WORKING DRAFT 5/21/07

SECTION-BY-SECTION SUMMARY OF BI-PARTISAN "BARGAIN" (Substitute Amendment for S. 1348)

Sec. 1. Effective Date Triggers

With the exception of the probationary benefits conferred by Section 601(h), relating to Z visas, and the admission of Y aliens under 101(a)(15)(Y)(ii)(I), the effective date of the Programs established by Title IV and Title VI, is the date the Secretary certifies in writing to the President and Congress that the following measures are funded, in place, and in operation:

1. **Staff Enhancements for Border Patrol**: CBP has increased the number of agents and support staff to 18,000 agents.
2. **Strong Border barriers**: The installation of at least 200 miles of vehicle barriers; 370 miles of fencing; and 70 ground-based radar and camera towers along the southern border, and 4 unmanned aerial vehicles.
3. **Catch and Return**: The detention and apprehension of all removable aliens apprehended crossing the southern border, except as specifically 'mandated' by law or humanitarian circumstances, and that ICE has the resources to maintain this practice, including resources to detain up to 27,500 non-citizens per day on an annual basis.
4. **Workplace Enforcement Tools**: DHS is using secure and effective identification tools to prevent unauthorized workers from obtaining jobs in the U.S. including the use of secure documentation that contains a photograph, biometrics, and/or complies with the REAL ID Act; and an electronic employment eligibility verification system that queries federal and state databases to restrict fraud, identity theft, and use of false social security numbers in the hiring process.
5. **Processing applications of Aliens**: DHS must be processing applications for Z status in a timely manner, including the background and security checks.

It is the sense of Congress that the border security and other measures can be completed within 18 months of enactment. The President must submit a report to Congress 90 days after enactment and every 90 days thereafter, detailing progress made in funding, appropriating and contractual agreements. The President must include specific spending recommendations if not enough progress is being made.

TITLE I – BORDER ENFORCEMENT

Subtitle A – Assets for Controlling United States Borders

Sec. 101. Additional Personnel. Sec. 101 requires the hiring of additional border personnel, subject to availability of appropriations in each FY from 2008 – 2012:

- **CBP:** An increase of not less 500 CBP officers, training, equipment and support;
- **Investigative personnel:** An increase of not less than 200 the number of positions for personnel within the Department assigned to investigate alien smuggling;

- **U.S. Deputy Marshalls:** An increase of not less than 50 U.S. Deputy Marshalls;
- **Recruitment of former military personnel:** CBP and DOD must recruit members of military who have separated from active duty and report to Congress on the implementation of such a recruitment program not later than 180 days after enactment.

- **Annual Increases:** The following increase in the number of positions for FYs 2008 through 2012 by not less than:

    - 2,000 in FY 2007;
    - 2,400 in FYs 2008 – 2012

- **Northern Border:** For FYs 2008-2012, the Secretary must assign a number of border patrol agents equal to not less than 20 percent of the net increase in border patrol agents, in addition to the border patrol agents assigned to the northern border during the previous fiscal year.

Sec. 102. Technological Assets. Requires an increase in technological assets, such as unmanned aerial vehicles, cameras, sensors, poles, and other technologies to achieve operational control of the U.S. border.

Sec. 103. Infrastructure. Requires the Secretary to construct 14 miles of fencing near the San Diego border, starting at the Pacific Ocean and extending eastward, of second and third fences, in addition to the existing reinforced fence.

Sec. 104. Ports of Entry. Authorizes the Secretary to construct additional ports of entry along the U.S. international land border, as necessary, and to make improvements of existing ones.

There is no Section 105 through Section 110

Subtitle B – Other Border Security Initiatives

Sec. 111. Biometric Entry-Exit System Requires the collection of biometric data and other information relating to immigration status, from aliens departing and entering the U.S. **Inspection of data of applicants for admission:** Immigration agents are authorized to collect biometric data from: applicants for admission; aliens who are paroled under section 212(d)(5); aliens seeking to land temporarily as alien crewmen; aliens seeking to transit through the U.S.; or to any lawful permanent resident entering the United States and who is not regarded as seeking admission pursuant to section 101(a)(13)(C). Refusal to provide biometric information when requested is a ground of inadmissibility, which can be waived by the Secretary. In fully implementing the biometric system, neither the APA nor other law relating to rulemaking, information collection or publication in the Federal Register has to be followed in implementing the entry and exit system.

Section 112. Unlawful Flight From Immigration or Customs Controls *Evading a checkpoint*: Anyone operating a motor vehicle or vessel who knowingly evades a checkpoint operated by DHS and knowingly or recklessly disregards or disobeys a lawful command of any law enforcement agent, can be imprisoned not more than 5 years, fined, or both. *Failure to stop:*

Anyone who fails to obey a DHS officer, can be fined, imprisoned not more than 2 years, or both. *Alternate penalties:* If person speeds or operates vehicle or vessel in dangerous or reckless manner, person can be fined or imprisoned for a period of not more than 10 years, or both. If violation creates a substantial and foreseeable risk of serious bodily injury or death, penalty is imprisonment of not more than 20 years, or a fine, or both. If violation caused serious bodily injury to anyone, person can be imprisoned 30 years or fined or both. If violation results in death, person can be fined, imprisoned for any term of years to life, or both. Conspirators are treated the same as the offender. Forfeiture procedures are laid out and definitions for terms used, are provided.

Section 113. Release of Aliens from Noncontiguous Territories. Amends 236(a)(2) relating to the apprehension and detention of aliens and provides that nationals of noncontiguous territories who have not been admitted or paroled, who are apprehended within 100 miles of the border or present a 'flight risk' may be released upon paying a bond of not less than $5000. There is no exception for asylum seekers who have passed credible fear determination.

Sec. 114. Seizure of Conveyance with Concealed Compartment: Expanding the definition of conveyances with hidden compartments subject to forfeiture. Amends Title 19 re the seizure and forfeiture of vehicles, vessels and other conveyances and instruments of international traffic and describes what acts constitute prima facie evidence of vehicles that are engaged in smuggling.

Subtitle C – Other Measures

Sec. 121. Deaths at the United States-Mexico Border. The CBP Commissioner must collect statistics on the total number of and causes of death. A report must be submitted that analyzes trends and makes recommendations to reduce the deaths.

Sec. 122. Border Security on Certain Federal Land. Defines "protected land" and "Secretary concerned" and authorizes additional CBP personnel, federal land resource training for CBP agents and unmanned aerial vehicles, remote video surveillance camera systems and sensors to gain operational control over international land borders of the U.S. and to prevent the entry of terrorists, unlawful aliens, narcotics, and other contraband into the U.S. Training is to be coordinated with the National Park Service, the US Fish and Wildlife Service or whatever relevant agency within the Dept. of the Interior. Damage to protected land related to illegal border activity must be analyzed and recommendations made re the appropriate cost recovery mechanism. A Border Protection Strategy must be developed jointly with Secretary and Secretaries of the Interior and the Secretary of Agriculture in a manner that bests protects the homeland.

Sec. 123 Secure Communication. Secretary is required to develop and implement a plan to improve the use of satellite communications and other means to ensure clear and secure two-way communication capabilities, among all Border Patrol agents and between all appropriate border security agencies of the Department and State, local and tribal law enforcement agencies.

Sec. 124. Unmanned Aircraft. Systems. Secretary must acquire and maintain additional unmanned aircraft for use on the border.

Sec. 125. Surveillance Technologies Programs. Secretary must develop a program to fully integrate and utilize aerial surveillance technologies, including unmanned aerial vehicles to enhance the international borders between the U.S. and Mexico and Canada, with the goal of ensuring continuous monitoring of each mile of the border. The Secretary must analyze current and proposed aerial surveillance technologies in consultation with numerous other agencies. Requires the use of a variety of aerial surveillance technologies. Secretary must also establish an "Integrated and Automated Surveillance Program" to procure additional unmanned aerial vehicles, cameras, sensors, poles, radar coverage and other technologies to achieve operational control of the border. In addition, the Secretary must develop appropriate standards to evaluate the performance of any contractor providing goods and services to carry out Integrated Program.

Sec. 126 Surveillance Plan. The Secretary must develop a comprehensive plan that includes, for example, assessments of existing technologies, a description of the compatibility of new surveillance with existing ones, and descriptions of the kind of surveillance to be employed.

Sec. 127. National Strategy for Border Security. Sec. 127 describes a very lengthy strategy for national security, which must include an implementation schedule, an assessment of the threat, a risk assessment for all U.S. ports of entry, an assessment of the legal requirements that prevent achieving operational control over the entire international land and maritime borders of the U.S., and an assessment of the most appropriate, practical and cost effective means of defending the borders. There are 13 points that must be included in the National Strategy.

Sec. 128. Border Patrol Training Capacity Review. The Comptroller General must conduct a study of the basic training provided to Border Patrol agents by DHS to ensure that such training is provided as efficiently and cost-effectively as possible.

Sec. 129. Biometric Data Enhancements. Requires the Secretary, not later than October 1, 2008, in consultation with the Attorney General, to enhance connectivity between the Automated Biometric Fingerprint Identification [IDENT] and Integrated Automated Fingerprint Identification System [IAFIS] to ensure expeditious searches and that all fingerprints are entered in the integrated entry and exit data system.

Sec. 130. U.S. Visit System. Requires DHS to submit a timeline for equipping all land borders with the US-VISIT entry/exit system; for developing and deploying the exit component of the US-VISIT system at all land borders; and for making all border screening systems interoperable.

Sec. 131. Document Fraud Detection. The Secretary is required to provide training to CBP officers on identifying and detecting fraudulent travel documents; to provide all CBP officers with access to the Forensic Documents Laboratory; and to require an assessment of and report to Congress on the Forensic Document Laboratory. It authorizes the appropriation of such sums as may be necessary to carry out the section.

Sec. 132. Border Relief Grant Program. The Secretary is authorized to award competitive grants, subject to the availability of appropriations, to eligible law enforcement agencies to assist such agencies in addressing: (1) criminal activity that occurs in their jurisdictions due to their proximity to the border, and (2) the impact of any lack of security along the border. Funds may only be used to provide additional resources such as, equipment, additional personnel, technology, and operational costs such as transportation and overtime.

Sec. 133. Port of Entry Infrastructure Assessment Study. Reports must be submitted not later than January 31 of every year, in consultation with USCBP to identify the port of entry infrastructure and technology improvement projects that would enhance border security and facilitate the flow of legitimate commerce if implemented.

Sec. 134. National Land Border Security Plan. The Secretary is required prepare a report regarding the vulnerability assessment of each port of entry located on the northern or southern border.

Sec. 135. Port of Entry Technology Demonstration. The Secretary must carry out a technology demonstration program to test, refine, and evaluate new port of entry technologies and to train personnel under realistic conditions. Detailed requirements regarding the testing facilities, the technology, the demonstration sites, and the different requirements are laid out.

Sec. 136. Combating Human Smuggling. Requires ICE, CBP, and other Federal, state, local, and tribal authorities to improve coordination efforts to combat smuggling, to include interoperability of data bases, personnel training, programs to target networks engaged in smuggling, and utilization of visas for victims of trafficking and other crimes and joint measures with the Secretary of State to enhance intelligence sharing. A report must be submitted to Congress not later than one year after implementing the plan.

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. Requires the Secretary to construct or acquire, in addition to existing facilities, at least 20 detention facilities with enough capacity to detain a combined total of not less than 20000 individuals at any time, for aliens detained pending removal or a decision of removal. The Secretary is also required to fully utilize all possible options to cost effectively increase available detention capacities.

Sec. 143. United States-Mexico Border Enforcement Review Commission. A new Commission to be called the United States-Mexico Border Enforcement Review Commission" which will study overall enforcement strategies, programs and policies. The Commission shall have 17 voting members who will be appointed and who will consist of the Governors of California, New Mexico, Arizona, and Texas, in addition to other members. Not more than 2 members of the Commission appointed by the Governors may be members of the same political party. The Commission shall make recommendations regarding border enforcement policies, strategies and programs, including recommendations regarding: the protection of human and civil rights of community residents and migrants along the international border between the U.S. and Mexico; cross border traffic; the effect on the environment of enforcement operations along the border; cross border traffic and commerce, among others. Members on the Commission shall

not receive pay. Not later than two years after the date of the first meeting, the Commission shall submit a report to the President. The Commission sunsets 90 days after the report is submitted to the President, unless it is reauthorized.

Title II – Interior Enforcement

Sec. 201. Additional Immigration Personnel. Increases in personnel in each of the FY 2008 – 2012, subject to availability of appropriations, as follows:

- **DHS** - trial attorneys and USCIS adjudicators, not less than 100 compared to the number of such positions for which funds were made available in the preceding year.
- **DOJ** - law clerks for immigration judges and BIA members, not less than one per judge and member;
- **Attorneys for Office of Immigration Litigation and for U.S. Attorneys -** not less than 50 compared to the number of such positions for which funds were made available in the preceding fiscal year;
- **Immigration judges** - increase by not less than 20 the number of full-time immigration judges and by not less than 80 the number of positions for personnel to support the immigration judges, compared to the number of such positions for which funds were made available during preceding fiscal year;
- **BIA members -** increase by 10, the number of Board members over the number of members serving on the date of enactment; **BIA staff attorneys**, increase by not less than 20 compared to the number of such positions for which funds were made available during the preceding fiscal year and increase the number of **support personnel** to support them by not less than 10 compared to the number of such positions for which funds were made available during the preceding fiscal year.
- **Administrative Office of the U.S. Courts** - increase the number of attorneys in Federal Defenders Program who litigate criminal immigration cases by not less than 50 compared to the number of such positions for which funds were made available during the preceding fiscal year.
- **Legal Orientation Program,** shall continue to be operated by the Director of EOIR, to provide basic immigration information on a nationwide basis.

Sec. 202. Detention and Removal of Aliens Ordered Removed. Amends section 241(a) of the INA.

- **Beginning of period:** removal date is the expiration date of the stay of removal if a court, the BIA or an immigration judge orders a stay of removal.
- **Extension of Period:** Removal period is extended beyond 90 days and the alien may remain in custody during the extended removal period if:
    - the alien fails to make all reasonable efforts to comply with the removal order, or
    - does not fully cooperate with efforts to establish alien's identity and carry out removal order including failing to make timely application in good faith for travel.
- **Tolling of period**: If the alien is not in custody, the removal period does not begin until the alien is taken into custody.

- If the Secretary transfers custody to another Federal agency, a state or local government agency, the removal period is tolled and begins on the date on which the alien is returned to the Secretary's custody.
- If a court, the BIA or immigration judge order a stay of removal of an alien subject to an administrative final order of removal, the Secretary may detain the alien during the pendency of such stay of removal.

- **Supervision after 90 day period:** Alien subject to supervision must obey reasonable restrictions or perform affirmative acts to prevent alien from absconding; for protection of community; or other purposes related to enforcement of immigration laws.
- **Parole:** Applicants for admission may be paroled and not returned to custody unless the alien 1) violates conditions of parole; or 2) removal becomes reasonably foreseeable.
- **Additional Rules for Detention or Release:**
  - Secretary must establish Administrative Review Process for aliens who effected an entry and cooperate with removal process to determine whether alien should be detained or released. Secretary may consider any evidence submitted by alien and any other evidence submitted by DOS or other Federal agency.
- **Detention beyond 90 day removal period**:** Authorized in Secretary's discretion until alien's removal if significant likelihood exists that alien will be removed in reasonable foreseeable future or if certification in writing that
  - 1) alien has highly contagious disease;
  - 2) that release of alien would have serious adverse foreign policy consequences; 3) there is reason to believe that release would threaten national security of U.S.; 4) that release of alien would threaten safety of community or any person and that conditions of release will not reasonably be expected to ensure safety of community or person and
    - alien was convicted of 1 or more aggravated felonies or of conspiracy to do so for aggregate term of imprisonment of at least 5 years; or
    - alien committed a crime of violence and due to mental condition or personality disorder is likely to engage in acts of violence in the future; or that release would threaten safety of community or any person and alien was convicted of 1 or more aggravated felonies for which alien was sentenced to an aggregate term of imprisonment of not less than 1 year. ** This period is now 6 months under *Zadvydas*
  - **Attorney General May Review** extension of removal detention. AG and Secretary shall promulgate regulations.
  - **Renewal and Certification:** Secretary may renew certification every 6 months. If certification not renewed, alien shall be released. If Secretary authorizes an extension of detention, alien may seek review before AG. Secretary may request that AG provide a hearing.
- **Redetention:** Authorized if alien does not comply with conditions of release or if Secretary determines that alien can be detained.
- **Detention and Review Process for aliens who effected an entry and fail to cooperate:** Alien must be detained until alien makes all reasonable efforts to comply with removal order and to cooperate fully with Secretary's efforts.

- **Review process for Aliens who have not effected an entry:** Secretary shall follow guidelines in 8 CFR 241.4 when detaining aliens who have not effected an entry. May also follow the guidelines presented here.
- **Judicial review** of any action or decision regarding detention and review restricted to habeas petitions in the U.S. District Courts and only where all administrative remedies have been satisfied.
- **Effective Date**: Date of enactment and shall apply to any alien subject to a final administrative removal, deportation or exclusion order that was issued before, on or after the date of enactment unless (a) that order was issued and the alien was subsequently released or paroled before the enactment of this Act and (b) the alien has complied with and remains in compliance with the terms and conditions of that release or parole; and (ii) any act or condition occurring or existing before, on, or after the date of the enactment of this Act.

- **Sec. 203. Aggravated Felony.** Amends definition of "Aggravated Felony". Definition applies to any offense, Federal or State, or a violation of the law in a foreign country for which a term of imprisonment was completed within the previous 15 years, and regardless of whether the conviction was entered on, before or after September 30, 1996. It also provides that the murder, rape, or sexual abuse of a minor will be considered an aggravated felony whether or not the minority of the victim is established by evidence contained in the record of conviction or by extrinsic evidence.
- Amends the alien smuggling aggravated felony ground to include all of INA § 274(a), relating to alien smuggling. Exception for first offense for assisting immediate family remains intact.
- The amendments take effect on the date of enactment. IIRAIRA amendments to the Act shall continue to apply whether the conviction occurred on, before, or after the date of enactment.

Sec. 205. Increased Criminal Penalties Related to Gang Violence and Removal. Adds the term "Criminal Gang" to the list of definitions in the Act. This section defines "Criminal Gang" as an "ongoing group, club, organization or association of 5 or more persons that has as one of its primary purposes the commission of one or more of the criminal offenses as described below **and** the members of which engage, or have engaged within the past 5 years in a continuing series of offenses. The list of offenses under Federal or State law and regardless of whether charged, and whether committed before, on, or after the effective date, include:

- felony drug offenses;
- felony offense involving firearms or explosives;
- offenses under sections 274, 277 or 278, relating to harboring, aiding or assisting aliens to enter the U.S.; or the importation of aliens for an 'immoral purpose';
- felony crimes of violence, as defined in section 16 of Title 18, which is punishable by a sentence of imprisonment of five years or more;
- crimes involving the obstruction of justice, tampering with or retaliating against a witness, victim, informant, or burglary; and
- any conduct punishable under numerous sections in Title 18 relating to fraud, peonage, slavery, trafficking, interstate travel relating to racketeering; laundering monetary instruments; monetary transactions in property from unlawful activity, and activities

relating to stolen motor vehicles or property. Conspiracy to commit these offenses is also included.

Inadmissible and Deportable: Aliens associated with criminal gangs are inadmissible and deportable if participated in a criminal gang, knowing or having reason to know such participation promoted, furthered, aided, or supported the illegal activity of the criminal gang

Aliens with TPS (temporary protected status) who participate in or at any time after admission participated in criminal gang activities knowing or having reason to know that such participation will promote, further, aid, or support the illegal activity of the criminal gang are not eligible for TPS. Secretary may detain such individual whenever appropriate.

Increased penalties related to removal: Amends Section 243 relating to penalties for failure to depart under either section 212(a) or 237(a). Increases the term of imprisonment to *not more than five years.* The term of imprisonment for willful failure to comply with the terms of release under supervision increases to a term of imprisonment of not more than five years (or 10 if member of some classes of aliens and fined under 18 USC.

- Amends the firearm ground at 18 USC § 924(c) to include an "alien smuggling crime" relating to the prohibition of carrying or using firearms during and in relation to an Alien Smuggling Crime.

Sec. 206. Illegal Entry. Amends Sec. 275. Knowingly entering or crossing the US border, eluding examination or inspection by an immigration officer, including refusing to stop when ordered, or knowingly entering by making a knowingly false or misleading statement or knowing concealment of a material fact is a criminal offense subject to the following penalties:

- Fine or imprisonment of not more than 6 months, or both.
- Fine, imprisonment for not more than 2 years or both for a second or subsequent violation or following an order of voluntary departure.
- *Penalty for alien convicted of 3 or more misdemeanors or felony: fined and imprisoned for not more than 10 years or both.
- *Penalty for alien convicted of a felony for which alien served a term of imprisonment of not less than 30 months: fined, imprisoned not more than 15 years or both.
- *Penalty for alien convicted of felony and alien served term of imprisonment: fined, imprisonment for not more than 20 years or both.

***Prior Convictions:** The convictions in these cases must be alleged in the indictment/information and proven beyond a reasonable doubt.

Offenses under this section continue until the alien is discovered in the U.S. by an immigration officer.

Improper time and place penalties: Aliens apprehended while entering or attempting to, or knowingly crossing the border are subject to a civil penalty of not less than $50 nor more than $250 for each crossing and 2x the amount if previously fined, plus any other criminal penalties.

Sec. 207. Illegal Reentry. Adds an affirmative defense for aliens who are under the age of 18 and who were not convicted of a crime or adjudicated a delinquent minor by a court for conduct that would have been a felony if committed by an adult. Amends section 276.

Reentry after Removal: May be fined, imprisoned not more than two years or both.

Reentry of Criminal Offenders:

- Penalty is a fine, imprisonment for up to 10 years, or both for alien, who reenters after removal and was convicted of 3 or more misdemeanors or a felony before removal.
- May be fined, imprisoned for not more than 15 years or both if alien who reenters was convicted of a felony before removal or departure for which alien was sentenced to a term of imprisonment of not less than 30 months.
- May be fined, imprisoned for not more than 20 years if convicted of felony before such removal for which alien was sentenced to term of imprisonment of not less than 60 months.
- May be fined, imprisoned for not more than 20 years or both if alien who reenters was convicted for 3 felonies before removal or departure.
- May be fined, imprisoned for not more than 20 years or both if alien who reenters was convicted before such removal, of murder, rape, kidnapping or felony offense described in 18 U.S.C. Chapter 77 (relating to peonage and slavery) or 113B (relating to terrorism).

Reentry after Repeated Removal: If deported, denied admission, excluded or removed 3 or more times and try to reenter or are found in the US, may be fined, imprisoned not more than 10 years or both.

Prior Convictions: Must be elements of crimes and penalties only apply if crimes are alleged in indictment/information and proven beyond a reasonable doubt or admitted by the defendant.

Affirmative Defenses: **1)** If application for Consent to Apply for Readmission before alleged violation was granted; 2) If alien previously denied admission and removed and the alien was not required to obtain advance consent and alien complied with all other laws and regulations; or 3) at the time of the prior exclusion, deportation, removal or denial of admission, the alien was under the age of 18 and had not been convicted of a crime or adjudicated a delinquent minor by a court of the U.S., state or territory for conduct that would constitute a felony if committed by an adult.

Limitation of Collateral Attack: Aliens cannot challenge the validity of any prior removal order concerning the alien in a criminal proceeding unless alien demonstrates by "clear and convincing evidence" that the alien exhausted all administrative remedies that may have been available to seek relief against the order; that the removal proceedings at which the order was issued improperly deprived alien of the opportunity for judicial review; and entry of the order was fundamentally unfair.

Reentry of Alien Removed Prior to Completion of Term of Imprisonment: If alien comes back or attempts to cross, alien has to finish incarceration for remainder of sentence which was pending at the time of deportation w/o any reduction for parole or supervised release unless alien affirmatively demonstrates that Secretary consented to reentry. Alien is subject to other penalties relating to reentry of removed alien.

Limitation: It is not "aiding and abetting" for someone to provide an alien with emergency humanitarian assistance, including emergency medical care and food, or to transport an alien to a location where such assistance **can be rendered without compensation or the expectation of compensation.**

Definitions:

Felony: Any criminal offense punishable by a term of imprisonment of more than one year under the laws of the U.S., any state or a foreign government.

Misdemeanor: Any criminal offense punishable by a term of imprisonment of not more than one year under applicable laws.

Removal: Denial of admission, exclusion, deportation, or removal or any agreement by which an alien stipulates or agrees to exclusion, deportation or removal.

State: State of the U.S., DC, and any commonwealth, territory or possession of the U.S.

Sec. 208. Reform of Passport, Visa and Immigration Fraud Offenses This section amends a number of sections under 18 USC, Chapter 75, sections 1541 through 1553. The definition of "**Marriage Fraud" is detailed in Sec. 1547 along with the applicable penalties.** Section 1547 imposes either a fine or imprisonment of not more than 10 years or both, for anyone who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws or knowingly misrepresents the existence or circumstances of a marriage in an application or document authorized by the immigration laws or during any immigration proceeding conducted by an administrative adjudicator, (examiner, officer, consular officer, immigration judge, or BIA panel member). There are additional penalties for multiple marriages.

Section 208 would amend 18 U.S.C., Chapter 75 to include a host of new passport, document-related, and marriage fraud offenses and, in some instances, would reduce the level of intent required (which, by extension, expands the number of people who can be prosecuted). Examples of the kinds of activities that would be made criminal under this section include an alien who:

- knowingly uses any passport to enter or to attempt to enter the United States;
- knowingly uses ANY immigration document issued or designed for the use of another;
- knowingly makes a false statement or representation in an application for a U.S. passport (including supporting documentation); and

- Knowingly furnishes a passport to a person for the use when such person is not the person for whom the passport was designed or issued.

Section 208 also would create a new chapter of definitions in 18 U.S.C. chapter 75. For example, "falsely make" would mean to prepare or complete an immigration document with "knowledge or in reckless disregard" of the fact that the document contains a statement that is false. "False statement or representation" would be defined to include "a personation or an omission."

This section would punish people who commit offenses outside the U.S. covered in chapter 75 if it relates to an immigration document, commerce, etc.

The AG is authorized to develop binding prosecution guidelines for federal prosecutors to ensure that any prosecution of an alien's entry into the U.S. by fraud is consistent with Article 31(1) of the 1951 Convention Relating to the Status of Refugees. There is no private right of action under the deadlines.

Sec. 209. Inadmissibility and Removal for Passport and Immigration Fraud Offenses. Section 209 would amend the INA inadmissibility and removal grounds to make violations and attempts and conspiracies to violate provisions under section 208 both removable and inadmissible grounds in proceedings pending on or after the date of enactment, with respect to conduct occurring on or after that date.

Sec. 210. Incarceration of Criminal Aliens. Section 210 would mandate the continuation of the Institutional Removal Program (IRP) or the development of another program to identify removable persons in federal and state correctional facilities; ensure that they are not released into the community; and to remove them when they complete their sentences. This program is to be expanded to all 50 states. Technology, such as videoconferencing to the maximum extent practicable to make IRP available in remote locations is required. A report to Congress is due not later than 6 months.

Sec. 211. Encouraging Aliens to Depart Voluntarily.

- **Voluntary Departure instead of Removal,** at the alien's expense, rather than being placed in proceedings for a period not longer than 120 days. The alien may be required to post a voluntary departure bond.
- **Before the Conclusion of Removal Proceedings**: After proceedings begin, an alien can depart voluntarily at alien's own expense, before the conclusion of proceedings before an immigration judge, for a period not to exceed 60 days but only if the alien can show that he/she has the means to depart and intends to do so. Aliens must post a voluntary departure bond in an amount sufficient to ensure their departure. An immigration judge may waive the requirement in individual cases if the judge finds that the alien has presented compelling evidence that posting the bond will cause serious financial hardship.
- **Limits post-hearing voluntary departure to 45 days**

- **Conditions of Voluntary Departure:** Only granted as part of an affirmative agreement. If alien agrees to depart, Secretary may agree to a reduction in period of inadmissibility under INA 212(a)(9)(A) or (B)(i). Agreement by alien during removal proceedings under Section 240 or at the conclusion of such proceedings must be presented on the record to the judge. The judge must advise the alien of the consequences of voluntary departure.
- **Failure to comply with such Agreement:** Alien is not eligible for benefits of agreement if alien does not leave within time frame or comply with terms and is subject to penalties and an alternate order of removal. **Civil penalty** of $3,000, which can be collected at any time and by whatever means. Alien is ineligible during time alien remains in the U.S. and for a period of 10 years thereafter, for adjustment, cancellation of removal, change in nonimmigrant classification, or registry for the time that s/he remains in the United States. Alien can file motions to reopen removal proceedings during time period. Alien can file motions based on an application for withholding of removal or torture relief if the motion presents material evidence of changed country conditions arising after the order granting voluntary departure and there is a sufficient showing of eligibility for such protection.
- Alien is not eligible to depart voluntarily if alien was previously given such a chance. The Secretary can promulgate regulations to limit eligibility or impose additional conditions for voluntary departure.
- No court has jurisdiction to affect, reinstate, enjoin, delay, stay or toll the period allowed for voluntary departure, notwithstanding sections of the Act, or habeas corpus provisions.

Section 212. Deterring Aliens Ordered Removed from Remaining in the United States Unlawfully. Certain aliens previously removed who seek admission not later than five years after the date of removal (or not later than 20 years after the alien's second or subsequent removal) are inadmissible. Other aliens who were ordered removed under section 240 or left the U.S. when an order of removal was outstanding, and who seeks admission not later than 10 years of that date, are inadmissible.

Bar on discretionary Relief: Civil Penalties for Failure to Depart –Unless alien files a timely motion to reconsider under INA 240(c)(6), or file a timely motion to reopen under section 240(c)(7) which is granted, alien shall be ineligible for 10 years after departure. Alien is not precluded from filing motion to reopen to seek withholding of removal under INA 241(b)(3) or protection against torture but only if the non-citizen presents proof of changed country conditions arising after the date of the final removal order.

Sec. 213. Prohibition of the Sale of Firearms to, or the Possession of Firearms by Certain Aliens. Prohibits sale to or possession by alien not lawfully admitted for permanent residence or lawfully admitted but not as an alien lawfully admitted for permanent resident.

Sec. 214. Uniform Statute of Limitations for Certain Immigration, Passport and Naturalization Offenses. Section 214 would establish a statute of limitations for all immigration crimes, including willful failure to register or to provide a change of address, as well as crimes involving trafficking in persons, for a period not later than ten years. Section 214 also would extend the same statute of limitations to attempts at such crimes.

Sec. 215. Diplomatic Security Services Section 215 would expand the authority of special agents of the Department of State and the Foreign Service to investigate identity theft and document fraud relating to the programs of the Department of State, peonage and slavery and federal offenses committed in the special maritime and territorial jurisdiction of the United States.

Sec. 216. Streamlined Processing of Background Checks Conducted for Immigration Benefits. Secretary must establish a task force to resolve cases where an application or benefit conferred under the Act was delayed due to an outstanding background check for more than two years from date it was initially filed. Describes membership requirements, appropriations, and report requirements.

Sec. 217. State Criminal Alien Assistance Program (SCAAP). Section 217 addresses reimbursement costs to the states and units of local government for costs of processing undocumented criminal aliens for indigent defense, criminal prosecution, autopsies, translators, and court costs. Appropriations authorized of $400,000 for each FY 2008 – 2012 and other compensation upon request.

Sec. 218. Transportation and Processing of Illegal Aliens Apprehended by State and Local Law Enforcement Officers. Secretary may provide transportation when officers take illegal aliens apprehended by state and local law enforcement officers into custody for processing.

Sec. 219. Reducing Illegal Immigration and Alien Smuggling on Tribal Lands. Section 219 would authorize grants to Indian tribes with land adjacent to an international border that may have been adversely affected by illegal immigration. The grants may be used for law enforcement, health care, environmental restoration and preserving cultural resources. It would further provide that within 180 days of enactment, the Secretary of DHS shall submit a report, including information on the level of access of Border patrol agents on tribal lands, the extent to which enforcement could be improved through enhanced access, and a strategy for obtaining access and identifying grants provided to Indian tribes that relate to border security.

Sec. 220. Alternatives to Detention. Section 220 would require the Secretary to conduct a study of the effectiveness of alternatives to detention, including electronic monitoring devices and intensive supervision programs in ensuring alien appearance at court and in compliance with removal orders.

Sec. 221. State and Local Enforcement of Immigration Laws. INA § 287(g) requires the DHS to reimburse state and local governments for costs incurred for training and equipment related to enforcement of Federal immigration laws. Appropriations are authorized.

Sec. 222. Protecting Immigrants from Convicted Sex Offenders. Amends INA § 204(a)(1) to bar individuals convicted of the sex offenses in § 101(a)(43)(A), (I) and (K) from sponsoring family members unless the DHS determines that the convicted citizen or permanent resident poses no risk to the alien being sponsored.

Sec. 223. Law Enforcement Authority of States and Political subdivisions and transfer to Federal custody. Adds new Section 240D regarding the ability of law enforcement officers in a state or political subdivision who arrest or apprehend an alien, to request the Secretary to take the alien into Federal custody. Spells out the procedures the Secretary must follow. Reimbursement costs to the states are authorized and the cost computation formula to be followed. A distinction is made between incarceration in a federal facility, security, separating aliens with civil violations from criminal ones; the necessity of a schedule for the transportation of aliens; and it authorizes the Secretary to enter into contracts. One federal, state or local prison in each state (or detention facility) must be designated as the central facility for transfer to the Department of Homeland Security.

Requires that the federal facility have appropriate security and that "if practicable," noncitizens detained solely for civil violations of Federal immigration law are separated from others.

Prior to entering into a contract or cooperative agreement, the Secretary of the Department of Homeland Security "shall determine whether the State … has in place any formal or informal policy that violates section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373)." (relating to communication between government agencies and the Department of Homeland Security)

Sec. 224. Laundering of Monetary Instruments. Adds alien smuggling and trafficking to the list of crimes the financial proceeds from which are subject to the money laundering provisions of 18 USC.

Sec. 225. Cooperative Enforcement Programs. Within 2 years after enactment the Secretary of the Department of Homeland Security shall negotiate and execute, where practicable, a cooperative enforcement agreement described in INA § 287(g) with at least 1 law enforcement agency in each State, to train law enforcement officers in the detection and apprehension of individuals engaged in transporting, harboring, sheltering, or encouraging aliens in violation of section 274 of such Act (8 U.S.C. 1324)

Sec. 226. Expansion of the Justice Prisoner and Alien Transfer System. Section 235 would require the Attorney General, not later than 60 days after the date of enactment, to issue a directive to expand the Justice Prisoner and Alien Transfer System (JPATS) so that the System provides additional services with respect to aliens who are unlawfully present in the United States. Such expansion should include: (1) increasing the daily operations of such System with buses and air hubs in 3 geographic regions; (2) allocating a set number of seats for such aliens for each metropolitan area; (3) allowing metropolitan areas to trade or give some of seats allocated to them under the System for such aliens to other areas in their region based on the transportation needs of each area; and (4) requiring an annual report that analyzes of the number of seats that each metropolitan area is allocated under this System for such aliens.

Sec. 228. Directive to the Sentencing Commission. Sentencing Commission must come up with guidelines and commentaries on sentencing for document and passport fraud.

Sec. 229. Cancellation of Visas. Allows cancellation of all non-immigrant visas based on the alien's violation of the terms of the nonimmigrant classification. This gives DHS broader authority to cancel visas.

TITLE III: Employment Verification System

Title III re-writes section 274A of the INA, which makes it illegal to knowingly employ undocumented immigrants. In general, title III strengthens enforcement by tightening employment verification, improving systems through which employers verify workers' identity and work eligibility (including by requiring employers to participate in an electronic eligibility verification system), and increasing penalties for non-compliance.

Making Employment of Unauthorized Aliens Unlawful

In general, it is unlawful for an employer to hire, recruit, refer for a fee, or continue to employ an alien in the United States knowing or in reckless disregard that the alien is unauthorized with respect to such employment. It is also illegal to knowingly employ an unauthorized workers through contract. Employers may establish an affirmative defense that they have complied with this title by following required procedures for document review and, when required to do so, electronic eligibility verification.

Document Verification Requirements

As in the current system, employers would be required to verify the identity and work authorization of employees by examining relevant documents, and attest to the employee's work authorization under penalty of perjury. Employees may present either: a US passport or passport card, a permanent resident card ("green card") or employment authorization card, or a temporary immigration benefits card under the Z-visa; or an identity document (in most cases, a REAL ID driver's license or a non-REAL ID license plus birth certificate, naturalization certificate, or similar document) along with an employment authorization document (social security card). Non-REAL ID driver's licenses may not be used after June 1, 2013. Employees must also attest to the veracity of these documents under penalty of perjury.

Employers are required to keep records of document verification for seven years after the date of hire or two years after an employee is terminated, whichever is earlier. Employers must also keep copies of employee documents as well as records related to Social Security no-match letters.

Electronic Eligibility Verification System

The government will establish an electronic verification system. The Secretary of DHS may require any employer to participate in the system immediately upon passage of the Act, and must require additional employers to participate within six months based upon risks to critical infrastructure, national security, immigration enforcement, or homeland security needs. All employers must run new hires through the EEVS within 18 months, and must re-verify all existing employees no later than three years after passage of the Act.

Employers must register with the EEVS and receive training prior to participating. Employers submit employees' names, social security numbers, and alien numbers (non-citizens only) no earlier than the date of hire and no later than the first date of employment. Re-verification must occur on the date work authorization expires in the case of employees with limited work authorization, including Z-visas.

The System will return a confirmation, non-confirmation, or further action notice immediately in most cases, and always within three days. If the employee is confirmed, the employer records the confirmation and the process ends. If the employee receives a further action notice, the employer is required to communicate this information to the employee. The employee then has ten days to contact the appropriate agency to contest the further action notice or the System will issue a final non-confirmation. Employment must be terminated in the case of a final non-confirmation.

The System will provide a final confirmation or non-confirmation within 10 days of the employee's contest. As long as the employee is taking steps required under the further action notice, the Secretary must extend the period of investigation until a final confirmation or non-confirmation is issued. An employer may not terminate an employee on the basis of work eligibility until a non-confirmation becomes final. An employer is not required to terminate a non-confirmed employee if the employee has filed an administrative or judicial appeal and the Secretary or Commissioner or a court of appeals has issued a stay of non-confirmation on the grounds that the appeal is frivolous, unlikely to succeed on the merits, or filed for purposes of delay

Employee protections

An employer may not use the EEVS to verify an employee prior to an offer of employment, may not require the individual to self-verify as a condition of an offer of employment, may not terminate an employee solely as the result of a further action notice, or require additional documents. The employer also may not take any of the following actions in response to a further action notice: reduce salary or other compensation, suspend the employee without pay, reduce hours (if the reduction is accompanied by a reduction in salary), deny necessary training. Employers must enforce document verification procedures in an even manner without regard to the employee's national origin or citizenship status.

The Secretary of DHS will establish a system for oversight and enforcement of these requirements (bypassing the existing Office of Special Counsel for Unfair Immigration-Related Employment Practices) and shall work with the Secretary of Labor to establish and maintain an employee complaint procedure. Fines for violating these provisions are up to $10,000 for each violation. The Secretary of Homeland Security will disseminate information to employers and employees about these protections.

Employers may not require an employee to post a bond or security (indemnity bond) to provide a financial guarantee or indemnity against a potential liability arising from the hiring, recruiting, or referring for a fee of the individual.

Administrative and Judicial Review for Employees

Following a final non-confirmation, an employee has 15 days to file an administrative appeal of such notice with the Commissioner of Social Security (in the case of US citizens) or the Secretary of DHS (non-citizens) based upon information the individual has provided as well as any additional evidence not previously considered. The Secretary or Commissioner shall stay the final non-confirmation unless the Secretary or the Commissioner determines that the administrative appeal is frivolous, unlikely to succeed on the merits, or filed for purposes of delay. In this case, the employer cannot terminate the employee until the administrative appeal is concluded. Administrative relief is limited to an order upholding, reversing, modifying, amending, or setting aside the final non-confirmation; there is no compensation for lost wages or other money damages of any kind.

Within 30 days of an administrative review decision, an employee may file a petition for judicial review with the US Court of Appeals for the judicial circuit in which the employee resides. An employee must file a brief not later than 40 days after the date on which the administrative record is available. The court of appeals shall decide the petition only on the administrative record on which the final nonconfirmation is based. The burden is on the petitioner to show that the final nonconfirmation decision was arbitrary, capricious, not supported by substantial evidence, or otherwise not in accordance with law. Administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.

Management of the EEVS

The System shall be designed to maximize reliability and ease of use, to respond accurately to queries, to protect private information, to allow for auditing and use of data mining to detect identity fraud, and to display a digital photograph of the employee based on records maintained by federal, state, and territorial agencies. DHS shall have access to data kept by these other agencies, including Social Security and IRS data. The Secretary and other federal and state agencies shall develop procedures to regulate this access and protect private data; no specific limitations are discussed in the title.

Limits on use of EEVS and prohibition on unauthorized use

The use of the system shall be limited to enforcement of immigration laws, enforcement and administration of anti-terrorism laws, and enforcement of federal criminal law relating to functions of EEVS, including prohibitions on forgery, fraud, and identity theft.Any employee who knowingly uses or discloses EEVS data for unauthorized purposes is subject to a fine of $5,000 - $50,000 per violation

Compliance

The secretary shall establish procedures for individuals to file complaints respecting potential violations of this title and to investigate those complaints. Immigration officers shall have reasonable access to examine employment records, and may compel witnesses by subpoena.

If the secretary believes there has been a civil violation of these requirements, the secretary shall issue a pre-penalty notice disclosing the material facts and alleged violations. Employers may file a petition for the remission or mitigation of fines or penalties within 15 days, including any relevant evidence of good faith compliance, etc. After considering an employer petition, if the secretary determines there was a violation the secretary issues a written penalty claim, which may include:

- Civil penalties for hiring or continuing to employ an unauthorized alien: $5,000 for each unauthorized alien; $10,000 for each alien if the employer has previously been fined; $25,000 for each unauthorized alien if the employer has been fined more than once before; $75,000 for each unauthorized alien if the employer has been fined more than twice before
- Record-keeping or verification practices violations: $1,000 per violation; $2,000 per violation if fined once before; $5,000 if fined more than once before; $15,000 if fined more than twice before.
- Criminal penalties: an employer who engages in a pattern or practice of knowing violations shall be fined not more than $75,000 for each unauthorized alien, imprisoned for not more than six months, or both
- Loss of government contracts. An employer who is a repeat violator of this section or is convicted of a crime under this section shall be subject to debarment from the receipt of federal contracts, grants, or cooperative agreements for a period of up to two years. The Secretary can waive or alter this debarment for an employer who already holds federal contracts, grants, or cooperative agreements after consultation with the relevant agencies.

The Secretary may also impose an order of internal review and certification of compliance, requiring the employer to certify that the employer is in compliance or has instituted a program to come into compliance. An employer is required to respond to the order within 60 days

If an employer fails to comply with a final penalty determination and the final determination is not subject to judicial review, the Attorney General may file suit to enforce compliance in district court. If an employer is liable for a fee or penalty that is not eligible for judicial review, the fee or penalty becomes a lien on the employer's property.

Judicial Review for Employers

Employer may file a petition for review of a penalty by posting a bond or other guarantee of payment and filing the petition within 30 days of a final penalty determination. The petition shall be filed in the judicial circuit court where the penalty claim was issued, and shall file a brief no later than 40 days after the date on which the administrative record is available. The court of appeals shall decide employer's petition only on the administrative record on which the final determination is based.

Preemption

The provisions of this section preempt any State or local law that requires the use of the EEVS in a fashion that conflicts with federal policies, procedures or timetables, or that imposes civil or

criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

No-Match Notice

DHS and SSA are authorized to establish regulatory requirements for verifying the identity and work authorization of employees who are the subject of SSA no-match notices.

Challenges to validity

Challenges to validity of this section are limited to constitutional challenges and title 5, chapter 5 of the US Code. Any challenges must be brought within 90 days after the date the challenged section or regulation is first implemented. The court may not certify a class for purposes of a class action lawsuit, and may not award attorneys' fees.

Disclosure of Taxpayer Information to Assist in Immigration Enforcement

Section 6103 of the Internal Revenue Code is amended to allow the Social Security Administration to provide protected taxpayer data to DHS for purposes of immigration enforcement. The Commissioner of Social Security may disclose: taxpayer identity information of each person who has filed an information return after calendar year 2005 which contains mismatched name and Social Security data or duplicate name and social security data. DHS contractors are required to comply with Social Security Administration confidentiality safeguards.

Increasing Security and Integrity of Social Security Cards

The Commissioner of Social Security must begin work to administer and issue fraud-resistant Social Security cards within six months of passage of the Act, and must exclusively issue fraud-resistant cards beginning within two years of passage of the Act. The Social Security Administration will issue a report within six months on the feasibility of including biometric information on the Social Security Card.

Increasing Security and Integrity of Identity Documents

DHS establishes a grant program to award states grants for the purpose of bringing their driver's licenses into compliance with the REAL ID Act. Only states that intend to comply with the REAL ID Act are eligible for these grants.

Voluntary Advanced Verification Program to Combat Identity Theft

The Secretary shall establish a voluntary program through which employers may submit an employee's fingerprints to the EEVS for purposes of determining the identity and work authorization of the employee. Fingerprints may only be used for purposes of this program and fingerprint data must be discarded after ten days unless citizens authorize DHS to retain their prints for purposes of preventing identity theft.

Responsibilities of the Social Security Administration

The Social Security Administration is required to cooperate with DHS in managing the EEVS. The SSA is also required to identify and correct database errors. The SSA must also develop a process whereby an individual can "freeze" the individual's social security number to preclude confirmation under the EEVS based on that individual's number until it is reactivated by that individual.

Immigration Enforcement Support by the IRS and the SSA

Secretary of Treasury and Secretary of Homeland Security shall establish a unit within the criminal investigation office of the Internal Revenue Service to investigate violations of the Internal Revenue Code, including cases in which tax records seem to reveal identity fraud. Penalties for failing to file correct tax returns are increased.

Authorization of Appropriations

The Act authorizes funds to be appropriated in each of the five years beginning on the date of the enactment of this Act to increase to a level not less than 4500 the number of DHS personnel assigned exclusively or principally to an office or offices dedicated to monitoring and enforcing compliance with this section and to acquiring, installing, and maintaining the technological equipment necessary to support the EEVS. Funds are also authorized to be appropriated to the Commissioner of Social Security for purposes of this section.

TITLE IV: New Temporary Worker (Y Visa) Program

Section 401. Nonimmigrant Temporary Worker

General: Creates a new Y visa category and folds the current H-2A and H-2B programs into it (Y-2A and Y-2B, respectively). The creation of the new Y-1 visa category and the new Y-2B visa category (formerly H-2B) do not go into effect until the enforcement triggers are satisfied.

Section 402. Admission of Nonimmigrant Workers.

Terms of status: Establishes the following limitations on Y-1 visa holders.

- Maximum three 2-year periods of admission permitted if coming alone.
    i. Must leave country for 1 year after each two-year period.
    ii. 2 years here, 1 year home, 2 years here, 1 year home, 2 years
- If family members accompanying, additional limitations
    i. Must show income at 150% of the poverty level and health insurance for the dependents.
- No extensions of admission period authorized.
- Y-1 visa holders who overstay are permanently barred from admission to U.S.
- Y-1 visa holder may change employers if the new position has been certified by DOL.
- $500 state impact fee ($250 for each dependent if applicable)

Section 403. General Y Nonimmigrant Employer Obligations.

Employer must petition for a Y nonimmigrant after obtaining certification of the position from the DOL. Certification involves demonstrating:

- Recruitment of U.S. workers[1]
- Payment of greater of the prevailing or actual wage paid to U.S. workers[2]
- Same working conditions as U.S. workers[3]
- Compliance with other labor protections[4]

Subtitle B – Seasonal Agricultural Workers

Section 404. Amendment to the Immigration and Nationality Act.

This section reforms the existing H-2A program for the temporary admission of alien agricultural workers. Employers desiring to employ H-2A aliens must first file an application with the Secretary of Labor and a job offered to domestic workers. If the job opportunities for which the application is filed are covered by a collective bargaining agreement, the applicant must assure that the collective bargaining representative has been notified of the application and that the job opportunities are not vacant because the occupant is on strike or locked out, are temporary or seasonal (maximum duration of 10 months), have been or will be offered to U.S. workers, and are covered by workers' compensation insurance. If the job opportunities for which the application is filed are not covered by a collective bargaining agreement, the applicant must also assure the minimum wages, benefits and working conditions required in Section 218A, non-displacement of U.S. workers, and recruitment of U.S. workers.

Workers in H-2A approved occupations from outside normal commuting distance must be provided with housing, at no cost to the worker, or a monetary housing allowance if there is sufficient housing in the area of intended employment

Workers outside normal commuting distance must be reimbursed reasonable costs for inbound transportation and subsistence if they complete 50-percent of the period of employment, and return transportation and subsistence if they complete the period of employment.

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[1] Recruitment period set for 90 days. There are some concerns that this may be too long. Furthermore, this section requires that the job be offered to any eligible US worker who applies, is qualified, and is available. It also requires such US worker be offered a minimum of the same wages, benefits and working conditions, making it a more expansive provision than previous proposals.

[2] Prevailing wage methodology is not the one in the DOL memo regarding wage surveys, but is instead set forth in new DOL regulations. in sec. 218B(c)(1)(B)(iii)(III)(aa).

[3] Language states that conditions should be similar to similarly employed workers in the field of employment, but it may be better instead to require conditions be similar to workers employed by the petitioner at the same place of employment.

[4] Section 403 renders an employer ineligible for participation in immigration programs for as little as one error on an application or FLSA or OSHA violation committed within the previous 3 years. A better and fairer test may be evidence of a pattern of violations.

Workers must be paid the highest of the federal, state or local statutory minimum wage, the prevailing wage for the occupation in the area of intended employment, or the applicable Adverse Effect Wage Rate (AEWR). The AEWR may not be greater than the applicable AEWR on January 1, 2003. If Congress fails to set a new wage standard applicable to H-2A workers within three years after the date of enactment, thereafter the existing AEWRs will be annually indexed by the percentage change in the Consumer Price Index, with a maximum adjustment of 4 percent annually. During the three years after enactment, the General Accounting Office is mandated to conduct a study of the H-2A wage standard and make a report to Congress. A Congressional commission is also appointed to conduct such a study and make recommendations to Congress.

Workers are guaranteed employment for a minimum of three-quarters of the period of employment for which they were recruited.

Motor vehicle safety and insurance standards are required for vehicles and drivers used to transport agricultural workers in H-2A occupations similar to those required for domestic farm workers under current law.

Employers of H-2A workers must assure compliance with all applicable federal, state and local labor laws.

Employers with valid labor certifications from the Secretary of Labor (DOL) may petition the Secretary of DHS for approval for the admission of aliens to perform the work described on the labor certification, or for the extension of stay of H-2A aliens already in the United States who are completing a prior period of authorized H-2A employment. The DHS is required to adjudicate the petition within 7 working days.

H-2A aliens are admitted or extended for the period of employment of an approved labor application, not to exceed 10 months. Employers may petition to extend the stay of H-2A aliens until they have accumulated a maximum of [**TBD**] years of continuous stay in the United States as an H-2A alien, after which the alien must depart the United States. An H-2A alien must remain outside the United States for a period equal to at least $1/5^{th}$ of the alien's presence in H-2A status before again being admitted as an H-2A alien.

Secretary of Labor must establish a process for the receipt, investigation and disposition of complaints respecting an employer's failure to meet the conditions of employment.

H-2A aliens are provided a private right of action to enforce the housing, transportation, wage, employment guarantee, motor vehicle safety provisions and discrimination provisions, and the written promises contained in the employer's job offer. Mediation of the complaint is required, if any party requests it, before a lawsuit may proceed.

Workers' compensation benefits are the exclusive remedy for losses covered by workers' compensation.

Discrimination against a worker who files a complaint or cooperates in an investigation or proceeding in connection with a complaint is prohibited.

Provisions of current law apply to associations and members of associations employing workers in H-2A certified occupations who commit violations.

Section 405. Determination and Use of User Fees

This section authorizes the Secretary to establish fees applicable to employers applying for certification to employ H-2A aliens to cover the actual direct costs of operating the H-2A program.

Section 406. Regulations.

This section requires Secretaries of Labor, DHS and State to be issued not later than one year after date of enactment.

Section 407. Reports to Congress.

Not later than September 30 of each year, the Secretary shall report to Congress regarding information compiled during the previous year with regard to the usage and operation of the H-2A program, as well as the number of workers who applied and were adjusted to blue card and permanent resident status. Not later than 180 days after the date of enactment of this Act, the Secretary shall report to Congress regarding steps being taken to implement it.

Section 408. Effective Date.

Except as otherwise provided, sections 404 and 405 shall take effect one year after the date of enactment of this act, or the promulgation of regulations, whichever is sooner.

Section 409. Numerical Limitations.

Sets the following numeric limits:

- 400K annual limit on Y-1 visa holders with an escalator up to 600K
- 100K with an escalator up to 200K for Y-2B (formerly H-2B)

Section 410. Requirements for Participating Countries.
Allows DOS to condition granting Y nonimmigrant status to foreign nationals based on whether the sending country enters into a bilateral agreement with the U.S.

Section 411. Compliance Investigators.

Requires DOL to hire new investigators and provides new authority to perform worksite investigations.

Section 412. Standing Commission on Immigration and Labor Markets.

Creates a commission to study nonimmigrant programs and numerical limits, including the allocation of immigrant visas through the merit-based system.

Section 412 [section number drafting error]. Agency Representation and Coordination.

Amends the immigration laws to prohibit US ICE officials from misrepresenting to employees or employers that they are members of any other agency or organization that provides domestic violence services, enforces, health and safety laws, provides heath care services, or any other services intended to protect life and safety. [Presumably related to the ICE posing as OSHA sting operation.]

Section 413. Bilateral Efforts with Mexico to Reduce Migration Pressures and Costs.

Sense of Congress resolutions recommending engagement with Mexico to deal with costs and pressures associated with Mexican migration to the U.S.

Section 414. Willing Worker-Willing Employer Electronic Database.

Requires DOL to create a link to a publicly accessible website that posts information concerning job openings from state electronic employment registries around the country. Also requires jobs that have been certified by DOL for foreign workers to be posted to this same site.

Section 415. Enumeration of Social Security Numbers.

Requires DHS to implement a system allowing for prompt enumeration of social security numbers for Y nonimmigrants.

Section 416. Contracting.

Does not expand authority of DOL or DHS to subcontract inherently governmental work to non-federal employees.

Section 417. Federal Rulemaking Requirements.

Allows the Secretary of Homeland Security and Secretary of Labor to issue an interim final rule within 6 months of enactment of this subtitle to implement it.

Subtitle C – Nonimmigrant Visa Reform

Section 418. Student Visas.

Extends foreign students' post-curricular Optional Practical Training (and F-1 status) to 24 months. Also creates a new "F-4" student visa for students pursuing an advanced degree candidates studying in the fields of math, engineering, technology or the physical sciences.

Re-defines work related activities student make engage in during the school year and vacation periods including the types of off campus work that is authorized with certain labor protection related provisions. This section also removes dual intent language in for H-1B and L-1 visa holders and has a provision granting dual intent for certain non-immigrant students.

Section 419. H-1B Streamlining and Simplification.

Raises the FY08 cap to 115,000 and indicates that in subsequent years the Secretary may issue additional H-1B visas (pursuant to new regulations that must be drafted) up to a 180,000 cap. Revises the definition of specialty occupation to exclude the "experience in the specialty" provision in section 214(i)(2)(C). This section revises W-2 requirements. This section also provides an extension of the H-1B status beyond the six year limit for merit-based adjustment applicants in one year increments but repeals sections 106(a) & (b) of the American Competitiveness in the Twenty-first Century Act of 2000.

Section 420. H-1B Employer Requirements.

This section applies the non-displacement and good faith recruitment requirements to all H-1B employers. This section changes requirement so that employers cannot displace a U.S. worker 180 days before and after filing and requires all employers to make good faith effort to recruit U.S. workers. This section also limits an employer of 50 or more employees to have only up to 50% of his/her employees be H-1Bs. Under this section, employers cannot advertise exclusively for H-1Bs.

Section 421. H-1B Government Authority and Requirements.

This section provides authority for DOL to review H-1B applications for "clear indicators of fraud or misrepresentation of material fact" and gives DOL 2 weeks after filing to provide certification unless DOL finds a problem. DOL may conduct an investigation pursuant to sec. 212(n)(2) of the INA. DOL has up to 24 months to determine whether or not to file a complaint and no judicial review of determinations. If DOL determines that an employer has failed to comply, DOL must provide a notice of hearing to take place within 120 days of DOL's determination. DHS is required to provide DOL with any infomation from the application process that indicates that the employer is not in compliance with the H-1B program requirements. This section also gives DOL more authority to conduct employer investigations and streamline the investigative process by permitting DOL to initiate its own investigations and eliminating the requirement that the DOL Secretary personally authorize an investigation.

DOL may conduct surveys of the degree to which employers are in compliance and must conduct annual compliance audits of not less than 1% of the employers of H-1Bs.

This section doubles certain fines for noncompliance and requires that an H-1B employee is provided information regarding employee rights and employer obligations.

Section 422. L-1 Visa Fraud and Abuse Protections.

Requires that if the petitioner is to be employed in a new office, petition may only be approved for one year if the petitioner has not been the beneficiary of two or more petitions with in the past two years and only if the employer has:

- An adequate business plan
- Office space to carry out the plan
- Finances to start the business upon approval of the petition

[**NOTE**[5]] An extension of the petition is not available until the employer and petitioner can show they have been doing business in the manner required by this section for the 12 month period. The dependent spouse of the L-1 may not work during the 12 months.

This section gives DHS authority to initiate investigations regarding compliance with L-1 program. DHS must give notice of intent to conduct investigation but no judicial review of the determination. If DHS determines that an employer has failed to comply, DOL must provide a notice of hearing to take place within 120 days of DHS's determination.

DHS may audit an employer regarding compliance with the program. DHS must conduct annual audits of not less than 1% of the employers of L-1s. The Attorney General is required to submit annual report to Congress with respect to L-1 petition data.

This section also lays out penalties both monetary and suspension of approvals for petitions, for employers in violation of L-1 requirements.

Section 423. Whistleblower Protections .

This section adds H-1B and L-1 whistleblower provisions for employees who reasonably believe they are reporting H-1B or L-1 program violations.

Section 424. Limitations on Approval of L-1 Petitions for Start-Up Companies.

[**NOTE**[6]] Requires that if the petitioner is to be employed in a new office, petition may only be approved for one year if the petitioner has not been the beneficiary of two or more petitions with in the past two years and only if the employer has:

- An adequate business plan
- Office space to carry out the plan
- Finances to start the business upon approval of the petition

An extension of the petition is not available until the employer and petitioner can show they have been doing business in the manner required by this section for the 12 month period. The dependent spouse of the L-1 may not work during the 12 months.

Section 425. Medical Services in Underserved Areas.

[5] Drafting issue: Includes provision affecting spouse of L-1 petitioner but the referenced provision is not included in this bill.

[6] Drafting issue: This section is substantially similar to section 422 without the reference to the spouse of an L-1.

Makes permanent the Conrad 30 program and allows certain underserved states that have used all of their 30 waiver slots in the Conrad 30 program to get an additional 20 slots, provided that certain highly underserved rural states (that have had trouble recruiting Conrad doctors) have received a guaranteed minimum number of Conrad doctors. The changes would be part of a three year pilot program. Sunsets the pilot program after three years.

Currently, doctors serving their three years in the Conrad 30 program must convert from the J-1 visa to an H-1B visa. This provision would allow doctors to serve the three years under other appropriate statuses.

This section also allows a doctor to begin working within 90 days of completing their residency and fellowship programs or 90 days from the date of approval of the waiver, whichever is later.

Section 426. Authorization of Appropriations.

Authorizes such sums as are necessary to carry out the title.

TITLE V: Immigration Benefits (green card "reform")

Section 501. Rebalancing of Immigrant Visa Allocation.

Family worldwide ceiling: Sets worldwide ceiling on family-based visas at 567K until pre-May 2005 backlogs in preference categories 1, 2B, 3, and 4 have been eliminated. Once eliminated, worldwide ceiling drops to 127K.

- 440K of the 557K dedicated exclusively to backlog reduction
- 127K dedicated to 2A category (87K) and new 1 category for parents of USCs (40K)

Merit worldwide ceiling: Sets 3 different worldwide ceiling levels.

- First five fiscal years post-enactment will be set at the level made available during FY05 (staff reporting this number to be 247K).
  - 10K set aside for exceptional Y visa holders (although Y program won't be up and running for at least 18 months – 2 years)
  - 90K set aside for reduction of employment-based backlog existing on date of enactment
- Next 3 or 4 fiscal years (until first undocumented can start adjusting), sets level at 140K
  - 10K set aside for exceptional Y visa holders
  - 90K set aside for employment-based reduction of backlog existing on date of enactment
- Once undocumented start adjusting (outside the worldwide ceilings), sets level at 380K
  - 10K set aside for exceptional Y visa holders

Supplemental Allocation for Z Adjustments: Once the backlog on family-based applications concludes, authorizes supplemental allocation of green cards for Z nonimmigrants outside the worldwide limits. 20% of the estimated universe of adjusting Z nonimmigrants will be made

available each year for 5 years. Additional visas will be available beyond the 5th year as needed to adjust all eligible Zs.

Section 502. Merit-Based Evaluation System for Immigrants. Eliminates employment preference categories 1, 2, and 3 and replaces it with a merit-based preference system. Eliminates the labor certification process. Maintains the special immigrant and EB-5 categories but cuts their numbers (total of 7,000 available annually).

Merit points are initially assigned as follows with a total of 100 points that could be earned:

- Employment: 47 maximum total points can be earned for:
  - U.S. employment in a specialty occupation (20 points);
  - U.S. employment in a high demand occupation (16 points);
  - U.S. employment in a science, technology, engineering, mathematics (STEM) or health-related field, current for at least one year (8 points)
  - From employer willing to pay 50% of LPR application fee: U.S. job offer or U.S. employer attestation for current employee (6 points)
  - U.S. work experience (2 points per year/10 points max)
  - Age of worker between 25-39 (3 points)

- Education: 28 maximum total points can be earned for:
  - Advanced Graduate degree (20 points)
  - Bachelor's degree (16 points)
  - Associate's degree (10 points)
  - High School diploma/GED (6 points)
  - Certified vocational degree (5 points)
  - DOL registered apprenticeship (8 points)
  - Associate's degree or above in STEM field (8 points)

- English/Civics: 15 total points can be earned for:
  - Native English speaker or TOEFL score 75 or above (15 points)
  - TOEFL score 60-75 (10 points)
  - Pass USCIS Citizenship test in English and civics (6 points)

- Extended Family: for those with total of 55 or above in above categories, 10 total points can be earned for:
  - Adult (21 or over) child of USC (8 points)
  - Adult (21 or over) child of LPR (6 points)
  - Sibling of USC or LPR (4 points)
  - Visa application in any category above after May 1, 2005 (2 points)

In addition, the following allocation has been set aside for the new Z visa category:

- Agricultural Work: 25 total points can be earned for:
  - Agricultural work for 3 years, 150 days/year (21 points)
  - Agricultural work for 4 years, 150 days for 3 years, plus 100 days for 1 year

- Agricultural work for 5 years, 100 days per year

- U.S. Employment: 15 total points can be earned for:
  - 1 point per year of lawful U.S. employment

- Home Ownership: 5 total points can be earned for:
  - 1 point per year of ownership of place of residence in U.S.

- Medical Insurance: 5 points total can be earned for:
  - Current medical insurance for entire family (5 points)

Gives DHS authority to establish regulations regarding petition process for merit-based system and creates a standing commission on immigration and labor markets for evaluating the relative weighting and selection criteria included in the point system. Petitions that have not been granted within a 3 year period are deemed denied.

Section 503. Reducing Chain Migration.

- Eliminates family preference categories 1, 2B, 3, and 4.
- Redefines immediate relatives to exclude parents of USCs.
  - Creates a new preference category for parents of USCs and creates an annual ceiling of 40K.
- Maintains 2A category at current approximate annual ceiling of 87,000.
- Dedicates 440K to reduction of pre-May 2005 family backlogs in the 1, 2B, 3, and 4 categories. [7]

Section 504. Creation of Process for Immigration of Family Members in Hardship Cases. Creates a new pool of 5,000 hardship-based immigrant visas for individuals with familial relationships that would have qualified them for sponsorship under former 1, 2B, 3, or 4. Must establish extreme hardship to the petitioner or beneficiary that cannot be alleviated with temporary visits. Petitions not granted terminate at end of fiscal year.

Section 505. Elimination of Diversity Visa Program. This section eliminates the diversity visa program and repeals the NACARA provision reducing the Other Worker category from 10,000 to 5,000.

Section 506. Parent Visitor Visas. Creates a new special visitor visa for parents of USCs and for spouses and minor children of Y-1 visa holders. Terms and conditions of visa:

- $1,000 bond
- 30 days per year maximum
- Permanent bar for individuals who overstay this visa
- No adjustment or change of status permitted
- Rates of overstays in excess of 7% by nationals of a country can lead to termination of program for such nationals and ultimately can lead to termination of program

[7] Does not eliminate backlogs in the 2A category and provides no relief for post-May 2005 family-based filings.

- USC sponsors whose beneficiary overstays are barred from sponsoring another beneficiary

Section 507. Prevention of Visa Fraud. Authorizes the Secretary of DHS to audit and evaluate information furnished as part of the immigrant petition.

Section 508. Increasing Per-Country Limits for Family-Based and Employment-Based Immigrants. Increases per-country limits on remaining family categories and on merit-based categories to 10%.

TITLE VI –Legalization

Section 601. Nonimmigrants in the U.S. Previously in Unlawful Status.

Section 601 Creates a new Z nonimmigrant visa category for individuals currently in undocumented status who:

- Have been continuously physically present since 1/1/07;
- Are admissible under the immigration laws (with exceptions noted below); and
- Are working and seek to continue performing labor, services or education

Spouses, children, and elderly parents of such workers can also obtain a Z visa provided that they were also continuously physically present in the U.S. since 1/1/07, subject to the following conditions:

- Children must be under 18 on date of application, and must be the natural-born or legally adopted child of the working Z visa holder
- Spouses of working Z visa holders may retain their status if their relationship terminates only if the cause is domestic violence

A number of existing grounds of inadmissibility would not apply, including: the unlawful presence bars, failure to attend a removal proceeding, misrepresentation and false claims to USC. The Secretary may not waive grounds related to criminal activity and security risks, among others.

The following exceptions apply to eligibility for the Z visa:

- Individuals subject to final orders of removal are ineligible.
- Individuals subject to reinstatement are ineligible
- Individuals who have persecuted others are ineligible
- Individuals who have been convicted of one felony, one "aggravated felony" as defined by the INA sec. 101(a)(43), three or more misdemeanors, one "crime of violence," or one crime of reckless driving or DUI if the crime results in an injury are ineligible
- Individuals who have entered or attempted to enter the U.S. illegally after 1/1/07 are ineligible
- Individuals who cannot establish good moral character during the three years prior to applying for a Z visa are ineligible

- Spouses and children of the principal Z visa holder (the worker) under 18 are ineligible if the worker is ineligible.

An extreme hardship waiver is available to individuals with final order or reinstatement orders (if they were not physically removed).

APPLICATION PROCESS: The bill authorizes the appropriation of funds to implement the legalization program. Starting six months after date of enactment, U.S. CIS shall issue an interim final rule and begin accepting Z visa applications. The application period will last one year. The Secretary of DHS has discretion to extend the application period another twelve months.

DHS is required to broadly disseminate information about the Z program for a period of two years following the issuance of regulations implementing the program. The information is also to be made available to employers and labor unions, and to be communicated through media sources used by immigrants in five languages spoken the most by immigrants.

The Z visa applicant must pay an initial processing fee that will fully cover adjudications costs, with a cap of $1500 per beneficiary. The principal applicant must also pay a penalty of $1000 and a State Impact Assistance Fee of $500. Finally the principal applicant must pay a $500 penalty for each derivative. The total for a family of four to make an initial Z visa application could run as high as $9000.

The Z visa applicant must also:

- Complete a detailed application form, including providing data on employment history, immigration history, and other factors relating to his eligibility for a Z visa
- Submit fingerprints for a background check
- Be interviewed by USCIS
- Register for the selective service (as required)
- Provide evidence of continuous physical presence, employment, or education to meet the statutory requirements for a Z visa. Acceptable forms of evidence include Federal, State, or local government records, bank records, business/employer records, union or day laborer center records, remittance records, and other documentation designated by the Secretary of DHS

  Once a complete application is accepted by the agency, USCIS has one business day to conduct initial background checks before issuing the applicant interim work authorization, discretionary advance parole, interim protection from deportation, and temporary suspension of their classification as an unauthorized alien. Such benefits would be evidenced in a tamper-proof document issued by DHS.

  There is in effect an interim stay of removal for immigrants who are picked up between date of enactment and the last day of initial registration for a Z visa, or who are in removal proceedings during that time period, provided they establish prima facie eligibility.

The burden of proof requires a preponderance of the evidence that the alien has satisfied the requirements of this section.

Once the Z visa is granted (after all background checks are complete), the applicant will receive new documentary evidence of her status and the benefits accorded by this status.

The Z visa (and future green card) applicant should not be deemed ineligible for using or having used fake documents prior to date of application. However, if she is denied the Z visa or immigrant visa, she can be prosecuted for having used false documents.

TERMS OF STATUS: The Z visa is good for an initial four years, and accords the visa holder and her spouse and children work authorization (including complete portability), travel permission, et cetera. It may be extended indefinitely, provided certain conditions are met. To extend the Z visa, the immigrant must:

- Remain eligible for a Z visa (including the work requirement and good moral character requirement). If they were a derivate, their principal must remain eligible for a Z visa
- Have timely filed all change of address notifications
- Pay an extension fee that will fully cover adjudications costs, with a cap of $1500 per beneficiary. The total for a family of four to extend their Z visas could run as high as $6000
- For the first renewal, show that she is trying to learn English and U.S. civics (either by taking the exam administered to naturalization applicants or demonstrating enrollment/attempted enrollment in an English class)
- For the second renewal, demonstrate proficiency in English and knowledge of U.S. civics by passing the exam administered to naturalization applicants
- Exceptions to the English language and U.S. civics requirements are made for minors (under 18), disabled people, and long-term U.S. residents over the age of 50

Delays in filing Z visa extensions and/or lapses in status are only forgivable at the discretion of the Secretary. A limited exception is made for victims of domestic violence.

Z visa holders may not change status to another nonimmigrant visa classification other than the U visa (for crime victims).

It should be underscored that the principal applicant (and any child over 16) must remain employed unless she is a full-time student, disabled, or unable to work due to a pregnancy. There is a limited exception for *force majeure* interruptions as determined by the Secretary.

Z visa status will terminate if the visa holders fails to timely file an extension of status, becomes ineligible for such status (including by failing to maintain employment), is found removable for criminal conduct, is found newly inadmissible, or uses the Z visa documentation fraudulently. Spouses and children of Z visa holders lose their visas if the principal becomes ineligible. Z visa

holders applying under the agriculture work rules have to meet specific prospective work requirements in agriculture.

Section 602. Earned Adjustment for Z Status Aliens.

Section 602 states that in order to obtain legal permanent residency, the Z visa holder must file an application for adjustment of status in person at a U.S. consulate in her country of origin (The Secretary has some discretion regarding the consular filing requirement, but the language is inadequate). All Z visa holders would be eligible to apply for permanent residence during a five-year period starting on the date that the pre-5/05 immigration backlogs have been eliminated. Green cards would be allocated through a merit-based point system over the course of five years. Derivatives must also meet these green card requirements. Again, limited exceptions apply for victims of domestic violence.

The principal applicant must pay a $4000 penalty in addition to application fees, and undergo a health screening. She must also have paid taxes during her tenure as a Z visa holder or enter into a payment plan with the IRS.

Green cards cannot be given to former Z visa holders until existing backlogs in family-based and employment-based visas are cleared out. The wait period extends until thirty days after people who applied for immigrant visas before 5/1/05 are current.

Section 603. Administrative Review, Removal Proceedings, and Judicial Review for Aliens Who Have Applied for Z Status.

Administrative Review: An applicant whose status has been denied, terminated, or revoked under this title may file an administrative appeal no later than 30 days after the decision. Review will be based on the record established at the time of the determination and any newly discovered or previously unavailable evidence. The applicant will be entitled to 1 motion to reopen or reconsider.

Review in Removal Proceedings: An applicant who receives a denial of the administrative review may request to be placed in removal proceedings under section 240 to seek review before an immigration judge.

An applicant whose status has been denied, terminated, or revoked based on aggravated felonies convictions may be placed in administrative removal proceedings under section 238(b).

An applicant whose status has been denied, terminated, or revoked based on other crimes may be placed in removal proceedings under section 240 to seek review before an immigration judge.

Applicants in removal proceedings will be entitled to 1 motion to reopen or reconsider.

Judicial Review: Amends INA section 242 by adding provisions regarding judicial review of Z visa applicants after subsection (g). There is no judicial review of Z visa denials due to late

filings. A denial or termination may be reviewed only in conjunction with the judicial review of an order of removal under this section, provided that all administrative remedies have been exhausted, and that court decides a challenge to the denial or termination only upon the administrative record on which the Secretary's decision was based. No court may review any discretionary determination made by the Secretary. Administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary. The U.S. District Court for the District of Columbia has sole jurisdiction over challenges to the constitutionality of programs in Title VI. Such challenges must be brought no later than one year after enactment relating to constitutional changes, one year after promulgation of regulations, or one year after implementation of policies and directives. Class actions are permitted.

Section 604. Mandatory Disclosure of Information.

No federal agency may use, release, or permit anyone to examine any information furnished by an applicant under Title VI of this Act, or the fact that the applicant applied for such status, or any subsequent application to extend status or apply for adjustment of status to lawful permanent residence.

- The confidentiality provisions shall not apply if the applicant:
- has been denied, terminated or revoked under Title VI of this Act because the applicant is determined to be is inadmissible or deportable under the criminal or terrorism grounds, has committed fraud in the application, is a smuggler, or is deportable because of marriage fraud
- is convicted of a felony, an aggravated felony, 3 misdemeanors, or a serious crime as defined in 101(h) of the INA
- has engaged in persecution
- has engaged in fraud, willful misrepresentation, concealment of a material fact, or knowingly offered a false statement or document
- knowingly and voluntarily waived in writing confidentially

Information provided may be disclosed to law enforcement agencies, courts, or grand juries in connection with criminal investigations. Information regarding applicant's criminal convictions may be released for immigration or law enforcement purposes, and may be used in decisions involving immigration benefits, including future benefits and naturalization applications.

Willful disclosure of such information to any unauthorized individual by any federal agent may result in a maximum penalty of $10,000.

Section 605. Employer Protections.

Employers are shielded from prosecution or investigation for prior unlawful employment of Z visa applicants, based on evidence of employment applicant submits in support of application. Nothing in this section may be used to shield the employer from any other violation of labor or employment laws.

Section 606. Enumeration of Social Security Number.

DHS, in conjunction with the Social Security Administration, shall implement system to provide social security number promptly after granting of Z visa or probationary status under Title VI.

Section 607. Preclusion of Social Security Credits for Years Prior to Enumeration.

Amends section 214 of the Social Security Act to preclude granting of social security credits for the years prior to attaining Z visa status and obtaining social security number.

Section 608. Payment of Penalties and Use of Penalties Collected.

Requires the Secretary to establish procedures for payment of 80% of the penalties described in section 601 and 602 above, through an installment payment plan.

Section 609. Limitations on Eligibility.

Between the enactment of the act and the time that the application period commences, an applicant for status under Title VI is not ineligible for an immigration benefit solely on the basis of the applicant having violated sections of the criminal code for using false documents or making false statements on applications.

Section 610. Rulemaking.

Requires the Secretary to issue interim rule to implement this title within 6 months of the date of enactment of this Act. Interim rule sunsets within 2 years after issuance.

Section 611. Authorization of Appropriations.

Authorizes Congress to appropriate such funds as are necessary to implement these provisions in an orderly and timely fashion.

Subtitle B—DREAM Act

Section 612. Short Title. DREAM Act of 2007.

Section 613. Definitions. Defines "institution of higher education" and "uniformed services" for purposes of the DREAM Act.

Section 614. Adjustment of Status of Certain Long-Term Residents Who Entered the United States As Children.

3 years after date of enactment, Secretary may begin to adjust to LPR status those eligible for Z visa who:

- Have maintained continuous physical presence in the U.S. since 1/1/07

- Was under 30 years of age on date of enactment
- Was under age 16 at time of initial entry into U.S.
- Have obtained U.S. high school diploma or GED
- Have not been absent from the U.S. for more than 365 total days during period of conditional residence (except those absent due to U.S. military service)
- Have acquired a degree from a U.S. higher ed institution; or completed 2 years in Bachelor's degree program or higher at such an institution; or have served at least 2 years in the U.S. military
- Has provided a list of all of the secondary educational institutions he or she has attended in the U.S
- Is in compliance with the eligibility and admissibility criteria for Z visa holders

Nothing in the DREAM Act shall apply a numerical limitation on the number of aliens who may be eligible for adjustment of status.

Section 615. Expedited Processing of Applications; Prohibition on Fees

Prohibits charging of additional fees to Z visa applicants applying for additional benefits under this subtitle.

Section 616. Higher Education Assistance.

The federal ban on states providing in-state tuition to undocumented immigrants does not apply to probationary Z or Z visa holders. Federal student loans, federal work study, and certain other federal assistance programs are available to qualified Z visa holders.

Section 617. Delay of Fines and Fees.

Z visa holders who qualify under DREAM Act provisions above are exempt from payment of penalties set forth in section 601(e)(6) above until the date that is 6 years and 6 months from the date of enactment of this Act, or age 24, whichever is later. At that point, penalties are waived entirely for Z visa holders who meet all requirements set forth in section 614 above. Failure to meet section 614 requirements results in termination of Z visa status unless section 601(e)(6) penalties are paid within 90 days.

Section 618. GAO Report.

Requires the GAO to submit a report to the House and Senate Judiciary Committees on the number of aliens who were eligible for, applied for, and were granted adjustment of status under the DREAM Act.

Section 619. Regulations, Effective Date, Authorization of Appropriations.

Secretary shall issue regulations regarding this subtitle no later than 6 months after the date of enactment of this act. This subtitle shall take effect on the date regulations are issued. Congress must make available to the Secretary such funds as are necessary to implement this subtitle.

Section 620. Correction of Social Security Records.

Social Security records reflecting employment of aliens prior to their adjustment to Z visa status are required to be corrected.

Subtitle C -- AgJOBS

Sec. 621 –Short Title: AgJOBS Act of 2007.

Sec. 622 – Admission of Agricultural Workers. This Title establishes a program whereby aliens who can demonstrate at least 863 hours or 150 agricultural work days during the 24-month period ending on December 31, 2006, an opportunity to adjust their status to that of an alien in "Z-A" status.

Z-A aliens will get priority adjustment for a green card (after the backlog is cleared) if they can prove that they: (a) performed at least 5 years of agricultural employment for at least 100 work days per year during the 5-year period beginning on the date of enactment; (b) or performed at least 3 years agricultural employment for at least 150 work days per year during the 3-year period beginning on the date of enactment; or (c) during the 4-year period beginning on the date of enactment worked at least 150 work days during 3 years and 100 work days during the remaining year.

In addition to the work requirement, Z-A aliens must pay their back taxes, learn English, and pay (a reduced) fine equal to $500 total.

Aliens who commit fraud or willful misrepresentation on applications for adjustment, or who have committed an act which makes them inadmissible under the INA, or commit a felony or 3 misdemeanors, or convicted of an offense which involves bodily injury, a threat of bodily injury or harm to property in excess of $500 are denied adjustment to lawful permanent resident status.

Sec. 623 – Agricultural Worker Immigration Status Adjustment Account. The Secretary of DHS may set a schedule of fees to be charged persons applying for Z-A status and permanent resident status and such fees may be used by DHS to pay its cost of processing such applications.

Sec. 624 Regulations, Effective Date and Funding. Regulations for the program must be promulgated not later than 7 months after the date of enactment. This section shall take effect on the date regulations are issued on an interim or other basis. Funding necessary to implement this subtitle is authorized.

Sec. 625. Correction of Social Security Records. Social Security records reflecting employment of aliens prior to their adjustment to Z-A card status are required to be corrected.

TITLE VII - Miscellaneous

Section 701. Waiver of Requirement for Fingerprints for Members of the Armed Forces.

Fingerprints collected by the Department of Defense can be used for naturalization purposes, with restrictions.

Section 702. Declaration of English.

The Government of the United States shall preserve and enhance the role of English as the language of the United States of America. The provision states that it does not expand or diminish rights relative to services or materials provided by the government of the United States in any language other than English.

Section 703. Pilot Project Regarding Immigration Practitioner Complaints.

Creates a three year pilot project to encourage reports of immigration practitioner fraud and increase public awareness of fraud by immigration practitioners. Requires a report to congress within one year.

Subtitle B- Assimilation and Naturalization

Section 704. The Office of Citizenship and Integration.

Changes the name of the Office of Citizenship to the "Office of Citizenship and Integration."

Section 705. Special Provisions for Elderly Immigrants.

Adds a provision to INA 312 stating that a person over the age of 75 years will not have to comply with the naturalization English proficiency requirement if at the time of examination for naturalization the person agrees to the naturalization oath in his native language or in English.

Section 706. Funding for the Office of Citizenship and Integration.

$20 million appropriated for the Office of Citizenship and Integration.

Section 707. Citizenship and Integration Councils

The Office of Citizenship and Immigrant Integration shall provide grants to states and municipalities for the creation of New Americans Integrations Councils. Grants awarded under this section shall be used to report on the status of new immigrants, lawful permanent residents, and citizens within the state or municipality; to conduct a needs assessment, including the availability of and demand for English language services and instruction classes, for new immigrants, lawful permanent residents, Z non-immigrants, and citizens; to convene public hearings and meetings to assist in the development of a comprehensive plan to integrate new immigrants, lawful permanent residents, Z non-immigrants, and citizens; and to develop a comprehensive plan to integrate new immigrants, lawful permanent residents, Z non-immigrants, and citizens into states and municipalities. The councils will consist of representatives from state and local government; business; faith-based organizations; civic

organizations; philanthropic leaders; and nonprofit organizations with experience working with immigrant communities. The Government Accountability Office, in coordination with the Office of Citizenship and Immigrant Integration, shall conduct an annual evaluation of the grant program conducted under this section. Authorizes appropriations for the Office of Citizenship and Immigrant Integration.

Section 708. History and Government Test.

The naturalization history and government test will test an applicant's understanding of the naturalization oath.

Section 709. English Language Learning

The Secretary of Education to develop an electronic program that teaches the English language at various levels of proficiency to individuals inside the United States whose primary language is a language other than English. The Secretary shall make the program available to the public for free and shall ensure that it is readily accessible to public libraries throughout the United States. The program shall be fully accessible to speakers of the top five foreign languages spoken inside the United States. Includes appropriation.

Section 710. Placeholder

Section 711. GAO Study on the Appellate Process for Immigration Appeals.

GAO shall study the possibility of consolidating all appeals from the BIA and habeas into one United States Court of Appeals by putting all appeals into an existing circuit court using judges who rotate from various circuits or a panel of judges who have authority to reassign cases from circuits with heavy caseloads to other circuit courts. Factors to consider will include resources, impact on the circuits, case management techniques that could be utilized including certificates of reviewability, the effect on adjudication, effect on litigants and other reforms that could be implemented.