

# Calendar No. \_\_\_\_\_

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S.** \_\_\_\_\_

To amend the Immigration and Nationality Act to provide for comprehensive reform and to provide conditional nonimmigrant authorization for employment to undocumented aliens, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

Mr. SPECTER from the Committee on \_\_\_\_\_ reported the following original bill; which was read twice and placed on the calendar

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## A BILL

To amend the Immigration and Nationality Act to provide for comprehensive reform and to provide conditional nonimmigrant authorization for employment to undocumented aliens, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Comprehensive Immigration Reform Act of 2006”.

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

## 2

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

## TITLE I—BORDER ENFORCEMENT

## Subtitle A—Assets for Controlling United States Borders

- Sec. 101. Enforcement personnel.
- Sec. 102. Technological assets.
- Sec. 103. Infrastructure.
- Sec. 104. Border patrol checkpoints.
- Sec. 105. Ports of entry.

## Subtitle B—Border Security Plans, Strategies, and Reports

- Sec. 111. Surveillance plan.
- Sec. 112. National Strategy for Border Security.
- Sec. 113. Reports on improving the exchange of information on North American security.
- Sec. 114. Improving the security of Mexico's southern border.

## Subtitle C—Other Border Security Initiatives

- Sec. 121. Biometric data enhancements.
- Sec. 122. Secure communication.
- Sec. 123. Border patrol training capacity review.
- Sec. 124. US-VISIT System.
- Sec. 125. Document fraud detection.
- Sec. 126. Improved document integrity.
- Sec. 127. Cancellation of visas.
- Sec. 128. Biometric entry-exit system.
- Sec. 129. Border study.

## TITLE II—INTERIOR ENFORCEMENT

- Sec. 201. Removal and denial of benefits to terrorist aliens.
- Sec. 202. Detention and removal of aliens ordered removed.
- Sec. 203. Aggravated felons.
- Sec. 204. Terrorist bars.
- Sec. 205. Increased criminal penalties related to gang violence, removal, and alien smuggling.
- Sec. 206. Illegal entry or unlawful presence of an alien.
- Sec. 207. Illegal reentry.
- Sec. 208. Reform of passport, visa, and immigration fraud offenses.
- Sec. 209. Inadmissibility and removal for passport and immigration fraud offenses.
- Sec. 210. Incarceration of criminal aliens.
- Sec. 211. Encouraging aliens to depart voluntarily.
- Sec. 212. Deterring aliens ordered removed from remaining in the United States unlawfully.
- Sec. 213. Prohibition of the sale of firearms to, or the possession of firearms by certain aliens.
- Sec. 214. Uniform statute of limitations for certain immigration, naturalization, and peonage offenses.
- Sec. 215. Diplomatic security services.
- Sec. 216. Completion of background and security checks.

## 3

- Sec. 217. Denial of benefits to terrorists and criminals.
- Sec. 218. State criminal alien assistance program.
- Sec. 219. Reducing illegal immigration and alien smuggling on tribal lands.
- Sec. 220. Alternatives to detention.
- Sec. 221. Conforming amendment.
- Sec. 222. Reporting requirements.
- Sec. 223. Severability.

## TITLE III—UNLAWFUL EMPLOYMENT OF ALIENS

- Sec. 301. Unlawful employment of aliens.
- Sec. 302. Employer Compliance Fund.
- Sec. 303. Additional worksite enforcement and fraud detection agents.
- Sec. 304. Clarification of Ineligibility for misrepresentation.

## TITLE IV—NONIMMIGRANT AND IMMIGRANT VISA REFORM

- Sec. 401. Nonimmigrant temporary worker.
- Sec. 402. Admission of nonimmigrant temporary guest workers.
- Sec. 403. Employer obligations.
- Sec. 404. Alien employment management system.
- Sec. 405. Rulemaking; effective date.
- Sec. 406. Recruitment of United States workers.
- Sec. 407. Temporary guest worker visa program task force.
- Sec. 408. Student visas.
- Sec. 409. Visas for individuals with advanced degrees.
- Sec. 410. Requirements for participating countries.
- Sec. 411. Authorization of appropriations.

## TITLE V—BACKLOG REDUCTION

- Sec. 501. Elimination of existing backlogs.
- Sec. 502. Country limits.
- Sec. 503. Allocation of immigrant visas.
- Sec. 504. Relief for minor children.

## TITLE VI—CONDITIONAL NONIMMIGRANT WORKERS

## Subtitle A—Conditional Nonimmigrant Work Authorization and Status

- Sec. 601. Conditional nonimmigrant work authorization and status.

## Subtitle B—Grant Programs to Assist Nonimmigrant Workers

- Sec. 611. Grants to support public education and community training.
- Sec. 612. Funding for the office of citizenship.
- Sec. 613. Civics integration grant program.
- Sec. 614. Temporary worker investment account study.

## TITLE VII—IMMIGRATION LITIGATION REDUCTION

## Subtitle A—Appeals and Review

- Sec. 701. Consolidation of immigration appeals.
- Sec. 702. Additional immigration personnel.
- Sec. 703. Board of immigration appeals removal order authority.
- Sec. 704. Judicial review of visa revocation.
- Sec. 705. Reinstatement of removal orders.

- Sec. 706. Withholding of removal.  
Sec. 707. Certificate of reviewability.  
Sec. 708. Discretionary decisions on motions to reopen or reconsider.  
Sec. 709. Prohibition of attorney fee awards for review of final orders of removal.

Subtitle B—Immigration Review Reform

- Sec. 711. Director of the executive office for immigration review.  
Sec. 712. Board of immigration appeals.  
Sec. 713. Immigration judges.  
Sec. 714. Removal and review of judges.  
Sec. 715. Legal orientation program.  
Sec. 716. Regulations.

TITLE VIII—MISCELLANEOUS

- Sec. 801. Technical and conforming amendments.

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

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

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) **DEPARTMENT.**—Except as otherwise pro-  
12 vided, the term “Department” means the Depart-  
13 ment of Homeland Security.

14 (2) **SECRETARY.**—Except as otherwise provided,  
15 the term “Secretary” means the Secretary of Home-  
16 land Security.

1                   **TITLE I—BORDER**  
2                   **ENFORCEMENT**  
3       **Subtitle A—Assets for Controlling**  
4                   **United States Borders**

5       **SEC. 101. ENFORCEMENT PERSONNEL.**

6           (a) **ADDITIONAL PERSONNEL.—**

7                   (1) **CUSTOMS AND BORDER PROTECTION OFFI-**  
8                   **CERS.—**In each of the fiscal years 2007 through  
9                   2011, the Secretary shall, subject to the availability  
10                   of appropriations, increase by not less than 250 the  
11                   number of positions for full-time active duty Cus-  
12                   toms and Border Protection officers.

13                   (2) **PORT OF ENTRY INSPECTORS.—**In each of  
14                   the fiscal years 2007 through 2011, the Secretary  
15                   shall, subject to the availability of appropriations, in-  
16                   crease by not less than 250 the number of positions  
17                   for full-time active duty port of entry inspectors and  
18                   provide appropriate training, equipment, and sup-  
19                   port to such additional inspectors.

20                   (3) **INVESTIGATIVE PERSONNEL.—**

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

1           3734) is amended by striking “800” and insert-  
2           ing “1000”.

3           (B) ADDITIONAL PERSONNEL.—In addi-  
4           tion to the positions authorized under section  
5           5203 of the Intelligence Reform and Terrorism  
6           Prevention Act of 2004, as amended by sub-  
7           paragraph (A), during each of the fiscal years  
8           2007 through 2011, the Secretary shall, subject  
9           to the availability of appropriations, increase by  
10          not less than 200 the number of positions for  
11          personnel within the Department assigned to  
12          investigate alien smuggling.

13          (b) AUTHORIZATION OF APPROPRIATIONS.—

14           (1) CUSTOMS AND BORDER PROTECTION OFFI-  
15          CERS.—There are authorized to be appropriated to  
16          the Secretary such sums as may be necessary for  
17          each of the fiscal years 2007 through 2011 to carry  
18          out paragraph (1) of subsection (a).

19           (2) PORT OF ENTRY INSPECTORS.—There are  
20          authorized to be appropriated to the Secretary such  
21          sums as may be necessary for each of the fiscal  
22          years 2007 through 2011 to carry out paragraph (2)  
23          of subsection (a).

24           (3) BORDER PATROL AGENTS.—There are au-  
25          thorized to be appropriated to the Secretary such

1        sums as may be necessary for each of fiscal years  
2        2007 through 2011 to carry out section 5202 of the  
3        Intelligence Reform and Terrorism Prevention Act  
4        of 2004 (Public Law 108–458; 118 Stat. 3734).

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

6        (a) ACQUISITION.—Subject to the availability of ap-  
7        propriations, the Secretary shall procure additional un-  
8        manned aerial vehicles, cameras, poles, sensors, and other  
9        technologies necessary to achieve operational control of the  
10       international borders of the United States and to establish  
11       a security perimeter known as a “virtual fence” along such  
12       international borders to provide a barrier to illegal immi-  
13       gration.

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

1 (c) REPORT.—Not later than 6 months after the date  
2 of enactment of this Act, the Secretary and the Secretary  
3 of Defense shall submit to Congress a report that con-  
4 tains—

5 (1) a description of the current use of Depart-  
6 ment of Defense equipment to assist the Secretary  
7 in carrying out surveillance of the international land  
8 borders of the United States;

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

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

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated to the Secretary such  
18 sums as may be necessary for each of the fiscal years 2007  
19 through 2011 to carry out subsection (a).

20 **SEC. 103. INFRASTRUCTURE.**

21 (a) CONSTRUCTION OF BORDER CONTROL FACILI-  
22 TIES.—Subject to the availability of appropriations, the  
23 Secretary shall construct all-weather roads and acquire  
24 additional vehicle barriers and facilities necessary to



1 achieve operational control of the international borders of  
2 the United States.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated to the Secretary such  
5 sums as may be necessary for each of the fiscal years 2007  
6 through 2011 to carry out subsection (a).

7 **SEC. 104. BORDER PATROL CHECKPOINTS.**

8 The Secretary may maintain temporary or permanent  
9 checkpoints on roadways in border patrol sectors that are  
10 located in proximity to the international border between  
11 the United States and Mexico.

12 **SEC. 105. PORTS OF ENTRY.**

13 The Secretary is authorized to—

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

17 (2) make necessary improvements to the ports  
18 of entry in existence on the date of the enactment  
19 of this Act.

20 **Subtitle B—Border Security Plans,**  
21 **Strategies, and Reports**

22 **SEC. 111. SURVEILLANCE PLAN.**

23 (a) REQUIREMENT FOR PLAN.—The Secretary shall  
24 develop a comprehensive plan for the systematic surveil-

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

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

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

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

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

18 (4) A description of the specific surveillance  
19 technology to be deployed.

20 (5) Identification of any obstacles that may im-  
21 pede such deployment.

22 (6) A detailed estimate of all costs associated  
23 with such deployment and with continued mainte-  
24 nance of such technologies.

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

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

9           **SEC. 112. NATIONAL STRATEGY FOR BORDER SECURITY.**

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

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

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

22                (2) An assessment of the threat posed by ter-  
23                rorists and terrorist groups that may try to infiltrate  
24                the United States at locations along the inter-

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

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

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

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

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

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

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

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

13           (8) A prioritized list of research and develop-  
14 ment objectives to enhance the security of the inter-  
15 national land and maritime borders of the United  
16 States.

17           (9) A description of ways to ensure that the  
18 free flow of travel and commerce is not diminished  
19 by efforts, activities, and programs aimed at secur-  
20 ing the international land and maritime borders of  
21 the United States.

22           (10) An assessment of additional detention fa-  
23 cilities and beds that are needed to detain unlawful  
24 aliens apprehended at United States ports of entry

1 or along the international land borders of the United  
2 States.

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

6 (12) A schedule for the implementation of the  
7 security measures described in such Strategy, includ-  
8 ing a prioritization of security measures, realistic  
9 deadlines for addressing the security and enforce-  
10 ment needs, an estimate of the resources needed to  
11 carry out such measures, and a description of how  
12 such resources should be allocated.

13 (c) CONSULTATION.—In developing the National  
14 Strategy for Border Security, the Secretary shall consult  
15 with representatives of—

16 (1) State, local, and tribal authorities with re-  
17 sponsibility for locations along the international land  
18 and maritime borders of the United States; and

19 (2) appropriate private sector and nongovern-  
20 mental organizations that have expertise in areas re-  
21 lated to border security.

22 (d) COORDINATION.—The National Strategy for Bor-  
23 der Security shall be consistent with the National Strategy  
24 for Maritime Security developed pursuant to Homeland

1 Security Presidential Directive 13, dated December 21,  
2 2004.

3 (e) SUBMISSION TO CONGRESS.—

4 (1) STRATEGY.—Not later than 1 year after the  
5 date of the enactment of this Act, the Secretary  
6 shall submit to Congress the National Strategy for  
7 Border Security.

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

12 (f) IMMEDIATE ACTION.—Nothing in this section or  
13 section 111 may be construed to relieve the Secretary of  
14 the responsibility to take all actions necessary and appro-  
15 priate to achieve and maintain operational control over the  
16 entire international land and maritime borders of the  
17 United States.

18 **SEC. 113. REPORTS ON IMPROVING THE EXCHANGE OF IN-**  
19 **FORMATION ON NORTH AMERICAN SECU-**  
20 **RITY.**

21 (a) REQUIREMENT FOR REPORTS.—Not later than 6  
22 months after the date of the enactment of this Act, and  
23 every 6 months thereafter, the Secretary of State, in co-  
24 ordination with the Secretary and the Secretary of De-  
25 fense, shall submit to Congress a report on improving the

1 exchange of information related to the security of North  
2 America.

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

5 (1) SECURITY CLEARANCES AND DOCUMENT IN-  
6 TEGRITY.—The progress made toward the develop-  
7 ment of common enrollment, security, technical, and  
8 biometric standards for the issuance, authentication,  
9 validation, and repudiation of secure documents, in-  
10 cluding—

11 (A) technical and biometric standards  
12 based on best practices and consistent with  
13 international standards for the issuance, au-  
14 thentication, validation, and repudiation of trav-  
15 el documents, including—

16 (i) passports;

17 (ii) visas; and

18 (iii) permanent resident cards;

19 (B) working with Canada and Mexico to  
20 encourage foreign governments to enact laws to  
21 combat alien smuggling and trafficking, and  
22 laws to forbid the use and manufacture of  
23 fraudulent travel documents and to promote in-  
24 formation sharing;



1           (C) applying the necessary pressures and  
2           support to ensure that other countries meet  
3           proper travel document standards and are com-  
4           mitted to travel document verification before  
5           the citizens of such countries travel internation-  
6           ally, including travel by such citizens to the  
7           United States; and

8           (D) providing technical assistance for the  
9           development and maintenance of a national  
10          database built upon identified best practices for  
11          biometrics associated with visa and travel docu-  
12          ments.

13          (2) IMMIGRATION AND VISA MANAGEMENT.—  
14          The progress of efforts to share information regard-  
15          ing high-risk individuals who may attempt to enter  
16          Canada, Mexico, or the United States, including the  
17          progress made—

18                 (A) in implementing the Statement of Mu-  
19                 tual Understanding on Information Sharing,  
20                 signed by Canada and the United States in  
21                 February 2003; and

22                 (B) in identifying trends related to immi-  
23                 gration fraud, including asylum and document  
24                 fraud, and to analyze such trends.

1           (3) VISA POLICY COORDINATION AND IMMIGRA-  
2           TION SECURITY.—The progress made by Canada,  
3           Mexico, and the United States to enhance the secu-  
4           rity of North America by cooperating on visa policy  
5           and identifying best practices regarding immigration  
6           security, including the progress made—

7                   (A) in enhancing consultation among offi-  
8                   cials who issue visas at the consulates or em-  
9                   bassies of Canada, Mexico, or the United States  
10                  throughout the world to share information,  
11                  trends, and best practices on visa flows;

12                  (B) in comparing the procedures and poli-  
13                  cies of Canada and the United States related to  
14                  visitor visa processing, including—

- 15                           (i) application process;  
16                           (ii) interview policy;  
17                           (iii) general screening procedures;  
18                           (iv) visa validity;  
19                           (v) quality control measures; and  
20                           (vi) access to appeal or review;

21                  (C) in exploring methods for Canada, Mex-  
22                  ico, and the United States to waive visa re-  
23                  quirements for nationals and citizens of the  
24                  same foreign countries;

1 (D) in providing technical assistance for  
2 the development and maintenance of a national  
3 database built upon identified best practices for  
4 biometrics associated with immigration viola-  
5 tors;

6 (E) in developing and implementing an im-  
7 migration security strategy for North America  
8 that works toward the development of a com-  
9 mon security perimeter by enhancing technical  
10 assistance for programs and systems to support  
11 advance automated reporting and risk targeting  
12 of international passengers;

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

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

19 (4) NORTH AMERICAN VISITOR OVERSTAY PRO-  
20 GRAM.—The progress made by Canada and the  
21 United States in implementing parallel entry-exit  
22 tracking systems that, while respecting the privacy  
23 laws of both countries, share information regarding  
24 third country nationals who have overstayed their

1 period of authorized admission in either Canada or  
2 the United States.

3 (5) TERRORIST WATCH LISTS.—The progress  
4 made in enhancing the capacity of the United States  
5 to combat terrorism through the coordination of  
6 counterterrorism efforts, including the progress  
7 made—

8 (A) in developing and implementing bilat-  
9 eral agreements between Canada and the  
10 United States and between Mexico and the  
11 United States to govern the sharing of terrorist  
12 watch list data and to comprehensively enu-  
13 merate the uses of such data by the govern-  
14 ments of each country;

15 (B) in establishing appropriate linkages  
16 among Canada, Mexico, and the United States  
17 Terrorist Screening Center; and

18 (C) in exploring with foreign governments  
19 the establishment of a multilateral watch list  
20 mechanism that would facilitate direct coordina-  
21 tion between the country that identifies an indi-  
22 vidual as an individual included on a watch list,  
23 and the country that owns such list, including  
24 procedures that satisfy the security concerns

1           and are consistent with the privacy and other  
2           laws of each participating country.

3           (6) MONEY LAUNDERING, CURRENCY SMUG-  
4           GLING, AND ALIEN SMUGGLING.—The progress made  
5           in improving information sharing and law enforce-  
6           ment cooperation in combating organized crime, in-  
7           cluding the progress made—

8                   (A) in combating currency smuggling,  
9                   money laundering, alien smuggling, and traf-  
10                  ficking in alcohol, firearms, and explosives;

11                  (B) in implementing the agreement be-  
12                  tween Canada and the United States known as  
13                  the Firearms Trafficking Action Plan;

14                  (C) in determining the feasibility of formu-  
15                  lating a firearms trafficking action plan be-  
16                  tween Mexico and the United States;

17                  (D) in developing a joint threat assessment  
18                  on organized crime between Canada and the  
19                  United States;

20                  (E) in determining the feasibility of formu-  
21                  lating a joint threat assessment on organized  
22                  crime between Mexico and the United States;

23                  (F) in developing mechanisms to exchange  
24                  information on findings, seizures, and capture

1 of individuals transporting undeclared currency;  
2 and

3 (G) in developing and implementing a plan  
4 to combat the transnational threat of illegal  
5 drug trafficking.

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

17 **SEC. 114. IMPROVING THE SECURITY OF MEXICO'S SOUTH-**  
18 **ERN BORDER.**

19 (a) TECHNICAL ASSISTANCE.—The Secretary of  
20 State, in coordination with the Secretary, shall work to  
21 cooperate with the head of Foreign Affairs Canada and  
22 the appropriate officials of the Government of Mexico to  
23 establish a program—

1           (1) to assess the specific needs of Guatemala  
2           and Belize in maintaining the security of the inter-  
3           national borders of such countries;

4           (2) to use the assessment made under para-  
5           graph (1) to determine the financial and technical  
6           support needed by Guatemala and Belize from Can-  
7           ada, Mexico, and the United States to meet such  
8           needs;

9           (3) to provide technical assistance to Guatemala  
10          and Belize to promote issuance of secure passports  
11          and travel documents by such countries; and

12          (4) to encourage Guatemala and Belize—

13               (A) to control alien smuggling and traf-  
14               ficking;

15               (B) to prevent the use and manufacture of  
16               fraudulent travel documents; and

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

19          (b) BORDER SECURITY FOR BELIZE, GUATEMALA,  
20          AND MEXICO.—The Secretary, in consultation with the  
21          Secretary of State, shall work to cooperate—

22               (1) with the appropriate officials of the Govern-  
23               ment of Guatemala and the Government of Belize to  
24               provide law enforcement assistance to Guatemala  
25               and Belize that specifically addresses immigration

1 issues to increase the ability of the Government of  
2 Guatemala to dismantle human smuggling organiza-  
3 tions and gain additional control over the inter-  
4 national border between Guatemala and Belize; and

5 (2) with the appropriate officials of the Govern-  
6 ment of Belize, the Government of Guatemala, the  
7 Government of Mexico, and the governments of  
8 neighboring contiguous countries to establish a pro-  
9 gram to provide needed equipment, technical assist-  
10 ance, and vehicles to manage, regulate, and patrol  
11 the international borders between Mexico and Guate-  
12 mala and between Mexico and Belize.

13 (c) TRACKING CENTRAL AMERICAN GANGS.—The  
14 Secretary of State, in coordination with the Secretary and  
15 the Director of the Federal Bureau of Investigation, shall  
16 work to cooperate with the appropriate officials of the  
17 Government of Mexico, the Government of Guatemala, the  
18 Government of Belize, and the governments of other Cen-  
19 tral American countries—

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

23 (2) to establish a program and database to  
24 track individuals involved in Central American gang  
25 activities;



1           (3) to develop a mechanism that is acceptable  
2 to the governments of Belize, Guatemala, Mexico,  
3 the United States, and other appropriate countries  
4 to notify such a government if an individual sus-  
5 pected of gang activity will be deported to that coun-  
6 try prior to the deportation and to provide support  
7 for the reintegration of such deportees into that  
8 country; and

9           (4) to develop an agreement to share all rel-  
10 evant information related to individuals connected  
11 with Central American gangs.

## 12 **Subtitle C—Other Border Security** 13 **Initiatives**

### 14 **SEC. 121. BIOMETRIC DATA ENHANCEMENTS.**

15 Not later than October 1, 2007, the Secretary shall—

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

23           (2) in consultation with the Secretary of State,  
24 collect all fingerprints from each alien required to  
25 provide fingerprints during the alien's initial enroll-

1       ment in the integrated entry and exit data system  
2       described in section 110 of the Illegal Immigration  
3       Reform and Immigrant Responsibility Act of 1996  
4       (8 U.S.C. 1365a).

5 **SEC. 122. SECURE COMMUNICATION.**

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

10           (1) among all Border Patrol agents conducting  
11       operations between ports of entry;

12           (2) between Border Patrol agents and their re-  
13       spective Border Patrol stations;

14           (3) between Border Patrol agents and residents  
15       in remote areas along the international land borders  
16       of the United States; and

17           (4) between all appropriate border security  
18       agencies of the Department and State, local, and  
19       tribal law enforcement agencies.

20 **SEC. 123. BORDER PATROL TRAINING CAPACITY REVIEW.**

21       (a) IN GENERAL.—The Comptroller General of the  
22       United States shall conduct a review of the basic training  
23       provided to Border Patrol agents by the Secretary to en-  
24       sure that such training is provided as efficiently and cost-  
25       effectively as possible.

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

3 (1) An evaluation of the length and content of  
4 the basic training curriculum provided to new Bor-  
5 der Patrol agents by the Federal Law Enforcement  
6 Training Center, including a description of how the  
7 curriculum has changed since September 11, 2001.

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

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

18 (4) An evaluation of whether utilizing com-  
19 parable non-Federal training programs, proficiency  
20 testing, and long-distance learning programs may af-  
21 fect—

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

1 (B) the per agent costs of basic training;

2 and

3 (C) the scope and quality of basic training

4 needed to fulfill the mission and duties of a

5 Border Patrol agent.

6 **SEC. 124. US-VISIT SYSTEM.**

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

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

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

19 and

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

22 **SEC. 125. DOCUMENT FRAUD DETECTION.**

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

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

5 (b) FORENSIC DOCUMENT LABORATORY.—The Sec-  
6 retary shall provide all Customs and Border Protection of-  
7 ficers with access to the Forensic Document Laboratory.

8 (c) ASSESSMENT.—

9 (1) REQUIREMENT FOR ASSESSMENT.—The In-  
10 spector General of the Department shall conduct an  
11 independent assessment of the accuracy and reli-  
12 ability of the Forensic Document Laboratory.

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

18 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
19 are authorized to be appropriated to the Secretary such  
20 sums as may be necessary for each of fiscal years 2007  
21 through 2011 to carry out this section.

22 **SEC. 126. IMPROVED DOCUMENT INTEGRITY.**

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

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

4           (2) in the heading, by striking “**ENTRY AND**  
5           **EXIT DOCUMENTS**” and inserting “**TRAVEL AND**  
6           **ENTRY DOCUMENTS AND EVIDENCE OF STA-**  
7           **TUS**”;

8           (3) in subsection (b)(1)—

9           (A) by striking “Not later than October  
10           26, 2004, the” and inserting “The”; and

11           (B) by striking “visas and” both places it  
12           appears and inserting “visas, evidence of status,  
13           and”;

14           (4) by redesignating subsection (d) as sub-  
15           section (e); and

16           (5) by inserting after subsection (c) the fol-  
17           lowing:

18           “(d) **OTHER DOCUMENTS**.—Not later than October  
19           26, 2007, every document, other than an interim docu-  
20           ment, issued by the Secretary of Homeland Security,  
21           which may be used as evidence of an alien’s status as an  
22           immigrant, nonimmigrant, parolee, asylee, or refugee,  
23           shall be machine-readable and tamper-resistant, and shall  
24           incorporate a biometric identifier to allow the Secretary

1 of Homeland Security to verify electronically the identity  
2 and status of the alien.”.

3 **SEC. 127. CANCELLATION OF VISAS.**

4 Section 222(g) (8 U.S.C. 1202(g)) is amended—

5 (1) in paragraph (1)—

6 (A) by striking “Attorney General” and in-  
7 serting “Secretary of Homeland Security”; and

8 (B) by inserting “and any other non-  
9 immigrant visa issued by the United States that  
10 is in the possession of the alien” after “such  
11 visa”; and

12 (2) in paragraph (2)(A), by striking “(other  
13 than the visa described in paragraph (1)) issued in  
14 a consular office located in the country of the alien’s  
15 nationality” and inserting “(other than a visa de-  
16 scribed in paragraph (1)) issued in a consular office  
17 located in the country of the alien’s nationality or  
18 foreign residence”.

19 **SEC. 128. BIOMETRIC ENTRY-EXIT SYSTEM.**

20 (a) COLLECTION OF BIOMETRIC DATA FROM ALIENS

21 DEPARTING THE UNITED STATES.—Section 215 (8

22 U.S.C. 1185) is amended—

23 (1) by redesignating subsection (c) as sub-  
24 section (g);

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

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

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

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

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

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

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

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



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

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

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

8                   “(C) WITHHOLDERS OF BIOMETRIC  
9 DATA.—Any alien who knowingly fails to com-  
10 ply with a lawful request for biometric data  
11 under section 215(e) or 235(d) is inadmis-  
12 sible.”; and

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

15                   “(2) The Secretary of Homeland Security shall  
16 determine whether a ground for inadmissibility ex-  
17 ists with respect to an alien described in subpara-  
18 graph (C) of subsection (a)(7) and may waive the  
19 application of such subparagraph for an individual  
20 alien or a class of aliens, at the discretion of the  
21 Secretary.”.

22       (e) IMPLEMENTATION.—Section 7208 of the 9/11  
23 Commission Implementation Act of 2004 (8 U.S.C.  
24 1365b) is amended—

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

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

11 (2) in subsection (l)—

12 (A) by striking “There are authorized”  
13 and inserting the following:

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

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

16 “(2) IMPLEMENTATION AT ALL LAND BORDER  
17 PORTS OF ENTRY.—There are authorized to be ap-  
18 propriated such sums as may be necessary for each  
19 of fiscal years 2007 and 2008 to implement the  
20 automated biometric entry and exit data system at  
21 all land border ports of entry.”.

22 **SEC. 129. BORDER STUDY.**

23 (a) SOUTHERN BORDER STUDY.—The Secretary, in  
24 consultation with the Attorney General, the Secretary of  
25 the Interior, the Secretary of Agriculture, the Secretary

1 of Defense, the Secretary of Commerce, and the Adminis-  
2 trator of the Environmental Protection Agency, shall con-  
3 duct a study on the construction of a system of physical  
4 barriers along the southern international land and mari-  
5 time border of the United States. The study shall in-  
6 clude—

7           (1) an assessment of the necessity of con-  
8 structing such a system, including the identification  
9 of areas of high priority for the construction of such  
10 a system determined after consideration of factors  
11 including the amount of narcotics trafficking and  
12 the number of illegal immigrants apprehended in  
13 such areas;

14           (2) an assessment of the feasibility of con-  
15 structing such a system;

16           (3) an assessment of the international, national,  
17 and regional environmental impact of such a system,  
18 including the impact on zoning, global climate  
19 change, ozone depletion, biodiversity loss, and  
20 transboundary pollution;

21           (4) an assessment of the necessity for ports of  
22 entry along such a system;

23           (5) an assessment of the impact such a system  
24 would have on international trade, commerce, and  
25 tourism;

1           (6) an assessment of the effect of such a system  
2           on private property rights including issues of emi-  
3           nent domain and riparian rights;

4           (7) an estimate of the costs associated with  
5           building a barrier system, including costs associated  
6           with excavation, construction, and maintenance; and

7           (8) an assessment of the effect of such a system  
8           on Indian reservations and units of the National  
9           Park System.

10          (b) NORTHERN BORDER STUDY.—The Secretary  
11          shall conduct a study on the construction of a system of  
12          physical barriers along the northern international land  
13          and maritime border of the United States. The study shall  
14          include—

15               (1) an assessment of the necessity of con-  
16               structing such a system;

17               (2) an assessment of the feasibility of con-  
18               structing such a system; and

19               (3) any other assessment or estimate described  
20               in paragraphs (3) through (8) of subsection (a) for  
21               such a system, if the Secretary determines that in-  
22               cluding such assessment or estimate is appropriate.

23          (c) REPORTS.—

24               (1) SOUTHERN BORDER STUDY.—Not later  
25               than 9 months after the date of the enactment of

1 this Act, the Secretary shall submit to Congress a  
2 report on the study described in subsection (a).

3 (2) NORTHERN BORDER STUDY.—Not later  
4 than 2 years after the date of enactment of this Act,  
5 the Secretary shall submit to Congress a report on  
6 the study described in subsection (b).

## 7 **TITLE II—INTERIOR** 8 **ENFORCEMENT**

### 9 **SEC. 201. REMOVAL AND DENIAL OF BENEFITS TO TER-** 10 **RORIST ALIENS.**

11 (a) ASYLUM.—Section 208(b)(2)(A)(v) (8 U.S.C.  
12 1158(b)(2)(A)(v)) is amended by striking “or (VI)” and  
13 inserting “(V), (VI), (VII), or (VIII)”.

14 (b) CANCELLATION OF REMOVAL.—Section  
15 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

16 (1) by striking “inadmissible under” and insert-  
17 ing “described in”; and

18 (2) by striking “deportable under” and insert-  
19 ing “described in”.

20 (c) VOLUNTARY DEPARTURE.—Section  
21 240B(b)(1)(C) (8 U.S.C. 1229c(b)(1)(C)) is amended by  
22 striking “deportable under section 237(a)(2)(A)(iii) or  
23 section 237(a)(4)” and inserting “described in paragraph  
24 (2)(A)(iii) or (4) of section 237(a)”.

1 (d) RESTRICTION ON REMOVAL.—Section  
2 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

3 (1) in clause (iii), by striking “or” at the end;

4 (2) in clause (iv) by striking the period at the  
5 end and inserting “; or”;

6 (3) by inserting after clause (iv) the following:

7 “(v) the alien is described in—

8 (I) subclause (I), (II), (III),  
9 (IV), (V), (VI), (VII), or (VIII) of  
10 section 212(a)(3)(B)(i); or

11 (II) section 237(a)(4)(B) (other  
12 than an alien described in section  
13 212(a)(3)(B)(i)(IV)) and the Sec-  
14 retary of Homeland Security deter-  
15 mines that there are not reasonable  
16 grounds for regarding the alien as a  
17 danger to the security of the United  
18 States.”; and

19 (4) in the undesignated paragraph after clause  
20 (iv), by striking “For purposes of clause (iv), an  
21 alien who is described in section 237(a)(4)(B) shall  
22 be considered to be an alien with respect to whom  
23 there are reasonable grounds for regarding as a dan-  
24 ger to the security of the United States.”.

1 (e) RECORD OF ADMISSION.—Section 249 (8 U.S.C.  
2 1259) is amended to read as follows:

3 **“SEC. 249. RECORD OF ADMISSION FOR PERMANENT RESI-**  
4 **DENCE IN THE CASE OF CERTAIN ALIENS**  
5 **WHO ENTERED THE UNITED STATES PRIOR**  
6 **TO JANUARY 1, 1972.**

7 “A record of lawful admission for permanent resi-  
8 dence may be made, in the discretion of the Secretary of  
9 Homeland Security and under such regulations as the Sec-  
10 retary may prescribe, for any alien, as of the date of the  
11 approval of the alien’s application or, if entry occurred be-  
12 fore July 1, 1924, as of the date of such entry if no such  
13 record is otherwise available, if the alien establishes that  
14 the alien—

15 “(1) is not described in section 212(a)(3)(E) or  
16 in section 212(a) (insofar as it relates to criminals,  
17 procurers, other immoral persons, subversives, viola-  
18 tors of the narcotics laws, or smugglers of aliens);

19 “(2) entered the United States before January  
20 1, 1972;

21 “(3) has resided in the United States continu-  
22 ously since such entry;

23 “(4) is a person of good moral character;

24 “(5) is not ineligible for citizenship; and

25 “(6) is not described in section 237(a)(4)(B).”.

1 (f) APPLICATION.—The amendments made by this  
2 section shall apply to—

3 (1) any aliens in a removal, deportation, or ex-  
4 clusion proceeding pending on or after the date of  
5 the enactment of this Act; and

6 (2) any act or condition constituting a ground  
7 for inadmissibility, excludability, or removal occur-  
8 ring or existing before, on, or after the date of the  
9 enactment of this Act.

10 **SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED**

11 **REMOVED.**

12 (a) IN GENERAL.—

13 (1) AMENDMENTS.—Section 241(a) (8 U.S.C.  
14 1231(a)) is amended—

15 (A) by striking “Attorney General” the  
16 first place it appears and inserting “Secretary  
17 of Homeland Security”;

18 (B) by striking “Attorney General” any  
19 other place it appears and inserting “Sec-  
20 retary”;

21 (C) in paragraph (1)—

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

24 “(ii) If a court, the Board of Immi-  
25 gration Appeals, or an immigration judge



1 orders a stay of the removal of the alien,  
2 the expiration date of the stay of re-  
3 moval.”.

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

6 “(C) EXTENSION OF PERIOD.—The re-  
7 moval period shall be extended beyond a period  
8 of 90 days and the alien may remain in deten-  
9 tion during such extended period if the alien  
10 fails or refuses to—

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

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

21 (iii) by adding at the end the fol-  
22 lowing:

23 “(D) TOLLING OF PERIOD.—If, at the  
24 time described in subparagraph (B), the alien is  
25 not in the custody of the Secretary under the

1 authority of this Act, the removal period shall  
2 not begin until the alien is taken into such cus-  
3 tody. If the Secretary lawfully transfers custody  
4 of the alien during the removal period to an-  
5 other Federal agency or to a State or local gov-  
6 ernment agency in connection with the official  
7 duties of such agency, the removal period shall  
8 be tolled, and shall recommence on the date on  
9 which the alien is returned to the custody of the  
10 Secretary.”;

11 (D) in paragraph (2), by adding at the end  
12 the following: “If a court, the Board of Immi-  
13 gration Appeals, or an immigration judge or-  
14 ders a stay of removal of an alien who is sub-  
15 ject to an administrative final order of removal,  
16 the Secretary, in the exercise of discretion, may  
17 detain the alien during the pendency of such  
18 stay of removal.”;

19 (E) in paragraph (3), by amending sub-  
20 paragraph (D) to read as follows:

21 “(D) to obey reasonable restrictions on the  
22 alien’s conduct or activities, or to perform af-  
23 firmative acts, that the Secretary prescribes for  
24 the alien—

1                   “(i) to prevent the alien from ab-  
2                   sconding;

3                   “(ii) for the protection of the commu-  
4                   nity; or

5                   “(iii) for other purposes related to the  
6                   enforcement of the immigration laws.”;

7                   (F) in paragraph (6), by striking “removal  
8                   period and, if released,” and inserting “removal  
9                   period, in the discretion of the Secretary, with-  
10                  out any limitations other than those specified in  
11                  this section, until the alien is removed. If an  
12                  alien is released, the alien”;

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

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

17                  “(7) PAROLE.—If an alien detained pursuant to  
18                  paragraph (6) is an applicant for admission, the  
19                  Secretary—

20                         “(A) may parole the alien under section  
21                         212(d)(5);

22                         “(B) notwithstanding section 212(d)(5),  
23                         may provide that the alien shall not be returned  
24                         to custody unless—

1                   “(i) the alien violates the conditions of  
2                   the alien’s parole; or

3                   “(ii) the alien’s removal becomes rea-  
4                   sonably foreseeable; and

5                   “(C) may not, under any circumstances,  
6                   classify an alien paroled under this paragraph  
7                   as having been admitted.

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

11                  “(A) DETENTION REVIEW PROCESS FOR  
12                  ALIENS WHO HAVE EFFECTED AN ENTRY AND  
13                  FULLY COOPERATE WITH REMOVAL.—The Sec-  
14                  retary of Homeland Security shall establish an  
15                  administrative review process to determine  
16                  whether an alien described in subparagraph (B)  
17                  should be detained or released after the removal  
18                  period in accordance with subparagraphs (C)  
19                  and (E).

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

22                         “(i) has effected an entry into the  
23                         United States;

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

1           “(iii) has cooperated fully with the  
2           Secretary’s efforts to establish the alien’s  
3           identity and to carry out the removal  
4           order, including making timely application  
5           in good faith for travel or other documents  
6           necessary for the alien’s departure; and

7           “(iv) has not conspired or acted to  
8           prevent removal.

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

11           “(i) shall consider any evidence sub-  
12          mitted by the alien;

13           “(ii) may consider any other evidence,  
14          including—

15           “(I) any information or assist-  
16          ance provided by the Department of  
17          State or other Federal agency; and

18           “(II) any other information avail-  
19          able to the Secretary pertaining to the  
20          ability to remove the alien.

21          “(D) AUTHORITY TO DETAIN FOR 90 DAYS  
22          BEYOND REMOVAL PERIOD.—The Secretary,  
23          without any limitations other than those speci-  
24          fied in this section, may detain an alien for 90  
25          days beyond the removal period (including any

1 extension of the removal period under para-  
2 graph (1)(C)).

3 “(E) AUTHORITY TO DETAIN FOR ADDI-  
4 TIONAL PERIOD.—The Secretary, without any  
5 limitations other than those specified in this  
6 section, may detain an alien beyond the 90-day  
7 period authorized under subparagraph (D) until  
8 the alien is removed, if the Secretary—

9 “(i) determines that there is a signifi-  
10 cant likelihood that the alien will be re-  
11 moved in the reasonably foreseeable future;  
12 or

13 “(ii) certifies in writing, after an ad-  
14 ministrative review process initiated not  
15 later than 30 days after the expiration of  
16 the removal period (including any exten-  
17 sion of the removal period under para-  
18 graph (1)(C))—

19 “(I) in consultation with the Sec-  
20 retary of Health and Human Services,  
21 that the alien has a highly contagious  
22 disease that poses a threat to public  
23 safety;

24 “(II) after receipt of a written  
25 recommendation from the Secretary of

1 State, that the release of the alien  
2 would likely have serious adverse for-  
3 eign policy consequences for the  
4 United States;

5 “(III) based on information avail-  
6 able to the Secretary (including classi-  
7 fied, sensitive, or national security in-  
8 formation, and regardless of the  
9 grounds upon which the alien was or-  
10 dered removed), that there is reason  
11 to believe that the release of the alien  
12 would threaten the national security  
13 of the United States;

14 “(IV) that—

15 “(aa) the release of the alien  
16 would threaten the safety of the  
17 community or any person, not-  
18 withstanding conditions of release  
19 designed to ensure the safety of  
20 the community or any person;  
21 and

22 “(bb) the alien—

23 “(AA) has been con-  
24 victed of 1 or more aggra-  
25 vated felonies (as defined in

1 section 101(a)(43)(A)), or of  
2 an attempt or conspiracy to  
3 commit 1 or more such ag-  
4 gravated felonies; or

5 “(BB) has committed a  
6 crime of violence (as defined  
7 in section 16 of title 18,  
8 United States Code, but not  
9 including a purely political  
10 offense) and, because of a  
11 mental condition or person-  
12 ality disorder and behavior  
13 associated with that condi-  
14 tion or disorder, is likely to  
15 engage in a future crime of  
16 violence; or

17 “(V) that—

18 “(aa) the release of the alien  
19 would threaten the safety of the  
20 community or any person, not-  
21 withstanding conditions of release  
22 designed to ensure the safety of  
23 the community or any person;  
24 and



1                   “(bb) the alien has been  
2 convicted of 1 or more aggra-  
3 vated felonies (as defined in sec-  
4 tion 101(a)(43)) for which the  
5 alien was sentenced to an aggre-  
6 gate term of imprisonment of not  
7 less than 1 year.

8                   “(F) RENEWAL AND DELEGATION OF CER-  
9 TIFICATION.—

10                   “(i) RENEWAL.—The Secretary may  
11 renew a certification under subparagraph  
12 (E)(ii) every 6 months, without limitation,  
13 after providing the alien with an oppor-  
14 tunity to request reconsideration of the  
15 certification and to submit documents or  
16 other evidence in support of that request.  
17 If the Secretary does not renew such cer-  
18 tification, the Secretary shall release the  
19 alien, pursuant to subparagraph (G).

20                   “(ii) DELEGATION.—Notwithstanding  
21 any other provision of law, the Secretary  
22 may not delegate the authority to make or  
23 renew a certification described in subclause  
24 (II), (III), or (V) of subparagraph (E)(ii)  
25 to any employee reporting to the Assistant

1 Secretary for Immigration and Customs  
2 Enforcement.

3 “(iii) HEARING.—The Secretary may  
4 request that the Attorney General, or a  
5 designee of the Attorney General, provide  
6 for a hearing to make the determination  
7 described in subparagraph  
8 (E)(ii)(IV)(bb)(BB).

9 “(G) RELEASE ON CONDITIONS.—If it is  
10 determined that an alien should be released  
11 from detention, the Secretary may, in the Sec-  
12 retary’s discretion, impose conditions on release  
13 in accordance with the regulations prescribed  
14 pursuant to paragraph (3).

15 “(H) REDETENTION.—The Secretary,  
16 without any limitations other than those speci-  
17 fied in this section, may detain any alien sub-  
18 ject to a final removal order who has previously  
19 been released from custody if—

20 “(i) the alien fails to comply with the  
21 conditions of release;

22 “(ii) the alien fails to continue to sat-  
23 isfy the conditions described in subpara-  
24 graph (B); or

1                   “(iii) upon reconsideration, the Sec-  
2                   retary determines that the alien can be de-  
3                   tained under subparagraph (E).

4                   “(I) APPLICABILITY.—This paragraph and  
5                   paragraphs (6) and (7) shall apply to any alien  
6                   returned to custody under subparagraph (H) as  
7                   if the removal period terminated on the day of  
8                   the redetention.

9                   “(J) DETENTION REVIEW PROCESS FOR  
10                  ALIENS WHO HAVE EFFECTED AN ENTRY AND  
11                  FAIL TO COOPERATE WITH REMOVAL.—The  
12                  Secretary shall detain an alien until the alien  
13                  makes all reasonable efforts to comply with a  
14                  removal order and to cooperate fully with the  
15                  Secretary’s efforts, if the alien—

16                         “(i) has effected an entry into the  
17                         United States; and

18                         “(ii)(I) and the alien faces a signifi-  
19                         cant likelihood that the alien will be re-  
20                         moved in the reasonably foreseeable future,  
21                         or would have been removed if the alien  
22                         had not—

23                                 “(aa) failed or refused to make  
24                                 all reasonable efforts to comply with a  
25                                 removal order;

1                   “(bb) failed or refused to fully  
2                   cooperate with the Secretary’s efforts  
3                   to establish the alien’s identity and  
4                   carry out the removal order, including  
5                   the failure to make timely application  
6                   in good faith for travel or other docu-  
7                   ments necessary to the alien’s depar-  
8                   ture; or

9                   “(cc) conspired or acted to pre-  
10                  vent removal; or

11                  “(II) the Secretary makes a certifi-  
12                  cation as specified in subparagraph (E), or  
13                  the renewal of a certification specified in  
14                  subparagraph (F).

15                  “(K) DETENTION REVIEW PROCESS FOR  
16                  ALIENS WHO HAVE NOT EFFECTED AN  
17                  ENTRY.—Except as otherwise provided in this  
18                  subparagraph, the Secretary shall follow the  
19                  guidelines established in section 241.4 of title 8,  
20                  Code of Federal Regulations, when detaining  
21                  aliens who have not effected an entry. The Sec-  
22                  retary may decide to apply the review process  
23                  outlined in this paragraph.

24                  “(9) JUDICIAL REVIEW.—Without regard to the  
25                  place of confinement, judicial review of any action or

1 decision made pursuant to paragraph (6), (7), or (8)  
2 shall be available exclusively in a habeas corpus pro-  
3 ceeding instituted in a United States District Court  
4 and only if the alien has exhausted all administrative  
5 remedies available to the alien as of right.”.

6 (2) EFFECTIVE DATE.—The amendments made  
7 by paragraph (1)—

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

10 (B) shall apply to—

11 (i) any alien subject to a final admin-  
12 istrative removal, deportation, or exclusion  
13 order that was issued before, on, or after  
14 the date of the enactment of this Act; and

15 (ii) any act or condition occurring or  
16 existing before, on, or after the date of the  
17 enactment of this Act.

18 (b) CRIMINAL DETENTION OF ALIENS.—Section  
19 3142 of title 18, United States Code, is amended—

20 (1) in subsection (e)—

21 (A) by redesignating paragraphs (1), (2),  
22 and (3) as subparagraphs (A), (B), and (C), re-  
23 spectively;

24 (B) by inserting “(1)” before “If, after a  
25 hearing”; and

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

2 “(2) In a case described in subsection (f)(1) of this  
3 section, a rebuttable presumption arises that no condition  
4 or combination of conditions will reasonably assure the ap-  
5 pearance of the person as required if the judicial officer  
6 finds that there is probable cause to believe that the per-  
7 son—

8 “(A) is an alien; and

9 “(B)(i) has no lawful immigration status in the  
10 United States;

11 “(ii) is the subject of a final order of removal;

12 or

13 “(iii) has committed a felony offense under sec-  
14 tion 911, 922(g)(5), 1015, 1028, 1425, or 1426 of  
15 this title, chapter 75 or 77 of this title, or section  
16 243, 274, 275, 276, 277, or 278 of the Immigration  
17 and Nationality Act (8 U.S.C. 1253, 1324, 1325,  
18 1326, 2327, and 1328).”; and

19 (2) in subsection (g)(3)—

20 (A) in subparagraph (A), by striking

21 “and” at the end;

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

23 “(C) the person’s immigration status;  
24 and”.

1 **SEC. 203. AGGRAVATED FELONS.**

2 (a) DEFINITION OF AGGRAVATED FELONY.—Section  
3 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

4 (1) by striking “The term ‘aggravated felony’  
5 means—” and inserting “Notwithstanding any other  
6 provision of law (including any provision providing  
7 an effective date), the term ‘aggravated felony’ ap-  
8 plies to an offense described in this paragraph,  
9 whether in violation of Federal or State law, and to  
10 such an offense in violation of the law of a foreign  
11 country for which the term of imprisonment was  
12 completed within the previous 15 years, even if the  
13 length of the term of imprisonment is based on re-  
14 cidivist or other enhancements and regardless of  
15 whether the conviction was entered before, on, or  
16 after September 30, 1996, and means—”

17 (2) in subparagraph (N), by striking “para-  
18 graph (1)(A) or (2) of”;

19 (3) in subparagraph (O), by striking “section  
20 275(a) or 276 committed by an alien who was pre-  
21 viously deported on the basis of a conviction for an  
22 offense described in another subparagraph of this  
23 paragraph” and inserting “section 275 or 276 for  
24 which the term of imprisonment is at least 1 year”;

25 (4) in subparagraph (U), by striking “an at-  
26 tempt or conspiracy to commit an offense described

1 in this paragraph” and inserting “aiding or abetting  
2 an offense described in this paragraph, or soliciting,  
3 counseling, procuring, commanding, or inducing an-  
4 other, attempting, or conspiring to commit such an  
5 offense”; and

6 (5) by striking the undesignated matter fol-  
7 lowing subparagraph (U).

8 (b) ADJUSTMENT OF STATUS.—Section 209(c) (8  
9 U.S.C. 1159(c)) is amended by adding at the end the fol-  
10 lowing: “An alien who is convicted of an aggravated felony  
11 is not eligible for a waiver or for adjustment of status  
12 under this section.”.

13 (c) APPLICABILITY.—The amendments made by sub-  
14 sections (a) and (b) shall apply to—

15 (1) any act that occurred before, on, or after  
16 the date of the enactment of this Act; and

17 (2) any removal, deportation, or exclusion pro-  
18 ceeding that is filed, pending, or reopened, on or  
19 after the date of the enactment of this Act in the  
20 case of an alien who is required to establish admissi-  
21 bility on or after such date of the enactment.

22 **SEC. 204. TERRORIST BARS.**

23 (a) DEFINITION OF GOOD MORAL CHARACTER.—  
24 Section 101(f) (8 U.S.C. 1101(f)) is amended—



1           (1) by inserting after paragraph (1) the fol-  
2           lowing:

3           “(2) an alien described in section 212(a)(3) or  
4           237(a)(4), as determined by the Secretary of Home-  
5           land Security or Attorney General based upon any  
6           relevant information or evidence, including classified,  
7           sensitive, or national security information;”;

8           (2) in paragraph (8), by striking “(as defined  
9           in subsection (a)(43))” and inserting the following:  
10          “, regardless of whether the crime was defined as an  
11          aggravated felony under subsection (a)(43) at the  
12          time of the conviction, unless—

13                 “(A) the person completed the term of im-  
14                 prisonment and sentence not later than 10  
15                 years before the date of application; and

16                 “(B) the Secretary of Homeland Security  
17                 or the Attorney General waives the application  
18                 of this paragraph; or”;

19          (3) in the undesignated matter following para-  
20          graph (9), by striking “a finding that for other rea-  
21          sons such person is or was not of good moral char-  
22          acter” and inserting the following: “a discretionary  
23          finding for other reasons that such a person is or  
24          was not of good moral character. In determining an  
25          applicant’s moral character, the Secretary of Home-

1 land Security and the Attorney General may take  
2 into consideration the applicant's conduct and acts  
3 at any time and are not limited to the period during  
4 which good moral character is required.”.

5 (b) PENDING PROCEEDINGS.—Section 204(b) (8  
6 U.S.C. 1154(b)) is amended by adding at the end the fol-  
7 lowing: “A petition may not be approved under this section  
8 if there is any administrative or judicial proceeding  
9 (whether civil or criminal) pending against the petitioner  
10 that could directly or indirectly result in the petitioner's  
11 denaturalization or the loss of the petitioner's lawful per-  
12 manent resident status.”.

13 (c) CONDITIONAL PERMANENT RESIDENT STATUS.—

14 (1) IN GENERAL.—Section 216(e) (8 U.S.C.  
15 1186a(e)) is amended by inserting “if the alien has  
16 had the conditional basis removed pursuant to this  
17 section” before the period at the end.

18 (2) CERTAIN ALIEN ENTREPRENEURS.—Section  
19 216A(e) (8 U.S.C. 1186b(e)) is amended by insert-  
20 ing “if the alien has had the conditional basis re-  
21 moved pursuant to this section” before the period at  
22 the end.

23 (d) JUDICIAL REVIEW OF NATURALIZATION APPLI-  
24 CATIONS.—Section 310(c) (8 U.S.C. 1421(c)) is amend-  
25 ed—

1           (1) by inserting “, not later than 120 days after  
2           the Secretary of Homeland Security’s final deter-  
3           mination,” after “may”; and

4           (2) by adding at the end the following: “The  
5           petitioner shall have the burden of showing that the  
6           Secretary’s denial of the application was contrary to  
7           law. Except in a proceeding under section 340, and  
8           notwithstanding any other provision of law, no court  
9           shall have jurisdiction to determine, or to review a  
10          determination of the Secretary regarding, whether,  
11          for purposes of an application for naturalization, an  
12          alien—

13               “(1) is a person of good moral character;

14               “(2) understands and is attached to the prin-  
15               ciples of the Constitution of the United States; or

16               “(3) is well disposed to the good order and hap-  
17               piness of the United States.”.

18          (e) PERSONS ENDANGERING NATIONAL SECURITY.—

19          Section 316 (8 U.S.C. 1427) is amended by adding at the  
20          end the following:

21               “(g) PERSONS ENDANGERING THE NATIONAL SECU-  
22          RITY.—A person may not be naturalized if the Secretary  
23          of Homeland Security determines, based upon any rel-  
24          evant information or evidence, including classified, sen-  
25          sitive, or national security information, that the person

1 was once an alien described in section 212(a)(3) or  
2 237(a)(4).”.

3 (f) CONCURRENT NATURALIZATION AND REMOVAL  
4 PROCEEDINGS.—Section 318 (8 U.S.C. 1429) is amended  
5 by striking “the Attorney General if” and all that follows  
6 and inserting: “the Secretary of Homeland Security or any  
7 court if there is pending against the applicant any removal  
8 proceeding or other proceeding to determine the appli-  
9 cant’s inadmissibility or deportability, or to determine  
10 whether the applicant’s lawful permanent resident status  
11 should be rescinded, regardless of when such proceeding  
12 was commenced. The findings of the Attorney General in  
13 terminating removal proceedings or canceling the removal  
14 of an alien under this Act shall not be deemed binding  
15 in any way upon the Secretary of Homeland Security with  
16 respect to the question of whether such person has estab-  
17 lished eligibility for naturalization in accordance with this  
18 title.”.

19 (g) DISTRICT COURT JURISDICTION.—Section  
20 336(b) (8 U.S.C. 1447(b)) is amended to read as follows:

21 “(b) REQUEST FOR HEARING BEFORE DISTRICT  
22 COURT.—If there is a failure to render a final administra-  
23 tive decision under section 335 before the end of the 180-  
24 day period beginning on the date on which the Secretary  
25 of Homeland Security completes all examinations and

1 interviews required under such section, the applicant may  
2 apply to the district court for the district in which the  
3 applicant resides for a hearing on the matter. Such district  
4 court shall only have jurisdiction to review the basis for  
5 delay and remand the matter to the Secretary of Home-  
6 land Security for the Secretary's determination on the ap-  
7 plication.".

8 (h) EFFECTIVE DATE.—The amendments made by  
9 this section—

10 (1) shall take effect on the date of the enact-  
11 ment of this Act;

12 (2) shall apply to any act that occurred before,  
13 on, or after such date of enactment; and

14 (3) shall apply to any application for natu-  
15 ralization or any other case or matter under the im-  
16 migration laws pending on, or filed after, such date  
17 of enactment.

18 **SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO**  
19 **GANG VIOLENCE, REMOVAL, AND ALIEN**  
20 **SMUGGLING.**

21 (a) CRIMINAL STREET GANGS.—

22 (1) INADMISSIBILITY.—Section 212(a)(2) (8  
23 U.S.C. 1182(a)(2)) is amended—

24 (A) by redesignating subparagraph (F) as  
25 subparagraph (J); and

1 (B) by inserting after subparagraph (E)  
2 the following:

3 “(F) MEMBERS OF CRIMINAL STREET  
4 GANGS.—Unless the Secretary of Homeland Se-  
5 curity or the Attorney General waives the appli-  
6 cation of this subparagraph, any alien who a  
7 consular officer, the Attorney General, or the  
8 Secretary of Homeland Security knows or has  
9 reason to believe—

10 “(i) is, or has been, a member of a  
11 criminal street gang (as defined in section  
12 521(a) of title 18, United States Code); or

13 “(ii) has participated in the activities  
14 of a criminal street gang, knowing or hav-  
15 ing reason to know that such activities pro-  
16 moted, furthered, aided, or supported the  
17 illegal activity of the criminal gang,  
18 is inadmissible.”.

19 (2) DEPORTABILITY.—Section 237(a)(2) (8  
20 U.S.C. 1227(a)(2)) is amended by adding at the end  
21 the following:

22 “(F) MEMBERS OF CRIMINAL STREET  
23 GANGS.—Unless the Secretary of Homeland Se-  
24 curity or the Attorney General waives the appli-  
25 cation of this subparagraph, any alien who the

1 Secretary of Homeland Security or the Attorney  
2 General knows or has reason to believe—

3 “(i) is, or at any time after admission  
4 has been, a member of a criminal street  
5 gang (as defined in section 521(a) of title  
6 18, United States Code); or

7 “(ii) has participated in the activities  
8 of a criminal street gang, knowing or hav-  
9 ing reason to know that such activities pro-  
10 moted, furthered, aided, or supported the  
11 illegal activity of the criminal gang,  
12 is deportable.”.

13 (3) TEMPORARY PROTECTED STATUS.—Section  
14 244 (8 U.S.C. 1254a) is amended—

15 (A) by striking “Attorney General” each  
16 place it appears and inserting “Secretary of  
17 Homeland Security”;

18 (B) in subsection (b)(3)—

19 (i) in subparagraph (B), by striking  
20 the last sentence and inserting the fol-  
21 lowing: “Notwithstanding any other provi-  
22 sion of this section, the Secretary of  
23 Homeland Security may, for any reason  
24 (including national security), terminate or  
25 modify any designation under this section.

1           Such termination or modification is effec-  
2           tive upon publication in the Federal Reg-  
3           ister, or after such time as the Secretary  
4           may designate in the Federal Register.”;

5           (ii) in subparagraph (C), by striking  
6           “a period of 12 or 18 months” and insert-  
7           ing “any other period not to exceed 18  
8           months”;

9           (C) in subsection (c)—

10           (i) in paragraph (1)(B), by striking  
11           “The amount of any such fee shall not ex-  
12           ceed \$50.”;

13           (ii) in paragraph (2)(B)—

14           (I) in clause (i), by striking “,  
15           or” at the end;

16           (II) in clause (ii), by striking the  
17           period at the end and inserting “; or”;  
18           and

19           (III) by adding at the end the  
20           following:

21           “(iii) the alien is, or at any time after  
22           admission has been, a member of a crimi-  
23           nal street gang (as defined in section  
24           521(a) of title 18, United States Code).”;  
25           and



1 (D) in subsection (d)—

2 (i) by striking paragraph (3); and

3 (ii) in paragraph (4), by adding at the  
4 end the following: “The Secretary of  
5 Homeland Security may detain an alien  
6 provided temporary protected status under  
7 this section whenever appropriate under  
8 any other provision of law.”.

9 (b) PENALTIES RELATED TO REMOVAL.—Section  
10 243 (8 U.S.C. 1253) is amended—

11 (1) in subsection (a)(1)—

12 (A) in the matter preceding subparagraph  
13 (A), by inserting “212(a) or” after “section”;  
14 and

15 (B) in the matter following subparagraph

16 (D)—

17 (i) by striking “or imprisoned not  
18 more than four years” and inserting “and  
19 imprisoned for not less than 6 months or  
20 more than 5 years”; and

21 (ii) by striking “, or both”; and

22 (2) in subsection (b), by striking “not more  
23 than \$1000 or imprisoned for not more than one  
24 year, or both” and inserting “under title 18, United  
25 States Code, and imprisoned for not less than 6

1 months or more than 5 years (or for not more than  
2 10 years if the alien is a member of any of the class-  
3 es described in paragraphs (1)(E), (2), (3), and (4)  
4 of section 237(a)).”.

5 (c) ALIEN SMUGGLING AND RELATED OFFENSES.—

6 (1) IN GENERAL.—Section 274 (8 U.S.C.  
7 1324), is amended to read as follows:

8 **“SEC. 274. ALIEN SMUGGLING AND RELATED OFFENSES.**

9 “(a) CRIMINAL OFFENSES AND PENALTIES.—

10 “(1) PROHIBITED ACTIVITIES.—A person shall  
11 be punished as provided under paragraph (2) if the  
12 person—

13 “(A) facilitates, encourages, directs, or in-  
14 duces a person to come to or enter the United  
15 States, or to cross the border into the United  
16 States, knowing or in reckless disregard of the  
17 fact that such person is an alien who lacks law-  
18 ful authority to come to, enter, or cross the bor-  
19 der into the United States;

20 “(B) facilitates, encourages, directs, or in-  
21 duces a person to come to or enter the United  
22 States, or to cross the border to the United  
23 States, at a place other than a designated port  
24 of entry or place other than as designated by  
25 the Secretary of Homeland Security, knowing

1 or in reckless disregard of the fact that such  
2 person is an alien and regardless of whether  
3 such alien has official permission or lawful au-  
4 thority to be in the United States;

5 “(C) transports, moves, harbors, conceals,  
6 or shields from detection a person outside of  
7 the United States knowing or in reckless dis-  
8 regard of the fact that such person is an alien  
9 in unlawful transit from 1 country to another  
10 or on the high seas, under circumstances in  
11 which the alien is seeking to enter the United  
12 States without official permission or legal au-  
13 thority;

14 “(D) encourages or induces a person to re-  
15 side or remain in the United States, knowing or  
16 in reckless disregard of the fact that such per-  
17 son is an alien who lacks lawful authority to re-  
18 side in or remain in the United States;

19 “(E) transports or moves a person in the  
20 United States, knowing or in reckless disregard  
21 of the fact that such person is an alien who  
22 lacks lawful authority to enter or be in the  
23 United States, if the transportation or move-  
24 ment will further the alien’s illegal entry into or  
25 illegal presence in the United States;

1           “(F) harbors, conceals, or shields from de-  
2           tection a person in the United States, knowing  
3           or in reckless disregard of the fact that such  
4           person is an alien who lacks lawful authority to  
5           be in the United States; or

6           “(G) conspires or attempts to commit any  
7           of the acts described in subparagraphs (A)  
8           through (F).

9           “(2) CRIMINAL PENALTIES.—A person who vio-  
10          lates any provision under paragraph (1)—

11           “(A) except as provided in subparagraphs  
12           (C) through (G), if the offense was not com-  
13           mitted for commercial advantage, profit, or pri-  
14           vate financial gain, shall be fined under title 18,  
15           United States Code, imprisoned for not more  
16           than 5 years, or both;

17           “(B) except as provided in subparagraphs  
18           (C) through (G), if the offense was committed  
19           for commercial advantage, profit, or private fi-  
20           nancial gain—

21           “(i) if the violation is the offender’s  
22           first violation under this subparagraph,  
23           shall be fined under such title, imprisoned  
24           for not more than 20 years, or both; or

1                   “(ii) if the violation is the offender’s  
2                   second or subsequent violation of this sub-  
3                   paragraph, shall be fined under such title,  
4                   imprisoned for not less than 3 years or  
5                   more than 20 years, or both;

6                   “(C) if the offense was committed with the  
7                   intent to further or aid the commission of any  
8                   other offense against the United States or any  
9                   State that is punishable by imprisonment for  
10                  more than 1 year, shall be fined under such  
11                  title, imprisoned for not less than 5 years or  
12                  more than 20 years, or both;

13                  “(D) shall be fined under such title, im-  
14                  prisoned not less than 5 years or more than 20  
15                  years, or both, if the offense created a substan-  
16                  tial and foreseeable risk of death, a substantial  
17                  and foreseeable risk of serious bodily injury (as  
18                  defined in section 2119(2) of title 18, United  
19                  States Code), or inhumane conditions to an-  
20                  other person, including—

21                         “(i) transporting the person in an en-  
22                         gine compartment, storage compartment,  
23                         or other confined space;

1                   “(ii) transporting the person at an ex-  
2                   cessive speed or in excess of the rated ca-  
3                   pacity of the means of transportation; or

4                   “(iii) transporting the person in, har-  
5                   boring the person in, or otherwise sub-  
6                   jecting the person to crowded or dangerous  
7                   conditions;

8                   “(E) if the offense caused serious bodily  
9                   injury to any person, shall be fined under such  
10                  title, imprisoned for not less than 7 years or  
11                  more than 30 years, or both;

12                  “(F) shall be fined under such title and  
13                  imprisoned for not less than 10 years or more  
14                  than 30 years if the offense involved an alien  
15                  who the offender knew or had reason to believe  
16                  was—

17                         “(i) engaged in terrorist activity (as  
18                         defined in section 212(a)(3)(B)); or

19                         “(ii) intending to engage in terrorist  
20                         activity.

21                  “(G) if the offense caused or resulted in  
22                  the death of any person, shall be fined under  
23                  such title and punished by death or imprisoned  
24                  for not less than 10 years or for life.

1           “(3) SPECIAL RULE FOR RELIGIOUS ORGANIZA-  
2           TIONS.—It is not a violation of subparagraph (D),  
3           (E) or (F) of paragraph (1) for a religious denomi-  
4           nation having a bona fide nonprofit, religious organi-  
5           zation in the United States, or the agents or officers  
6           of such denomination or organization, to encourage,  
7           invite, call, allow, or enable an alien, who lacks law-  
8           ful authority to reside in or remain in the United  
9           States and who is present in the United States to  
10          perform the vocation of a minister or missionary for  
11          the denomination or organization in the United  
12          States as a volunteer who is not compensated as an  
13          employee, notwithstanding the provision of room,  
14          board, travel, medical assistance, and other basic liv-  
15          ing expenses, provided the minister or missionary  
16          has been a member of the denomination for at least  
17          1 year.

18          “(4) EXTRATERRITORIAL JURISDICTION.—  
19          There is extraterritorial Federal jurisdiction over the  
20          offenses described in this subsection.

21          “(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

22          “(1) CRIMINAL OFFENSE AND PENALTIES.—  
23          Any person who, during any 12-month period, know-  
24          ingly employs 10 or more individuals with actual  
25          knowledge or in reckless disregard of the fact that

1 the individuals are aliens described in paragraph (2),  
2 shall be fined under title 18, United States Code,  
3 imprisoned for not more than 10 years, or both.

4 “(2) DEFINED TERM.—An alien described in  
5 this paragraph is an alien who—

6 “(A) is an unauthorized alien (as defined  
7 in section 274A(h)(3));

8 “(B) is present in the United States with-  
9 out lawful authority; and

10 “(C) has been brought into the United  
11 States in violation of this subsection.

12 “(c) SEIZURE AND FORFEITURE.—

13 “(1) IN GENERAL.—Any real or personal prop-  
14 erty used to commit or facilitate the commission of  
15 a violation of this section, the gross proceeds of such  
16 violation, and any property traceable to such prop-  
17 erty or proceeds, shall be subject to forfeiture.

18 “(2) APPLICABLE PROCEDURES.—Seizures and  
19 forfeitures under this subsection shall be governed  
20 by the provisions of chapter 46 of title 18, United  
21 States Code, relating to civil forfeitures, except that  
22 such duties as are imposed upon the Secretary of  
23 the Treasury under the customs laws described in  
24 section 981(d) shall be performed by such officers,



1 agents, and other persons as may be designated for  
2 that purpose by the Secretary of Homeland Security.

3 “(3) PRIMA FACIE EVIDENCE IN DETERMINA-  
4 TIONS OF VIOLATIONS.—In determining whether a  
5 violation of subsection (a) has occurred, prima facie  
6 evidence that an alien involved in the alleged viola-  
7 tion lacks lawful authority to come to, enter, reside  
8 in, remain in, or be in the United States or that  
9 such alien had come to, entered, resided in, re-  
10 mained in, or been present in the United States in  
11 violation of law shall include—

12 “(A) any order, finding, or determination  
13 concerning the alien’s status or lack of status  
14 made by a Federal judge or administrative ad-  
15 judicator (including an immigration judge or  
16 immigration officer) during any judicial or ad-  
17 ministrative proceeding authorized under Fed-  
18 eral immigration law;

19 “(B) official records of the Department of  
20 Homeland Security, the Department of Justice,  
21 or the Department of State concerning the  
22 alien’s status or lack of status; and

23 “(C) testimony by an immigration officer  
24 having personal knowledge of the facts con-  
25 cerning the alien’s status or lack of status.

1           “(d) AUTHORITY TO ARREST.—No officer or person  
2 shall have authority to make any arrests for a violation  
3 of any provision of this section except—

4           “(1) officers and employees designated by the  
5 Secretary of Homeland Security, either individually  
6 or as a member of a class; and

7           “(2) other officers responsible for the enforce-  
8 ment of Federal criminal laws.

9           “(e) ADMISSIBILITY OF VIDEOTAPED WITNESS TES-  
10 TIMONY.—Notwithstanding any provision of the Federal  
11 Rules of Evidence, the videotaped or otherwise audio-  
12 visually preserved deposition of a witness to a violation  
13 of subsection (a) who has been deported or otherwise ex-  
14 pelled from the United States, or is otherwise unavailable  
15 to testify, may be admitted into evidence in an action  
16 brought for that violation if—

17           “(1) the witness was available for cross exam-  
18 ination at the deposition by the party, if any, oppos-  
19 ing admission of the testimony; and

20           “(2) the deposition otherwise complies with the  
21 Federal Rules of Evidence.

22           “(f) OUTREACH PROGRAM.—The Secretary of Home-  
23 land Security, in consultation with the Attorney General  
24 and the Secretary of State, as appropriate, shall develop  
25 and implement an outreach program to educate the public

1 in the United States and abroad about the penalties for  
2 bringing in and harboring aliens in violation of this sec-  
3 tion.

4 “(g) DEFINITIONS.—In this section:

5 “(1) **LAWFUL AUTHORITY.**—The term ‘lawful  
6 authority’ means permission, authorization, or li-  
7 cense that is expressly provided for in the immigra-  
8 tion laws of the United States or accompanying reg-  
9 ulations. The term does not include any such au-  
10 thority secured by fraud or otherwise obtained in  
11 violation of law or authority sought, but not ap-  
12 proved. No alien shall be deemed to have lawful au-  
13 thority to come to, enter, reside in, remain in, or be  
14 in the United States if such coming to, entry, resi-  
15 dence, remaining, or presence was, is, or would be  
16 in violation of law.

17 “(2) **PROCEEDS.**—The term ‘proceeds’ includes  
18 any property or interest in property obtained or re-  
19 tained as a consequence of an act or omission in vio-  
20 lation of this section.

21 “(3) **UNLAWFUL TRANSIT.**—The term ‘unlawful  
22 transit’ means travel, movement, or temporary pres-  
23 ence that violates the laws of any country in which  
24 the alien is present or any country from which the  
25 alien is traveling or moving.

1           “(4) **CROSSED THE BORDER INTO THE UNITED**  
2           **STATES.**—For purposes of this section, an alien is  
3           deemed to have crossed the border into the United  
4           States regardless of whether the alien is free from  
5           official restraint.”.

6           (2) **CLERICAL AMENDMENT.**—The table of con-  
7           tents is amended by striking the item relating to sec-  
8           tion 274 and inserting the following:

          “Sec. 274. Alien smuggling and related offenses.”.

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

13               (1) in paragraph (1)—

14                     (A) in subparagraph (A), by inserting “,  
15                     alien smuggling crime,” after “crime of vio-  
16                     lence” each place such term appears;

17                     (B) in subparagraph (D)(ii), by inserting  
18                     “, alien smuggling crime,” after “crime of vio-  
19                     lence”; and

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

21           “(6) For purposes of this subsection, the term ‘alien  
22           smuggling crime’ means any felony punishable under sec-  
23           tion 274(a), 277, or 278 of the Immigration and Nation-  
24           ality Act (8 U.S.C. 1324(a), 1327, and 1328).”.

1 **SEC. 206. ILLEGAL ENTRY OR UNLAWFUL PRESENCE OF AN**  
2 **ALIEN.**

3 (a) IN GENERAL.—Section 275(a) (8 U.S.C.  
4 1325(a)) is amended to read as follows:

5 **“SEC. 275. ILLEGAL ENTRY OR UNLAWFUL PRESENCE OF**  
6 **AN ALIEN.**

7 “(a) IN GENERAL.—

8 “(1) CRIMINAL OFFENSES.—An alien shall be  
9 subject to the penalties set forth in paragraph (2) if  
10 the alien—

11 “(A) knowingly enters or crosses the bor-  
12 der into the United States at any time or place  
13 other than as designated by the Secretary of  
14 Homeland Security;

15 “(B) knowingly eludes examination or in-  
16 spection by an immigration officer;

17 “(C) knowingly enters or crosses the bor-  
18 der to the United States by means of a know-  
19 ingly false or misleading representation or the  
20 knowing concealment of a material fact; or

21 “(D) is otherwise present in the United  
22 States, knowing that such presence violates the  
23 terms and conditions of any admission, parole,  
24 immigration status, or authorized stay granted  
25 the alien under this Act.

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

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

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

10           “(C) if the violation occurred after the  
11 alien had been convicted of 3 or more mis-  
12 demeanors or for a felony, shall be fined under  
13 such title, imprisoned not more than 10 years,  
14 or both;

15           “(D) if the violation occurred after the  
16 alien had been convicted of a felony for which  
17 the alien received a term of imprisonment of  
18 not less than 30 months, shall be fined under  
19 such title, imprisoned not more than 15 years,  
20 or both; and

21           “(E) if the violation occurred after the  
22 alien had been convicted of a felony for which  
23 the alien received a term of imprisonment of  
24 not less than 60 months, such alien shall be

1           fined under such title, imprisoned not more  
2           than 20 years, or both.

3           “(3) PRIOR CONVICTIONS.—The prior convic-  
4           tions described in subparagraphs (C) through (E) of  
5           paragraph (2) are elements of the offenses described  
6           in that paragraph and the penalties in such subpara-  
7           graphs shall apply only in cases in which the convic-  
8           tion or convictions that form the basis for the addi-  
9           tional penalty are—

10                   “(A) alleged in the indictment or informa-  
11           tion; and

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

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

18           “(b) IMPROPER TIME OR PLACE; CIVIL PEN-  
19           ALTIES.—

20                   “(1) IN GENERAL.—Any alien who is appre-  
21           hended while entering, attempting to enter, or know-  
22           ingly crossing or attempting to cross the border to  
23           the United States at a time or place other than as  
24           designated by immigration officers shall be subject  
25           to a civil penalty, in addition to any criminal or

1 other civil penalties that may be imposed under any  
2 other provision of law, in an amount equal to—

3 “(A) not less than \$50 or more than \$250  
4 for each such entry, crossing, attempted entry,  
5 or attempted crossing; or

6 “(B) twice the amount specified in para-  
7 graph (1) if the alien had previously been sub-  
8 ject to a civil penalty under this subsection.

9 “(2) **CROSSED THE BORDER DEFINED.**—For  
10 purposes of this section, an alien is deemed to have  
11 crossed the border if the act was voluntary, regard-  
12 less of whether the alien was under observation at  
13 the time of the crossing.”.

14 (b) **CLERICAL AMENDMENT.**—The table of contents  
15 is amended by striking the item relating to section 275  
16 and inserting the following:

“Sec. 275. Illegal entry or unlawful presence of an alien.”.

17 **SEC. 207. ILLEGAL REENTRY.**

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

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

21 “(a) **REENTRY AFTER REMOVAL.**—Any alien who  
22 has been denied admission, excluded, deported, or re-  
23 moved, or who has departed the United States while an  
24 order of exclusion, deportation, or removal is outstanding,  
25 and subsequently enters, attempts to enter, crosses the



1 border to, attempts to cross the border to, or is at any  
2 time found in the United States, shall be fined under title  
3 18, United States Code, imprisoned not more than 2  
4 years, or both.

5 “(b) REENTRY OF CRIMINAL OFFENDERS.—Not-  
6 withstanding the penalty provided in subsection (a), if an  
7 alien described in that subsection—

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

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

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

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

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

7           “(c) **PROOF OF PRIOR CONVICTIONS.**—The prior con-  
8           victions described in subsection (b) are elements of the  
9           crimes described in that subsection, and the penalties in  
10          that subsection shall apply only in cases in which the con-  
11          viction or convictions that form the basis for the additional  
12          penalty are—

13                 “(1) alleged in the indictment or information;  
14                 and

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

17           “(d) **AFFIRMATIVE DEFENSES.**—It shall be an af-  
18          firmative defense to a violation of this section that—

19                 “(1) prior to the alleged violation, the alien had  
20                 sought and received the express consent of the Sec-  
21                 retary of Homeland Security to reapply for admis-  
22                 sion into the United States; or

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

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

4           “(B) had complied with all other laws and  
5           regulations governing the alien’s admission into  
6           the United States.

7           “(e) LIMITATION ON COLLATERAL ATTACK ON UN-  
8           DERLYING REMOVAL ORDER.—In a criminal proceeding  
9           under this section, an alien may not challenge the validity  
10          of any prior removal order concerning the alien unless the  
11          alien demonstrates by clear and convincing evidence  
12          that—

13           “(1) the alien exhausted all administrative rem-  
14          edies that may have been available to seek relief  
15          against the order;

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

19           “(3) the entry of the order was fundamentally  
20          unfair.

21          “(f) REENTRY OF ALIEN REMOVED PRIOR TO COM-  
22          PLETION OF TERM OF IMPRISONMENT.—Any alien re-  
23          moved pursuant to section 241(a)(4) who enters, attempts  
24          to enter, crosses the border to, attempts to cross the bor-  
25          der to, or is at any time found in, the United States shall

1 be incarcerated for the remainder of the sentence of im-  
2 prisonment which was pending at the time of deportation  
3 without any reduction for parole or supervised release un-  
4 less the Secretary of Homeland Security expressly con-  
5 sents to such alien's reentry. Such alien shall be subject  
6 to such other penalties relating to the reentry of removed  
7 aliens as may be available under this section or any other  
8 provision of law.

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

10 “(1) the term ‘crosses the border’ applies when  
11 an alien acts voluntarily, regardless of whether the  
12 alien was under observation at the time of the cross-  
13 ing;

14 “(2) term ‘felony’ means any criminal offense  
15 punishable by a term of imprisonment of more than  
16 1 year under the laws of the United States, any  
17 State, or a foreign government;

18 “(3) the term ‘removal’ includes any denial of  
19 admission, exclusion, deportation, or removal, or any  
20 agreement by which an alien stipulates or agrees to  
21 exclusion, deportation, or removal; and

22 “(4) the term ‘State’ means a State of the  
23 United States, the District of Columbia, and any  
24 commonwealth, territory, or possession of the United  
25 States.”.

1 **SEC. 208. REFORM OF PASSPORT, VISA, AND IMMIGRATION**

2 **FRAUD OFFENSES.**

3 (a) IN GENERAL.—Chapter 75 of title 18, United  
4 States Code, is amended to read as follows:

5 **“CHAPTER 75—PASSPORT, VISA, AND**  
6 **IMMIGRATION FRAUD**

“Sec.

“1541. Trafficking in passports.

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

“1543. Forgery and unlawful production of a passport.

“1544. Misuse of a passport.

“1545. Schemes to defraud aliens.

“1546. Immigration and visa fraud.

“1547. Marriage fraud.

“1548. Attempts and conspiracies.

“1549. Alternative penalties for certain offenses.

“1550. Seizure and forfeiture.

“1551. Additional jurisdiction.

“1552. Additional venue.

“1553. Definitions.

“1554. Authorized law enforcement activities.

7 **“§ 1541. Trafficking in passports**

8 “(a) MULTIPLE PASSPORTS.—Any person who, dur-  
9 ing any 3-year period, knowingly—

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

12 “(2) forges, counterfeits, alters, or falsely  
13 makes 10 or more passports;

14 “(3) secures, possesses, uses, receives, buys,  
15 sells, or distributes 10 or more passports, knowing  
16 the passports to be forged, counterfeited, altered,  
17 falsely made, stolen, procured by fraud, issued or de-

1 signed for the use of another, or produced or issued  
2 without lawful authority; or

3 “(4) completes, mails, prepares, presents, signs,  
4 or submits 10 or more applications for a United  
5 States passport (including any supporting docu-  
6 mentation), knowing the applications to contain any  
7 false statement or representation,

8 shall be fined under this title, imprisoned not more than  
9 20 years, or both.

10 “(b) PASSPORT MATERIALS.—Any person who know-  
11 ingly and without lawful authority produces, counterfeits,  
12 secures, possesses, or uses any official paper, seal,  
13 hologram, image, text, symbol, stamp, engraving, plate, or  
14 other material used to make a passport shall be fined  
15 under this title, imprisoned not more than 20 years, or  
16 both.

17 **“§ 1542. False statement in an application for a pass-**  
18 **port**

19 “Any person who knowingly—

20 “(1) makes any false statement or representa-  
21 tion in an application for a United States passport  
22 (including any supporting documentation);

23 “(2) completes, mails, prepares, presents, signs,  
24 or submits an application for a United States pass-  
25 port (including any supporting documentation)

1 knowing the application to contain any false state-  
2 ment or representation; or

3 “(3) causes or attempts to cause the production  
4 of a passport by means of any fraud or false applica-  
5 tion for a United States passport (including any  
6 supporting documentation), if such production oc-  
7 curs or would occur at a facility authorized by the  
8 Secretary of State for the production of passports,  
9 shall be fined under this title, imprisoned not more than  
10 15 years, or both.

11 **“§ 1543. Forgery and unlawful production of a pass-  
12 port**

13 “(a) FORGERY.—Any person who—

14 “(1) knowingly forges, counterfeits, alters, or  
15 falsely makes any passport; or

16 “(2) knowingly transfers any passport knowing  
17 it to be forged, counterfeited, altered, falsely made,  
18 stolen, or to have been produced or issued without  
19 lawful authority,

20 shall be fined under this title, imprisoned not more than  
21 15 years, or both.

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

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

4           “(2) produces, issues, authorizes, or verifies a  
5 United States passport for or to any person not  
6 owing allegiance to the United States; or

7           “(3) transfers or furnishes a passport to a per-  
8 son for use when such person is not the person for  
9 whom the passport was issued or designed,

10 shall be fined under this title, imprisoned not more than  
11 15 years, or both.

12 **“§ 1544. Misuse of a passport**

13           “(a) IN GENERAL.—Any person who—

14           “(1) knowingly uses any passport issued or de-  
15 signed for the use of another;

16           “(2) knowingly uses any passport in violation of  
17 the conditions or restrictions therein contained, or in  
18 violation of the laws, regulations, or rules governing  
19 the issuance and use of the passport;

20           “(3) knowingly secures, possesses, uses, re-  
21 ceives, buys, sells, or distributes any passport know-  
22 ing it to be forged, counterfeited, altered, falsely  
23 made, procured by fraud, or produced or issued  
24 without lawful authority; or



1           “(4) knowingly violates the terms and condi-  
2           tions of any safe conduct duly obtained and issued  
3           under the authority of the United States,  
4 shall be fined under this title, imprisoned not more than  
5 15 years, or both.

6           “(b) ENTRY; FRAUD.—Any person who knowingly  
7 uses any passport—

8           “(1) to enter or to attempt to enter the United  
9 States, or

10           “(2) to defraud the United States, a State, or  
11 a political subdivision of a State, knowing the pass-  
12 port to be forged, counterfeited, altered, falsely  
13 made, procured by fraud, produced or issued without  
14 lawful authority, or issued or designed for the use of  
15 another,

16 shall be fined under this title, imprisoned not more than  
17 15 years, or both.

18 **“§ 1545. Schemes to defraud aliens**

19           “(a) IN GENERAL.—Any person who knowingly exe-  
20 cutes a scheme or artifice, in connection with any matter  
21 that is authorized by or arises under Federal immigration  
22 laws, or any matter the offender claims or represents is  
23 authorized by or arises under Federal immigration laws—

24           “(1) to defraud any person, or

1           “(2) to obtain or receive from any person, by  
2           means of false or fraudulent pretenses, representa-  
3           tions, promises, money or anything else of value,  
4 shall be fined under this title, imprisoned not more than  
5 15 years, or both.

6           “(b) MISREPRESENTATION.—Any person who know-  
7           ingly and falsely represents himself to be an attorney in  
8 any matter arising under Federal immigration laws shall  
9 be fined under this title, imprisoned not more than 15  
10 years, or both.

11 **“§ 1546. Immigration and visa fraud**

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

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

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

17           “(3) completes, mails, prepares, presents, signs,  
18           or submits any immigration document knowing it to  
19           contain any materially false statement or representa-  
20           tion;

21           “(4) secures, possesses, uses, transfers, re-  
22           ceives, buys, sells, or distributes any immigration  
23           document knowing it to be forged, counterfeited, al-  
24           tered, falsely made, stolen, procured by fraud, issued

1 or designed for another, or produced or issued with-  
2 out lawful authority;

3 “(5) adopts or uses a false or fictitious name to  
4 evade or to attempt to evade the immigration laws;  
5 or

6 “(6) transfers or furnishes an immigration doc-  
7 ument to a person without lawful authority for use  
8 if such person is not the person for whom the immi-  
9 gration document was issued or designed,

10 shall be fined under this title, imprisoned not more than  
11 15 years, or both.

12 “(b) MULTIPLE VIOLATIONS.—Any person who, dur-  
13 ing any 3-year period, knowingly—

14 “(1) and without lawful authority produces,  
15 issues, or transfers 10 or more immigration docu-  
16 ments;

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

19 “(3) secures, possesses, uses, buys, sells, or dis-  
20 tributes 10 or more immigration documents, know-  
21 ing the immigration documents to be forged, coun-  
22 terfeited, altered, stolen, falsely made, procured by  
23 fraud, issued or designed for the use of another, or  
24 produced or issued without lawful authority; or

1           “(4) completes, mails, prepares, presents, signs,  
2           or submits 10 or more immigration documents  
3           knowing the documents to contain any materially  
4           false statement or representation,  
5 shall be fined under this title, imprisoned not more than  
6 20 years, or both.

7           “(c) IMMIGRATION DOCUMENT MATERIALS.—Any  
8 person who knowingly and without lawful authority pro-  
9 duces, counterfeits, secures, possesses, or uses any official  
10 paper, seal, hologram, image, text, symbol, stamp, engrav-  
11 ing, plate, or other material, used to make an immigration  
12 document shall be fined under this title, imprisoned not  
13 more than 20 years, or both.

14 **“§ 1547. Marriage fraud**

15           “(a) EVASION OR MISREPRESENTATION.—Any per-  
16 son who—

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

20           “(2) knowingly misrepresents the existence or  
21 circumstances of a marriage—

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

24           “(B) during any immigration proceeding  
25 conducted by an administrative adjudicator (in-

1           cluding an immigration officer or examiner, a  
2           consular officer, an immigration judge, or a  
3           member of the Board of Immigration Appeals),  
4 shall be fined under this title, imprisoned not more than  
5 10 years, or both.

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

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

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

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

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

19          “(d) DURATION OF OFFENSE.—

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

24                 “(2) COMMERCIAL ENTERPRISE.—An offense  
25                 under subsection (c) continues until the fraudulent

1 nature of commercial enterprise is discovered by an  
2 immigration officer or other law enforcement officer.

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

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

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

8 “(a) **TERRORISM.**—Any person who violates any sec-  
9 tion of this chapter—

10 “(1) knowing that such violation will facilitate  
11 an act of international terrorism or domestic ter-  
12 rorism (as those terms are defined in section 2331);  
13 or

14 “(2) with the intent to facilitate an act of inter-  
15 national terrorism or domestic terrorism,  
16 shall be fined under this title, imprisoned not more than  
17 25 years, or both.

18 “(b) **OFFENSE AGAINST GOVERNMENT.**—Any person  
19 who violates any section of this chapter—

20 “(1) knowing that such violation will facilitate  
21 the commission of any offense against the United  
22 States (other than an offense in this chapter) or  
23 against any State, which offense is punishable by  
24 imprisonment for more than 1 year; or

1           “(2) with the intent to facilitate the commission  
2           of any offense against the United States (other than  
3           an offense in this chapter) or against any State,  
4           which offense is punishable by imprisonment for  
5           more than 1 year,  
6           shall be fined under this title, imprisoned not more than  
7           20 years, or both.

8           **“§ 1550. Seizure and forfeiture**

9           “(a) FORFEITURE.—Any property, real or personal,  
10          used to commit or facilitate the commission of a violation  
11          of any section of this chapter, the gross proceeds of such  
12          violation, and any property traceable to such property or  
13          proceeds, shall be subject to forfeiture.

14          “(b) APPLICABLE LAW.—Seizures and forfeitures  
15          under this section shall be governed by the provisions of  
16          chapter 46 relating to civil forfeitures, except that such  
17          duties as are imposed upon the Secretary of the Treasury  
18          under the customs laws described in section 981(d) shall  
19          be performed by such officers, agents, and other persons  
20          as may be designated for that purpose by the Secretary  
21          of Homeland Security, the Secretary of State, or the At-  
22          torney General.

23          **“§ 1551. Additional jurisdiction**

24          “(a) IN GENERAL.—Any person who commits an of-  
25          fense under this chapter within the special maritime and

1 territorial jurisdiction of the United States shall be pun-  
2 ished as provided under this chapter.

3 “(b) EXTRATERRITORIAL JURISDICTION.—Any per-  
4 son who commits an offense under this chapter outside  
5 the United States shall be punished as provided under this  
6 chapter if—

7 “(1) the offense involves a United States immi-  
8 gration document (or any document purporting to be  
9 such a document) or any matter, right, or benefit  
10 arising under or authorized by Federal immigration  
11 laws;

12 “(2) the offense is in or affects foreign com-  
13 merce;

14 “(3) the offense affects, jeopardizes, or poses a  
15 significant risk to the lawful administration of Fed-  
16 eral immigration laws, or the national security of the  
17 United States;

18 “(4) the offense is committed to facilitate an  
19 act of international terrorism (as defined in section  
20 2331) or a drug trafficking crime (as defined in sec-  
21 tion 929(a)(2)) that affects or would affect the na-  
22 tional security of the United States;

23 “(5) the offender is a national of the United  
24 States (as defined in section 101(a)(22) of the Im-  
25 migration and Nationality Act (8 U.S.C.



1 1101(a)(22))) or an alien lawfully admitted for per-  
2 manent residence in the United States (as defined in  
3 section 101(a)(20) of such Act); or

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

6 **“§ 1552. Additional venue**

7 “(a) IN GENERAL.—An offense under section 1542  
8 may be prosecuted in—

9 “(1) any district in which the false statement or  
10 representation was made;

11 “(2) any district in which the passport applica-  
12 tion was prepared, submitted, mailed, received, proc-  
13 essed, or adjudicated; or

14 “(3) in the case of an application prepared and  
15 adjudicated outside the United States, in the district  
16 in which the resultant passport was produced.

17 “(b) SAVINGS CLAUSE.—Nothing in this section lim-  
18 its the venue otherwise available under sections 3237 and  
19 3238.

20 **“§ 1553. Definitions**

21 “As used in this chapter:

22 “(1) The term ‘falsely make’ means to prepare  
23 or complete an immigration document with knowl-  
24 edge or in reckless disregard of the fact that the  
25 document—

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

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

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

7           “(2) The term a ‘false statement or representa-  
8           tion’ includes a personation or an omission.

9           “(3) The term ‘felony’ means any criminal of-  
10          fense punishable by a term of imprisonment of more  
11          than 1 year under the laws of the United States, any  
12          State, or a foreign government.

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

14           “(A) means—

15           “(i) any passport or visa; or

16           “(ii) any application, petition, affi-  
17           davit, declaration, attestation, form, identi-  
18           fication card, alien registration document,  
19           employment authorization document, bor-  
20           der crossing card, certificate, permit,  
21           order, license, stamp, authorization, grant  
22           of authority, or other evidentiary docu-  
23           ment, arising under or authorized by the  
24           immigration laws of the United States; and

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

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

5           “(A) the laws described in section  
6           101(a)(17) of the Immigration and Nationality  
7           Act (8 U.S.C. 1101(a)(17));

8           “(B) the laws relating to the issuance and  
9           use of passports; and

10           “(C) the regulations prescribed under the  
11           authority of any law described in paragraphs  
12           (1) and (2).

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

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

18           “(8) The term ‘passport’ means a travel docu-  
19           ment attesting to the identity and nationality of the  
20           bearer that is issued under the authority of the Sec-  
21           retary of State, a foreign government, or an inter-  
22           national organization; or any instrument purporting  
23           to be the same.

24           “(9) The term ‘produce’ means to make, pre-  
25           pare, assemble, issue, print, authenticate, or alter.





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

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

5 (b) AUTHORIZATION FOR DETENTION AFTER COM-  
6 PLETION OF STATE OR LOCAL PRISON SENTENCE.—Law  
7 enforcement officers of a State or political subdivision of  
8 a State may—

9 (1) hold an illegal alien for a period not to ex-  
10 ceed 14 days after the completion of the alien’s  
11 State prison sentence to effectuate the transfer of  
12 the alien to Federal custody if the alien is removable  
13 or not lawfully present in the United States; or

14 (2) issue a detainer that would allow aliens who  
15 have served a State prison sentence to be detained  
16 by the State prison until authorized employees of the  
17 Bureau of Immigration and Customs Enforcement  
18 can take the alien into custody.

19 (c) TECHNOLOGY USAGE.—Technology, such as  
20 videoconferencing, shall be used to the maximum extent  
21 practicable to make the Program available in remote loca-  
22 tions. Mobile access to Federal databases of aliens, such  
23 as IDENT, and live scan technology shall be used to the  
24 maximum extent practicable to make these resources

1 available to State and local law enforcement agencies in  
2 remote locations.

3 (d) REPORT TO CONGRESS.—Not later than 6  
4 months after the date of the enactment of this Act, and  
5 annually thereafter, the Secretary shall submit a report  
6 to Congress on the participation of States in the Program  
7 and in any other program authorized under subsection (a).

8 (e) AUTHORIZATION OF APPROPRIATIONS.—There  
9 are authorized to be appropriated such sums as may be  
10 necessary in each of the fiscal years 2007 through 2011  
11 to carry out the Program.

12 **SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUN-**  
13 **TARILY.**

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

16 (1) in subsection (a)—

17 (A) by amending paragraph (1) to read as  
18 follows:

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

1 (B) by striking paragraph (3);

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

4 (D) by adding after paragraph (1) the fol-  
5 lowing:

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

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

16 (i) by amending subparagraph (A) to  
17 read as follows:

18 “(A) INSTEAD OF REMOVAL.—Subject to  
19 subparagraph (C), permission to voluntarily de-  
20 part under paragraph (1) shall not be valid for  
21 any period in excess of 120 days. The Secretary  
22 may require an alien permitted to voluntarily  
23 depart under paragraph (1) to post a voluntary  
24 departure bond, to be surrendered upon proof



1           that the alien has departed the United States  
2           within the time specified.”;

3                   (ii) by redesignating subparagraphs  
4                   (B), (C), and (D) as paragraphs (C), (D),  
5                   and (E), respectively;

6                   (iii) by adding after subparagraph (A)  
7                   the following:

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

1 evidence that such a bond is unnecessary to  
2 guarantee timely departure.”;

3 (iv) in subparagraph (C), as redesign-  
4 nated, by striking “subparagraphs (C)  
5 and(D)(ii)” and inserting “subparagraphs  
6 (D) and (E)(ii)”;

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

11 (vi) in subparagraph (E), as redesign-  
12 nated, by striking “subparagraph (B)”  
13 each place that term appears and inserting  
14 “subparagraph (C)”;

15 (F) in paragraph (4), by striking “para-  
16 graph (1)” and inserting “paragraphs (1) and  
17 (2)”;

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

21 (3) by amending subsection (c) to read as fol-  
22 lows:

23 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

24 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

25 Voluntary departure may only be granted as part of

1 an affirmative agreement by the alien. A voluntary  
2 departure agreement under subsection (b) shall in-  
3 clude a waiver of the right to any further motion,  
4 appeal, application, petition, or petition for review  
5 relating to removal or relief or protection from re-  
6 moval.

7 “(2) CONCESSIONS BY THE SECRETARY.—In  
8 connection with the alien’s agreement to depart vol-  
9 untarily under paragraph (1), the Secretary of  
10 Homeland Security may agree to a reduction in the  
11 period of inadmissibility under subparagraph (A) or  
12 (B)(i) of section 212(a)(9).

13 “(3) ADVISALS.—Agreements relating to vol-  
14 untary departure granted during removal pro-  
15 ceedings under section 240, or at the conclusion of  
16 such proceedings, shall be presented on the record  
17 before the immigration judge. The immigration  
18 judge shall advise the alien of the consequences of  
19 a voluntary departure agreement before accepting  
20 such agreement.

21 “(4) FAILURE TO COMPLY WITH AGREE-  
22 MENT.—

23 “(A) IN GENERAL.—If an alien agrees to  
24 voluntary departure under this section and fails  
25 to depart the United States within the time al-

1           lowed for voluntary departure or fails to comply  
2           with any other terms of the agreement (includ-  
3           ing failure to timely post any required bond),  
4           the alien is—

5                   “(i) ineligible for the benefits of the  
6                   agreement;

7                   “(ii) subject to the penalties described  
8                   in subsection (d); and

9                   “(iii) subject to an alternate order of  
10                  removal if voluntary departure was granted  
11                  under subsection (a)(2) or (b).

12                 “(B) EFFECT OF FILING TIMELY AP-  
13                 PEAL.—If, after agreeing to voluntary depart-  
14                 ture, the alien files a timely appeal of the immi-  
15                 gration judge’s decision granting voluntary de-  
16                 parture, the alien may pursue the appeal in-  
17                 stead of the voluntary departure agreement.  
18                 Such appeal operates to void the alien’s vol-  
19                 untary departure agreement and the con-  
20                 sequences of such agreement, but precludes the  
21                 alien from another grant of voluntary departure  
22                 while the alien remains in the United States.

23                 “(5) VOLUNTARY DEPARTURE PERIOD NOT AF-  
24                 FECTED.—Except as expressly agreed to by the Sec-  
25                 retary in writing in the exercise of the Secretary’s

1 discretion before the expiration of the period allowed  
2 for voluntary departure, no motion, appeal, applica-  
3 tion, petition, or petition for review shall affect, rein-  
4 state, enjoin, delay, stay, or toll the alien's obligation  
5 to depart from the United States during the period  
6 agreed to by the alien and the Secretary.”;

7 (4) by amending subsection (d) to read as fol-  
8 lows:

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

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

1 An alien will be ineligible for any benefits under this  
2 chapter until this civil penalty is paid.

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

11 “(3) REOPENING.—The alien shall be ineligible  
12 to reopen the final order of removal that took effect  
13 upon the alien’s failure to depart, or upon the alien’s  
14 other violations of the conditions for voluntary de-  
15 parture, during the period described in paragraph  
16 (2). This paragraph does not preclude a motion to  
17 reopen to seek withholding of removal under section  
18 241(b)(3) or protection against torture, if the mo-  
19 tion—

20 “(A) presents material evidence of changed  
21 country conditions arising after the date of the  
22 order granting voluntary departure in the coun-  
23 try to which the alien would be removed; and

1           “(B) makes a sufficient showing to the sat-  
2           isfaction of the Attorney General that the alien  
3           is otherwise eligible for such protection.”; and  
4           (5) by amending subsection (e) to read as fol-  
5           lows:

6           “(e) ELIGIBILITY.—

7           “(1) PRIOR GRANT OF VOLUNTARY DEPAR-  
8           TURE.—An alien shall not be permitted to volun-  
9           tarily depart under this section if the Secretary of  
10          Homeland Security or the Attorney General pre-  
11          viously permitted the alien to depart voluntarily.

12          “(2) RULEMAKING.—The Secretary may pro-  
13          mulgate regulations to limit eligibility or impose ad-  
14          ditional conditions for voluntary departure under  
15          subsection (a)(1) for any class of aliens. The Sec-  
16          retary or Attorney General may by regulation limit  
17          eligibility or impose additional conditions for vol-  
18          untary departure under subsections (a)(2) or (b) of  
19          this section for any class or classes of aliens.”; and

20          (6) in subsection (f), by adding at the end the  
21          following: “Notwithstanding section 242(a)(2)(D) of  
22          this Act, sections 1361, 1651, and 2241 of title 28,  
23          United States Code, any other habeas corpus provi-  
24          sion, and any other provision of law, no court shall  
25          have jurisdiction to affect, reinstate, enjoin, delay,

1 stay, or toll the period allowed for voluntary depart-  
2 ture under this section.”.

3 (b) RULEMAKING.—The Secretary shall promulgate  
4 regulations to provide for the imposition and collection of  
5 penalties for failure to depart under section 240B(d) of  
6 the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

7 (c) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-  
9 graph (2), the amendments made by this section  
10 shall apply with respect to all orders granting vol-  
11 untary departure under section 240B of the Immi-  
12 gration and Nationality Act (8 U.S.C. 1229c) made  
13 on or after the date that is 180 days after the enact-  
14 ment of this Act.

15 (2) EXCEPTION.—The amendment made by  
16 subsection (a)(6) shall take effect on the date of the  
17 enactment of this Act and shall apply with respect  
18 to any petition for review which is entered on or  
19 after such date.

20 **SEC. 212. DETERRING ALIENS ORDERED REMOVED FROM**  
21 **REMAINING IN THE UNITED STATES UNLAW-**  
22 **FULLY.**

23 (a) INADMISSIBLE ALIENS.—Section 212(a)(9)(A) (8  
24 U.S.C. 1182(a)(9)(A)) is amended—



1           (1) in clause (i), by striking “seeks admission  
2           within 5 years of the date of such removal (or within  
3           20 years” and inserting “seeks admission not later  
4           than 5 years after the date of the alien’s removal (or  
5           not later than 20 years after the alien’s removal”;  
6           and

7           (2) in clause (ii), by striking “seeks admission  
8           within 10 years of the date of such alien’s departure  
9           or removal (or within 20 years of” and inserting  
10          “seeks admission not later than 10 years after the  
11          date of the alien’s departure or removal (or not later  
12          than 20 years after”.

13          (b) BAR ON DISCRETIONARY RELIEF.—Section 274D  
14 (9 U.S.C. 324d) is amended—

15           (1) in subsection (a), by striking “Commis-  
16           sioner” and inserting “Secretary of Homeland Secu-  
17           rity”; and

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

19          “(c) INELIGIBILITY FOR RELIEF.—

20           “(1) IN GENERAL.—Unless a timely motion to  
21           reopen is granted under section 240(c)(6), an alien  
22           described in subsection (a) shall be ineligible for any  
23           discretionary relief from removal (including cancella-  
24           tion of removal and adjustment of status) during the  
25           time the alien remains in the United States and for

1 a period of 10 years after the alien’s departure from  
2 the United States.

3 “(2) SAVINGS PROVISION.—Nothing in para-  
4 graph (1) shall preclude a motion to reopen to seek  
5 withholding of removal under section 241(b)(3) or  
6 protection against torture, if the motion—

7 “(A) presents material evidence of changed  
8 country conditions arising after the date of the  
9 final order of removal in the country to which  
10 the alien would be removed; and

11 “(B) makes a sufficient showing to the sat-  
12 isfaction of the Attorney General that the alien  
13 is otherwise eligible for such protection.”.

14 (c) EFFECTIVE DATES.—The amendments made by  
15 this section shall take effect on the date of the enactment  
16 of this Act with respect to aliens who are subject to a final  
17 order of removal, whether the removal order was entered  
18 before, on, or after such date.

19 **SEC. 213. PROHIBITION OF THE SALE OF FIREARMS TO, OR**  
20 **THE POSSESSION OF FIREARMS BY CERTAIN**  
21 **ALIENS.**

22 Section 922 of title 18, United States Code, is  
23 amended—

24 (1) in subsection (d)(5)—

1 (A) in subparagraph (A), by striking “or”  
2 at the end;

3 (B) in subparagraph (B), by striking  
4 “(y)(2)” and all that follows and inserting “(y),  
5 is in a nonimmigrant classification; or”; and

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

7 “(C) has been paroled into the United  
8 States under section 212(d)(5) of the Immigra-  
9 tion and Nationality Act (8 U.S.C.  
10 1182(d)(5));” and

11 (2) in subsection (g)(5)—

12 (A) in subparagraph (A), by striking “or”  
13 at the end;

14 (B) in subparagraph (B), by striking  
15 “(y)(2)” and all that follows and inserting “(y),  
16 is in a nonimmigrant classification; or”; and

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

18 “(C) has been paroled into the United  
19 States under section 212(d)(5) of the Immigra-  
20 tion and Nationality Act (8 U.S.C.  
21 1182(d)(5));”.

22 (3) in subsection (y)—

23 (A) in the header, by striking “ADMITTED  
24 UNDER NONIMMIGRANT VISAS” and inserting  
25 “IN A NONIMMIGRANT CLASSIFICATION”;

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

3 “(B) the term ‘nonimmigrant classifica-  
4 tion’ includes all classes of nonimmigrant aliens  
5 described in section 101(a)(15) of the Immigra-  
6 tion and Nationality Act (8 U.S.C.  
7 1101(a)(15)), or otherwise described in the im-  
8 migration laws (as defined in section  
9 101(a)(17) of such Act).”;

10 (C) in paragraph (2), by striking “has  
11 been lawfully admitted to the United States  
12 under a nonimmigrant visa” and inserting “is  
13 in a nonimmigrant classification”; and

14 (D) in paragraph (3)(A), by striking “Any  
15 individual who has been admitted to the United  
16 States under a nonimmigrant visa may receive  
17 a waiver from the requirements of subsection  
18 (g)(5)” and inserting “Any alien in a non-  
19 immigrant classification may receive a waiver  
20 from the requirements of subsection (g)(5)(B)”.

21 **SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CER-**  
22 **TAIN IMMIGRATION, NATURALIZATION, AND**  
23 **PEONAGE OFFENSES.**

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

1 **“§ 3291. Immigration, naturalization, and peonage of-**  
2 **fenses**

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

16 (b) CLERICAL AMENDMENT.—The table of sections  
17 for chapter 213 of title 18, United States Code, is amend-  
18 ed by striking the item relating to section 3291 and insert-  
19 ing the following:

“3291. Immigration, naturalization, and peonage offenses.”.

20 **SEC. 215. DIPLOMATIC SECURITY SERVICES.**

21 Section 2709(a)(1) of title 22, United States Code,  
22 is amended to read as follows:

23 “(1) conduct investigations concerning—

24 “(A) illegal passport or visa issuance or  
25 use;

1           “(B) identity theft or document fraud af-  
2           fecting or relating to the programs, functions,  
3           and authorities of the Department of State;

4           “(C) violations of chapter 77 of title 18,  
5           United States Code; and

6           “(D) Federal offenses committed within  
7           the special maritime and territorial jurisdiction  
8           of the United States (as defined in section 7(9)  
9           of title 18, United States Code);”.

10 **SEC. 216. COMPLETION OF BACKGROUND AND SECURITY**

11 **CHECKS.**

12           Section 103 (8 U.S.C. 1103) is amended by adding  
13 at the end the following:

14           “(i) Notwithstanding any other provision of law, ap-  
15           propriate background and security checks, as determined  
16           by the Secretary of Homeland Security, shall be completed  
17           and assessed and any suspected or alleged fraud relating  
18           to the granting of any status (including the granting of  
19           adjustment of status), relief, protection from removal, or  
20           other benefit under this subsection shall be investigated  
21           and resolved before the Secretary or the Attorney General  
22           may—

23           “(1) grant or order the grant of adjustment of  
24           status of an alien to that of an alien lawfully admit-  
25           ted for permanent residence;

1           “(2) grant or order the grant of any other sta-  
2           tus, relief, protection from removal, or other benefit  
3           under the immigration laws; or

4           “(3) issue any documentation evidencing or re-  
5           lated to such grant by the Secretary, the Attorney  
6           General, or any court.”.

7   **SEC. 217. DENIAL OF BENEFITS TO TERRORISTS AND**  
8                                   **CRIMINALS.**

9           (a) IN GENERAL.—Chapter 4 of title III (8 U.S.C.  
10 1501 et seq.) is amended by adding at the end the fol-  
11 lowing:

12   **“SEC. 362. CONSTRUCTION.**

13           “(a) IN GENERAL.—Nothing in this Act or in any  
14 other provision of law shall be construed to require the  
15 Secretary of Homeland Security, the Attorney General,  
16 the Secretary of State, the Secretary of Labor, or any  
17 other authorized head of any Federal agency to grant any  
18 application, approve any petition, or grant or continue any  
19 status or benefit under the immigration laws by, to, or  
20 on behalf of—

21           “(1) any alien described in subparagraph (A)(i),  
22           (A)(iii), (B), or (F) of section 212(a)(3) or subpara-  
23           graph (A)(i), (A)(iii), or (B) of section 237(a)(4);

24           “(2) any alien with respect to whom a criminal  
25           or other investigation or case is pending that is ma-

1       terial to the alien’s inadmissibility, deportability, or  
2       eligibility for the status or benefit sought; or

3             “(3) any alien for whom all law enforcement  
4       checks, as deemed appropriate by such authorized  
5       official, have not been conducted and resolved.

6       “(b) DENIAL; WITHHOLDING.—An official described  
7       in subsection (a) may deny or withhold (with respect to  
8       an alien described in subsection (a)(1)) or withhold pend-  
9       ing resolution of the investigation, case, or law enforce-  
10      ment checks (with respect to an alien described in para-  
11      graph (2) or (3) of subsection (a)) any such application,  
12      petition, status, or benefit on such basis.”.

13       (b) CLERICAL AMENDMENT.—The table of contents  
14      is amended by inserting after the item relating to section  
15      361 the following:

      “Sec. 362. Construction.”.

16      **SEC. 218. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

17       (a) REIMBURSEMENT FOR COSTS ASSOCIATED WITH  
18      PROCESSING CRIMINAL ILLEGAL ALIENS.—Section 241(i)  
19      (8 U.S.C. 1231(i)) is amended to read as follows:

20       “(i) INCARCERATION OF UNDOCUMENTED CRIMINAL  
21      ALIENS.—

22             “(1) REIMBURSEMENT REQUIREMENT.—The  
23      Secretary of Homeland Security shall reimburse  
24      States and units of local government for costs asso-  
25      ciated with detaining and processing undocumented



1 criminal aliens through the criminal justice system,  
2 including—

3 “(A) indigent defense;

4 “(B) criminal prosecution;

5 “(C) autopsies;

6 “(D) translators and interpreters; and

7 “(E) courts costs.

8 “(2) COMPENSATION UPON REQUEST.—

9 “(A) IN GENERAL.—If the chief executive  
10 officer of a State (or, if appropriate, a unit of  
11 local government) exercising authority with re-  
12 spect to the incarceration of an undocumented  
13 criminal alien submits a written request to the  
14 Secretary of Homeland Security, the Secretary  
15 shall—

16 “(i) enter into a contractual arrange-  
17 ment which provides for compensation to  
18 the State or a political subdivision of the  
19 State, as may be appropriate, with respect  
20 to the incarceration of the undocumented  
21 criminal alien; or

22 “(ii) take the undocumented criminal  
23 alien into the custody of the Federal Gov-  
24 ernment and incarcerate the alien.



1           “(ii) was the subject of exclusion or  
2           deportation proceedings at the time the  
3           alien was taken into custody by the State  
4           or by the unit of local government; or

5           “(iii) was admitted as a nonimmigrant  
6           and, at the time the alien was taken into  
7           custody by the State or by the unit of local  
8           government, failed to—

9           “(I) maintain the nonimmigrant  
10           status in which the alien was admitted  
11           or to which it was changed under sec-  
12           tion 248; or

13           “(II) comply with the conditions  
14           of any such status.

15           “(4) AUTHORIZATION OF APPROPRIATIONS.—

16           “(A) IN GENERAL.—There are authorized  
17           to be appropriated \$400,000,000 for each of  
18           the fiscal years 2007 through 2012 to carry out  
19           paragraph (1).

20           “(B) COMPENSATION UPON REQUEST.—  
21           There are authorized to be appropriated to  
22           carry out paragraph (2)—

23           “(i) such sums as may be necessary  
24           for fiscal year 2007;

1                   “(ii) \$750,000,000 for fiscal year  
2                   2008;

3                   “(iii) \$850,000,000 for fiscal year  
4                   2009; and

5                   “(iv) \$950,000,000 for each of the fis-  
6                   cal years 2010 through 2012.

7                   “(C) LIMITATION.—Amounts appropriated  
8                   pursuant to the authorization of appropriations  
9                   in subparagraphs (A) and (B) that are distrib-  
10                  uted to a State or unit of local government may  
11                  only be used for correctional purposes.”.

12                  (b) TECHNICAL AMENDMENT.—Section 501 of the  
13                  Immigration Reform and Control Act of 1986 (8 U.S.C.  
14                  1365) is amended by striking “Attorney General” each  
15                  place it appears and inserting “Secretary of Homeland Se-  
16                  curity”.

17                  **SEC. 219. REDUCING ILLEGAL IMMIGRATION AND ALIEN**  
18                  **SMUGGLING ON TRIBAL LANDS.**

19                  (a) GRANTS AUTHORIZED.—The Secretary may  
20                  award grants to Indian tribes with lands adjacent to an  
21                  international border of the United States that have been  
22                  adversely affected by illegal immigration.

23                  (b) USE OF FUNDS.—Grants awarded under sub-  
24                  section (a) may be used for—

25                         (1) law enforcement activities;

- 1 (2) health care services;
- 2 (3) environmental restoration; and
- 3 (4) the preservation of cultural resources.

4 (c) REPORT.—Not later than 180 days after the date  
5 of the enactment of this Act, the Secretary shall submit  
6 a report to the Committee on the Judiciary of the Senate  
7 and the Committee on the Judiciary of the House of Rep-  
8 resentatives that—

9 (1) describes the level of access of Border Pa-  
10 trol agents on tribal lands;

11 (2) describes the extent to which enforcement of  
12 immigration laws may be improved by enhanced ac-  
13 cess to tribal lands;

14 (3) contains a strategy for improving such ac-  
15 cess through cooperation with tribal authorities; and

16 (4) identifies grants provided by the Depart-  
17 ment for Indian tribes, either directly or through  
18 State or local grants, relating to border security ex-  
19 penses.

20 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
21 are authorized to be appropriated such sums as may be  
22 necessary for each of the fiscal years 2007 through 2011  
23 to carry out this section.

24 **SEC. 220. ALTERNATIVES TO DETENTION.**

25 The Secretary shall conduct a study of—

1           (1) the effectiveness of alternatives to detention,  
2 including electronic monitoring devices and intensive  
3 supervision programs, in ensuring alien appearance  
4 at court and compliance with removal orders;

5           (2) the effectiveness of the Intensive Super-  
6 vision Appearance Program and the costs and bene-  
7 fits of expanding that program to all States; and

8           (3) other alternatives to detention, including—

9                   (A) release on an order of recognizance;

10                   (B) appearance bonds; and

11                   (C) electronic monitoring devices.

12 **SEC. 221. CONFORMING AMENDMENT.**

13           Section 101(a)(43)(P) (8 U.S.C. 1101(a)(43)(P)) is  
14 amended—

15           (1) by striking “(i) which either is falsely mak-  
16 ing, forging, counterfeiting, mutilating, or altering a  
17 passport or instrument in violation of section 1543  
18 of title 18, United States Code, or is described in  
19 section 1546(a) of such title (relating to document  
20 fraud) and (ii)” and inserting “which is described in  
21 chapter 75 of title 18, United States Code, and”;  
22 and

23           (2) by inserting the following: “that is not de-  
24 scribed in section 1548 of such title (relating to in-  
25 creased penalties), and” (ii) after “first offense”.

1 **SEC. 222. REPORTING REQUIREMENTS.**

2 (a) CLARIFYING ADDRESS REPORTING REQUIRE-  
3 MENTS.—Section 265 (8 U.S.C. 1305) is amended—

4 (1) in subsection (a)—

5 (A) by striking “notify the Attorney Gen-  
6 eral in writing” and inserting “submit written  
7 or electronic notification to the Secretary of  
8 Homeland Security, in a manner approved by  
9 the Secretary,”;

10 (B) by striking “the Attorney General may  
11 require by regulation” and inserting “the Sec-  
12 retary may require”; and

13 (C) by adding at the end the following: “If  
14 the alien is involved in proceedings before an  
15 immigration judge or in an administrative ap-  
16 peal of such proceedings, the alien shall submit  
17 to the Attorney General the alien’s current ad-  
18 dress and a telephone number, if any, at which  
19 the alien may be contacted.”;

20 (2) in subsection (b), by striking “Attorney  
21 General” each place such term appears and inserting  
22 “Secretary”;

23 (3) in subsection (c), by striking “given to such  
24 parent” and inserting “given by such parent”; and

25 (4) by inserting at the end the following:

26 “(d) ADDRESS TO BE PROVIDED.—

1           “(1) IN GENERAL.—Except as otherwise pro-  
2           vided by the Secretary under paragraph (2), an ad-  
3           dress provided by an alien under this section shall  
4           be the alien’s current residential mailing address,  
5           and shall not be a post office box or other non-resi-  
6           dential mailing address or the address of an attor-  
7           ney, representative, labor organization, or employer.

8           “(2) SPECIFIC REQUIREMENTS.—The Secretary  
9           may provide specific requirements with respect to—

10                   “(A) designated classes of aliens and spe-  
11                   cial circumstances, including aliens who are em-  
12                   ployed at a remote location; and

13                   “(B) the reporting of address information  
14                   by aliens who are incarcerated in a Federal,  
15                   State, or local correctional facility.

16           “(3) DETENTION.—An alien who is being de-  
17           tained by the Secretary under this Act is not re-  
18           quired to report the alien’s current address under  
19           this section during the time the alien remains in de-  
20           tention, but shall be required to notify the Secretary  
21           of the alien’s address under this section at the time  
22           of the alien’s release from detention.

23           “(e) USE OF MOST RECENT ADDRESS PROVIDED BY  
24           THE ALIEN.—



1           “(1) IN GENERAL.—Notwithstanding any other  
2 provision of law, the Secretary may provide for the  
3 appropriate coordination and cross referencing of  
4 address information provided by an alien under this  
5 section with other information relating to the alien’s  
6 address under other Federal programs, including—

7           “(A) any information pertaining to the  
8 alien, which is submitted in any application, pe-  
9 tition, or motion filed under this Act with the  
10 Secretary of Homeland Security, the Secretary  
11 of State, or the Secretary of Labor;

12           “(B) any information available to the At-  
13 torney General with respect to an alien in a  
14 proceeding before an immigration judge or an  
15 administrative appeal or judicial review of such  
16 proceeding;

17           “(C) any information collected with respect  
18 to nonimmigrant foreign students or exchange  
19 program participants under section 641 of the  
20 Illegal Immigration Reform and Immigrant Re-  
21 sponsibility Act of 1996 (8 U.S.C. 1372); and

22           “(D) any information collected from State  
23 or local correctional agencies pursuant to the  
24 State Criminal Alien Assistance Program.

1           “(2) RELIANCE.—The Secretary may rely on  
2           the most recent address provided by the alien under  
3           this section or section 264 to send to the alien any  
4           notice, form, document, or other matter pertaining  
5           to Federal immigration laws, including service of a  
6           notice to appear. The Attorney General and the Sec-  
7           retary may rely on the most recent address provided  
8           by the alien under section 239(a)(1)(F) to contact  
9           the alien about pending removal proceedings.

10           “(3) OBLIGATION.—The alien’s provision of an  
11           address for any other purpose under the Federal im-  
12           migration laws does not excuse the alien’s obligation  
13           to submit timely notice of the alien’s address to the  
14           Secretary under this section (or to the Attorney  
15           General under section 239(a)(1)(F) with respect to  
16           an alien in a proceeding before an immigration judge  
17           or an administrative appeal of such proceeding).”.

18           (b) CONFORMING CHANGES WITH RESPECT TO REG-  
19           ISTRATION REQUIREMENTS.—Chapter 7 of title II (8  
20           U.S.C. 1301 et seq.) is amended—

21           (1) in section 262(c), by striking “Attorney  
22           General” and inserting “Secretary of Homeland Se-  
23           curity”;

1           (2) in section 263(a), by striking “Attorney  
2           General” and inserting “Secretary of Homeland Se-  
3           curity”; and

4           (3) in section 264—

5                 (A) in subsections (a), (b), (c), and (d), by  
6                 striking “Attorney General” each place it ap-  
7                 pears and inserting “Secretary of Homeland  
8                 Security”; and

9                 (B) in subsection (f)—

10                         (i) by striking “Attorney General is  
11                         authorized” and inserting “Secretary of  
12                         Homeland Security and Attorney General  
13                         are authorized”; and

14                         (ii) by striking “Attorney General or  
15                         the Service” and inserting “Secretary or  
16                         the Attorney General”.

17           (c) PENALTIES.—Section 266 (8 U.S.C. 1306) is  
18 amended—

19                 (1) by amending subsection (b) to read as fol-  
20                 lows:

21                 “(b) FAILURE TO PROVIDE NOTICE OF ALIEN’S CUR-  
22 RENT ADDRESS.—

23                         “(1) CRIMINAL PENALTIES.—Any alien or any  
24                         parent or legal guardian in the United States of any  
25                         minor alien who fails to notify the Secretary of

1 Homeland Security of the alien's current address in  
2 accordance with section 265 shall be fined under  
3 title 18, United States Code, imprisoned for not  
4 more than 6 months, or both.

5 “(2) EFFECT ON IMMIGRATION STATUS.—Any  
6 alien who violates section 265 (regardless of whether  
7 the alien is punished under paragraph (1)) and does  
8 not establish to the satisfaction of the Secretary that  
9 such failure was reasonably excusable or was not  
10 willful shall be taken into custody in connection with  
11 removal of the alien. If the alien has not been in-  
12 spected or admitted, or if the alien has failed on  
13 more than 1 occasion to submit notice of the alien's  
14 current address as required under section 265, the  
15 alien may be presumed to be a flight risk. The Sec-  
16 retary or the Attorney General, in considering any  
17 form of relief from removal which may be granted  
18 in the discretion of the Secretary or the Attorney  
19 General, may take into consideration the alien's fail-  
20 ure to comply with section 265 as a separate nega-  
21 tive factor. If the alien failed to comply with the re-  
22 quirements of section 265 after becoming subject to  
23 a final order of removal, deportation, or exclusion,  
24 the alien's failure shall be considered as a strongly  
25 negative factor with respect to any discretionary mo-

1       tion for reopening or reconsideration filed by the  
2       alien.”;

3               (2) in subsection (c), by inserting “or a notice  
4       of current address” before “containing statements”;  
5       and

6               (3) in subsections (c) and (d), by striking “At-  
7       torney General” each place it appears and inserting  
8       “Secretary”.

9       (d) EFFECTIVE DATES.—

10              (1) IN GENERAL.—Except as provided in para-  
11       graph (2), the amendments made by this section  
12       shall apply to proceedings initiated on or after the  
13       date of the enactment of this Act.

14              (2) CONFORMING AND TECHNICAL AMEND-  
15       MENTS.—The amendments made by paragraphs  
16       (1)(A), (1)(B), (2) and (3) of subsection (a) are ef-  
17       fective as if enacted on March 1, 2003.

18       **SEC. 223. SEVERABILITY.**

19       If any provision of this title, any amendment made  
20       by this title, or the application of such provision or amend-  
21       ment to any person or circumstance is held to be invalid  
22       for any reason, the remainder of this title, the amend-  
23       ments made by this title, and the application of the provi-  
24       sions of such to any other person or circumstance shall  
25       not be affected by such holding.

1                   **TITLE III—UNLAWFUL**  
2                   **EMPLOYMENT OF ALIENS**

3   **SEC. 301. UNLAWFUL EMPLOYMENT OF ALIENS.**

4           (a) IN GENERAL.—Section 274A (8 U.S.C. 1324a)  
5 is amended to read as follows:

6   **“SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.**

7           “(a) MAKING EMPLOYMENT OF UNAUTHORIZED  
8 ALIENS UNLAWFUL.—

9                   “(1) IN GENERAL.—It is unlawful for an em-  
10           ployer—

11                           “(A) to hire, or to recruit or refer for a  
12                           fee, an alien for employment in the United  
13                           States knowing, or with reason to know, that  
14                           the alien is an unauthorized alien with respect  
15                           to such employment; or

16                           “(B) to hire, or to recruit or refer for a  
17                           fee, for employment in the United States an in-  
18                           dividual unless such employer meets the re-  
19                           quirements of subsections (c) and (d).

20                   “(2) CONTINUING EMPLOYMENT.—It is unlaw-  
21           ful for an employer, after lawfully hiring an alien for  
22           employment, to continue to employ the alien in the  
23           United States knowing or with reason to know that  
24           the alien is (or has become) an unauthorized alien  
25           with respect to such employment.

1           “(3) USE OF LABOR THROUGH CONTRACT.—In  
2           this section, an employer who uses a contract, sub-  
3           contract, or exchange, entered into, renegotiated, or  
4           extended after the date of the enactment of the  
5           Comprehensive Immigration Reform Act of 2006, to  
6           obtain the labor of an alien in the United States  
7           knowing, or with reason to know, that the alien is  
8           an unauthorized alien with respect to performing  
9           such labor, shall be considered to have hired the  
10          alien for employment in the United States in viola-  
11          tion of paragraph (1)(A).

12          “(4) REBUTTABLE PRESUMPTION OF UNLAW-  
13          FUL HIRING.—If the Secretary determines that an  
14          employer has hired more than 10 unauthorized  
15          aliens during a calendar year, a rebuttable presump-  
16          tion is created for the purposes of a civil enforce-  
17          ment proceeding, that the employer knew or had  
18          reason to know that such aliens were unauthorized.

19          “(5) DEFENSE.—

20                 “(A) IN GENERAL.—Subject to subpara-  
21                 graph (B), an employer that establishes that  
22                 the employer has complied in good faith with  
23                 the requirements of subsections (c) and (d) has  
24                 established an affirmative defense that the em-

1           employer has not violated paragraph (1)(A) with  
2           respect to such hiring, recruiting, or referral.

3           “(B) EXCEPTION.—Until the date that an  
4           employer is required to participate in the Elec-  
5           tronic Employment Verification System under  
6           subsection (d) or is permitted to participate in  
7           such System on a voluntary basis, the employer  
8           may establish an affirmative defense under sub-  
9           paragraph (A) without a showing of compliance  
10          with subsection (d).

11          “(b) ORDER OF INTERNAL REVIEW AND CERTIFI-  
12          CATION OF COMPLIANCE.—

13           “(1) AUTHORITY TO REQUIRE CERTIFI-  
14          CATION.—If the Secretary has reasonable cause to  
15          believe that an employer has failed to comply with  
16          this section, the Secretary is authorized, at any time,  
17          to require that the employer certify that the em-  
18          ployer is in compliance with this section, or has in-  
19          stituted a program to come into compliance.

20           “(2) CONTENT OF CERTIFICATION.—Not later  
21          than 60 days after the date an employer receives a  
22          request for a certification under paragraph (1) the  
23          chief executive officer or similar official of the em-  
24          ployer shall certify under penalty of perjury that—



1           “(A) the employer is in compliance with  
2           the requirements of subsections (c) and (d); or

3           “(B) that the employer has instituted a  
4           program to come into compliance with such re-  
5           quirements.

6           “(3) EXTENSION.—The 60-day period referred  
7           to in paragraph (2), may be extended by the Sec-  
8           retary for good cause, at the request of the em-  
9           ployer.

10           “(4) PUBLICATION.—The Secretary is author-  
11           ized to publish in the Federal Register standards or  
12           methods for such a certification and for specific  
13           record keeping practices with respect to such certifi-  
14           cation, and procedures for the audit of any records  
15           related to such certification at any time.

16           “(c) DOCUMENT VERIFICATION REQUIREMENTS.—  
17           An employer hiring, or recruiting or referring for a fee,  
18           an individual for employment in the United States shall  
19           take all reasonable steps to verify that the individual is  
20           eligible for such employment. Such steps shall include  
21           meeting the requirements of subsection (d) and the fol-  
22           lowing paragraphs:

23           “(1) ATTESTATION BY EMPLOYER.—

24           “(A) REQUIREMENTS.—

1           “(i) IN GENERAL.—The employer  
2 shall attest, under penalty of perjury and  
3 on a form prescribed by the Secretary, that  
4 the employer has verified the identity and  
5 eligibility for employment of the individual  
6 by examining—

7                   “(I) a document described in  
8 subparagraph (B); or

9                   “(II) a document described in  
10 subparagraph (C) and a document de-  
11 scribed in subparagraph (D).

12           “(ii) SIGNATURE REQUIREMENTS.—  
13 An attestation required by clause (i) may  
14 be manifested by a handwritten or elec-  
15 tronic signature.

16           “(iii) STANDARDS FOR EXAMINA-  
17 TION.—An employer has complied with the  
18 requirement of this paragraph with respect  
19 to examination of documentation if, based  
20 on the totality of the circumstances, a rea-  
21 sonable person would conclude that the  
22 document examined is genuine and estab-  
23 lishes the individual’s identity and eligi-  
24 bility for employment in the United States.



1 individual that the Secretary pro-  
2 scribes in regulations is sufficient for  
3 the purposes of this subparagraph;

4 “(II) is evidence of eligibility for  
5 employment in the United States; and

6 “(III) contains security features  
7 to make the document resistant to  
8 tampering, counterfeiting, and fraudu-  
9 lent use.

10 “(C) DOCUMENTS EVIDENCING EMPLOY-  
11 MENT ELIGIBILITY.—A document described in  
12 this subparagraph is an individual’s—

13 “(i) social security account number  
14 card issued by the Commissioner of Social  
15 Security (other than a card which specifies  
16 on its face that the issuance of the card  
17 does not authorize employment in the  
18 United States); or

19 “(ii) any other documents evidencing  
20 eligibility of employment in the United  
21 States, if—

22 “(I) the Secretary has published  
23 a notice in the Federal Register stat-  
24 ing that such document is acceptable

1 for purposes of this subparagraph;  
2 and

3 “(II) contains security features  
4 to make the document resistant to  
5 tampering, counterfeiting, and fraudu-  
6 lent use.

7 “(D) DOCUMENTS ESTABLISHING IDEN-  
8 TITY OF INDIVIDUAL.—A document described in  
9 this subparagraph is an individual’s—

10 “(i) driver’s license or identity card  
11 issued by a State, the Commonwealth of  
12 the Northern Mariana Islands, or an out-  
13 lying possession of the United States that  
14 complies with the requirements of the  
15 REAL ID Act of 2005 (division B of Pub-  
16 lic Law 109–13; 119 Stat. 302);

17 “(ii) driver’s license or identity card  
18 issued by a State, the Commonwealth of  
19 the Northern Mariana Islands, or an out-  
20 lying possession of the United States that  
21 is not in compliance with the requirements  
22 of the REAL ID Act of 2005, if the license  
23 or identity card—

1                   “(I) is not required by the Sec-  
2                   retary to comply with such require-  
3                   ments; and

4                   “(II) contains the individual’s  
5                   photograph or information including  
6                   the individual’s name, date of birth,  
7                   gender, and address; and

8                   “(iii) identification card issued by a  
9                   Federal agency or department, including a  
10                  branch of the Armed Forces, or an agency,  
11                  department, or entity of a State, or a Na-  
12                  tive American tribal document, provided  
13                  that such card or document—

14                  “(I) contains the individual’s  
15                  photograph or information including  
16                  the individual’s name, date of birth,  
17                  gender, eye color, and address; and

18                  “(II) contains security features  
19                  to make the card resistant to tam-  
20                  pering, counterfeiting, and fraudulent  
21                  use; or

22                  “(iv) in the case of an individual who  
23                  is under 16 years of age who is unable to  
24                  present a document described in clause (i),

1 (ii), or (iii) a document of personal identity  
2 of such other type that—

3 “(I) the Secretary determines is  
4 a reliable means of identification; and

5 “(II) contains security features  
6 to make the document resistant to  
7 tampering, counterfeiting, and fraudu-  
8 lent use.

9 “(E) AUTHORITY TO PROHIBIT USE OF  
10 CERTAIN DOCUMENTS.—

11 “(i) AUTHORITY.—If the Secretary  
12 finds that a document or class of docu-  
13 ments described in subparagraph (B), (C),  
14 or (D) is not reliable to establish identity  
15 or eligibility for employment (as the case  
16 may be) or is being used fraudulently to an  
17 unacceptable degree, the Secretary is au-  
18 thorized to prohibit, or impose conditions,  
19 on the use of such document or class of  
20 documents for purposes of this subsection.

21 “(ii) REQUIREMENT FOR PUBLICA-  
22 TION.—The Secretary shall publish notice  
23 of any findings under clause (i) in the Fed-  
24 eral Register.

25 “(2) ATTESTATION OF EMPLOYEE.—

1 “(A) REQUIREMENTS.—

2 “(i) IN GENERAL.—The individual  
3 shall attest, under penalty of perjury on  
4 the form prescribed by the Secretary, that  
5 the individual is a national of the United  
6 States, an alien lawfully admitted for per-  
7 manent residence, or an alien who is au-  
8 thorized under this Act or by the Secretary  
9 to be hired, recruited or referred for a fee,  
10 in the United States.

11 “(ii) SIGNATURE FOR EXAMINA-  
12 TION.—An attestation required by clause  
13 (i) may be manifested by a handwritten or  
14 electronic signature.

15 “(B) PENALTIES.—An individual who  
16 falsely represents that the individual is eligible  
17 for employment in the United States in an at-  
18 testation required by subparagraph (A) shall,  
19 for each such violation, be subject to a fine of  
20 not more than \$5,000, a term of imprisonment  
21 not to exceed 3 years, or both.

22 “(3) RETENTION OF ATTESTATION.—An em-  
23 ployer shall retain a paper, microfiche, microfilm, or  
24 electronic version of an attestation submitted under  
25 paragraph (1) or (2) for an individual and make



1 such attestations available for inspection by an offi-  
2 cer of the Department of Homeland Security, any  
3 other person designated by the Secretary, the Spe-  
4 cial Counsel for Immigration-Related Unfair Em-  
5 ployment Practices of the Department of Justice, or  
6 the Secretary of Labor during a period beginning on  
7 the date of the hiring, or recruiting or referring for  
8 a fee, of the individual and ending—

9 “(A) in the case of the recruiting or refer-  
10 ral for a fee (without hiring) of an individual,  
11 7 years after the date of the recruiting or refer-  
12 ral; or

13 “(B) in the case of the hiring of an indi-  
14 vidual the later of—

15 “(i) 7 years after the date of such hir-  
16 ing;

17 “(ii) 1 year after the date the individ-  
18 ual’s employment is terminated; or

19 “(iii) in the case of an employer or  
20 class of employers, a period that is less  
21 than the applicable period described in  
22 clause (i) or (ii) if the Secretary reduces  
23 such period for such employer or class of  
24 employers.

1           “(4) DOCUMENT RETENTION AND RECORD  
2           KEEPING REQUIREMENTS.—

3           “(A) RETENTION OF DOCUMENTS.—An  
4           employer shall retain, for the applicable period  
5           described in paragraph (3), the following docu-  
6           ments:

7                   “(i) IN GENERAL.—Notwithstanding  
8                   any other provision of law, the employer  
9                   shall copy all documents presented by an  
10                  individual pursuant to this subsection and  
11                  shall retain paper, microfiche, microfilm,  
12                  or electronic copies of such documents.  
13                  Such copies shall reflect the signature of  
14                  the employer and the individual and the  
15                  date of receipt of such documents.

16                  “(ii) USE OF RETAINED DOCU-  
17                  MENTS.—An employer shall use copies re-  
18                  tained under clause (i) only for the pur-  
19                  poses of complying with the requirements  
20                  of this subsection, except as otherwise per-  
21                  mitted under law.

22           “(B) RETENTION OF SOCIAL SECURITY  
23           CORRESPONDENCE.—The employer shall main-  
24           tain records related to an individual of any no-  
25           match notice from the Commissioner of Social

1 Security regarding the individual's name or cor-  
2 responding social security account number and  
3 the steps taken to resolve each issue described  
4 in the no-match notice.

5 “(C) RETENTION OF CLARIFICATION DOC-  
6 UMENTS.—The employer shall maintain records  
7 of any actions and copies of any correspondence  
8 or action taken by the employer to clarify or re-  
9 solve any issue that raises reasonable doubt as  
10 to the validity of the individual's identity or eli-  
11 gibility for employment in the United States.

12 “(D) RETENTION OF OTHER RECORDS.—  
13 The Secretary may require that an employer re-  
14 tain copies of additional records related to the  
15 individual for the purposes of this section.

16 “(5) PENALTIES.—An employer that fails to  
17 comply with the requirement of this subsection shall  
18 be subject to the penalties described in subsection  
19 (e)(4)(B).

20 “(6) NO AUTHORIZATION OF NATIONAL IDENTI-  
21 FICATION CARDS.—Nothing in this section may be  
22 construed to authorize, directly or indirectly, the  
23 issuance, use, or establishment of a national identi-  
24 fication card.

1           “(d) ELECTRONIC EMPLOYMENT VERIFICATION SYS-  
2 TEM.—

3           “(1) REQUIREMENT FOR SYSTEM.—The Sec-  
4 retary, in cooperation with the Commissioner of So-  
5 cial Security, shall implement an Electronic Employ-  
6 ment Verification System (referred to in this sub-  
7 section as the ‘System’) as described in this sub-  
8 section.

9           “(2) MANAGEMENT OF SYSTEM.—

10           “(A) IN GENERAL.—The Secretary shall,  
11 through the System—

12           “(i) provide a response to an inquiry  
13 made by an employer through the Internet  
14 or other electronic media or over a tele-  
15 phone line regarding an individual’s iden-  
16 tity and eligibility for employment in the  
17 United States;

18           “(ii) establish a set of codes to be pro-  
19 vided through the System to verify such  
20 identity and authorization; and

21           “(iii) maintain a record of each such  
22 inquiry and the information and codes pro-  
23 vided in response to such inquiry.

24           “(B) INITIAL RESPONSE.—Not later than  
25 3 days after an employer submits an inquire to

1 the System regarding an individual, the Sec-  
2 retary shall provide, through the System, to the  
3 employer—

4 “(i) if the System is able to confirm  
5 the individual’s identity and eligibility for  
6 employment in the United States, a con-  
7 firmation notice, including the appropriate  
8 codes on such confirmation notice; or

9 “(ii) if the System is unable to con-  
10 firm the individual’s identity or eligibility  
11 for employment in the United States, a  
12 tentative nonconfirmation notice, including  
13 the appropriate codes for such noncon-  
14 firmation notice.

15 “(C) VERIFICATION PROCESS IN CASE OF A  
16 TENTATIVE NONCONFIRMATION NOTICE.—

17 “(i) IN GENERAL.—If a tentative non-  
18 confirmation notice is issued under sub-  
19 paragraph (B)(ii), not later than 10 days  
20 after the date an individual submits infor-  
21 mation to contest such notice under para-  
22 graph (7)(C)(ii)(III), the Secretary,  
23 through the System, shall issue a final con-  
24 firmation notice or a final nonconfirmation

1 notice to the employer, including the ap-  
2 propriate codes for such notice.

3 “(ii) DEVELOPMENT OF PROCESS.—

4 The Secretary shall consult with the Com-  
5 missioner of Social Security to develop a  
6 verification process to be used to provide a  
7 final confirmation notice or a final noncon-  
8 firmation notice under clause (i).

9 “(D) DESIGN AND OPERATION OF SYS-  
10 TEM.—The Secretary, in consultation with the  
11 Commissioner of Social Security, shall design  
12 and operate the System—

13 “(i) to maximize reliability and ease of  
14 use by employers in a manner that pro-  
15 tects and maintains the privacy and secu-  
16 rity of the information maintained in the  
17 System;

18 “(ii) to respond to each inquiry made  
19 by an employer; and

20 “(iii) to track and record any occur-  
21 rence when the System is unable to receive  
22 such an inquiry;

23 “(iv) to include appropriate adminis-  
24 trative, technical, and physical safeguards

1 to prevent unauthorized disclosure of per-  
2 sonal information;

3 “(v) to allow for monitoring of the use  
4 of the System and provide an audit capa-  
5 bility; and

6 “(vi) to have reasonable safeguards,  
7 developed in consultation with the Attorney  
8 General, to prevent employers from engag-  
9 ing in unlawful discriminatory practices,  
10 based on national origin or citizenship sta-  
11 tus.

12 “(E) RESPONSIBILITIES OF THE COMMIS-  
13 SIONER OF SOCIAL SECURITY.—The Commis-  
14 sioner of Social Security shall establish a reli-  
15 able, secure method to provide through the Sys-  
16 tem, within the time periods required by sub-  
17 paragraphs (B) and (C)—

18 “(i) a determination of whether the  
19 name and social security account number  
20 provided in an inquiry by an employer  
21 match such information maintained by the  
22 Commissioner in order to confirm the va-  
23 lidity of the information provided;

1           “(ii) a determination of whether such  
2           social security account number was issued  
3           to the named individual;

4           “(iii) determination of whether such  
5           social security account number is valid for  
6           employment in the United States; and

7           “(iv) a confirmation notice or a non-  
8           confirmation notice under subparagraph  
9           (B) or (C), in a manner that ensures that  
10          other information maintained by the Com-  
11          missioner is not disclosed or released to  
12          employers through the System.

13          “(F) RESPONSIBILITIES OF THE SEC-  
14          RETARY.—The Secretary shall establish a reli-  
15          able, secure method to provide through the Sys-  
16          tem, within the time periods required by sub-  
17          paragraphs (B) and (C)—

18                 “(i) a determination of whether the  
19                 name and alien identification or authoriza-  
20                 tion number provided in an inquiry by an  
21                 employer match such information main-  
22                 tained by the Secretary in order to confirm  
23                 the validity of the information provided;



1           “(ii) a determination of whether such  
2           number was issued to the named indi-  
3           vidual;

4           “(iii) a determination of whether the  
5           individual is authorized to be employed in  
6           the United States; and

7           “(iv) any other related information  
8           that the Secretary may require.

9           “(G)    UPDATING    INFORMATION.—The  
10           Commissioner of Social Security and the Sec-  
11           retary shall update the information maintained  
12           in the System in a manner that promotes max-  
13           imum accuracy and shall provide a process for  
14           the prompt correction of erroneous information.

15           “(3)    REQUIREMENTS   FOR PARTICIPATION.—  
16           Except as provided in paragraphs (4) and (5), the  
17           Secretary shall require employers to participate in  
18           the System as follows:

19           “(A)    CRITICAL EMPLOYERS.—

20           “(i)    REQUIRED PARTICIPATION.—As  
21           of the date that is 180 days after the date  
22           of the enactment of the Comprehensive Im-  
23           migration Reform Act of 2006, the Sec-  
24           retary shall require any employer or class  
25           of employers to participate in the System,

1 with respect to employees hired by the em-  
2 ployer prior to, on, or after such date of  
3 enactment, if the Secretary determines, in  
4 the Secretary's sole and unreviewable dis-  
5 cretion, such employer or class of employer  
6 is—

7 “(I) part of the critical infra-  
8 structure of the United States; or

9 “(II) directly related to the na-  
10 tional security or homeland security of  
11 the United States.

12 “(ii) DISCRETIONARY PARTICIPA-  
13 TION.—As of the date that is 180 days  
14 after the date of the enactment of the  
15 Comprehensive Immigration Reform Act of  
16 2006, the Secretary may require additional  
17 any employer or class of employers to par-  
18 ticipate in the System with respect to em-  
19 ployees hired on or after such date if the  
20 Secretary designates such employer or  
21 class of employers, in the Secretary's sole  
22 and unreviewable discretion, as a critical  
23 employer based on immigration enforce-  
24 ment or homeland security needs.

1           “(B) LARGE EMPLOYERS.—Not later than  
2           2 years after the date of the enactment of the  
3           Comprehensive Immigration Reform Act of  
4           2006, the Secretary shall require an employer  
5           with more than 5,000 employees in the United  
6           States to participate in the System, with re-  
7           spect to all employees hired by the employer  
8           after the date the Secretary requires such par-  
9           ticipation.

10           “(C) MID-SIZED EMPLOYERS.—Not later  
11           than 3 years after the date of enactment of the  
12           Comprehensive Immigration Reform Act of  
13           2006, the Secretary shall require an employer  
14           with less than 5,000 employees and with more  
15           than 1,000 employees in the United States to  
16           participate in the System, with respect to all  
17           employees hired by the employer after the date  
18           the Secretary requires such participation.

19           “(D) SMALL EMPLOYERS.—Not later than  
20           4 years after the date of the enactment of the  
21           Comprehensive Immigration Reform Act of  
22           2006, the Secretary shall require all employers  
23           with less than 1,000 employees and with more  
24           than 250 employees in the United States to  
25           participate in the System, with respect to all

1 employees hired by the employer after the date  
2 the Secretary requires such participation.

3 “(E) REMAINING EMPLOYERS.—Not later  
4 than 5 years after the date of the enactment of  
5 the Comprehensive Immigration Reform Act of  
6 2006, the Secretary shall require all employers  
7 in the United States to participate in the Sys-  
8 tem, with respect to all employees hired by an  
9 employer after the date the Secretary requires  
10 such participation.

11 “(F) REQUIREMENT TO PUBLISH.—The  
12 Secretary shall publish in the Federal Register  
13 the requirements for participation in the Sys-  
14 tem as described in subparagraphs (A), (B),  
15 (C), (D), and (E) prior to the effective date of  
16 such requirements.

17 “(4) OTHER PARTICIPATION IN SYSTEM.—Not-  
18 withstanding paragraph (3), the Secretary has the  
19 authority, in the Secretary’s sole and unreviewable  
20 discretion—

21 “(A) to permit any employer that is not re-  
22 quired to participate in the System under para-  
23 graph (3) to participate in the System on a vol-  
24 untary basis; and

1           “(B) to require any employer that is re-  
2           quired to participate in the System under para-  
3           graph (3) with respect to newly hired employees  
4           to participate in the System with respect to all  
5           employees hired by the employer prior to, on, or  
6           after the date of the enactment of the Com-  
7           prehensive Immigration Reform Act of 2006, if  
8           the Secretary has reasonable causes to believe  
9           that the employer has engaged in violations of  
10          the immigration laws.

11          “(5) WAIVER.—The Secretary is authorized to  
12          waive or delay the participation requirements of  
13          paragraph (3) respect to any employer or class of  
14          employers if the Secretary provides notice to Con-  
15          gress of such waiver prior to the date such waiver  
16          is granted.

17          “(6) CONSEQUENCE OF FAILURE TO PARTICI-  
18          PATE.—If an employer is required to participate in  
19          the System and fails to comply with the require-  
20          ments of the System with respect to an individual—

21                 “(A) such failure shall be treated as a vio-  
22                 lation of subsection (a)(1)(B) of this section  
23                 with respect to such individual; and

24                 “(B) a rebuttable presumption is created  
25                 that the employer has violated subsection

1 (a)(1)(A) of this section, however such pre-  
2 sumption may not apply to a prosecution under  
3 subsection (f)(1).

4 “(7) SYSTEM REQUIREMENTS.—

5 “(A) IN GENERAL.—An employer that par-  
6 ticipates in the System shall, with respect to the  
7 hiring, or recruiting or referring for a fee, any  
8 individual for employment in the United States,  
9 shall—

10 “(i) obtain from the individual and  
11 record on the form designated by the Sec-  
12 retary—

13 “(I) the individual’s social secu-  
14 rity account number; and

15 “(II) in the case of an individual  
16 who does not attest that the indi-  
17 vidual is a national of the United  
18 States under subsection (c)(2), such  
19 identification or authorization number  
20 that the Secretary shall require; and

21 “(ii) retain the original of such form  
22 and make such form available for inspec-  
23 tion for the periods and in the manner de-  
24 scribed in subsection (c)(3).

1           “(B) SEEKING VERIFICATION.—The em-  
2           ployer shall submit an inquiry through the Sys-  
3           tem to seek confirmation of the individual’s  
4           identity and eligibility for employment in the  
5           United States—

6                   “(i) not later than 3 working days (or  
7                   such other reasonable time as may be spec-  
8                   ified by the Secretary of Homeland Secu-  
9                   rity) after the date of the hiring, or re-  
10                  cruiting or referring for a fee, of the indi-  
11                  vidual (as the case may be); or

12                   “(ii) in the case of an employee hired  
13                  prior to the date of enactment of the Com-  
14                  prehensive Immigration Reform Act of  
15                  2006, at such time as the Secretary shall  
16                  specify.

17           “(C) CONFIRMATION OR NONCONFIRMA-  
18           TION.—

19                   “(i) CONFIRMATION UPON INITIAL IN-  
20                  QUIRY.—If an employer receives a con-  
21                  firmation notice under paragraph (2)(B)(i)  
22                  for an individual, the employer shall  
23                  record, on the form specified by the Sec-  
24                  retary, the appropriate code provided in  
25                  such notice.

1                   “(ii)       NONCONFIRMATION       AND  
2                   VERIFICATION.—

3                   “(I) NONCONFIRMATION.—If an  
4                   employer receives a tentative noncon-  
5                   firmation notice under paragraph  
6                   (2)(B)(ii) for an individual, the em-  
7                   ployer shall inform such individual of  
8                   the issuances of such notice in writing  
9                   and the individual may contest such  
10                  nonconfirmation notice.

11                  “(II) NO CONTEST.—If the indi-  
12                  vidual does not contest the tentative  
13                  nonconfirmation notice under sub-  
14                  clause (I) within 10 days of receiving  
15                  notice from the individual’s employer,  
16                  the notice shall become final and the  
17                  employer shall record on the form  
18                  specified by the Secretary, the appro-  
19                  priate code provided in the noncon-  
20                  firmation notice.

21                  “(III) CONTEST.—If the indi-  
22                  vidual contests the tentative noncon-  
23                  firmation notice under subclause (I),  
24                  the individual shall submit appro-  
25                  priate information to contest such no-



1            tice to the System within 10 days of  
2            receiving notice from the individual’s  
3            employer and shall utilize the  
4            verification process developed under  
5            paragraph (2)(C)(ii).

6            “(IV) EFFECTIVE PERIOD OF  
7            TENTATIVE NONCONFIRMATION.—A  
8            tentative nonconfirmation notice shall  
9            remain in effect until a final such no-  
10          tice becomes final under clause (II) or  
11          a final confirmation notice or final  
12          nonconfirmation notice is issued by  
13          the System.

14          “(V) PROHIBITION ON TERMI-  
15          NATION.—An employer may not ter-  
16          minate the employment of an indi-  
17          vidual based on a tentative noncon-  
18          firmation notice until such notice be-  
19          comes final under clause (II) or a  
20          final nonconfirmation notice is issued  
21          for the individual by the System.  
22          Nothing in this clause shall apply to a  
23          termination of employment for any  
24          reason other than because of such a  
25          failure.

1                   “(VI) RECORDING OF CONCLU-  
2                   SION ON FORM.—If a final confirma-  
3                   tion or nonconfirmation is provided by  
4                   the System regarding an individual,  
5                   the employer shall record on the form  
6                   designated by the Secretary the ap-  
7                   propriate code that is provided under  
8                   the System to indicate a confirmation  
9                   or nonconfirmation of the identity and  
10                  employment eligibility of the indi-  
11                  vidual.

12                  “(D) CONSEQUENCES OF NONCONFIRMA-  
13                  TION.—

14                  “(i) TERMINATION OF CONTINUED  
15                  EMPLOYMENT.—If the employer has re-  
16                  ceived a final nonconfirmation regarding  
17                  an individual, the employer shall terminate  
18                  the employment, recruitment, or referral of  
19                  the individual. Such employer shall provide  
20                  to the Secretary any information relating  
21                  to the nonconfirmed individual that the  
22                  Secretary determines would assist the Sec-  
23                  retary in enforcing or administering the  
24                  immigration laws. If the employer con-  
25                  tinues to employ, recruit, or refer the indi-

1           vidual after receiving final nonconfirma-  
2           tion, a rebuttable presumption is created  
3           that the employer has violated subsections  
4           (a)(1)(A) and (a)(2). Such presumption  
5           may not apply to a prosecution under sub-  
6           section (f)(1).

7           “(8) PROTECTION FROM LIABILITY.—No em-  
8           ployer that participates in the System shall be liable  
9           under any law for any employment-related action  
10          taken with respect to an individual in good faith reli-  
11          ance on information provided by the System.

12          “(9) LIMITATION ON USE OF THE SYSTEM.—  
13          Notwithstanding any other provision of law, nothing  
14          in this subsection shall be construed to permit or  
15          allow any department, bureau, or other agency of  
16          the United States to utilize any information, data-  
17          base, or other records used in the System for any  
18          purpose other than as provided for under this sub-  
19          section.

20          “(10) MODIFICATION AUTHORITY.—The Sec-  
21          retary, after notice is submitted to Congress and  
22          provided to the public in the Federal Register, is au-  
23          thorized to modify the requirements of this sub-  
24          section, including requirements with respect to com-  
25          pletion of forms, method of storage, attestations,

1 copying of documents, signatures, methods of trans-  
2 mitting information, and other operational and tech-  
3 nical aspects to improve the efficiency, accuracy, and  
4 security of the System.

5 “(11) FEES.—The Secretary is authorized to  
6 require any employer participating in the System to  
7 pay a fee or fees for such participation. The fees  
8 may be set at a level that will recover the full cost  
9 of providing the System to all participants. The fees  
10 shall be deposited and remain available as provided  
11 in subsection (m) and (n) of section 286, and pro-  
12 viding the System shall be considered an immigra-  
13 tion adjudication service for purposes of such sub-  
14 section (n).

15 “(12) REPORT.—Not later than 1 year after  
16 the date of the enactment of the Comprehensive Im-  
17 migration Reform Act of 2006, the Secretary shall  
18 submit to Congress a report on the capacity, systems  
19 integrity, and accuracy of the System.

20 “(e) COMPLIANCE.—

21 “(1) COMPLAINTS AND INVESTIGATIONS.—The  
22 Secretary shall establish procedures—

23 “(A) for individuals and entities to file  
24 complaints regarding potential violations of sub-  
25 section (a);

1           “(B) for the investigation of those com-  
2           plaints that the Secretary deems it appropriate  
3           to investigate; and

4           “(C) for the investigation of such other  
5           violations of subsection (a), as the Secretary de-  
6           termines are appropriate.

7           “(2) AUTHORITY IN INVESTIGATIONS.—

8           “(A) IN GENERAL.—In conducting inves-  
9           tigations and hearings under this subsection—

10           “(i) immigration officers shall have  
11           reasonable access to examine evidence of  
12           any employer being investigated; and

13           “(ii) immigration officers designated  
14           by the Secretary may compel by subpoena  
15           the attendance of witnesses and the pro-  
16           duction of evidence at any designated place  
17           in an investigation or case under this sub-  
18           section.

19           “(B) FAILURE TO COOPERATE.—In case of  
20           refusal to obey a subpoena lawfully issued  
21           under subparagraph (A)(ii), the Secretary may  
22           request that the Attorney General apply in an  
23           appropriate district court of the United States  
24           for an order requiring compliance with such

1 subpoena, and any failure to obey such order  
2 may be punished by such court as contempt.

3 “(3) COMPLIANCE PROCEDURES.—

4 “(A) PRE-PENALTY NOTICE.—If the Sec-  
5 retary has reasonable cause to believe that  
6 there has been a violation of a requirement of  
7 this section and determines that further pro-  
8 ceedings related to such violation are war-  
9 ranted, the Secretary shall issue to the em-  
10 ployer concerned a written notice of the Sec-  
11 retary’s intention to issue a claim for a fine or  
12 other penalty. Such notice shall—

13 “(i) describe the violation;

14 “(ii) specify the laws and regulations  
15 allegedly violated;

16 “(iii) disclose the material facts which  
17 establish the alleged violation; and

18 “(iv) inform such employer that the  
19 employer shall have a reasonable oppor-  
20 tunity to make representations as to why a  
21 claim for a monetary or other penalty  
22 should not be imposed.

23 “(B) REMISSION OR MITIGATION OF PEN-  
24 ALTIES.—

1           “(i) PETITION BY EMPLOYER.—When-  
2           ever any employer receives written notice  
3           of a fine or other penalty in accordance  
4           with subparagraph (A), the employer may  
5           file within 30 days from receipt of such no-  
6           tice, with the Secretary a petition for the  
7           remission or mitigation of such fine or  
8           penalty, or a petition for termination of  
9           the proceedings. The petition may include  
10          any relevant evidence or proffer of evidence  
11          the employer wishes to present, and shall  
12          be filed and considered in accordance with  
13          procedures to be established by the Sec-  
14          retary.

15          “(ii) REVIEW BY SECRETARY.—If the  
16          Secretary finds that such fine or other  
17          penalty was incurred erroneously, or finds  
18          the existence of such mitigating cir-  
19          cumstances as to justify the remission or  
20          mitigation of such fine or penalty, the Sec-  
21          retary may remit or mitigate such fine or  
22          other penalty on the terms and conditions  
23          as the Secretary determines are reasonable  
24          and just, or order termination of any pro-  
25          ceedings related to the notice. Such miti-

1           gating circumstances may include good  
2           faith compliance and participation in, or  
3           agreement to participate in, the System, if  
4           not otherwise required.

5           “(iii) APPLICABILITY.—This subpara-  
6           graph may not apply to an employer that  
7           has or is engaged in a pattern or practice  
8           of violations of paragraph (1)(A), (1)(B),  
9           or (2) of subsection (a) or of any other re-  
10          quirements of this section.

11          “(C) PENALTY CLAIM.—After considering  
12          evidence and representations offered by the em-  
13          ployer pursuant to subparagraph (B), the Sec-  
14          retary shall determine whether there was a vio-  
15          lation and promptly issue a written final deter-  
16          mination setting forth the findings of fact and  
17          conclusions of law on which the determination  
18          is based and the appropriate penalty.

19          “(4) CIVIL PENALTIES.—

20                 “(A) HIRING OR CONTINUING TO EMPLOY  
21                 UNAUTHORIZED ALIENS.—Any employer that  
22                 violates any provision of paragraph (1)(A) or  
23                 (2) of subsection (a) shall pay civil penalties as  
24                 follows:



1           “(i) Pay a civil penalty of not less  
2           than \$500 and not more than \$4,000 for  
3           each unauthorized alien with respect to  
4           each such violation.

5           “(ii) If the employer has previously  
6           been fined 1 time under this subparagraph,  
7           pay a civil penalty of not less than \$4,000  
8           and not more than \$10,000 for each unau-  
9           thorized alien with respect to each such  
10          violation.

11          “(iii) If the employer has previously  
12          been fined more than 1 time under this  
13          subparagraph or has failed to comply with  
14          a previously issued and final order related  
15          to any such provision, pay a civil penalty  
16          of not less than \$6,000 and not more than  
17          \$20,000 for each unauthorized alien with  
18          respect to each such violation.

19          “(B) RECORD KEEPING OR VERIFICATION  
20          PRACTICES.—Any employer that violates or fails  
21          to comply with the requirements of the sub-  
22          section (b), (c), and (d), shall pay a civil pen-  
23          alty as follows:

1                   “(i) Pay a civil penalty of not less  
2                   than \$200 and not more than \$2,000 for  
3                   each such violation.

4                   “(ii) If the employer has previously  
5                   been fined 1 time under this subparagraph,  
6                   pay a civil penalty of not less than \$400  
7                   and not more than \$4,000 for each such  
8                   violation.

9                   “(iii) If the employer has previously  
10                  been fined more than 1 time under this  
11                  subparagraph or has failed to comply with  
12                  a previously issued and final order related  
13                  to such requirements, pay a civil penalty of  
14                  \$6,000 for each such violation.

15                  “(C)     OTHER     PENALTIES.—Notwith-  
16                  standing subparagraphs (A) and (B), the Sec-  
17                  retary may impose additional penalties for vio-  
18                  lations, including cease and desist orders, spe-  
19                  cially designed compliance plans to prevent fur-  
20                  ther violations, suspended fines to take effect in  
21                  the event of a further violation, and in appro-  
22                  priate cases, the civil penalty described in sub-  
23                  section (g)(2).

24                  “(D)     REDUCTION OF PENALTIES.—Not-  
25                  withstanding subparagraphs (A), (B), and (C),

1           the Secretary is authorized to reduce or miti-  
2           gate penalties imposed upon employers, based  
3           upon factors including the employer's hiring  
4           volume, compliance history, good-faith imple-  
5           mentation of a compliance program, participa-  
6           tion in a temporary worker program, and vol-  
7           untary disclosure of violations of this subsection  
8           to the Secretary.

9           “(E) ADJUSTMENT FOR INFLATION.—All  
10          penalties in this section may be adjusted every  
11          4 years to account for inflation, as provided by  
12          law.

13          “(5) JUDICIAL REVIEW.—An employer ad-  
14          versely affected by a final determination may, within  
15          45 days after the date the final determination is  
16          issued, file a petition in the Court of Appeals for the  
17          appropriate circuit for review of the order. The filing  
18          of a petition as provided in this paragraph shall stay  
19          the Secretary's determination until entry of judg-  
20          ment by the court. The burden shall be on the em-  
21          ployer to show that the final determination was not  
22          supported by substantial evidence. The Secretary is  
23          authorized to require that the petitioner provide,  
24          prior to filing for review, security for payment of

1 fines and penalties through bond or other guarantee  
2 of payment acceptable to the Secretary.

3 “(6) ENFORCEMENT OF ORDERS.—If an em-  
4 ployer fails to comply with a final determination  
5 issued against that employer under this subsection,  
6 and the final determination is not subject to review  
7 as provided in paragraph (5), the Attorney General  
8 may file suit to enforce compliance with the final de-  
9 termination in any appropriate district court of the  
10 United States. In any such suit, the validity and ap-  
11 propriateness of the final determination shall not be  
12 subject to review.

13 “(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR  
14 PATTERN OR PRACTICE VIOLATIONS.—

15 “(1) CRIMINAL PENALTY.—An employer that  
16 engages in a pattern or practice of knowing viola-  
17 tions of subsection (a)(1)(A) or (a)(2) shall be fined  
18 not more than \$20,000 for each unauthorized alien  
19 with respect to whom such a violation occurs, im-  
20 prisoned for not more than 6 months for the entire  
21 pattern or practice, or both.

22 “(2) ENJOINING OF PATTERN OR PRACTICE  
23 VIOLATIONS.—If the Secretary or the Attorney Gen-  
24 eral has reasonable cause to believe that an employer  
25 is engaged in a pattern or practice of employment,

1 recruitment, or referral in violation of paragraph  
2 (1)(A) or (2) of subsection (a), the Attorney General  
3 may bring a civil action in the appropriate district  
4 court of the United States requesting such relief, in-  
5 cluding a permanent or temporary injunction, re-  
6 straining order, or other order against the employer,  
7 as the Secretary deems necessary.

8 “(g) PROHIBITION OF INDEMNITY BONDS.—

9 “(1) PROHIBITION.—It is unlawful for an em-  
10 ployer, in the hiring, recruiting, or referring for a  
11 fee, of an individual, to require the individual to post  
12 a bond or security, to pay or agree to pay an  
13 amount, or otherwise to provide a financial guar-  
14 antee or indemnity, against any potential liability  
15 arising under this section relating to such hiring, re-  
16 cruiting, or referring of the individual.

17 “(2) CIVIL PENALTY.—Any employer which is  
18 determined, after notice and opportunity for mitiga-  
19 tion of the monetary penalty under subsection (e), to  
20 have violated paragraph (1) of this subsection shall  
21 be subject to a civil penalty of \$10,000 for each vio-  
22 lation and to an administrative order requiring the  
23 return of any amounts received in violation of such  
24 paragraph to the employee or, if the employee can-

1 not be located, to the Employer Compliance Fund  
2 established under section 286(w).

3 “(h) PROHIBITION ON AWARD OF GOVERNMENT  
4 CONTRACTS, GRANTS, AND AGREEMENTS.—

5 “(1) EMPLOYERS WITH NO CONTRACTS,  
6 GRANTS OR AGREEMENTS.—

7 “(A) IN GENERAL.—If an employer who  
8 does not hold a Federal contract, grant, or co-  
9 operative agreement is determined by the Sec-  
10 retary to be a repeat violator of this section or  
11 is convicted of a crime under this section, the  
12 employer shall be debarred from the receipt of  
13 a Federal contract, grant, or cooperative agree-  
14 ment for a period of 2 years. The Secretary or  
15 the Attorney General shall advise the Adminis-  
16 trator of General Services of such a debarment,  
17 and the Administrator of General Services shall  
18 list the employer on the List of Parties Ex-  
19 cluded from Federal Procurement and Non-  
20 procurement Programs for a period of 2 years.

21 “(B) WAIVER.—The Administrator of Gen-  
22 eral Services, in consultation with the Secretary  
23 and the Attorney General, may waive operation  
24 of this subsection or may limit the duration or  
25 scope of the debarment.

1           “(2) EMPLOYERS WITH CONTRACTS, GRANTS,  
2           OR AGREEMENTS.—

3           “(A) IN GENERAL.—An employer who  
4           holds a Federal contract, grant, or cooperative  
5           agreement and is determined by the Secretary  
6           of Homeland Security to be a repeat violator  
7           of this section or is convicted of a crime under  
8           this section, shall be debarred from the receipt  
9           of Federal contracts, grants, or cooperative  
10          agreements for a period of 2 years.

11          “(B) NOTICE TO AGENCIES.—Prior to de-  
12          barring the employer under subparagraph (A),  
13          the Secretary, in cooperation with the Adminis-  
14          trator of General Services, shall advise any  
15          agency or department holding a contract, grant,  
16          or cooperative agreement with the employer of  
17          the Government’s intention to debar the em-  
18          ployer from the receipt of new Federal con-  
19          tracts, grants, or cooperative agreements for a  
20          period of 2 years.

21          “(C) WAIVER.—After consideration of the  
22          views of any agency or department that holds  
23          a contract, grant, or cooperative agreement  
24          with the employer, the Secretary may, in lieu of  
25          debarring the employer from the receipt of new

1 Federal contracts, grants, or cooperative agree-  
2 ments for a period of 2 years, waive operation  
3 of this subsection, limit the duration or scope of  
4 the debarment, or may refer to an appropriate  
5 lead agency the decision of whether to debar the  
6 employer, for what duration, and under what  
7 scope in accordance with the procedures and  
8 standards prescribed by the Federal Acquisition  
9 Regulation. However, any proposed debarment  
10 predicated on an administrative determination  
11 of liability for civil penalty by the Secretary or  
12 the Attorney General shall not be reviewable in  
13 any debarment proceeding. The decision of  
14 whether to debar or take alternation shall not  
15 be judicially reviewed.

16 “(3) SUSPENSION.—Indictments for violations  
17 of this section or adequate evidence of actions that  
18 could form the basis for debarment under this sub-  
19 section shall be considered a cause for suspension  
20 under the procedures and standards for suspension  
21 prescribed by the Federal Acquisition Regulation.

22 “(i) MISCELLANEOUS PROVISIONS.—

23 “(1) DOCUMENTATION.—In providing docu-  
24 mentation or endorsement of authorization of aliens  
25 (other than aliens lawfully admitted for permanent



1 residence) eligible to be employed in the United  
2 States, the Secretary shall provide that any limita-  
3 tions with respect to the period or type of employ-  
4 ment or employer shall be conspicuously stated on  
5 the documentation or endorsement.

6 “(2) PREEMPTION.—The provisions of this sec-  
7 tion preempt any State or local law imposing civil or  
8 criminal sanctions (other than through licensing and  
9 similar laws) upon those who employ, or recruit or  
10 refer for a fee for employment, unauthorized aliens.

11 “(j) DEPOSIT OF AMOUNTS RECEIVED.—Except as  
12 otherwise specified, civil penalties collected under this sec-  
13 tion shall be deposited by the Secretary into the Employer  
14 Compliance Fund established under section 286(w).

15 “(k) DEFINITIONS.—In this section:

16 “(1) EMPLOYER.—The term ‘employer’ means  
17 any person or entity, including any entity of the  
18 Government of the United States, hiring, recruiting,  
19 or referring an individual for employment in the  
20 United States.

21 “(2) NO-MATCH NOTICE.—The term ‘no-match  
22 notice’ means written notice from the Commissioner  
23 of Social Security to an employer reporting earnings  
24 on a Form W-2 that an employee name or cor-

1       responding social security account number fail to  
2       records maintained by the Commissioner.

3           “(3) SECRETARY.—Except as otherwise pro-  
4       vided, the term ‘Secretary’ means the Secretary of  
5       Homeland Security.

6           “(4) UNAUTHORIZED ALIEN.—The term ‘unau-  
7       thorized alien’ means, with respect to the employ-  
8       ment of an alien at a particular time, that the alien  
9       is not at that time either—

10           “(A) an alien lawfully admitted for perma-  
11       nent residence; or

12           “(B) authorized to be so employed by this  
13       Act or by the Secretary.”.

14       (b) CONFORMING AMENDMENT.—

15           (1) AMENDMENT.—Sections 401, 402, 403,  
16       404, and 405 of the Illegal Immigration Reform and  
17       Immigrant Responsibility Act of 1996 (division C of  
18       Public Law 104–208; 8 U.S.C. 1324a) are repealed.

19           (2) CONSTRUCTION.—Nothing in this sub-  
20       section or in subsection (d) of section 274A , as  
21       amended by subsection (a), may be construed to  
22       limit the authority of the Secretary to allow or con-  
23       tinue to allow the participation of employers who  
24       participated in the basic pilot program under such  
25       sections 401, 402, 403, 404, and 405 in the Elec-

1       tronic Employment Verification System established  
2       pursuant to such subsection (d).

3       (c) EFFECTIVE DATE.—The amendments made by  
4       subsections (a) and (b) shall take effect on the date that  
5       is 180 days after the date of the enactment of this Act.

6       **SEC. 302. EMPLOYER COMPLIANCE FUND.**

7       Section 286 (8 U.S.C. 1356) is amended by adding  
8       at the end the following new subsection:

9       “(w) EMPLOYER COMPLIANCE FUND.—

10           “(1) IN GENERAL.—There is established in the  
11           general fund of the Treasury, a separate account  
12           which shall be known as the ‘Employer Compliance  
13           Fund’ (referred to in this subsection as the ‘Fund’).

14           “(2) DEPOSITS.—There shall be deposited as  
15           offsetting receipts into the Fund all civil monetary  
16           penalties collected by the Secretary of Homeland Se-  
17           curity under section 274A.

18           “(3) PURPOSE.—Amounts refunded to the Sec-  
19           retary from the Fund shall be used for the purposes  
20           of enhancing and enforcing employer compliance  
21           with section 274A.

22           “(4) AVAILABILITY OF FUNDS.—Amounts de-  
23           posited into the Fund shall remain available until  
24           expended and shall be refunded out of the Fund by

1 the Secretary of the Treasury, at least on a quar-  
2 terly basis, to the Secretary of Homeland Security.”.

3 **SEC. 303. ADDITIONAL WORKSITE ENFORCEMENT AND**  
4 **FRAUD DETECTION AGENTS.**

5 (a) WORKSITE ENFORCEMENT.—The Secretary shall,  
6 subject to the availability of appropriations for such pur-  
7 pose, annually increase, by not less than 2,000, the num-  
8 ber of positions for investigators dedicated to enforcing  
9 compliance with sections 274 and 274A of the Immigra-  
10 tion and Nationality Act (8 U.S.C. 1324, and 1324a) dur-  
11 ing the 5-year period beginning date of the enactment of  
12 this Act.

13 (b) FRAUD DETECTION.—The Secretary shall, sub-  
14 ject to the availability of appropriations for such purpose,  
15 increase by not less than 1,000 the number of positions  
16 for Immigration Enforcement Agents dedicated to immi-  
17 gration fraud detection during the 5-year period beginning  
18 date of the enactment of this Act.

19 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
20 are authorized to be appropriated to the Secretary during  
21 each of fiscal years 2007 through 2011 such sums as may  
22 be necessary to carry out this section.

1 **SEC. 304. CLARIFICATION OF INELIGIBILITY FOR MIS-**  
2 **REPRESENTATION.**

3 Section 212(a)(6)(C)(ii)(I) (8 U.S.C.  
4 1182(a)(6)(C)(ii)(I)), is amended by striking “citizen”  
5 and inserting “national”.

6 **TITLE IV—NONIMMIGRANT AND**  
7 **IMMIGRANT VISA REFORM**

8 **SEC. 401. NONIMMIGRANT TEMPORARY WORKER.**

9 (a) NEW TEMPORARY WORKER CATEGORY.—Section  
10 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is amended to  
11 read as follows:

12 “(H) an alien—

13 “(i)(b) subject to section 212(j)(2)—

14 “(aa) who is coming temporarily  
15 to the United States to perform serv-  
16 ices (other than services described in  
17 clause (ii)(a) or subparagraph (O) or  
18 (P)) in a specialty occupation de-  
19 scribed in section 214(i)(1) or as a  
20 fashion model;

21 “(bb) who meets the require-  
22 ments for the occupation specified in  
23 section 214(i)(2) or, in the case of a  
24 fashion model, is of distinguished  
25 merit and ability; and

1                   “(cc) with respect to whom the  
2                   Secretary of Labor determines and  
3                   certifies to the Secretary of Homeland  
4                   Security that the intending employer  
5                   has filed an application with the Sec-  
6                   retary in accordance with section  
7                   212(n)(1);

8                   “(b1)(aa) who is entitled to enter the  
9                   United States under the provisions of an  
10                  agreement listed in section 214(g)(8)(A);

11                  “(bb) who is engaged in a specialty  
12                  occupation described in section 214(i)(3);  
13                  and

14                  “(cc) with respect to whom the Sec-  
15                  retary of Labor determines and certifies to  
16                  the Secretary of Homeland Security and  
17                  the Secretary of State that the intending  
18                  employer has filed an attestation with the  
19                  Secretary of Labor in accordance with sec-  
20                  tion 212(t)(1); or

21                  “(c)(aa) who is coming temporarily to  
22                  the United States to perform services as a  
23                  registered nurse;

24                  “(bb) who meets the qualifications de-  
25                  scribed in section 212(m)(1); and

1           “(cc) with respect to whom the Sec-  
2           retary of Labor determines and certifies to  
3           the Secretary of Homeland Security that  
4           an unexpired attestation is on file and in  
5           effect under section 212(m)(2) for the fa-  
6           cility (as defined in section 212(m)(6)) for  
7           which the alien will perform the services;  
8           or

9           “(ii)(a) who—

10           “(aa) has a residence in a foreign  
11           country which the alien has no inten-  
12           tion of abandoning; and

13           “(bb) is coming temporarily to  
14           the United States to perform agricul-  
15           tural labor or services (as defined by  
16           the Secretary of Labor), including ag-  
17           ricultural labor (as defined in section  
18           3121(g) of the Internal Revenue Code  
19           of 1986), agriculture (as defined in  
20           section 3(f) of the Fair Labor Stand-  
21           ards Act of 1938 (29 U.S.C. 203(f))),  
22           and the pressing of apples for cider on  
23           a farm, of a temporary or seasonal  
24           nature;

25           “(b) who—

1                   “(aa) has a residence in a foreign  
2 country which the alien has no inten-  
3 tion of abandoning;

4                   “(bb) is coming temporarily to  
5 the United States to perform non-  
6 agricultural work or services of a tem-  
7 porary or seasonal nature (if unem-  
8 ployed persons capable of performing  
9 such work or services cannot be found  
10 in the United States), excluding med-  
11 ical school graduates coming to the  
12 United States to perform services as  
13 members of the medical profession; or  
14 “(c) who—

15                   “(aa) has a residence in a foreign  
16 country which the alien has no inten-  
17 tion of abandoning;

18                   “(bb) is coming temporarily to  
19 the United States to perform tem-  
20 porary labor or services other than the  
21 labor or services described in clause  
22 (i)(b), (i)(c), (ii)(a), (ii)(b), or (iii), or  
23 subparagraph (L), (O), (P), or (R) (if  
24 unemployed persons capable of per-



1 forming such labor or services cannot  
2 be found in the United States); and

3 “(cc) meets the requirements of  
4 section 218A, including the filing of a  
5 petition under such section on behalf  
6 of the alien;

7 “(iii) who—

8 “(a) has a residence in a foreign  
9 country which the alien has no inten-  
10 tion of abandoning; and

11 “(b) is coming temporarily to the  
12 United States as a trainee (other than  
13 to receive graduate medical education  
14 or training) in a training program  
15 that is not designed primarily to pro-  
16 vide productive employment; or

17 “(iv) who—

18 “(a) is the spouse or a minor  
19 child of an alien described in clause  
20 (iii); and

21 “(b) is accompanying or following  
22 to join such alien.”.

23 (b) EFFECTIVE DATE.—The amendment made by  
24 subsection (a) shall take effect on the date which is 1 year  
25 after the date of the enactment of this Act and shall apply

1 to aliens, who, on such effective date, are outside of the  
2 United States.

3 **SEC. 402. ADMISSION OF NONIMMIGRANT TEMPORARY**  
4 **GUEST WORKERS.**

5 (a) TEMPORARY GUEST WORKERS.—

6 (1) IN GENERAL.—Chapter 2 of title II (8  
7 U.S.C. 1181 et seq.) is amended by inserting after  
8 section 218 the following:

9 **“SEC. 218A. ADMISSION OF H-2C NONIMMIGRANTS.**

10 “(a) AUTHORIZATION.—The Secretary of State may  
11 grant a temporary visa to an H-2C nonimmigrant who  
12 demonstrates an intent to perform labor or services in the  
13 United States (other than those occupational classifica-  
14 tions covered under the provisions of clause (i)(b), (ii)(a)  
15 or (ii)(b) of section 101(a)(15)(H) or subparagraph (L),  
16 (O), (P), or (R)) of section 101(a)(15).

17 “(b) REQUIREMENTS FOR ADMISSION.—An alien  
18 shall be eligible for H-2C nonimmigrant status if the alien  
19 meets the following requirements:

20 “(1) ELIGIBILITY TO WORK.—The alien shall  
21 establish that the alien is capable of performing the  
22 labor or services required for an occupation under  
23 section 101(a)(15)(H)(ii)(c).

24 “(2) EVIDENCE OF EMPLOYMENT.—The alien  
25 shall establish that the alien has received a job offer

1 from an employer who has complied with the re-  
2 quirements of 218B.

3 “(3) FEE.—The alien shall pay a \$500 visa  
4 issuance fee in addition to the cost of processing and  
5 adjudicating such application. Nothing in this para-  
6 graph shall be construed to affect consular proce-  
7 dures for charging reciprocal fees.

8 “(4) MEDICAL EXAMINATION.—The alien shall  
9 undergo a medical examination (including a deter-  
10 mination of immunization status), at the alien’s ex-  
11 pense, that conforms to generally accepted standards  
12 of medical practice.

13 “(5) APPLICATION CONTENT AND WAIVER.—

14 “(A) APPLICATION FORM.—The alien shall  
15 submit to the Secretary a completed applica-  
16 tion, on a form designed by the Secretary of  
17 Homeland Security, including proof of evidence  
18 of the requirements under paragraphs (1) and  
19 (2).

20 “(B) CONTENT.—In addition to any other  
21 information that the Secretary requires to de-  
22 termine an alien’s eligibility for H-2C non-  
23 immigrant status, the Secretary shall require an  
24 alien to provide information concerning the  
25 alien’s—

1 “(i) physical and mental health;

2 “(ii) criminal history and gang mem-  
3 bership;

4 “(iii) immigration history; and

5 “(iv) involvement with groups or indi-  
6 viduals that have engaged in terrorism,  
7 genocide, persecution, or who seek the  
8 overthrow of the United States Govern-  
9 ment.

10 “(C) KNOWLEDGE.—The alien shall in-  
11 clude with the application submitted under this  
12 paragraph a signed certification in which the  
13 alien certifies that—

14 “(i) the alien has read and under-  
15 stands all of the questions and statements  
16 on the application form;

17 “(ii) the alien certifies under penalty  
18 of perjury under the laws of the United  
19 States that the application, and any evi-  
20 dence submitted with it, are all true and  
21 correct; and

22 “(iii) the applicant authorizes the re-  
23 lease of any information contained in the  
24 application and any attached evidence for  
25 law enforcement purposes.

1 “(c) GROUNDS OF INADMISSIBILITY.—

2 “(1) IN GENERAL.—In determining an alien’s  
3 admissibility as an H–2C nonimmigrant—

4 “(A) paragraphs (5), (6)(A), (7), (9)(B),  
5 and (9)(C) of section 212(a) may be waived for  
6 conduct that occurred before the effective date  
7 of the Comprehensive Immigration Reform Act  
8 of 2006;

9 “(B) the Secretary of Homeland Security  
10 may not waive the application of—

11 “(i) subparagraph (A), (B), (C), (E),  
12 (G), (H), or (I) of section 212(a)(2) (relat-  
13 ing to criminals);

14 “(ii) section 212(a)(3) (relating to se-  
15 curity and related grounds); or

16 “(iii) subparagraph (A), (C) or (D) of  
17 section 212(a)(10) (relating to polygamists  
18 and child abductors); and

19 “(C) for conduct that occurred before the  
20 date of the enactment of the Comprehensive  
21 Immigration Reform Act of 2006, the Secretary  
22 of Homeland Security may waive the applica-  
23 tion of any provision of section 212(a) not list-  
24 ed in subparagraph (B) on behalf of an indi-  
25 vidual alien—

1                   “(i) for humanitarian purposes;  
2                   “(ii) to ensure family unity; or  
3                   “(iii) if such a waiver is otherwise in  
4                   the public interest.

5                   “(2) RENEWAL OF AUTHORIZED ADMISSION  
6                   AND SUBSEQUENT ADMISSIONS.—An alien seeking  
7                   renewal of authorized admission or subsequent ad-  
8                   mission as an H-2C nonimmigrant shall establish  
9                   that the alien is not inadmissible under section  
10                  212(a).

11                  “(d) BACKGROUND CHECKS.—The Secretary of  
12                  Homeland Security shall not admit, and the Secretary of  
13                  State shall not issue a visa to, an alien seeking H-2C non-  
14                  immigrant status unless all appropriate background  
15                  checks have been completed.

16                  “(e) INELIGIBLE TO CHANGE NONIMMIGRANT CLAS-  
17                  SIFICATION.—An H-2C nonimmigrant may not change  
18                  nonimmigrant classification under section 248.

19                  “(f) PERIOD OF AUTHORIZED ADMISSION.—

20                  “(1) AUTHORIZED PERIOD AND RENEWAL.—  
21                  The initial period of authorized admission as an H-  
22                  2C nonimmigrant shall be 3 years, and the alien  
23                  may seek 1 extension for an additional 3-year pe-  
24                  riod.

1           “(2) FOREIGN RESIDENCY REQUIREMENT.—

2           After the expiration of the authorized period de-  
3           scribed in paragraph (1), an alien may not reenter  
4           the United States as an H-2C nonimmigrant until  
5           the alien has resided continuously in the alien’s  
6           home country for not less than 1 year.

7           “(3) INTERNATIONAL COMMUTERS.—An alien

8           who resides outside the United States and commutes  
9           into the United States to work as an H-2C non-  
10          immigrant, is not subject to the time limitations  
11          under paragraphs (1) and (2).

12          “(4) LOSS OF EMPLOYMENT.—

13                 “(A) IN GENERAL.—Subject to subsection  
14                 (c), the period of authorized admission of an  
15                 H-2C nonimmigrant shall terminate if the alien  
16                 is unemployed for 45 or more consecutive days.

17                 “(B) RETURN TO FOREIGN RESIDENCE.—

18                 Any alien whose period of authorized admission  
19                 terminates under subparagraph (A) shall be re-  
20                 quired to return to the country of the alien’s  
21                 nationality or last residence.

22                 “(C) PERIOD OF VISA VALIDITY.—Any

23                 alien, whose period of authorized admission ter-  
24                 minates under subparagraph (A), who returns  
25                 to the country of the alien’s nationality or last

1 residence under subparagraph (B), may reenter  
2 the United States as an H-2C nonimmigrant to  
3 work for an employer, if the alien has complied  
4 with the requirements of subsections (b) and  
5 (f)(2). The Secretary may, in the Secretary's  
6 sole and unreviewable discretion, reauthorize  
7 such alien for admission as an H-2C non-  
8 immigrant without requiring the alien's depar-  
9 ture from the United States.

10 “(5) VISITS OUTSIDE UNITED STATES.—

11 “(A) IN GENERAL.—Under regulations es-  
12 tablished by the Secretary of Homeland Secu-  
13 rity, an H-2C nonimmigrant—

14 “(i) may travel outside of the United  
15 States; and

16 “(ii) may be readmitted without hav-  
17 ing to obtain a new visa if the period of  
18 authorized admission has not expired.

19 “(B) EFFECT ON PERIOD OF AUTHORIZED  
20 ADMISSION.—Time spent outside the United  
21 States under subparagraph (A) shall not extend  
22 the period of authorized admission in the  
23 United States.



1           “(6) BARS TO EXTENSION OR ADMISSION.—An  
2 alien may not be granted H–2C nonimmigrant sta-  
3 tus, or an extension of such status, if—

4           “(A) the alien has violated any material  
5 term or condition of such status granted pre-  
6 viously, including failure to comply with the  
7 change of address reporting requirements under  
8 section 265;

9           “(B) the alien is inadmissible as a non-  
10 immigrant; or

11           “(C) the granting of such status or exten-  
12 sion of such status would allow the alien to ex-  
13 ceed 6 years as an H–2C nonimmigrant, unless  
14 the alien has resided and been physically  
15 present outside the United States for at least 1  
16 year after the expiration of such H–2C non-  
17 immigrant status.

18           “(g) EVIDENCE OF NONIMMIGRANT STATUS.—Each  
19 H–2C nonimmigrant shall be issued documentary evidence  
20 of nonimmigrant status, which—

21           “(1) shall be machine-readable, tamper-resist-  
22 ant, and allow for biometric authentication;

23           “(2) shall be designed in consultation with the  
24 Forensic Document Laboratory of the Bureau of  
25 Immigration and Customs Enforcement;

1           “(3) shall, during the alien’s authorized period  
2 of admission under subsection (f), serve as a valid  
3 entry document for the purpose of applying for ad-  
4 mission to the United States—

5           “(A) instead of a passport and visa if the  
6 alien—

7           “(i) is a national of a foreign territory  
8 contiguous to the United States; and

9           “(ii) is applying for admission at a  
10 land border port of entry; and

11           “(B) in conjunction with a valid passport,  
12 if the alien is applying for admission at an air  
13 or sea port of entry;

14           “(4) may be accepted during the period of its  
15 validity by an employer as evidence of employment  
16 authorization and identity under section  
17 274A(b)(1)(B); and

18           “(5) shall be issued to the H-2C nonimmigrant  
19 by the Secretary of Homeland Security promptly  
20 after the final adjudication of such alien’s applica-  
21 tion for H-2C nonimmigrant status.

22           “(h) PENALTY FOR FAILURE TO DEPART.—If an H-  
23 2C nonimmigrant fails to depart the United States before  
24 the date which is 10 days after the date that the alien’s  
25 authorized period of admission as an H-2C nonimmigrant

1 terminates, the H-2C nonimmigrant may not apply for  
2 or receive any immigration relief or benefit under this Act  
3 or any other law, except for relief under sections 208 and  
4 241(b)(3) and relief under the Convention Against Tor-  
5 ture and Other Cruel, Inhuman or Degrading Treatment  
6 or Punishment, for an alien who indicates either an inten-  
7 tion to apply for asylum under section 208 or a fear of  
8 persecution or torture.

9 “(i) PENALTY FOR ILLEGAL ENTRY OR OVERSTAY.—  
10 Any alien who enters, attempts to enter, or crosses the  
11 border after the date of the enactment of this section, and  
12 is physically present in the United States after such date  
13 in violation of this Act or of any other Federal law, may  
14 not receive, for a period of 10 years—

15 “(1) any relief under sections 240A and 240B;

16 or

17 “(2) nonimmigrant status under section  
18 101(a)(15).

19 “(j) PORTABILITY.—A nonimmigrant alien described  
20 in this section, who was previously issued a visa or other-  
21 wise provided H-2C nonimmigrant status, may accept a  
22 new offer of employment with a subsequent employer, if—

23 “(1) the employer complies with section 218B;

24 and

1           “(2) the alien, after lawful admission to the  
2           United States, did not work without authorization.

3           “(k) DENIAL OF DISCRETIONARY RELIEF.—The Sec-  
4           retary of Homeland Security shall have sole discretion to  
5           determine whether an alien is eligible for H-2C non-  
6           immigrant status. Notwithstanding any other provision of  
7           law, no court shall have jurisdiction to review—

8           “(1) any judgment regarding the granting of  
9           relief under this section; or

10          “(2) any other decision or action of the Sec-  
11          retary of Homeland Security, the authority for  
12          which is specified under this section to be at the dis-  
13          cretion of the Secretary, other than the granting of  
14          relief under section 208(a).

15          “(l) JUDICIAL REVIEW.—

16          “(1) LIMITATIONS ON RELIEF.—Without regard  
17          to the nature of the action or claim and without re-  
18          gard to the identity of the party or parties bringing  
19          the action, no court may—

20                 “(A) enter declaratory, injunctive, or other  
21                 equitable relief in any action pertaining to—

22                         “(i) an order or notice denying an  
23                         alien H-2C nonimmigrant status or any  
24                         other benefit arising from such status; or

1                   “(ii) an order of removal, exclusion, or  
2                   deportation entered against an alien if  
3                   such order is entered after the termination  
4                   of the alien’s period of authorized admis-  
5                   sion as an H–2C nonimmigrant; or

6                   “(B) certify a class under Rule 23 of the  
7                   Federal Rules of Civil Procedure in any action  
8                   for which judicial review is authorized under  
9                   this subsection.

10                  “(2) CHALLENGES TO VALIDITY.—

11                   “(A) IN GENERAL.—Subject to subpara-  
12                   graph (B), any right or benefit not otherwise  
13                   waived or limited under this section shall be  
14                   available in an action instituted in a United  
15                   States District Court.

16                   “(B) LIMITATION.—A right or benefit de-  
17                   scribed in subparagraph (A) shall be limited to  
18                   determinations of—

19                   “(i) whether this section, or any regu-  
20                   lation issued to implement this section, vio-  
21                   lates the Constitution of the United States;  
22                   or

23                   “(ii) whether a regulation, written pol-  
24                   icy directive, written policy guideline, or  
25                   written procedure issued under the author-

1                   ity the Secretary of Homeland Security to  
2                   implement this section is inconsistent with  
3                   applicable provisions of this section or is  
4                   otherwise in violation of law.

5           “(m) CHANGE OF ADDRESS.—An H-2C non-  
6 immigrant shall comply with the change of address report-  
7 ing requirements under section 265 through either elec-  
8 tronic or paper notification.

9           “(n) COLLECTION OF FEES.—All fees collected under  
10 this section shall be deposited in the Treasury in accord-  
11 ance with section 286(e).

12           “(o) ISSUANCE OF H-4 NONIMMIGRANT VISAS FOR  
13 SPOUSE AND CHILDREN.—

14                   “(1) IN GENERAL.—The alien spouse and chil-  
15 dren of an H-2C nonimmigrant (referred to in this  
16 section as ‘dependent aliens’) who are accompanying  
17 or following to join the H-2C nonimmigrant may be  
18 issued nonimmigrant visas under section  
19 101(a)(15)(H)(iv).

20                   “(2) REQUIREMENTS FOR ADMISSION.—A de-  
21 pendent alien is eligible for nonimmigrant status  
22 under 101(a)(15)(H)(iv) if the dependant alien  
23 meets the following requirements:

24                           “(A) ELIGIBILITY.—The dependent alien is  
25                           admissible as a nonimmigrant and does not fall

1           within a class of aliens ineligible for H-4A non-  
2           immigrant status listed under subsection (c).

3           “(B) VISA APPLICATION FEE.—A depend-  
4           ent alien applying for a visa under this sub-  
5           section shall pay a \$500 family supplemental  
6           application fee, in addition to the costs charged  
7           by the Department of State for processing and  
8           adjudicating such application. Such fee shall be  
9           deposited and remain available as provided  
10          under section 286(x). Nothing in this subpara-  
11          graph shall be construed to affect consular pro-  
12          cedures for collection of reciprocity fees for the  
13          issuance of the visa.

14          “(C) MEDICAL EXAMINATION.—Before a  
15          nonimmigrant visa is issued to a dependent  
16          alien under this subsection, the dependent alien  
17          may be required to submit to a medical exam-  
18          ination (including a determination of immuniza-  
19          tion status) at the alien’s expense, that con-  
20          forms to generally accepted standards of med-  
21          ical practice.

22          “(D) BACKGROUND CHECKS.—Before a  
23          nonimmigrant visa is issued to a dependent  
24          alien under this section, the consular officer  
25          shall conduct such background checks as the

1 Secretary of State, in consultation with the Sec-  
2 retary of Homeland Security, considers appro-  
3 priate.

4 “(E) FINANCIAL SUPPORT.—A dependent  
5 alien who is accompanying or following to join  
6 an H-2C nonimmigrant is inadmissible under  
7 section 212(a)(4) as an alien likely to become  
8 a public charge, unless the principal alien dem-  
9 onstrates to the consular officer that the H-2C  
10 nonimmigrant will have sufficient financial re-  
11 sources to adequately support the dependent  
12 alien during the dependent alien’s time in the  
13 United States.

14 “(p) DEFINITIONS.—In this section and sections  
15 218A through 218D:

16 “(1) AGGRIEVED PERSON.—The term ‘ag-  
17 grievied person’ means a person adversely affected by  
18 an alleged violation of this section, including—

19 “(A) a worker whose job, wages, or work-  
20 ing conditions are adversely affected by the vio-  
21 lation; and

22 “(B) a representative for workers whose  
23 jobs, wages, or working conditions are adversely  
24 affected by the violation who brings a complaint  
25 on behalf of such worker.



1           “(2) AREA OF EMPLOYMENT.—The terms ‘area  
2 of employment’ and ‘area of intended employment’  
3 mean the area within normal commuting distance of  
4 the worksite or physical location at which the work  
5 of the temporary worker is or will be performed. If  
6 such worksite or location is within a Metropolitan  
7 Statistical Area, any place within such area is  
8 deemed to be within the area of employment.

9           “(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible  
10 individual’ means, with respect to employment, an  
11 individual who is not an unauthorized alien (as de-  
12 fined in section 274A(h)(3)) with respect to that em-  
13 ployment.

14           “(4) EMPLOYER.—The term ‘employer’ means  
15 a person, firm, corporation, or other association or  
16 organization that—

17                   “(A) allows or permits a person to work;

18                   “(B) has a location within the United  
19 States to which United States workers may be  
20 referred for employment;

21                   “(C) proposes to employ workers at a place  
22 within the United States; and

23                   “(D) has an employer relationship with re-  
24 spect to employees, evidenced by the ability to

1 hire, pay, fire, supervise, or otherwise control  
2 the work of any such employee.

3 “(5) FOREIGN LABOR CONTRACTOR.—The term  
4 ‘foreign labor contractor’ means any person who for  
5 any compensation or other valuable consideration  
6 paid or promised to be paid, performs any foreign  
7 labor contracting activity.

8 “(6) FOREIGN LABOR CONTRACTING ACTIV-  
9 ITY.—The term ‘foreign labor contracting activity’  
10 means recruiting, soliciting, hiring, employing, or  
11 furnishing, an individual who resides outside of the  
12 United States for employment in the United States  
13 as a nonimmigrant alien described in section  
14 101(a)(15)(H)(ii)(c).

15 “(7) H-2C NONIMMIGRANT.—The term ‘H-2C  
16 nonimmigrant’ means a nonimmigrant described in  
17 section 101(a)(15)(H)(ii)(c).

18 “(8) SEPARATION FROM EMPLOYMENT.—The  
19 term ‘separation from employment’ means the work-  
20 er’s loss of employment, other than through a dis-  
21 charge for inadequate performance, violation of  
22 workplace rules, cause, voluntary departure, vol-  
23 untary retirement, or the expiration of a grant or  
24 contract. The term does not include any situation in  
25 which the worker is offered, as an alternative to

1 such loss of employment, a similar employment op-  
2 portunity with the same employer at equivalent or  
3 higher compensation and benefits than the position  
4 from which the employee was discharged, regardless  
5 of whether the employee accepts the offer. Nothing  
6 in this paragraph shall limit an employee's rights  
7 under a collective bargaining agreement or other em-  
8 ployment contract.

9 “(9) UNITED STATES WORKER.—The term  
10 ‘United States worker’ means an employee who is—

11 “(A) a citizen or national of the United  
12 States; or

13 “(B) an alien who is—

14 “(i) lawfully admitted for permanent  
15 residence;

16 “(ii) admitted as a refugee under sec-  
17 tion 207;

18 “(iii) granted asylum under section  
19 208; or

20 “(iv) otherwise authorized, under this  
21 Act or by the Secretary of Homeland Secu-  
22 rity, to be employed in the United States.”.

23 (2) CLERICAL AMENDMENT.—The table of con-  
24 tents for the Immigration and Nationality Act (8

1 U.S.C. 1101 et seq.) is amended by inserting after  
2 the item relating to section 218 the following:

“Sec. 218A. Admission of temporary H-2C workers.”.

3 (b) CREATION OF STATE IMPACT ASSISTANCE AC-  
4 COUNT.—Section 286 (8 U.S.C. 1356) is amended by add-  
5 ing at the end the following:

6 “(x) STATE IMPACT ASSISTANCE ACCOUNT.—There  
7 is established in the general fund of the Treasury a sepa-  
8 rate account, which shall be known as the ‘State Impact  
9 Aid Account’. Notwithstanding any other provision under  
10 this Act, there shall be deposited as offsetting receipts into  
11 the account all family supplemental visa and family sup-  
12 plemental extension of status fees collected under sections  
13 218A and 218B.”.

14 **SEC. 403. EMPLOYER OBLIGATIONS.**

15 (a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.)  
16 is amended by inserting after section 218A, as added by  
17 section 402, the following:

18 **“SEC. 218B. EMPLOYER OBLIGATIONS.**

19 “(a) GENERAL REQUIREMENTS.—Each employer  
20 who employs an H-2C nonimmigrant shall—

21 “(1) comply with all applicable Federal, State,  
22 and local laws, including—

23 “(A) laws affecting migrant and seasonal  
24 agricultural workers; and

1           “(B) section 402 of the Illegal Immigra-  
2           tion Reform and Immigrant Responsibility Act  
3           of 1996 (8 U.S.C. 1324a note);

4           “(2) file a petition in accordance with sub-  
5           section (b); and

6           “(3) pay the appropriate fee, as determined by  
7           the Secretary of Labor.

8           “(b) PETITION.—A petition to hire an H-2C non-  
9           immigrant under this section shall include an attestation  
10          by the employer of the following:

11           “(1) PROTECTION OF UNITED STATES WORK-  
12          ERS.—The employment of an H-2C non-  
13          immigrant—

14           “(A) will not adversely affect the wages  
15           and working conditions of workers in the  
16           United States similarly employed; and

17           “(B) did not and will not cause the separa-  
18           tion from employment of a United States work-  
19           er employed by the employer within the 180-day  
20           period beginning 90 days before the date on  
21           which the petition is filed.

22           “(2) WAGES.—

23           “(A) IN GENERAL.—The H-2C non-  
24           immigrant will be paid not less than the greater  
25           of—

1                   “(i) the actual wage level paid by the  
2                   employer to all other individuals with simi-  
3                   lar experience and qualifications for the  
4                   specific employment in question; or

5                   “(ii) the prevailing wage level for the  
6                   occupational classification in the area of  
7                   employment, taking into account experi-  
8                   ence and skill levels of employees.

9                   “(B) CALCULATION.—The wage levels  
10                  under subparagraph (A) shall be calculated  
11                  based on the best information available at the  
12                  time of the filing of the application.

13                  “(C) PREVAILING WAGE LEVEL.—For pur-  
14                  poses of subparagraph (A)(ii), the prevailing  
15                  wage level may be determined through private,  
16                  independent wage surveys. If the job oppor-  
17                  tunity is covered by a collective bargaining  
18                  agreement between a union and the employer,  
19                  the prevailing wage shall be the wage rate set  
20                  forth in the collective bargaining agreement. If  
21                  the job opportunity is not covered by such an  
22                  agreement, and it is in an occupation that is  
23                  covered by a wage determination under a provi-  
24                  sion of subchapter IV of chapter 31 of title 40,

1 United States Code, the prevailing wage level  
2 shall be the appropriate statutory wage.

3 “(3) WORKING CONDITIONS.—All workers in  
4 the occupation at the place of employment at which  
5 the H–2C nonimmigrant will be employed will be  
6 provided the working conditions and benefits that  
7 are normal to workers similarly employed in the area  
8 of intended employment.

9 “(4) LABOR DISPUTE.—There is not a strike,  
10 lockout, or work stoppage in the course of a labor  
11 dispute in the occupation at the place of employment  
12 at which the H–2C nonimmigrant will be employed.  
13 If such strike, lockout, or work stoppage occurs fol-  
14 lowing submission of the petition, the employer will  
15 provide notification in accordance with regulations  
16 promulgated by the Secretary of Labor.

17 “(5) PROVISION OF INSURANCE.—If the posi-  
18 tion for which the H–2C nonimmigrant is sought is  
19 not covered by the State workers’ compensation law,  
20 the employer will provide, at no cost to the H–2C  
21 nonimmigrant, insurance covering injury and disease  
22 arising out of, and in the course of, the worker’s em-  
23 ployment, which will provide benefits at least equal  
24 to those provided under the State workers’ com-  
25 pensation law for comparable employment.

1           “(6) NOTICE TO EMPLOYEES.—

2                   “(A) IN GENERAL.—The employer has pro-  
3           vided notice of the filing of the petition to the  
4           bargaining representative of the employer’s em-  
5           ployees in the occupational classification and  
6           area of employment for which the H-2C non-  
7           immigrant is sought.

8                   “(B) NO BARGAINING REPRESENTATIVE.—  
9           If there is no such bargaining representative,  
10          the employer has—

11                   “(i) posted a notice of the filing of the  
12           petition in a conspicuous location at the  
13           place or places of employment for which  
14           the H-2C nonimmigrant is sought; or

15                   “(ii) electronically disseminated such  
16           a notice to the employer’s employees in the  
17           occupational classification for which the  
18           H-2C nonimmigrant is sought.

19           “(7) RECRUITMENT.—Unless the Secretary of  
20          Labor has determined that there is a shortage of  
21          United States workers in the occupation and area of  
22          intended employment for which the H-2C non-  
23          immigrant is sought—

24                   “(A) there are not sufficient workers who  
25           are able, willing, and qualified, and who will be



1 available at the time and place needed, to per-  
2 form the labor or services involved in the peti-  
3 tion; and

4 “(B) good faith efforts have been taken to  
5 recruit United States workers, in accordance  
6 with regulations promulgated by the Secretary  
7 of Labor, which efforts included—

8 “(i) the completion of recruitment  
9 during the period beginning on the date  
10 that is 90 days before the date on which  
11 the petition was filed with the Department  
12 of Homeland Security and ending on the  
13 date that is 14 days before such filing  
14 date; and

15 “(ii) the actual wage paid by the em-  
16 ployer for the occupation in the areas of  
17 intended employment was used in con-  
18 ducting recruitment.

19 “(8) INELIGIBILITY.—The employer is not cur-  
20 rently ineligible from using the H-2C nonimmigrant  
21 program described in this section.

22 “(9) BONAFIDE OFFER OF EMPLOYMENT.—The  
23 job for which the H-2C nonimmigrant is sought is  
24 a bona fide job—

1           “(A) for which the employer needs labor or  
2 services;

3           “(B) which has been and is clearly open to  
4 any United States worker; and

5           “(C) for which the employer will be able to  
6 place the H-2C nonimmigrant on the payroll.

7           “(10) PUBLIC AVAILABILITY AND RECORDS RE-  
8 TENTION.—A copy of each petition filed under this  
9 section and documentation supporting each attesta-  
10 tion, in accordance with regulations promulgated by  
11 the Secretary of Labor, will—

12           “(A) be provided to every H-2C non-  
13 immigrant employed under the petition;

14           “(B) be made available for public examina-  
15 tion at the employer’s place of business or work  
16 site;

17           “(C) be made available to the Secretary of  
18 Labor during any audit; and

19           “(D) remain available for examination for  
20 5 years after the date on which the petition is  
21 filed.

22           “(11) NOTIFICATION UPON SEPARATION FROM  
23 OR TRANSFER OF EMPLOYMENT.—The employer will  
24 notify the Secretary of Labor and the Secretary of  
25 Homeland Security of a H-2C nonimmigrant’s sepa-

1       ration from employment or transfer to another em-  
2       ployer not more than 3 business days after the date  
3       of such separation or transfer, in accordance with  
4       regulations promulgated by the Secretary of Home-  
5       land Security.

6           “(12) ACTUAL NEED FOR LABOR OR SERV-  
7       ICES.—The petition was filed not more than 60 days  
8       before the date on which the employer needed labor  
9       or services for which the H-2C nonimmigrant is  
10      sought.

11      “(c) AUDIT OF ATTESTATIONS.—

12           “(1) REFERRALS BY SECRETARY OF HOMELAND  
13      SECURITY.—The Secretary of Homeland Security  
14      shall refer all approved petitions for H-2C non-  
15      immigrants to the Secretary of Labor for potential  
16      audit.

17           “(2) AUDITS AUTHORIZED.—The Secretary of  
18      Labor may audit any approved petition referred pur-  
19      suant to paragraph (1), in accordance with regula-  
20      tions promulgated by the Secretary of Labor.

21      “(d) INELIGIBLE EMPLOYERS.—

22           “(1) IN GENERAL.—The Secretary of Homeland  
23      Security shall not approve an employer’s petitions,  
24      applications, certifications, or attestations under any  
25      immigrant or nonimmigrant program if the Sec-

1       retary of Labor determines, after notice and an op-  
2       portunity for a hearing, that the employer submit-  
3       ting such documents—

4               “(A) has, with respect to the attestations  
5       required under subsection (b)—

6                       “(i) misrepresented a material fact;

7                       “(ii) made a fraudulent statement; or

8                       “(iii) failed to comply with the terms  
9       of such attestations; or

10               “(B) failed to cooperate in the audit proc-  
11       ess in accordance with regulations promulgated  
12       by the Secretary of Labor.

13               “(2) LENGTH OF INELIGIBILITY.—An employer  
14       described in paragraph (1) shall be ineligible to par-  
15       ticipate in the labor certification programs of the  
16       Secretary of Labor for not less than the time period  
17       determined by the Secretary, not to exceed 3 years.

18       “(e) REGULATION OF FOREIGN LABOR CONTRAC-  
19       TORS.—

20               “(1) COVERAGE.—Notwithstanding any other  
21       provision of law, an H-2C nonimmigrant may not be  
22       treated as an independent contractor.

23               “(2) APPLICABILITY OF LAWS.—An H-2C non-  
24       immigrant shall not be denied any right or any rem-  
25       edy under Federal, State, or local labor or employ-

1       ment law that would be applicable to a United  
2       States worker employed in a similar position with  
3       the employer because of the alien’s status as a non-  
4       immigrant worker.

5           “(3) TAX RESPONSIBILITIES.—With respect to  
6       each employed H–2C nonimmigrant, an employer  
7       shall comply with all applicable Federal, State, and  
8       local tax and revenue laws.

9           “(f) WHISTLEBLOWER PROTECTION.—It shall be un-  
10      lawful for an employer or a labor contractor of an H–2C  
11      nonimmigrant to intimidate, threaten, restrain, coerce, re-  
12      taliate, discharge, or in any other manner, discriminate  
13      against an employee or former employee because the em-  
14      ployee or former employee—

15           “(1) discloses information to the employer or  
16      any other person that the employee or former em-  
17      ployee reasonably believes demonstrates a violation  
18      of this Act; or

19           “(2) cooperates or seeks to cooperate in an in-  
20      vestigation or other proceeding concerning compli-  
21      ance with the requirements of this Act.

22           “(g) LABOR RECRUITERS.—

23           “(1) IN GENERAL.—Each employer that en-  
24      gages in foreign labor contracting activity and each  
25      foreign labor contractor shall ascertain and disclose,

1 to each such worker who is recruited for employment  
2 at the time of the worker's recruitment—

3 “(A) the place of employment;

4 “(B) the compensation for the employ-  
5 ment;

6 “(C) a description of employment activi-  
7 ties;

8 “(D) the period of employment;

9 “(E) any other employee benefit to be pro-  
10 vided and any costs to be charged for each ben-  
11 efit;

12 “(F) any travel or transportation expenses  
13 to be assessed;

14 “(G) the existence of any labor organizing  
15 effort, strike, lockout, or other labor dispute at  
16 the place of employment;

17 “(H) the existence of any arrangement  
18 with any owner, employer, foreign contractor,  
19 or its agent where such person receives a com-  
20 mission from the provision of items or services  
21 to workers;

22 “(I) the extent to which workers will be  
23 compensated through workers' compensation,  
24 private insurance, or otherwise for injuries or  
25 death, including—

1 “(i) work related injuries and death  
2 during the period of employment;

3 “(ii) the name of the State workers’  
4 compensation insurance carrier or the  
5 name of the policyholder of the private in-  
6 surance;

7 “(iii) the name and the telephone  
8 number of each person who must be noti-  
9 fied of an injury or death; and

10 “(iv) the time period within which  
11 such notice must be given;

12 “(J) any education or training to be pro-  
13 vided or required, including—

14 “(i) the nature and cost of such train-  
15 ing;

16 “(ii) the entity that will pay such  
17 costs; and

18 “(iii) whether the training is a condi-  
19 tion of employment, continued employ-  
20 ment, or future employment; and

21 “(K) a statement, in a form specified by  
22 the Secretary of Labor, describing the protec-  
23 tions of this Act for workers recruited abroad.

24 “(2) FALSE OR MISLEADING INFORMATION.—

25 No foreign labor contractor or employer who en-

1 gages in foreign labor contracting activity shall  
2 knowingly provide material false or misleading infor-  
3 mation to any worker concerning any matter re-  
4 quired to be disclosed in paragraph (1).

5 “(3) FEES.—A person conducting a foreign  
6 labor contracting activity shall not assess any fee to  
7 a worker for such foreign labor contracting activity.

8 “(4) TERMS.—No employer or foreign labor  
9 contractor shall, without justification, violate the  
10 terms of any agreement made by that contractor or  
11 employer regarding employment under this program.

12 “(5) TRAVEL COSTS.—If the foreign labor con-  
13 tractor or employer charges the employee for trans-  
14 portation such transportation costs shall be reason-  
15 able.

16 “(6) OTHER WORKER PROTECTIONS.—

17 “(A) NOTIFICATION.—Not less frequently  
18 than once every 2 years, each employer shall  
19 notify the Secretary of Labor of the identity of  
20 any foreign labor contractor engaged by the em-  
21 ployer in any foreign labor contractor activity  
22 for, or on behalf of, the employer.

23 “(B) REGISTRATION OF FOREIGN LABOR  
24 CONTRACTORS.—



1           “(i) IN GENERAL.—No person shall  
2 engage in foreign labor recruiting activity  
3 unless such person has a certificate of reg-  
4 istration from the Secretary of Labor  
5 specifying the activities that such person is  
6 authorized to perform. An employer who  
7 retains the services of a foreign labor con-  
8 tractor shall only use those foreign labor  
9 contractors who are registered under this  
10 subparagraph.

11           “(ii) ISSUANCE.—The Secretary shall  
12 promulgate regulations to establish an effi-  
13 cient electronic process for the investiga-  
14 tion and approval of an application for a  
15 certificate of registration of foreign labor  
16 contractors not later than 14 days after  
17 such application is filed, including—

18           “(I) requirements under para-  
19 graphs (1), (4), and (5) of section 102  
20 of the Migrant and Seasonal Agricul-  
21 tural Worker Protection Act (29  
22 U.S.C. 1812);

23           “(II) an expeditious means to up-  
24 date registrations and renew certifi-  
25 cates; and

1                   “(III) any other requirements  
2                   that the Secretary may prescribe.

3                   “(iii) TERM.—Unless suspended or re-  
4                   voked, a certificate under this subpara-  
5                   graph shall be valid for 2 years.

6                   “(iv) REFUSAL TO ISSUE; REVOCA-  
7                   TION; SUSPENSION.—In accordance with  
8                   regulations promulgated by the Secretary  
9                   of Labor, the Secretary may refuse to issue  
10                  or renew, or may suspend or revoke, a cer-  
11                  tificate of registration under this subpara-  
12                  graph if—

13                   “(I) the application or holder of  
14                   the certification has knowingly made a  
15                   material misrepresentation in the ap-  
16                   plication for such certificate;

17                   “(II) the applicant for, or holder  
18                   of, the certification is not the real  
19                   party in interest in the application or  
20                   certificate of registration and the real  
21                   party in interest—

22                   “(aa) is a person who has  
23                   been refused issuance or renewal  
24                   of a certificate;

1                   “(bb) has had a certificate  
2                   suspended or revoked; or

3                   “(cc) does not qualify for a  
4                   certificate under this paragraph;  
5                   or

6                   “(III) the applicant for or holder  
7                   of the certification has failed to com-  
8                   ply with this Act.

9                   “(C) REMEDY FOR VIOLATIONS.—An em-  
10                  ployer engaging in foreign labor contracting ac-  
11                  tivity and a foreign labor contractor that vio-  
12                  lates the provisions of this subsection shall be  
13                  subject to remedies for foreign labor contractor  
14                  violations under subsections (h) and (i). If a  
15                  foreign labor contractor acting as an agent of  
16                  an employer violates any provision of this sub-  
17                  section, the employer shall also be subject to  
18                  remedies under subsections (h) and (i). An em-  
19                  ployer that violates a provision of this sub-  
20                  section relating to employer obligations shall be  
21                  subject to remedies under subsections (h) and  
22                  (i).

23                  “(D) EMPLOYER NOTIFICATION.—An em-  
24                  ployer shall notify the Secretary of Labor if the

1 employer becomes aware of a violation of this  
2 subsection by a foreign labor recruiter.

3 “(E) WRITTEN AGREEMENTS.—A foreign  
4 labor contractor may not violate the terms of  
5 any written agreements made with an employer  
6 relating to any contracting activity or worker  
7 protection under this subsection.

8 “(F) BONDING REQUIREMENT.—The Sec-  
9 retary of Labor may require a foreign labor  
10 contractor to post a bond in an amount suffi-  
11 cient to ensure the protection of individuals re-  
12 cruited by the foreign labor contractor. The  
13 Secretary may consider the extent to which the  
14 foreign labor contractor has sufficient ties to  
15 the United States to adequately enforce this  
16 subsection.

17 “(h) ENFORCEMENT.—

18 “(1) IN GENERAL.—The Secretary of Labor  
19 shall promulgate regulations for the receipt, inves-  
20 tigation, and disposition of complaints by an ag-  
21 grievied person respecting a violation of this section.

22 “(2) FILING DEADLINE.—No investigation or  
23 hearing shall be conducted on a complaint con-  
24 cerning a violation under this section unless the

1 complaint was filed not later than 12 months after  
2 the date of such violation.

3 “(3) REASONABLE CAUSE.—The Secretary of  
4 Labor shall conduct an investigation under this sub-  
5 section if there is reasonable cause to believe that a  
6 violation of this section has occurred. The process  
7 established under this subsection shall provide that,  
8 not later than 30 days after a complaint is filed, the  
9 Secretary shall determine if there is reasonable  
10 cause to find such a violation.

11 “(4) NOTICE AND HEARING.—

12 “(A) IN GENERAL.—Not later than 60  
13 days after the Secretary of Labor makes a de-  
14 termination of reasonable cause under para-  
15 graph (4), the Secretary shall issue a notice to  
16 the interested parties and offer an opportunity  
17 for a hearing on the complaint, in accordance  
18 with section 556 of title 5, United States Code.

19 “(B) COMPLAINT.—If the Secretary of  
20 Labor, after receiving a complaint under this  
21 subsection, does not offer the aggrieved party  
22 or organization an opportunity for a hearing  
23 under subparagraph (A), the Secretary shall no-  
24 tify the aggrieved party or organization of such  
25 determination and the aggrieved party or orga-

1           nization may seek a hearing on the complaint  
2           in accordance with such section 556.

3           “(C) HEARING DEADLINE.—Not later than  
4           60 days after the date of a hearing under this  
5           paragraph, the Secretary of Labor shall make a  
6           finding on the matter in accordance with para-  
7           graph (5).

8           “(5) ATTORNEYS’ FEES.—A complainant who  
9           prevails with respect to a claim under this sub-  
10          section shall be entitled to an award of reasonable  
11          attorneys’ fees and costs.

12          “(6) POWER OF THE SECRETARY.—The Sec-  
13          retary may bring an action in any court of com-  
14          petent jurisdiction—

15                 “(A) to seek remedial action, including in-  
16                 junctive relief;

17                 “(B) to recover the damages described in  
18                 subsection (i); or

19                 “(C) to ensure compliance with terms and  
20                 conditions described in subsection (g).

21          “(7) SOLICITOR OF LABOR.—Except as pro-  
22          vided in section 518(a) of title 28, United States  
23          Code, the Solicitor of Labor may appear for and rep-  
24          resent the Secretary of Labor in any civil litigation  
25          brought under this subsection. All such litigation

1 shall be subject to the direction and control of the  
2 Attorney General.

3 “(8) PROCEDURES IN ADDITION TO OTHER  
4 RIGHTS OF EMPLOYEES.—The rights and remedies  
5 provided to workers under this section are in addi-  
6 tion to any other contractual or statutory rights and  
7 remedies of the workers, and are not intended to  
8 alter or affect such rights and remedies.

9 “(i) PENALTIES.—

10 “(1) IN GENERAL.—If, after notice and an op-  
11 portunity for a hearing, the Secretary of Labor finds  
12 a violation of subsection (e), (f), or (g), the Sec-  
13 retary may impose administrative remedies and pen-  
14 alties, including—

15 “(A) back wages;

16 “(B) fringe benefits; and

17 “(C) civil monetary penalties.

18 “(2) CIVIL PENALTIES.—The Secretary of  
19 Labor may impose, as a civil penalty—

20 “(A) for a violation of subsection (e) or  
21 (f)—

22 “(i) a fine in an amount not to exceed  
23 \$2,000 per violation per affected worker;

1           “(ii) if the violation was willful viola-  
2           tion, a fine in an amount not to exceed  
3           \$5,000 per violation per affected worker;

4           “(iii) if the violation was willful and if  
5           in the course of such violation a United  
6           States worker was harmed, a fine in an  
7           amount not to exceed \$25,000 per viola-  
8           tion per affected worker; and

9           “(B) for a violation of subsection (g)—

10           “(i) a fine in an amount not less than  
11           \$500 and not more than \$4,000 per viola-  
12           tion per affected worker;

13           “(ii) if the violation was willful, a fine  
14           in an amount not less than \$2,000 and not  
15           more than \$5,000 per violation per af-  
16           fected worker; and

17           “(iii) if the violation was willful and if  
18           in the course of such violation a United  
19           States worker was harmed, a fine in an  
20           amount not less than \$6,000 and not more  
21           than \$35,000 per violation per affected  
22           worker.

23           “(3) USE OF CIVIL PENALTIES.—All penalties  
24           collected under this subsection shall be deposited in  
25           the Treasury in accordance with section 286(w).



1           “(4) CRIMINAL PENALTIES.—If a willful and  
2           knowing violation of subsection (g) causes extreme  
3           physical or financial harm to an individual, the per-  
4           son in violation of such subsection may be impris-  
5           oned for not more than 6 months, fined in an  
6           amount not more than \$35,000, or both.”.

7           (b) CLERICAL AMENDMENT.—The table of contents  
8           is amended by inserting after the item relating to section  
9           218A, as added by section 402, the following:

          “Sec. 218B. Employer obligations.”.

10   **SEC. 404. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

11           (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)  
12           is amended by inserting after section 218B, as added by  
13           section 403, the following:

14   **“SEC. 218C. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

15           “(a) ESTABLISHMENT.—The Secretary of Homeland  
16           Security shall establish a program (referred to in this sec-  
17           tion as the ‘alien employment management system’) to  
18           manage and track the employment of H–2C non-  
19           immigrants.

20           “(b) REQUIREMENTS.—The alien employment man-  
21           agement system shall—

22                   “(1) provide employers who seek employees with  
23                   an opportunity to recruit and advertise employment  
24                   opportunities available to United States workers be-  
25                   fore hiring an H–2C nonimmigrant;

1           “(2) collect sufficient information from employ-  
2           ers to enable the Secretary of Homeland Security to  
3           determine—

4                   “(A) if the nonimmigrant is employed;

5                   “(B) which employers have hired an H-2C  
6           nonimmigrant;

7                   “(C) the number of H-2C nonimmigrants  
8           that an employer is authorized to hire and is  
9           currently employing;

10                   “(D) the occupation, industry, and length  
11           of time that an H-2C nonimmigrant has been  
12           employed in the United States;

13           “(3) allow employers to request approval of  
14           multiple H-2C nonimmigrant workers; and

15           “(4) permit employers to submit applications  
16           under this section in an electronic form.”.

17           (b) CLERICAL AMENDMENT.—The table of contents  
18           for the Immigration and Nationality Act (8 U.S.C. 1101  
19           et seq.) is amended by inserting after the item relating  
20           to section 218B, as added by section 403, the following:

          “Sec. 218C. Alien employment management system.”.

21           **SEC. 405. RULEMAKING; EFFECTIVE DATE.**

22           (a) RULEMAKING.—Not later than 6 months after  
23           the date of enactment of this Act, the Secretary of Labor  
24           shall promulgate regulations, in accordance with the notice  
25           and comment provisions of section 553 of title 5, United

1 States Code, to carry out the provisions of sections 218A,  
2 218B, and 218C, as added by this Act.

3 (b) EFFECTIVE DATE.—The amendments made by  
4 sections 402, 403, and 404 shall take effect on the date  
5 that is 1 year after the date of the enactment of this Act  
6 with regard to aliens, who, on such effective date, are in  
7 the foreign country where they maintain residence.

8 **SEC. 406. RECRUITMENT OF UNITED STATES WORKERS.**

9 (a) ELECTRONIC JOB REGISTRY.—

10 (1) IN GENERAL.—The Secretary of Labor shall  
11 direct the coordination, implementation, and modi-  
12 fication of an electronic job registry and a nation-  
13 wide system of public labor exchange services to pro-  
14 vide information on employment opportunities avail-  
15 able to United States workers.

16 (2) CONSULTATION.—The Secretary of Labor—

17 (A) shall consult with state workforce  
18 agencies to coordinate employment opportuni-  
19 ties nationwide; and

20 (B) may work with private companies and  
21 nonprofit organizations in the development of  
22 the registry and system under paragraph (1).

23 (b) RECRUITMENT OF UNITED STATES WORKERS.—

24 (1) POSTING.—An employer shall attest that  
25 the employer has posted an employment opportunity

1 for not less than 30 days in order to recruit United  
2 States workers before the employer may attest that  
3 a nonimmigrant worker has been offered such em-  
4 ployment opportunity, in accordance with section  
5 218B(b)(9) of the Immigration and Nationality Act,  
6 as added by this Act.

7 (2) RECORDS.—An employer shall maintain  
8 records for not less than 1 year after the date on  
9 which an H-2C nonimmigrant is hired that describe  
10 the reasons for not hiring any of the United States  
11 workers who may have applied for such position.

12 (c) OVERSIGHT AND MAINTENANCE OF RECORDS.—  
13 The Secretary of Labor shall promulgate regulations re-  
14 garding the maintenance of electronic job registry records  
15 for the purpose of audit or investigation.

16 (d) ACCESS TO JOB REGISTRY.—The Secretary of  
17 Labor shall ensure that job opportunities advertised on an  
18 electronic job registry established under this section are  
19 accessible—

20 (1) by the State workforce agencies, which may  
21 further disseminate job opportunity information to  
22 other interested parties; and

23 (2) through the Internet, for access by workers,  
24 employers, labor organizations, and other interested  
25 parties.

1 **SEC. 407. TEMPORARY GUEST WORKER VISA PROGRAM**

2 **TASK FORCE.**

3 (a) **ESTABLISHMENT.**—There is established a task  
4 force to be known as the “Temporary Worker Task  
5 Force” (referred to in this section as the “Task Force”).

6 (b) **PURPOSES.**—The purposes of the Task Force  
7 are—

8 (1) to study the impact of the admission of  
9 aliens under section 101(a)(15)(ii)(c) on the wages,  
10 working conditions, and employment of United  
11 States workers; and

12 (2) to make recommendations to the Secretary  
13 of Labor regarding the need for an annual numerical  
14 limitation on the number of aliens that may be ad-  
15 mitted in any fiscal year under section  
16 101(a)(15)(ii)(c).

17 (c) **MEMBERSHIP.**—

18 (1) **IN GENERAL.**—The Task Force shall be  
19 composed of 10 members, of whom—

20 (A) 1 shall be appointed by the President  
21 and shall serve as chairman of the Task Force;

22 (B) 1 shall be appointed by the leader of  
23 the minority party in the Senate, in consulta-  
24 tion with the leader of the minority party in the  
25 House of Representatives, and shall serve as  
26 vice chairman of the Task Force;

1 (C) 2 shall be appointed by the majority  
2 leader of the Senate;

3 (D) 2 shall be appointed by the minority  
4 leader of the Senate;

5 (E) 2 shall be appointed by the Speaker of  
6 the House of Representatives; and

7 (F) 2 shall be appointed by the minority  
8 leader of the House of Representatives.

9 (2) DEADLINE FOR APPOINTMENT.—All mem-  
10 bers of the Task Force shall be appointed not later  
11 than 6 months after the date of the enactment of  
12 this Act.

13 (3) VACANCIES.—Any vacancy in the Task  
14 Force shall not affect its powers, but shall be filled  
15 in the same manner in which the original appoint-  
16 ment was made.

17 (4) QUORUM.—Six members of the Task Force  
18 shall constitute a quorum.

19 (d) QUALIFICATIONS.—

20 (1) IN GENERAL.—Members of the Task Force  
21 shall be—

22 (A) individuals with expertise in economics,  
23 demography, labor, business, or immigration or  
24 other pertinent qualifications or experience; and

1           (B) representative of a broad cross-section  
2           of perspectives within the United States, includ-  
3           ing the public and private sectors and aca-  
4           demia.

5           (2) POLITICAL AFFILIATION.—Not more than 5  
6           members of the Task Force may be members of the  
7           same political party.

8           (3) NONGOVERNMENTAL APPOINTEES.—An in-  
9           dividual appointed to the Task Force may not be an  
10          officer or employee of the Federal Government or of  
11          any State or local government.

12          (e) MEETINGS.—

13           (1) INITIAL MEETING.—The Task Force shall  
14           meet and begin the operations of the Task Force as  
15           soon as practicable.

16           (2) SUBSEQUENT MEETINGS.—After its initial  
17           meeting, the Task Force shall meet upon the call of  
18           the chairman or a majority of its members.

19          (f) REPORT.—Not later than 18 months after the  
20          date of the enactment of this Act, the Task Force shall  
21          submit, to Congress, the Secretary of Labor, and the Sec-  
22          retary, a report that contains—

23           (1) findings with respect to the duties of the  
24          Task Force;

1           (2) recommendations for imposing a numerical  
2           limit.

3           (g) NUMERICAL LIMITATIONS.—

4           (1) IN GENERAL.—Not later than 6 months  
5           after the submission of the report under subsection  
6           (f), the Secretary of Labor may impose a numerical  
7           limitation on the number of aliens that may be ad-  
8           mitted under section 101(a)(15)(ii)(c).

9           (2) EFFECTIVE DATE.—Any numerical limit  
10          imposed pursuant to paragraph (1) shall not become  
11          effective until 6 months after the Secretary of Labor  
12          submits a report to Congress regarding the imposi-  
13          tion of a numerical limit.

14   **SEC. 408. STUDENT VISAS.**

15          (a) IN GENERAL.—Section 101(a)(15)(F) (8 U.S.C.  
16   1101(a)(15)(F)) is amended—

17           (1) in clause (i)—

18           (A) by striking “he has no intention of  
19           abandoning, who is” and inserting the fol-  
20           lowing: “the alien has no intention of aban-  
21           doning, who is—

22           “(I”;

23           (B) by striking “consistent with section  
24           214(l)” and inserting “(except for a graduate



1 program described in clause (iv)) consistent  
2 with section 214(m)”;

3 (C) by striking the comma at the end and  
4 inserting the following: “; or

5 “(II) engaged in temporary employment  
6 for optional practical training related to the  
7 alien’s area of study, which practical training  
8 shall be authorized for a period or periods of up  
9 to 24 months;”;

10 (2) in clause (ii)—

11 (A) by inserting “or (iv)” after “clause  
12 (i)”; and

13 (B) by striking “, and” and inserting a  
14 semicolon;

15 (3) in clause (iii), by adding “and” at the end;

16 and

17 (4) by adding at the end the following:

18 “(iv) an alien described in clause (i)  
19 who has been accepted and plans to attend  
20 an accredited graduate program in mathe-  
21 matics, engineering, technology, or the  
22 physical sciences in the United States for  
23 the purpose of obtaining an advanced de-  
24 gree.”.

1 (b) REQUIREMENTS FOR OBTAINING AN F-4 VISA.—

2 Section 214(m) (8 U.S.C. 1184(m)) is amended—

3 (1) by inserting before paragraph (1) the fol-  
4 lowing:

5 “(m) NONIMMIGRANT ELEMENTARY, SECONDARY,  
6 AND POST-SECONDARY SCHOOL STUDENTS.—”; and

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

8 “(3)(A) An alien who obtains the status of a non-  
9 immigrant under section 101(a)(15)(F)(iv) shall dem-  
10 onstrate an intent to—

11 “(i) return to the country of residence of such  
12 alien immediately after the completion or termi-  
13 nation of the graduate program qualifying such alien  
14 for such status; or

15 “(ii)(I) find employment in the United States  
16 related to the field of study of such alien; and

17 “(II) become a permanent resident of the  
18 United States upon the completion of the graduate  
19 program, which was the basis for such non-  
20 immigrant status.

21 “(B) A visa issued to an alien under section  
22 101(a)(15)(F)(iv) shall be valid—

23 “(i) during the intended period of study in a  
24 graduate program described in such section;

1           “(ii) for an additional period, not to exceed 1  
2           year after the completion of the graduate program,  
3           if the alien is actively pursuing an offer of employ-  
4           ment related to the knowledge and skills obtained  
5           through the graduate program; and

6           “(iii) for an additional period, not to exceed 6  
7           months, while the alien’s application for adjustment  
8           of status under section 245(a)(2) is pending.

9           “(C) An alien shall qualify for adjustment of status  
10          to that of a person admitted for permanent residence if  
11          the alien—

12           “(i) has the status of a nonimmigrant under  
13          section 101(a)(15)(F)(iv);

14           “(ii) has successfully earned a doctorate degree  
15          in mathematics, engineering, technology or the phys-  
16          ical sciences at an accredited college or university in  
17          the United States; and

18           “(iii) is employed full time in the United States  
19          in a position related to the knowledge and skills  
20          gained while pursuing such degree.”.

21          (c) OFF CAMPUS WORK AUTHORIZATION FOR FOR-  
22          EIGN STUDENTS.—Aliens admitted as nonimmigrant stu-  
23          dents described in section 101(a)(15)(F) of the Immigra-  
24          tion and Nationality Act (8 U.S.C. 1101(a)(15)(F)) may

1 be employed in an off-campus position unrelated to the  
2 alien's field of study if—

3 (1) the alien has enrolled full time at the edu-  
4 cational institution and is maintaining good aca-  
5 demic standing;

6 (2) the employer provides the educational insti-  
7 tution and the Secretary of Labor with an attesta-  
8 tion that the employer—

9 (A) has spent at least 21 days recruiting  
10 United States citizens to fill the position; and

11 (B) will pay the alien and other similarly  
12 situated workers at a rate equal to not less  
13 than the greater of—

14 (i) the actual wage level for the occu-  
15 pation at the place of employment; or

16 (ii) the prevailing wage level for the  
17 occupation in the area of employment; and

18 (3) the alien will not be employed more than—

19 (A) 20 hours per week during the aca-  
20 demic term; or

21 (B) 40 hours per week during vacation pe-  
22 riods and between academic terms.

23 (d) DISQUALIFICATION.—If the Secretary of Labor  
24 determines that an employer has provided an attestation  
25 under subsection (c)(2) that is materially false or has

1 failed to pay wages in accordance with the attestation, the  
2 employer, after notice and opportunity for a hearing, shall  
3 be disqualified from employing an alien student under sub-  
4 section (c).

5 (e) ADJUSTMENT OF STATUS.—Section 245(a) (8  
6 U.S.C. 1255(a)) is amended to read as follows:

7 “(a) AUTHORIZATION.—

8 “(1) IN GENERAL.—The Secretary of Homeland  
9 Security may adjust the status of an alien to that  
10 of an alien lawfully admitted for permanent resi-  
11 dence if—

12 “(A) the alien—

13 “(i) was inspected and admitted or  
14 paroled into the United States; or

15 “(ii) has an approved petition for clas-  
16 sification under section 105(a)(15)(F) or  
17 subparagraph (A)(iii), A(iv), B(ii), or  
18 B(iii) of section 204(a)(1);

19 “(B) the alien submits an application for  
20 such adjustment;

21 “(C) the alien is eligible to receive an im-  
22 migrant visa and is admissible to the United  
23 States for permanent residence; and

1           “(D) an immigrant visa is immediately  
2           available to the alien at the time the application  
3           is filed.

4           “(2) MATHEMATICIANS, ENGINEERS, AND SCI-  
5           ENTISTS.—The Secretary of Homeland Security may  
6           adjust the status of an alien who meets the require-  
7           ments under section 214(m)(3) to that of an alien  
8           lawfully admitted for permanent residence if the  
9           alien—

10           “(A) makes an application for such adjust-  
11           ment;

12           “(B) is eligible to receive an immigrant  
13           visa;

14           “(C) is admissible to the United States for  
15           permanent residence; and

16           “(D) remits a fee of \$1,000 to the Sec-  
17           retary.”.

18           (f) USE OF FEES.—

19           (1) JOB TRAINING; SCHOLARSHIPS.—Section  
20           286(s)(1) (8 U.S.C. 1356(s)(1)) is amended by in-  
21           serting “and 80 percent of the fees collected under  
22           section 245(a)(2)(D)” before the period at the end.

23           (2) FRAUD PREVENTION AND DETECTION.—  
24           Section 286(v)(1) (8 U.S.C. 1356(v)(1)) is amended  
25           by inserting “and 20 percent of the fees collected

1 under section 245(a)(2)(D)” before the period at the  
2 end.

3 **SEC. 409. VISAS FOR INDIVIDUALS WITH ADVANCED DE-**  
4 **GREES.**

5 (a) ALIENS WITH CERTAIN ADVANCED DEGREES  
6 NOT SUBJECT TO NUMERICAL LIMITATIONS ON EMPLOY-  
7 MENT BASED IMMIGRANTS.—

8 (1) IN GENERAL.—Section 201(b)(1) (8 U.S.C.  
9 1151(b)(1)) is amended by adding at the end the  
10 following:

11 “(F) Aliens who have earned an advanced  
12 degree in science, technology, engineering, or  
13 math and have been working in a related field  
14 in the United States under a nonimmigrant visa  
15 during the 3-year period preceding their appli-  
16 cation for an immigrant visa under section  
17 203(b).

18 “(G) Aliens described in subparagraph (A)  
19 or (B) of section 203(b)(1)(A) or who have re-  
20 ceived a national interest waiver under section  
21 203(b)(2)(B).

22 “(H) The immediate relatives of an alien  
23 who is admitted as an employment-based immi-  
24 grant under section 203(b).”.

1           (2) APPLICABILITY.—The amendment made by  
2 paragraph (1) shall apply to any visa application—

3           (A) pending on the date of the enactment  
4 of this Act; or

5           (B) filed on or after such date of enact-  
6 ment.

7           (b)           LABOR           CERTIFICATION.—Section  
8 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amend-  
9 ed—

10           (1) in subclause (I), by striking “or” at the  
11 end;

12           (2) in subclause (II), by striking the period at  
13 the end and inserting “; or”; and

14           (3) by adding at the end the following:

15                           “(III) has an advanced degree in  
16 the sciences, technology, engineering,  
17 or mathematics from an accredited  
18 university in the United States and is  
19 a member of a profession requiring  
20 such a degree.”.

21           (c) TEMPORARY WORKERS.—Section 214(g) (8  
22 U.S.C. 1184(g)) is amended—

23           (1) in paragraph (1)—

24                           (A) by striking “(beginning with fiscal year  
25 1992)”; and



1 (B) in subparagraph (A)—

2 (i) in clause (vii), by striking “each  
3 succeeding fiscal year; or” and inserting  
4 “each of fiscal years 2004, 2005, and  
5 2006;”; and

6 (ii) by adding after clause (vii) the  
7 following:

8 “(viii) 115,000 in the first fiscal year  
9 beginning after the date of the enactment  
10 of this clause; and

11 “(ix) the number calculated under  
12 paragraph (9) in each fiscal year after the  
13 year described in clause (viii); or”;

14 (2) in paragraph (5)—

15 (A) in subparagraph (B), by striking “or”  
16 at the end;

17 (B) in subparagraph (C), by striking the  
18 period at the end and inserting “; or”; and

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

20 “(D) has earned an advanced degree in  
21 science, technology, engineering, or math.”;

22 (3) by redesignating paragraphs (9), (10), and  
23 (11) as paragraphs (10), (11), and (12), respec-  
24 tively; and

1 (4) by inserting after paragraph (8) the fol-  
2 lowing:

3 “(9) If the numerical limitation in paragraph  
4 (1)(A)—

5 “(A) is reached during a given fiscal year,  
6 the numerical limitation under paragraph  
7 (1)(A)(ix) for the subsequent fiscal year shall  
8 be equal to 120 percent of the numerical limita-  
9 tion of the given fiscal year; or

10 “(B) is not reached during a given fiscal  
11 year, the numerical limitation under paragraph  
12 (1)(A)(ix) for the subsequent fiscal year shall  
13 be equal to the numerical limitation of the given  
14 fiscal year.”.

15 (d) **APPLICABILITY.**—The amendment made by sub-  
16 section (c)(2) shall apply to any visa application—

17 (1) pending on the date of the enactment of  
18 this Act; or

19 (2) filed on or after such date of enactment.

20 **SEC. 410. REQUIREMENTS FOR PARTICIPATING COUN-**  
21 **TRIES.**

22 (a) **IN GENERAL.**—The Secretary of State, in co-  
23 operation with the Secretary and the Attorney General,  
24 shall negotiate with each of the home countries of aliens  
25 described in 101(a)(15)(H)(ii)(c) to enter into a bilateral

1 agreement with the United States in which such countries  
2 agree to the requirements under subsection (b).

3 (b) REQUIREMENTS OF BILATERAL AGREEMENTS.—

4 Each agreement negotiated under subsection (a) shall re-  
5 quire the participating country to—

6 (1) accept the return of nationals who are or-  
7 dered removed from the United States within 3 days  
8 of such removal;

9 (2) cooperate with the United States Govern-  
10 ment to—

11 (A) identify, track, and reduce gang mem-  
12 bership, violence, and human trafficking and  
13 smuggling; and

14 (B) control illegal immigration;

15 (3) provide the United States Government  
16 with—

17 (A) passport information and criminal  
18 records of aliens who are seeking admission to,  
19 or are present in, the United States; and

20 (B) admission and entry data to facilitate  
21 United States entry-exit data systems; and

22 (4) educate nationals of the home country re-  
23 garding United States temporary worker programs  
24 to ensure that such nationals are not exploited; and

1           (5) evaluate means to provide housing incen-  
2           tives in the alien's home country for returning work-  
3           ers.

4 **SEC. 411. AUTHORIZATION OF APPROPRIATIONS.**

5           There are authorized to be appropriated to the Sec-  
6           retary such sums as may be necessary to carry out this  
7           title and the amendments made by this title for the first  
8           fiscal year beginning before the date of enactment of this  
9           Act and each of the subsequent fiscal years beginning not  
10          more than 7 years after the effective date of the regula-  
11          tions promulgated by the Secretary to implement this title.

12 **TITLE V—BACKLOG REDUCTION**

13 **SEC. 501. ELIMINATION OF EXISTING BACKLOGS.**

14          (a) **FAMILY-SPONSORED IMMIGRANTS.**—Section  
15 201(c) (8 U.S.C. 1151(c)) is amended to read as follows:

16          “(c) **WORLDWIDE LEVEL OF FAMILY-SPONSORED**  
17 **IMMIGRANTS.**—The worldwide level of family-sponsored  
18 immigrants under this subsection for a fiscal year is equal  
19 to the sum of—

20                 “(1) 480,000;

21                 “(2) the difference between the maximum num-  
22                 ber of visas authorized to be issued under this sub-  
23                 section during the previous fiscal year and the num-  
24                 ber of visas issued during the previous fiscal year;

25                 “(3) the difference between—

1           “(A) the maximum number of visas au-  
2           thorized to be issued under this subsection dur-  
3           ing fiscal years 2001 through 2005 minus the  
4           number of visas issued under this subsection  
5           during those fiscal years; and

6           “(B) the number of visas calculated under  
7           subparagraph (A) that were issued after fiscal  
8           year 2005.”.

9           (b) EMPLOYMENT-BASED IMMIGRANTS.—Section  
10          201(d) (8 U.S.C. 1151(d)) is amended to read as follows:

11          “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED  
12          IMMIGRANTS.—

13                 “(1) IN GENERAL.—Subject to paragraph (2),  
14                 the worldwide level of employment-based immigrants  
15                 under this subsection for a fiscal year is equal to the  
16                 sum of—

17                         “(A) 290,000;

18                         “(B) the difference between the maximum  
19                         number of visas authorized to be issued under  
20                         this subsection during the previous fiscal year  
21                         and the number of visas issued during the pre-  
22                         vious fiscal year; and

23                         “(C) the difference between—

24                                 “(i) the maximum number of visas au-  
25                                 thorized to be issued under this subsection

1                   during fiscal years 2001 through 2005 and  
2                   the number of visa numbers issued under  
3                   this subsection during those fiscal years;  
4                   and

5                   “(ii) the number of visas calculated  
6                   under clause (i) that were issued after fis-  
7                   cal year 2005.

8                   “(2) VISAS FOR SPOUSES AND CHILDREN.—Im-  
9                   migrant visas issued on or after October 1, 2004, to  
10                  spouses and children of employment-based immi-  
11                  grants shall not be counted against the numerical  
12                  limitation set forth in paragraph (1).”.

13 **SEC. 502. COUNTRY LIMITS.**

14                  Section 202(a) (8 U.S.C. 1152(a)) is amended—

15                   (1) in paragraph (2)—

16                   (A) by striking “, (4), and (5)” and insert-  
17                   ing “and (4)”; and

18                   (B) by striking “7 percent (in the case of  
19                   a single foreign state) or 2 percent” and insert-  
20                   ing “10 percent (in the case of a single foreign  
21                   state) or 5 percent”; and

22                   (2) by striking paragraph (5).

1 **SEC. 503. ALLOCATION OF IMMIGRANT VISAS.**

2 (a) PREFERENCE ALLOCATION FOR FAMILY-SPON-  
3 SORED IMMIGRANTS.—Section 203(a) (8 U.S.C. 1153(a))  
4 is amended to read as follows:

5 “(a) PREFERENCE ALLOCATIONS FOR FAMILY-SPON-  
6 SORED IMMIGRANTS.—Aliens subject to the worldwide  
7 level specified in section 201(c) for family-sponsored immi-  
8 grants shall be allocated visas as follows:

9 “(1) UNMARRIED SONS AND DAUGHTERS OF  
10 CITIZENS.—Qualified immigrants who are the un-  
11 married sons or daughters of citizens of the United  
12 States shall be allocated visas in a quantity not to  
13 exceed the sum of—

14 “(A) 10 percent of such worldwide level;  
15 and

16 “(B) any visas not required for the class  
17 specified in paragraph (4).

18 “(2) SPOUSES AND UNMARRIED SONS AND  
19 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—

20 “(A) IN GENERAL.—Visas in a quantity  
21 not to exceed 50 percent of such worldwide level  
22 plus any visas not required for the class speci-  
23 fied in paragraph (1) shall be allocated to quali-  
24 fied immigrants who are—

1                   “(i) the spouses or children of an  
2                   alien lawfully admitted for permanent resi-  
3                   dence; or

4                   “(ii) the unmarried sons or daughters  
5                   of an alien lawfully admitted for perma-  
6                   nent residence.

7                   “(B) MINIMUM PERCENTAGE.—Visas allo-  
8                   cated to individuals described in subparagraph  
9                   (A)(i) shall constitute not less than 77 percent  
10                  of the visas allocated under this paragraph.

11                  “(3) MARRIED SONS AND DAUGHTERS OF CITI-  
12                  ZENS.—Qualified immigrants who are the married  
13                  sons and daughters of citizens of the United States  
14                  shall be allocated visas in a quantity not to exceed  
15                  the sum of—

16                         “(A) 10 percent of such worldwide level;  
17                         and

18                         “(B) any visas not required for the classes  
19                         specified in paragraphs (1) and (2).

20                  “(4) BROTHERS AND SISTERS OF CITIZENS.—  
21                  Qualified immigrants who are the brothers or sisters  
22                  of a citizen of the United States who is at least 21  
23                  years of age shall be allocated visas in a quantity  
24                  not to exceed 30 percent of the worldwide level.”.



1           (b) PREFERENCE ALLOCATION FOR EMPLOYMENT-  
2 BASED IMMIGRANTS.—Section 203(b) (8 U.S.C. 1153(b))  
3 is amended—

4           (1) in paragraph (1), by striking “28.6 per-  
5 cent” and inserting “15 percent”;

6           (2) in paragraph (2)(A), by striking “28.6 per-  
7 cent” and inserting “15 percent”;

8           (3) in paragraph (3)(A)—

9                 (A) by striking “28.6 percent” and insert-  
10 ing “35 percent”; and

11                 (B) by striking clause (iii);

12           (4) by striking paragraph (4);

13           (5) by redesignating paragraph (5) as para-  
14 graph (4);

15           (6) in paragraph (4)(A), as redesignated, by  
16 striking “7.1 percent” and inserting “5 percent”;

17           (7) by inserting after paragraph (4), as redesign-  
18 dated, the following:

19                 “(5) OTHER WORKERS.—Visas shall be made  
20 available, in a number not to exceed 30 percent of  
21 such worldwide level, plus any visa numbers not re-  
22 quired for the classes specified in paragraphs (1)  
23 through (4), to qualified immigrants who are capa-  
24 ble, at the time of petitioning for classification under  
25 this paragraph, of performing unskilled labor that is

1 not of a temporary or seasonal nature, for which  
2 qualified workers are determined to be unavailable in  
3 the United States.”; and

4 (8) by striking paragraph (6).

5 (c) CONFORMING AMENDMENTS.—

6 (1) DEFINITION OF SPECIAL IMMIGRANT.—Sec-  
7 tion 101(a)(27)(M) (8 U.S.C. 1101(a)(27)(M)) is  
8 amended by striking “subject to the numerical limi-  
9 tations of section 203(b)(4),”.

10 (2) REPEAL OF TEMPORARY REDUCTION IN  
11 WORKERS’ VISAS.—Section 203(e) of the Nicaraguan  
12 Adjustment and Central American Relief Act (Public  
13 Law 105–100; 8 U.S.C. 1153 note) is repealed.

14 **SEC. 504. RELIEF FOR MINOR CHILDREN.**

15 (a) IN GENERAL.—Section 201(b)(2) (8 U.S.C.  
16 1151(b)(2)) is amended to read as follows:

17 “(2)(A)(i) Aliens admitted under section 211(a)  
18 on the basis of a prior issuance of a visa under sec-  
19 tion 203(a) to their accompanying parent who is an  
20 immediate relative.

21 “(ii) In this subparagraph, the term ‘immediate  
22 relative’ means a child, spouse, or parent of a citizen  
23 of the United States (and each child of such child,  
24 spouse, or parent who is accompanying or following  
25 to join the child, spouse, or parent), except that, in

1 the case of parents, such citizens shall be at least 21  
2 years of age.

3 “(iii) An alien who was the spouse of a citizen  
4 of the United States for not less than 2 years at the  
5 time of the citizen’s death and was not legally sepa-  
6 rated from the citizen at the time of the citizen’s  
7 death, and each child of such alien, shall be consid-  
8 ered, for purposes of this subsection, to remain an  
9 immediate relative after the date of the citizen’s  
10 death if the spouse files a petition under section  
11 204(a)(1)(A)(ii) before the earlier of—

12 “(I) 2 years after such date; or

13 “(II) the date on which the spouse remar-  
14 ries.

15 “(iv) In this clause, an alien who has filed a pe-  
16 tition under clause (iii) or (iv) of section  
17 204(a)(1)(A) remains an immediate relative if the  
18 United States citizen spouse or parent loses United  
19 States citizenship on account of the abuse.

20 “(B) Aliens born to an alien lawfully admitted  
21 for permanent residence during a temporary visit  
22 abroad.”.

23 (b) PETITION.—Section 204(a)(1)(A)(ii) (8 U.S.C.  
24 1154 (a)(1)(A)(ii)) is amended by striking “in the second  
25 sentence of section 201(b)(2)(A)(i) also” and inserting “in

1 section 201(b)(2)(A)(iii) or an alien child or alien parent  
2 described in the 201(b)(2)(A)(iv)”.

3 **TITLE VI—CONDITIONAL**  
4 **NONIMMIGRANT WORKERS**  
5 **Subtitle A—Conditional Non-**  
6 **immigrant Work Authorization**  
7 **and Status**

8 **SEC. 601. CONDITIONAL NONIMMIGRANT WORK AUTHOR-**  
9 **IZATION AND STATUS.**

10 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)  
11 is amended by inserting after section 218C, as added by  
12 section 404 of this Act, the following:

13 **“SEC. 218D. CONDITIONAL NONIMMIGRANT WORK AUTHOR-**  
14 **IZATION AND STATUS.**

15 “(a) IN GENERAL.—The Secretary of Homeland Se-  
16 curity may grant conditional nonimmigrant work author-  
17 ization and status to remain in the United States to aliens,  
18 who were employed in the United States on January 4,  
19 2004.

20 “(b) REQUIREMENTS.—

21 “(1) PRESENCE; EMPLOYMENT.—An alien may  
22 not be granted work authorization and status under  
23 subsection (a) unless the alien establishes that the  
24 alien was—

1           “(A) physically present in the United  
2 States before January 4, 2004; and

3           “(B) employed in the United States before  
4 January 4, 2004, and has been employed in the  
5 United States since that date.

6           “(2) EVIDENCE OF EMPLOYMENT.—

7           “(A) CONCLUSIVE DOCUMENTS.—An alien  
8 may conclusively establish employment status in  
9 compliance with paragraph (1)(B) by submit-  
10 ting to the Secretary of Homeland Security  
11 records demonstrating such employment main-  
12 tained by—

13           “(i) the Social Security Administra-  
14 tion, Internal Revenue Service, or by any  
15 other Federal, State, or local government  
16 agency;

17           “(ii) an employer; or

18           “(iii) a labor union, day labor center,  
19 or organization that assists workers in  
20 matters related to employment.

21           “(B) OTHER DOCUMENTS.—An alien who  
22 is unable to submit any of the documents de-  
23 scribed in subparagraph (A) may comply with  
24 paragraph (1)(B) by submitting to the Sec-

1           retary other types of reliable documents, as de-  
2           termined by the Secretary.

3           “(3) ADMISSIBILITY.—

4                 “(A) IN GENERAL.—Except as provided in  
5           subparagraph (B) and (C), an alien may not be  
6           granted work authorization and status under  
7           subsection (a) unless the alien establishes that  
8           the alien—

9                 “(i) is admissible to the United  
10           States; and

11                 “(ii) has not ordered, incited, assisted,  
12           or otherwise participated in the persecution  
13           of any person on account of race, religion,  
14           nationality, membership in a particular so-  
15           cial group, or political opinion.

16                 “(B) GROUNDS NOT APPLICABLE.—The  
17           provisions of paragraphs (5)(A), (6)(A), (7),  
18           and (9)(B) of section 212(a) and section  
19           212(d)(3) shall not apply in determining admis-  
20           sibility under this paragraph.

21                 “(C) WAIVER.—The Secretary of Home-  
22           land Security may waive any provision of sec-  
23           tion 212(a), except paragraphs (2), (3), (6)(B),  
24           (6)(E), (9)(A), (9)(C)(i)(II), (10)(A), (10)(C),  
25           and (10)(E).

1           “(4) INELIGIBLE.—An alien is ineligible for sta-  
2           tus under this section if—

3                   “(A) the alien is subject to a final order of  
4                   removal, deportation, or exclusion;

5                   “(B) the alien failed to depart the United  
6                   States during the period of a voluntary depar-  
7                   ture order under section 240B or a prior provi-  
8                   sion of law;

9                   “(C) the alien willfully fails to comply with  
10                  any request for information by the Secretary of  
11                  Homeland Security; or

12                  “(D) a notice to appear was served on the  
13                  alien or filed with the immigration court before  
14                  the alien filed an application under this title,  
15                  except that the Secretary of Homeland Security  
16                  may waive ineligibility that would otherwise re-  
17                  sult from the service or filing of a notice to ap-  
18                  pear under this subparagraph.

19           “(5) MEDICAL EXAMINATION.—The alien may  
20           be required, at the alien’s expense, to undergo such  
21           an appropriate medical examination (including a de-  
22           termination of immunization status) that conforms  
23           to generally accepted professional standards of med-  
24           ical practice.

25           “(6) PAYMENT OF INCOME TAXES.—

1           “(A) IN GENERAL.—Not later than the  
2           date on which conditional nonimmigrant work  
3           authorization and status is granted under this  
4           section, the alien shall establish the payment of  
5           all Federal income taxes owed for employment  
6           in the United States before January 4, 2004,  
7           by establishing that—

8                     “(i) no such tax liability exists;

9                     “(ii) all outstanding liabilities have  
10           been met; or

11                    “(iii) the alien has entered into an  
12           agreement with the Internal Revenue Serv-  
13           ice for payment of all outstanding liabil-  
14           ities.

15           “(B) INTERNAL REVENUE SERVICE CO-  
16           OPERATION.—The Commissioner of Internal  
17           Revenue shall provide documentation to an  
18           alien upon request to establish the payment of  
19           all income taxes required under this paragraph.

20           “(7) TERMINATION.—The Secretary of Home-  
21           land Security may terminate an alien’s status grant-  
22           ed under this section if—

23                    “(A) the Secretary of Homeland Security  
24           determines that the alien was not in fact eligi-  
25           ble for such status; or



1           “(B) the alien commits an act that makes  
2           the alien removable from the United States.

3           “(c) IMPLEMENTATION.—

4           “(1) APPLICATION.—

5           “(A) IN GENERAL.—An alien may not be  
6           granted conditional nonimmigrant work author-  
7           ization and status under this section unless the  
8           Secretary of Homeland Security approves an  
9           application that is submitted not later than 1  
10          year after the date of the enactment of the  
11          Comprehensive Immigration Reform Act of  
12          2006 on an application form designed by the  
13          Secretary that contains, in addition to any  
14          other information that the Secretary determines  
15          to be required to determine an alien’s eligibility  
16          under this section, information about the  
17          alien’s—

18                   “(i) physical and mental health;

19                   “(ii) criminal history and gang mem-  
20                   bership;

21                   “(iii) immigration history;

22                   “(iv) involvement with groups or indi-  
23                   viduals that have engaged in terrorism,  
24                   genocide, persecution, or who seek the

1                   overthrow of the United States Govern-  
2                   ment;

3                   “(v) claims to United States citizen-  
4                   ship; and

5                   “(vi) tax history.

6                   “(B) WAIVER.—The application submitted  
7                   under subparagraph (A) shall include an agree-  
8                   ment through which the alien, in exchange for  
9                   the discretionary benefit of obtaining condi-  
10                  tional nonimmigrant work authorization and  
11                  status, agrees to waive any right—

12                  “(i) to administrative or judicial re-  
13                  view or appeal of an immigration officer’s  
14                  determination as to the alien’s eligibility;  
15                  or

16                  “(ii) to contest any removal action,  
17                  other than on the basis of an application  
18                  for asylum under section 208 or 241(b)(3),  
19                  or under the Convention Against Torture  
20                  and Other Cruel, Inhuman or Degrading  
21                  Treatment or Punishment.

22                  “(C) KNOWLEDGE.—The application sub-  
23                  mitted under subparagraph (A) shall include a  
24                  signed statement by the alien certifying, under  
25                  penalty of perjury, that—

1                   “(i) the alien has read and understood  
2                   all of the questions and statements on the  
3                   application form;

4                   “(ii) the application, and any evidence  
5                   submitted with it, are all true and correct;  
6                   and

7                   “(iii) the applicant authorizes the re-  
8                   lease of any information contained in the  
9                   application and any attached evidence for  
10                  law enforcement purposes.

11                  “(D) EMPLOYER.—The application shall  
12                  include a signed affidavit from the alien’s em-  
13                  ployer attesting that the alien is a current em-  
14                  ployee of the employer.

15                  “(E) ACKNOWLEDGMENT.—An alien who  
16                  applies for conditional nonimmigrant work au-  
17                  thorization and status under this section shall  
18                  submit to the Secretary of Homeland Secu-  
19                  rity—

20                         “(i) an acknowledgment, made in  
21                         writing and under oath, that the alien—

22                                 “(I) is unlawfully present in the  
23                                 United States and subject to removal  
24                                 or deportation, as appropriate, under  
25                                 this Act; and

1                   “(II) understands the terms of  
2                   being granted conditional non-  
3                   immigrant work authorization and  
4                   status;

5                   “(ii) any Social Security account num-  
6                   ber or card in the possession of the alien  
7                   or relied upon by the alien; and

8                   “(iii) any false or fraudulent docu-  
9                   ments in the alien’s possession.

10                  “(F) APPLICATION FEE.—

11                   “(i) EMPLOYER.—An employer seek-  
12                   ing to continue to employ an alien that  
13                   meets the requirements of (b)(1)(B) shall  
14                   submit an application fee of \$500.

15                   “(ii) USE OF FEE.—The fees collected  
16                   under clause (i) shall be available for use  
17                   by the Secretary of Homeland Security for  
18                   activities to identify, locate, or remove ille-  
19                   gal aliens and for worksite enforcement.

20                  “(2) PROCESSING.—

21                   “(A) ACCEPTANCE OF APPLICATIONS.—

22                   The Secretary of Homeland Security shall begin  
23                   accepting applications for conditional non-  
24                   immigrant work authorization and status not  
25                   later than 3 months after the date of the enact-

1           ment of the Comprehensive Immigration Re-  
2           form Act of 2006.

3           “(B) INTERVIEW.—The Secretary of  
4           Homeland Security may interview an alien to  
5           determine eligibility for conditional non-  
6           immigrant work authorization and status.

7           “(C) COMPLETION OF PROCESSING.—The  
8           Secretary of Homeland Security shall ensure  
9           that all applications for conditional non-  
10          immigrant work authorization and status are  
11          processed not later than 18 months after the  
12          date of the enactment of the Comprehensive  
13          Immigration Reform Act of 2006.

14          “(3) SECURITY.—

15                 “(A) IN GENERAL.—The Secretary of  
16                 Homeland Security shall ensure that the appli-  
17                 cation process under this section—

18                         “(i) is secure;

19                         “(ii) incorporates antifraud protec-  
20                         tion; and

21                         “(iii) utilizes biometric authentication  
22                         at time of document issuance.

23           “(B) SECURITY AND LAW ENFORCEMENT  
24           BACKGROUND CHECKS.—An alien may not be

1 granted conditional nonimmigrant work author-  
2 ization and status unless—

3 “(i) the alien submits biometric data  
4 in accordance with procedures established  
5 by the Secretary of Homeland Security;  
6 and

7 “(ii) all appropriate background  
8 checks have been completed to the satisfac-  
9 tion of the Secretary.

10 “(d) FAILURE TO APPLY.—

11 “(1) IN GENERAL.—Except as provided under  
12 subparagraph (B), an alien shall be ineligible for any  
13 relief under sections 240A and 240B if the alien—

14 “(A) was physically present in the United  
15 States before January 4, 2004, and was not le-  
16 gally present in the United States under any  
17 classification described in section 101(a)(15) on  
18 that date; and

19 “(B) fails to timely apply for conditional  
20 nonimmigrant work authorization and status  
21 under this section.

22 “(2) WAIVER.—The Secretary of Homeland Se-  
23 curity may waive the application of paragraph (1) if  
24 the Secretary determines that the alien could not ob-

1       tain such status for reasons of age, mental impair-  
2       ment, or physical disability.

3       “(e) DOCUMENTARY EVIDENCE OF STATUS.—

4               “(1) DOCUMENT FEATURES.—In designing a  
5       document to provide evidence of conditional non-  
6       immigrant work authorization and status, the Sec-  
7       retary of Homeland Security—

8                       “(A) shall ensure that the document is ma-  
9       chine-readable, tamper-resistant, and allows for  
10       biometric authentication;

11                      “(B) shall consult with the Forensic Docu-  
12       ment Laboratory; and

13                      “(C) may incorporate integrated-circuit  
14       technology into the document.

15       “(2) DOCUMENT USE.—The document designed  
16       under paragraph (1)—

17                      “(A) may serve as a travel, entry, and  
18       work authorization document during the period  
19       of its validity; and

20                      “(B) may be accepted by an employer as  
21       evidence of employment authorization and iden-  
22       tity under section 274A(c)(1)(B).

23       “(f) TERMS OF STATUS.—

24               “(1) REPORTING.—An alien is not eligible to  
25       maintain conditional nonimmigrant work authoriza-

1           tion and status unless the alien complies with all of  
2           the registration requirements under section 264.

3           “(2) TRAVEL.—

4                   “(A) UNLAWFUL PRESENCE.—An alien  
5                   granted conditional nonimmigrant work author-  
6                   ization and status shall not be subject to sec-  
7                   tion 212(a)(9) for any unlawful presence that  
8                   occurred before the Secretary of Homeland Se-  
9                   curity granted the alien such authorization and  
10                  status.

11                  “(B) RULEMAKING.—The Secretary of  
12                  Homeland Security shall promulgate regulations  
13                  to—

14                          “(i) authorize aliens granted condi-  
15                          tional nonimmigrant work authorization  
16                          and status to—

17                                  “(I) travel outside of the United  
18                                  States; and

19                                  “(II) be readmitted if the period  
20                                  of conditional nonimmigrant work au-  
21                                  thorization and status has not ex-  
22                                  pired; and

23                                  “(ii) require each such alien to estab-  
24                                  lish, at the time of application for admis-



1                   sion, that the alien is admissible under sec-  
2                   tion 212(a).

3                   “(C) EFFECT ON PERIOD OF AUTHORIZED  
4                   ADMISSION.—Time spent outside the United  
5                   States under subparagraph (B)(i)(I) shall not  
6                   extend the period of conditional nonimmigrant  
7                   work authorization and status.

8                   “(3) STATUS; BENEFITS.—During the period in  
9                   which an alien is granted conditional nonimmigrant  
10                  work authorization and status under this section,  
11                  the alien—

12                  “(A) shall not be considered to be perma-  
13                  nently residing in the United States under the  
14                  color of law;

15                  “(B) shall be treated as a nonimmigrant  
16                  admitted under section 214;

17                  “(C) may be deemed ineligible for public  
18                  assistance by a State or any political subdivi-  
19                  sion of a State which furnishes such assistance;  
20                  and

21                  “(D) may not be detained, determined in-  
22                  admissible or deportable, or removed pending  
23                  adjudication of the alien’s application for condi-  
24                  tional nonimmigrant work authorization and  
25                  status, unless the alien, through conduct or

1 criminal conviction, becomes ineligible for such  
2 authorization or status.

3 “(g) FAMILY MEMBERS.—

4 “(1) IN GENERAL.—The spouse or child of an  
5 alien granted conditional nonimmigrant work au-  
6 thorization and status under this section is subject  
7 to the same terms and conditions as the principal  
8 alien, but is not authorized to work in the United  
9 States.

10 “(2) APPLICATION FEE.—

11 “(A) IN GENERAL.—The spouse or child of  
12 an alien seeking conditional nonimmigrant work  
13 authorization and status shall submit, in addi-  
14 tion to any other fee authorized by law, a fee  
15 of \$100 per family member.

16 “(B) USE OF FEE.—The fees collected  
17 under subparagraph (A) shall be available for  
18 use by the Secretary of Homeland Security for  
19 activities to identify, locate, or remove aliens  
20 who are deportable under section 237.

21 “(h) EMPLOYMENT.—

22 “(1) IN GENERAL.—An alien granted condi-  
23 tional nonimmigrant work authorization and sta-  
24 tus—

1           “(A) shall be continuously employed while  
2           in the United States; and

3           “(B) may be employed by any United  
4           States employer.

5           “(2) FAILURE TO MAINTAIN EMPLOYMENT.—

6           “(A) IN GENERAL.—Any alien who fails to  
7           be employed for 45 days while in the United  
8           States is ineligible to work in the United States  
9           until after the alien has departed the United  
10          States and reentered.

11          “(B) WAIVER.—The Secretary of Home-  
12          land Security may, in the Secretary’s sole and  
13          unreviewable discretion, reauthorize an alien for  
14          employment without requiring the alien to de-  
15          part from the United States.

16          “(3) PORTABILITY.—An alien granted condi-  
17          tional nonimmigrant work authorization and status  
18          under this section may accept a new offer of employ-  
19          ment with a subsequent employer, if—

20                 “(A) the employer complies with section  
21                 218B; and

22                 “(B) the alien did not work without au-  
23                 thorization.

24          “(i) PENALTIES FOR FALSE STATEMENTS IN APPLI-  
25          CATION FOR CONDITIONAL NONIMMIGRANT STATUS.—

1 “(1) CRIMINAL PENALTY.—

2 “(A) VIOLATION.—It shall be unlawful for  
3 any person, who files, or assists in filing, an ap-  
4 plication for adjustment of status under this  
5 section—

6 “(i) to knowingly and willfully—

7 “(I) falsify, misrepresent, con-  
8 ceal, or cover up a material fact;

9 “(II) make any false, fictitious,  
10 or fraudulent statement or representa-  
11 tion; or

12 “(III) make or use any false  
13 writing or document, knowing that  
14 such writing or document contains  
15 any false, fictitious, or fraudulent  
16 statement, or entry; or

17 “(ii) to create or supply a false writ-  
18 ing or document for use in making such an  
19 application.

20 “(B) PENALTY.—Any person who violates  
21 subparagraph (A) shall be fined in accordance  
22 with title 18, United States Code, imprisoned  
23 not more than 5 years, or both.

24 “(2) INADMISSIBILITY.—An alien who is con-  
25 victed of a crime under paragraph (1) is inadmis-

1           sible to the United States on the ground described  
2           in section 212(a)(6)(C)(i).

3           “(j) WAIVER OF RIGHTS.—An alien is not eligible for  
4 conditional nonimmigrant work authorization and status,  
5 unless the alien has waived any right to contest, other  
6 than on the basis of an application for asylum or protec-  
7 tion under the Convention Against Torture and Other  
8 Cruel, Inhuman or Degrading Treatment or Punishment,  
9 any action for deportation or removal of the alien that is  
10 instituted against the alien subsequent to a grant of condi-  
11 tional nonimmigrant work authorization and status.

12           “(k) DENIAL OF DISCRETIONARY RELIEF.—The de-  
13 termination of whether an alien is eligible for a grant of  
14 conditional nonimmigrant work authorization and status  
15 is solely within the discretion of the Secretary of Home-  
16 land Security. Notwithstanding any other provision of law,  
17 no court shall have jurisdiction to review—

18                   “(1) any judgment regarding the granting of  
19 relief under this section; or

20                   “(2) any other decision or action by the Sec-  
21 retary of Homeland Security for which the Secretary  
22 is given discretion under this section, other than the  
23 granting of relief under section 208(a).

24           “(l) JUDICIAL REVIEW.—

1           “(1) LIMITATIONS ON RELIEF.—Without regard  
2           to the nature of the action or claim and without re-  
3           gard to the identity of the party or parties bringing  
4           the action, no court may—

5                   “(A) enter declaratory, injunctive, or other  
6                   equitable relief in any action pertaining to—

7                           “(i) an order or notice denying an  
8                           alien a grant of conditional nonimmigrant  
9                           work authorization and status or any other  
10                          benefit arising from such status; or

11                          “(ii) an order of removal, exclusion, or  
12                          deportation entered against an alien after  
13                          a grant of conditional nonimmigrant sta-  
14                          tus; or

15                   “(B) certify a class under rule 23 of the  
16                   Federal Rules of Civil Procedure in any action  
17                   for which judicial review is authorized under a  
18                   subsequent paragraph of this subsection.

19           “(2) CHALLENGES TO VALIDITY.—

20                   “(A) IN GENERAL.—Subject to subpara-  
21                   graph (B), any right or benefit not otherwise  
22                   waived or limited under this section is available  
23                   in an action instituted in a United States Dis-  
24                   trict Court.

1           “(B) LIMITATION.—Judicial review under  
2           subparagraph (A) shall be limited to determina-  
3           tions of—

4                   “(i) whether such section, or any reg-  
5                   ulation issued to implement such section,  
6                   violates the Constitution of the United  
7                   States; and

8                   “(ii) whether such a regulation, or a  
9                   written policy directive, written policy  
10                  guideline, or written procedure issued  
11                  under the authority of the Secretary of  
12                  Homeland Security to implement such sec-  
13                  tion, is inconsistent with applicable provi-  
14                  sions of this section or otherwise violates  
15                  Federal law.”.

16           (b) CLERICAL AMENDMENT.—The table of contents  
17           is amended by inserting after the item relating to section  
18           218C, as added by this Act, the following:

          “Sec. 218D. Conditional nonimmigrant work authorization and status.”.

19           **Subtitle B—Grant Programs to**  
20           **Assist Nonimmigrant Workers**

21           **SEC. 611. GRANTS TO SUPPORT PUBLIC EDUCATION AND**  
22           **COMMUNITY TRAINING.**

23           (a) GRANTS AUTHORIZED.—The Assistant Attorney  
24           General, Office of Justice Programs, may award grants  
25           to qualified non-profit community organizations to edu-

1 cate, train, and support non-profit agencies, immigrant  
2 communities, and other interested entities regarding the  
3 provisions of this Act and the amendments made by this  
4 Act.

5 (b) USE OF FUNDS.—

6 (1) IN GENERAL.—Grants awarded under this  
7 section shall be used—

8 (A) for public education, training, technical  
9 assistance, government liaison, and all related  
10 costs (including personnel and equipment) in-  
11 curred by the grantee in providing services re-  
12 lated to this Act; and

13 (B) to educate, train, and support non-  
14 profit organizations, immigrant communities,  
15 and other interested parties regarding this Act  
16 and the amendments made by this Act and on  
17 matters related to its implementation.

18 (2) EDUCATION.—In addition to the purposes  
19 described in paragraph (1), grants awarded under  
20 this section shall be used to—

21 (A) educate immigrant communities and  
22 other interested entities regarding—

23 (i) the individuals and organizations  
24 that can provide authorized legal represen-



1                   tation in immigration matters under regu-  
2                   lations prescribed by the Secretary; and

3                   (ii) the dangers of securing legal ad-  
4                   vice and assistance from those who are not  
5                   authorized to provide legal representation  
6                   in immigration matters;

7                   (B) educate interested entities regarding  
8                   the requirements for obtaining nonprofit rec-  
9                   ognition and accreditation to represent immi-  
10                  grants under regulations prescribed by the Sec-  
11                  retary;

12                  (C) provide nonprofit agencies with train-  
13                  ing and technical assistance on the recognition  
14                  and accreditation process; and

15                  (D) educate nonprofit community organi-  
16                  zations, immigrant communities, and other in-  
17                  terested entities regarding—

18                   (i) the process for obtaining benefits  
19                   under this Act or under an amendment  
20                   made by this Act; and

21                   (ii) the availability of authorized legal  
22                   representation for low-income persons who  
23                   may qualify for benefits under this Act or  
24                   under an amendment made by this Act.

1           (c) DIVERSITY.—The Assistant Attorney General  
2 shall ensure, to the extent possible, that the nonprofit  
3 community organizations receiving grants under this sec-  
4 tion serve geographically diverse locations and ethnically  
5 diverse populations who may qualify for benefits under the  
6 Act.

7           (d) AUTHORIZATION OF APPROPRIATIONS.—There  
8 are authorized to be appropriated to the Office of Justice  
9 Programs of the Department of Justice such sums as may  
10 be necessary for each of the fiscal years 2007 through  
11 2009 to carry out this section.

12 **SEC. 612. FUNDING FOR THE OFFICE OF CITIZENSHIP.**

13           (a) AUTHORIZATION.—The Secretary, acting through  
14 the Director of the Bureau of Citizenship and Immigration  
15 Services, is authorized to establish the United States Citi-  
16 zenship and Immigration Foundation (referred to in this  
17 subtitle as the “Foundation”).

18           (b) PURPOSE.—The Foundation shall be incor-  
19 porated in the District of Columbia, exclusively for chari-  
20 table and educational purposes to support the functions  
21 of the Office of Citizenship of the Bureau of Citizenship  
22 and Immigration Services.

23           (c) GIFTS.—

24               (1) TO FOUNDATION.—The Foundation may so-  
25 licit, accept, and make gifts of money and other

1 property in accordance with section 501(c)(3) of the  
2 Internal Revenue Code of 1986.

3 (2) FROM FOUNDATION.—The Office of Citizen-  
4 ship may accept gifts from the Foundation to sup-  
5 port the functions of the Office.

6 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
7 are authorized to be appropriated such sums as may be  
8 necessary to carry out the mission of the Office of Citizen-  
9 ship.

10 **SEC. 613. CIVICS INTEGRATION GRANT PROGRAM.**

11 (a) IN GENERAL.—The Secretary shall establish a  
12 competitive grant program to provide financial assistance  
13 to nonprofit organizations, including faith-based organiza-  
14 tions, to support—

15 (1) efforts by entities certified by the Office of  
16 Citizenship to provide civics and English as a second  
17 language courses; and

18 (2) other activities approved by the Secretary to  
19 promote civics and English as a second language.

20 (b) ACCEPTANCE OF GIFTS.—The Secretary may ac-  
21 cept and use gifts from the Foundation for grants under  
22 this section.

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

1 **SEC. 614. TEMPORARY WORKER INVESTMENT ACCOUNT**  
2 **STUDY.**

3 (a) **STUDY.**—The Secretary, in consultation with the  
4 Commissioner of Social Security and the Secretary of the  
5 Treasury shall conduct a study of the feasibility of estab-  
6 lishing temporary worker investment accounts for aliens  
7 granted conditional nonimmigrant work authorization and  
8 status under section 218D of the Immigration and Na-  
9 tionality Act, as added by section 601.

10 (b) **REPORT.**—Not later than 1 year after the date  
11 of the enactment of this Act, the Secretary shall submit  
12 a report to Congress on the results of the study conducted  
13 under subsection (a).

14 **TITLE VII—IMMIGRATION**  
15 **LITIGATION REDUCTION**  
16 **Subtitle A—Appeals and Review**

17 **SEC. 701. CONSOLIDATION OF IMMIGRATION APPEALS.**

18 (a) **REAPPORTIONMENT OF CIRCUIT COURT**  
19 **JUDGES.**—The table in section 44(a) of title 28, United  
20 States Code, is amended in the item relating to the Fed-  
21 eral Circuit by striking “12” and inserting “15”.

22 (b) **REVIEW OF ORDERS OF REMOVAL.**—Section  
23 242(b) (8 U.S.C. 1252(b)) is amended—

24 (1) in paragraph (2), by striking the first sen-  
25 tence and inserting “The petition for review shall be

1 filed with the United States Court of Appeals for the  
2 Federal Circuit.”;

3 (2) in paragraph (5)(B), by adding at the end  
4 the following: “Any appeal of a decision by the dis-  
5 trict court under this paragraph shall be filed with  
6 the United States Court of Appeals for the Federal  
7 Circuit.”; and

8 (3) in paragraph (7), by amending subpara-  
9 graph (C) to read as follows:

10 “(C) CONSEQUENCE OF INVALIDATION  
11 AND VENUE OF APPEALS.—

12 “(i) INVALIDATION.—If the district  
13 court rules that the removal order is in-  
14 valid, the court shall dismiss the indict-  
15 ment for violation of section 243(a).

16 “(ii) APPEALS.—The United States  
17 Government may appeal a dismissal under  
18 clause (i) to the United States Court of  
19 Appeals for the Federal Circuit within 30  
20 days after the date of the dismissal. If the  
21 district court rules that the removal order  
22 is valid, the defendant may appeal the dis-  
23 trict court decision to the United States  
24 Court of Appeals for the Federal Circuit

1                   within 30 days after the date of completion  
2                   of the criminal proceeding.”.

3           (c) REVIEW OF ORDERS REGARDING INADMISSABLE  
4 ALIENS.—Section 242(e) (8 U.S.C. 1252(e)) is amended  
5 by adding at the end the following new paragraph:

6                   “(6) VENUE.—The petition to appeal any deci-  
7                   sion by the district court pursuant to this subsection  
8                   shall be filed with the United States Court of Ap-  
9                   peals for the Federal Circuit.”.

10          (d) EXCLUSIVE JURISDICTION.—Section 242(g) (8  
11 U.S.C. 1252(g)) is amended—

12                   (1) by striking “Except”; and inserting the fol-  
13                   lowing:

14                   “(1) IN GENERAL.—Except”; and

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

16                   “(2) APPEALS.—Notwithstanding any other  
17                   provision of law, the United States Court of Appeals  
18                   for the Federal Circuit shall have exclusive jurisdic-  
19                   tion to review a district court order arising from any  
20                   action taken, or proceeding brought, to remove or  
21                   exclude an alien from the United States, including  
22                   a district court order granting or denying a petition  
23                   for writ of habeas corpus.”.

24          (e) JURISDICTION OF THE UNITED STATES COURT  
25 OF APPEALS FOR THE FEDERAL CIRCUIT.—

1           (1) EXCLUSIVE JURISDICTION.—Section  
2           1295(a) of title 28, United States Code, is amended  
3           by adding at the end the following new paragraph:

4           “(15) of an appeal to review a final administra-  
5           tive order or a district court decision arising from  
6           any action taken, or proceeding brought, to remove  
7           or exclude an alien from the United States.”.

8           (2) CONFORMING AMENDMENTS.—Such section  
9           1295(a) is further amended—

10           (A) in paragraph (13), by striking “and”;  
11           and

12           (B) in paragraph (14), by striking the pe-  
13           riod at the end and inserting a semicolon and  
14           “and”.

15           (f) EFFECTIVE DATE.—The amendments made by  
16           this section shall take effect upon the date of enactment  
17           of this Act and shall apply to any final agency order or  
18           district court decision entered on or after the date of en-  
19           actment of this Act.

20   **SEC. 702. ADDITIONAL IMMIGRATION PERSONNEL.**

21           (a) DEPARTMENT OF HOMELAND SECURITY.—

22           (1) TRIAL ATTORNEYS.—In each of fiscal years  
23           2007 through 2011, the Secretary shall, subject to  
24           the availability of appropriations for such purpose,  
25           increase the number of positions for attorneys in the

1 Office of General Counsel of the Department who  
2 represent the Department in immigration matters by  
3 not less than 100 above the number of such posi-  
4 tions for which funds were made available during  
5 each preceding fiscal year.

6 (2) AUTHORIZATION OF APPROPRIATIONS.—  
7 There are authorized to be appropriated to the Sec-  
8 retary for each of fiscal years 2007 through 2011  
9 such sums as may be necessary to carry out this  
10 subsection.

11 (b) DEPARTMENT OF JUSTICE.—

12 (1) LITIGATION ATTORNEYS.—In each of fiscal  
13 years 2007 through 2011, the Attorney General  
14 shall, subject to the availability of appropriations for  
15 such purpose, increase by not less than 50 the num-  
16 ber of positions for attorneys in the Office of Immi-  
17 gration Litigation of the Department of Justice.

18 (2) UNITED STATES ATTORNEYS.—In each of  
19 fiscal years 2007 through 2011, the Attorney Gen-  
20 eral shall, subject to the availability of appropria-  
21 tions for such purpose, increase by not less than 50  
22 the number of attorneys in the United States Attor-  
23 neys' office to litigate immigration cases in the Fed-  
24 eral courts.



1           (3) IMMIGRATION JUDGES.—In each of fiscal  
2           years 2007 through 2011, the Attorney General  
3           shall, subject to the availability of appropriations for  
4           such purpose, increase by not less than 50 the num-  
5           ber of immigration judges.

6           (4) AUTHORIZATION OF APPROPRIATIONS.—

7           (A) IN GENERAL.—There are authorized to  
8           be appropriated to the Attorney General for  
9           each of the fiscal years 2007 through 2011  
10          such sums as may be necessary to carry out  
11          paragraphs (1), (2), and (3), including the hir-  
12          ing of necessary support staff.

13          (B) ASSISTANT FEDERAL PUBLIC DEFEND-  
14          ERS.—There are authorized to be appropriated  
15          such sums as necessary for each of the fiscal  
16          years 2007 through 2011 to increase the num-  
17          ber of Assistant Federal Public Defenders to  
18          litigate criminal immigration cases in the Fed-  
19          eral courts.

20 **SEC. 703. BOARD OF IMMIGRATION APPEALS REMOVAL**  
21 **ORDER AUTHORITY.**

22          (a) IN GENERAL.—Section 101(a)(47) (8 U.S.C.  
23 1101(a)(47)) is amended to read as follows:

24                 “(47)(A)(i) The term ‘order of removal’ means  
25                 the order of the immigration judge, the Board of

1 Immigration Appeals, or other administrative officer  
2 to whom the Attorney General or the Secretary of  
3 Homeland Security has delegated the responsibility  
4 for determining whether an alien is removable, con-  
5 cluding that the alien is removable, or ordering re-  
6 moval.

7 “(ii) The term ‘order of deportation’ means the  
8 order of the special inquiry officer, or other such ad-  
9 ministrative officer to whom the Attorney General  
10 has delegated the responsibility for determining  
11 whether an alien is deportable, concluding that the  
12 alien is deportable, or ordering deportation.

13 “(B) An order described under subparagraph  
14 (A) shall become final upon the earlier of—

15 “(i) a determination by the Board of Im-  
16 migration Appeals affirming such order;

17 “(ii) the entry by the Board of Immigra-  
18 tion Appeals of such order;

19 “(iii) the expiration of the period in which  
20 any party is permitted to seek review of such  
21 order by the Board of Immigration Appeals;

22 “(iv) the entry by an immigration judge of  
23 such order, if appeal is waived by all parties; or

24 “(v) the entry by another administrative  
25 officer of such order, at the conclusion of a

1 process authorized by law other than under sec-  
2 tion 240.”.

3 (b) CONFORMING AMENDMENTS.—The Immigration  
4 and Nationality Act is amended—

5 (1) in section 212(d)(12)(A) (8 U.S.C.  
6 1182(d)(12)(A)), by inserting “an order of” before  
7 “removal”; and

8 (2) in section 245A(g)(2)(B) (8 U.S.C.  
9 1255a(g)(2)(B))—

10 (A) in the heading, by inserting “, RE-  
11 MOVAL,” after “DEPORTATION”; and

12 (B) in clause (i), by striking “deporta-  
13 tion,” and inserting “deportation or an order of  
14 removal,”.

15 **SEC. 704. JUDICIAL REVIEW OF VISA REVOCATION.**

16 Section 221(i) (8 U.S.C. 1201(i)) is amended by  
17 striking the last sentence and inserting “Notwithstanding  
18 any other provision of law, including section 2241 of title  
19 28, United States Code, any other habeas corpus provi-  
20 sion, and sections 1361 and 1651 of such title, a revoca-  
21 tion under this subsection may not be reviewed by any  
22 court, and no court shall have jurisdiction to hear any  
23 claim arising from, or any challenge to, such a revoca-  
24 tion.”.

1 **SEC. 705. REINSTATEMENT OF REMOVAL ORDERS.**

2 (a) REINSTATEMENT.—

3 (1) IN GENERAL.—Section 241(a)(5) (8 U.S.C.  
4 1231(a)(5)) is amended to read as follows:

5 “(5) REINSTATEMENT OF REMOVAL ORDERS  
6 AGAINST ALIENS ILLEGALLY REENTERING.—

7 “(A) IN GENERAL.—If the Secretary of  
8 Homeland Security finds that an alien has en-  
9 tered the United States illegally after having  
10 been removed, deported, or excluded or having  
11 departed voluntarily, under an order of removal,  
12 deportation, or exclusion, regardless of the date  
13 of the original order or the date of the illegal  
14 entry—

15 “(i) the order of removal, deportation,  
16 or exclusion is reinstated from its original  
17 date and is not subject to being reopened  
18 or reviewed notwithstanding section  
19 242(a)(2)(D);

20 “(ii) the alien is not eligible and may  
21 not apply for any relief under this Act, re-  
22 gardless of the date that an application or  
23 request for such relief may have been filed  
24 or made; and

1                   “(iii) the alien shall be removed under  
2                   the order of removal, deportation, or exclu-  
3                   sion at any time after the illegal entry.

4                   “(B) NO OTHER PROCEEDINGS.—Rein-  
5                   statement under this paragraph shall not re-  
6                   quire proceedings under section 240 or other  
7                   proceedings before an immigration judge.”.

8                   (2) CONFORMING AMENDMENT.—Section  
9                   242(a)(2)(D) (8 U.S.C. 1252(a)(2)(D)) is amended  
10                  by striking “section)” and inserting “section or sec-  
11                  tion 241(a)(5))”.

12                  (b) JUDICIAL REVIEW.—Section 242 (8 U.S.C. 1252)  
13                  is amended by adding at the end the following new sub-  
14                  section:

15                  “(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER  
16                  SECTION 241(a)(5).—

17                         “(1) REVIEW OF REINSTATEMENT.—Judicial  
18                         review of a determination under section 241(a)(5) is  
19                         available under subsection (a) of this section.

20                         “(2) NO REVIEW OF ORIGINAL ORDER.—Not-  
21                         withstanding any other provision of law, including  
22                         section 2241 of title 28, United States Code, any  
23                         other habeas corpus provision, and sections 1361  
24                         and 1651 of such title, no court shall have jurisdic-

1           tion to review any cause or claim, arising from or re-  
2           lating to any challenge to the original order.”.

3           (c) **EFFECTIVE DATE.**—The amendments made by  
4 subsections (a) and (b) shall take effect as if enacted on  
5 April 1, 1997, and shall apply to all orders reinstated on  
6 or after that date by the Secretary (or by the Attorney  
7 General prior to March 1, 2003), regardless of the date  
8 of the original order.

9           **SEC. 706. WITHHOLDING OF REMOVAL.**

10          (a) **IN GENERAL.**—Section 241(b)(3) (8 U.S.C.  
11 1231(b)(3)) is amended—

12               (1) in subparagraph (A), by adding at the end  
13               “‘The burden of proof is on the alien to establish  
14               that the alien’s life or freedom would be threatened  
15               in that country, and that race, religion, nationality,  
16               membership in a particular social group, or political  
17               opinion would be at least one central reason for such  
18               threat.’”; and

19               (2) in subparagraph (C), by striking “‘In deter-  
20               mining whether an alien has demonstrated that the  
21               alien’s life or freedom would be threatened for a rea-  
22               son described in subparagraph (A)’” and inserting  
23               “‘For purposes of this paragraph,’”.

24          (b) **EFFECTIVE DATE.**—The amendments made by  
25 subsection (a) shall take effect as if enacted on May 11,

1 2005, and shall apply to applications for withholding of  
2 removal made on or after such date.

3 **SEC. 707. CERTIFICATE OF REVIEWABILITY.**

4 (a) ALIEN'S BRIEF.—Section 242(b)(3)(C) (8 U.S.C.  
5 1252(b)(3)(C)) is amended to read as follows:

6 “(C) ALIEN'S BRIEF.—The alien shall  
7 serve and file a brief in connection with a peti-  
8 tion for judicial review not later than 40 days  
9 after the date on which the administrative  
10 record is available. The court may not extend  
11 this deadline except upon motion for good cause  
12 shown. If an alien fails to file a brief within the  
13 time provided in this subparagraph, the court  
14 shall dismiss the appeal unless a manifest injus-  
15 tice would result.”.

16 (b) CERTIFICATE OF REVIEWABILITY.—Section  
17 242(b)(3) (8 U.S.C. 1252 (b)(3)) is amended by adding  
18 at the end the following new subparagraphs:

19 “(D) CERTIFICATE OF REVIEWABILITY.—

20 “(i) After the alien has filed a brief,  
21 the petition for review shall be assigned to  
22 one judge on the Federal Circuit Court of  
23 Appeals.

24 “(ii) Unless such judge issues a cer-  
25 tificate of reviewability, the petition for re-

1 view shall be denied and the United States  
2 may not file a brief.

3 “(iii) Such judge may not issue a cer-  
4 tificate of reviewability under clause (ii)  
5 unless the petitioner establishes a prima  
6 facie case that the petition for review  
7 should be granted.

8 “(iv) Such judge shall complete all ac-  
9 tion on such certificate, including ren-  
10 dering judgment, not later than 60 days  
11 after the date on which the judge is as-  
12 signed the petition for review, unless an  
13 extension is granted under clause (v).

14 “(v) Such judge may grant, on the  
15 judge’s own motion or on the motion of a  
16 party, an extension of the 60-day period  
17 described in clause (iv) if—

18 “(I) all parties to the proceeding  
19 agree to such extension; or

20 “(II) such extension is for good  
21 cause shown or in the interests of jus-  
22 tice, and the judge states the grounds  
23 for the extension with specificity.

24 “(vi) If no certificate of reviewability  
25 is issued before the end of the period de-



1           scribed in clause (iv), including any exten-  
2           sion under clause (v), the petition for re-  
3           view shall be denied, any stay or injunction  
4           on petitioner’s removal shall be dissolved  
5           without further action by the court or the  
6           Government, and the alien may be re-  
7           moved.

8                   “(vii) If such judge issues a certificate  
9           of reviewability under clause (ii), the  
10          United States shall be afforded an oppor-  
11          tunity to file a brief in response to the  
12          alien’s brief. The alien may serve and file  
13          a reply brief not later than 14 days after  
14          service of the United States brief, and the  
15          court may not extend this deadline except  
16          upon motion for good cause shown.

17                   “(E) NO FURTHER REVIEW OF DECISION  
18          NOT TO ISSUE A CERTIFICATE OF  
19          REVIEWABILITY.—The decision of a judge on  
20          the Federal Circuit Court of Appeals not to  
21          issue a certificate of reviewability or to deny a  
22          petition for review, shall be the final decision  
23          for the Federal Circuit Court of Appeals and  
24          may not be reconsidered, reviewed, or reversed

1 by the such Court through any mechanism or  
2 procedure.”.

3 **SEC. 708. DISCRETIONARY DECISIONS ON MOTIONS TO RE-**  
4 **OPEN OR RECONSIDER.**

5 (a) **EXERCISE OF DISCRETION.**—Section 240(c) (8  
6 U.S.C. 1229a(c)) is amended—

7 (1) in paragraph (6), by adding at the end the  
8 following new subparagraph:

9 “(D) **DISCRETION.**—The decision to grant  
10 or deny a motion to reconsider is committed to  
11 the Attorney General’s discretion.”; and

12 (2) in paragraph (7), by adding at the end the  
13 following new subparagraph:

14 “(D) **DISCRETION.**—The decision to grant  
15 or deny a motion to reopen is committed to the  
16 Attorney General’s discretion.”.

17 (b) **ELIGIBILITY FOR PROTECTION FROM REMOVAL**  
18 **TO ALTERNATIVE COUNTRY.**—Section 240(c) (8 U.S.C.  
19 1229a(c)), as amended by subsection (a), is further  
20 amended by adding at the end of paragraph (7)(C) the  
21 following new clause:

22 “(v) **SPECIAL RULE FOR ALTER-**  
23 **NATIVE COUNTRIES OF REMOVAL.**—The re-  
24 quirements of this paragraph may not  
25 apply if—

1                   “(I) the Secretary of Homeland  
2 Security is seeking to remove the alien  
3 to an alternative or additional country  
4 of removal under paragraph (1)(C),  
5 2(D), or 2(E) of section 241(b) that  
6 was not considered during the alien’s  
7 prior removal proceedings;

8                   “(II) the alien’s motion to reopen  
9 is filed within 30 days after receiving  
10 notice of the Secretary’s intention to  
11 remove the alien to that country; and

12                   “(III) the alien establishes a  
13 prima facie case that the alien is enti-  
14 tled by law to withholding of removal  
15 under section 241(b)(3) or protection  
16 under the Convention Against Torture  
17 and Other Cruel, Inhuman or Degrad-  
18 ing Treatment or Punishment, done  
19 at New York December 10, 1984,  
20 with respect to that particular coun-  
21 try.”.

22           (c) EFFECTIVE DATE.—This amendment made by  
23 this section shall apply to motions to reopen or reconsider  
24 which are filed on or after the date of the enactment of  
25 this Act in removal, deportation, or exclusion proceedings,

1 whether a final administrative order is entered before, on,  
2 or after the date of the enactment of this Act.

3 **SEC. 709. PROHIBITION OF ATTORNEY FEE AWARDS FOR**  
4 **REVIEW OF FINAL ORDERS OF REMOVAL.**

5 (a) IN GENERAL.—Section 242 (8 U.S.C. 1252), as  
6 amended by section 705(b), is further amended by adding  
7 at the end the following new subsection:

8 “(i) PROHIBITION ON ATTORNEY FEE AWARDS.—  
9 Notwithstanding any other provision of law, a court may  
10 not award fees or other expenses to an alien based upon  
11 the alien’s status as a prevailing party in any proceedings  
12 relating to an order of removal issued under this Act, un-  
13 less the court of appeals concludes that the determination  
14 of the Attorney General or the Secretary of Homeland Se-  
15 curity that the alien was removable under sections 212  
16 and 237 was not substantially justified.”.

17 (b) EFFECTIVE DATE.—The amendment made by  
18 subsection (a) shall apply to all fees or other expenses  
19 awarded on or after the date of the enactment of this Act,  
20 regardless of the date that such fees or expenses were in-  
21 curred.

1     **Subtitle B—Immigration Review**  
2                     **Reform**

3     **SEC. 711. DIRECTOR OF THE EXECUTIVE OFFICE FOR IMMI-**  
4                     **GRATION REVIEW.**

5             (a) APPOINTMENT.—Notwithstanding any other pro-  
6 vision of law or regulation, the Director of the Executive  
7 Office for Immigration Review of the Department of Jus-  
8 tice described in section 1003.0 of title 8, Code of Federal  
9 Regulations (or any corresponding similar regulation)  
10 shall be appointed by the President with the advice and  
11 consent of the Senate.

12             (b) INITIAL APPOINTMENT.—The individual who is  
13 serving as Director of the Executive Office for Immigra-  
14 tion Review on the date of the enactment of this Act shall  
15 serve as Acting Director of such Office until either—

16                 (1) the individual is appointed as described in  
17 paragraph (1); or

18                 (2) a successor has been appointed in such  
19 manner.

20     **SEC. 712. BOARD OF IMMIGRATION APPEALS.**

21             (a) COMPOSITION AND APPOINTMENT.—Notwith-  
22 standing any other provision of law or regulation, the  
23 Board of Immigration Appeals of the Department of Jus-  
24 tice described in section 1003.1 of title 8, Code of Federal  
25 Regulations (or any corresponding similar regulation) (re-

1 ferred to in this section as the “Board”), shall be com-  
2 posed of a Chair and 14 other immigration appeals judges,  
3 appointed by the Director of the Executive Office for Im-  
4 migration Review, in consultation with the Attorney Gen-  
5 eral.

6 (b) TERM OF APPOINTMENT.—The term of appoint-  
7 ment of each member of the Board shall be 6 years from  
8 the date upon which such person was appointed and quali-  
9 fied. Upon the expiration of a term of office, a Board  
10 member may continue to act until a successor has been  
11 appointed and qualified, except that no Board member  
12 may serve more than 12 years.

13 (c) CURRENT MEMBERS.—Each individual who is  
14 serving as a member of the Board on the date of the enact-  
15 ment of this Act shall be appointed to the Board utilizing  
16 a system of staggered terms of appointment based on se-  
17 niority.

18 (d) QUALIFICATIONS.—Each member of the Board,  
19 including the Chair, shall be an attorney in good standing  
20 of a bar of a State or the District of Columbia and shall  
21 have at least 7 years of professional, legal expertise in im-  
22 migration and nationality law.

23 (e) DUTIES OF THE CHAIR.—The Chair of the  
24 Board, subject to the supervision of the Director, shall—

1           (1) be responsible, on behalf of the Board, for  
2           the administrative operations of the Board and shall  
3           have the power to appoint such administrative as-  
4           sistants, attorneys, clerks, and other personnel as  
5           may be needed for that purpose;

6           (2) direct, supervise, and establish internal op-  
7           erating procedures and policies of the Board;

8           (3) designate a member of the Board to act as  
9           Chair if the Chair is absent or unavailable;

10          (4) adjudicate cases as a member of the Board;

11          (5) form 3-member panels as provided by sub-  
12          section (i);

13          (6) direct that a case be heard en banc as pro-  
14          vided by subsection (j); and

15          (7) exercise such other authorities as the Direc-  
16          tor may provide.

17          (f) BOARD MEMBERS DUTIES.—In deciding a case  
18          before the Board, the Board—

19               (1) shall exercise independent judgment and  
20               discretion; and

21               (2) may take any action that is appropriate and  
22               necessary for the disposition of such case that is  
23               consistent with the authority provided in this section  
24               and any regulations established in accordance with  
25               this section.

1 (g) JURISDICTION.—

2 (1) IN GENERAL.—The Board shall have juris-  
3 diction to hear appeals described in section  
4 1003.1(b) of title 8, Code of Federal Regulations (or  
5 any corresponding similar regulation).

6 (2) LIMITATION.—The Board shall not have ju-  
7 risdiction to hear an appeal of a decision of an im-  
8 migration judge for an order of removal entered in  
9 absentia.

10 (h) SCOPE OF REVIEW.—

11 (1) FINDINGS OR FACT.—The Board shall—

12 (A) accept findings of fact determined by  
13 an immigration judge, including findings as to  
14 the credibility of testimony, unless the findings  
15 are clearly erroneous; and

16 (B) give due deference to an immigration  
17 judge's application of the law to the facts.

18 (2) QUESTIONS OF LAW.—The Board shall re-  
19 view de novo questions of law, discretion, and judg-  
20 ment, and all other issues in appeals from decisions  
21 of immigration judges.

22 (3) APPEALS FROM OFFICERS' DECISIONS.—  
23 The Board shall review de novo all questions arising  
24 in appeals from decisions issued by officers of the  
25 Department.



1           (4)(A) PROHIBITION ON FACT FINDING.—Ex-  
2           cept for taking administrative notice of commonly  
3           known facts such as current events or the contents  
4           of official documents, the Board may not engage in  
5           fact-finding in the course of deciding appeals.

6           (B) REMAND.—A party asserting that the  
7           Board cannot properly resolve an appeal without  
8           further fact-finding shall file a motion for remand.  
9           If further fact-finding is needed in a case, the Board  
10          shall remand the proceeding to the immigration  
11          judge or, as appropriate, to the Secretary.

12          (i) PANELS.—

13           (1) IN GENERAL.—Except as provided in para-  
14           graph (5) all cases shall be subject to review by a  
15           3-member panel. The Chair shall divide the Board  
16           into 3-member panels and designate a presiding  
17           member.

18           (2) AUTHORITY.—Each panel may exercise the  
19           appropriate authority of the Board that is necessary  
20           for the adjudication of cases before it.

21           (3) QUORUM.—Two members appointed to a  
22           panel shall constitute a quorum for such panel.

23           (4) CHANGES IN COMPOSITION.—The Chair  
24           may from time to time make changes in the com-

1 position of a panel and of the presiding member of  
2 a panel.

3 (5) PRESIDING MEMBER DECISIONS.—The pre-  
4 siding member of a panel may act alone on any mo-  
5 tion as provided in paragraphs (3) and (4) of sub-  
6 section (k) and may not otherwise dismiss or deter-  
7 mine an appeal as a single Board member.

8 (j) EN BANC PROCESS.—

9 (1) IN GENERAL.—The Board may on its own  
10 motion, by a majority vote of the Board members,  
11 or by direction of the Chair—

12 (A) consider any case as the full Board en  
13 banc; or

14 (B) reconsider as the full Board en banc  
15 any case that has been considered or decided by  
16 a 3-member panel or by a limited en banc  
17 panel.

18 (2) QUORUM.—A majority of the Board mem-  
19 bers shall constitute a quorum of the Board sitting  
20 en banc.

21 (k) DECISIONS OF THE BOARD.—

22 (1) BINDING DECISIONS.—

23 (A) IN GENERAL.—A precedent decision of  
24 the Board shall be binding on the Secretary and  
25 the immigration judges unless such decision is

1 modified or reversed by the Court of Appeals  
2 for the Federal Circuit or by the United States  
3 Supreme Court.

4 (B) APPEAL BY THE SECRETARY.—The  
5 Secretary, with the concurrence of the Attorney  
6 General, may appeal a decision of the Board  
7 under this section to the Court of Appeals for  
8 the Federal Circuit.

9 (2) AFFIRMANCE WITHOUT OPINION.—Upon in-  
10 dividualized review of a case, the Board may affirm  
11 the decision of an immigration judge without opinion  
12 only if—

13 (A) the decision of the immigration judge  
14 resolved all issues in the case;

15 (B) the issue on appeal is squarely con-  
16 trolled by existing Board or Federal court  
17 precedent and does not involve the application  
18 of precedent to a novel fact situation;

19 (C) the factual and legal questions raised  
20 on appeal are so insubstantial that the case  
21 does not warrant the issuance of a written opin-  
22 ion in the case; and

23 (D) the Board approves both the result  
24 reached in the decision below and all of the rea-  
25 soning of that decision.

1           (3) SUMMARY DISMISSAL OF APPEALS.—The 3-  
2 member panel or the presiding member acting alone  
3 may summarily dismiss any appeal or portion of any  
4 appeal in any case which—

5           (A) the party seeking the appeal fails to  
6 specify the reasons for the appeal;

7           (B) the only reason for the appeal specified  
8 by such party involves a finding of fact or a  
9 conclusion of law that was conceded by that  
10 party at a prior proceeding;

11           (C) the appeal is from an order that grant-  
12 ed such party the relief that had been re-  
13 quested;

14           (D) the appeal is determined to be filed for  
15 an improper purpose, such as to cause unneces-  
16 sary delay; or

17           (E) the appeal lacks an arguable basis in  
18 fact or in law and is not supported by a good  
19 faith argument for extension, modification, or  
20 reversal of existing law.

21           (4) UNOPPOSED DISPOSITIONS.—The 3-member  
22 panel or the presiding member acting alone may—

23           (A) grant an unopposed motion or a mo-  
24 tion to withdraw an appeal pending before the  
25 Board; or

1 (B) adjudicate a motion to remand any ap-  
2 peal—

3 (i) from the decision of an officer of  
4 the Department if the appropriate official  
5 of the Department requests that the mat-  
6 ter be remanded back for further consider-  
7 ation;

8 (ii) if remand is required because of a  
9 defective or missing transcript; or

10 (iii) if remand is required for any  
11 other procedural or ministerial issue.

12 (5) NOTICE OF RIGHT TO APPEAL.—The deci-  
13 sion by the Board shall include notice to the alien  
14 of the alien's right to file a petition for review in the  
15 United States Court of Appeals for the Federal Cir-  
16 cuit within 30 days of the date of the decision.

17 **SEC. 713. IMMIGRATION JUDGES.**

18 (a) APPOINTMENT OF CHIEF IMMIGRATION  
19 JUDGE.—Notwithstanding any other provision of law or  
20 regulation, the Chief Immigration Judge described in sec-  
21 tion 1003.9 of title 8, Code of Federal Regulations (or  
22 any corresponding similar regulation) shall be appointed  
23 by the Director of the Executive Officer for Immigration  
24 Review, in consultation with the Attorney General.

25 (b) APPOINTMENT OF IMMIGRATION JUDGES.—

1           (1) IN GENERAL.—Immigration judges shall be  
2 appointed by the Director of the Executive Office for  
3 Immigration Review, in consultation with the Chief  
4 Immigration Judge and the Chair of the Board of  
5 Immigration Appeals.

6           (2) TERM OF APPOINTMENT.—The term of ap-  
7 pointment of each immigration judge shall be 7  
8 years from the date upon which such person was ap-  
9 pointed and qualified. Upon the expiration of a term  
10 of office, the immigration judge may continue to act  
11 until a successor has been appointed and qualified,  
12 except that no immigration judge member may serve  
13 more than 14 years.

14           (3) CURRENT MEMBERS.—Each individual who  
15 is serving as an immigration judge on the date of  
16 the enactment of this Act shall be appointed as an  
17 immigration judge utilizing a system of staggered  
18 terms of appointment based on seniority.

19           (4) QUALIFICATIONS.—Each immigration  
20 judge, including the Chief Immigration Judge, shall  
21 be an attorney in good standing of a bar of a State  
22 or the District of Columbia and shall have at least  
23 5 years of professional, legal expertise in immigra-  
24 tion and nationality law.

1           (c) JURISDICTION.—An Immigration judge shall have  
2 the authority to hear matters related to any removal pro-  
3 ceeding pursuant to section 240 of the Immigration and  
4 Nationality Act (8 U.S.C. 1229a) described in section  
5 1240.1(a) of title 8, Code of Federal Regulations (or any  
6 corresponding similar regulation).

7           (d) DUTIES OF IMMIGRATION JUDGES.—In deciding  
8 a case, an immigration judge—

9               (1) shall exercise independent judgment and  
10 discretion; and

11               (2) may take any action that is appropriate and  
12 necessary for the disposition of such case that is  
13 consistent with their authorities under this section  
14 and regulations established in accordance with this  
15 section.

16           (e) REVIEW.—Decisions of immigration judges are  
17 subject to review by the Board of Immigration Appeals  
18 in any case in which the Board has jurisdiction.

19 **SEC. 714. REMOVAL AND REVIEW OF JUDGES.**

20           (a) IN GENERAL.—Immigration judges and members  
21 of the Board of Immigration Appeals may be removed  
22 from office only for good cause—

23               (1) by the Director of the Executive Office for  
24 Immigration Review, in consultation with the Chair

1 of the Board, in the case of the removal of a mem-  
2 ber of the Board; or

3 (2) by the Director, in consultation with the  
4 Chief Immigration Judge, in the case of the removal  
5 of an immigration judge.

6 (b) INDEPENDENT JUDGMENT.—No immigration  
7 judge or member of the Board may be removed or other-  
8 wise subject to disciplinary or adverse action for their ex-  
9 ercise of independent judgment and discretion as pre-  
10 scribed by this subtitle.

11 **SEC. 715. LEGAL ORIENTATION PROGRAM.**

12 (a) CONTINUED OPERATION.—The Director of the  
13 Executive Office for Immigration Review shall continue to  
14 operate a legal orientation program to provide basic infor-  
15 mation about immigration court procedures for immigra-  
16 tion detainees and shall expand the legal orientation pro-  
17 gram to provide such information on a nationwide basis.

18 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
19 are authorized to be appropriated such sums as may be  
20 necessary to carry out such legal orientation program.

21 **SEC. 716. REGULATIONS.**

22 Not later than 180 days after the date of the enact-  
23 ment of this Act, the Attorney General shall issue regula-  
24 tions to implement this subtitle.



1       **TITLE VIII—MISCELLANEOUS**

2       **SEC. 801. TECHNICAL AND CONFORMING AMENDMENTS.**

3           The Attorney General, in consultation with the Sec-  
4       retary, shall, as soon as practicable but not later than 90  
5       days after the date of the enactment of this Act, submit  
6       to Congress a draft of any technical and conforming  
7       changes in the Immigration and Nationality Act which are  
8       necessary to reflect the changes in the substantive provi-  
9       sions of law made by the Homeland Security Act of 2002,  
10       this Act, or any other provision of law.