 vided, the term ‘Secretary’ means the Secretary of
3 Homeland Security.

4 “(13) TEMPORARY.—A worker is employed on a
5 ‘temporary’ basis where the employment is intended
6 not to exceed 10 months.

7 “(14) UNITED STATES WORKER.—The term
8 ‘United States worker’ means any worker, whether
9 a national of the United States, an alien lawfully ad-
10 mitted for permanent residence, or any other alien,
11 who is authorized to work in the job opportunity
12 within the United States, except an alien admitted
13 or otherwise provided status under section
14 101(a)(15)(H)(ii)(a).”.

15 (b) TABLE OF CONTENTS.—The table of contents (8
16 U.S.C. 1101 et seq.) is amended by inserting after the
17 item relating to section 218B, as added by section 403,
18 the following:

“Sec. 218C. H-2a employer applications.

“Sec. 218D. H-2a employment requirements.

“Sec. 218E. Procedure for admission and extension of stay of H-2A workers.

“Sec. 218F. Worker protections and labor standards enforcement.

“Sec. 218G. Definitions.”.

19 **SEC. 405. DETERMINATION AND USE OF USER FEES.**

20 (a) SCHEDULE OF FEES.—The Secretary shall estab-
21 lish and periodically adjust a schedule of fees for the em-
22 ployment of aliens pursuant to sections 218C through
23 218G of the Immigration and Nationality Act, as added

1 by section 404(a), and a collection process for such fees
2 from employers. Such fees shall be the only fees charge-
3 able to employers for services provided under such sec-
4 tions.

5 (b) DETERMINATION OF SCHEDULE.—

6 (1) IN GENERAL.—The schedule established
7 pursuant to subsection (a) shall—

8 (A) reflect a fee rate based on the number
9 of job opportunities indicated in the employer's
10 application under section 218C of the Immigra-
11 tion and Nationality Act that is sufficient to
12 provide for the direct costs of providing services
13 related to an employer's authorization to em-
14 ploy aliens pursuant to such section; and

15 (B) include the certification of eligible em-
16 ployers, the issuance of documentation, and the
17 admission of eligible aliens.

18 (2) PROCEDURE.—

19 (A) IN GENERAL.—In establishing and ad-
20 justing the schedule established pursuant to
21 subsection (a), the Secretary shall comply with
22 Federal cost accounting and fee setting stand-
23 ards.

24 (B) PUBLICATION AND COMMENT.—The
25 Secretary shall publish in the Federal Register

1 an initial fee schedule and associated collection
2 process and the cost data or estimates upon
3 which such fee schedule is based, and any sub-
4 sequent amendments thereto, pursuant to which
5 public comment shall be sought and a final rule
6 issued.

7 (c) **USE OF PROCEEDS.**—Notwithstanding any other
8 provision of law, all proceeds resulting from the payment
9 of the fees under sections 218C through 218G of the Im-
10 migration and Nationality Act shall be available without
11 further appropriation and shall remain available without
12 fiscal year limitation to reimburse the Secretary, the Sec-
13 retary of State, and the Secretary of Labor for the costs
14 of carrying out sections 218C and 218E of the Immigra-
15 tion and Nationality Act.

16 **SEC. 406. REGULATIONS.**

17 (a) **REQUIREMENT FOR THE SECRETARY TO CON-**
18 **SULT.**—The Secretary shall consult with the Secretary of
19 Labor and the Secretary of Agriculture during the promul-
20 gation of all regulations to implement the duties of the
21 Secretary under this Act and the amendments made by
22 this Act.

23 (b) **REQUIREMENT FOR THE SECRETARY OF STATE**
24 **TO CONSULT.**—The Secretary of State shall consult with
25 the Secretary, the Secretary of Labor, and the Secretary

1 of Agriculture on all regulations to implement the duties
2 of the Secretary of State under this Act and the amend-
3 ments made by this Act.

4 (c) REQUIREMENT FOR THE SECRETARY OF LABOR
5 TO CONSULT.—The Secretary of Labor shall consult with
6 the Secretary of Agriculture and the Secretary on all regu-
7 lations to implement the duties of the Secretary of Labor
8 under this Act and the amendments made by this Act.

9 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—
10 All regulations to implement the duties of the Secretary,
11 the Secretary of State, and the Secretary of Labor created
12 under sections 218C through 218G of the Immigration
13 and Nationality Act, as added by section 404, shall be
14 issued not later than the earlier of 1 year after the date
15 of the enactment of this Act.

16 **SEC. 407. REPORTS TO CONGRESS.**

17 (a) ANNUAL REPORT.—Not later than September 30
18 of each year, the Secretary shall submit a report to Con-
19 gress that identifies, for the previous year—

20 (1) the number of job opportunities approved
21 for employment of aliens admitted under section
22 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
23 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the
24 number of workers actually admitted, disaggregated
25 by State and by occupation;

1 (2) the number of such aliens reported to have
2 abandoned employment pursuant to subsection
3 218E(e)(2) of such Act;

4 (3) the number of such aliens who departed the
5 United States within the period specified in sub-
6 section 218E(d) of such Act;

7 (4) the number of aliens who applied for adjust-
8 ment of status pursuant to section 623;

9 (5) the number of such aliens whose status was
10 adjusted under section 623;

11 (6) the number of aliens who applied for perma-
12 nent residence pursuant to section 214A(j) of the
13 Immigration and Nationality Act, as amended by
14 section 623(b); and

15 (7) the number of such aliens who were ap-
16 proved for permanent residence pursuant to section
17 214A(j) of the Immigration and Nationality Act, as
18 amended by section 623(b).

19 (b) IMPLEMENTATION REPORT.—Not later than 180
20 days after the date of the enactment of this Act, the Sec-
21 retary shall prepare and submit to Congress a report that
22 describes the measures being taken and the progress made
23 in implementing this Act.

1 **SEC. 408. EFFECTIVE DATE.**

2 Except as otherwise provided, sections 404 and 405
3 shall take effect on the earlier of—

4 (1) the date that is 1 year after the date of the
5 enactment of this Act; or

6 (2) the date on which regulations are promul-
7 gated to implement such sections.

8 **SEC. 409. NUMERICAL LIMITATIONS.**

9 Section 214(g) (8 U.S.C. 1184(g)) is amended—

10 (1) in paragraph (1)—

11 (A) by striking “(beginning with fiscal year
12 1992)”;

13 (B) by striking subparagraph (B) and in-
14 serting the following:

15 “(B) under section 101(a)(15)(Y)(i), may
16 not exceed—

17 “(i) 400,000 for the first fiscal year
18 in which the program is implemented;

19 “(ii) in any subsequent fiscal year,
20 subject to clause (iii), the number for the
21 previous fiscal year as adjusted in accord-
22 ance with the method set forth in para-
23 graph (2); and

24 “(iii) 600,000 for any fiscal year;

25 “(C) under section 101(a)(15)(Y)(iii), may
26 not exceed 20 percent of the annual limit on ad-

1 missions of aliens under section
2 101(a)(15)(Y)(i) for that fiscal year; or

3 “(D) under section 101(a)(15)(Y)(ii)(II),
4 may not exceed—

5 “(i) 100,000 for the first fiscal year
6 in which the program is implemented;

7 “(ii) in any subsequent fiscal year,
8 subject to clause (iii), the number for the
9 previous fiscal year as adjusted in accord-
10 ance with the method set forth in para-
11 graph (2); and

12 “(iii) 200,000 for any fiscal year.”;

13 and

14 (2) by redesignating paragraphs (2) through
15 (11) as paragraphs (3) through (12), respectively;

16 (3) by inserting after paragraph (1) the fol-
17 lowing:

18 “(2) MARKET-BASED ADJUSTMENT.—With re-
19 spect to the numerical limitation set in subpara-
20 graph (A)(ii), (B)(ii), and (D)(ii) of paragraph (1)—

21 “(A) if the total number of visas allocated
22 for that fiscal year are issued during the first
23 6 months that fiscal year, an additional 15 per-
24 cent of the allocated number shall be made
25 available immediately and the allocated amount

1 for the following fiscal year shall increase by 15
2 percent of the original allocated amount in the
3 prior fiscal year;

4 “(B) if the total number of visas allocated
5 for that fiscal year are issued before the end of
6 that fiscal year, the allocated amount for the
7 following fiscal year shall increase by 10 per-
8 cent of the original allocated amount in the
9 prior fiscal year; and

10 “(C) with the exception of the first subse-
11 quent fiscal year to the fiscal year in which the
12 program is implemented, if fewer visas were al-
13 lotted the previous fiscal year than the number
14 of visas allocated for that year and the reason
15 was not due to processing delays or delays in
16 promulgating regulations, then the allocated
17 amount for the following fiscal year shall de-
18 crease by 10 percent of the allocated amount in
19 the prior fiscal year.”; and

20 (4) in paragraph (10), as redesignated by para-
21 graph (2) of this subsection, by amending subpara-
22 graph (A) to read as follows:

23 “(A) Subject to subparagraphs (B) and (C), an alien
24 who has been present in the United States as an H-2B
25 nonimmigrant during any 1 of the 3 fiscal years imme-

1 diately preceding the fiscal year of the approved start date
2 of a petition for a nonimmigrant worker described in sec-
3 tion 101(a)(15)(H)(ii)(b) shall not be counted toward such
4 limitation for the fiscal year in which the petition is ap-
5 proved. Such alien shall be considered a returning work-
6 er.”.

7 **SEC. 410. REQUIREMENTS FOR PARTICIPATING COUN-**
8 **TRIES.**

9 (a) IN GENERAL.—The Secretary of State, in co-
10 operation with the Secretary and the Attorney General,
11 may, as a condition of authorizing the grant of non-
12 immigrant visas for Y nonimmigrants who are citizens or
13 nationals of any foreign country, negotiate with each such
14 country to enter into a bilateral agreement with the
15 United States that conforms to the requirements under
16 subsection (b).

17 (b) REQUIREMENTS OF BILATERAL AGREEMENTS.—
18 It is the sense of Congress that each agreement negotiated
19 under subsection (a) shall require the participating home
20 country to—

21 (1) accept the return of nationals who are or-
22 dered removed from the United States within 3 days
23 of such removal;

24 (2) cooperate with the United States Govern-
25 ment to—

1 (A) identify, track, and reduce gang mem-
2 bership, violence, and human trafficking and
3 smuggling; and

4 (B) control illegal immigration;

5 (3) provide the United States Government
6 with—

7 (A) passport information and criminal
8 records of aliens who are seeking admission to,
9 or are present in, the United States; and

10 (B) admission and entry data to facilitate
11 United States entry-exit data systems;

12 (4) educate nationals of the home country re-
13 garding United States temporary worker programs
14 to ensure that such nationals are not exploited;

15 (5) evaluate means to provide housing incen-
16 tives in the alien's home country for returning work-
17 ers; and

18 (6) agree to such other terms as the Secretary
19 of State considers appropriate and necessary.

20 **SEC. 411. COMPLIANCE INVESTIGATORS.**

21 The Secretary of Labor, subject to the availability of
22 appropriations for such purpose, shall increase, by not less
23 than 200 per year for each of the 5 fiscal years after the
24 date of the enactment of this Act, the number of positions
25 for compliance investigators and attorneys dedicated to

1 the enforcement of labor standards, including those con-
2 tained in sections 218A, 218B, and 218C of the Immigra-
3 tion and Nationality Act, as added by this title, the Fair
4 Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and
5 the Occupational Safety and Health Act of 1970 (29
6 U.S.C. 651 et seq.) in geographic and occupational areas
7 in which a high percentage of workers are Y non-
8 immigrants.

9 **SEC. 412. STANDING COMMISSION ON IMMIGRATION AND**
10 **LABOR MARKETS.**

11 (a) ESTABLISHMENT OF COMMISSION.—

12 (1) IN GENERAL.—There is established an inde-
13 pendent Federal agency within the Executive Branch
14 to be known as the Standing Commission on Immi-
15 gration and Labor Markets (referred to in this sec-
16 tion as the “Commission”).

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

19 (A) to study nonimmigrant programs and
20 the numerical limits imposed by law on admis-
21 sion of nonimmigrants;

22 (B) to study the numerical limits imposed
23 by law on immigrant visas;

24 (C) to study the allocation of immigrant
25 visas through the merit-based system; and

1 (D) to make recommendations to the
2 President and Congress with respect to such
3 programs.

4 (3) MEMBERSHIP.—The Commission shall be
5 composed of—

6 (A) 6 voting members—

7 (i) who shall be appointed by the
8 President, with the advice and consent of
9 the Senate, not later than 6 months after
10 the establishment of the Y Nonimmigrant
11 Worker Program;

12 (ii) who shall serve for 3-year stag-
13 gered terms, which can be extended for 1
14 additional 3-year term;

15 (iii) who shall select a Chair from
16 among the voting members to serve a 2-
17 year term, which can be extended for 1 ad-
18 ditional 2-year term;

19 (iv) who shall have expertise in eco-
20 nomics, demography, labor, business, or
21 immigration or other pertinent qualifica-
22 tions or experience;

23 (v) who may not be an employee of
24 the Federal Government or of any State or
25 local government; and

1 (vi) not more than 3 of whom may be
2 members of the same political party.

3 (B) 7 ex-officio members, including—

4 (i) the Secretary;

5 (ii) the Secretary of State;

6 (iii) the Attorney General;

7 (iv) the Secretary of Labor;

8 (v) the Secretary of Commerce;

9 (vi) the Secretary of Health and
10 Human Services; and

11 (vii) the Secretary of Agriculture.

12 (4) VACANCIES.—Any vacancy in the Commis-
13 sion shall be filled in the same manner as the origi-
14 nal appointment.

15 (5) MEETINGS.—

16 (A) INITIAL MEETING.—The Commission
17 shall meet and begin carrying out the duties de-
18 scribed in subsection (b) as soon as practicable.

19 (B) SUBSEQUENT MEETINGS.—After its
20 initial meeting, the Commission shall meet at
21 least once per quarter upon the call of the
22 Chair or a majority of its members.

23 (C) QUORUM.—Four voting members of
24 the Commission shall constitute a quorum.

1 (b) DUTIES OF THE COMMISSION.—The Commission
2 shall—

3 (1) examine and analyze—

4 (A) the development and implementation of
5 the programs;

6 (B) the criteria for the admission of non-
7 immigrant workers;

8 (C) the formula for determining the annual
9 numerical limitations of nonimmigrant workers;

10 (D) the impact of nonimmigrant workers
11 on immigration;

12 (E) the impact of nonimmigrant workers
13 on the economy, unemployment rate, wages,
14 workforce, and businesses of the United States;

15 (F) the numerical limits imposed by law on
16 immigrant visas and its effect on the economy,
17 unemployment rate, wages, workforce, and busi-
18 nesses of the United States;

19 (G) the allocation of immigrant visas
20 through the evaluation system established under
21 title V; and

22 (H) any other matters regarding the pro-
23 grams that the Commission considers appro-
24 priate;

1 (2) not later than 18 months after the date of
2 the enactment of this Act, and every year thereafter,
3 submit a report to the President and Congress
4 that—

5 (A) contains the findings of the analysis
6 conducted under paragraph (1);

7 (B) makes recommendations regarding the
8 necessary adjustments to the programs studied
9 to meet the labor market needs of the United
10 States; and

11 (C) makes other recommendations regard-
12 ing the programs, including legislative or ad-
13 ministrative action, that the Commission deter-
14 mines to be in the national interest.

15 (c) INFORMATION AND ASSISTANCE FROM FEDERAL
16 AGENCIES.—

17 (1) INFORMATION.—The head of any Federal
18 department or agency that receives a request from
19 the Commission for information, including sugges-
20 tions, estimates, and statistics, as the Commission
21 considers necessary to carry out the provisions of
22 this section, shall furnish such information to the
23 Commission, to the extent allowed by law.

24 (2) ASSISTANCE.—

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

7 (B) OTHER FEDERAL AGENCIES.—The de-
8 partments and agencies of the United States
9 may provide the Commission with such services,
10 funds, facilities, staff, and other support serv-
11 ices as the heads of such departments and
12 agencies determine advisable and authorized by
13 law.

14 (d) PERSONNEL MATTERS.—

15 (1) STAFF.—

16 (A) APPOINTMENT AND COMPENSATION.—
17 The Chair, in accordance with rules agreed
18 upon by the Commission, may appoint and fix
19 the compensation of a staff director and such
20 other personnel as may be necessary to enable
21 the Commission to carry out its functions.

22 (B) FEDERAL EMPLOYEES.—

23 (i) IN GENERAL.—Except as provided
24 under clause (ii), the executive director and
25 any personnel of the Commission who are

1 employees shall be considered to be em-
2 ployees under section 2105 of title 5,
3 United States Code, for purposes of chap-
4 ters 63, 81, 83, 84, 85, 87, 89, and 90 of
5 such title.

6 (ii) COMMISSION MEMBERS.—Clause
7 (i) shall not apply to members of the Com-
8 mission.

9 (2) DETAILEES.—Any employee of the Federal
10 Government may be detailed to the Commission
11 without reimbursement from the Commission. Such
12 detailee shall retain the rights, status, and privileges
13 of the detailee's regular employment without inter-
14 ruption.

15 (3) CONSULTANT SERVICES.—The Commission
16 may procure the services of experts and consultants
17 in accordance with section 3109 of title 5, United
18 States Code, at rates not to exceed the daily rate
19 paid a person occupying a position at level IV of the
20 Executive Schedule under section 5315 of such title
21 5.

22 (e) COMPENSATION AND TRAVEL EXPENSES.—

23 (1) COMPENSATION.—Each voting member of
24 the Commission may be compensated at a rate not
25 to exceed the daily equivalent of the annual rate of

1 basic pay in effect for a position at level IV of the
2 Executive Schedule under section 5315 of title 5,
3 United States Code, for each day during which that
4 member is engaged in the actual performance of the
5 duties of the Commission.

6 (2) TRAVEL EXPENSES.—Members of the Com-
7 mission shall be allowed travel expenses, including
8 per diem in lieu of subsistence, under section
9 5703(b) of title 5, United States Code, while away
10 from their homes or regular places of business in the
11 performance of services for the Commission.

12 (f) FUNDING.—Fees and fines deposited into the
13 Temporary Worker Program Account under section
14 286(w) of the Immigration and Nationality Act, as added
15 by section 402, may be used by the Commission to carry
16 out its duties under this section.

17 **SEC. 413. AGENCY REPRESENTATION AND COORDINATION.**

18 Section 274A(e) (8 U.S.C. 1324a(e)) is amended—

19 (1) in paragraph (2)—

20 (A) in subparagraph (A), by striking the
21 comma at the end and inserting a semicolon;

22 (B) in subparagraph (B), by striking “,
23 and” and inserting a semicolon;

1 (C) in subparagraph (C), by striking
2 “paragraph (2).” and inserting “paragraph (1);
3 and”; and

4 (D) by inserting after subparagraph (C)
5 the following:

6 “(D) United States Immigration and Cus-
7 toms Enforcement officials may not misrepre-
8 sent to employees or employers that they are a
9 member of any agency or organization that pro-
10 vides domestic violence services, enforces health
11 and safety law, provides health care services, or
12 any other services intended to protect life and
13 safety.”.

14 **SEC. 414. BILATERAL EFFORTS WITH MEXICO TO REDUCE**
15 **MIGRATION PRESSURES AND COSTS.**

16 (a) FINDINGS.—Congress makes the following find-
17 ings:

18 (1) Migration from Mexico to the United States
19 is directly linked to the degree of economic oppor-
20 tunity and the standard of living in Mexico.

21 (2) Mexico comprises a prime source of migra-
22 tion to the United States.

23 (3) Remittances from Mexican citizens working
24 in the United States reached a record high of nearly
25 \$17,000,000,000 in 2004.

1 (4) Migration patterns may be reduced from
2 Mexico to the United States by addressing the de-
3 gree of economic opportunity available to Mexican
4 citizens.

5 (5) Many Mexican assets are held extra-legally
6 and cannot be readily used as collateral for loans.

7 (6) A majority of Mexican businesses are small
8 or medium size with limited access to financial cap-
9 ital.

10 (7) These factors constitute a major impedi-
11 ment to broad-based economic growth in Mexico.

12 (8) Approximately 20 percent of Mexico's popu-
13 lation works in agriculture, with the majority of this
14 population working on small farms and few on large
15 commercial enterprises.

16 (9) The Partnership for Prosperity is a bilateral
17 initiative launched jointly by the President of the
18 United States and the President of Mexico in 2001,
19 which aims to boost the social and economic stand-
20 ards of Mexican citizens, particularly in regions
21 where economic growth has lagged and emigration
22 has increased.

23 (10) The Presidents of Mexico and the United
24 States and the Prime Minister of Canada, at their
25 trilateral summit on March 23, 2005, agreed to pro-

1 mote economic growth, competitiveness, and quality
2 of life in the agreement on Security and Prosperity
3 Partnership of North America.

4 (b) SENSE OF CONGRESS REGARDING PARTNERSHIP
5 FOR PROSPERITY.—It is the sense of Congress that the
6 United States and Mexico should accelerate the implemen-
7 tation of the Partnership for Prosperity to help generate
8 economic growth and improve the standard of living in
9 Mexico, which will lead to reduced migration, by—

10 (1) increasing access for poor and under served
11 populations in Mexico to the financial services sec-
12 tor, including credit unions;

13 (2) assisting Mexican efforts to formalize its
14 extra-legal sector, including the issuance of formal
15 land titles, to enable Mexican citizens to use their
16 assets to procure capital;

17 (3) facilitating Mexican efforts to establish an
18 effective rural lending system for small- and me-
19 dium-sized farmers that will—

20 (A) provide long term credit to borrowers;

21 (B) develop a viable network of regional
22 and local intermediary lending institutions; and

23 (C) extend financing for alternative rural
24 economic activities beyond direct agricultural
25 production;

1 (4) expanding efforts to reduce the transaction
2 costs of remittance flows in order to increase the
3 pool of savings available to help finance domestic in-
4 vestment in Mexico;

5 (5) encouraging Mexican corporations to adopt
6 internationally recognized corporate governance
7 practices, including anti-corruption and transparency
8 principles;

9 (6) enhancing Mexican efforts to strengthen
10 governance at all levels, including efforts to improve
11 transparency and accountability, and to eliminate
12 corruption, which is the single biggest obstacle to de-
13 velopment;

14 (7) assisting the Government of Mexico in im-
15 plementing all provisions of the Inter-American Con-
16 vention Against Corruption (ratified by Mexico on
17 May 27, 1997) and urging the Government of Mex-
18 ico to participate fully in the Convention's formal
19 implementation monitoring mechanism;

20 (8) helping the Government of Mexico to
21 strengthen education and training opportunities
22 throughout the country, with a particular emphasis
23 on improving rural education; and

1 (9) encouraging the Government of Mexico to
2 create incentives for persons who have migrated to
3 the United States to return to Mexico.

4 (c) SENSE OF CONGRESS REGARDING BILATERAL
5 PARTNERSHIP ON HEALTH CARE.—It is the sense of Con-
6 gress that the Government of the United States and the
7 Government of Mexico should enter into a partnership to
8 examine uncompensated and burdensome health care costs
9 incurred by the United States due to legal and illegal im-
10 migration, including—

11 (1) increasing health care access for poor and
12 under served populations in Mexico;

13 (2) assisting Mexico in increasing its emergency
14 and trauma health care facilities along the border,
15 with emphasis on expanding prenatal care in the
16 United States-Mexico border region;

17 (3) facilitating the return of stable, incapaci-
18 tated workers temporarily employed in the United
19 States to Mexico in order to receive extended, long-
20 term care in their home country; and

21 (4) helping the Government of Mexico to estab-
22 lish a program with the private sector to cover the
23 health care needs of Mexican nationals temporarily
24 employed in the United States.

1 **SEC. 415. WILLING WORKER-WILLING EMPLOYER ELEC-**
2 **TRONIC DATABASE.**

3 (a) **ELECTRONIC JOB REGISTRY LINK.**—

4 (1) **WEB PAGE.**—The Secretary of Labor shall
5 establish a publicly accessible Web page on the
6 Internet website of the Department of Labor that
7 provides a single Internet link to each State work-
8 force agency's statewide electronic registry of jobs
9 available throughout the United States to United
10 States workers.

11 (2) **RULEMAKING.**—The Secretary of Labor
12 shall promulgate regulations regarding the mainte-
13 nance of electronic job registry records by the em-
14 ployer for the purpose of audit or investigations.

15 (3) **ACCESSIBILITY.**—The Secretary of Labor
16 shall ensure that job opportunities advertised on a
17 State workforce agency statewide electronic job reg-
18 istry established under this section are accessible—

19 (A) by the State workforce agencies, which
20 may further disseminate job opportunity infor-
21 mation to interested parties; and

22 (B) through the internet, for access by
23 workers, employers, labor organizations, and
24 other interested parties.

25 (4) **PRIVATE SECTOR ASSISTANCE.**—The Sec-
26 retary of Labor may work with private companies

1 and nonprofit organizations in the development and
2 operation of the job registry link and system under
3 paragraph (1).

4 (b) ELECTRONIC REGISTRY OF CERTIFIED APPLICA-
5 TIONS.—

6 (1) IN GENERAL.—The Secretary of Labor shall
7 compile, on a current basis, a registry (by employer
8 and by occupational classification) of the approved
9 labor certification applications filed under this pro-
10 gram. Such registry shall include the wage rate,
11 number of workers sought, period of intended em-
12 ployment, and date of need. The Secretary of Labor
13 shall make such registry publicly available through
14 an Internet website.

15 (2) CONSULTATION.—The Secretary of Labor
16 may consult with the Secretary of Homeland Secu-
17 rity, and others as appropriate, in the establishment
18 of the registry described in paragraph (1) to ensure
19 its compatibility with any system designed to track
20 Y nonimmigrant employment that is operated and
21 maintained by the Secretary of Homeland Security.

22 (3) ACCESSIBILITY.—The Secretary of Labor
23 shall ensure that job opportunities advertised on the
24 electronic job registry established under this sub-
25 section are accessible by the State workforce agen-

1 cies, which may further disseminate job opportunity
2 information to other interested parties.

3 **SEC. 416. ENUMERATION OF SOCIAL SECURITY NUMBER.**

4 The Secretary, in coordination with the Commis-
5 sioner of the Social Security Administration, shall imple-
6 ment a system to allow for the prompt enumeration of a
7 Social Security number after the Secretary has granted
8 an alien Y nonimmigrant status.

9 **SEC. 417. CONTRACTING.**

10 Nothing in this section shall be construed to limit the
11 authority of the Secretary or Secretary of Labor to con-
12 tract with or license United States entities, as provided
13 for in regulation, to implement any provision of this title,
14 either entirely or in part, to the extent that each Sec-
15 retary, in such Secretary's discretion, determines that
16 such implementation is feasible, cost-effective, secure, and
17 in the interest of the United States. Nothing in this provi-
18 sion shall be construed to alter or amend any of the re-
19 quirements of OMB Circular A-76 or any other current
20 law governing Federal contracting. Any inherently govern-
21 mental work already performed by employees of the De-
22 partment or the Department of Labor, or any inherently
23 governmental work generated by the requirements of this
24 Act, shall continue to be performed by Federal employees,
25 and any current commercial work, or new commercial

1 work generated by the requirements of this Act, that is
2 subject to public-private competition under OMB Circular
3 A-76 or any other relevant law shall continue to be subject
4 to public-private competition.

5 **SEC. 418. FEDERAL RULEMAKING REQUIREMENTS.**

6 (a) IN GENERAL.—Not later than 6 months after the
7 date of the enactment of this Act, the Secretary and the
8 Secretary of Labor shall each issue an interim final rule
9 to implement this subtitle and the amendments made by
10 this subtitle. Each such interim final rule shall become ef-
11 fective immediately upon publication in the Federal Reg-
12 ister. Each such interim final rule shall sunset 2 years
13 after issuance unless the relevant Secretary issues a final
14 rule within 2 years of the issuance of the interim final
15 rule.

16 (b) SUNSET DATE.—The exemption provided under
17 subsection (a) shall sunset not later than 2 years after
18 the date of the enactment of this Act. Such sunset shall
19 not be construed to impose any requirements on, or affect
20 the validity of, any rule issued or other action taken by
21 either Secretary under such exemption.

1 **Subtitle C—Nonimmigrant Visa**
2 **Reform**

3 **SEC. 419. STUDENT VISAS.**

4 (a) IN GENERAL.—Section 101(a)(15)(F) (8 U.S.C.
5 1101(a)(15)(F)) is amended—

6 (1) in clause (i)—

7 (A) by striking “who is” and inserting
8 “who is—

9 “(I”;

10 (B) by striking “consistent with section
11 214(l)” and inserting “consistent with section
12 214(m)”;

13 (C) by striking “Attorney General” each
14 time such term appears and inserting “Sec-
15 retary of Homeland Security”; and

16 (D) by striking the comma at the end and
17 inserting the following: “; or

18 “(II) engaged in temporary employ-
19 ment for optional practical training for an
20 aggregate period of not more than 24
21 months and related to such alien’s major
22 area of study, where such alien has been
23 lawfully enrolled on a full time basis as a
24 nonimmigrant under clause (i) or (iv) at a
25 college, university, conservatory, or semi-

1 nary described in subclause (i)(I) for 1 full
2 academic year and such employment oc-
3 curs—

4 “(aa) during the student’s annual
5 vacation and at other times when
6 school is not in session, if the student
7 is currently enrolled, and is eligible
8 for registration and intends to register
9 for the next term or session;

10 “(bb) while school is in session,
11 provided that practical training does
12 not exceed 20 hours a week while
13 school is in session; or

14 “(cc) within a 26-month period
15 after completion of all course require-
16 ments for the degree (excluding thesis
17 or equivalent);”; and

18 (2) in clause (ii)—

19 (A) by inserting “or (iv)” after “clause
20 (i)”; and

21 (B) by striking “, and” and inserting a
22 semicolon; and

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

24 “(iv) an alien described in clause (i), ex-
25 cept that the alien is not required to have a res-

1 idence in a foreign country that the alien has
2 no intention of abandoning, who has been ac-
3 cepted at and plans to attend an accredited
4 graduate program in mathematics, engineering,
5 information technology, or the natural sciences
6 in the United States for the purpose of obtain-
7 ing an advanced degree; and

8 “(v) an alien who maintains actual resi-
9 dence and place of abode in the alien’s country
10 of nationality, who is described in clause (i), ex-
11 cept that the alien’s actual course of study may
12 involve a distance learning program, for which
13 the alien is temporarily visiting the United
14 States for a period not to exceed 30 days;”.

15 (b) OFF CAMPUS WORK AUTHORIZATION FOR FOR-
16 EIGN STUDENTS.—

17 (1) IN GENERAL.—An alien admitted as a non-
18 immigrant student described in section
19 101(a)(15)(F) of the Immigration and Nationality
20 Act (8 U.S.C. 1101(a)(15)(F)) may be employed in
21 an off-campus position unrelated to the alien’s field
22 of study if—

23 (A) the alien has enrolled full-time at the
24 educational institution and is maintaining good
25 academic standing;

1 (B) the employer provides the educational
2 institution and the Secretary of Labor with an
3 attestation that the employer—

4 (i) has spent at least 21 days recruit-
5 ing United States workers to fill the posi-
6 tion; and

7 (ii) will pay the alien and other simi-
8 larly situated workers at a rate equal to
9 not less than the greater of—

10 (I) the actual wage level for the
11 occupation at the place of employ-
12 ment; or

13 (II) the prevailing wage level for
14 the occupation in the area of employ-
15 ment; and

16 (C) the alien will not be employed more
17 than—

18 (i) 20 hours per week during the aca-
19 demic term; or

20 (ii) 40 hours per week during vacation
21 periods and between academic terms.

22 (2) DISQUALIFICATION.—If the Secretary of
23 Labor determines that an employer has provided an
24 attestation under paragraph (1)(B) that is materi-
25 ally false or has failed to pay wages in accordance

1 with the attestation, the employer, after notice and
2 opportunity for a hearing, may be disqualified for a
3 period of not more than 5 years from employing an
4 alien student under paragraph (1).

5 (3) SOCIAL SECURITY.—For purposes of section
6 210 of the Social Security Act (42 U.S.C. 410) and
7 section 3121 of the Internal Revenue Code (26
8 U.S.C. 3121), any employment engaged in by a stu-
9 dent pursuant to paragraph (1) shall not be consid-
10 ered to be for a purpose related to section
11 101(a)(15)(F) of the Immigration and Nationality
12 Act (8 U.S.C. 1101(a)(15)(F)).

13 (c) CLARIFYING THE IMMIGRANT INTENT PROVI-
14 SION.—Section 214(b) (8 U.S.C. 1184(b)) is amended—

15 (1) by striking “(other than a nonimmigrant
16 described in subparagraph (L) or (V) of section
17 101(a)(15), and other than a nonimmigrant de-
18 scribed in any provision of section 101(a)(15)(H)(i)
19 except subclause (b1) of such section)”; and

20 (2) by striking “under section 101(a)(15)” and
21 inserting “under the immigration laws”.

22 (d) GRANTING DUAL INTENT TO CERTAIN NON-
23 IMMIGRANT STUDENTS.—Section 214(h) (8 U.S.C.
24 1184(h)) is amended—

1 (1) by striking “(H)(i)(b) or (c),” and inserting
2 “(F)(iv), (H)(i)(b), (H)(i)(c),”; and

3 (2) by striking “if the alien had obtained a
4 change of status” and inserting “if the alien had
5 been admitted as, provided status as, or obtained a
6 change of status”.

7 **SEC. 420. H-1B STREAMLINING AND SIMPLIFICATION.**

8 (a) H-1B AMENDMENTS.—Section 214(g) (8 U.S.C.
9 1184(g)) is amended—

10 (1) in paragraph (1)(A), by striking clauses (i)
11 through (vii) and inserting the following:

12 “(i) 115,000 in fiscal year 2008;

13 “(ii) in any subsequent fiscal year, subject
14 to clause (iii), the number for the previous fis-
15 cal year as adjusted in accordance with the
16 method set forth in paragraph (2); and

17 “(iii) 180,000 for any fiscal year;”.

18 (2) in paragraph (9), as redesignated by section
19 409—

20 (A) in subparagraph (B)—

21 (i) in clause (ii), by striking “The an-
22 nual numerical limitations described in
23 clause (i) shall not exceed” and inserting
24 “Without respect to the annual numerical
25 limitations described in clause (i), the Sec-

1 retary may issue a visa or otherwise grant
2 nonimmigrant status pursuant to section
3 1101(a)(15)(H)(i)(b) in the following
4 quantities:”; and
5 (B) by striking clause (iv); and
6 (C) by striking subparagraph (D).

7 (b) **REQUIRING A DEGREE.**—Section 214(i)(2) (8
8 U.S.C. 1184(i)) is amended—

9 (1) in subparagraph (A), by striking the comma
10 at the end and inserting “; and”; and

11 (2) by striking subparagraphs (B) and (C) and
12 inserting the following:

13 “(B) attainment of a bachelor’s or higher
14 degree in the specific specialty from an edu-
15 cational institution in the United States accred-
16 ited by a nationally recognized accrediting agen-
17 cy or association (or an equivalent degree from
18 a foreign educational institution that is equiva-
19 lent to such an institution) as a minimum for
20 entry into the occupation in the United
21 States.”.

22 (c) **PROVISION OF W-2 FORMS.**—Section 214(g)(5),
23 as redesignated by section 409, is amended to read as fol-
24 lows:

1 “(5) In the case of a nonimmigrant described in sec-
2 tion 101(a)(15)(H)(i)(b)—

3 “(A) the period of authorized admission as such
4 a nonimmigrant may not exceed 6 years (except for
5 a nonimmigrant who has filed a petition for an im-
6 migrant visa under section 203(b)(1), if 365 days or
7 more have elapsed since filing and it has not been
8 denied, in which case the Secretary of Homeland Se-
9 curity may extend the stay of an alien in 1-year in-
10 crements until such time as a final decision is made
11 on the alien’s lawful permanent residence);

12 “(B) if the alien is granted an initial period of
13 admission less than 6 years, any subsequent applica-
14 tion for an extension of stay for such alien shall in-
15 clude the Form W-2 Wage and Tax Statement filed
16 by the employer for such employee, and such other
17 form or information relating to such employment as
18 the Secretary of Homeland Security, in the discre-
19 tion of the Secretary, may specify, with respect to
20 such nonimmigrant alien employee for the period of
21 admission granted to the alien; and

22 “(C) notwithstanding section 6103 of the Inter-
23 nal Revenue Code of 1986, or any other law, the
24 Commissioner of Internal Revenue or the Commis-
25 sioner of the Social Security Administration shall

1 upon request of the Secretary confirm whether the
2 Form W-2 Wage and Tax Statement filed by the
3 employer subparagraph (B) matches a Form W-2
4 Wage and Tax Statement filed with the Internal
5 Revenue Service or the Social Security Administra-
6 tion, as the case may be.”.

7 (d) EXTENSION OF H 1-B STATUS FOR MERIT-
8 BASED ADJUSTMENT APPLICANTS.—

9 (1) IN GENERAL.—Section 214(g)(4), as reded-
10 signed by section 409, is amended—

11 (A) by inserting “(A)” after “(4)”;

12 (B) by striking “If an alien” and inserting
13 the following:

14 “(B) If an alien”; and

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

16 “(D) Subparagraph (B) shall not apply to such a
17 nonimmigrant who has filed a petition for an immigrant
18 visa accompanied by a qualifying employer recommenda-
19 tion under section 203(b)(1), if 365 days or more have
20 elapsed since filing and it has not been denied, in which
21 case the Secretary of Homeland Security may extend the
22 stay of an alien in 1-year increments until such time as
23 a final decision is made on the alien’s lawful permanent
24 residence.”.

1 (2) REPEAL.—Section 106 of the American
2 Competitiveness in the Twenty-first Century Act of
3 2000 (8 U.S.C. 1184 note) is amended by striking
4 subsections (a) and (b).

5 **SEC. 421. H-1B EMPLOYER REQUIREMENTS.**

6 (a) APPLICATION OF NONDISPLACEMENT AND GOOD
7 FAITH RECRUITMENT REQUIREMENTS TO ALL H-1B
8 EMPLOYERS.—

9 (1) AMENDMENTS.—Section 212(n) (8 U.S.C.
10 1182(n)) is amended—

11 (A) in paragraph (1)—

12 (i) in subparagraph (E)—

13 (I) in clause (i), by striking
14 “(E)(i) In the case of an application
15 described in clause (ii), the” and in-
16 serting “(E) The”; and

17 (II) by striking clause (ii);

18 (ii) in subparagraph (F), by striking
19 “‘In the case of’” and all that follows
20 through “‘where—’” and inserting “‘The
21 employer will not place the nonimmigrant
22 with another employer if—’”; and

23 (iii) in subparagraph (G), by striking
24 “‘In the case of an application described in

1 subparagraph (E)(ii), subject” and insert-
2 ing “Subject”;

3 (B) in paragraph (2)—

4 (i) in subparagraph (E), by striking
5 “If an H-1B-dependent employer” and in-
6 serting “If an employer that employs H-
7 1B nonimmigrants”; and

8 (ii) in subparagraph (F), by striking
9 “The preceding sentence shall apply to an
10 employer regardless of whether or not the
11 employer is an H-1B-dependent em-
12 ployer.”; and

13 (C) by striking paragraph (3).

14 (2) EFFECTIVE DATE.—The amendments made
15 by paragraph (1) shall apply to applications filed on
16 or after the date of the enactment of this Act.

17 (b) NONDISPLACEMENT REQUIREMENT.—

18 (1) EXTENDING TIME PERIOD FOR NON-
19 DISPLACEMENT.—Section 212(n), as amended by
20 subsection (a), is further amended—

21 (A) in paragraph (1)—

22 (i) in subparagraph (E), by striking
23 “90 days” each place it appears and in-
24 serting “180 days”;

1 (ii) in subparagraph (F)(ii), by strik-
2 ing “90 days” each place it appears and
3 inserting “180 days”; and

4 (B) in paragraph (2)(C)(iii), by striking
5 “90 days” each place it appears and inserting
6 “180 days”.

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

9 (A) shall apply to applications filed on or
10 after the date of the enactment of this Act; and

11 (B) shall not apply to displacements for
12 periods occurring more than 90 days before
13 such date.

14 (c) H-1B NONIMMIGRANTS NOT ADMITTED FOR
15 JOBS ADVERTISED OR OFFERED ONLY TO H-1B NON-
16 IMMIGRANTS.—Section 212(n)(1), as amended by this sec-
17 tion, is further amended—

18 (1) by inserting after subparagraph (G) the fol-
19 lowing:

20 “(H)(i) The employer has not advertised
21 the available jobs specified in the application in
22 an advertisement that states or indicates that—

23 “(I) the job or jobs are only available
24 to persons who are or who may become H-
25 1B nonimmigrants; or

1 “(II) persons who are or who may be
2 come H–1B nonimmigrants shall receive
3 priority or a preference in the hiring proc-
4 ess.

5 “(ii) The employer has not only recruited
6 persons who are, or who may become, H–1B
7 nonimmigrants to fill the job or jobs.”; and
8 (2) in the undesignated paragraph at the end,
9 by striking “The employer” and inserting the fol-
10 lowing:

11 “(K) The employer”.

12 (d) LIMIT ON PERCENTAGE OF H-1B EMPLOYEES.—
13 Section 212(n)(1), as amended by this section, is further
14 amended by inserting after subparagraph (H), as added
15 by subsection (c)(1), the following:

16 “(I) If the employer employs not less than
17 50 employees in the United States, not more
18 than 50 percent of such employees are H–1B
19 nonimmigrants.”.

20 **SEC. 422. H-1B GOVERNMENT AUTHORITY AND REQUIRE-**
21 **MENTS.**

22 (a) SAFEGUARDS AGAINST FRAUD AND MISREPRE-
23 SENTATION IN APPLICATION REVIEW PROCESS.—Section
24 212(n)(1)(K), as redesignated by section 421(c)(2), is
25 amended—

1 (1) by inserting “and through the Department
2 of Labor’s website, without charge.” after “D.C.”;

3 (2) by inserting “, clear indicators of fraud,
4 misrepresentation of material fact,” after “complete-
5 ness”;

6 (3) by striking “or obviously inaccurate” and
7 inserting “, presents clear indicators of fraud or
8 misrepresentation of material fact, or is obviously in-
9 accurate”;

10 (4) by striking “within 7 days of” and inserting
11 “not later than 14 days after”; and

12 (5) by adding at the end the following: “If the
13 Secretary’s review of an application identifies clear
14 indicators of fraud or misrepresentation of material
15 fact, the Secretary may conduct an investigation and
16 hearing under paragraph (2).”

17 (b) INVESTIGATIONS BY DEPARTMENT OF LABOR.—
18 Section 212(n)(2) is amended—

19 (1) in subparagraph (A)—

20 (A) by striking “12 months” and inserting
21 “24 months”; and

22 (B) by striking “The Secretary shall con-
23 duct” and all that follows and inserting “Upon
24 the receipt of such a complaint, the Secretary
25 may initiate an investigation to determine if

1 such a failure or misrepresentation has oc-
2 curred.”;

3 (2) in subparagraph (C)(i)—

4 (A) by striking “a condition of paragraph
5 (1)(B), (1)(E), or (1)(F)” and inserting “a con-
6 dition under subparagraph (B), (C)(i), (E), (F),
7 (H), (I), or (J) of paragraph (1)”;

8 (B) by striking “(1)(C)” and inserting
9 “(1)(C)(ii)”;

10 (3) in subparagraph (G)—

11 (A) in clause (i), by striking “if the Sec-
12 retary” and all that follows and inserting “with
13 regard to the employer’s compliance with the
14 requirements of this subsection.”;

15 (B) in clause (ii), by striking “and whose
16 identity” and all that follows through “failure
17 or failures.” and inserting “the Secretary of
18 Labor may conduct an investigation into the
19 employer’s compliance with the requirements of
20 this subsection.”;

21 (C) in clause (iii), by striking the last sen-
22 tence;

23 (D) by striking clauses (iv) and (v);

24 (E) by redesignating clauses (vi), (vii), and
25 (viii) as clauses (iv), (v), and (vi), respectively;

1 (F) in clause (iv), as redesignated, by
2 striking “meet a condition described in clause
3 (ii), unless the Secretary of Labor receives the
4 information not later than 12 months” and in-
5 serting “comply with the requirements under
6 this subsection, unless the Secretary of Labor
7 receives the information not later than 24
8 months”;

9 (G) by amending clause (v), as redesign-
10 nated, to read as follows:

11 “(v) The Secretary of Labor shall provide no-
12 tice to an employer of the intent to conduct an in-
13 vestigation. The notice shall be provided in such a
14 manner, and shall contain sufficient detail, to permit
15 the employer to respond to the allegations before an
16 investigation is commenced. The Secretary is not re-
17 quired to comply with this clause if the Secretary de-
18 termines that such compliance would interfere with
19 an effort by the Secretary to investigate or secure
20 compliance by the employer with the requirements of
21 this subsection. A determination by the Secretary
22 under this clause shall not be subject to judicial re-
23 view.”;

24 (H) in clause (vi), as redesignated, by
25 striking “An investigation” and all that follows

1 through “the determination.” and inserting “If
2 the Secretary of Labor, after an investigation
3 under clause (i) or (ii), determines that a rea-
4 sonable basis exists to make a finding that the
5 employer has failed to comply with the require-
6 ments under this subsection, the Secretary shall
7 provide interested parties with notice of such
8 determination and an opportunity for a hearing
9 in accordance with section 556 of title 5,
10 United States Code, not later than 120 days
11 after the date of such determination.”; and

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

13 “(vii) If the Secretary of Labor, after a hear-
14 ing, finds a reasonable basis to believe that the em-
15 ployer has violated the requirements under this sub-
16 section, the Secretary may impose a penalty under
17 subparagraph (C).”; and

18 (4) by striking subparagraph (H).

19 (c) INFORMATION SHARING BETWEEN DEPARTMENT
20 OF LABOR AND DEPARTMENT OF HOMELAND SECUR-
21 ITY.—Section 212(n)(2), as amended by this section, is
22 further amended by inserting after subparagraph (G) the
23 following:

24 “(H) The Director of United States Citizenship and
25 Immigration Services shall provide the Secretary of Labor

1 with any information contained in the materials submitted
2 by H-1B employers as part of the adjudication process
3 that indicates that the employer is not complying with H-
4 1B visa program requirements. The Secretary may initiate
5 and conduct an investigation and hearing under this para-
6 graph after receiving information of noncompliance under
7 this subparagraph.”.

8 (d) AUDITS.—Section 212(n)(2)(A), as amended by
9 this section, is further amended by adding at the end the
10 following: “The Secretary may conduct surveys of the de-
11 gree to which employers comply with the requirements
12 under this subsection and may conduct annual compliance
13 audits of employers that employ H-1B nonimmigrants.
14 The Secretary shall conduct annual compliance audits of
15 not less than 1 percent of the employers that employ H-
16 1B nonimmigrants during the applicable calendar year.”

17 (e) PENALTIES.—Section 212(n)(2)(C), as amended
18 by this section, is further amended—

19 (1) in clause (i)(I), by striking “\$1,000” and
20 inserting “\$2,000”;

21 (2) in clause (ii)(I), by striking “\$5,000” and
22 inserting “\$10,000”; and

23 (3) in clause (vi)(III), by striking “\$1,000” and
24 inserting “\$2,000”.

1 (f) INFORMATION PROVIDED TO h-1b NON-
2 IMMIGRANTS UPON VISA ISSUANCE.—Section 212(n), as
3 amended by this section, is further amended by inserting
4 after paragraph (2) the following:

5 “(3)(A) Upon issuing an H-1B visa to an applicant
6 outside the United States, the issuing office shall provide
7 the applicant with—

8 (i) a brochure outlining the employer’s obliga-
9 tions and the employee’s rights under Federal law,
10 including labor and wage protections; and

11 (ii) the contact information for Federal agen-
12 cies that can offer more information or assistance in
13 clarifying employer obligations and workers’ rights.

14 “(B) Upon the issuance of an H-1B visa to an alien
15 inside the United States, the officer of the Department
16 of Homeland Security shall provide the applicant with—

17 (i) a brochure outlining the employer’s obliga-
18 tions and the employee’s rights under Federal law,
19 including labor and wage protections; and

20 (ii) the contact information for Federal agen-
21 cies that can offer more information or assistance in
22 clarifying employer’s obligations and workers
23 rights.”.

1 **SEC. 423. L-1 VISA FRAUD AND ABUSE PROTECTIONS.**

2 (a) IN GENERAL.—Section 214(c)(2) (8 U.S.C.
3 1184(c)(2)) is amended by inserting after subsection (F)
4 the following:

5 “(G)(i) If the beneficiary of a petition under this sub-
6 section is coming to the United States to open, or be em-
7 ployed in, a new facility, the petition may be approved for
8 up to 12 months only if the employer operating the new
9 facility has—

10 “(I) a business plan;

11 “(II) sufficient physical premises to carry out
12 the proposed business activities; and

13 “(III) the financial ability to commence doing
14 business immediately upon the approval of the peti-
15 tion.

16 “(ii) An extension of the approval period under clause
17 (i) may not be granted until the importing employer sub-
18 mits an application to the Secretary of Homeland Security
19 that contains—

20 “(I) evidence that the importing employer
21 meets the requirements of this subsection;

22 “(II) evidence that the beneficiary meets the re-
23 quirements under section 101(a)(15)(L);

24 “(III) a statement summarizing the original pe-
25 tition;

1 “(IV) evidence that the importing employer has
2 fully complied with the business plan submitted
3 under clause (i)(I);

4 “(V) evidence of the truthfulness of any rep-
5 resentations made in connection with the filing of
6 the original petition;

7 “(VI) evidence that the importing employer,
8 during the preceding 12 months, has been doing
9 business at the new facility through regular, system-
10 atic, and continuous provision of goods or services,
11 or has otherwise been taking commercially reason-
12 able steps to establish the new facility as a commer-
13 cial enterprise;

14 “(VII) a statement of the duties the beneficiary
15 has performed at the new facility during the pre-
16 ceding 12 months and the duties the beneficiary will
17 perform at the new facility during the extension pe-
18 riod approved under this clause;

19 “(VIII) a statement describing the staffing at
20 the new facility, including the number of employees
21 and the types of positions held by such employees;

22 “(IX) evidence of wages paid to employees;

23 “(X) evidence of the financial status of the new
24 facility; and

1 “(XI) any other evidence or data prescribed by
2 the Secretary.

3 “(iii) Notwithstanding subclauses (I) through (VI) of
4 clause (ii), and subject to the maximum period of author-
5 ized admission set forth in subparagraph (D), the Sec-
6 retary of Homeland Security may approve a petition sub-
7 sequently filed on behalf of the beneficiary to continue em-
8 ployment at the facility described in this subsection for
9 a period beyond the initially granted 12-month period if
10 the importing employer demonstrates that the failure to
11 satisfy any of the requirements described in those sub-
12 clauses was directly caused by extraordinary cir-
13 cumstances beyond the control of the importing employer.

14 “(iv) For purposes of determining the eligibility of
15 an alien for classification under section 101(a)(15)(L), the
16 Secretary of Homeland Security shall work cooperatively
17 with the Secretary of State to verify a company or facili-
18 ty’s existence in the United States and abroad.”.

19 (b) INVESTIGATIONS AND AUDITS BY DEPARTMENT
20 OF HOMELAND SECURITY.—

21 (1) DEPARTMENT OF HOMELAND SECURITY IN-
22 VESTIGATIONS.—Section 214(c)(2) is amended by
23 inserting after subparagraph (G), as added by sub-
24 section (a), the following:

1 “(H)(i) The Secretary of Homeland Security may ini-
2 tiate an investigation of any employer that employs non-
3 immigrants described in section 101(a)(15)(L) with re-
4 gard to the employer’s compliance with the requirements
5 of this subsection.

6 “(ii) If the Secretary of Homeland Security receives
7 specific credible information from a source who is likely
8 to have knowledge of an employer’s practices, employment
9 conditions, or compliance with the requirements under this
10 subsection, the Secretary may conduct an investigation
11 into the employer’s compliance with the requirements of
12 this subsection. The Secretary may withhold the identity
13 of the source from the employer, and the source’s identity
14 shall not be subject to disclosure under section 552 of title
15 5.

16 “(iii) The Secretary of Homeland Security shall es-
17 tablish a procedure for any person desiring to provide to
18 the Secretary of Homeland Security information described
19 in clause (ii) that may be used, in whole or in part, as
20 the basis for the commencement of an investigation de-
21 scribed in such clause, to provide the information in writ-
22 ing on a form developed and provided by the Secretary
23 of Homeland Security and completed by or on behalf of
24 the person.

1 “(iv) No investigation described in clause (ii) (or
2 hearing described in clause (vi) based on such investiga-
3 tion) may be conducted with respect to information about
4 a failure to comply with the requirements under this sub-
5 section, unless the Secretary of Homeland Security re-
6 ceives the information not later than 24 months after the
7 date of the alleged failure.

8 “(v) Before commencing an investigation of an em-
9 ployer under clause (i) or (ii), the Secretary of Homeland
10 Security shall provide notice to the employer of the intent
11 to conduct such investigation. The notice shall be provided
12 in such a manner, and shall contain sufficient detail, to
13 permit the employer to respond to the allegations before
14 an investigation is commenced. The Secretary is not re-
15 quired to comply with this clause if the Secretary deter-
16 mines that to do so would interfere with an effort by the
17 Secretary to investigate or secure compliance by the em-
18 ployer with the requirements of this subsection. There
19 shall be no judicial review of a determination by the Sec-
20 retary under this clause.

21 “(vi) If the Secretary of Homeland Security, after an
22 investigation under clause (i) or (ii), determines that a
23 reasonable basis exists to make a finding that the em-
24 ployer has failed to comply with the requirements under
25 this subsection, the Secretary shall provide interested par-

1 ties with notice of such determination and an opportunity
2 for a hearing in accordance with section 556 of title 5,
3 United States Code, not later than 120 days after the date
4 of such determination. If such a hearing is requested, the
5 Secretary shall make a finding concerning the matter by
6 not later than 120 days after the date of the hearing.

7 “(vii) If the Secretary of Homeland Security, after
8 a hearing, finds a reasonable basis to believe that the em-
9 ployer has violated the requirements under this subsection,
10 the Secretary may impose a penalty under section
11 214(c)(2)(J).”.

12 (2) AUDITS.—Section 214(c)(2)(H), as added
13 by paragraph (1), is amended by adding at the end
14 the following:

15 “(viii) The Secretary of Homeland Security may con-
16 duct surveys of the degree to which employers comply with
17 the requirements under this section and may conduct an-
18 nual compliance audits of employers that employ H-1B
19 nonimmigrants. The Secretary shall conduct annual com-
20 pliance audits of not less than 1 percent of the employers
21 that employ nonimmigrants described in section
22 101(a)(15)(L) during the applicable calendar year.”.

23 (3) REPORTING REQUIREMENT.—Section
24 214(c)(8) of such Act is amended by inserting
25 “(L),” after “(H),”.

1 (c) PENALTIES.—Section 214(c)(2) is amended by in-
2 serting after subparagraph (H), as added by subsection
3 (b), the following:

4 “(I)(i) If the Secretary of Homeland Security finds,
5 after notice and an opportunity for a hearing, a failure
6 by an employer to meet a condition under subparagraph
7 (F), (G), (H), (I), or (K) or a misrepresentation of mate-
8 rial fact in a petition to employ 1 or more aliens as non-
9 immigrants described in section 101(a)(15)(L)—

10 “(I) the Secretary of Homeland Security may
11 impose such other administrative remedies (includ-
12 ing civil monetary penalties in an amount not to ex-
13 ceed \$2,000 per violation) as the Secretary deter-
14 mines to be appropriate; and

15 “(II) the Secretary of Homeland Security may
16 not, during a period of at least 1 year, approve a pe-
17 tition for that employer to employ 1 or more aliens
18 as such nonimmigrants.

19 “(ii) If the Secretary of Homeland Security finds,
20 after notice and an opportunity for a hearing, a willful
21 failure by an employer to meet a condition under subpara-
22 graph (F), (G), (H), (I), or (K) or a misrepresentation
23 of material fact in a petition to employ 1 or more aliens
24 as nonimmigrants described in section 101(a)(15)(L)—

1 “(I) the Secretary of Homeland Security may
2 impose such other administrative remedies (includ-
3 ing civil monetary penalties in an amount not to ex-
4 ceed \$10,000 per violation) as the Secretary deter-
5 mines to be appropriate; and

6 “(II) the Secretary of Homeland Security may
7 not, during a period of at least 2 years, approve a
8 petition filed for that employer to employ 1 or more
9 aliens as such nonimmigrants.

10 “(iii) If the Secretary of Homeland Security finds,
11 after notice and an opportunity for a hearing, a willful
12 failure by an employer to meet a condition under subpara-
13 graph (L)(i)—

14 “(I) the Secretary of Homeland Security may
15 impose such other administrative remedies (includ-
16 ing civil monetary penalties in an amount not to ex-
17 ceed \$10,000 per violation) as the Secretary deter-
18 mines to be appropriate; and

19 “(II) the employer shall be liable to employees
20 harmed for lost wages and benefits.”.

21 **SEC. 424. WHISTLEBLOWER PROTECTIONS.**

22 (a) H-1B WHISTLEBLOWER PROTECTIONS.—Section
23 212(n)(2)(C)(iv) (8 U.S.C. 1182(n)(2)(C)(iv)) is amend-
24 ed—

1 (1) by inserting “take, fail to take, or threaten
2 to take or fail to take, a personnel action, or” before
3 “to intimidate”; and

4 (2) by adding at the end the following: “An em-
5 ployer that violates this clause shall be liable to the
6 employees harmed by such violation for lost com-
7 pensation, including back pay.”.

8 (b) L-1 WHISTLEBLOWER PROTECTIONS.—Section
9 214(c)(2) is amended by inserting after subparagraph (I),
10 as added by section 423, the following:

11 “(J)(i) It is a violation of this subparagraph for an
12 employer who has filed a petition to import 1 or more
13 aliens as nonimmigrants described in section
14 101(a)(15)(L) to take, fail to take, or threaten to take
15 or fail to take, a personnel action, or to intimidate, threat-
16 en, restrain, coerce, blacklist, discharge, or discriminate
17 in any other manner against an employee because the em-
18 ployee—

19 “(I) has disclosed information that the em-
20 ployee reasonably believes evidences a violation of
21 this subsection, or any rule or regulation pertaining
22 to this subsection; or

23 “(II) cooperates or seeks to cooperate with the
24 requirements of this subsection, or any rule or regu-
25 lation pertaining to this subsection.

1 “(ii) An employer that violates this subparagraph
2 shall be liable to the employees harmed by such violation
3 for lost wages and benefits.

4 “(iii) In this subparagraph, the term ‘employee’ in-
5 cludes—

6 “(I) a current employee;

7 “(II) a former employee; and

8 “(III) an applicant for employment.”.

9 **SEC. 425. LIMITATIONS ON APPROVAL OF L-1 PETITIONS**
10 **FOR START-UP COMPANIES.**

11 Section 214(c)(2), as amended by sections 423 and
12 424, is further amended—

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

16 (2) in subparagraph (E), by striking “In the
17 case of an alien spouse admitted under section
18 101(a)(15)(L), who” and inserting “Except as pro-
19 vided in subparagraph (L), if an alien spouse admit-
20 ted under section 101(a)(15)(L)”;

21 (3) by adding at the end the following:

22 “(K)(i) If the beneficiary of a petition under this sub-
23 section is coming to the United States to be employed in
24 a new office, the petition may be approved for a period
25 not to exceed 12 months only if the alien has not been

1 the beneficiary of 2 or more petitions under this subpara-
2 graph within the immediately preceding 2 years and only
3 if the employer operating the new office has—

4 “(I) an adequate business plan;

5 “(II) sufficient physical premises to carry out
6 the proposed business activities; and

7 “(III) the financial ability to commence doing
8 business immediately upon the approval of the peti-
9 tion.

10 “(ii) An extension of the approval period under clause
11 (i) may not be granted until the importing employer sub-
12 mits to the Secretary of Homeland Security—

13 “(I) evidence that the importing employer
14 meets the requirements of this subsection;

15 “(II) evidence that the beneficiary meets the re-
16 quirements of section 101(a)(15)(L);

17 “(III) a statement summarizing the original pe-
18 tition;

19 “(IV) evidence that the importing employer has
20 substantially complied with the business plan sub-
21 mitted under clause (i);

22 “(V) evidence of the truthfulness of any rep-
23 resentations made in connection with the filing of
24 the original petition if requested by the Secretary;

1 “(VI) evidence that the importing employer,
2 from the date of petition approval under clause (i),
3 has been doing business at the new office through
4 regular, systematic, and continuous provision of
5 goods or services;

6 “(VII) a statement of the duties the beneficiary
7 has performed at the new office during the approval
8 period under clause (i) and the duties the beneficiary
9 will perform at the new office during the extension
10 period approved under this clause;

11 “(VIII) a statement describing the staffing at
12 the new office, including the number of employees
13 and the types of positions held by such employees;

14 “(IX) evidence of wages paid to employees if
15 the beneficiary will be employed in a managerial or
16 executive capacity;

17 “(X) evidence of the financial status of the new
18 office; and

19 “(XI) any other evidence or data prescribed by
20 the Secretary.

21 “(iii) A new office employing the beneficiary of an
22 L-1 petition approved under this subparagraph shall do
23 business through regular, systematic, and continuous pro-
24 vision of goods or services for the entire period of petition
25 approval.

1 “(iv) Notwithstanding clause (iii) or subclauses (I)
2 through (VI) of clause (ii), and subject to the maximum
3 period of authorized admission set forth in subparagraph
4 (D), the Secretary of Homeland Security, in the discretion
5 of the Secretary, may approve a subsequently filed petition
6 on behalf of the beneficiary to continue employment at the
7 office described in this subsection for a period beyond the
8 initially granted 12-month period if the importing em-
9 ployer has been doing business at the new office through
10 regular, systematic, and continuous provision of goods or
11 services for the 6 months immediately preceding the date
12 of extension petition filing and demonstrates that the fail-
13 ure to satisfy any of the requirements described in those
14 subclauses was directly caused by extraordinary cir-
15 cumstances, as determined by the Secretary, in the discre-
16 tion of the Secretary.

17 “(L)(i) The Secretary of Homeland Security may not
18 authorize the spouse of an alien described under section
19 101(a)(15)(L), who is a dependent of a beneficiary under
20 subparagraph (K), to engage in employment in the United
21 States during the initial 12-month period described in sub-
22 paragraph (K)(i).

23 “(ii) A spouse described in clause (i) may be provided
24 employment authorization upon the approval of an exten-
25 sion under subparagraph (K)(ii).

1 “(M) For purposes of determining the eligibility of
2 an alien for classification under section 101(a)(15)(L), the
3 Secretary of Homeland Security shall establish procedures
4 with the Department of State to verify a company or of-
5 fice’s existence in the United States and abroad.”.

6 **SEC. 426. MEDICAL SERVICES IN UNDERSERVED AREAS.**

7 (a) PERMANENT AUTHORIZATION OF THE CONRAD
8 PROGRAM.—

9 (1) IN GENERAL.—Section 220(c) of the Immi-
10 gration and Nationality Technical Corrections Act of
11 1994 (8 U.S.C. 1182 note) ((as amended by section
12 1(a) of Public Law 108–441 and section 2 of Public
13 Law 109–477)) is amended by striking “and before
14 June 1, 2008.”.

15 (2) EFFECTIVE DATE.—The amendment made
16 by paragraph (1) shall take effect as if enacted on
17 June 1, 2007.

18 (b) PILOT PROGRAM REQUIREMENTS.—Section
19 214(l) (8 U.S.C. 1184(l)) is amended by adding at the
20 end the following:

21 “(4)(A) Notwithstanding paragraph (1)(B), the Sec-
22 retary of Homeland Security may grant up to a total of
23 50 waivers for a State under section 212(e) in a fiscal
24 year if, after the first 30 such waivers for the State are
25 granted in that fiscal year—

1 “(i) an interested State agency requests a waiver;
2 er; and

3 “(ii) the requirements under subparagraph (B)
4 are met.

5 “(B) The requirements under this subparagraph are
6 met if—

7 “(i) fewer than 20 percent of the physician vacancies in the health professional shortage areas of
8 the State, as designated by the Secretary of Health
9 and Human Services, were filled in the most recent
10 fiscal year;

11 “(ii) all of the waivers allotted for the State
12 under paragraph (1)(B)) were used in the most recent
13 fiscal year; and
14 cent fiscal year; and

15 “(iii) all underserved highly rural States—

16 “(I) used the minimum guaranteed number
17 of waivers under section 212(e) in health professional shortage areas in the most recent
18 fiscal year; or
19 cal year; or

20 “(II) all agreed to waive the right to receive the minimum guaranteed number of such
21 waivers.
22 waivers.

23 “(C) In this paragraph:

24 “(i) The term ‘health professional shortage
25 area’ has the meaning given the term in section

1 332(a)(1) of the Public Health Service Act (42
2 U.S.C. 254e(a)(1)).

3 “(ii) The term ‘underserved highly rural State’
4 means a State with at least 30 counties with a popu-
5 lation density of not more than 10 people per square
6 mile, based on the latest available decennial census
7 conducted by the Bureau of Census.

8 “(iii) The term ‘minimum guaranteed number’
9 means—

10 “(I) for the first fiscal year of the pilot
11 program, 15;

12 “(II) for each subsequent fiscal year, the
13 sum of—

14 “(aa) the minimum guaranteed num-
15 ber for the second fiscal year; and

16 “(bb) if any State received additional
17 waivers under this paragraph in the first
18 fiscal year;

19 “(III) for the third fiscal year, the sum
20 of—

21 “(aa) the minimum guaranteed num-
22 ber for the second fiscal year; and

23 “(bb) if any State received additional
24 waivers under this paragraph in the first
25 fiscal year.”.

1 (c) TERMINATION DATE.—Section 214(l)(4) of the
2 Immigration and Nationality Act, as added by subsection
3 (b) is repealed on September 30, 2011.

4 (d) MEDICAL PROFESSIONALS.—Section 212(j) (8
5 U.S.C. 1182(j)) is amended—

6 (1) by redesignating paragraph (2) as para-
7 graph (3);

8 (2) by inserting after paragraph (1) the fol-
9 lowing:

10 “(2)(A) An alien who is coming to the United States
11 to receive graduate medical education or training (or seeks
12 to acquire status as a nonimmigrant under section
13 1101(a)(15)(J) to receive graduate medical education or
14 training) may not change status under section 1258 to
15 a nonimmigrant under section 1101(a)(15)(H)(i)(b) until
16 the alien graduates from the medical education or training
17 program and meets the requirements of paragraph (3)(B).

18 “(B) Any occupation that an alien described in para-
19 graph (2)(A) may be employed in while receiving graduate
20 medical education or training shall not be deemed a ‘spe-
21 cialty occupation’ within the meaning of section 1184(i)
22 for purposes of section 1101(a)(15)(H)(i)(b).”;

23 (3) in paragraph (3), as redesignated by para-
24 graph (1) of this subsection, by striking the matter

1 preceding subparagraph (A) and inserting the fol-
2 lowing:

3 “(3) An alien who has graduated from a medical
4 school and who is coming to the United States to practice
5 primary care or specialty medicine as a member of the
6 medical profession may not be admitted as a non-
7 immigrant under section 1101(a)(15)(H)(i)(b) of this title
8 unless—”;

9 (e) DEFINITION.—Section 101(a)(15)(J) is amended
10 by inserting “(except an alien coming to the United States
11 to receive graduate medical education or training)” after
12 “abandoning”.

13 (f) INTENTION TO ABANDON FOREIGN RESI-
14 DENCE.—Section 214(h) (8 U.S.C. 1184(h)) is amended
15 by inserting “(E), (J) (if the alien is coming to the United
16 States to receive graduate medical education or training),”
17 after “described in subparagraph”.

18 (g) MEDICAL RESIDENTS INELIGIBLE FOR H-1B
19 NONIMMIGRANT STATUS.—Section 214(i)(1) (8 U.S.C.
20 1184(i)) is amended to read as follows:

21 “(1) Except as provided in paragraph (3), for pur-
22 poses of section 101(a)(15)(H)(i)(b), section
23 101(a)(15)(E)(iii), and paragraph (2), the term ‘specialty
24 occupation’—

25 “(A) means an occupation that requires—

1 “(i) theoretical and practical application of
2 a body of highly specialized knowledge; and

3 “(ii) attainment of a bachelor’s or higher
4 degree in the specific specialty (or its equiva-
5 lent) as a minimum for entry into the occupa-
6 tion in the United States; and

7 “(B) shall not include graduate medical edu-
8 cation or training.”.

9 (h) WAIVER OF FOREIGN RESIDENCE REQUIRE-
10 MENT.—Section 214(l) (8 U.S.C. 1184(l)) is amended—

11 (1) in paragraph (1)—

12 (A) in subparagraph (C)—

13 (i) in clause (i), by striking “Attorney
14 General to be in the public interest; and”
15 and inserting “Secretary of Homeland Se-
16 curity to be in the public interest;”;

17 (ii) by striking subclause (ii) and in-
18 serting the following:

19 “(ii) the alien has accepted employment
20 with the health facility or health care organiza-
21 tion and agrees to continue to work for a total
22 of not less than 3 years; and

23 “(iii) the alien begins employment not later
24 than 90 days after the later of the date on
25 which the alien—

1 “(I) received such waiver; or

2 “(II) received nonimmigrant status or
3 employment authorization pursuant to an
4 application filed under paragraph (2)(A)
5 (if such application is filed not later than
6 90 days after eligibility of completing grad-
7 uate medical education or training under a
8 program approved pursuant to section
9 212(j)(1));”;

10 (B) by striking the period at the end and
11 inserting the following: “; or

12 “(E) in the case of a request by an interested
13 State agency, the alien agrees to practice primary
14 care or specialty medicine care, for a continuous pe-
15 riod of 2 years, only at a federally qualified health
16 facility, health care organization or center, or in a
17 rural health clinic that is located in—

18 “(i) a geographic area which is designated
19 by the Secretary of Health and Human Services
20 as having a shortage of health care profes-
21 sionals; and

22 “(ii) a State that utilized less than 10 of
23 the total allotted waivers for the State under
24 paragraph (1)(B) (excluding the number of

1 waivers available pursuant to paragraph
2 (1)(D)(ii) in the most recent fiscal year.”;

3 (2) in paragraph (2), by amending subpara-
4 graph (A) to read as follows:

5 “(A) Notwithstanding section 248(a)(2), upon sub-
6 mission of a request to an interested Federal agency or
7 an interested State agency for recommendation of a waiver
8 under this section by a physician who is maintaining valid
9 nonimmigrant status under section 101(a)(15)(J), the
10 Secretary of Homeland Security may accept as properly
11 filed an application to change the status of such physician
12 to any appropriate nonimmigrant status. Upon favorable
13 recommendation by the Secretary of State of such request,
14 and approval by the Secretary of Homeland Security the
15 waiver under this section, the Secretary of Homeland Se-
16 curity may change the status of such physician to that
17 of an appropriate nonimmigrant status.”.

18 (3) in paragraph (3)(A), by inserting “require-
19 ment of or” before “agreement entered into”.

20 (i) PERIOD OF AUTHORIZED ADMISSION FOR PHYSI-
21 CIANS ON H-1B VISAS WHO WORK IN MEDICALLY UN-
22 DERSERVED COMMUNITIES.—Section 214(g)(5), as re-
23 numbered by section 409 and amended by section 719(c),
24 is further amended by adding at the end the following:

1 “(D) The period of authorized admission under
2 subparagraph (A) shall not apply to an alien physi-
3 cian who fulfills the requirements under subsection
4 (l)(1)(E) and who has practiced primary or specialty
5 care in a medically underserved community for a
6 continuous period of 5 years.”.

7 **SEC. 427. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated such sums
9 as may be necessary to carry out this title, and the amend-
10 ments made by this title.

11 **TITLE V—IMMIGRATION**
12 **BENEFITS**

13 **SEC. 501. REBALANCING OF IMMIGRANT VISA ALLOCATION.**

14 (a) FAMILY-SPONSORED IMMIGRANTS.—Section
15 201(c) (8 U.S.C. 1151(c)) is amended to read as follows:

16 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED
17 IMMIGRANTS.—

18 “(1) For each fiscal year until visas needed for
19 petitions described in section 503(f)(2) of the Secure
20 Borders, Economic Opportunity, and Immigration
21 Reform Act of 2007 become available, the worldwide
22 level of family-sponsored immigrants under this sub-
23 section is 567,000 for petitions for classifications
24 under section 203(a), plus any immigrant visas not
25 required for the class specified in subsection (d).

1 “(2) Except as provided in paragraph (1), the
2 worldwide level of family-sponsored immigrants
3 under this subsection for a fiscal year is 127,000,
4 plus any immigrant visas not required for the class
5 specified in subsection (d).”.

6 (b) MERIT-BASED IMMIGRANTS.—Section 201(d) (8
7 U.S.C. 1151(d)) is amended to read as follows:

8 “(d) WORLDWIDE LEVEL OF MERIT-BASED, SPE-
9 CIAL, AND EMPLOYMENT CREATION IMMIGRANTS.—

10 “(1) IN GENERAL.—The worldwide level of
11 merit-based, special, and employment creation immi-
12 grants under this subsection—

13 “(A) for the first 5 fiscal years shall be
14 equal to the number of immigrant visas made
15 available to aliens seeking immigrant visas
16 under section 203(b) for fiscal year 2005, plus
17 any immigrant visas not required for the class
18 specified in subsection (c), of which—

19 “(i) at least 10,000 will be for excep-
20 tional aliens in nonimmigrant status under
21 section 101(a)(15)(Y); and

22 “(ii) 90,000 will be for aliens who
23 were the beneficiaries of an application
24 that was pending or approved on the effec-
25 tive date of this section, as described in

1 section 502(d) of the Secure Borders, Eco-
2 nomic Opportunity, and Immigration Re-
3 form Act of 2007;

4 “(B) starting in the sixth fiscal year, shall
5 be equal to 140,000 for each fiscal year until
6 aliens described in section 101(a)(15)(Z) first
7 become eligible for an immigrant visa, plus any
8 immigrant visas not required for the class spec-
9 ified in subsection (c), of which—

10 “(i) at least 10,000 will be for excep-
11 tional aliens in nonimmigrant status under
12 section 101(a)(15)(Y); and

13 “(ii) not more than 90,000 will be for
14 aliens who were the beneficiaries of an ap-
15 plication that was pending or approved on
16 the effective date of this section, as de-
17 scribed in section 502(d) of the ‘Secure
18 Borders, Economic Opportunity, and Im-
19 migration Reform Act of 2007’; and

20 “(C)(i) 380,000, for each fiscal year start-
21 ing in the first fiscal year in which aliens de-
22 scribed in section 101(a)(15)(Z) become eligible
23 for an immigrant visa, of which at least 10,000
24 will be for exceptional aliens of nonimmigrant
25 status under section 101(a)(15)(Y), plus any

1 immigrant visas not required for the class spec-
2 ified in subsection (e), plus

3 “(ii) the temporary supplemental allocation
4 of additional visas described in paragraph (2)
5 for nonimmigrants described in section
6 101(a)(15)(Z).

7 “(2) TEMPORARY SUPPLEMENTAL ALLOCA-
8 TION.—The temporary supplemental allocation of
9 visas described in this paragraph is as follows:

10 “(A) For the first 5 fiscal years in which
11 aliens described in section 101(a)(15)(Z) are el-
12 igible for an immigrant visa, the number cal-
13 culated pursuant to section 503(f)(2) of the Se-
14 cure Borders, Economic Opportunity, and Im-
15 migration Reform Act of 2007.

16 “(B) In the sixth fiscal year in which
17 aliens described in section 101(a)(15)(Z) are el-
18 igible for an immigrant visa, the number cal-
19 culated pursuant to section 503(f)(3) of Secure
20 Borders, Economic Opportunity, and Immigra-
21 tion Reform Act of 2007.

22 “(C) Starting in the seventh fiscal year in
23 which aliens described in section 101(a)(15)(Z)
24 are eligible for an immigrant visa, the number
25 equal to the number of aliens described in sec-

1 tion 101(a)(15)(Z) who became aliens admitted
2 for permanent residence based on the merit-
3 based evaluation system in the prior fiscal year
4 until no further aliens described in section
5 101(a)(15)(Z) adjust status.

6 “(3) TERMINATION OF TEMPORARY SUPPLE-
7 MENTAL ALLOCATION.—The temporary supple-
8 mental allocation of visas described in paragraph (2)
9 shall terminate when the number of visas calculated
10 pursuant to paragraph (2)(C) is zero.

11 “(4) LIMITATION.—The temporary supple-
12 mental visas described in paragraph (2) shall not be
13 awarded to any individual other than an individual
14 described in section 101(a)(15)(Z).”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the first day of the fiscal
17 year subsequent to the fiscal year of enactment.

18 **SEC. 502. INCREASING AMERICAN COMPETITIVENESS**
19 **THROUGH A MERIT-BASED EVALUATION SYS-**
20 **TEM FOR IMMIGRANTS.**

21 (a) SENSE OF CONGRESS.—It is the sense of Con-
22 gress that the United States benefits from a workforce
23 that has diverse skills, experience, and training.

1 (b) CREATION OF MERIT-BASED EVALUATION SYS-
 2 TEM FOR IMMIGRANTS AND REALLOCATION OF VISAS.—
 3 Section 203(b) (8 U.S.C. 1153(b)) is amended—

4 (1) by striking paragraphs (1) through (3) and
 5 inserting the following:

6 “(1) MERIT-BASED IMMIGRANTS.—Visas shall
 7 first be made available in a number not to exceed 95
 8 percent of such worldwide level, plus any visas not
 9 required for the classes in paragraphs (2) and (3),
 10 to qualified immigrants selected through a merit-
 11 based evaluation system.

12 “(A) The merit-based evaluation system
 13 shall initially consist of the following criteria
 14 and weights:

“Category	Description	Max- imum points
“Employment Occupation National interest/critical infrastructure Employer endorsement Experience Age of worker	U.S. employment in specialty occupa- tion (as defined by the Department of Labor)— 20 pts U.S. employment in high demand occu- pation (the 30 occupations that have grown the most in the preceding 10- year period, as determined by the Bureau of Labor Statistics)— 16 pts U.S. employment in STEM or health occupation, current for at least 1 year— 8 pts (extraordinary or ordi- nary) A U.S. employer willing to pay 50% of a legal permanent resident’s applica- tion fee either 1) offers a job, or 2) attests for a current employee— 6 pts Years of work for U.S. firm— 2 pts/ year (max 10 points) Worker’s age: 25-39— 3 points	47

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“Category	Description	Maximum points
“Education (terminal degree)	M.D., M.B.A., Graduate degree, etc.– 20 pts Bachelor’s Degree– 16 pts Associate’s Degree– 10 pts High school diploma or GED– 6 pts Completed certified Perkins Vocational Education program– 5 pts Completed Department of Labor Registered Apprenticeship– 8 pts STEM, associates and above– 8 pts	28
“English and civics	Native speaker of English or TOEFL score of 75 or higher– 15 pts TOEFL score of 60-74– 10 pts Pass USCIS Citizenship Tests in English & Civics– 6 pts	15
“Extended family (Applied if threshold of 55 in above categories)	Adult (21 or older) son or daughter of United States citizen– 8 points Adult (21 or older) son or daughter of a legal permanent resident– 6 pts Sibling of United States citizen or LPR– 4 pts If had applied for a family visa in any of the above categories after May 1, 2005– 2 pts	10
“Total		100

“Category	Description	Maximum points
“Supplemental schedule for Zs Agriculture National Interest	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 pts	25
U.S. employment experience	Year of lawful employment– 1 pt	15
Home ownership	Own place of residence– 1 pt/year owned	5
Medical insurance	Current medical insurance for entire family	5

1 “(B) The Secretary of Homeland Security,
2 after consultation with the Secretary of Com-
3 merce and the Secretary of Labor, shall estab-

1 lish procedures to adjudicate petitions filed pur-
2 suant to the merit-based evaluation system. The
3 Secretary may establish a time period in a fis-
4 cal year in which such petitions must be sub-
5 mitted.

6 “(C) The Standing Commission on Immi-
7 gration and Labor Markets established pursu-
8 ant to section 407 of the Secure Borders, Eco-
9 nomic Opportunity, and Immigration Reform
10 Act of 2007 shall submit recommendations to
11 Congress concerning the establishment of proce-
12 dures for modifying the selection criteria and
13 relative weights accorded such criteria in order
14 to ensure that the merit-based evaluation sys-
15 tem corresponds to the current needs of the
16 United States economy and the national inter-
17 est.

18 “(D) No modifications to the selection cri-
19 teria and relative weights accorded such criteria
20 that are established by the Secure Borders,
21 Economic Opportunity, and Immigration Re-
22 form Act of 2007 should take effect earlier than
23 the sixth fiscal year in which aliens described in
24 section 101(a)(15)(Z) are eligible for an immi-
25 grant visa.

1 “(E) The application of the selection cri-
2 teria to any particular visa petition or applica-
3 tion pursuant to the merit-based evaluation sys-
4 tem shall be within the Secretary’s sole and
5 unreviewable discretion.

6 “(F) Any petition filed pursuant to this
7 paragraph that has not been found by the Sec-
8 retary to have qualified in the merit-based eval-
9 uation system shall be deemed denied on the
10 first day of the third fiscal year following the
11 date on which such petition was filed. Such de-
12 nial shall not preclude the petitioner from filing
13 a successive petition pursuant to this para-
14 graph. Notwithstanding this paragraph, the
15 Secretary may deny a petition when denial is
16 appropriate under other provisions of law, in-
17 cluding but not limited to section 204(c).”;

18 (2) by redesignating paragraphs (4) through
19 (6) as paragraphs (2) through (4), respectively;

20 (3) in paragraph (2), as redesignated—

21 (A) by striking “7.1 percent” and inserting
22 “4,200”; and

23 (B) striking “5,000” and inserting
24 “2,500”; and

25 (4) in paragraph (3), as redesignated—

1 (A) by striking “7.1 percent” and inserting
2 “2,800”; and

3 (B) striking “3,000” and inserting
4 “1,500”.

5 (c) PROCEDURE FOR GRANTING IMMIGRANT STA-
6 TUS.—Section 204(a)(1) (8 U.S.C. 1154(a)(1)) is amend-
7 ed by striking subparagraphs (E) and (F).

8 (d) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Subject to paragraph (2),
10 the amendments made by this section shall take ef-
11 fect on the first day of the fiscal year subsequent to
12 the fiscal year of enactment, unless such date is less
13 than 270 days after the date of enactment, in which
14 case the amendments shall take effect on the first
15 day of the following fiscal year.

16 (2) PENDING AND APPROVED PETITIONS AND
17 APPLICATIONS.—Petitions for an employment-based
18 visa filed for classification under paragraph (1), (2),
19 or (3) of section 203(b) of the Immigration and Na-
20 tionality Act (8 U.S.C. 1153(b) (as such provisions
21 existed prior to the enactment of this section) that
22 were filed prior to the date of the introduction of the
23 Secure Borders, Economic Opportunity, and Immi-
24 gration Reform Act of 2007 and were pending or ap-
25 proved at the time of the effective date of this sec-

1 tion, shall be treated as if such provisions remained
2 effective and an approved petition may serve as the
3 basis for issuance of an immigrant visa. Aliens with
4 applications for a labor certification pursuant to sec-
5 tion 212(a)(5)(A) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1182(a)(5)(A)) shall preserve the
7 immigrant visa priority date accorded by the date of
8 filing of such labor certification application.

9 (e) CONFORMING AMENDMENTS.—

10 (1) Section 201 (8 U.S.C. 1151) is amended by
11 striking “employment-based” each place it appears
12 and inserting “merit-based”.

13 (2) Section 202 (8 U.S.C. 1152) is amended by
14 striking “employment-based” each place it appears
15 and inserting “merit-based”.

16 (3) Section 203(b) (8 U.S.C. 1153(b)) is
17 amended—

18 (A) by amending the matter preceding
19 paragraph (1) to read as follows:

20 “(b) PREFERENCE ALLOCATION FOR MERIT-BASED,
21 SPECIAL, AND EMPLOYMENT CREATION IMMIGRANTS.—

22 Aliens subject to the worldwide level specified in section
23 201(d) for merit-based, special, and employment creation
24 immigrants in a fiscal year shall be allotted visas as fol-
25 lows:”;

1 (B) in paragraph (6)(B)(i)—

2 (i) by striking “employment-based”
3 and inserting “merit-based”; and

4 (ii) by striking “paragraphs (1), (2),
5 and (3)” and inserting “paragraph (1)”;
6 and

7 (C) in paragraph (6)(B)(iii)—

8 (i) by striking “employment-based”
9 and inserting “merit-based”; and

10 (ii) by striking “each of paragraphs
11 (1) through (3)” and inserting “paragraph
12 (1)”.

13 (4) Section 212(a)(4) (8 U.S.C. 1182(a)(4)) is
14 amended by striking subparagraph (D).

15 (5) Section 213A(f) (8 U.S.C. 1183a(f)) is
16 amended—

17 (A) by striking paragraph (4);

18 (B) by striking paragraph (5) and insert-
19 ing the following:

20 “(4) NON-PETITIONING CASES.—Such term also
21 includes an individual who does not meet the re-
22 quirement of paragraph (1)(D) but who is a spouse,
23 parent, mother-in-law, father-in-law, sibling, child (if
24 at least 18 years of age), son, daughter, son-in-law,
25 daughter-in-law, sister-in-law, brother-in-law, grand-

1 parent, or grandchild of a sponsored alien or a legal
2 guardian of a sponsored alien, meets the require-
3 ments of paragraph (1) (other than subparagraph
4 (D)), and executes an affidavit of support with re-
5 spect to such alien in a case in which—

6 “(A) the individual petitioning under sec-
7 tion 204 for the classification of such alien died
8 after the approval of such petition; and

9 “(B) the Secretary of Homeland Security
10 has determined for humanitarian reasons that
11 revocation of such petition under section 205
12 would be inappropriate.”;

13 (C) by redesignating paragraph (6) as
14 paragraph (5); and

15 (D) by striking “(6)” and inserting “(5)”.

16 (6) Section 212(a) (8 U.S.C. 1182(a)) is
17 amended by striking paragraph (5).

18 (7) Section 218(g)(3) (8 U.S.C. 1188) is
19 amended by striking paragraph (3) and redesign-
20 ating paragraph (4) as paragraph (3).

21 (8)(A) Section 207(c)(3) (8 U.S.C. 1157(c)(3))
22 is amended by striking “, (5),” in the first sentence.

23 (B) Section 209(c) (8 U.S.C. 1159(c)) is
24 amended by striking “, (5),” in the second sentence.

1 (C) Section 210(c)(2)(A) (8 U.S.C.
2 1160(c)(2)(A)) is amended by striking “paragraphs
3 (5) and” and inserting “paragraph”.

4 (D) Section 237(a)(1)(H)(i)(II) (8 U.S.C.
5 1227(a)(1)(H)(i)(II)) is amended by striking “para-
6 graphs (5) and” and inserting “paragraph”.

7 (E) Section 245(h)(2)(A) (8 U.S.C.
8 1255(h)(2)(A)) is amended by striking “, (5)(A),”.

9 (F) Section 245A(d)(2)(A) (8 U.S.C.
10 1255a(d)(2)(A)) is amended by striking “paragraphs
11 (5) and” and inserting “paragraph”.

12 (G) Section 286(s)(6) (8 U.S.C. 1356(s)(6)) is
13 amended by striking “and section 212(a)(5)(A)”.

14 (f) REFERENCES TO SECRETARY OF HOMELAND SE-
15 CURITY.—

16 (1) Section 203 (8 U.S.C. 1153) is amended by
17 striking “Attorney General” each place it appears
18 and inserting “Secretary of Homeland Security”.

19 (2) Section 204 (8 U.S.C. 1154) is amended by
20 striking “Attorney General” each place it appears,
21 except for section 204(f)(4)(B), and inserting “Sec-
22 retary of Homeland Security”.

1 **SEC. 503. REDUCING CHAIN MIGRATION AND PERMITTING**
2 **PETITIONS BY NATIONALS.**

3 (a) CAP EXEMPT CATEGORIES.—Paragraph (1) of
4 section 201(b) (8 U.S.C. 1151(b)) is amended by adding
5 at the end the following:

6 “(F) Aliens admitted under section 211(a) on
7 the basis of a prior issuance of a visa under section
8 203(a) to their accompanying parent who is an im-
9 mediate relative.

10 “(G) Aliens born to an alien lawfully admitted
11 for permanent residence during a temporary visit
12 abroad.”.

13 (b) IMMEDIATE RELATIVES.—

14 (1) IMMEDIATE RELATIVE REDEFINED.—Sec-
15 tion 201(b)(2) (8 U.S.C. 1151(b)) is amended to
16 read as follows:

17 “(2) IMMEDIATE RELATIVES.—

18 “(A) IN GENERAL.—For purposes of this
19 subsection, the term ‘immediate relative’ means
20 a child or spouse of a citizen of the United
21 States (and each child of such child or spouse
22 who is accompanying or following to join the
23 alien).

24 “(B) SPOUSE OF A DECEASED UNITED
25 STATES CITIZEN.—An alien who was the spouse
26 of a citizen of the United States and not legally

1 separated from the citizen at the time of the
2 citizen's death, who was married to the citizen
3 for not less than 2 years at the time of the citi-
4 zen's death (or, if married for less than 2 years
5 at the time of the citizen's death, who proves by
6 a preponderance of the evidence that the mar-
7 riage was entered into in good faith and not
8 solely for the purpose of obtaining an immigra-
9 tion benefit), and each child of such alien, may
10 be considered, for purposes of this subsection,
11 to remain an immediate relative after the date
12 of the citizen's death if the spouse files a peti-
13 tion under section 204(a)(1)(A)(ii) before the
14 earlier of—

15 “(i) 2 years after such date; or

16 “(ii) the date on which the spouse re-
17 marries.

18 “(C) BATTERED SPOUSE OR CHILD.—An
19 alien who has filed a petition under clause (iii)
20 or (iv) of section 204(a)(1)(A) remains an im-
21 mediate relative if the United States citizen
22 spouse or parent loses United States citizenship
23 on account of the abuse.”.

24 (2) PETITION.—Section 204(a)(1)(A)(ii) (8
25 U.S.C. 1154(a)(1)(A)(ii)) is amended by striking “in

1 the second sentence of section 201(b)(2)(A)(i)” and
2 inserting “in section 201(b)(2)(B)”.

3 (c) PREFERENCE CATEGORIES.—Section 203(a) (8
4 U.S.C. 1153(a)) is amended—

5 (1) by amending paragraph (1) to read as fol-
6 lows:

7 “(1) PARENTS OF A CITIZEN OF THE UNITED
8 STATES IF THE CITIZEN IS AT LEAST 21 YEARS OF
9 AGE.—Qualified immigrants who are the parents of
10 a citizen of the United States if such citizen is at
11 least 21 years of age shall be allocated visas in a
12 number not to exceed 40,000, plus any visas not re-
13 quired for the classes specified in paragraph (3).”;

14 (2) by amending paragraph (2) to read as fol-
15 lows:

16 “(2) SPOUSES OR CHILDREN OF AN ALIEN LAW-
17 FULLY ADMITTED FOR PERMANENT RESIDENCE OR
18 A NATIONAL.—Qualified immigrants who are the
19 spouses or children of an alien lawfully admitted for
20 permanent residence or a noncitizen national of the
21 United States as defined in section 101(a)(22)(B) of
22 this Act who is resident in the United States shall
23 be allocated visas in a number not to exceed 87,000,
24 plus any visas not required for the class specified in
25 paragraph (1).”;

1 (3) by amending paragraph (3) and to read as
2 follows:

3 “(3) FAMILY-SPONSORED IMMIGRANTS WHO
4 ARE BENEFICIARIES OF FAMILY-BASED VISA PETI-
5 TIONS FILED BEFORE MAY 1, 2005.—Immigrant visas
6 totaling 440,000 shall be allotted visas as follows:

7 “(A) Qualified immigrants who are the un-
8 married sons or unmarried daughters of citizens
9 of the United States shall be allocated visas to-
10 taling 70,400 immigrant visas, plus any visas
11 not required for the class specified in subpara-
12 graph (D).

13 “(B) Qualified immigrants who are the un-
14 married sons or unmarried daughters of an
15 alien lawfully admitted for permanent residence,
16 shall be allocated visas totaling 110,000 immi-
17 grant visas, plus any visas not required for the
18 class specified in subparagraph (A).

19 “(C) Qualified immigrants who are the
20 married sons or married daughters of citizens
21 of the United States shall be allocated visas to-
22 taling 70,400 immigrant visas, plus any visas
23 not required for the class specified in subpara-
24 graphs (A) and (B).

1 “(D) Qualified immigrants who are the
2 brothers or sisters of citizens of the United
3 States, if such citizens are at least 21 years of
4 age, shall be allocated visas totaling 189,200
5 immigrant visas, plus any visas not required for
6 the class specified in subparagraph (A), (B), or
7 (C).”; and

8 (4) by striking paragraph (4).

9 (d) PETITION.—Section 204(a)(1)(A)(i) (8 U.S.C.
10 1154(a)(1)(A)(i)) is amended by striking “, (3), or (4)”
11 after “paragraph (1)”.

12 (e) EFFECTIVE DATE.—

13 (1) IN GENERAL.—The amendments made by
14 this section shall take effect on the first day of the
15 fiscal year subsequent to the fiscal year of enact-
16 ment.

17 (2) PENDING AND APPROVED PETITIONS.—Pe-
18 titions for a family-sponsored visa filed for classifica-
19 tion under section 203(a) (1), (2)(B), (3), or (4) of
20 the Immigration and Nationality Act (as such provi-
21 sions existed prior to the date of the enactment of
22 this section) which were filed before May 1, 2005,
23 regardless of whether the petitions were approved
24 before May 1, 2005, shall be treated as if such pro-
25 visions remained in effect, and an approved petition

1 may be the basis of an immigrant visa pursuant to
2 section 203(a)(3).

3 (f) DETERMINATIONS OF NUMBER OF INTENDED
4 LAWFUL PERMANENT RESIDENTS.—

5 (1) SURVEY OF PENDING AND APPROVED FAM-
6 ILY-BASED PETITIONS.—The Secretary may require
7 a submission from petitioners with approved or
8 pending family-based petitions filed for classification
9 under section 203(a) (1), (2)(B), (3), or (4) of the
10 Immigration and Nationality Act (as such provisions
11 existed prior to the date of the enactment of this
12 section) filed on or before May 1, 2005, to determine
13 that the petitioner and the beneficiary have a con-
14 tinuing commitment to the petition for the alien rel-
15 ative under the classification. In the event the Sec-
16 retary requires a submission pursuant to this sec-
17 tion, the Secretary shall take reasonable steps to
18 provide notice of such a requirement. In the event
19 that the petitioner or beneficiary is no longer com-
20 mitted to the beneficiary obtaining an immigrant
21 visa under this classification or if the petitioner does
22 not respond to the request for a submission, the Sec-
23 retary may deny the petition if the petition has not
24 been adjudicated or revoke the petition without addi-

1 tional notice pursuant to section 205 if it has been
2 approved.

3 (2) FIRST SURVEY OF Z NONIMMIGRANTS IN-
4 TENDING TO ADJUST STATUS.—The Secretary shall
5 establish procedures by which nonimmigrants de-
6 scribed in section 101(a)(15)(Z) who seek to become
7 aliens lawfully admitted for permanent residence
8 under the merit-based immigrant system shall estab-
9 lish their eligibility, pay any applicable fees and pen-
10 alties, and file their petitions. Not later than the
11 conclusion of the eighth fiscal year after the effective
12 date of section 218D of the Immigration and Na-
13 tionality Act, the Secretary will determine the total
14 number of qualified applicants who have followed the
15 procedures set forth in this section. The number cal-
16 culated pursuant to this paragraph shall be 20 per-
17 cent of the total number of qualified applicants. The
18 Secretary shall calculate the number of visas needed
19 per year.

20 (3) SECOND SURVEY OF Z NONIMMIGRANTS IN-
21 TENDING TO ADJUST STATUS.—Not later than the
22 conclusion of the thirteenth fiscal year after the ef-
23 fective date of section 218D of the Immigration and
24 Nationality Act, the Secretary shall determine the
25 total number of qualified applicants not described in

1 paragraph (2) who have followed the procedures set
2 forth in this section. The number calculated pursu-
3 ant to this paragraph shall be the lesser of—

4 (A) the number of qualified applicants, as
5 determined by the Secretary pursuant to this
6 paragraph; and

7 (B) the number calculated pursuant to
8 paragraph (2).

9 (g) CONFORMING AMENDMENTS.—

10 (1) Section 212(d)(12)(B) (8 U.S.C.
11 1182(d)(12)(B)) is amended by striking
12 “201(b)(2)(A)” and inserting “201(b)(2)”.

13 (2) Section 101(a)(15)(K)(ii) (8 U.S.C.
14 1101(a)(15)(K)) is amended by striking
15 “201(b)(2)(A)(i)” and inserting “201(b)(2)”.

16 (3) Section 204(a) (8 U.S.C. 1154(a)) is
17 amended by striking “201(b)(2)(A)(i)” each place it
18 appears and inserting “201(b)(2)”.

19 (4) Section 214(r)(3)(A) (8 U.S.C.
20 1184(r)(3)(A)) is amended by striking
21 “201(b)(2)(A)(i)” and inserting “201(b)(2)”.

22 **SEC. 504. CREATION OF PROCESS FOR IMMIGRATION OF**
23 **FAMILY MEMBERS IN HARDSHIP CASES.**

24 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)
25 is amended by inserting after section 203 the following:

1 **“SEC. 203A. IMMIGRANT VISAS FOR HARDSHIP CASES.**

2 “(a) IN GENERAL.—Immigrant visas allocated under
3 this section may not exceed 5,000 per fiscal year.

4 “(b) DETERMINATION OF ELIGIBILITY.—The Sec-
5 retary of Homeland Security may grant an immigrant visa
6 to an applicant who satisfies the following qualifications:

7 “(1) FAMILY RELATIONSHIP.—Visas under this
8 section will be given to aliens who are—

9 “(A) the unmarried sons or unmarried
10 daughters of citizens of the United States;

11 “(B) the unmarried sons or the unmarried
12 daughters of aliens lawfully admitted for per-
13 manent residence;

14 “(C) the married sons or married daugh-
15 ters of citizens of the United States; or

16 “(D) the brothers or sisters of citizens of
17 the United States, if such citizens are at least
18 21 years of age.

19 “(2) NECESSARY HARDSHIP.—The petitioner
20 must demonstrate to the satisfaction of the Sec-
21 retary of Homeland Security that the lack of an im-
22 migrant visa under this section would result in ex-
23 treme hardship to the petitioner or the beneficiary
24 that cannot be relieved by temporary visits as a non-
25 immigrant.

1 “(3) INELIGIBILITY TO IMMIGRATE THROUGH
2 OTHER MEANS.—The alien described in paragraph
3 (1) must be ineligible to immigrate or adjust status
4 through other means, including obtaining an immi-
5 grant visa filed for classification under section
6 201(b)(2)(A) or section 203 (a) or (b), and obtain-
7 ing cancellation of removal under section 240A(b). A
8 determination under this section that an alien is eli-
9 gible to immigrate through other means does not
10 foreclose or restrict any later determination on the
11 question of eligibility by the Secretary of Homeland
12 Security or the Attorney General.

13 “(c) PROCESSING OF APPLICATIONS.—

14 “(1) IN GENERAL.—An alien selected for an im-
15 migrant visa pursuant to this section shall remain
16 eligible to receive such visa only if the alien files an
17 application for an immigrant visa or an application
18 for adjustment of status within the fiscal year in
19 which the visa becomes available, or at such reason-
20 able time as the Secretary may specify after the end
21 of the fiscal year for petitions approved in the last
22 quarter of the fiscal year.

23 “(2) TERMINATION OF APPLICATIONS.—All pe-
24 titions for an immigrant visa under this section shall
25 automatically terminate if not granted within the fis-

1 cal year in which they were filed. The Secretary may
2 in the discretion of the Secretary establish such rea-
3 sonable application period or other procedures for
4 filing petitions as the Secretary may deem necessary
5 in order to ensure the orderly processing of such pe-
6 titions within the fiscal year of filing.

7 “(3) RESERVE.—The Secretary may reserve up
8 to 2,500 of the immigrant visas allocated under this
9 section for approval in the period between March 31
10 and September 30 of a fiscal year.

11 “(d) PROHIBITION ON REVIEW.—Decisions on
12 whether an alien qualifies for an immigrant visa under this
13 section are in the unreviewable discretion of the Sec-
14 retary.”.

15 (b) CLERICAL AMENDMENT.—The table of contents
16 is amended by inserting after the item relating to section
17 203 the following new item:

“Sec. 203A. Immigrant visas for hardship cases.”.

18 **SEC. 505. ELIMINATION OF DIVERSITY VISA PROGRAM.**

19 (a) IN GENERAL.—Section 201 (8 U.S.C. 1151) is
20 amended—

21 (1) in subsection (a)—

22 (A) in paragraph (1), by inserting “and”
23 after the semicolon;

24 (B) in paragraph (2), by striking “; and”
25 and inserting a period;

1 (C) by striking paragraph (3); and

2 (2) by striking subsection (e).

3 (b) OTHER AMENDMENTS.—Section 203 (8 U.S.C.
4 1153) is amended—

5 (1) by striking subsection (c);

6 (2) in subsection (d), by striking “(a), (b), or
7 (c),” and inserting “(a) or (b),”;

8 (3) in subsection (e)—

9 (A) by striking paragraph (2); and

10 (B) by redesignating paragraph (3) as
11 paragraph (2);

12 (4) in subsection (f), by striking “(a), (b), or
13 (c)” and inserting “(a) or (b)”; and

14 (5) in subsection (g), by striking “(a), (b), and
15 (c)” and inserting “(a) and (b)”.

16 (c) CONFORMING AMENDMENTS.—Section 204 (8
17 U.S.C. 1154) is amended—

18 (1) in subsection (a)(1)—

19 (A) by striking subparagraph (I); and

20 (B) by redesignating subparagraphs (J),
21 (K), and (L) as subparagraphs (I), (J), and
22 (K), respectively; and

23 (2) in subsection (e), by striking “(a), (b), or
24 (c)” and inserting “(a) or (b)”.

1 (d) REPEAL OF TEMPORARY REDUCTION IN VISAS
2 FOR OTHER WORKERS.—Section 203(e) of the Nica-
3 ragan Adjustment and Central American Relief Act,
4 (Public Law 105–100; 8 U.S.C. 1153 note) is repealed.

5 (e) EFFECTIVE DATE.—

6 (1) IN GENERAL.—The amendments made by
7 this section shall take effect on October 1, 2008.

8 (2) TERMINATION OF DIVERSITY VISA PRO-
9 GRAM.—No alien may receive lawful permanent resi-
10 dent status based on the diversity visa program on
11 or after the effective date of this section.

12 (f) CONFORMING AMENDMENTS.—Section 203 (8
13 U.S.C. 1153(a)) is amended by redesignating subsections
14 (d) through (h) as subsections (c) through (g), respec-
15 tively.

16 **SEC. 506. FAMILY VISITOR VISAS.**

17 (a) IN GENERAL.—Section 101(a)(15)(B) (8 U.S.C.
18 1101(a)(15)(B)) is amended to read as follows:

19 “(B) an alien (other than one coming for
20 the purpose of study or of performing skilled or
21 unskilled labor or as a representative of foreign
22 press, radio, film, or other foreign information
23 media coming to engage in such vocation) hav-
24 ing a residence in a foreign country which he or
25 she has no intention of abandoning and who is

1 visiting the United States temporarily for busi-
2 ness or temporarily for pleasure. The require-
3 ment that the alien have a residence in a for-
4 eign country which the alien has no intention of
5 abandoning shall not apply to an alien de-
6 scribed in section 214(s) who is seeking to enter
7 as a temporary visitor for pleasure;”.

8 (b) PARENT VISITOR VISAS.—Section 214 (8 U.S.C.
9 1184) is amended by adding at the end the following:

10 “(s) PARENT VISITOR VISAS.—

11 “(1) IN GENERAL.—The parent of a United
12 States citizen at least 21 years of age, or the spouse
13 or child of an alien in nonimmigrant status under
14 section 101(a)(15)(Y)(i), demonstrating satisfaction
15 of the requirements of this subsection, may be
16 granted a nonimmigrant visa under section
17 101(a)(15)(B) as a temporary visitor for pleasure.

18 “(2) REQUIREMENTS.—An alien seeking a non-
19 immigrant visa under this subsection must dem-
20 onstrate through presentation of such documentation
21 as the Secretary may by regulations prescribe,
22 that—

23 “(A) the alien’s United States citizen son
24 or daughter who is at least 21 years of age or
25 the alien’s spouse or parent in nonimmigrant

1 status under section 101(a)(15)(Y)(i), is spon-
2 soring the alien’s visit to the United States;

3 “(B) the sponsoring United States citizen,
4 or spouse or parent in nonimmigrant status
5 under section 101(a)(15)(Y)(i), has, according
6 to such procedures as the Secretary may by
7 regulations prescribe, posted on behalf of the
8 alien a bond in the amount of \$1,000, which
9 shall be forfeited if the alien overstays the au-
10 thorized period of admission (except as provided
11 in subparagraph (5)(B)) or otherwise violates
12 the terms and conditions of the alien’s non-
13 immigrant status; and

14 “(C) the alien, the sponsoring United
15 States citizen son or daughter, or the spouse or
16 parent in nonimmigrant status under
17 101(a)(15)(Y)(i), possesses the ability and fi-
18 nancial means to return the alien to the alien’s
19 country of residence.

20 “(3) TERMS AND CONDITIONS.—An alien ad-
21 mitted as a visitor for pleasure under the provisions
22 of this subsection—

23 “(A) may not stay in the United States for
24 an aggregate period in excess of 30 days within
25 any calendar year;

1 “(B) shall, according to such procedures as
2 the Secretary may by regulations prescribe, reg-
3 ister with the Secretary upon departure from
4 the United States; and

5 “(C) may not be issued employment au-
6 thorization by the Secretary or be employed.

7 “(4) CERTIFICATION.—

8 “(A) REPORT.—Not later than January 1
9 of each year, the Secretary of Homeland Secu-
10 rity shall submit a written report to Congress
11 estimating the percentage of aliens admitted to
12 the United States during the preceding fiscal
13 year as visitors for pleasure under the terms
14 and conditions of this subsection who have re-
15 mained in the United States beyond their au-
16 thorized period of admission (except as provided
17 in paragraph (5)(B)). When preparing this re-
18 port, the Secretary shall determine which coun-
19 tries, if any, have a disproportionately high rate
20 of nationals overstaying their period of author-
21 ized admission under this subsection.

22 “(B) TERMINATION OF ELIGIBILITY OF
23 NATIONALS OF CERTAIN COUNTRIES.—Except
24 as provided in subparagraph (C), if the Sec-
25 retary reports under subparagraph (A) for 2

1 consecutive fiscal years that the percentage of
2 aliens overstaying their period of authorized ad-
3 mission exceeds 7 percent, the Secretary may,
4 in his discretion, determine that no more visas
5 under this section may be issued for those
6 countries whose nationals have a disproportion-
7 ately high rate of aliens overstaying their period
8 of authorized admission under this subsection.

9 “(C) TERMINATION OF THE PROGRAM.—

10 Notwithstanding subparagraph (B), if the Sec-
11 retary reports under subparagraph (A) for 2
12 consecutive fiscal years that the percentage of
13 aliens overstaying their period of authorized ad-
14 mission under this subsection exceeds 7 percent
15 and the percentage is not significantly affected
16 by countries whose nationals have a dispropor-
17 tionately high rate of aliens overstaying their
18 period of authorized admission, the Secretary
19 may, in the Secretary’s discretion, determine
20 that no more visas may be issued under this
21 subsection as of the date of the second consecu-
22 tive report described in subparagraph (A) find-
23 ing an overstay rate in excess of 7 percent.

24 “(D) EFFECT ON EXISTING VISAS.—In the
25 event the Secretary determines under subpara-

1 graph (B) or (C) that no more visas shall be
2 issued, all visas previously issued under this
3 subsection and still valid on the date that the
4 Secretary determines that no more visas should
5 be issued shall expire on the earlier of the visa's
6 date of expiration or 12 months after the date
7 of the determination.

8 “(5) PERMANENT BARS FOR OVERSTAYS.—

9 “(A) IN GENERAL.—Any alien admitted as
10 a visitor for pleasure under the terms and con-
11 ditions of this subsection who remains in the
12 United States beyond the alien's authorized pe-
13 riod of admission is permanently barred from
14 any future immigration benefits under the im-
15 migration laws, except—

16 “(i) asylum under section 208(a);

17 “(ii) withholding of removal under
18 section 241(b)(3); or

19 “(iii) protection under the Convention
20 Against Torture and Other Cruel, Inhu-
21 man, or Degrading Treatment or Punish-
22 ment, done at New York, December 10,
23 1984.

24 “(B) EXCEPTION.—Overstay of the au-
25 thorized period of admission granted to aliens

1 admitted as visitors for pleasure under the
2 terms and conditions of this subsection may be
3 excused in the discretion of the Secretary where
4 it is demonstrated that—

5 “(i) the period of overstay was due to
6 extraordinary circumstances beyond the
7 control of the applicant, and the Secretary
8 finds the period commensurate with the
9 circumstances; and

10 “(ii) the alien has not otherwise vio-
11 lated the alien’s nonimmigrant status.

12 “(6) BAR ON SPONSOR OF OVERSTAY.—The
13 United States citizen or Y-1 nonimmigrant sponsor
14 of an alien—

15 “(A) admitted as a visitor for pleasure
16 under the terms and conditions of this sub-
17 section; and

18 “(B) who remains in the United States be-
19 yond the alien’s authorized period of admission,
20 shall be permanently barred from sponsoring that
21 alien or any other alien for admission as a visitor for
22 pleasure under the terms and conditions of this sub-
23 section, and, in the case of a Y-1 nonimmigrant
24 sponsor, shall have the alien’s Y-1 nonimmigrant
25 status terminated.

1 “(7) CONSTRUCTION.—Nothing in this sub-
2 section shall be construed, except as provided in this
3 subsection, to make inapplicable the requirements
4 for admissibility and eligibility, as well as the terms
5 and conditions of admission, as a nonimmigrant
6 under section 101(a)(15)(B).”.

7 **SEC. 507. PREVENTION OF VISA FRAUD.**

8 (a) IN GENERAL.—Section 204 (8 U.S.C. 1154) is
9 amended by adding at the end the following:

10 “(1) FRAUD PREVENTION.—The Secretary of Home-
11 land Security may audit and evaluate the information fur-
12 nished as part of the applications filed under subsection
13 (a) and refer evidence of fraud to appropriate law enforce-
14 ment agencies based on the audit information.”.

15 (b) USE OF FUNDS.—Section 286(v)(2) (8 U.S.C.
16 1356(v)(2)) is amended by striking subparagraphs (B)
17 and (C) and inserting the following:

18 “(B) SECRETARY OF HOMELAND SECUR-
19 RITY.—One-third of the amounts deposited into
20 the Fraud Prevention and Detection Account
21 shall remain available to the Secretary of
22 Homeland Security until expended for programs
23 and activities to prevent and detect immigration
24 benefit fraud, including, fraud with respect to
25 petitions under paragraph (1) or (2)(A) of sec-

1 tion 214(e) to grant an alien nonimmigrant sta-
2 tus described in subparagraph (H)(i), (H)(ii),
3 or (L) of section 101(a)(15).

4 “(C) SECRETARY OF LABOR.—One-third of
5 the amounts deposited into the Fraud Preven-
6 tion and Detection Account shall remain avail-
7 able to the Secretary of Labor until expended
8 for enforcement programs and activities de-
9 scribed in section 212(n), and for enforcement
10 programs and fraud detection and prevention
11 activities not otherwise authorized under section
12 212(n), to be conducted by the Secretary of
13 Labor that focus on industries likely to employ
14 nonimmigrants.”.

15 **SEC. 508. INCREASING PER-COUNTRY LIMITS FOR FAMILY-**
16 **BASED AND EMPLOYMENT-BASED IMMI-**
17 **GRANTS.**

18 (a) PER COUNTRY LEVELS.—Section 202(a)(2) (8
19 U.S.C. 1152(a)) is amended to read as follows:

20 “(2) PER COUNTRY LEVELS FOR FAMILY-SPON-
21 SORED AND MERIT-BASED IMMIGRANTS.—Subject to
22 paragraphs (3), (4), (5), (6), and (7), the total num-
23 ber of immigrant visas made available to natives of
24 any single foreign state or dependent area under
25 subsections (a) and (b) of section 203 in any fiscal

1 year may not exceed 10 percent (in the case of a sin-
2 gle foreign state) or 3 percent (in the case of a de-
3 pendent area) of the total number of such visas
4 made available under such subsections in that fiscal
5 year.”.

6 (b) EXCEPTIONS.—Section 202(a) (8 U.S.C.
7 1152(a)) is amended by adding at the end the following:

8 “(6) RULES FOR CERTAIN FAMILY-BASED PETI-
9 TION FILED BEFORE MAY 1, 2005.—If the per-coun-
10 try levels in paragraph (2) prevent the use of other-
11 wise available visas described in section
12 201(c)(1)(B), the per country level will not apply for
13 such visas.

14 “(7) EXCEPTION FOR Z NONIMMIGRANTS.—
15 Paragraph (2) shall not apply to aliens who are non-
16 immigrants described in section 101(a)(15)(Z) who
17 are eligible to seek lawful permanent resident status
18 based on a petition for classification under section
19 203(b)(1).”.

1 **TITLE VI—NONIMMIGRANTS IN**
2 **THE UNITED STATES PRE-**
3 **VIOUSLY IN UNLAWFUL STA-**
4 **TUS**

5 **Subtitle A—Z Nonimmigrants**

6 **SEC. 601. Z NONIMMIGRANTS.**

7 (a) IN GENERAL.—Notwithstanding any other provi-
8 sion of law, (including section 244(h) of the Immigration
9 and Nationality Act (8 U.S.C. 1254a(h)), the Secretary
10 may permit an alien, or a dependent of such alien, de-
11 scribed in this section, to remain lawfully in the United
12 States under the conditions set forth in this title.

13 (b) ESTABLISHMENT OF Z NONIMMIGRANT CAT-
14 EGORY.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is
15 amended by inserting at the end the following new sub-
16 paragraph:

17 “(Z) subject to title VI of the Secure Bor-
18 ders, Economic Opportunity, and Immigration
19 Reform Act of 2007, an alien who—

20 “(i) is physically present in the
21 United States, has maintained continuous
22 physical presence in the United States
23 since January 1, 2007, is employed, and
24 seeks to continue performing labor, serv-
25 ices or education;

1 “(ii) is physically present in the
2 United States, has maintained continuous
3 physical presence in the United States
4 since January 1, 2007, and such alien—

5 “(I) is the spouse or parent (65
6 years of age or older) of an alien de-
7 scribed in clause (i); or

8 “(II) was, within 2 years of the
9 date on which the Secure Borders,
10 Economic Opportunity, and Immigra-
11 tion Reform Act of 2007 was intro-
12 duced in the Senate, the spouse of an
13 alien who is described in clause (i) or
14 is eligible for such classification, if—

15 “(aa) the termination of the
16 relationship with such spouse was
17 connected to domestic violence;
18 and

19 “(bb) such spouse has been
20 battered or subjected to extreme
21 cruelty by such alien; or

22 “(iii) is under 18 years of age at the
23 time of application for nonimmigrant sta-
24 tus under this subparagraph, is physically
25 present in the United States, has main-

1 tained continuous physical presence in the
2 United States since January 1, 2007, and
3 was born to or legally adopted by at least
4 one parent who is at the time of applica-
5 tion described in clause (i) or (ii).”.

6 (c) PRESENCE IN THE UNITED STATES.—

7 (1) IN GENERAL.—The alien shall establish
8 that the alien was not present in lawful status in the
9 United States on January 1, 2007, under any classi-
10 fication described in section 101(a)(15) of the Immi-
11 gration and Nationality Act (8 U.S.C. 1101(a)(15))
12 or any other immigration status made available
13 under a treaty or other multinational agreement that
14 has been ratified by the Senate.

15 (2) CONTINUOUS PRESENCE.—For purposes of
16 this section, an absence from the United States
17 without authorization for a continuous period of 90
18 days or more than 180 days in the aggregate shall
19 constitute a break in continuous physical presence.

20 (d) OTHER CRITERIA.—

21 (1) GROUNDS OF INELIGIBILITY.—

22 (A) IN GENERAL.—An alien is ineligible
23 for Z nonimmigrant status if the Secretary de-
24 termines that the alien—

1 (i) is inadmissible to the United
2 States under section 212(a) of Immigra-
3 tion and Nationality Act (8 U.S.C.
4 1182(a)), except as provided in paragraph
5 (2);

6 (ii) subject to subparagraph (B), is
7 subject to the execution of an outstanding
8 administratively final order of removal, de-
9 portation, or exclusion;

10 (iii) subject to subparagraph (B), is
11 described in or is subject to section
12 241(a)(5) of such Act;

13 (iv) has ordered, incited, assisted, or
14 otherwise participated in the persecution of
15 any person on account of race, religion, na-
16 tionality, membership in a particular social
17 group, or political opinion;

18 (v) is an alien—

19 (I) for whom there are reasonable
20 grounds for believing that the alien
21 has committed a serious criminal of-
22 fense (as described in section 101(h)
23 of such Act (8 U.S.C. 1101(h))) out-
24 side the United States before arriving
25 in the United States; or

1 (II) for whom there are reason-
2 able grounds for regarding the alien
3 as a danger to the security of the
4 United States;

5 (vi) has been convicted of—

6 (I) a felony;

7 (II) an aggravated felony (as de-
8 fined in section 101(a)(43) of such
9 Act);

10 (III) 3 or more misdemeanors
11 under Federal or State law; or

12 (IV) a serious criminal offense
13 (as described in section 101(h) of
14 such Act);

15 (vii) has entered or attempted to enter
16 the United States illegally on or after Jan-
17 uary 1, 2007; and

18 (viii) with respect to an applicant for
19 Z-2 nonimmigrant status or Z-3 non-
20 immigrant status, a Z-2 nonimmigrant, or
21 a Z-3 nonimmigrant who is under 18
22 years of age, the alien is ineligible for Z
23 nonimmigrant status if the principal Z-1
24 nonimmigrant or Z-1 nonimmigrant status
25 applicant is ineligible.

1 (B) WAIVER.—The Secretary may, in the
2 Secretary’s discretion, waive ineligibility under
3 clause (ii) or (iii) if the alien has not been phys-
4 ically removed from the United States and if
5 the alien demonstrates that the alien’s depar-
6 ture from the United States would result in ex-
7 treme hardship to the alien or the alien’s
8 spouse, parent, or child.

9 (C) CONSTRUCTION.—Nothing in this
10 paragraph shall require the Secretary to com-
11 mence removal proceedings against an alien.

12 (2) GROUNDS OF INADMISSIBILITY.—

13 (A) IN GENERAL.—In determining an
14 alien’s admissibility under paragraph
15 (1)(A)(i)—

16 (i) paragraphs (6)(A)(i) (with respect
17 to an alien present in the United States
18 without being admitted or paroled before
19 the date of application, but not with re-
20 spect to an alien who has arrived in the
21 United States on or after January 1,
22 2007), (6)(B), (6)(C)(i), (6)(C)(ii), (6)(D),
23 (6)(F), (6)(G), (7), (9)(B), (9)(C)(i)(I),
24 and (10)(B) of section 212(a) of the Immi-
25 gration and Nationality Act (8 U.S.C.

1 1182) shall not apply, but only with re-
2 spect to conduct occurring or arising be-
3 fore the date of application;

4 (ii) the Secretary may not waive—

5 (I) subparagraph (A), (B), (C),
6 (D)(ii), (E), (F), (G), (H), or (I) of
7 section 212(a)(2) of such Act (relat-
8 ing to criminals);

9 (II) section 212(a)(3) of such Act
10 (relating to security and related
11 grounds);

12 (III) with respect to an applica-
13 tion for Z nonimmigrant status, sec-
14 tion 212(a)(6)(C)(i) of such Act;

15 (IV) paragraph (6)(A)(i) of sec-
16 tion 212(a) of such Act (with respect
17 to any entries occurring on or after
18 January 1, 2007);

19 (V) section 212(a)(9)(C)(i)(II) of
20 such Act; or

21 (VI) subparagraph (A), (C), or
22 (D) of section 212(a)(10) of such Act
23 (relating to polygamists, child abduc-
24 tors, and unlawful voters); and

1 (iii) the Secretary may, in the Sec-
2 retary's discretion, waive the application of
3 any provision of section 212(a) of such Act
4 not listed in clause (ii) on behalf of an in-
5 dividual alien for humanitarian purposes,
6 to ensure family unity, or if such waiver is
7 otherwise in the public interest.

8 (B) CONSTRUCTION.—Nothing in this
9 paragraph shall be construed as affecting the
10 authority of the Secretary other than under this
11 paragraph to waive the provisions of section
12 212(a) of such Act.

13 (e) ELIGIBILITY REQUIREMENTS.—To be eligible for
14 Z nonimmigrant status an alien shall meet the following
15 and any other applicable requirements set forth in this
16 section:

17 (1) ELIGIBILITY.—The alien must not fall with-
18 in a class of aliens ineligible for Z nonimmigrant
19 status listed under subsection (d)(1).

20 (2) ADMISSIBILITY.—The alien must not be in-
21 admissible as a nonimmigrant to the United States
22 under section 212 of the Immigration and Nation-
23 ality Act (8 U.S.C. 1182), except as provided in sub-
24 section (d)(2) of this section, regardless of whether

1 the alien has previously been admitted to the United
2 States.

3 (3) PRESENCE.—To be eligible for Z–1 non-
4 immigrant status, Z–2 nonimmigrant status, or Z–
5 3 nonimmigrant status, the alien shall—

6 (A) have been physically present in the
7 United States before January 1, 2007, and
8 have maintained continuous physical presence
9 in the United States since that date;

10 (B) be physically present in the United
11 States on the date of application for Z non-
12 immigrant status; and

13 (C) be on January 1, 2007, and on the
14 date of application for Z nonimmigrant status,
15 not present in lawful status in the United
16 States under any classification described in sec-
17 tion 101(a)(15) of the Immigration and Nation-
18 ality Act (8 U.S.C. 1101(a)(15)) or any other
19 immigration status made available under a trea-
20 ty or other multinational agreement that has
21 been ratified by the Senate.

22 (4) EMPLOYMENT.—An alien seeking Z–1 non-
23 immigrant status must be employed in the United
24 States on the date of filing of the application for Z–
25 1 nonimmigrant status.

1 (5) FEES AND PENALTIES.—

2 (A) PROCESSING FEES.—

3 (i) IN GENERAL.—An alien making an
4 initial application for Z nonimmigrant sta-
5 tus shall be required to pay a processing
6 fee in an amount sufficient to recover the
7 full cost of adjudicating the application,
8 but no more than \$1,500 for a single Z
9 nonimmigrant.

10 (ii) FEE FOR EXTENSION APPLICA-
11 TION.—An alien applying for extension of
12 the alien's Z nonimmigrant status shall be
13 required to pay a processing fee in an
14 amount sufficient to cover administrative
15 and other expenses associated with proc-
16 essing the extension application, but no
17 more than \$1,500 for a single Z non-
18 immigrant.

19 (B) PENALTIES.—

20 (i) IN GENERAL.—An alien making an
21 initial application for Z-1 nonimmigrant
22 status shall be required to pay, in addition
23 to the processing fee in subparagraph (A),
24 a penalty of \$1,000.

1 (ii) DERIVATIVE STATUS.—A Z-1
2 nonimmigrant making an initial applica-
3 tion for Z-1 nonimmigrant status shall be
4 required to pay a \$500 penalty for each
5 alien seeking Z-2 nonimmigrant status or
6 Z-3 nonimmigrant status derivative to
7 such applicant for Z-1 nonimmigrant sta-
8 tus.

9 (iii) CHANGE OF Z NONIMMIGRANT
10 CLASSIFICATION.—An alien who is a Z-2
11 nonimmigrant or Z-3 nonimmigrant and
12 who has not previously been a Z-1 non-
13 immigrant, and who changes status to that
14 of a Z-1 nonimmigrant, shall in addition
15 to processing fees be required to pay the
16 initial application penalties applicable to
17 Z-1 nonimmigrants.

18 (C) STATE IMPACT ASSISTANCE FEE.—In
19 addition to any other amounts required to be
20 paid under this subsection, a Z-1 non-
21 immigrant making an initial application for Z-
22 1 nonimmigrant status shall be required to pay
23 a State impact assistance fee equal to \$500.

24 (D) DEPOSIT AND SPENDING OF FEES.—
25 The processing fees under subparagraph (A)

1 shall be deposited and remain available until ex-
2 pended as provided by subsections (m) and (n)
3 of section 286 of the Immigration and Nation-
4 ality Act (8 U.S.C. 1356).

5 (E) DEPOSIT, ALLOCATION, AND SPEND-
6 ING OF PENALTIES.—

7 (i) DEPOSIT OF PENALTIES.—The
8 penalty under subparagraph (B) shall be
9 deposited and remain available as provided
10 by subsection (w) of such section 286, as
11 added by section 402.

12 (ii) DEPOSIT OF STATE IMPACT AS-
13 SISTANCE FUNDS.—The funds under sub-
14 paragraph (C) shall be deposited and re-
15 main available as provided by subsection
16 (x) of such section 286, as added by sec-
17 tion 402 of such Act.

18 (6) INTERVIEW.—An applicant for Z non-
19 immigrant status shall appear to be interviewed.

20 (7) MILITARY SELECTIVE SERVICE.—The alien
21 shall establish that if the alien is within the age pe-
22 riod required under the Military Selective Service
23 Act (50 U.S.C. App. 451 et seq.) that such alien has
24 registered under that Act.

25 (f) APPLICATION PROCEDURES.—

1 (1) IN GENERAL.—The Secretary shall pre-
2 scribe by notice in the Federal Register, in accord-
3 ance with the procedures described in section 610 of
4 the Secure Borders, Economic Opportunity, and Im-
5 migration Reform Act of 2007, the procedures for
6 an alien in the United States to apply for Z non-
7 immigrant status and the evidence required to dem-
8 onstrate eligibility for such status.

9 (2) INITIAL RECEIPT OF APPLICATIONS.—The
10 Secretary, or such other entities as are authorized
11 by the Secretary to accept applications under the
12 procedures established under this subsection, shall
13 accept applications from aliens for Z nonimmigrant
14 status for a period of 1 year starting the first day
15 of the first month beginning no more than 180 days
16 after the date of the enactment of this section. If,
17 during the 1-year initial period for the receipt of ap-
18 plications for Z nonimmigrant status, the Secretary
19 determines that additional time is required to reg-
20 ister applicants for Z nonimmigrant status, the Sec-
21 retary may, in the Secretary's discretion, extend the
22 period for accepting applications by not more than
23 1 year.

24 (3) BIOMETRIC DATA.—Each alien applying for
25 Z nonimmigrant status shall submit biometric data

1 in accordance with procedures established by the
2 Secretary.

3 (g) CONTENT OF APPLICATION FILED BY ALIEN.—

4 (1) APPLICATION FORM.—The Secretary shall
5 create an application form that an alien shall be re-
6 quired to complete as a condition of obtaining Z
7 nonimmigrant status.

8 (2) APPLICATION INFORMATION.—

9 (A) IN GENERAL.—The application form
10 shall request such information as the Secretary
11 deems necessary and appropriate, including—

12 (i) information concerning the alien's
13 physical and mental health;

14 (ii) complete criminal history, includ-
15 ing all arrests and dispositions; gang mem-
16 bership, renunciation of gang affiliation;

17 (iii) immigration history;

18 (iv) employment history; and

19 (v) claims to United States citizen-
20 ship.

21 (3) SECURITY AND LAW ENFORCEMENT BACK-
22 GROUND CHECKS.—

23 (A) SUBMISSION OF FINGERPRINTS.—The
24 Secretary may not accord Z nonimmigrant sta-
25 tus unless the alien submits fingerprints and

1 other biometric data in accordance with proce-
2 dures established by the Secretary.

3 (B) BACKGROUND CHECKS.—The Sec-
4 retary shall utilize fingerprints and other bio-
5 metric data provided by the alien to conduct ap-
6 propriate background checks of such alien to
7 search for criminal, national security, or other
8 law enforcement actions that would render the
9 alien ineligible for classification under this sec-
10 tion.

11 (h) TREATMENT OF APPLICANTS.—

12 (1) IN GENERAL.—An alien who files an appli-
13 cation for Z nonimmigrant status shall, upon sub-
14 mission of any evidence required under subsections
15 (f) and (g) and after the Secretary has conducted
16 appropriate background checks, to include name and
17 fingerprint checks, that have not by the end of the
18 next business day produced information rendering
19 the applicant ineligible—

20 (A) be granted probationary benefits in the
21 form of employment authorization pending final
22 adjudication of the alien's application;

23 (B) may, in the Secretary's discretion, re-
24 ceive advance permission to re-enter the United

1 States pursuant to existing regulations gov-
2 erning advance parole;

3 (C) may not be detained for immigration
4 purposes, determined inadmissible or deport-
5 able, or removed pending final adjudication of
6 the alien's application, unless the alien is deter-
7 mined to be ineligible for Z nonimmigrant sta-
8 tus; and

9 (D) may not be considered an unauthor-
10 ized alien (as defined in section 274A of the
11 Immigration and Nationality Act (8 U.S.C.
12 1324a) unless employment authorization under
13 subparagraph (A) is denied.

14 (2) TIMING OF PROBATIONARY BENEFITS.—No
15 probationary benefits shall be issued to an alien
16 until the alien has passed all appropriate back-
17 ground checks or the end of the next business day,
18 whichever is sooner.

19 (3) CONSTRUCTION.—Nothing in this section
20 shall be construed to limit the Secretary's authority
21 to conduct any appropriate background and security
22 checks subsequent to issuance of evidence of proba-
23 tionary benefits under paragraph (4).

24 (4) PROBATIONARY AUTHORIZATION DOCU-
25 MENT.—The Secretary shall provide each alien de-

1 scribed in paragraph (1) with a counterfeit-resistant
2 document that reflects the benefits and status set
3 forth in paragraph (1). The Secretary may by regu-
4 lation establish procedures for the issuance of docu-
5 mentary evidence of probationary benefits and, ex-
6 cept as provided herein, the conditions under which
7 such documentary evidence expires, terminates, or is
8 renewed. All documentary evidence of probationary
9 benefits shall expire no later than 6 months after
10 the date on which the Secretary begins to approve
11 applications for Z nonimmigrant status.

12 (5) BEFORE APPLICATION PERIOD.—If an alien
13 is apprehended between the date of the enactment of
14 this Act and the date on which the period for initial
15 registration closes under subsection (f)(2), and the
16 alien is able to establish prima facie eligibility for Z
17 nonimmigrant status, the Secretary shall provide the
18 alien with a reasonable opportunity to file an appli-
19 cation under this section after such regulations are
20 promulgated.

21 (6) DURING CERTAIN PROCEEDINGS.—Notwith-
22 standing any provision of the Act, if the Secretary
23 determines that an alien who is in removal pro-
24 ceedings is prima facie eligible for Z nonimmigrant
25 status, then the Secretary shall affirmatively com-

1 municate such determination to the immigration
2 judge. The immigration judge shall then terminate
3 or administratively close such proceedings and per-
4 mit the alien a reasonable opportunity to apply for
5 such classification.

6 (i) ADJUDICATION OF APPLICATION FILED BY
7 ALIEN.—

8 (1) IN GENERAL.—The Secretary may approve
9 the issuance of documentation of status, as de-
10 scribed in subsection (j), to an applicant for Z non-
11 immigrant status who satisfies the requirements of
12 this section.

13 (2) EVIDENCE OF CONTINUOUS PHYSICAL
14 PRESENCE, EMPLOYMENT, OR EDUCATION.—

15 (A) PRESUMPTIVE DOCUMENTS.—A Z
16 nonimmigrant or an applicant for Z non-
17 immigrant status may presumptively establish
18 satisfaction of each required period of presence,
19 employment, or study by submitting records to
20 the Secretary that demonstrate such presence,
21 employment, or study, and that the Secretary
22 verifies have been maintained by the Social Se-
23 curity Administration, the Internal Revenue
24 Service, or any other Federal, State, or local
25 government agency.

1 (B) VERIFICATION.—Each Federal agency,
2 and each State or local government agency, as
3 a condition of receipt of any funds under sub-
4 section (x) of section 286 of the Immigration
5 and Nationality Act, as added by section 402,
6 shall within 90 days of the enactment ensure
7 that procedures are in place under which such
8 agency shall—

9 (i) consistent with all otherwise appli-
10 cable laws, including laws governing pri-
11 vacy, provide documentation to an alien
12 upon request to satisfy the documentary
13 requirements of this paragraph; or

14 (ii) notwithstanding any other provi-
15 sion of law, including section 6103 of the
16 Internal Revenue Code of 1986, provide
17 verification to the Secretary of documenta-
18 tion offered by an alien as evidence of—

19 (I) presence or employment re-
20 quired under this section; or

21 (II) a requirement for any other
22 benefit under the immigration laws.

23 (C) OTHER DOCUMENTS.—A Z non-
24 immigrant or an applicant for Z nonimmigrant
25 status who is unable to submit a document de-

1 scribed in subparagraph (A) may establish sat-
2 isfaction of each required period of presence,
3 employment, or study by submitting to the Sec-
4 retary at least 2 other types of reliable docu-
5 ments that provide evidence of employment, in-
6 cluding—

7 (i) bank records;

8 (ii) business records;

9 (iii) employer records;

10 (iv) records of a labor union or day
11 labor center;

12 (v) remittance records;

13 (vi) sworn affidavits from nonrelatives
14 who have direct knowledge of the alien's
15 work, that contain—

16 (I) the name, address, and tele-
17 phone number of the affiant;

18 (II) the nature and duration of
19 the relationship between the affiant
20 and the alien; and

21 (III) other verification or infor-
22 mation.

23 (D) ADDITIONAL DOCUMENTS.—The Sec-
24 retary may—

1 (i) designate additional documents to
2 evidence the required period of presence,
3 employment, or study; and

4 (ii) set such terms and conditions on
5 the use of affidavits as is necessary to
6 verify and confirm the identity of any affi-
7 ant or otherwise prevent fraudulent sub-
8 missions.

9 (3) BURDEN OF PROOF.—An alien who is ap-
10 plying for a Z nonimmigrant visa under this section
11 shall prove, by a preponderance of the evidence, that
12 the alien has satisfied the requirements of this sec-
13 tion.

14 (4) DENIAL OF APPLICATION.—

15 (A) IN GENERAL.—An alien who fails to
16 satisfy the eligibility requirements for a Z non-
17 immigrant visa shall have the alien's application
18 denied and may not file additional applications.

19 (B) FAILURE TO SUBMIT INFORMATION.—
20 An alien who fails to submit requested initial
21 evidence, including requested biometric data,
22 and requested additional evidence by the date
23 required by the Secretary shall, except if the
24 alien demonstrates to the satisfaction of the
25 Secretary that such failure was reasonably ex-

1 cusable or was not willful, have the alien's ap-
2 plication considered abandoned. Such applica-
3 tion shall be denied and the alien may not file
4 additional applications.

5 (j) EVIDENCE OF NONIMMIGRANT STATUS.—

6 (1) IN GENERAL.—Documentary evidence of
7 nonimmigrant status shall be issued to each Z non-
8 immigrant.

9 (2) FEATURES OF DOCUMENTATION.—Docu-
10 mentary evidence of Z nonimmigrant status—

11 (A) shall be machine-readable, tamper-re-
12 sistant, and shall contain a digitized photo-
13 graph and other biometric identifiers that may
14 be authenticated;

15 (B) shall be designed in consultation with
16 U.S. Immigration and Customs Enforcement's
17 Forensic Document Laboratory;

18 (C) shall, during the alien's authorized pe-
19 riod of admission under subsection (k), serve as
20 a valid travel and entry document for the pur-
21 pose of applying for admission to the United
22 States where the alien is applying for admission
23 at a port of entry;

24 (D) may be accepted during the period of
25 its validity by an employer as evidence of em-

1 ployment authorization and identity under sec-
2 tion 274A of the Immigration and Nationality
3 Act (8 U.S.C. 1324a), as amended by title III;
4 and

5 (E) shall be issued to the Z nonimmigrant
6 by the Secretary promptly after final adjudica-
7 tion of such alien's application for Z non-
8 immigrant status, except that an alien may not
9 be granted permanent Z nonimmigrant status
10 until all appropriate background checks on the
11 alien are completed to the satisfaction of the
12 Secretary.

13 (k) PERIOD OF AUTHORIZED ADMISSION.—

14 (1) INITIAL PERIOD.—The initial period of au-
15 thorized admission as a Z nonimmigrant shall be 4
16 years.

17 (2) EXTENSIONS.—

18 (A) IN GENERAL.—Z nonimmigrants may
19 seek an indefinite number of 4-year extensions
20 of the initial period of authorized admission.

21 (B) REQUIREMENTS.—In order to be eligi-
22 ble for an extension of the initial or any subse-
23 quent period of authorized admission under this
24 paragraph, an alien must satisfy the following
25 requirements:

1 (i) ELIGIBILITY.—The alien must
2 demonstrate continuing eligibility for Z
3 nonimmigrant status.

4 (ii) ENGLISH LANGUAGE AND
5 CIVICS.—

6 (I) REQUIREMENT AT FIRST RE-
7 NEWAL.—At or before the time of ap-
8 plication for the first extension of Z
9 nonimmigrant status, an alien who is
10 18 years of age or older must dem-
11 onstrate an attempt to gain an under-
12 standing of the English language and
13 knowledge of United States civics by
14 taking the naturalization test de-
15 scribed in paragraph (1) and (2) of
16 section 312(a) of the Immigration and
17 Nationality Act (8 U.S.C. 1423(a)) by
18 demonstrating enrollment in or place-
19 ment on a waiting list for English
20 classes.

21 (II) REQUIREMENT AT SECOND
22 RENEWAL.—At or before the time of
23 application for the second extension of
24 Z nonimmigrant status, an alien who
25 is 18 years of age or older must pass

1 the naturalization test described in
2 such paragraphs (1) and (2) of such
3 section 312(a). The alien may make
4 up to 3 attempts to demonstrate such
5 understanding and knowledge but
6 must satisfy this requirement prior to
7 the expiration of the second extension
8 of Z nonimmigrant status.

9 (III) EXCEPTION.—The require-
10 ment of subclauses (I) and (II) shall
11 not apply to any person who, on the
12 date of the filing of the person's appli-
13 cation for an extension of Z non-
14 immigrant status—

15 (aa) is unable because of
16 physical or developmental dis-
17 ability or mental impairment to
18 meet the requirements of such
19 subclauses;

20 (bb) is over 50 years of age
21 and has been living in the United
22 States for periods totaling at
23 least 20 years; or

24 (cc) is over 55 years of age
25 and has been living in the United

1 States for periods totaling at
2 least 15 years.

3 (iii) EMPLOYMENT.—With respect to
4 an extension of Z–1 nonimmigrant status
5 or Z–3 nonimmigrant status, an alien shall
6 demonstrate satisfaction of the employ-
7 ment or study requirements provided in
8 subsection (m) during the alien’s most re-
9 cent authorized period of stay as of the
10 date of application.

11 (iv) FEES.—The alien must pay a
12 processing fee in an amount sufficient to
13 recover the full cost of adjudicating the ap-
14 plication, but no more than \$1,500 for a
15 single Z nonimmigrant.

16 (C) SECURITY AND LAW ENFORCEMENT
17 BACKGROUND CHECKS.—An alien applying for
18 extension of Z nonimmigrant status may be re-
19 quired to submit to a renewed security and law
20 enforcement background check that shall be
21 completed to the satisfaction of the Secretary
22 before such extension may be granted.

23 (D) TIMELY FILING AND MAINTENANCE OF
24 STATUS.—

1 (i) IN GENERAL.—An extension of
2 stay under this paragraph, or a change of
3 status to another Z nonimmigrant status
4 under subsection (l), may not be approved
5 for an applicant who failed to maintain Z
6 nonimmigrant status or where such status
7 expired or terminated before the applica-
8 tion was filed.

9 (ii) EXCEPTION.—Failure to file be-
10 fore the period of previously authorized
11 status expired or terminated may be ex-
12 cused in the discretion of the Secretary
13 and without separate application, with any
14 extension granted from the date the pre-
15 viously authorized stay expired, where it is
16 demonstrated at the time of filing that—

17 (I) the delay was due to extraor-
18 dinary circumstances beyond the con-
19 trol of the applicant, and the Sec-
20 retary finds the delay commensurate
21 with the circumstances; and

22 (II) the alien has not otherwise
23 violated the alien's Z nonimmigrant
24 status.

1 (iii) EXEMPTIONS FROM PENALTY
2 AND EMPLOYMENT REQUIREMENTS.—An
3 alien demonstrating extraordinary cir-
4 cumstances under clause (ii), including the
5 spouse of a Z-1 nonimmigrant who has
6 been battered or has been the subject of
7 extreme cruelty perpetrated by the Z-1
8 nonimmigrant, and who is changing to Z-
9 1 nonimmigrant status, may be exempted
10 by the Secretary, in the Secretary's discre-
11 tion, from—

12 (I) the requirements under sub-
13 section (m) for a period of up to 180
14 days; and

15 (II) the penalty provisions of sub-
16 section (e)(5)(B)(iii), except that the
17 alien shall pay the penalty under sub-
18 section (e)(5)(B) at the time of appli-
19 cation for the alien's first subsequent
20 extension of Z-1 nonimmigrant sta-
21 tus.

22 (E) BARS TO EXTENSION.—Except as pro-
23 vided in subparagraph (D), a Z nonimmigrant
24 shall not be eligible to extend such non-
25 immigrant status if—

1 (i) the alien has violated any term or
2 condition of the alien's Z nonimmigrant
3 status, including failing to comply with the
4 change of address reporting requirements
5 under section 265 of the Immigration and
6 Nationality Act (8 U.S.C. 1305);

7 (ii) the period of authorized admission
8 of the Z nonimmigrant has been termi-
9 nated for any reason; or

10 (iii) with respect to a Z-2 non-
11 immigrant or a Z-3 nonimmigrant, the
12 principal alien's Z-1 nonimmigrant status
13 has been terminated.

14 (I) CHANGE OF STATUS.—

15 (1) CHANGE FROM Z NONIMMIGRANT STA-
16 TUS.—

17 (A) IN GENERAL.—A Z nonimmigrant may
18 not change status under section 248 of the Im-
19 migration and Nationality Act (8 U.S.C. 1258)
20 to another nonimmigrant status, except another
21 Z nonimmigrant status or status under sub-
22 paragraph (U) of section 101(a)(15) of such
23 Act (8 U.S.C. 1101(a)(15)).

24 (B) CHANGE FROM Z-A STATUS.—A Z-A
25 nonimmigrant may change status to Z non-

1 immigrant status at the time of renewal ref-
2 erenced in section 214A(j)(1)(C) of the Immi-
3 gration and Nationality Act, as added by sec-
4 tion 631.

5 (C) LIMIT ON CHANGES.—A Z non-
6 immigrant may not change status more than
7 one time per 365-day period. The Secretary
8 may, in the Secretary's discretion, waive the ap-
9 plication of this subparagraph to an alien if it
10 is established to the satisfaction of the Sec-
11 retary that application of this subparagraph
12 would result in extreme hardship to the alien.

13 (2) NO CHANGE TO Z NONIMMIGRANT STA-
14 TUS.—A nonimmigrant under the immigration laws
15 may not change status under section 248 of the Im-
16 migration and Nationality Act (8 U.S.C. 1258) to Z
17 nonimmigrant status.

18 (m) EMPLOYMENT.—

19 (1) Z-1 AND Z-3 NONIMMIGRANTS.—

20 (A) IN GENERAL.—Z-1 nonimmigrants
21 and Z-3 nonimmigrants shall be authorized to
22 work in the United States.

23 (B) CONTINUOUS EMPLOYMENT REQUIRE-
24 MENT.—All requirements that an alien be em-
25 ployed or seeking employment for purposes of

1 this title shall not apply to an alien who is
2 under 16 years or over 65 years of age. A Z-
3 1 nonimmigrant or Z-3 nonimmigrant between
4 16 and 65 years of age shall remain continu-
5 ously employed full time in the United States as
6 a condition of such nonimmigrant status, except
7 if—

8 (i) the alien is pursuing a full course
9 of study at an established college, univer-
10 sity, seminary, conservatory, trade school,
11 academic high school, elementary school, or
12 other academic institution or language
13 training program;

14 (ii) the alien is employed while also
15 engaged in study at an established college,
16 university, seminary, conservatory, aca-
17 demic high school, elementary school, or
18 other academic institution or language
19 training program;

20 (iii) the alien cannot demonstrate em-
21 ployment because of a physical or mental
22 disability (as defined under section 3(2) of
23 the Americans with Disabilities Act of
24 1990 (42 U.S.C. 12102(2)) or as a result
25 of pregnancy if such condition is evidenced

1 by the submission of documentation pre-
2 scribed by the Secretary; or

3 (iv) the alien's ability to work has
4 been temporarily interrupted by an event
5 that the Secretary has determined to be a
6 force majeure interruption.

7 (2) Z-2 NONIMMIGRANTS.—Z-2 nonimmigrants
8 shall be authorized to work in the United States.

9 (3) PORTABILITY.—Nothing in this subsection
10 shall be construed to limit the ability of a Z non-
11 immigrant to change employers during the alien's
12 period of authorized admission.

13 (n) TRAVEL OUTSIDE THE UNITED STATES.—

14 (1) IN GENERAL.—A Z nonimmigrant—

15 (A) may travel outside of the United
16 States; and

17 (B) may be readmitted (if otherwise admis-
18 sible) without having to obtain a visa if—

19 (i) the alien's most recent period of
20 authorized admission has not expired;

21 (ii) the alien is the bearer of valid
22 documentary evidence of Z nonimmigrant
23 status that satisfies the conditions set out
24 in subsection (j); and

1 (iii) the alien is not subject to the
2 bars on extension described in subsection
3 (k)(2)(E).

4 (2) ADMISSIBILITY.—On seeking readmission to
5 the United States after travel outside the United
6 States an alien granted Z nonimmigrant status must
7 establish that such action is not inadmissible, except
8 as provided by subsection (d)(2).

9 (3) EFFECT ON PERIOD OF AUTHORIZED AD-
10 MISSION.—Time spent outside the United States
11 under paragraph (1) shall not extend the most re-
12 cent period of authorized admission in the United
13 States under subsection (k).

14 (o) TERMINATION OF BENEFITS.—

15 (1) IN GENERAL.—Any benefit provided to a Z
16 nonimmigrant or an applicant for Z nonimmigrant
17 status under this section shall terminate if—

18 (A) the Secretary determines that the alien
19 is ineligible for such classification and all review
20 procedures under section 603 of this Act have
21 been exhausted or waived by the alien;

22 (B)(i) the alien is found removable from
23 the United States under section 237 of the Im-
24 migration and Nationality Act (8 U.S.C. 1227);

1 (ii) the alien becomes inadmissible under
2 section 212 of such Act (8 U.S.C. 1227) (ex-
3 cept as provided in subsection (d)(2)); or

4 (iii) the alien becomes ineligible under sub-
5 section (d)(1);

6 (C) the alien has used documentation
7 issued under this section for unlawful or fraud-
8 ulent purposes;

9 (D) in the case of the spouse or child of
10 an alien applying for a Z nonimmigrant visa or
11 classified as a Z nonimmigrant under this sec-
12 tion, the benefits for the principal alien are ter-
13 minated;

14 (E) with respect to a Z-1 nonimmigrant or
15 Z-3 nonimmigrant, the employment or study
16 requirements under subsection (m) have been
17 violated; or

18 (F) with respect to probationary benefits,
19 the alien's application for Z nonimmigrant sta-
20 tus is denied.

21 (2) DENIAL OF IMMIGRANT VISA OR ADJUST-
22 MENT APPLICATION.—Any application for an immi-
23 grant visa or adjustment of status to lawful perma-
24 nent resident status made under this section by an

1 alien whose Z nonimmigrant status is terminated
2 under paragraph (1) shall be denied.

3 (3) DEPARTURE FROM THE UNITED STATES.—

4 Any alien whose period of authorized admission or
5 probationary benefits is terminated under paragraph
6 (1), as well as the alien's Z-2 nonimmigrant or Z-
7 3 nonimmigrant dependents, shall depart the United
8 States immediately.

9 (4) INVALIDATION OF DOCUMENTATION.—Any
10 documentation that is issued by the Secretary under
11 subsection (j) or pursuant to subsection (h)(4) to
12 any alien, whose period of authorized admission ter-
13 minates under paragraph (1), shall automatically be
14 rendered invalid for any purpose except departure.

15 (p) REVOCATION.—If, at any time after an alien has
16 obtained status under this section, but not yet adjusted
17 such status to that of an alien lawfully admitted for per-
18 manent residence under section 602, the Secretary may,
19 for good and sufficient cause, if it appears that the alien
20 was not in fact eligible for status under section 601, re-
21 voke the alien's status following appropriate notice to the
22 alien.

23 (q) DISSEMINATION OF INFORMATION ON Z PRO-
24 GRAM.—During the 2-year period immediately after the
25 issuance of regulations implementing this title, the Sec-

1 retary, in cooperation with entities approved by the Sec-
2 retary, shall broadly disseminate information respecting Z
3 nonimmigrant classification under this section and the re-
4 quirements to be satisfied to obtain such classification.
5 The Secretary shall disseminate information to employers
6 and labor unions to advise them of the rights and protec-
7 tions available to them and to workers who file applica-
8 tions under this section. Such information shall be broadly
9 disseminated, in no fewer than the top 5 principal lan-
10 guages, as determined by the Secretary in the Secretary's
11 discretion, spoken by aliens who would qualify for classi-
12 fication under this section, including to television, radio,
13 and print media to which such aliens would have access.

14 (r) DEFINITIONS.—In this title:

15 (1) Z NONIMMIGRANT.—The term “Z non-
16 immigrant” means an alien admitted to the United
17 States under subparagraph (Z) of section 101(a)(15)
18 of the Immigration and Nationality Act (8 U.S.C.
19 1101(a)(15)), as added by subsection (b). The term
20 does not include aliens granted probationary benefits
21 under subsection (h) of this section or whose appli-
22 cations for nonimmigrant status under such sub-
23 paragraph (Z) have not yet been adjudicated.

24 (2) Z-1 NONIMMIGRANT.—The term “Z-1 non-
25 immigrant” means an alien admitted to the United

1 States under clause (i) of section 101(a)(15)(Z) of
2 the Immigration and Nationality Act, as added by
3 subsection (b).

4 (3) Z-A NONIMMIGRANT.—The term “Z-A non-
5 immigrant” means an alien admitted to the United
6 States under subparagraph (Z-A) of section
7 101(a)(15) of the Immigration and Nationality Act,
8 as added by section 631.

9 (4) Z-2 NONIMMIGRANT.—The term “Z-2 non-
10 immigrant” means an alien admitted to the United
11 States under clause (ii) of section 101(a)(15)(Z) of
12 the Immigration and Nationality Act, as added by
13 subsection (b).

14 (5) Z-3 NONIMMIGRANT.—The term “Z-3 non-
15 immigrant” means an alien admitted to the United
16 States under clause (iii) of section 101(a)(15)(Z) of
17 the Immigration and Nationality Act, as added by
18 subsection (b).

19 **SEC. 602. EARNED ADJUSTMENT FOR Z STATUS ALIENS.**

20 (a) Z-1 NONIMMIGRANTS.—

21 (1) PROHIBITION ON IMMIGRANT VISA.—A Z-1
22 nonimmigrant may not be issued an immigrant visa
23 pursuant to sections 221 and 222 of the Immigra-
24 tion and Nationality Act (8 U.S.C. 1201 and 1202).

1 State, a Z-1 nonimmigrant applying for
2 adjustment of status under this paragraph
3 shall make an application at a consular of-
4 fice in the alien's country of origin. A con-
5 sular office in a country that is not a Z-
6 1 nonimmigrant's country of origin may as
7 a matter of discretion, or shall at the di-
8 rection of the Secretary of State, accept an
9 application for adjustment of status from
10 such an alien.

11 (C) APPROVED PETITION.—The alien must
12 be the beneficiary of an approved petition under
13 section 204 of the Immigration and Nationality
14 Act (8 U.S.C. 1154) or have an approved peti-
15 tion that was filed pursuant to the evaluation
16 system under section 203(b)(1)(A) of such Act,
17 as amended by section 502.

18 (D) ADMISSIBILITY.—The alien must not
19 be inadmissible under section 212(a) of such
20 Act, except for those grounds previously waived
21 under subsection (d)(2) of section 601.

22 (E) FEES AND PENALTIES.—In addition to
23 the fees payable to the Secretary and Secretary
24 of State in connection with the filing of an im-
25 migrant petition and application for adjustment

1 of status, a Z-1 nonimmigrant who is the head
2 of household must pay a \$4,000 penalty at the
3 time of submission of any immigrant petition
4 on the alien's behalf, regardless of whether the
5 alien submits such petition on the alien's own
6 behalf or the alien is the beneficiary of an im-
7 migrant petition filed by another party.

8 (4) EXEMPTIONS.—Paragraph (3)(B) shall not
9 apply to an alien who, on the date on which the ap-
10 plication for adjustment of status is filed under this
11 section, is exempted from the employment require-
12 ments under subsection (m)(1)(B)(iii) of section
13 601.

14 (5) FAILURE TO ESTABLISH LAWFUL ADMIS-
15 SION TO THE UNITED STATES.—Unless exempted
16 under paragraph (4), a Z immigrant who fails to de-
17 part and reenter the United States in accordance
18 with this subsection may not become a lawful perma-
19 nent resident under this section.

20 (b) Z-2 AND Z-3 NONIMMIGRANTS.—

21 (1) RESTRICTION ON VISA ISSUANCE OR AD-
22 JUSTMENT.—An application for an immigrant visa
23 or for adjustment of status to that of an alien law-
24 fully admitted for permanent residence of a Z-2
25 nonimmigrant or a Z-3 nonimmigrant who is under

1 18 years of age may not be approved before the ad-
2 justment of status of the alien's principal Z-1 non-
3 immigrant.

4 (2) ADJUSTMENT OF STATUS.—

5 (A) ADJUSTMENT.—Notwithstanding sub-
6 sections (a) and (c) of section 245 of the Immi-
7 gration and Nationality Act (8 U.S.C. 1255),
8 the status of any Z-2 nonimmigrant or Z-3
9 nonimmigrant may be adjusted by the Secretary
10 to that of an alien lawfully admitted for perma-
11 nent residence.

12 (B) REQUIREMENTS.—A Z-2 non-
13 immigrant or Z-3 nonimmigrant may adjust
14 status to that of an alien lawfully admitted for
15 permanent residence upon satisfying, in addi-
16 tion to all other requirements imposed by law,
17 the following requirements:

18 (i) STATUS.—The alien must be in
19 valid Z-2 nonimmigrant or Z-3 non-
20 immigrant status.

21 (ii) APPROVED PETITION.—The alien
22 must be the beneficiary of an approved pe-
23 tition under section 204 of the Immigra-
24 tion and Nationality Act (8 U.S.C. 1154)
25 or have an approved petition that was filed

1 pursuant to the merit-based evaluation sys-
2 tem under section 203(b)(1)(A) of such
3 Act, as amended by section 502.

4 (iii) ADMISSIBILITY.—The alien must
5 not be inadmissible under section 212(a) of
6 the Immigration and Nationality Act (8
7 U.S.C. 1182(a)), except for those grounds
8 previously waived under subsection (d)(2)
9 of section 601.

10 (iv) FEES.—The alien must pay the
11 fees payable to the Secretary and the Sec-
12 retary of State in connection with the fil-
13 ing of an immigrant petition and applica-
14 tion for an immigrant visa.

15 (c) MAINTENANCE OF WAIVERS OF INADMIS-
16 SIBILITY.—The grounds of inadmissibility not applicable
17 under subsection (d)(2) of section 601 shall also be consid-
18 ered inapplicable for purposes of admission as an immi-
19 grant or adjustment pursuant to this section.

20 (d) APPLICATION OF OTHER LAW.—In processing
21 applications under this section on behalf of aliens who
22 have been battered or subjected to extreme cruelty, the
23 Secretary shall apply—

1 (1) the provisions under section 204(a)(1)(J) of
2 the Immigration and Nationality Act (8 U.S.C.
3 1154(a)(1)(J)); and

4 (2) the protections, prohibitions, and penalties
5 under section 384 of the Illegal Immigration Reform
6 and Immigrant Responsibility Act of 1996 (8 U.S.C.
7 1367).

8 (e) **BACK OF THE LINE.**—An alien may not adjust
9 status to that of a lawful permanent resident under this
10 section until 30 days after an immigrant visa becomes
11 available for approved petitions filed under sections 201,
12 202, and 203 of the Act that were filed before May 1,
13 2005.

14 (f) **INELIGIBILITY FOR PUBLIC BENEFITS.**—For pur-
15 poses of section 403 of the Personal Responsibility and
16 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.
17 1613), an alien whose status has been adjusted under this
18 section shall not be eligible for any Federal means-tested
19 public benefit unless the alien meets the alien eligibility
20 criteria for such benefit under title IV of such Act (8
21 U.S.C. 1601 et seq.).

22 (g) **MEDICAL EXAMINATION.**—An applicant for
23 earned adjustment shall undergo an appropriate medical
24 examination (including a determination of immunization

1 status) that conforms to generally accepted professional
2 standards of medical practice.

3 (h) PAYMENT OF INCOME TAXES.—

4 (1) IN GENERAL.—Not later than the date on
5 which status is adjusted under this section, the ap-
6 plicant shall satisfy any applicable Federal tax liabil-
7 ity accrued during the period of Z nonimmigrant
8 status by establishing that—

9 (A) no such tax liability exists;

10 (B) all outstanding liabilities have been
11 paid; or

12 (C) the applicant has entered into, and is
13 in compliance with, an agreement for payment
14 of all outstanding liabilities with the Internal
15 Revenue Service.

16 (2) IRS COOPERATION.—The Secretary of the
17 Treasury shall establish rules and procedures under
18 which the Commissioner of Internal Revenue shall
19 provide documentation to—

20 (A) the applicant, upon request, to estab-
21 lish the payment of all taxes required under
22 this subsection; or

23 (B) the Secretary, upon request, regarding
24 the payment of Federal taxes by an alien apply-
25 ing for a benefit under this section.

1 (i) DEPOSIT OF FEES.—Fees collected under this
2 paragraph shall be deposited into the Immigration Exam-
3 ination Fee Account and shall remain available as pro-
4 vided under subsections (m) and (n) of section 286 of the
5 Immigration and Nationality Act (8 U.S.C. 1356).

6 (j) DEPOSIT OF PENALTIES.—Penalties collected
7 under this paragraph shall be deposited into the Tem-
8 porary Worker Program Account and shall remain avail-
9 able as provided under subsection (w) of the Immigration
10 and Nationality Act (8 U.S.C. 1356), as added by section
11 402.

12 **SEC. 603. ADMINISTRATIVE REVIEW, REMOVAL PRO-**
13 **CEEDINGS, AND JUDICIAL REVIEW FOR**
14 **ALIENS WHO HAVE APPLIED FOR LEGAL STA-**
15 **TUS.**

16 (a) ADMINISTRATIVE REVIEW FOR ALIENS WHO
17 HAVE APPLIED FOR STATUS UNDER THIS TITLE.—

18 (1) EXCLUSIVE REVIEW.—Administrative re-
19 view of a determination respecting nonimmigrant
20 status under this title shall be conducted solely in
21 accordance with this subsection.

22 (2) ADMINISTRATIVE APPELLATE REVIEW.—
23 Except as provided in subsection (b)(2), an alien
24 whose status under this title has been denied, termi-
25 nated, or revoked may file not more than one appeal

1 of the denial, termination, or rescission with the Sec-
2 retary not later than 30 calendar days after the date
3 of the decision or mailing thereof, whichever occurs
4 later in time. The Secretary shall establish an appel-
5 late authority to provide for a single level of admin-
6 istrative appellate review of a denial, termination, or
7 rescission of status under this Act.

8 (3) STANDARD FOR REVIEW.—Such administra-
9 tive appellate review shall be based solely upon the
10 administrative record established at the time of the
11 determination on the application and upon such ad-
12 ditional newly discovered or previously unavailable
13 evidence as the administrative appellate review au-
14 thority may decide to consider at the time of the de-
15 termination.

16 (4) LIMITATION ON MOTIONS TO REOPEN AND
17 RECONSIDER.—During the administrative appellate
18 review process the alien may file not more than one
19 motion to reopen or to reconsider. The Secretary's
20 decision whether to consider any such motion is
21 committed to the Secretary's discretion.

22 (b) REMOVAL OF ALIENS WHO HAVE BEEN DENIED
23 STATUS UNDER THIS TITLE.—

24 (1) SELF-INITIATED REMOVAL.—Any alien who
25 receives a denial under subsection (a) may request,

1 not later than 30 calendar days after the date of the
2 denial or the mailing thereof, whichever occurs later
3 in time, that the Secretary place the alien in removal
4 proceedings. The Secretary shall place the alien in
5 removal proceedings to which the alien would other-
6 wise be subject, unless the alien is subject to an ad-
7 ministratively final order of removal, provided that
8 no court shall have jurisdiction to review the timing
9 of the Secretary's initiation of such proceedings. If
10 the alien is subject to an administratively final order
11 of removal, the alien may seek review of the denial
12 under this section pursuant to subsection (h) of sec-
13 tion 242 of the Immigration and Nationality Act (8
14 U.S.C. 1252), as added by subsection (c), as though
15 the order of removal had been entered on the date
16 of the denial, provided that the court shall not re-
17 view the order of removal except as otherwise pro-
18 vided by law.

19 (2) ALIENS WHO ARE DETERMINED TO BE IN-
20 ELIGIBLE DUE TO CRIMINAL CONVICTIONS.—

21 (A) AGGRAVATED FELONS.—Notwith-
22 standing any other provision of this Act, an
23 alien whose application for status under this
24 title has been denied or whose status has been
25 terminated or revoked by the Secretary under

1 subclause (II) of subsection 601(d)(1)(A)(vi)
2 because the alien has been convicted of an ag-
3 gravated felony (as defined in section
4 101(a)(43) of the Immigration and Nationality
5 Act (8 U.S.C. 1101(a)(43))), may be placed
6 forthwith in proceedings pursuant to section
7 238(b) of such Act (8 U.S.C. 1228).

8 (B) OTHER CRIMINALS.—Notwithstanding
9 any other provision of this Act, any other alien
10 whose application for status under this title has
11 been denied or whose status has been termi-
12 nated or revoked by the Secretary under sub-
13 clause (I), (III), or (IV) of section
14 601(d)(1)(A)(vi) may be placed immediately in
15 removal proceedings under section 240 of the
16 Immigration and Nationality Act (8 U.S.C.
17 1229(a)).

18 (C) FINAL DENIAL, TERMINATION OR RE-
19 SCISSION.—The Secretary's denial, termination,
20 or rescission of the status of any alien described
21 in subparagraph (A) or (B) shall be final for
22 purposes of subsection (h)(3)(C) of section 242
23 of the Immigration and Nationality Act (8
24 U.S.C. 1252), as added by subsection (c), and
25 shall represent the exhaustion of all review pro-

1 cedures for purposes of subsection (h) or (o) of
2 section 601, notwithstanding subsection (a)(2)
3 of this section.

4 (3) LIMITATION ON MOTIONS TO REOPEN AND
5 RECONSIDER.—During the removal process under
6 this subsection the alien may file not more than 1
7 motion to reopen or to reconsider. The Secretary’s
8 or Attorney General’s decision whether to consider
9 any such motion is committed to the discretion of
10 the Secretary or the Attorney General, as appro-
11 priate.

12 (c) JUDICIAL REVIEW.—Section 242 (8 U.S.C. 1252)
13 is amended by adding at the end the following new sub-
14 section:

15 “(h) JUDICIAL REVIEW OF ELIGIBILITY DETERMINA-
16 TIONS RELATING TO STATUS UNDER THE SECURE BOR-
17 DERS, ECONOMIC OPPORTUNITY, AND IMMIGRATION RE-
18 FORM ACT OF 2007.—

19 “(1) EXCLUSIVE REVIEW.—Notwithstanding
20 any other provision of law (statutory or nonstatu-
21 tory), including section 2241 of title 28, United
22 States Code, or any other habeas corpus provision,
23 and sections 1361 and 1651 of such title, and except
24 as provided in this subsection, no court shall have
25 jurisdiction to review a determination respecting an

1 application for status under title VI of the Secure
2 Borders, Economic Opportunity, and Immigration
3 Reform Act of 2007, including, without limitation, a
4 denial, termination, or rescission of such status.

5 “(2) NO REVIEW FOR LATE FILINGS.—An alien
6 may not file an application for status under title VI
7 of the Secure Borders, Economic Opportunity, and
8 Immigration Reform Act of 2007 beyond the period
9 for receipt of such applications established by section
10 601(f) of that Act. The denial of any application
11 filed beyond the expiration of the period established
12 by that subsection shall not be subject to judicial re-
13 view or remedy.

14 “(3) REVIEW OF A DENIAL, TERMINATION, OR
15 RESCISSION OF STATUS.—A denial, termination, or
16 rescission of status under subsection 601 of Secure
17 Borders, Economic Opportunity, and Immigration
18 Reform Act of 2007 may be reviewed only in con-
19 junction with the judicial review of an order of re-
20 moval under this section, provided that—

21 “(A) the venue provision set forth in sub-
22 section (b)(2) shall govern;

23 “(B) the deadline for filing the petition for
24 review in subsection (b)(1) shall control;

1 “(C) the alien has exhausted all adminis-
2 trative remedies available to the alien as of
3 right, including the timely filing of an adminis-
4 trative appeal pursuant to section 603(a) of the
5 Secure Borders, Economic Opportunity, and
6 Immigration Reform Act of 2007;

7 “(D) the court shall decide a challenge to
8 the denial of status only on the administrative
9 record on which the Secretary’s denial, termi-
10 nation, or rescission was based;

11 “(E) LIMITATION ON REVIEW.—Notwith-
12 standing any other provision of law (statutory
13 or nonstatutory), including section 2241 of title
14 28, United States Code, or any other habeas
15 corpus provision, and sections 1361 and 1651
16 of such title, no court reviewing a denial, termi-
17 nation, or rescission of status under title VI of
18 the Secure Borders, Economic Opportunity, and
19 Immigration Reform Act of 2007 may review
20 any discretionary decision or action of the Sec-
21 retary regarding any application for or termi-
22 nation or rescission of such status.

23 “(F) LIMITATION ON MOTIONS TO REOPEN
24 AND RECONSIDER.—The alien may file not

1 more than 1 motion to reopen or to reconsider
2 in proceedings brought under this section.

3 “(4) STANDARD FOR JUDICIAL REVIEW.—Judicial
4 review of the Secretary of Homeland Security’s
5 denial, termination, or rescission of status under
6 title VI of the Secure Borders, Economic Oppor-
7 tunity, and Immigration Reform Act of 2007 relat-
8 ing to any alien shall be based solely upon the ad-
9 ministrative record before the Secretary when the
10 Secretary enters a final denial, termination, or re-
11 scission. The administrative findings of fact are con-
12 clusive unless any reasonable adjudicator would be
13 compelled to conclude to the contrary. The legal de-
14 terminations are conclusive unless manifestly con-
15 trary to law.

16 “(5) CHALLENGES ON VALIDITY OF THE SYS-
17 TEM.—

18 “(A) IN GENERAL.—Any claim that title
19 VI of the Secure Borders, Economic Oppor-
20 tunity, and Immigration Reform Act of 2007,
21 or any regulation, written policy, or written di-
22 rective issued or unwritten policy or practice
23 initiated by or under the authority of the Sec-
24 retary of Homeland Security to implement that
25 title, violates the Constitution of the United

1 States or is otherwise in violation of law is
2 available exclusively in an action instituted in
3 the United States District Court for the Dis-
4 trict of Columbia in accordance with the proce-
5 dures prescribed in this paragraph. Nothing in
6 this subparagraph shall preclude an applicant
7 for status under such title from asserting that
8 an action taken or decision made by the Sec-
9 retary with respect to the applicant's status
10 under such title was contrary to law in a pro-
11 ceeding under section 603 of the Secure Bor-
12 ders, Economic Opportunity, and Immigration
13 Reform Act of 2007 and subsection (b)(2) of
14 this section.

15 “(B) DEADLINES FOR BRINGING AC-
16 TIONS.—Any action instituted under this para-
17 graph—

18 “(i) shall, if it asserts a claim that
19 title VI of the Secure Borders, Economic
20 Opportunity, and Immigration Reform Act
21 of 2007 or any regulation, written policy,
22 or written directive issued by or under the
23 authority of the Secretary to implement
24 that title violates the Constitution or is
25 otherwise unlawful, be filed no later than

1 1 year after the date of the publication or
2 promulgation of the challenged regulation,
3 policy or directive or, in cases challenging
4 the validity of such Act, not later than 1
5 year after the date of the enactment of
6 such Act; and

7 “(ii) shall, if it asserts a claim that an
8 unwritten policy or practice initiated by or
9 under the authority of the Secretary vio-
10 lates the Constitution or is otherwise un-
11 lawful, be filed not later than 1 year after
12 the plaintiff knew or reasonably should
13 have known of the unwritten policy or
14 practice.

15 “(C) CLASS ACTIONS.—Any claim de-
16 scribed in subparagraph (A) that is brought as
17 a class action shall be brought in conformity
18 with the Class Action Fairness Act of 2005
19 (Public Law 109–2; 119 Stat. 4), the amend-
20 ments made by that Act, and the Federal Rules
21 of Civil Procedure.

22 “(D) PRECLUSIVE EFFECT.—The final dis-
23 position of any claim brought under paragraph
24 (5)(A) shall be preclusive of any such claim as-
25 serted in a subsequent proceeding under this

1 subsection or under subsection 603 of the Se-
2 cure Borders, Economic Opportunity, and Im-
3 migration Reform Act of 2007.

4 “(E) EXHAUSTION AND STAY OF PRO-
5 CEEDINGS.—No claim brought under this para-
6 graph shall require the plaintiff to exhaust ad-
7 ministrative remedies under subsection 603 of
8 the Secure Borders, Economic Opportunity, and
9 Immigration Reform Act of 2007, but nothing
10 shall prevent the court from staying pro-
11 ceedings under this paragraph to permit the
12 Secretary to evaluate an allegation of an un-
13 written policy or practice or to take corrective
14 action. In issuing such a stay, the court shall
15 take into account any harm the stay may cause
16 to the claimant. The court shall have no author-
17 ity to stay proceedings initiated under any other
18 section of the Immigration and Nationality
19 Act.”.

20 **SEC. 604. MANDATORY DISCLOSURE OF INFORMATION.**

21 (a) IN GENERAL.—Except as otherwise provided in
22 this section, no Federal agency or bureau, nor any officer,
23 employee, or contractor of such agency or bureau, may—

24 (1) use the information furnished by an appli-
25 cant under section 601 or 602 or subtitle B or the

1 fact that the applicant applied for Z nonimmigrant
2 status for any purpose other than to make a deter-
3 mination on the application;

4 (2) make or release any publication through
5 which the information furnished by any particular
6 applicant can be identified; or

7 (3) permit anyone other than the officers, em-
8 ployees or contractors of such agency, bureau, or ap-
9 proved entity, as approved by the Secretary, to ex-
10 amine individual applications that have been filed.

11 (b) EXCEPTIONS TO CONFIDENTIALITY.—

12 (1) IN GENERAL.—Subsection (a) shall not
13 apply with respect to—

14 (A) an alien whose application has been
15 denied, terminated or revoked based on the Sec-
16 retary's finding that the alien—

17 (i) is inadmissible under paragraphs
18 (2), (3), (6)(C)(i) (with respect to informa-
19 tion furnished by an applicant under sec-
20 tion 601 or 602 or subtitle B of the Secure
21 Borders, Economic Opportunity, and Im-
22 migration Reform Act of 2007) or (6)(E)
23 of section 212(a) of the Immigration and
24 Nationality Act (8 U.S.C. 1182(a));

1 (ii) is deportable under paragraph
2 (1)(E), (1)(G), (2), or (4) of section
3 237(a) of such Act (8 U.S.C. 1227); or

4 (iii) was physically removed and is
5 subject to reinstatement pursuant to sec-
6 tion 241(a)(5) of such Act (8 U.S.C.
7 1231(a)(5));

8 (B) an alien whose application for Z non-
9 immigrant status has been denied, terminated,
10 or revoked under section 601(d)(1)(A)(vi);

11 (C) an alien whom the Secretary deter-
12 mines has ordered, incited, assisted, or other-
13 wise participated in the persecution of any per-
14 son on account of race, religion, nationality,
15 membership in a particular social group, or po-
16 litical opinion;

17 (D) an alien whom the Secretary deter-
18 mines has, in connection with the alien's appli-
19 cation under section 601 or 602 or subtitle B,
20 engaged in fraud or willful misrepresentation,
21 concealment of a material fact, or knowingly of-
22 fered a false statement, representation or docu-
23 ment;

1 (E) an alien who has knowingly and volun-
2 tarily waived in writing the confidentiality pro-
3 visions in subsection (a); or

4 (F) an order from a court of competent ju-
5 risdiction.

6 (2) CONSTRUCTION.—Nothing in this sub-
7 section shall require the Secretary to commence re-
8 moval proceedings against an alien whose application
9 has been denied, terminated, or revoked based on
10 the Secretary’s finding that the alien is inadmissible
11 or deportable.

12 (c) AUTHORIZED DISCLOSURES.—Information fur-
13 nished on or derived from an application described in sub-
14 section (a) may be disclosed to—

15 (1) a law enforcement agency, intelligence agen-
16 cy, national security agency, component of the De-
17 partment, court, or grand jury in connection with a
18 criminal investigation or prosecution or a national
19 security investigation or prosecution; or

20 (2) an official coroner for purposes of affirma-
21 tively identifying a deceased individual, whether or
22 not the death of such individual resulted from a
23 crime.

24 (d) AUDITING AND EVALUATION OF INFORMA-
25 TION.—The Secretary may audit and evaluate information

1 furnished as part of any application filed under section
2 601 or 602 or subtitle B for purposes of identifying fraud
3 or fraud schemes, and may use any evidence detected by
4 means of audits and evaluations for purposes of inves-
5 tigating, prosecuting or referring for prosecution, denying,
6 or terminating immigration benefits.

7 (e) USE OF INFORMATION IN PETITIONS AND APPLI-
8 CATIONS SUBSEQUENT TO ADJUSTMENT OF STATUS.—If
9 the Secretary has adjusted an alien's status to that of an
10 alien lawfully admitted for permanent residence pursuant
11 to section 602 of this Act, then at any time thereafter
12 the Secretary may use the information furnished by the
13 alien in the application for adjustment of status or in the
14 applications for status pursuant to section 601 or 602 or
15 subtitle B to make a determination on any application.

16 (f) PENALTIES.—Whoever knowingly uses, publishes,
17 or permits information to be examined in violation of this
18 section shall be fined not more than \$10,000.

19 (g) CONSTRUCTION.—Nothing in this section shall be
20 construed to limit the use, or release, for immigration en-
21 forcement purposes of information contained in files or
22 records of the Secretary or Attorney General pertaining
23 to an applications filed under section 601 or 602 or sub-
24 title B, other than information furnished by an applicant
25 pursuant to the application, or any other information de-

1 rived from the application, that is not available from any
2 other source.

3 **SEC. 605. EMPLOYER PROTECTIONS.**

4 (a) IN GENERAL.—Copies of employment records or
5 other evidence of employment provided by an alien or by
6 an alien’s employer in support of an alien’s application
7 for Z nonimmigrant status shall not be used in a prosecu-
8 tion or investigation (civil or criminal) of that employer
9 under section 247A of the Immigration and Nationality
10 Act (8 U.S.C. 1324a), as amended by title III, or the tax
11 laws of the United States for the prior unlawful employ-
12 ment of that alien, regardless of the adjudication of such
13 application or reconsideration by the Secretary of such
14 alien’s prima facie eligibility determination.

15 (b) APPLICABILITY OF OTHER LAW.—Nothing in
16 this section may be used to shield an employer from liabil-
17 ity under section 274B of the Immigration and Nation-
18 ality Act (8 U.S.C. 1324b) or any other labor or employ-
19 ment law.

20 **SEC. 606. ENUMERATION OF SOCIAL SECURITY NUMBER.**

21 The Secretary, in coordination with the Commis-
22 sioner of Social Security, shall implement a system to
23 allow for the prompt enumeration of a Social Security
24 number after the Secretary has granted an alien Z non-

1 immigrant status or any probationary benefits based upon
2 application for such status.

3 **SEC. 607. PRECLUSION OF SOCIAL SECURITY CREDITS FOR**
4 **YEARS PRIOR TO ENUMERATION.**

5 (a) INSURED STATUS.—Section 214 of the Social Se-
6 curity Act (42 U.S.C. 414) is amended by—

7 (1) amending subsection (c) by striking “For”
8 and inserting “Except as provided in subsection (e),
9 for”; and

10 (2) adding at the end the following new sub-
11 sections:

12 “(d)(1) Except as provided in paragraph (2) and sub-
13 section (e), for purposes of this section and for purposes
14 of determining a qualifying quarter of coverage under sec-
15 tion 402(b)(2)(B) of the Personal Responsibility and
16 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.
17 1612(b)(2)(B)), no quarter of coverage shall be credited
18 if, with respect to any individual who is assigned a social
19 security account number after 2007, such quarter of cov-
20 erage is earned prior to the year in which such social secu-
21 rity account number is assigned.

22 “(2) Paragraph (1) shall not apply with respect to
23 any quarter of coverage earned by an individual who satis-
24 fies the criterion specified in subsection (c)(2).

1 “(e) Subsection (d) shall not apply with respect to
2 a determination under subsection (a) or (b) for a deceased
3 individual in the case of a child who is a United States
4 citizen and who is applying for child’s insurance benefits
5 under section 202(d) based on the wages and self-employ-
6 ment income of such deceased individual.”.

7 (b) BENEFIT COMPUTATION.—Section 215(e) of such
8 Act (42 U.S.C. 415(e)) is amended—

9 (1) by striking “and” at the end of paragraph
10 (1);

11 (2) by striking the period at the end of para-
12 graph (2) and inserting “; and”; and

13 (3) by adding at the end the following new
14 paragraph:

15 “(3) in computing the average indexed monthly
16 earnings of an individual, there shall not be counted
17 any wages or self-employment income for any year
18 for which no quarter of coverage may be credited to
19 such individual as a result of the application of sec-
20 tion 214(d).”.

21 (c) EFFECTIVE DATE.—The amendment made by
22 subsection (a) that provides for a new section 214(e) of
23 the Social Security Act shall be effective with respect to
24 applications for benefits filed after the sixth month fol-
25 lowing the month of the date of the enactment of this Act.

1 **SEC. 608. PAYMENT OF PENALTIES AND USE OF PENALTIES**
2 **COLLECTED.**

3 (a) PROCEDURES.—The Secretary shall by regulation
4 establish procedures allowing for the payment of 80 per-
5 cent of the penalties described in section 601(e)(6)(B) and
6 section 602(a)(1)(C)(v) through an installment payment
7 plan.

8 (b) USE.—Any penalties received under this title with
9 respect to an application for Z–1 nonimmigrant status
10 shall be used in the following order of priority:

11 (1) Shall be credited as offsetting collections to
12 appropriations provided pursuant to section 611 for
13 the fiscal year in which this Act is enacted and the
14 subsequent fiscal year.

15 (2) Shall be deposited and remain available as
16 otherwise provided under this title.

17 **SEC. 609. LIMITATIONS ON ELIGIBILITY.**

18 (a) IN GENERAL.—An alien is not ineligible for any
19 immigration benefit under any provision of this title, or
20 any amendment made by this title, solely on the basis that
21 the alien violated section 1543, 1544, or 1546 of title 18,
22 United States Code, or any amendments made by this Act,
23 during the period beginning on the date of the enactment
24 of such Act and ending on the date on which the alien
25 applies for any benefits under this title, except with re-

1 spect to any forgery, fraud, or misrepresentation on the
2 application for Z nonimmigrant status filed by the alien.

3 (b) PROSECUTION.—An alien who commits a viola-
4 tion of section 1543, 1544, or 1546 of such title or any
5 amendments made by this Act, during the period begin-
6 ning on the date of the enactment of such Act and ending
7 on the date that the alien applies for eligibility for such
8 benefit may be prosecuted for the violation if the alien's
9 application for such benefit is denied.

10 **SEC. 610. RULEMAKING.**

11 (a) INTERIM FINAL RULE.—The Secretary shall
12 issue an interim final rule within 6 months of the date
13 of the enactment of this subtitle to implement this title
14 and the amendments made by this title. The interim final
15 rule shall become effective immediately upon publication
16 in the Federal Register. The interim final rule shall sunset
17 2 years after issuance unless the Secretary issues a final
18 rule within 2 years of the issuance of the interim final
19 rule.

20 (b) EXEMPTION.—The exemption provided under this
21 section shall sunset not later than 2 years after the date
22 of the enactment of this subtitle, provided that, such sun-
23 set shall not be construed to impose any requirements on,
24 or affect the validity of, any rule issued or other action
25 taken by the Secretary under such exemptions.

1 **SEC. 611. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—There are authorized to be appro-
3 priated to the Secretary such sums as may be necessary
4 to carry out this title and the amendments made by this
5 title.

6 (b) AVAILABILITY OF FUNDS.—Funds appropriated
7 pursuant to subsection (a) shall remain available until ex-
8 pended.

9 (c) SENSE OF CONGRESS.—It is the sense of the Con-
10 gress that funds authorized to be appropriated under sub-
11 section (a) should be directly appropriated so as to facili-
12 tate the orderly and timely commencement of the proc-
13 essing of applications filed under sections 601 and 602.

14 **Subtitle B—Dream Act**

15 **SEC. 620. SHORT TITLE.**

16 This subtitle may be cited as the “Development, Re-
17 lief, and Education for Alien Minors Act of 2007” or the
18 “DREAM Act of 2007”.

19 **SEC. 621. DEFINITIONS.**

20 In this subtitle:

21 (1) INSTITUTION OF HIGHER EDUCATION.—The
22 term “institution of higher education” has the
23 meaning given that term in section 101 of the High-
24 er Education Act of 1965 (20 U.S.C. 1001).

1 (2) UNIFORMED SERVICES.—The term “uni-
2 formed services” has the meaning given that term in
3 section 101(a) of title 10, United States Code.

4 **SEC. 622. ADJUSTMENT OF STATUS OF CERTAIN LONG-**
5 **TERM RESIDENTS WHO ENTERED THE**
6 **UNITED STATES AS CHILDREN.**

7 (a) SPECIAL RULE FOR CERTAIN LONG-TERM RESI-
8 DENTS WHO ENTERED THE UNITED STATES AS CHIL-
9 DREN.—

10 (1) IN GENERAL.—Notwithstanding any other
11 provision of law and except as otherwise provided in
12 this subtitle, the Secretary may beginning on the
13 date that is 3 years after the date of the enactment
14 of this Act adjust to the status of an alien lawfully
15 admitted for permanent residence an alien who is
16 determined to be eligible for or has been issued a
17 probationary Z or Z nonimmigrant visa if the alien
18 demonstrates that—

19 (A) the alien has been physically present in
20 the United States for a continuous period since
21 January 1, 2007, is under 30 years of age on
22 the date of the enactment, and had not yet
23 reached the age of 16 years at the time of ini-
24 tial entry;

1 (B) the alien has earned a high school di-
2 ploma or obtained a general education develop-
3 ment certificate in the United States;

4 (C) subject to paragraph (2), the alien has
5 not abandoned the alien's residence in the
6 United States;

7 (D) the alien has—

8 (i) acquired a degree from an institu-
9 tion of higher education in the United
10 States or has completed at least 2 years, in
11 good standing, in a program for a bach-
12 elor's degree or higher degree in the
13 United States; or

14 (ii) The alien has served in the uni-
15 formed services for at least 2 years and, if
16 discharged, has received an honorable dis-
17 charge;

18 (E) the alien has provided a list of all of
19 the secondary educational institutions that the
20 alien attended in the United States; and

21 (F) the alien is in compliance with the eli-
22 gibility and admissibility criteria set forth in
23 section 601(d).

24 (2) ABANDONMENT.—The Secretary shall pre-
25 sume that the alien has abandoned such residence if

1 the alien is absent from the United States for more
2 than 365 days, in the aggregate, during the period
3 of conditional residence, unless the alien dem-
4 onstrates that alien has not abandoned the alien's
5 residence. An alien who is absent from the United
6 States due to active service in the uniformed services
7 has not abandoned the alien's residence in the
8 United States during the period of such service.

9 (b) TREATMENT OF PERIOD FOR PURPOSES OF NAT-
10 URALIZATION.—Solely for purposes of title III of the Im-
11 migration and Nationality Act (8 U.S.C. 1401 et seq.),
12 an alien who has been granted probationary benefits under
13 section 601(h) or Z nonimmigrant status and has satisfied
14 the requirements of paragraphs (A) through (F) of sub-
15 section (a)(1) shall beginning on the date that is 8 years
16 after the date of the enactment of this Act be considered
17 to have satisfied the requirements of section 316(a)(1) of
18 the Immigration and Nationality Act (8 U.S.C.
19 1427(a)(1)).

20 (c) EXEMPTION FROM NUMERICAL LIMITATIONS.—
21 Nothing in this section may be construed to apply a nu-
22 merical limitation on the number of aliens who may be
23 eligible for adjustment of status.

24 (d) REGULATIONS.—

1 (1) PROPOSED REGULATIONS.—Not later than
2 180 days after the date of the enactment of this Act,
3 the Secretary shall publish proposed regulations im-
4 plementing this section. Such regulations shall be ef-
5 fective immediately on an interim basis, but are sub-
6 ject to change and revision after public notice and
7 opportunity for a period for public comment.

8 (2) INTERIM, FINAL REGULATIONS.—Within a
9 reasonable time after publication of the interim reg-
10 ulations in accordance with paragraph (1), the Sec-
11 retary shall publish final regulations implementing
12 this section.

13 **SEC. 623. EXPEDITED PROCESSING OF APPLICATIONS; PRO-**
14 **HIBITION ON FEES.**

15 Regulations promulgated under this subtitle shall
16 provide that no additional fee will be charged to an appli-
17 cant for a Z nonimmigrant visa for applying for benefits
18 under this subtitle.

19 **SEC. 624. HIGHER EDUCATION ASSISTANCE.**

20 (a) INAPPLICABILITY OF OTHER LAWS.—Section 505
21 of the Illegal Immigration Reform and Immigrant Respon-
22 sibility Act of 1996 (8 U.S.C. 1623) shall have no force
23 or effect with respect to an alien who is a probationary
24 Z or Z nonimmigrant.

1 (b) ASSISTANCE.—Notwithstanding any provision of
2 the Higher Education Act of 1965 (20 U.S.C. 1001 et
3 seq.), with respect to assistance provided under title IV
4 of the Higher Education Act of 1965 (20 U.S.C. 1070
5 et seq.), an alien who adjusts status to that of a lawful
6 permanent resident under this title, or who is a proba-
7 tionary Z or Z nonimmigrant under this title and who
8 meets the eligibility criteria set forth in section 614(a)(1)
9 (A), (B), and (F), shall be eligible for the following assist-
10 ance under such title IV:

11 (1) Student loans under parts B, D, and E of
12 such title IV (20 U.S.C. 1071 et seq., 1087a et seq.,
13 1087aa et seq.), subject to the requirements of such
14 parts.

15 (2) Federal work-study programs under part C
16 of such title IV (42 U.S.C. 2751 et seq.), subject to
17 the requirements of such part.

18 (3) Services under such title IV (20 U.S.C.
19 1070 et seq.), subject to the requirements for such
20 services.

21 **SEC. 625. DELAY OF FINES AND FEES.**

22 (a) IN GENERAL.—Payment of the penalties and fees
23 specified in section 601(e)(6) shall not be required with
24 respect to an alien who meets the eligibility criteria set
25 forth in section 614(a)(1)(A), (B), and (F) until the date

1 that is 6 years and 6 months after the date of the enact-
2 ment of this Act or the alien reaches the age of 24, which-
3 ever is later. If the alien makes all of the demonstrations
4 specified in section 614(a)(1) by such date, the penalties
5 shall be waived. If the alien fails to make the demonstra-
6 tions specified in section 614(a)(1) by such date, the
7 alien's Z nonimmigrant status will be terminated unless
8 the alien pays the penalties and fees specified in section
9 601(e)(6) consistent with the procedures set forth in sec-
10 tion 608 within 90 days.

11 (b) REFUNDS.—With respect to an alien who meets
12 the eligibility criteria set forth in section 614(a)(1) (A)
13 and (F), but not the eligibility criteria in section
14 614(a)(1)(B), the individual who pays the penalties speci-
15 fied in section 601(e)(6) shall be entitled to a refund when
16 the alien makes all the demonstrations specified in section
17 614(a)(1).

18 **SEC. 626. GAO REPORT.**

19 Not later than 7 years after the date of the enact-
20 ment of this Act, the Comptroller General of the United
21 States shall submit a report to the Committee on the Judi-
22 ciary of the Senate and the Committee on the Judiciary
23 of the House of Representatives, which sets forth—

24 (1) the number of aliens who were eligible for
25 adjustment of status under section 622;

1 (2) the number of aliens who applied for adjust-
2 ment of status under section 622; and

3 (3) the number of aliens who were granted ad-
4 justment of status under section 622.

5 **SEC. 627. REGULATIONS, EFFECTIVE DATE, AUTHORIZA-**
6 **TION OF APPROPRIATIONS.**

7 (a) **REGULATIONS.**—The Secretary shall issue regula-
8 tions to carry out the amendments made by this subtitle
9 not later than the first day of the seventh month that be-
10 gins after the date of the enactment of this Act.

11 (b) **EFFECTIVE DATE.**—This subtitle shall take effect
12 on the date that regulations required by subsection (a) are
13 issued, regardless of whether such regulations are issued
14 on an interim basis or on any other basis.

15 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There
16 are authorized to be appropriated to the Secretary such
17 sums as may be necessary to implement this subtitle, in-
18 cluding any sums needed for costs associated with the ini-
19 tiation of such implementation.

20 **Subtitle C—Agricultural Workers**

21 **SEC. 630. SHORT TITLE.**

22 This subtitle may be cited as the “Agricultural Job
23 Opportunities, Benefits, and Security Act of 2007” or the
24 “AgJOBS Act of 2007”.

1 **PART I—ADMISSION**

2 **SEC. 631. ADMISSION OF AGRICULTURAL WORKERS.**

3 (a) Z–A NONIMMIGRANT VISA CATEGORY.—

4 (1) ESTABLISHMENT.—Paragraph (15) of sec-
5 tion 101(a) of the Immigration and Nationality Act
6 (8 U.S.C. 1101(a)), as amended by section 601(b),
7 is further amended by adding at the end the fol-
8 lowing new subparagraph:

9 “(Z–A)(i) an alien who is coming to the
10 United States to perform any service or activity
11 that is considered to be agricultural under sec-
12 tion 3(f) of the Fair Labor Standards Act of
13 1938 (29 U.S.C. 203(f)), agricultural labor
14 under section 3121(g) of the Internal Revenue
15 Code of 1986, or the performance of agricul-
16 tural labor or services described in subpara-
17 graph (H)(ii)(a), who meets the requirements of
18 section 214A of this Act; or

19 “(ii) the spouse or minor child of an alien
20 described in clause (i) who is residing in the
21 United States.”.

22 (b) REQUIREMENTS FOR ISSUANCE OF NON-
23 IMMIGRANT VISA.—Chapter 2 of title II (8 U.S.C. 1181
24 et seq.) is amended by inserting after section 214 the fol-
25 lowing new section:

1 **“SEC. 214A. ADMISSION OF AGRICULTURAL WORKERS.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) AGRICULTURAL EMPLOYMENT.—The term
4 ‘agricultural employment’ means any service or ac-
5 tivity that is considered to be agricultural under sec-
6 tion 3(f) of the Fair Labor Standards Act of 1938
7 (29 U.S.C. 203(f)) or agricultural labor under sec-
8 tion 3121(g) of the Internal Revenue Code of 1986
9 or the performance of agricultural labor or services
10 described in section 101(a)(15)(H)(ii)(a).

11 “(2) DEPARTMENT.—The term ‘Department’
12 means the Department of Homeland Security.

13 “(3) EMPLOYER.—The term ‘employer’ means
14 any person or entity, including any farm labor con-
15 tractor and any agricultural association, that em-
16 ploys workers in agricultural employment.

17 “(4) QUALIFIED DESIGNATED ENTITY.—The
18 term ‘qualified designated entity’ means—

19 “(A) a qualified farm labor organization or
20 an association of employers designated by the
21 Secretary; or

22 “(B) any such other person designated by
23 the Secretary if that Secretary determines such
24 person is qualified and has substantial experi-
25 ence, demonstrated competence, and has a his-
26 tory of long-term involvement in the prepara-

1 tion and submission of applications for adjust-
2 ment of status under section 209, 210, or 245,
3 the Act entitled ‘An Act to adjust the status of
4 Cuban refugees to that of lawful permanent
5 residents of the United States, and for other
6 purposes’, approved November 2, 1966 (Public
7 Law 89–732; 8 U.S.C. 1255 note), Public Law
8 95–145 (8 U.S.C. 1255 note), or the Immigra-
9 tion Reform and Control Act of 1986 (Public
10 Law 99–603; 100 Stat. 3359) or any amend-
11 ment made by that Act.

12 “(5) SECRETARY.—Except as otherwise pro-
13 vided, the term ‘Secretary’ means the Secretary of
14 Homeland Security.

15 “(6) TEMPORARY.—A worker is employed on a
16 ‘temporary’ basis when the employment is intended
17 not to exceed 10 months.

18 “(7) WORK DAY.—The term ‘work day’ means
19 any day in which the individual is employed 5.75 or
20 more hours in agricultural employment.

21 “(8) Z–A DEPENDENT VISA.—The term ‘Z–A
22 dependent visa’ means a nonimmigrant visa issued
23 pursuant to section 101(a)(15)(Z–A)(ii).

1 “(9) Z–A VISA.—The term ‘Z–A visa’ means a
2 nonimmigrant visa issued pursuant to section
3 101(a)(15)(Z–A)(i).

4 “(b) AUTHORIZATION FOR PRESENCE, EMPLOY-
5 MENT, AND TRAVEL IN THE UNITED STATES.—

6 “(1) IN GENERAL.—An alien issued a Z–A visa
7 or a Z–A dependent visa may remain in, and be em-
8 ployed in, the United States during the period such
9 visa is valid.

10 “(2) AUTHORIZED EMPLOYMENT.—The Sec-
11 retary shall provide an alien who is issued a Z–A
12 visa or a Z–A dependent visa an employment author-
13 ized endorsement or other appropriate work permit,
14 in the same manner as an alien lawfully admitted
15 for permanent residence.

16 “(3) AUTHORIZED TRAVEL.—An alien who is
17 issued a Z–A visa or a Z–A dependent visa is au-
18 thorized to travel outside the United States (includ-
19 ing commuting to the United States from a resi-
20 dence in a foreign country) in the same manner as
21 an alien lawfully admitted for permanent residence.

22 “(c) QUALIFICATIONS.—

23 “(1) Z–A VISA.—Notwithstanding any other
24 provision of law, the Secretary shall, pursuant to the

1 requirements of this section, issued a Z–A visa to an
2 alien if the Secretary determines that the alien—

3 “(A) has performed agricultural employ-
4 ment in the United States for at least 863
5 hours or 150 work days during the 24-month
6 period ending on December 31, 2006;

7 “(B) applied for such status during the
8 18-month application period beginning on the
9 first day of the seventh month that begins after
10 the date of the enactment of this Act;

11 “(C) is admissible to the United States
12 under section 212, except as otherwise provided
13 in paragraph (4);

14 “(D) has not been convicted of any felony
15 or a misdemeanor, an element of which involves
16 bodily injury, threat of serious bodily injury, or
17 harm to property in excess of \$500; and

18 “(E) meets the requirements of paragraph
19 (3).

20 “(2) Z–A DEPENDENT VISA.—Notwithstanding
21 any other provision of law, the Secretary shall issue
22 a Z–A dependent visa to an alien who is—

23 “(A) described in section 101(a)(15)(Z–
24 A)(ii);

1 “(B) meets the requirements of paragraph
2 (3); and

3 “(C) is admissible to the United States
4 under section 212, except as otherwise provided
5 in paragraph (4).

6 “(3) SECURITY AND LAW ENFORCEMENT BACK-
7 GROUND CHECKS.—

8 “(A) FINGERPRINTS.—An alien seeking a
9 Z–A visa or a Z–A dependent visa shall submit
10 fingerprints to the Secretary at such time and
11 in manner as the Secretary may require.

12 “(B) BACKGROUND CHECKS.—The Sec-
13 retary shall utilize fingerprints provided under
14 subparagraph (A) and other biometric data pro-
15 vided by an alien to conduct a background
16 check of the alien, including searching the
17 alien’s criminal history and any law enforce-
18 ment actions taken with respect to the alien
19 and ensuring that the alien is not a risk to na-
20 tional security.

21 “(4) WAIVER OF CERTAIN GROUNDS OF INAD-
22 MISSIBILITY.—In the determination of an alien’s eli-
23 gibility for a Z–A visa or a Z–A dependent visa the
24 following shall apply:

1 “(A) GROUNDS OF EXCLUSION NOT APPLI-
2 CABLE.—The provisions of paragraphs (5),
3 (6)(A), (7), and (9) of section 212(a) shall not
4 apply.

5 “(B) WAIVER OF OTHER GROUNDS.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in clause (ii), the Secretary may
8 waive any provision of such section 212(a),
9 other than the paragraphs described in
10 subparagraph (A), in the case of individual
11 aliens for humanitarian purposes, to en-
12 sure family unity, or if such waiver is oth-
13 erwise in the public interest.

14 “(ii) GROUNDS THAT MAY NOT BE
15 WAIVED.—Except as provided in subpara-
16 graph (C), subparagraphs (A), (B), and
17 (C) of paragraph (2), and paragraphs (3)
18 and (4) of section 212(a) may not be
19 waived by the Secretary under clause (i).

20 “(iii) CONSTRUCTION.—Nothing in
21 this subparagraph shall be construed as af-
22 fecting the authority of the Secretary other
23 than under this subparagraph to waive
24 provisions of such section 212(a).

1 “(C) SPECIAL RULE FOR DETERMINATION
2 OF PUBLIC CHARGE.—An alien is not ineligible
3 for a Z–A visa or a Z–A dependent visa by rea-
4 son of a ground of inadmissibility under section
5 212(a)(4) if the alien demonstrates a history of
6 employment in the United States evidencing
7 self-support without reliance on public cash as-
8 sistance.

9 “(d) APPLICATION.—

10 “(1) IN GENERAL.—An alien seeking a Z–A
11 visa shall submit an application to the Secretary for
12 such a visa, including information regarding any Z–
13 A dependent visa for the spouse of child of the alien.

14 “(2) SUBMISSION.—Applications for a Z–A visa
15 under paragraph (1) may be submitted—

16 “(A) to the Secretary if the applicant is
17 represented by an attorney or a nonprofit reli-
18 gious, charitable, social service, or similar orga-
19 nization recognized by the Board of Immigra-
20 tion Appeals under section 292.2 of title 8,
21 Code of Federal Regulations (or similar suc-
22 cessor regulations); or

23 “(B) to a qualified designated entity if the
24 applicant consents to the forwarding of the ap-
25 plication to the Secretary.

1 “(3) PROOF OF ELIGIBILITY.—

2 “(A) IN GENERAL.—An alien may estab-
3 lish that the alien meets the requirement for a
4 Z–A visa through government employment
5 records or records supplied by employers or col-
6 lective bargaining organizations, and other reli-
7 able documentation as the alien may provide.
8 The Secretary shall establish special procedures
9 to properly credit work in cases in which an
10 alien was employed under an assumed name.

11 “(B) DOCUMENTATION OF WORK HIS-
12 TORY.—

13 “(i) BURDEN OF PROOF.—An alien
14 applying for a Z–A visa or applying for ad-
15 justment of status described in subsection
16 (j) has the burden of proving by a prepon-
17 derance of the evidence that the alien has
18 performed the requisite number of hours or
19 days of agricultural employment required
20 for such application or adjustment of sta-
21 tus, as applicable.

22 “(ii) TIMELY PRODUCTION OF
23 RECORDS.—If an employer or farm labor
24 contractor employing such an alien has
25 kept proper and adequate records respect-

1 ing such employment, the alien’s burden of
2 proof under clause (i) may be met by se-
3 curing timely production of such records
4 under regulations to be promulgated by the
5 Secretary.

6 “(iii) SUFFICIENT EVIDENCE.—An
7 alien may meet the burden of proof under
8 clause (i) to establish that the alien has
9 performed the requisite number of hours or
10 days of agricultural employment by pro-
11 ducing sufficient evidence to show the ex-
12 tent of that employment as a matter of
13 just and reasonable inference.

14 “(4) APPLICATIONS SUBMITTED TO QUALIFIED
15 DESIGNATED ENTITIES.—

16 “(A) REQUIREMENTS.—Each qualified
17 designated entity shall agree—

18 “(i) to forward to the Secretary an
19 application submitted to that entity pursu-
20 ant to paragraph (2)(B) if the alien for
21 whom the application is being submitted
22 has consented to such forwarding;

23 “(ii) not to forward to the Secretary
24 any such application if such an alien has
25 not consented to such forwarding; and

1 “(iii) to assist an alien in obtaining
2 documentation of the alien’s work history,
3 if the alien requests such assistance.

4 “(B) NO AUTHORITY TO MAKE DETER-
5 MINATIONS.—No qualified designated entity
6 may make a determination required by this sec-
7 tion to be made by the Secretary.

8 “(5) APPLICATION FEES.—

9 “(A) FEE SCHEDULE.—The Secretary
10 shall provide for a schedule of fees that—

11 “(i) shall be charged for applying for
12 a Z–A visa under this section or for an ad-
13 justment of status described in subsection
14 (j); and

15 “(ii) may be charged by qualified des-
16 ignated entities to help defray the costs of
17 services provided to such aliens making
18 such an application.

19 “(B) PROHIBITION ON EXCESS FEES BY
20 QUALIFIED DESIGNATED ENTITIES.—A quali-
21 fied designated entity may not charge any fee
22 in excess of, or in addition to, the fees author-
23 ized under subparagraph (A)(ii) for services
24 provided to applicants.

1 “(6) LIMITATION ON ACCESS TO INFORMA-
2 TION.—Files and records collected or compiled by a
3 qualified designated entity for the purposes of this
4 section are confidential and the Secretary shall not
5 have access to such a file or record relating to an
6 alien without the consent of the alien, except as al-
7 lowed by a court order.

8 “(7) TREATMENT OF APPLICANTS.—

9 “(A) IN GENERAL.—An alien who files an
10 application under this section to receive a Z–A
11 visa and any spouse or child of the alien seek-
12 ing a Z–A dependant visa, on the date de-
13 scribed in subparagraph (B)—

14 “(i) shall be granted probationary
15 benefits in the form of employment author-
16 ization pending final adjudication of the
17 alien’s application;

18 “(ii) may in the Secretary’s discretion
19 receive advance permission to re-enter the
20 United States pursuant to existing regula-
21 tions governing advance parole;

22 “(iii) may not be detained for immi-
23 gration purposes, determined inadmissible
24 or deportable, or removed pending final ad-
25 judication of the alien’s application, unless

1 the alien is determined to be ineligible for
2 Z–A visa; and

3 “(iv) may not be considered an unau-
4 thorized alien (as defined in section 274A)
5 until the date on which the alien’s applica-
6 tion for a Z–A visa is denied.

7 “(B) TIMING OF PROBATIONARY BENE-
8 FITS.—

9 “(i) IN GENERAL.—Subject to clause
10 (ii), an alien who submits an application
11 for a Z–A visa under this subsection, in-
12 cluding any evidence required under this
13 subsection, and any spouse or child of the
14 alien seeking a Z–A dependent visa shall
15 receive the probationary benefits described
16 in clauses (i) through (iv) of subparagraph
17 (A) at the earlier of—

18 “(I) the date and time that the
19 alien has passed all appropriate back-
20 ground checks, including name and
21 fingerprint checks; or

22 “(II) the end of the next business
23 day after the date that the Secretary
24 receives the alien’s application for a
25 Z–A visa.

1 “(ii) EXCEPTION.—If the Secretary
2 determines that the alien fails the back-
3 ground checks referred to in clause (i)(I),
4 the alien may not be granted probationary
5 benefits described in clauses (i) through
6 (iv) of subparagraph (A).

7 “(C) PROBATIONARY AUTHORIZATION DOC-
8 UMENT.—The Secretary shall provide each alien
9 granted probationary benefits described in
10 clauses (i) through (iv) of subparagraph (A)
11 with a counterfeit-resistant document that re-
12 flects the benefits and status set forth in sub-
13 paragraph (A). The Secretary may, by regula-
14 tion, establish procedures for the issuance of
15 documentary evidence of probationary benefits
16 and, except as provided herein, the conditions
17 under which such documentary evidence ex-
18 pires, terminates, or is renewed.

19 “(D) CONSTRUCTION.—Nothing in this
20 section may be construed to limit the Sec-
21 retary’s authority to conduct any appropriate
22 background and security checks subsequent to
23 issuance of evidence of probationary benefits
24 under this paragraph.

1 “(8) TEMPORARY STAY OF REMOVAL AND WORK
2 AUTHORIZATION FOR CERTAIN APPLICANTS.—

3 “(A) BEFORE APPLICATION PERIOD.—Be-
4 ginning on the date of the enactment of the
5 AgJOBS Act of 2007, the Secretary shall pro-
6 vide that, in the case of an alien who is appre-
7 hended prior to the first date of the application
8 period described in subsection (c)(1)(B) and
9 who can establish a nonfrivolous case of eligi-
10 bility for a Z–A visa (but for the fact that the
11 alien may not apply for such status until the
12 beginning of such period), the alien—

13 “(i) may not be removed; and

14 “(ii) shall be granted authorization to
15 engage in employment in the United States
16 and be provided an employment authorized
17 endorsement or other appropriate work
18 permit for such purpose.

19 “(B) DURING APPLICATION PERIOD.—The
20 Secretary shall provide that, in the case of an
21 alien who presents a nonfrivolous application
22 for Z–A visa during the application period de-
23 scribed in subsection (c)(1)(B), including an
24 alien who files such an application within 30
25 days of the alien’s apprehension, and until a

1 final determination on the application has been
2 made in accordance with this section, the
3 alien—

4 “(i) may not be removed; and

5 “(ii) shall be granted authorization to
6 engage in employment in the United States
7 and be provided an employment authorized
8 endorsement or other appropriate work
9 permit for such purpose.

10 “(e) NUMERICAL LIMITATIONS.—

11 “(1) Z–A VISA.—The Secretary may not issue
12 more than 1,500,000 Z–A visas.

13 “(2) Z–A DEPENDENT VISA.—The Secretary
14 may not count any Z–A dependent visa issued
15 against the numerical limitation described in para-
16 graph (1).

17 “(f) EVIDENCE OF NONIMMIGRANT STATUS.—

18 “(1) IN GENERAL.—Documentary evidence of
19 nonimmigrant status shall be issued to each alien
20 granted a Z–A visa or a Z–A dependent visa.

21 “(2) FEATURES OF DOCUMENTATION.—Docu-
22 mentary evidence of a Z–A visa or a Z–A dependent
23 visa—

24 “(A) shall be machine-readable, tamper-re-
25 sistant, and shall contain a digitized photo-

1 graph and other biometric identifiers that can
2 be authenticated;

3 “(B) shall be designed in consultation with
4 U.S. Immigration and Customs Enforcement’s
5 Forensic Document Laboratory;

6 “(C) shall serve as a valid travel and entry
7 document for an alien granted a Z–A visa or a
8 Z–A dependent visa for the purpose of applying
9 for admission to the United States where the
10 alien is applying for admission at a port of
11 entry;

12 “(D) may be accepted during the period of
13 its validity by an employer as evidence of em-
14 ployment authorization and identity under sec-
15 tion 274A; and

16 “(E) shall be issued to the alien granted
17 the visa by the Secretary promptly after final
18 adjudication of such alien’s application for the
19 visa, except that an alien may not be granted
20 a Z–A visa or a Z–A dependent visa until all
21 appropriate background checks on each alien
22 are completed to the satisfaction of the Sec-
23 retary.

24 “(g) FINE.—An alien granted a Z–A visa shall pay
25 a fine of \$100 to the Secretary.

1 “(h) TREATMENT OF ALIENS GRANTED A Z–A
2 VISA.—

3 “(1) IN GENERAL.—Except as otherwise pro-
4 vided under this subsection, an alien issued a Z–A
5 visa or a Z–A dependent visa shall be considered to
6 be an alien lawfully admitted for permanent resi-
7 dence for purposes of any law other than any provi-
8 sion of this Act.

9 “(2) DELAYED ELIGIBILITY FOR CERTAIN FED-
10 ERAL PUBLIC BENEFITS.—An alien issued a Z–A
11 visa shall not be eligible, by reason of such status,
12 for any form of assistance or benefit described in
13 section 403(a) of the Personal Responsibility and
14 Work Opportunity Reconciliation Act of 1996 (8
15 U.S.C. 1613(a)) until 5 years after the date on
16 which the alien is granted an adjustment of status
17 under subsection (d).

18 “(3) TERMS OF EMPLOYMENT.—

19 “(A) PROHIBITION.—No alien issued a Z–
20 A visa may be terminated from employment by
21 any employer during the period of a Z–A visa
22 except for just cause.

23 “(B) TREATMENT OF COMPLAINTS.—

24 “(i) ESTABLISHMENT OF PROCESS.—

25 The Secretary shall establish a process for

1 the receipt, initial review, and disposition
2 of complaints by aliens issued a Z-A visa
3 who allege that they have been terminated
4 without just cause. No proceeding shall be
5 conducted under this subparagraph with
6 respect to a termination unless the Sec-
7 retary determines that the complaint was
8 filed not later than 6 months after the
9 date of the termination.

10 “(ii) INITIATION OF ARBITRATION.—
11 If the Secretary finds that an alien has
12 filed a complaint in accordance with clause
13 (i) and there is reasonable cause to believe
14 that the alien was terminated from employ-
15 ment without just cause, the Secretary
16 shall initiate binding arbitration pro-
17 ceedings by requesting the Federal Medi-
18 ation and Conciliation Service to appoint a
19 mutually agreeable arbitrator from the ros-
20 ter of arbitrators maintained by such Serv-
21 ice for the geographical area in which the
22 employer is located. The procedures and
23 rules of such Service shall be applicable to
24 the selection of such arbitrator and to such
25 arbitration proceedings. The Secretary

1 shall pay the fee and expenses of the arbi-
2 trator, subject to the availability of appro-
3 priations for such purpose.

4 “(iii) ARBITRATION PROCEEDINGS.—
5 The arbitrator shall conduct the pro-
6 ceeding under this subparagraph in accord-
7 ance with the policies and procedures pro-
8 mulgated by the American Arbitration As-
9 sociation applicable to private arbitration
10 of employment disputes. The arbitrator
11 shall make findings respecting whether the
12 termination was for just cause. The arbi-
13 trator may not find that the termination
14 was for just cause unless the employer so
15 demonstrates by a preponderance of the
16 evidence. If the arbitrator finds that the
17 termination was not for just cause, the ar-
18 bitrator shall make a specific finding of the
19 number of days or hours of work lost by
20 the employee as a result of the termi-
21 nation. The arbitrator shall have no au-
22 thority to order any other remedy, includ-
23 ing reinstatement, back pay, or front pay
24 to the affected employee. Not later than 30
25 days after the date of the conclusion of the

1 arbitration proceeding, the arbitrator shall
2 transmit the findings in the form of a writ-
3 ten opinion to the parties to the arbitration
4 and the Secretary. Such findings shall be
5 final and conclusive, and no official or
6 court of the United States shall have the
7 power or jurisdiction to review any such
8 findings.

9 “(iv) EFFECT OF ARBITRATION FIND-
10 INGS.—If the Secretary receives a finding
11 of an arbitrator that an employer has ter-
12 minated the employment of an alien who is
13 issued a Z–A visa without just cause, the
14 Secretary shall credit the alien for the
15 number of days of work not performed
16 during such period of termination for the
17 purpose of determining if the alien meets
18 the qualifying employment requirement of
19 subsection (f)(2).

20 “(v) TREATMENT OF ATTORNEY’S
21 FEES.—Each party to an arbitration under
22 this subparagraph shall bear the cost of
23 their own attorney’s fees for the arbitra-
24 tion.

600

1 “(vi) NONEXCLUSIVE REMEDY.—The
2 complaint process provided for in this sub-
3 paragraph is in addition to any other
4 rights an employee may have in accordance
5 with applicable law.

6 “(vii) EFFECT ON OTHER ACTIONS OR
7 PROCEEDINGS.—Any finding of fact or
8 law, judgment, conclusion, or final order
9 made by an arbitrator in the proceeding
10 before the Secretary shall not be conclusive
11 or binding in any separate or subsequent
12 action or proceeding between the employee
13 and the employee’s current or prior em-
14 ployer brought before an arbitrator, admin-
15 istrative agency, court, or judge of any
16 State or the United States, regardless of
17 whether the prior action was between the
18 same or related parties or involved the
19 same facts, except that the arbitrator’s
20 specific finding of the number of days or
21 hours of work lost by the employee as a re-
22 sult of the employment termination may be
23 referred to the Secretary pursuant to
24 clause (iv).

25 “(4) RECORD OF EMPLOYMENT.—

601

1 “(A) IN GENERAL.—Each employer of an
2 alien who is issued a Z–A visa shall annually—

3 “(i) provide a written record of em-
4 ployment to the alien; and

5 “(ii) provide a copy of such record to
6 the Secretary.

7 “(B) CIVIL PENALTIES.—

8 “(i) IN GENERAL.—If the Secretary
9 finds, after notice and opportunity for a
10 hearing, that an employer of an alien
11 issued a Z–A visa has failed to provide the
12 record of employment required under sub-
13 paragraph (A) or has provided a false
14 statement of material fact in such a
15 record, the employer shall be subject to a
16 civil money penalty in an amount not to
17 exceed \$1,000 per violation.

18 “(ii) LIMITATION.—The penalty appli-
19 cable under clause (i) for failure to provide
20 records shall not apply unless the alien has
21 provided the employer with evidence of em-
22 ployment authorization granted under this
23 subsection.

24 “(i) TERMINATION OF A GRANT OF Z–A VISA.—

1 “(1) IN GENERAL.—The Secretary may termi-
2 nate a Z–A visa or a Z–A dependent visa issued to
3 an alien only if the Secretary determines that the
4 alien is deportable.

5 “(2) GROUNDS FOR TERMINATION.—Prior to
6 the date that an alien granted a Z–A visa or a Z–
7 A dependent visa becomes eligible for adjustment of
8 status described in subsection (j), the Secretary may
9 deny adjustment to permanent resident status and
10 provide for termination of the alien’s Z–A visa or Z–
11 A dependent visa if—

12 “(A) the Secretary finds, by a preponder-
13 ance of the evidence, that the issuance of a Z–
14 A visa was the result of fraud or willful mis-
15 representation (as described in section
16 212(a)(6)(C)(i)); or

17 “(B) the alien—

18 “(i) commits an act that makes the
19 alien inadmissible to the United States as
20 an immigrant, except as provided under
21 subsection (c)(4);

22 “(ii) is convicted of a felony or 3 or
23 more misdemeanors committed in the
24 United States;

1 “(iii) is convicted of an offense, an
2 element of which involves bodily injury,
3 threat of serious bodily injury, or harm to
4 property in excess of \$500; or

5 “(iv) in the case of an alien issued a
6 Z–A visa, fails to perform the agricultural
7 employment described in subsection
8 (j)(1)(A) unless the alien was unable to
9 work in agricultural employment due to
10 the extraordinary circumstances described
11 in subsection (j)(1)(A)(iii).

12 “(3) REPORTING REQUIREMENT.—The Sec-
13 retary shall promulgate regulations to ensure that
14 the alien issued a Z–A visa complies with the quali-
15 fying agricultural employment described in sub-
16 section (j)(1)(A) at the end of the 5-year work pe-
17 riod, which may include submission of an application
18 pursuant to this subsection.

19 “(j) ADJUSTMENT TO PERMANENT RESIDENCE.—

20 “(1) Z–A VISA.—Except as provided in this
21 subsection, the Secretary shall award the maximum
22 number of points available pursuant to section
23 203(b)(1) and adjust the status of an alien issued
24 a Z–A visa to that of an alien lawfully admitted for
25 permanent residence under this Act, if the Secretary

1 determines that the following requirements are satis-
2 fied:

3 “(A) QUALIFYING EMPLOYMENT.—

4 “(i) IN GENERAL.—Subject to clauses
5 (ii) and (iii), the alien has performed at
6 least—

7 “(I) 5 years of agricultural em-
8 ployment in the United States for at
9 least 100 work days per year, during
10 the 5-year period beginning on the
11 date of the enactment of the AgJOBS
12 Act of 2007; or

13 “(II) 3 years of agricultural em-
14 ployment in the United States for at
15 least 150 work days per year, during
16 the 3-year period beginning on such
17 date of enactment.

18 “(ii) FOUR-YEAR PERIOD OF EMPLOY-
19 MENT.—An alien shall be considered to
20 meet the requirements of clause (i) if the
21 alien has performed 4 years of agricultural
22 employment in the United States for at
23 least 150 workdays during 3 years of those
24 4 years and at least 100 workdays during

1 the remaining year, during the 4-year pe-
2 riod beginning on such date of enactment.

3 “(iii) EXTRAORDINARY CIR-
4 CUMSTANCES.—In determining whether an
5 alien has met the requirement of clause (i),
6 the Secretary may credit the alien with not
7 more than 12 additional months to meet
8 the requirement of that clause if the alien
9 was unable to work in agricultural employ-
10 ment due to—

11 “(I) pregnancy, injury, or dis-
12 ease, if the alien can establish such
13 pregnancy, disabling injury, or disease
14 through medical records;

15 “(II) illness, disease, or other
16 special needs of a minor child, if the
17 alien can establish such illness, dis-
18 ease, or special needs through medical
19 records; or

20 “(III) severe weather conditions
21 that prevented the alien from engag-
22 ing in agricultural employment for a
23 significant period of time.

1 “(B) PROOF.—An alien may demonstrate
2 compliance with the requirements of subpara-
3 graph (A) by submitting—

4 “(i) the record of employment de-
5 scribed in subsection (h)(4); or

6 “(ii) such documentation as may be
7 submitted under subsection (d)(3).

8 “(C) APPLICATION PERIOD.—Not later
9 than 8 years after the date of the enactment of
10 the AgJOBS Act of 2007, the alien must—

11 “(i) apply for adjustment of status; or

12 “(ii) renew the alien’s Z visa status as
13 described in section 601(k)(2).

14 “(D) FINE.—The alien pays to the Sec-
15 retary a fine of \$400.

16 “(2) SPOUSES AND MINOR CHILDREN.—Not-
17 withstanding any other provision of law, the Sec-
18 retary shall confer the status of lawful permanent
19 resident on the spouse and minor child of an alien
20 granted any adjustment of status under paragraph
21 (1), including any individual who was a minor child
22 on the date such alien was granted a Z–A visa, if
23 the spouse or minor child applies for such status, or
24 if the principal alien includes the spouse or minor

1 child in an application for adjustment of status to
2 that of a lawful permanent resident.

3 “(3) GROUNDS FOR DENIAL OF ADJUSTMENT
4 OF STATUS.—The Secretary may deny an alien
5 granted a Z–A visa or a Z–A dependent visa an ad-
6 justment of status under this Act and provide for
7 termination of such visa if—

8 “(A) the Secretary finds by a preponder-
9 ance of the evidence that grant of the Z–A visa
10 was the result of fraud or willful misrepresenta-
11 tion (as described in section 212(a)(6)(C)(i)); or

12 “(B) the alien—

13 “(i) commits an act that makes the
14 alien inadmissible to the United States
15 under section 212, except as provided
16 under subsection (c)(4);

17 “(ii) is convicted of a felony or 3 or
18 more misdemeanors committed in the
19 United States; or

20 “(iii) is convicted of an offense, an
21 element of which involves bodily injury,
22 threat of serious bodily injury, or harm to
23 property in excess of \$500.

24 “(4) GROUNDS FOR REMOVAL.—Any alien
25 granted Z–A visa status who does not apply for ad-

1 justment of status or renewal of Z status under sec-
2 tion 601(k)(2) of the Secure Borders, Economic Op-
3 portunity, and Immigration Reform Act of 2007
4 prior to the expiration of the application period de-
5 scribed in subsection (c)(1)(B) or who fails to meet
6 the other requirements of paragraph (1) by the end
7 of the application period, is deportable and may be
8 removed under section 240.

9 “(5) PAYMENT OF TAXES.—

10 “(A) IN GENERAL.—Not later than the
11 date on which an alien’s status is adjusted as
12 described in this subsection, the alien shall es-
13 tablish that the alien does not owe any applica-
14 ble Federal tax liability by establishing that—

15 “(i) no such tax liability exists;

16 “(ii) all such outstanding tax liabil-
17 ities have been paid; or

18 “(iii) the alien has entered into an
19 agreement for payment of all outstanding
20 liabilities with the Internal Revenue Serv-
21 ice.

22 “(B) APPLICABLE FEDERAL TAX LIABIL-
23 ITY.—In this paragraph, the term ‘applicable
24 Federal tax liability’ means liability for Federal
25 taxes, including penalties and interest, owed for

1 any year during the period of employment re-
2 quired under paragraph (1)(A) for which the
3 statutory period for assessment of any defi-
4 ciency for such taxes has not expired.

5 “(C) IRS COOPERATION.—The Secretary
6 of the Treasury shall establish rules and proce-
7 dures under which the Commissioner of Inter-
8 nal Revenue shall provide documentation to an
9 alien upon request to establish the payment of
10 all taxes required by this subsection.

11 “(6) ENGLISH LANGUAGE.—

12 “(A) IN GENERAL.—Not later than the
13 date on which a Z–A nonimmigrant’s status is
14 adjusted or renewed under section 601(k)(2) of
15 the Secure Borders, Economic Opportunity, and
16 Immigration Reform Act of 2007, a Z–A non-
17 immigrant who is 18 years of age or older shall
18 pass the naturalization test described in section
19 312(a) (1) and (2).

20 “(B) EXCEPTION.—The requirement of
21 subparagraph (A) shall not apply to any person
22 who, on the date of the filing of the person’s
23 application for an extension of Z–A non-
24 immigrant status—

1 “(i) is unable because of physical or
2 developmental disability or mental impair-
3 ment to comply therewith;

4 “(ii) is over 50 years of age and has
5 been living in the United States for periods
6 totaling at least 20 years; or

7 “(iii) is over 55 years of age and has
8 been living in the United States for periods
9 totaling at least 15 years.

10 “(7) PRIORITY OF APPLICATIONS.—

11 “(A) BACK OF LINE.—An alien may not
12 adjust status to that of a lawful permanent
13 resident under this subsection until 30 days
14 after the date on which an immigrant visa be-
15 comes available for approved petitions filed
16 under sections 201, 202, and 203 that were
17 filed before May 1, 2005 (referred to in this
18 paragraph as the ‘processing date’).

19 “(B) OTHER APPLICANTS.—The proc-
20 essing of applications for an adjustment of sta-
21 tus under this subsection shall be processed not
22 later than 1 year after the processing date.

23 “(C) CONSULAR APPLICATION.—

24 “(i) IN GENERAL.—A Z-A non-
25 immigrant’s application for adjustment of

1 status to that of an alien lawfully admitted
2 for permanent residence shall be filed in
3 person with a United States consulate
4 abroad.

5 “(ii) PLACE OF APPLICATION.—Un-
6 less otherwise directed by the Secretary of
7 State, a Z–A nonimmigrant applying for
8 adjustment of status under this paragraph
9 shall make an application at a consular of-
10 fice in the alien’s country of origin. The
11 Secretary of State shall direct a consular
12 office in a country that is not a Z–A non-
13 immigrant’s country of origin to accept an
14 application for adjustment of status from
15 such an alien, where the Z–A non-
16 immigrant’s country of origin is not contig-
17 uous to the United States, and as consular
18 resources make possible.

19 “(k) CONFIDENTIALITY OF INFORMATION.—Appli-
20 cants for Z–A nonimmigrant status under this section
21 shall be afforded confidentiality as provided under section
22 604 of the Secure Borders, Economic Opportunity, and
23 Immigration Reform Act of 2007.

24 “(l) PENALTIES FOR FALSE STATEMENTS IN APPLI-
25 CATIONS.—

1 “(1) CRIMINAL PENALTY.—Any person who—

2 “(A) applies for a Z–A visa or a Z–A de-
3 pendent visa under this section or an adjust-
4 ment of status described in subsection (j) and
5 knowingly and willfully falsifies, conceals, or
6 covers up a material fact or makes any false,
7 fictitious, or fraudulent statements or represen-
8 tations, or makes or uses any false writing or
9 document knowing the same to contain any
10 false, fictitious, or fraudulent statement or
11 entry; or

12 “(B) creates or supplies a false writing or
13 document for use in making such an applica-
14 tion,

15 shall be fined in accordance with title 18, United
16 States Code, imprisoned not more than 5 years, or
17 both.

18 “(2) INADMISSIBILITY.—An alien who is con-
19 victed of a crime under paragraph (1) shall be con-
20 sidered to be inadmissible to the United States on
21 the ground described in section 212(a)(6)(C)(i).

22 “(m) ELIGIBILITY FOR LEGAL SERVICES.—Section
23 504(a)(11) of Public Law 104–134 (110 Stat. 1321–54)
24 shall not be construed to prevent a recipient of funds
25 under the Legal Services Corporation Act (42 U.S.C. 2996

1 et seq.) from providing legal assistance directly related to
2 an application for a Z–A visa under subsection (b) or an
3 adjustment of status under subsection (j).

4 “(n) ADMINISTRATIVE AND JUDICIAL REVIEW.—Ad-
5 ministrative or judicial review of a determination on an
6 application for a Z–A visa shall be such as is provided
7 under section 603 of the Secure Borders, Economic Op-
8 portunity, and Immigration Reform Act of 2007.

9 “(o) PUBLIC OUTREACH.—Beginning not later than
10 the first day of the application period described in sub-
11 section (c)(1)(B), the Secretary shall cooperate with quali-
12 fied designated entities to broadly disseminate information
13 regarding the availability of Z–A visas, the benefits of
14 such visas, and the requirements to apply for and be
15 granted such a visa.”.

16 (c) NUMERICAL LIMITATIONS.—

17 (1) WORLDWIDE LEVEL OF IMMIGRATION.—
18 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amend-
19 ed by this Act, is further amended—

20 (A) in subparagraph (A), by striking “sub-
21 paragraph (A) or (B)” and inserting “subpara-
22 graph (A), (B), or (N)”;

23 (B) by adding at the end, the following
24 new subparagraph:

1 “(N) Aliens issued a Z–A visa or a Z–A de-
2 pendent visa (as those terms are defined in section
3 214A) who receive an adjustment of status to that
4 of an alien lawfully admitted for permanent resi-
5 dence.”.

6 (2) NUMERICAL LIMITATIONS ON INDIVIDUAL
7 FOREIGN STATES.—Section 202(a) (8 U.S.C. 1152)
8 is amended by adding at the end the following new
9 paragraph:

10 “(6) SPECIAL RULE FOR Z–A NON-
11 IMMIGRANTS.—An immigrant visa may be made
12 available to an alien issued a Z–A visa or a Z–A de-
13 pendent visa (as those terms are defined in section
14 214A) without regard to the numerical limitations of
15 this section.”.

16 (d) CLERICAL AMENDMENT.—The table of contents
17 of the Immigration and Nationality Act (8 U.S.C. 1101
18 et seq.) is amended by inserting after the item relating
19 to section 214 the following:

 “Sec. 214A. Admission of agricultural workers.”.

20 **SEC. 632. AGRICULTURAL WORKER IMMIGRATION STATUS**
21 **ADJUSTMENT ACCOUNT.**

22 Section 286 (8 U.S.C. 1356) is amended by adding
23 at the end the following new subsection:

24 “(y) AGRICULTURAL WORKER IMMIGRATION STATUS
25 ADJUSTMENT ACCOUNT.—

1 “(1) ESTABLISHMENT.—There is established in
2 the general fund of the Treasury a separate account,
3 which shall be known as the ‘Agricultural Worker
4 Immigration Status Adjustment Account’. Notwith-
5 standing any other provision of law, there shall be
6 deposited as offsetting receipts into the account all
7 fees collected under section 214A.

8 “(2) USE OF FEES.—The fees deposited into
9 the Agricultural Worker Immigration Status Adjust-
10 ment Account shall be used by the Secretary of
11 Homeland Security for processing applications made
12 by aliens seeking nonimmigrant status under section
13 101(a)(15)(Z–A) or for processing applications made
14 by such an alien who is seeking an adjustment of
15 status

16 “(3) AVAILABILITY OF FUNDS.—All amounts
17 deposited in the Agricultural Worker Immigration
18 Status Adjustment Account under this subsection
19 shall remain available until expended.”.

20 **SEC. 633. REGULATIONS, EFFECTIVE DATE, AUTHORIZA-**
21 **TION OF APPROPRIATIONS.**

22 (a) REGULATIONS.—The Secretary shall issue regula-
23 tions to carry out the amendments made by this subtitle
24 not later than the first day of the seventh month that be-
25 gins after the date of the enactment of this Act.

1 (b) EFFECTIVE DATE.—This subtitle shall take effect
2 on the date that regulations required by subsection (a) are
3 issued, regardless of whether such regulations are issued
4 on an interim basis or on any other basis.

5 (c) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to the Secretary such
7 sums as may be necessary to implement this subtitle and
8 the amendments made by this subtitle, including any sums
9 needed for costs associated with the initiation of such im-
10 plementation.

11 **PART II—CORRECTION OF SOCIAL SECURITY**

12 **RECORDS**

13 **SEC. 640. CORRECTION OF SOCIAL SECURITY RECORDS.**

14 (a) IN GENERAL.—Section 208(e)(1) of the Social
15 Security Act (42 U.S.C. 408(e)(1)) is amended—

16 (1) in subparagraph (B)(ii), by striking “or” at
17 the end;

18 (2) in subparagraph (C), by inserting “or” at
19 the end;

20 (3) by inserting after subparagraph (C) the fol-
21 lowing:

22 “(D) who is granted nonimmigrant status
23 pursuant to section 101(a)(15)(Z–A) of the Im-
24 migration and Nationality Act,”; and

1 (4) by striking “1990.” and inserting “1990, or
2 in the case of an alien described in subparagraph
3 (D), if such conduct is alleged to have occurred be-
4 fore the date on which the alien was granted such
5 nonimmigrant status.”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 subsection (a) shall take effect on the first day of the sev-
8 enth month that begins after the date of the enactment
9 of this Act.

10 **TITLE VII—MISCELLANEOUS**

11 **Subtitle A—Miscellaneous**

12 **Immigration Reform**

13 **SEC. 701. WAIVER OF REQUIREMENT FOR FINGERPRINTS**

14 **FOR MEMBERS OF THE ARMED FORCES.**

15 Notwithstanding any other provision of law or any
16 regulation, in the case of an alien currently serving in the
17 United States Armed Forces overseas and applying for
18 naturalization from overseas, the Secretary shall use the
19 fingerprints provided by the Secretary of Defense for such
20 alien, if the alien—

21 (1) may be naturalized pursuant to section 328
22 or 329 of the Immigration and Nationality Act (8
23 U.S.C. 1439 or 1440);

1 (2) was fingerprinted in accordance with the re-
2 quirements of the Secretary of Defense at the time
3 the alien enlisted in the Armed Forces; and

4 (3) submits the application to become a natu-
5 ralized citizen of the United States not later than 12
6 months after the date the alien is fingerprinted.

7 **SEC. 702. DECLARATION OF ENGLISH.**

8 (a) IN GENERAL.—English is the common language
9 of the United States.

10 (b) PRESERVING AND ENHANCING THE ROLE OF
11 THE ENGLISH LANGUAGE.—The Government of the
12 United States shall preserve and enhance the role of
13 English as the language of the United States. Nothing in
14 this Act shall diminish or expand any existing rights under
15 the laws of the United States relative to services or mate-
16 rials provided by the Government of the United States in
17 any language other than English.

18 (c) DEFINITION.—For the purposes of this section,
19 the term “law” includes provisions of the Constitution of
20 the United States, any Federal statute, judicial decisions
21 interpreting Federal statute, Federal regulations, and Ex-
22 ecutive Orders of the President.

1 **SEC. 703. PILOT PROJECT REGARDING IMMIGRATION**
2 **PRACTITIONER COMPLAINTS.**

3 (a) **IN GENERAL.**—Within 180 days of the date of
4 enactment of this Act, the Secretary, in consultation with
5 the Attorney General, shall institute a 3-year pilot project
6 to—

7 (1) encourage alien victims of immigration
8 practitioner fraud, and related crimes, to come for-
9 ward and file practitioner fraud complaints with the
10 Department;

11 (2) cooperate with Federal, State, and local law
12 enforcement officials who are responsible for inves-
13 tigating and prosecuting such crimes; and

14 (3) increase public awareness regarding the
15 problem of immigration practitioner fraud.

16 (b) **REPORTING.**—Not later than 1 year after the end
17 of the 3-year pilot project, the Secretary shall submit to
18 Congress a report that includes information concerning—

19 (1) the number of individuals who file practi-
20 tioner fraud complaints under the pilot program;

21 (2) the demographic characteristics, nationality,
22 and immigration status of the complainants;

23 (3) the number of indictments that result from
24 the pilot program; and

25 (4) the number of successful fraud prosecutions
26 that result from the pilot program.

1 **Subtitle B—Assimilation and**
2 **Naturalization**

3 **SEC. 711. THE OFFICE OF CITIZENSHIP AND INTEGRATION.**

4 Section 451(f) of the Homeland Security Act of 2002,
5 Public Law 107–296 (6 U.S.C. 271(f)), is amended—

6 (1) by inserting “and Immigrant Integration”
7 after “Office of Citizenship” each place it appears in
8 the text and in the heading; and

9 (2) in paragraph (2), by striking “instruction
10 and training on citizenship responsibilities” and in-
11 serting “civic integration, and instruction and train-
12 ing on citizenship responsibilities and requirements
13 for citizenship”.

14 **SEC. 712. SPECIAL PROVISIONS FOR ELDERLY IMMI-**
15 **GRANTS.**

16 Section 312(b) of the Immigration and Nationality
17 Act (8 U.S.C. 1423(b)) is amended by adding at the end
18 the following:

19 “(4) The requirements of subsection (a) shall
20 not apply to a person who is over 75 years of age
21 on the date of filing an application for naturalization
22 if the person expresses, in English or in the person’s
23 native language, at the time of examination for nat-
24 uralization that the person understands and agrees

1 to the elements of the oath required by section
2 337.”.

3 **SEC. 713. FUNDING FOR THE OFFICE OF CITIZENSHIP AND**
4 **IMMIGRANT INTEGRATION.**

5 There is authorized to be appropriated to the Sec-
6 retary \$100,000,000 to carry out the mission and oper-
7 ations of the Office of Citizenship and Immigrant Integra-
8 tion (as designated by section 711 of this Act) in the U.S.
9 Citizenship and Immigration Services, including oper-
10 ations relating to the patriotic integration of prospective
11 citizens into—

12 (1) the common values and traditions of the
13 United States, including an understanding of United
14 States history and the principles of the Constitution
15 of the United States; and

16 (2) the civic traditions of the United States, in-
17 cluding the Pledge of Allegiance, respect for the flag
18 of the United States, and voting in public elections.

19 **SEC. 714. CITIZENSHIP AND INTEGRATION COUNCILS.**

20 (a) GRANTS AUTHORIZED.—The Office of Citizen-
21 ship and Immigrant Integration shall provide grants to
22 States and municipalities for effective integration of immi-
23 grants into United States society through the creation of
24 New Americans Integration Councils.

25 (b) USE OF FUNDS.—

1 (1) IN GENERAL.—Grants awarded under this
2 section shall be used—

3 (A) to report on the status of new immi-
4 grants, lawful permanent residents, and citizens
5 within the State or municipality;

6 (B) to conduct a needs assessment, includ-
7 ing the availability of and demand for English
8 language services and instruction classes, for
9 new immigrants, lawful permanent residents, Z
10 nonimmigrants, and citizens;

11 (C) to convene public hearings and meet-
12 ings to assist in the development of a com-
13 prehensive plan to integrate new immigrants,
14 lawful permanent residents, Z nonimmigrants,
15 and citizens; and

16 (D) to develop a comprehensive plan to in-
17 tegrate new immigrants, lawful permanent resi-
18 dents, Z nonimmigrants, and citizens into
19 States and municipalities.

20 (2) MEMBERSHIP OF INTEGRATION COUN-
21 CILS.—New Americans Integration Councils estab-
22 lished under this section shall consist of no less than
23 10 and no more than 15 individuals from the fol-
24 lowing sectors:

25 (A) State and local government.

1 (B) Business.

2 (C) Faith-based organizations.

3 (D) Civic organizations.

4 (E) Philanthropic leaders.

5 (F) Nonprofit organizations with experi-
6 ence working with immigrant communities.

7 (c) REPORTING.—The Comptroller General of the
8 United States, in coordination with the Chief of the Office
9 of Citizenship and Immigrant Integration, shall conduct
10 an annual evaluation of the grant program established
11 under this section. The evaluation shall be used by the
12 Office of Citizenship and Immigrant Integration—

13 (1) to determine and improve upon the pro-
14 gram's effectiveness;

15 (2) to develop recommended best practices for
16 States and municipalities who receive grants under
17 this subsection; and

18 (3) to further define the program's goals and
19 objectives.

20 (d) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Office of Citizen-
22 ship and Immigrant Integration such sums as may be nec-
23 essary for each of the fiscal years 2008 through 2012 to
24 carry out this section.

1 **SEC. 715. HISTORY AND GOVERNMENT TEST.**

2 The Secretary shall incorporate a knowledge and un-
3 derstanding of the meaning of the oath of allegiance pro-
4 vided by section 337 of the Immigration and Nationality
5 Act (8 U.S.C. 1448) into the history and government test
6 given to applicants for citizenship. Nothing in this Act,
7 other than this section, shall be construed to influence the
8 naturalization test redesign process currently underway
9 under the direction of the United States Citizenship and
10 Immigration Services.

11 **SEC. 716. ENGLISH LEARNING PROGRAM.**

12 (a) IN GENERAL.—The Secretary of Education shall
13 develop an open source electronic program, useable on per-
14 sonal computers and through the Internet, that teaches
15 the English language at various levels of proficiency, up
16 to and including the ability to pass the Test of English
17 as a Foreign Language, to individuals inside the United
18 States whose primary language is a language other than
19 English. The Secretary shall make the program available
20 to the public free of charge, including by placing the pro-
21 gram on the Department of Education website, and shall
22 ensure that it is readily accessible to public libraries
23 throughout the United States. The program shall be fully
24 accessible, at a minimum, to speakers of the top 5 foreign
25 languages spoken in the United States.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to the Secretary of Edu-
3 cation such sums as are necessary to carry out the provi-
4 sions of this section.

5 **SEC. 717. GAO STUDY ON THE APPELLATE PROCESS FOR**
6 **IMMIGRATION APPEALS.**

7 (a) IN GENERAL.—The Comptroller General of the
8 United States shall, not later than 180 days after the date
9 of enactment of this Act, conduct a study on the appellate
10 process for immigration appeals.

11 (b) REQUIREMENTS.—In conducting the study under
12 subsection (a), the Comptroller General shall consider the
13 possibility of consolidating all appeals from the Board of
14 Immigration Appeals and habeas corpus petitions in immi-
15 gration cases into 1 United States Court of Appeals, by—

16 (1) consolidating all such appeals into an exist-
17 ing circuit court, such as the United States Court of
18 Appeals for the Federal Circuit;

19 (2) consolidating all such appeals into a central-
20 ized appellate court consisting of active circuit court
21 judges temporarily assigned from the various cir-
22 cuits, in a manner similar to the Foreign Intel-
23 ligence Surveillance Court or the Temporary Emer-
24 gency Court of Appeals; or

1 (3) implementing a mechanism by which a
2 panel of active circuit court judges shall have the au-
3 thority to reassign such appeals from circuits with
4 relatively high caseloads to circuits with relatively
5 low caseloads.

6 (c) **FACTORS TO CONSIDER.**—In conducting the
7 study under subsection (a), the Comptroller General, in
8 consultation with the Attorney General, the Secretary, and
9 the Director of the Judicial Conference of the United
10 States, shall consider—

11 (1) the resources needed for each alternative,
12 including judges, attorneys, and other support staff,
13 case management techniques including technological
14 requirements, physical infrastructure, and other pro-
15 cedural and logistical issues as appropriate;

16 (2) the impact of each plan on various circuits,
17 including the caseload of the circuit in general and
18 the caseload per panel;

19 (3) the possibility of utilizing case management
20 techniques to reduce the impact of any consolidation
21 option, such as requiring certificates of reviewability,
22 similar to procedures for habeas corpus and existing
23 summary dismissal procedures in local rules of the
24 courts of appeals;

1 (4) the effect of provisions of this Act on the
2 ability of the circuit courts to adjudicate such ap-
3 peals;

4 (5) the potential impact, if any, on litigants;
5 and

6 (6) other reforms to improve adjudication of
7 immigration matters, including appellate review of
8 motions to reopen and reconsider, and attorney fee
9 awards with respect to review of final orders of re-
10 moval.