AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

109TH CONGRESS
2D SESSION

S. 2611

AN ACT

To provide for comprehensive immigration reform and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Comprehensive Immigration Reform Act of 2006".

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

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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

section or other provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

SEC. 3. DEFINITIONS.

In this Act:

(1) DEPARTMENT.—Except as otherwise provided, the term ''Department'' means the Department of Homeland Security.

(2) SECRETARY.—Except as otherwise provided, the term ''Secretary'' means the Secretary of Homeland Security.

SEC. 4. SEVERABILITY.

If any provision of this Act, any amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be invalid for any reason, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any other person or circumstance shall not be affected by such holding.

TITLE I—BORDER ENFORCEMENT

Subtitle A—Assets for Controlling United States Borders

SEC. 101. ENFORCEMENT PERSONNEL.

(a) ADDITIONAL PERSONNEL.—

(1) PORT OF ENTRY INSPECTORS.—In each of the fiscal years 2007 through 2011, the Secretary shall, subject to the availability of appropriations, increase by not less than 500 the number of positions for full-time active duty port of entry inspectors and provide appropriate training, equipment, and support to such additional inspectors.

(2) INVESTIGATIVE PERSONNEL.—

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

(B) ADDITIONAL PERSONNEL.—In addition to the positions authorized under section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended by subparagraph (A), during each of the fiscal years 2007 through 2011, the Secretary shall, subject to the availability of appropriations, increase by not less than 200 the number of positions for personnel within the Department assigned to investigate alien smuggling.

(3) DEPUTY UNITED STATES MARSHALS.—In each of the fiscal years 2007 through 2011, the Attorney General shall, subject to the availability of appropriations, increase by not less than 50 the number of positions for full-time active duty Deputy United States Marshals that investigate criminal matters related to immigration.

(4) RECRUITMENT OF FORMER MILITARY PERSONNEL.—

(A) IN GENERAL.—The Commissioner of United States Customs and Border Protection, in conjunction with the Secretary of Defense or a designee of the Secretary of Defense, shall establish a program to actively recruit members of the Army, Navy, Air Force, Marine Corps, and Coast Guard who have elected to separate from active duty.

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

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) PORT OF ENTRY INSPECTORS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2007 through 2011 to carry out paragraph (1) of subsection (a).

(2) DEPUTY UNITED STATES MARSHALS.—There are authorized to be appropriated to the Attorney General such sums as may be necessary for each of the fiscal years 2007 through 2011 to carry out subsection (a)(3).

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

"SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

''(a) ANNUAL INCREASES.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time active-duty border patrol agents within the Department of Homeland Security (above the number of such positions for which funds were appropriated for the preceding fiscal year), by—

''(1) 2,000 in fiscal year 2006;

"(2) 2,400 in fiscal year 2007;

"(3) 2,400 in fiscal year 2008;

"(4) 2,400 in fiscal year 2009;

"(5) 2,400 in fiscal year 2010; and

"(6) 2,400 in fiscal year 2011;

"(b) NORTHERN BORDER.—In each of the fiscal years 2006 through 2011, in addition to the border patrol agents assigned along the northern border of the United States during the previous fiscal year, the Secretary shall assign a number of border patrol agents equal to not less than 20 percent of the net increase in border patrol agents during each such fiscal year.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2007 through 2011 to carry out this section.".

SEC. 102. TECHNOLOGICAL ASSETS.

(a) ACQUISITION.—Subject to the availability of appropriations, the Secretary shall procure additional unmanned aerial vehicles, cameras, poles, sensors, and other technologies necessary to achieve operational control of the international borders of the United States and to establish a security perimeter known as a "virtual fence" along such international borders to provide a barrier to illegal immigration.

(b) INCREASED AVAILABILITY OF EQUIPMENT.—The Secretary and the Secretary of Defense shall develop and implement a plan to use authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, to increase the availability and use of Department of Defense equipment, including unmanned aerial vehicles, tethered aerostat radars, and other surveillance equipment, to assist the Secretary in carrying out surveillance activities conducted at or near the international land borders of the United States to prevent illegal immigration.

(c) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary and the Secretary of Defense shall submit to Congress a report that contains—

(1) a description of the current use of Department of Defense equipment to assist the Secretary in carrying out surveillance of the international land borders of the United States and assessment of the risks to citizens of the United States and foreign policy interests associated with the use of such equipment;

(2) the plan developed under subsection (b) to increase the use of Department of Defense equipment to assist such surveillance activities; and

(3) a description of the types of equipment and other support to be provided by the Secretary of Defense under such plan during the 1-year period beginning on the date of the submission of the report.

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

(e) UNMANNED AERIAL VEHICLE PILOT PROGRAM.—During the 1-year period beginning on the date on which the report is submitted under subsection (c), the Secretary shall conduct a pilot program to test unmanned aerial vehicles for border surveillance along the international border between Canada and the United States.

(f) CONSTRUCTION.—Nothing in this section may be construed as altering or amending the prohibition on the use of any part of the Army or the Air Force as a posse comitatus under section 1385 of title 18, United States Code.

SEC. 103. INFRASTRUCTURE.

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

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

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

SEC. 104. BORDER PATROL CHECKPOINTS.

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

SEC. 105. PORTS OF ENTRY.

The Secretary is authorized to—

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

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

SEC. 106. CONSTRUCTION OF STRATEGIC BORDER FENCING AND VEHICLE BARRIERS.

(a) TUCSON SECTOR.—The Secretary shall—

(1) replace all aged, deteriorating, or damaged primary fencing in the Tucson Sector located proximate to population centers in Douglas, Nogales,

Naco, and Lukeville, Arizona with double- or triple-layered fencing running parallel to the international border between the United States and Mexico;

(2) extend the double- or triple-layered fencing for a distance of not less than 2 miles beyond urban areas, except that the double- or triple-layered fence shall extend west of Naco, Arizona, for a distance of 10 miles; and

(3) construct not less than 150 miles of vehicle barriers and all-weather roads in the Tucson Sector running parallel to the international border between the United States and Mexico in areas that are known transit points for illegal cross-border traffic.

(b) YUMA SECTOR.—The Secretary shall—

(1) replace all aged, deteriorating, or damaged primary fencing in the Yuma Sector located proximate to population centers in Yuma, Somerton, and San Luis, Arizona with double- or triple-layered fencing running parallel to the international border between the United States and Mexico;

(2) extend the double- or triple-layered fencing for a distance of not less than 2 miles beyond urban areas in the Yuma Sector; and

(3) construct not less than 50 miles of vehicle barriers and all-weather roads in the Yuma Sector

running parallel to the international border between the United States and Mexico in areas that are known transit points for illegal cross-border traffic.

(c) OTHER HIGH TRAFFICKED AREAS.—The Secretary shall construct not less than 370 miles of triple-layered fencing which may include portions already constructed in San Diego Tucson and Yuma Sectors, and 500 miles of vehicle barriers in other areas along the southwest border that the Secretary determines are areas that are most often used by smugglers and illegal aliens attempting to gain illegal entry into the United States.

(d) CONSTRUCTION DEADLINE.—The Secretary shall immediately commence construction of the fencing, barriers, and roads described in subsections (a), (b), and (c) and shall complete such construction not later than 2 years after the date of the enactment of this Act.

(e) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes the progress that has been made in constructing the fencing, barriers, and roads described in subsections (a), (b), and (c).

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

Subtitle B—Border Security Plans, Strategies, and Reports

SEC. 111. SURVEILLANCE PLAN.

(a) REQUIREMENT FOR PLAN.—The Secretary shall develop a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States.

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

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

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

(3) A description of how the Commissioner of the United States Customs and Border Protection of the Department is working, or is expected to work, with the Under Secretary for Science and Technology of the Department to identify and test surveillance technology.

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

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

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

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

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

SEC. 112. NATIONAL STRATEGY FOR BORDER SECURITY.

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

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

(1) The implementation schedule for the comprehensive plan for systematic surveillance described in section 111.

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

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

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

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

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

(5) An assessment of the most appropriate, practical, and cost-effective means of defending the

international land and maritime borders of the United States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities.

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

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

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

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

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

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

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

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

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

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

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

(d) COORDINATION.—The National Strategy for Border Security shall be consistent with the National Strategy for Maritime Security developed pursuant to Homeland Security Presidential Directive 13, dated December 21, 2004.

(e) SUBMISSION TO CONGRESS.—

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

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

(f) IMMEDIATE ACTION.—Nothing in this section or section 111 may be construed to relieve the Secretary of the responsibility to take all actions necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States.

SEC. 113. REPORTS ON IMPROVING THE EXCHANGE OF INFORMATION ON NORTH AMERICAN SECURITY.

(a) REQUIREMENT FOR REPORTS.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of State, in coordination with the Secretary and the heads of other appropriate Federal agencies, shall submit to Congress a report on improving the exchange of information related to the security of North America.

(b) CONTENTS.—Each report submitted under subsection (a) shall contain a description of the following:

(1) SECURITY CLEARANCES AND DOCUMENT INTEGRITY.—The progress made toward the development of common enrollment, security, technical, and biometric standards for the issuance, authentication, validation, and repudiation of secure documents, including—

(A) technical and biometric standards based on best practices and consistent with international standards for the issuance, authentication, validation, and repudiation of travel documents, including—

(i) passports;

(ii) visas; and

(iii) permanent resident cards;

(B) working with Canada and Mexico to encourage foreign governments to enact laws to combat alien smuggling and trafficking, and laws to forbid the use and manufacture of fraudulent travel documents and to promote information sharing;

(C) applying the necessary pressures and support to ensure that other countries meet proper travel document standards and are committed to travel document verification before the citizens of such countries travel internationally, including travel by such citizens to the United States; and

(D) providing technical assistance for the development and maintenance of a national database built upon identified best practices for

biometrics associated with visa and travel documents.

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

(A) in implementing the Statement of Mutual Understanding on Information Sharing, signed by Canada and the United States in February 2003; and

(B) in identifying trends related to immigration fraud, including asylum and document fraud, and to analyze such trends.

(3) VISA POLICY COORDINATION AND IMMIGRATION SECURITY.—The progress made by Canada, Mexico, and the United States to enhance the security of North America by cooperating on visa policy and identifying best practices regarding immigration security, including the progress made—

(A) in enhancing consultation among officials who issue visas at the consulates or embassies of Canada, Mexico, or the United States throughout the world to share information, trends, and best practices on visa flows;

(B) in comparing the procedures and policies of Canada and the United States related to visitor visa processing, including—

(i) application process;

(ii) interview policy;

(iii) general screening procedures;

(iv) visa validity;

(v) quality control measures; and

(vi) access to appeal or review;

(C) in exploring methods for Canada, Mexico, and the United States to waive visa requirements for nationals and citizens of the same foreign countries;

(D) in providing technical assistance for the development and maintenance of a national database built upon identified best practices for biometrics associated with immigration violators;

(E) in developing and implementing an immigration security strategy for North America that works toward the development of a common security perimeter by enhancing technical assistance for programs and systems to support advance automated reporting and risk targeting of international passengers;

(F) in sharing information on lost and stolen passports on a real-time basis among immigration or law enforcement officials of Canada, Mexico, and the United States; and

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

(4) NORTH AMERICAN VISITOR OVERSTAY PROGRAM.—The progress made by Canada and the United States in implementing parallel entry-exit tracking systems that, while respecting the privacy laws of both countries, share information regarding third country nationals who have overstayed their period of authorized admission in either Canada or the United States.

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

(A) in developing and implementing bilateral agreements between Canada and the United States and between Mexico and the United States to govern the sharing of terrorist watch list data and to comprehensively enu-

merate the uses of such data by the governments of each country;

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

(C) in exploring with foreign governments the establishment of a multilateral watch list mechanism that would facilitate direct coordination between the country that identifies an individual as an individual included on a watch list, and the country that owns such list, including procedures that satisfy the security concerns and are consistent with the privacy and other laws of each participating country.

(6) MONEY LAUNDERING, CURRENCY SMUGGLING, AND ALIEN SMUGGLING.—The progress made in improving information sharing and law enforcement cooperation in combating organized crime, including the progress made—

(A) in combating currency smuggling, money laundering, alien smuggling, and trafficking in alcohol, firearms, and explosives;

(B) in implementing the agreement between Canada and the United States known as the Firearms Trafficking Action Plan;

(C) in determining the feasibility of formulating a firearms trafficking action plan between Mexico and the United States;

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

(E) in determining the feasibility of formulating a joint threat assessment on organized crime between Mexico and the United States;

(F) in developing mechanisms to exchange information on findings, seizures, and capture of individuals transporting undeclared currency; and

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

(7) LAW ENFORCEMENT COOPERATION.—The progress made in enhancing law enforcement cooperation among Canada, Mexico, and the United States through enhanced technical assistance for the development and maintenance of a national database built upon identified best practices for biometrics associated with known and suspected criminals or terrorists, including exploring the formation of law enforcement teams that include personnel from the

United States and Mexico, and appropriate procedures for such teams.

SEC. 114. IMPROVING THE SECURITY OF MEXICO'S SOUTHERN BORDER.

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

(1) to assess the specific needs of Guatemala and Belize in maintaining the security of the international borders of such countries;

(2) to use the assessment made under paragraph (1) to determine the financial and technical support needed by Guatemala and Belize from Canada, Mexico, and the United States to meet such needs;

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

(4) to encourage Guatemala and Belize—

(A) to control alien smuggling and trafficking;

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

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

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

(1) with the appropriate officials of the Government of Guatemala and the Government of Belize to provide law enforcement assistance to Guatemala and Belize that specifically addresses immigration issues to increase the ability of the Government of Guatemala to dismantle human smuggling organizations and gain additional control over the international border between Guatemala and Belize; and

(2) with the appropriate officials of the Government of Belize, the Government of Guatemala, the Government of Mexico, and the governments of neighboring contiguous countries to establish a program to provide needed equipment, technical assistance, and vehicles to manage, regulate, and patrol the international borders between Mexico and Guatemala and between Mexico and Belize.

(c) TRACKING CENTRAL AMERICAN GANGS.—The Secretary of State, in coordination with the Secretary and the Director of the Federal Bureau of Investigation, shall work to cooperate with the appropriate officials of the

Government of Mexico, the Government of Guatemala, the Government of Belize, and the governments of other Central American countries—

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

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

(3) to develop a mechanism that is acceptable to the governments of Belize, Guatemala, Mexico, the United States, and other appropriate countries to notify such a government if an individual suspected of gang activity will be deported to that country prior to the deportation and to provide support for the reintegration of such deportees into that country; and

(4) to develop an agreement to share all relevant information related to individuals connected with Central American gangs.

(d) LIMITATIONS ON ASSISTANCE.—Any funds made available to carry out this section shall be subject to the limitations contained in section 551 of the Foreign Operations, Export Financing, and Related Programs Appro-

priations Act of 2006 (Public Law 109–102; 119 Stat. 2218).

SEC. 115. COMBATING HUMAN SMUGGLING.

(a) REQUIREMENT FOR PLAN.—The Secretary shall develop and implement a plan to improve coordination between the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Border Protection of the Department and any other Federal, State, local, or tribal authorities, as determined appropriate by the Secretary, to improve coordination efforts to combat human smuggling.

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

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

(2) adequate and effective personnel training;

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

(4) effective utilization of—

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

(B) investigatory techniques, equipment, and procedures that prevent, detect, and prosecute international money laundering and other operations that are utilized in smuggling;

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

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

(c) REPORT.—Not later than 1 year after implementing the plan described in subsection (a), the Secretary shall submit to Congress a report on such plan, including any recommendations for legislative action to improve efforts to combating human smuggling.

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

SEC. 116. DEATHS AT UNITED STATES-MEXICO BORDER.

(a) COLLECTION OF STATISTICS.—The Commissioner of the Bureau of Customs and Border Protection shall collect statistics relating to deaths occurring at the border between the United States and Mexico, including—

(1) the causes of the deaths; and

(2) the total number of deaths.

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

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

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

SEC. 117. COOPERATION WITH THE GOVERNMENT OF MEXICO.

(a) COOPERATION REGARDING BORDER SECURITY.—The Secretary of State, in cooperation with the Secretary and representatives of Federal, State, and local law enforcement agencies that are involved in border security and immigration enforcement efforts, shall work with the appropriate officials from the Government of Mexico to improve coordination between the United States and Mexico regarding—

(1) improved border security along the international border between the United States and Mexico;

(2) the reduction of human trafficking and smuggling between the United States and Mexico;

(3) the reduction of drug trafficking and smuggling between the United States and Mexico;

(4) the reduction of gang membership in the United States and Mexico;

(5) the reduction of violence against women in the United States and Mexico; and

(6) the reduction of other violence and criminal activity.

(b) COOPERATION REGARDING EDUCATION ON IMMIGRATION LAWS.—The Secretary of State, in cooperation with other appropriate Federal officials, shall work with the appropriate officials from the Government of Mexico to carry out activities to educate citizens and nationals of Mexico regarding eligibility for status as a nonimmigrant under Federal law to ensure that the citizens and nationals are not exploited while working in the United States.

(c) COOPERATION REGARDING CIRCULAR MIGRATION.—The Secretary of State, in cooperation with the Secretary of Labor and other appropriate Federal officials, shall work with the appropriate officials from the Government of Mexico to improve coordination between the United States and Mexico to encourage circular migration, including assisting in the development of economic opportunities and providing job training for citizens and nationals in Mexico.

(d) CONSULTATION REQUIREMENT.—Federal, State, and local representatives in the United States shall consult with their counterparts in Mexico concerning the construc-

tion of additional fencing and related border security structures along the international border between the United States and Mexico, as authorized by this title, before the commencement of any such construction in order to—

(1) solicit the views of affected communities;

(2) lessen tensions; and

(3) foster greater understanding and stronger cooperation on this and other important security issues of mutual concern.

(e) ANNUAL REPORT.—Not later than 180 days after the date of enactment of this Act, and annually thereafter, the Secretary of State shall submit to Congress a report on the actions taken by the United States and Mexico under this section.

Subtitle C—Other Border Security Initiatives

SEC. 121. BIOMETRIC DATA ENHANCEMENTS.

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

(1) in consultation with the Attorney General, enhance connectivity between the Automated Biometric Fingerprint Identification System (IDENT) of the Department and the Integrated Automated Fingerprint Identification System (IAFIS) of the

Federal Bureau of Investigation to ensure more expeditious data searches; and

(2) in consultation with the Secretary of State, collect all fingerprints from each alien required to provide fingerprints during the alien's initial enrollment in the integrated entry and exit data system described in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a).

SEC. 122. SECURE COMMUNICATION.

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

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

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

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

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

SEC. 123. BORDER PATROL TRAINING CAPACITY REVIEW.

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

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

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

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

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

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

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

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

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

SEC. 124. US–VISIT SYSTEM.

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

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

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

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

SEC. 125. DOCUMENT FRAUD DETECTION.

(a) TRAINING.—Subject to the availability of appropriations, the Secretary shall provide all Customs and Border Protection officers with training in identifying and detecting fraudulent travel documents. Such training shall be developed in consultation with the head of the Forensic Document Laboratory of the Bureau of Immigration and Customs Enforcement.

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

(c) ASSESSMENT.—

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

(2) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, the Inspector General shall submit to Congress the

findings of the assessment required by paragraph (1).

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

SEC. 126. IMPROVED DOCUMENT INTEGRITY.

(a) IN GENERAL.—Section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1732) is amended—

(1) by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security'';

(2) in the heading, by striking ''**ENTRY AND EXIT DOCUMENTS**'' and inserting ''**TRAVEL AND ENTRY DOCUMENTS AND EVIDENCE OF STATUS**'';

(3) in subsection (b)(1)—

(A) by striking ''Not later than October 26, 2004, the'' and inserting ''The''; and

(B) by striking ''visas and'' both places it appears and inserting ''visas, evidence of status, and'';

(4) by redesignating subsection (d) as subsection (e); and

(5) by inserting after subsection (c) the following:

''(d) OTHER DOCUMENTS.—Not later than October 26, 2007, every document, other than an interim document, issued by the Secretary of Homeland Security, which may be used as evidence of an alien's status as an immigrant, nonimmigrant, parolee, asylee, or refugee, shall be machine-readable and tamper-resistant, and shall incorporate a biometric identifier to allow the Secretary of Homeland Security to verify electronically the identity and status of the alien.''.

SEC. 127. CANCELLATION OF VISAS.

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

(1) in paragraph (1)—

(A) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''; and

(B) by inserting ''and any other nonimmigrant visa issued by the United States that is in the possession of the alien'' after ''such visa''; and

(2) in paragraph (2)(A), by striking ''(other than the visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality'' and inserting ''(other than a visa described in paragraph (1)) issued in a consular office

located in the country of the alien's nationality or foreign residence''.

SEC. 128. BIOMETRIC ENTRY-EXIT SYSTEM.

(a) COLLECTION OF BIOMETRIC DATA FROM ALIENS DEPARTING THE UNITED STATES.—Section 215 (8 U.S.C. 1185) is amended—

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

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

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

''(c) The Secretary of Homeland Security is authorized to require aliens departing the United States to provide biometric data and other information relating to their immigration status.''.

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

''(5) AUTHORITY TO COLLECT BIOMETRIC DATA.—In conducting inspections under subsection (b), immigration officers are authorized to collect biometric data from—

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

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

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

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

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

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

"(C) WITHHOLDERS OF BIOMETRIC DATA.—Any alien who knowingly fails to comply with a lawful request for biometric data under section 215(c) or 235(d) is inadmissible."; and

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

"(2) The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to an alien described in subparagraph (C) of subsection (a)(7) and may waive the

application of such subparagraph for an individual alien or a class of aliens, at the discretion of the Secretary.''.

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

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

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

(2) in subsection (l)—

(A) by striking ''There are authorized'' and inserting the following:

''(1) IN GENERAL.—There are authorized''; and

(B) by adding at the end the following:

''(2) IMPLEMENTATION AT ALL LAND BORDER PORTS OF ENTRY.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2007 and 2008 to implement the

automated biometric entry and exit data system at all land border ports of entry.''.

SEC. 129. BORDER STUDY.

(a) SOUTHERN BORDER STUDY.—The Secretary, in consultation with the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Defense, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, shall conduct a study on the construction of a system of physical barriers along the southern international land and maritime border of the United States. The study shall include—

(1) an assessment of the necessity of constructing such a system, including the identification of areas of high priority for the construction of such a system determined after consideration of factors including the amount of narcotics trafficking and the number of illegal immigrants apprehended in such areas;

(2) an assessment of the feasibility of constructing such a system;

(3) an assessment of the international, national, and regional environmental impact of such a system, including the impact on zoning, global climate

change, ozone depletion, biodiversity loss, and transboundary pollution;

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

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

(6) an assessment of the effect of such a system on private property rights including issues of eminent domain and riparian rights;

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

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

(9) an assessment of the necessity of constructing such a system after the implementation of provisions of this Act relating to guest workers, visa reform, and interior and worksite enforcement, and the likely effect of such provisions on undocumented immigration and the flow of illegal immigrants across the international border of the United States;

(10) an assessment of the impact of such a system on diplomatic relations between the United

States and Mexico, Central America, and South America, including the likely impact of such a system on existing and potential areas of bilateral and multilateral cooperative enforcement efforts;

(11) an assessment of the impact of such a system on the quality of life within border communities in the United States and Mexico, including its impact on noise and light pollution, housing, transportation, security, and environmental health;

(12) an assessment of the likelihood that such a system would lead to increased violations of the human rights, health, safety, or civil rights of individuals in the region near the southern international border of the United States, regardless of the immigration status of such individuals;

(13) an assessment of the effect such a system would have on violence near the southern international border of the United States; and

(14) an assessment of the effect of such a system on the vulnerability of the United States to infiltration by terrorists or other agents intending to inflict direct harm on the United States.

(b) REPORT.—Not later than 9 months after the date of the enactment of this Act, the Secretary shall submit

to Congress a report on the study described in subsection (a).

SEC. 130. SECURE BORDER INITIATIVE FINANCIAL ACCOUNTABILITY.

(a) IN GENERAL.—The Inspector General of the Department shall review each contract action relating to the Secure Border Initiative having a value of more than $20,000,000, to determine whether each such action fully complies with applicable cost requirements, performance objectives, program milestones, inclusion of small, minority, and women-owned business, and time lines. The Inspector General shall complete a review under this subsection with respect to each contract action—

(1) not later than 60 days after the date of the initiation of the action; and

(2) upon the conclusion of the performance of the contract.

(b) INSPECTOR GENERAL.—

(1) ACTION.—If the Inspector General becomes aware of any improper conduct or wrongdoing in the course of conducting a contract review under subsection (a), the Inspector General shall, as expeditiously as practicable, refer information relating to such improper conduct or wrongdoing to the Secretary, or to another appropriate official of the De-

partment, who shall determine whether to temporarily suspend the contractor from further participation in the Secure Border Initiative.

(2) REPORT.—Upon the completion of each review described in subsection (a), the Inspector General shall submit to the Secretary a report containing the findings of the review, including findings regarding—

(A) cost overruns;

(B) significant delays in contract execution;

(C) lack of rigorous departmental contract management;

(D) insufficient departmental financial oversight;

(E) bundling that limits the ability of small businesses to compete; or

(F) other high risk business practices.

(c) REPORTS BY THE SECRETARY.—

(1) IN GENERAL.—Not later than 30 days after the receipt of each report required under subsection (b)(2), the Secretary shall submit a report, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, that describes—

(A) the findings of the report received from the Inspector General; and

(B) the steps the Secretary has taken, or plans to take, to address the problems identified in such report.

(2) CONTRACTS WITH FOREIGN COMPANIES.—Not later than 60 days after the initiation of each contract action with a company whose headquarters is not based in the United States, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, regarding the Secure Border Initiative.

(d) REPORTS ON UNITED STATES PORTS.—Not later that 30 days after receiving information regarding a proposed purchase of a contract to manage the operations of a United States port by a foreign entity, the Committee on Foreign Investment in the United States shall submit a report to Congress that describes—

(1) the proposed purchase;

(2) any security concerns related to the proposed purchase; and

(3) the manner in which such security concerns have been addressed.

(e) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts that are otherwise authorized to be appropriated to the Office of the Inspector General of the Department, there are authorized to be appropriated to the Office, to enable the Office to carry out this section—

(1) for fiscal year 2007, not less than 5 percent of the overall budget of the Office for such fiscal year;

(2) for fiscal year 2008, not less than 6 percent of the overall budget of the Office for such fiscal year; and

(3) for fiscal year 2009, not less than 7 percent of the overall budget of the Office for such fiscal year.

SEC. 131. MANDATORY DETENTION FOR ALIENS APPREHENDED AT OR BETWEEN PORTS OF ENTRY.

(a) IN GENERAL.—Beginning on October 1, 2007, an alien (other than a national of Mexico) who is attempting to illegally enter the United States and who is apprehended at a United States port of entry or along the international land and maritime border of the United States shall be detained until removed or a final decision granting admission has been determined, unless the alien—

(1) is permitted to withdraw an application for admission under section 235(a)(4) of the Immigra-

tion and Nationality Act (8 U.S.C. 1225(a)(4)) and immediately departs from the United States pursuant to such section; or

(2) is paroled into the United States by the Secretary for urgent humanitarian reasons or significant public benefit in accordance with section 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

(b) REQUIREMENTS DURING INTERIM PERIOD.—Beginning 60 days after the date of the enactment of this Act and before October 1, 2007, an alien described in subsection (a) may be released with a notice to appear only if—

(1) the Secretary determines, after conducting all appropriate background and security checks on the alien, that the alien does not pose a national security risk; and

(2) the alien provides a bond of not less than $5,000.

(c) RULES OF CONSTRUCTION.—

(1) ASYLUM AND REMOVAL.—Nothing in this section shall be construed as limiting the right of an alien to apply for asylum or for relief or deferral of removal based on a fear of persecution.

(2) TREATMENT OF CERTAIN ALIENS.—The mandatory detention requirement in subsection (a)

does not apply to any alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations.

(3) DISCRETION.—Nothing in this section shall be construed as limiting the authority of the Secretary, in the Secretary's sole unreviewable discretion, to determine whether an alien described in clause (ii) of section 235(b)(1)(B) of the Immigration and Nationality Act shall be detained or released after a finding of a credible fear of persecution (as defined in clause (v) of such section).

SEC. 132. EVASION OF INSPECTION OR VIOLATION OF ARRIVAL, REPORTING, ENTRY, OR CLEARANCE REQUIREMENTS.

(a) IN GENERAL.—Chapter 27 of title 18, United States Code, is amended by adding at the end the following:

"§ 555. Evasion of inspection or during violation of arrival, reporting, entry, or clearance requirements

"(a) PROHIBITION.—A person shall be punished as described in subsection (b) if such person attempts to elude or eludes customs, immigration, or agriculture inspection or fails to stop at the command of an officer or

employee of the United States charged with enforcing the immigration, customs, or other laws of the United States at a port of entry or customs or immigration checkpoint.

"(b) PENALTIES.—A person who commits an offense described in subsection (a) shall be—

"(1) fined under this title;

"(2)(A) imprisoned for not more than 3 years, or both;

"(B) imprisoned for not more than 10 years, or both, if in commission of this violation, attempts to inflict or inflicts bodily injury (as defined in section 1365(g) of this title); or

"(C) imprisoned for any term of years or for life, or both, if death results, and may be sentenced to death; or

"(3) both fined and imprisoned under this subsection.

"(c) CONSPIRACY.—If 2 or more persons conspire to commit an offense described in subsection (a), and 1 or more of such persons do any act to effect the object of the conspiracy, each shall be punishable as a principal, except that the sentence of death may not be imposed.

"(d) PRIMA FACIE EVIDENCE.—For the purposes of seizure and forfeiture under applicable law, in the case of use of a vehicle or other conveyance in the commission

of this offense, or in the case of disregarding or disobeying the lawful authority or command of any officer or employee of the United States under section 111(b) of this title, such conduct shall constitute prima facie evidence of smuggling aliens or merchandise.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 27 of title 18, United States Code, is amended by inserting at the end:

''555. Evasion of inspection or during violation of arrival, reporting, entry, or clearance requirements.''.

(c) FAILURE TO OBEY BORDER ENFORCEMENT OFFICERS.—Section 111 of title 18, United States Code, is amended by inserting after subsection (b) the following:

''(c) FAILURE TO OBEY LAWFUL ORDERS OF BORDER ENFORCEMENT OFFICERS.—Whoever willfully disregards or disobeys the lawful authority or commend of any officer or employee of the United States charged with enforcing the immigration, customs, or other laws of the United States while engaged in, or on account of, the performance of official duties shall be fined under this title or imprisoned for not more than 5 years, or both.''.

SEC. 133. TEMPORARY NATIONAL GUARD SUPPORT FOR SECURING THE SOUTHERN LAND BORDER OF THE UNITED STATES.

(a) AUTHORITY TO PROVIDE ASSISTANCE.—(1) With the approval of the Secretary of Defense, the Governor

of a State may order any units or personnel of the National Guard of such State to perform annual training duty under section 502(a) of title 32, United States Code, to carry out in any State along the southern land border of the United States the activities authorized in subsection (b), for the purpose of securing such border. Such duty shall not exceed 21 days in any year.

(2) With the approval of the Secretary of Defense, the Governor of a State may order any units or personnel of the National Guard of such State to perform duty under section 502(f) of title 32, United States Code, to provide command, control, and continuity of support for units or personnel performing annual training duty under paragraph (1).

(b) AUTHORIZED ACTIVITIES.—The activities authorized by this subsection are any of the following:

(1) Ground reconnaissance activities;

(2) Airborne reconnaissance activities;

(3) Logistical support;

(4) Provision of translation services and training;

(5) Administrative support services;

(6) Technical training services;

(7) Emergency medical assistance and services;

(8) Communications services;

(9) Rescue of aliens in peril;

(10) Construction of roadways, patrol roads, fences, barriers, and other facilities to secure the southern land border of the United States; and

(11) Ground and air transportation.

(c) COOPERATIVE AGREEMENTS.—Units and personnel of the National Guard of a State may perform activities in another State under subsection (a) only pursuant to the terms of an emergency management assistance compact or other cooperative arrangement entered into between Governors of such States for purposes of this section, and only with the approval of the Secretary of Defense.

(d) COORDINATION OF ASSISTANCE.—The Secretary of Homeland Security shall, in consultation with the Secretary of Defense and the Governors of the States concerned, coordinate the performance of activities under this section by units and personnel of the National Guard.

(e) ANNUAL TRAINING.—Annual training duty performed by members of the National Guard under subsection (a) shall be appropriate for the units and individual members concerned, taking into account the types of units and military occupational specialties of individual members performing such duty.

(f) DEFINITIONS.—In this section:

(1) The term ''Governor of a State'' means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

(2) The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(3) The term ''State along the southern border of the United States'' means each of the following:

(A) The State of Arizona.

(B) The State of California.

(C) The State of New Mexico.

(D) The State of Texas.

(g) DURATION OF AUTHORITY.—The authority of this section shall expire on January 1, 2009.

(h) PROHIBITION ON DIRECT PARTICIPATION IN LAW ENFORCEMENT.—Activities carried out under the authority of this section shall not include the direct participation of a member of the National Guard in a search, seizure, arrest, or similar activity.

SEC. 134. REPORT ON INCENTIVES TO ENCOURAGE CERTAIN MEMBERS AND FORMER MEMBERS OF THE ARMED FORCES TO SERVE IN THE BUREAU OF CUSTOMS AND BORDER PROTECTION.

(a) REPORT REQUIRED.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of Defense shall jointly submit to the appropriate committees of Congress a report assessing the desirability and feasibility of offering incentives to covered members and former members of the Armed Forces for the purpose of encouraging such members to serve in the Bureau of Customs and Border Protection.

(b) COVERED MEMBERS AND FORMER MEMBERS OF THE ARMED FORCES.—For purposes of this section, covered members and former members of the Armed Forces are the following:

(1) Members of the reserve components of the Armed Forces.

(2) Former members of the Armed Forces within two years of separation from service in the Armed Forces.

(c) REQUIREMENTS AND LIMITATIONS.—

(1) NATURE OF INCENTIVES.—In considering incentives for purposes of the report required by

subsection (a), the Secretaries shall consider such incentives, whether monetary or otherwise and whether or not authorized by current law or regulations, as the Secretaries jointly consider appropriate.

(2) TARGETING OF INCENTIVES.—In assessing any incentive for purposes of the report, the Secretaries shall give particular attention to the utility of such incentive in—

(A) encouraging service in the Bureau of Customs and Border Protection after service in the Armed Forces by covered members and former of the Armed Forces who have provided border patrol or border security assistance to the Bureau as part of their duties as members of the Armed Forces; and

(B) leveraging military training and experience by accelerating training, or allowing credit to be applied to related areas of training, required for service with the Bureau of Customs and Border Protection.

(3) PAYMENT.—In assessing incentives for purposes of the report, the Secretaries shall assume that any costs of such incentives shall be borne by the Department of Homeland Security.

(d) ELEMENTS.—The report required by subsection (a) shall include the following:

(1) A description of various monetary and non-monetary incentives considered for purposes of the report.

(2) An assessment of the desirability and feasibility of utilizing any such incentive for the purpose specified in subsection (a), including an assessment of the particular utility of such incentive in encouraging service in the Bureau of Customs and Border Protection after service in the Armed Forces by covered members and former members of the Armed Forces described in subsection (c)(2).

(3) Any other matters that the Secretaries jointly consider appropriate.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committees on Armed Services, Homeland Security and Governmental Affairs, and Appropriations of the Senate; and

(2) the Committees on Armed Services, Homeland Security, and Appropriations of the House of Representatives.

SEC. 135. WESTERN HEMISPHERE TRAVEL INITIATIVE.

(a) FINDINGS.—Congress makes the following findings:

(1) United States citizens make approximately 130,000,000 land border crossings each year between the United States and Canada and the United States and Mexico, with approximately 23,000,000 individual United States citizens crossing the border annually.

(2) Approximately 27 percent of United States citizens possess United States passports.

(3) In fiscal year 2005, the Secretary of State issued an estimated 10,100,000 passports, representing an increase of 15 percent from fiscal year 2004.

(4) The Secretary of State estimates that 13,000,000 passports will be issued in fiscal year 2006, 16,000,000 passports will be issued in fiscal year 2007, and 17,000,000 passports will be issued in fiscal year 2008.

(b) EXTENSION OF WESTERN HEMISPHERE TRAVEL INITIATIVE IMPLEMENTATION DEADLINE.—Section 7209(b)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1185 note) is amended by striking ''January 1, 2008'' and inserting ''the later of June 1, 2009, or 3 months after the

Secretary of State and the Secretary of Homeland Security make the certification required in subsection (i) of section 133 of the Comprehensive Immigration Reform Act of 2006.''.

(c) PASSPORT CARDS.—

(1) AUTHORITY TO ISSUE.—In order to facilitate travel of United States citizens to Canada, Mexico, the countries located in the Caribbean, and Bermuda, the Secretary of State, in consultation with the Secretary, is authorized to develop a travel document known as a Passport Card.

(2) ISSUANCE.—In accordance with the Western Hemisphere Travel Initiative carried out pursuant to section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1185 note), the Secretary of State, in consultation with the Secretary, shall be authorized to issue to a citizen of the United States who submits an application in accordance with paragraph (5) a travel document that will serve as a Passport Card.

(3) APPLICABILITY.—A Passport Card shall be deemed to be a United States passport for the purpose of United States laws and regulations relating to United States passports.

(4) VALIDITY.—A Passport Card shall be valid for the same period as a United States passport.

(5) LIMITATION ON USE.—A Passport Card may only be used for the purpose of international travel by United States citizens through land and sea ports of entry between—

(A) the United States and Canada;

(B) the United States and Mexico; and

(C) the United States and a country located in the Caribbean or Bermuda.

(6) APPLICATION FOR ISSUANCE.—To be issued a Passport Card, a United States citizen shall submit an application to the Secretary of State. The Secretary of State shall require that such application shall contain the same information as is required to determine citizenship, identity, and eligibility for issuance of a United States passport.

(7) TECHNOLOGY.—

(A) EXPEDITED TRAVELER PROGRAMS.—To the maximum extent practicable, a Passport Card shall be designed and produced to provide a platform on which the expedited traveler programs carried out by the Secretary, such as NEXUS, NEXUS AIR, SENTRI, FAST, and Register Traveler may be added. The Secretary

of State and the Secretary shall notify Congress not later than July 1, 2007, if the technology to add expedited travel features to the Passport Card is not developed by that date.

(B) TECHNOLOGY.—The Secretary and the Secretary of State shall establish a technology implementation plan that accommodates desired technology requirements of the Department of State and the Department, allows for future technological innovations, and ensures maximum facilitation at the northern and southern borders.

(8) SPECIFICATIONS FOR CARD.—A Passport Card shall be easily portable and durable. The Secretary of State and the Secretary shall consult regarding the other technical specifications of the Card, including whether the security features of the Card could be combined with other existing identity documentation.

(9) FEE.—

(A) IN GENERAL.—An applicant for a Passport Card shall submit an application under paragraph (6) together with a nonrefundable fee in an amount to be determined by the Secretary of State. Passport Card fees shall be

deposited as an offsetting collection to the appropriate Department of State appropriation, to remain available until expended.

(B) LIMITATION ON FEES.—

(i) IN GENERAL.—The Secretary of State shall seek to make the application fee under this paragraph as low as possible.

(ii) MAXIMUM FEE WITHOUT CERTIFICATION.—Except as provided in clause (iii), the application fee may not exceed $24.

(iii) MAXIMUM FEE WITH CERTIFICATION.—The application fee may be not more than $34 if the Secretary of State, the Secretary, and the Postmaster General—

(I) jointly certify to Congress that the cost to produce and issue a Passport Card significantly exceeds $24; and

(II) provide a detailed cost analysis for such fee.

(C) REDUCTION OF FEE.—The Secretary of State shall reduce the fee for a Passport

Card for an individual who submits an application for a Passport Card together with an application for a United States passport.

(D) WAIVER OF FEE FOR CHILDREN.—The Secretary of State shall waive the fee for a Passport Card for a child under 18 years of age.

(E) AUDIT.—In the event that the fee for a Passport Card exceeds $24, the Comptroller General of the United States shall conduct an audit to determine whether Passport Cards are issued at the lowest possible cost.

(10) ACCESSIBILITY.—In order to make the Passport Card easily obtainable, an application for a Passport Card shall be accepted in the same manner and at the same locations as an application for a United States passport.

(11) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting, altering, modifying, or otherwise affecting the validity of a United States passport. A United States citizen may possess a United States passport and a Passport Card.

(d) STATE ENROLLMENT DEMONSTRATION PROGRAM.—

(1) IN GENERAL.—Notwithstanding any other provisions of law, the Secretary of State and the Secretary shall enter into a memorandum of understanding with 1 or more appropriate States to carry out at least 1 demonstration program as follows:

(A) A State may include an individual's United States citizenship status on a driver's license which meets the requirements of section 202 of the REAL ID Act of 2005 (division B of Public Law 109–13; 49 U.S.C. 30301 note).

(B) The Secretary of State shall develop a mechanism to communicate with a participating State to verify the United States citizenship status of an applicant who voluntarily seeks to have the applicant's United States citizenship status included on a driver's license.

(C) All information collected about the individual shall be managed exclusively in the same manner as information collected through a passport application and no further distribution of such information shall be permitted.

(D) A State may not require an individual to include the individual's citizenship status on a driver's license.

(E) Notwithstanding any other provision of law, a driver's license which meets the requirements of this paragraph shall be deemed to be sufficient documentation to permit the bearer to enter the United States from Canada or Mexico through not less than at least 1 designated international border crossing in each State participating in the demonstration program.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall have the effect of creating a national identity card.

(3) AUTHORITY TO EXPAND.—The Secretary of State and the Secretary may expand the demonstration program under this subsection so that such program is carried out in additional States, through additional ports of entry, for additional foreign countries, and in a manner that permits the use of additional types of identification documents to prove identity under the program.

(4) STUDY.—Not later than 6 months after the date that the demonstration program under this subsection is carried out, the Comptroller General of the United States shall conduct a study of—

(A) the cost of the production and issuance of documents that meet the requirements of the program compared with other travel documents;

(B) the impact of the program on the flow of cross-border traffic and the economic impact of the program; and

(C) the security of travel documents that meet the requirements of the program compared with other travel documents.

(5) RECIPROCITY WITH CANADA.—Notwithstanding any other provision of law, if the Secretary of State and the Secretary certify that certain identity documents issued by Canada (or any of its provinces) meet security and citizenship standards comparable to the requirements described in paragraph (1), the Secretary may determine that such documents are sufficient to permit entry into the United States. The Secretary shall work, to the maximum extent possible, to ensure that identification documents issued by Canada that are used as described in this paragraph contain the same technology as identification documents issued by the United States (or any State).

(6) ADDITIONAL PILOT PROGRAMS.—To the maximum extent possible, the Secretary shall seek to

conduct pilot programs related to Passport Cards and the State Enrollment Demonstration Program described in this subsection on the international border between the United States and Canada and the international border between the United States and Mexico.

(e) EXPEDITED PROCESSING FOR REPEAT TRAVELERS.—

(1) LAND CROSSINGS.—To the maximum extent practicable at the United States border with Canada and the United States border with Mexico, the Secretary shall expand expedited traveler programs carried out by the Secretary to all ports of entry and should encourage citizens of the United States to participate in the preenrollment programs, as such programs assist border control officers of the United States in the fight against terrorism by increasing the number of known travelers crossing the border. The identities of such expedited travelers should be entered into a database of known travelers who have been subjected to in-depth background and watchlist checks to permit border control officers to focus more attention on unknown travelers, potential criminals, and terrorists. The Secretary, in consultation with the appropriate officials of the Government

of Canada, shall equip at least 6 additional northern border crossings with NEXUS technology and 6 additional southern ports of entry with SENTRI technology.

(2) SEA CROSSINGS.—The Commissioner of Customs and Border Patrol shall conduct and expand trusted traveler programs and pilot programs to facilitate expedited processing of United States citizens returning from pleasure craft trips in Canada, Mexico, the Caribbean, or Bermuda. One such program shall be conducted in Florida and modeled on the I–68 program.

(f) PROCESS FOR INDIVIDUALS LACKING APPROPRIATE DOCUMENTS.—

(1) IN GENERAL.—The Secretary shall establish a program that satisfies section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1185 note)—

(A) to permit a citizen of the United States who has not been issued a United States passport or other appropriate travel document to cross the international border and return to the United States for a time period of not more than 72 hours, on a limited basis, and at no additional fee; or

(B) to establish a process to ascertain the identity of, and make admissibility determinations for, a citizen described in paragraph (A) upon the arrival of such citizen at an international border of the United States.

(2) GRACE PERIOD.—During a time period determined by the Secretary, officers of the United States Customs and Border Patrol may permit citizens of the United States and Canada who are unaware of the requirements of section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1185 note), or otherwise lacking appropriate documentation, to enter the United States upon a demonstration of citizenship satisfactory to the officer. Officers of the United States Customs and Border Patrol shall educate such individuals about documentary requirements.

(g) TRAVEL BY CHILDREN.—Notwithstanding any other provision of law, the Secretary shall develop a procedure to accommodate groups of children traveling by land across an international border under adult supervision with parental consent without requiring a government-issued identity and citizenship document.

(h) PUBLIC PROMOTION.—The Secretary of State, in consultation with the Secretary, shall develop and implement an outreach plan to inform United States citizens about the Western Hemisphere Travel Initiative and the provisions of this Act, to facilitate the acquisition of appropriate documentation to travel to Canada, Mexico, the countries located in the Caribbean, and Bermuda, and to educate United States citizens who are unaware of the requirements for such travel. Such outreach plan should include—

(1) written notifications posted at or near public facilities, including border crossings, schools, libraries, Amtrak stations, and United States Post Offices located within 50 miles of the international border between the United States and Canada or the international border between the United States and Mexico and other ports of entry;

(2) provisions to seek consent to post such notifications on commercial property, such as offices of State departments of motor vehicles, gas stations, supermarkets, convenience stores, hotels, and travel agencies;

(3) the collection and analysis of data to measure the success of the public promotion plan; and

(4) additional measures as appropriate.

(i) CERTIFICATION.—Notwithstanding any other provision of law, the Secretary may not implement the plan described in section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1185 note) until the later of June 1, 2009, or the date that is 3 months after the Secretary of State and the Secretary certify to Congress that—

(1)(A) if the Secretary and the Secretary of State develop and issue Passport Cards under this section—

(i) such cards have been distributed to at least 90 percent of the eligible United States citizens who applied for such cards during the 6-month period beginning not earlier than the date the Secretary of State began accepting applications for such cards and ending not earlier than 10 days prior to the date of certification;

(ii) Passport Cards are provided to applicants, on average, within 4 weeks of application or within the same period of time required to adjudicate a passport; and

(iii) a successful pilot has demonstrated the effectiveness of the Passport Card; or

(B) if the Secretary and the Secretary of State do not develop and issue Passport Cards under this

section and develop a program to issue an alternative document that satisfies the requirements of section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004, in addition to the NEXUS, SENTRI, FAST and Border Crossing Card programs, such alternative document is widely available and well publicized;

(2) United States border crossings have been equipped with sufficient document readers and other technologies to ensure that implementation will not substantially slow the flow of traffic and persons across international borders;

(3) officers of the Bureau of Customs and Border Protection have received training and been provided the infrastructure necessary to accept Passport Cards and all alternative identity documents at all United States border crossings; and

(4) the outreach plan described in subsection (g) has been implemented and the Secretary determines such plan has been successful in providing information to United States citizens.

(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of State and the Secretary such sums as may be necessary to carry out this section, and the amendment made by this section.

Subtitle D—Border Tunnel Prevention Act

SEC. 141. SHORT TITLE.

This subtitle may be cited as the ''Border Tunnel Prevention Act''.

SEC. 142. CONSTRUCTION OF BORDER TUNNEL OR PASSAGE.

(a) IN GENERAL.—Chapter 27 of title 18, United States Code, as amended by section 132, is further amended by adding at the end the following:

''§ 556. Border tunnels and passages

''(a) Any person who knowingly constructs or finances the construction of a tunnel or subterranean passage that crosses the international border between the United States and another country, other than a lawfully authorized tunnel or passage known to the Secretary of Homeland Security and subject to inspection by the Bureau of Immigration and Customs Enforcement, shall be fined under this title and imprisoned for not more than 20 years.

''(b) Any person who knows or recklessly disregards the construction or use of a tunnel or passage described in subsection (a) on land that the person owns or controls shall be fined under this title and imprisoned for not more than 10 years.

"(c) Any person who uses a tunnel or passage described in subsection (a) to unlawfully smuggle an alien, goods (in violation of section 545), controlled substances, weapons of mass destruction (including biological weapons), or a member of a terrorist organization (as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))) shall be subject to a maximum term of imprisonment that is twice the maximum term of imprisonment that would have otherwise been applicable had the unlawful activity not made use of such a tunnel or passage.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 27 of title 18, United States Code, as amended by section 132, is further amended by adding at the end the following:

"Sec. 556. Border tunnels and passages.".

(c) CRIMINAL FORFEITURE.—Section 982(a)(6) of title 18, United States Code, is amended by inserting "556," before "1425,".

SEC. 143. DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.

(a) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall promulgate or amend sentencing guidelines to provide for increased penalties for persons convicted of

offenses described in section 556 of title 18, United States Code, as added by section 142.

(b) REQUIREMENTS.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that the sentencing guidelines, policy statements, and official commentary reflect the serious nature of the offenses described in section 556 of title 18, United States Code, and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) provide adequate base offense levels for offenses under such section;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including—

(A) the use of a tunnel or passage described in subsection (a) of such section to facilitate other felonies; and

(B) the circumstances for which the sentencing guidelines currently provide applicable sentencing enhancements;

(4) ensure reasonable consistency with other relevant directives, other sentencing guidelines, and statutes;

(5) make any necessary and conforming changes to the sentencing guidelines and policy statements; and

(6) ensure that the sentencing guidelines adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

Subtitle E—Border Law Enforcement Relief Act

SEC. 151. SHORT TITLE.

This subtitle may be cited as the ''Border Law Enforcement Relief Act of 2006''.

SEC. 152. FINDINGS.

Congress finds the following:

(1) It is the obligation of the Federal Government of the United States to adequately secure the Nation's borders and prevent the flow of undocumented persons and illegal drugs into the United States.

(2) Despite the fact that the United States Border Patrol apprehends over 1,000,000 people each year trying to illegally enter the United States, according to the Congressional Research Service, the net growth in the number of unauthorized aliens has increased by approximately 500,000 each year. The Southwest border accounts for approximately 94

percent of all migrant apprehensions each year. Currently, there are an estimated 11,000,000 unauthorized aliens in the United States.

(3) The border region is also a major corridor for the shipment of drugs. According to the El Paso Intelligence Center, 65 percent of the narcotics that are sold in the markets of the United States enter the country through the Southwest Border.

(4) Border communities continue to incur significant costs due to the lack of adequate border security. A 2001 study by the United States-Mexico Border Counties Coalition found that law enforcement and criminal justice expenses associated with illegal immigration exceed $89,000,000 annually for the Southwest border counties.

(5) In August 2005, the States of New Mexico and Arizona declared states of emergency in order to provide local law enforcement immediate assistance in addressing criminal activity along the Southwest border.

(6) While the Federal Government provides States and localities assistance in covering costs related to the detention of certain criminal aliens and the prosecution of Federal drug cases, local law enforcement along the border are provided no assist-

ance in covering such expenses and must use their limited resources to combat drug trafficking, human smuggling, kidnappings, the destruction of private property, and other border-related crimes.

(7) The United States shares 5,525 miles of border with Canada and 1,989 miles with Mexico. Many of the local law enforcement agencies located along the border are small, rural departments charged with patrolling large areas of land. Counties along the Southwest United States-Mexico border are some of the poorest in the country and lack the financial resources to cover the additional costs associated with illegal immigration, drug trafficking, and other border-related crimes.

(8) Federal assistance is required to help local law enforcement operating along the border address the unique challenges that arise as a result of their proximity to an international border and the lack of overall border security in the region

SEC. 153. BORDER RELIEF GRANT PROGRAM.

(a) GRANTS AUTHORIZED.—

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

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

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

(2) DURATION.—Grants may be awarded under this subsection during fiscal years 2007 through 2011.

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

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

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

(i) Canada; or

(ii) Mexico.

(b) USE OF FUNDS.—Grants awarded pursuant to subsection (a) may only be used to provide additional resources for an eligible law enforcement agency to address criminal activity occurring along any such border, including—

(1) to obtain equipment;

(2) to hire additional personnel;

(3) to upgrade and maintain law enforcement technology;

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

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

(c) APPLICATION.—

(1) IN GENERAL.—Each eligible law enforcement agency seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

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

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

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

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

(1) ELIGIBLE LAW ENFORCEMENT AGENCY.—The term ''eligible law enforcement agency'' means a tribal, State, or local law enforcement agency—

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

(i) Canada; or

(ii) Mexico; or

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

(2) HIGH IMPACT AREA.—The term ''High Impact Area'' means any county designated by the Secretary as such, taking into consideration—

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

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

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

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated $50,000,000 for each of fiscal years 2007 through 2011 to carry out the provisions of this section.

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

(A) ⅔ shall be set aside for eligible law enforcement agencies located in the 6 States with the largest number of undocumented alien apprehensions; and

(B) ⅓ shall be set aside for areas designated as a High Impact Area under subsection (d).

(f) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated for grants under this section shall be used to supplement and not supplant other State and local public funds obligated for the purposes provided under this title.

SEC. 154. ENFORCEMENT OF FEDERAL IMMIGRATION LAW.

Nothing in this subtitle shall be construed to authorize State or local law enforcement agencies or their officers to exercise Federal immigration law enforcement authority.

Subtitle F—Rapid Response Measures

SEC. 161. DEPLOYMENT OF BORDER PATROL AGENTS.

(a) EMERGENCY DEPLOYMENT OF BORDER PATROL AGENTS.—

(1) IN GENERAL.—If the Governor of a State on an international border of the United States declares an international border security emergency and requests additional United States Border Patrol agents (referred to in this subtitle as ''agents'') from the Secretary, the Secretary, subject to paragraphs (1) and (2), may provide the State with not more than 1,000 additional agents for the purpose of patrolling and defending the international border, in order to prevent individuals from crossing the international border into the United States at any location other than an authorized port of entry.

(2) CONSULTATION.—Upon receiving a request for agents under paragraph (1), the Secretary, after consultation with the President, shall grant such request to the extent that providing such agents will not significantly impair the Department's ability to provide border security for any other State.

(3) COLLECTIVE BARGAINING.—Emergency deployments under this subsection shall be made in ac-

cordance with all applicable collective bargaining agreements and obligations.

(b) ELIMINATION OF FIXED DEPLOYMENT OF BORDER PATROL AGENTS.—The Secretary shall ensure that agents are not precluded from performing patrol duties and apprehending violators of law, except in unusual circumstances if the temporary use of fixed deployment positions is necessary.

(c) INCREASE IN FULL-TIME BORDER PATROL AGENTS.—Section 5202(a)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (118 Stat. 3734), as amended by section 101(b)(2), is further amended by striking ''2,000'' and inserting ''3,000''.

SEC. 162. BORDER PATROL MAJOR ASSETS.

(a) CONTROL OF BORDER PATROL ASSETS.—The United States Border Patrol shall have complete and exclusive administrative and operational control over all the assets utilized in carrying out its mission, including, aircraft, watercraft, vehicles, detention space, transportation, and all of the personnel associated with such assets.

(b) HELICOPTERS AND POWER BOATS.—

(1) HELICOPTERS.—The Secretary shall increase, by not less than 100, the number of helicopters under the control of the United States Border Patrol. The Secretary shall ensure that appro-

priate types of helicopters are procured for the various missions being performed.

(2) POWER BOATS.—The Secretary shall increase, by not less than 250, the number of power boats under the control of the United States Border Patrol. The Secretary shall ensure that the types of power boats that are procured are appropriate for both the waterways in which they are used and the mission requirements.

(3) USE AND TRAINING.—The Secretary shall—

(A) establish an overall policy on how the helicopters and power boats procured under this subsection will be used; and

(B) implement training programs for the agents who use such assets, including safe operating procedures and rescue operations.

(c) MOTOR VEHICLES.—

(1) QUANTITY.—The Secretary shall establish a fleet of motor vehicles appropriate for use by the United States Border Patrol that will permit a ratio of not less than 1 police-type vehicle for every 3 agents. These police-type vehicles shall be replaced not less than every 3 years. The Secretary shall ensure that there are sufficient numbers and types of

other motor vehicles to support the mission of the United States Border Patrol.

(2) FEATURES.—All motor vehicles purchased for the United States Border Patrol shall—

(A) be appropriate for the mission of the United States Border Patrol; and

(B) have a panic button and a global positioning system device that is activated solely in emergency situations to track the location of agents in distress.

SEC. 163. ELECTRONIC EQUIPMENT.

(a) PORTABLE COMPUTERS.—The Secretary shall ensure that each police-type motor vehicle in the fleet of the United States Border Patrol is equipped with a portable computer with access to all necessary law enforcement databases and otherwise suited to the unique operational requirements of the United States Border Patrol.

(b) RADIO COMMUNICATIONS.—The Secretary shall augment the existing radio communications system so that all law enforcement personnel working in each area where United States Border Patrol operations are conducted have clear and encrypted 2-way radio communication capabilities at all times. Each portable communications device shall be equipped with a panic button and a global

positioning system device that is activated solely in emergency situations to track the location of agents in distress.

(c) HAND-HELD GLOBAL POSITIONING SYSTEM DEVICES.—The Secretary shall ensure that each United States Border Patrol agent is issued a state-of-the-art hand-held global positioning system device for navigational purposes.

(d) NIGHT VISION EQUIPMENT.—The Secretary shall ensure that sufficient quantities of state-of-the-art night vision equipment are procured and maintained to enable each United States Border Patrol agent working during the hours of darkness to be equipped with a portable night vision device.

SEC. 164. PERSONAL EQUIPMENT.

(a) BORDER ARMOR.—The Secretary shall ensure that every agent is issued high-quality body armor that is appropriate for the climate and risks faced by the agent. Each agent shall be permitted to select from among a variety of approved brands and styles. Agents shall be strongly encouraged, but not required, to wear such body armor whenever practicable. All body armor shall be replaced not less than every 5 years.

(b) WEAPONS.—The Secretary shall ensure that agents are equipped with weapons that are reliable and effective to protect themselves, their fellow agents, and in-

nocent third parties from the threats posed by armed criminals. The Secretary shall ensure that the policies of the Department authorize all agents to carry weapons that are suited to the potential threats that they face.

(c) UNIFORMS.—The Secretary shall ensure that all agents are provided with all necessary uniform items, including outerwear suited to the climate, footwear, belts, holsters, and personal protective equipment, at no cost to such agents. Such items shall be replaced at no cost to such agents as they become worn, unserviceable, or no longer fit properly.

SEC. 165. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2007 through 2011 to carry out this subtitle.

TITLE II—INTERIOR ENFORCEMENT

SEC. 201. REMOVAL AND DENIAL OF BENEFITS TO TERRORIST ALIENS.

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

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

(1) by striking ''inadmissible under'' and inserting ''described in''; and

(2) by striking ''deportable under'' and inserting ''described in''.

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

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

(1) in clause (iii), by striking ''or'' at the end;

(2) in clause (iv) by striking the period at the end and inserting ''; or'';

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

''(v) the alien is described in section 237(a)(4)(B) (other than an alien described in section 212(a)(3)(B)(i)(IV) if the Secretary of Homeland Security determines that there are not reasonable grounds for regarding the alien as a danger to the security of the United States).''; and

(4) in the undesignated paragraph, by striking ''For purposes of clause (iv), an alien who is de-

scribed in section 237(a)(4)(B) shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.''.

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

''SEC. 249. RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN ALIENS WHO ENTERED THE UNITED STATES PRIOR TO JANUARY 1, 1972.

''A record of lawful admission for permanent residence may be made, in the discretion of the Secretary of Homeland Security and under such regulations as the Secretary may prescribe, for any alien, as of the date of the approval of the alien's application or, if entry occurred before July 1, 1924, as of the date of such entry if no such record is otherwise available, if the alien establishes that the alien—

''(1) is not described in section 212(a)(3)(E) or in section 212(a) (insofar as it relates to criminals, procurers, other immoral persons, subversives, violators of the narcotics laws, or smugglers of aliens);

''(2) entered the United States before January 1, 1972;

"(3) has resided in the United States continuously since such entry;

"(4) is a person of good moral character;

"(5) is not ineligible for citizenship; and

"(6) is not described in section 237(a)(4)(B).".

(f) EFFECTIVE DATE AND APPLICATION.—The amendments made by this section shall—

(1) take effect on the date of the enactment of this Act; and

(2) apply to any act or condition constituting a ground for inadmissibility, excludability, or removal occurring or existing on or after the date of the enactment of this Act.

SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED REMOVED.

(a) IN GENERAL.—

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

(A) by striking "Attorney General" the first place it appears and inserting "Secretary of Homeland Security";

(B) by striking "Attorney General" any other place it appears and inserting "Secretary";

(C) in paragraph (1)—

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

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

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

"(C) EXTENSION OF PERIOD.—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to—

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

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

(iii) by adding at the end the following:

"(D) TOLLING OF PERIOD.—If, at the time described in subparagraph (B), the alien is not in the custody of the Secretary under the authority of this Act, the removal period shall not begin until the alien is taken into such custody. If the Secretary lawfully transfers custody of the alien during the removal period to another Federal agency or to a State or local government agency in connection with the official duties of such agency, the removal period shall be tolled, and shall recommence on the date on which the alien is returned to the custody of the Secretary.";

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

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

"(D) to obey reasonable restrictions on the alien's conduct or activities, or to perform affirmative acts, that the Secretary prescribes for the alien—

"(i) to prevent the alien from absconding;

"(ii) for the protection of the community; or

"(iii) for other purposes related to the enforcement of the immigration laws.";

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

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

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

"(7) PAROLE.—If an alien detained pursuant to paragraph (6) is an applicant for admission, the Secretary of Homeland Security, in the Secretary's discretion, may parole the alien under section 212(d)(5) and may provide, notwithstanding section

212(d)(5), that the alien shall not be returned to custody unless either the alien violates the conditions of the alien's parole or the alien's removal becomes reasonably foreseeable, provided that in no circumstance shall such alien be considered admitted.

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

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

"(B) ALIEN DESCRIBED.—An alien is described in this subparagraph if the alien—

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

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

"(iii) has cooperated fully with the Secretary's efforts to establish the alien's identity and to carry out the removal

order, including making timely application in good faith for travel or other documents necessary for the alien's departure; and

"(iv) has not conspired or acted to prevent removal.

"(C) EVIDENCE.—In making a determination under subparagraph (A), the Secretary—

"(i) shall consider any evidence submitted by the alien;

"(ii) may consider any other evidence, including—

"(I) any information or assistance provided by the Department of State or other Federal agency; and

"(II) any other information available to the Secretary pertaining to the ability to remove the alien.

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

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

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

"(ii) certifies in writing—

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

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

"(III) based on information available to the Secretary (including classi-

fied, sensitive, or national security information, and regardless of the grounds upon which the alien was ordered removed), that there is reason to believe that the release of the alien would threaten the national security of the United States;

"(IV) that—

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

"(bb) the alien—

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

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

"(V) that—

"(aa) the release of the alien would threaten the safety of the community or any person, notwithstanding conditions of release designed to ensure the safety of the community or any person; and

"(bb) the alien has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(43)) for which the alien was sentenced to an aggre-

gate term of imprisonment of not less than 1 year.

"(F) ADMINISTRATIVE REVIEW PROCESS.—The Secretary, without any limitations other than those specified in this section, may detain an alien pending a determination under subparagraph (E)(ii), if the Secretary has initiated the administrative review process identified in subparagraph (A) not later than 30 days after the expiration of the removal period (including any extension of the removal period under paragraph (1)(C)).

"(G) RENEWAL AND DELEGATION OF CERTIFICATION.—

"(i) RENEWAL.—The Secretary may renew a certification under subparagraph (E)(ii) every 6 months, without limitation, after providing the alien with an opportunity to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew such certification, the Secretary shall release the alien, pursuant to subparagraph (H).

"(ii) DELEGATION.—Notwithstanding any other provision of law, the Secretary may not delegate the authority to make or renew a certification described in subclause (II), (III), or (V) of subparagraph (E)(ii) to any employee reporting to the Assistant Secretary for Immigration and Customs Enforcement.

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

"(H) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention, the Secretary may, in the Secretary's discretion, impose conditions on release in accordance with the regulations prescribed pursuant to paragraph (3).

"(I) REDETENTION.—The Secretary, without any limitations other than those specified in this section, may detain any alien subject to a final removal order who has previously been released from custody if—

"(i) the alien fails to comply with the conditions of release;

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

"(iii) upon reconsideration, the Secretary determines that the alien can be detained under subparagraph (E).

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

"(K) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE EFFECTED AN ENTRY AND FAIL TO COOPERATE WITH REMOVAL.—The Secretary shall detain an alien until the alien makes all reasonable efforts to comply with a removal order and to cooperate fully with the Secretary's efforts, if the alien—

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

"(ii)(I) and the alien faces a significant likelihood that the alien will be removed in the reasonably foreseeable future,

or would have been removed if the alien had not—

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

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

"(cc) conspired or acted to prevent removal; or

"(II) the Secretary makes a certification as specified in subparagraph (E), or the renewal of a certification specified in subparagraph (G).

"(L) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE NOT EFFECTED AN ENTRY.—Except as otherwise provided in this subparagraph, the Secretary shall follow the guidelines established in section 241.4 of title 8, Code of Federal Regulations, when detaining

aliens who have not effected an entry. The Secretary may decide to apply the review process outlined in this paragraph.

"(9) JUDICIAL REVIEW.—Without regard to the place of confinement, judicial review of any action or decision made pursuant to paragraph (6), (7), or (8) shall be available exclusively in a habeas corpus proceeding brought in a United States district court and only if the alien has exhausted all administrative remedies (statutory and nonstatutory) available to the alien as of right.".

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

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

(B) shall apply to—

(i) any alien subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of the enactment of this Act; and

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

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

(1) in subsection (e)—

(A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(B) by inserting ''(1)'' before ''If, after a hearing'';

(C) in subparagraphs (B) and (C), as redesignated, by striking ''paragraph (1)'' and inserting ''subparagraph (A)''; and

(D) by adding after subparagraph (C), as redesignated, the following:

''(2) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required if the judicial officer finds that there is probable cause to believe that the person—

''(A) is an alien; and

''(B)(i) has no lawful immigration status in the United States;

''(ii) is the subject of a final order of removal; or

''(iii) has committed a felony offense under section 911, 922(g)(5), 1015, 1028, 1425, or 1426 of this title, chapter 75 or 77 of this title, or section 243, 274, 275, 276, 277, or 278 of the Immigration

and Nationality Act (8 U.S.C. 1253, 1324, 1325, 1326, 2327, and 1328).''; and

(2) in subsection (g)(3)—

(A) in subparagraph (A), by striking ''and'' at the end; and

(B) by adding at the end the following:

''(C) the person's immigration status; and''.

SEC. 203. AGGRAVATED FELONY.

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

(1) by striking ''The term 'aggravated felony' means—'' and inserting ''Notwithstanding any other provision of law (except for the provision providing an effective date for section 203 of the Comprehensive Immigration Reform Act of 2006), the term 'aggravated felony' applies to an offense described in this paragraph, whether in violation of Federal or State law and to such an offense in violation of the law of a foreign country, for which the term of imprisonment was completed within the previous 15 years, even if the length of the term of imprisonment is based on recidivist or other enhancements and regardless of whether the conviction was entered be-

fore, on, or after September 30, 1996, and means—''; (2) in subparagraph (A), by striking ''murder, rape, or sexual abuse of a minor;'' and inserting ''murder, rape, or sexual abuse of a minor, whether or not the minority of the victim is established by evidence contained in the record of conviction or by evidence extrinsic to the record of conviction;''; (3) in subparagraph (N), by striking ''paragraph (1)(A) or (2) of''; (4) in subparagraph (O), by striking ''section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph'' and inserting ''section 275 or 276 for which the term of imprisonment is at least 1 year''; (5) in subparagraph (U), by striking ''an attempt or conspiracy to commit an offense described in this paragraph'' and inserting ''aiding or abetting an offense described in this paragraph, or soliciting, counseling, procuring, commanding, or inducing another, attempting, or conspiring to commit such an offense''; and (6) by striking the undesignated matter following subparagraph (U).

(b) EFFECTIVE DATE AND APPLICATION.—

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

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

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

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

SEC. 204. TERRORIST BARS.

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

(1) by inserting after paragraph (1) the following:

''(2) an alien described in section 212(a)(3) or 237(a)(4), as determined by the Secretary of Homeland Security or Attorney General based upon any relevant information or evidence, including classified, sensitive, or national security information;'';

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

''(A) the person completed the term of imprisonment and sentence not later than 10 years before the date of application; and

''(B) the Secretary of Homeland Security or the Attorney General waives the application of this paragraph; or''; and

(3) in the undesignated matter following paragraph (9), by striking ''a finding that for other reasons such person is or was not of good moral character'' and inserting the following: ''a discretionary finding for other reasons that such a person is or was not of good moral character. In determining an applicant's moral character, the Secretary of Homeland Security and the Attorney General may take into consideration the applicant's conduct and acts at any time and are not limited to the period during which good moral character is required.''.

(b) PENDING PROCEEDINGS.—Section 204(b) (8 U.S.C. 1154(b)) is amended by adding at the end the following: ''A petition may not be approved under this section

if there is any administrative or judicial proceeding (whether civil or criminal) pending against the petitioner that could directly or indirectly result in the petitioner's denaturalization or the loss of the petitioner's lawful permanent resident status.''.

(c) CONDITIONAL PERMANENT RESIDENT STATUS.—

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

(2) CERTAIN ALIEN ENTREPRENEURS.—Section 216A(e) (8 U.S.C. 1186b(e)) is amended by inserting ''if the alien has had the conditional basis removed pursuant to this section'' before the period at the end.

(d) JUDICIAL REVIEW OF NATURALIZATION APPLICATIONS.—Section 310(c) (8 U.S.C. 1421(c)) is amended—

(1) by inserting '', not later than 120 days after the Secretary of Homeland Security's final determination,'' after ''may''; and

(2) by adding at the end the following: ''Except that in any proceeding, other than a proceeding under section 340, the court shall review for substantial evidence the administrative record and find-

ings of the Secretary of Homeland Security regarding whether an alien is a person of good moral character, understands and is attached to the principles of the Constitution of the United States, or is well disposed to the good order and happiness of the United States. The petitioner shall have the burden of showing that the Secretary's denial of the application was contrary to law.''.

(e) PERSONS ENDANGERING NATIONAL SECURITY.—Section 316 (8 U.S.C. 1427) is amended by adding at the end the following:

''(g) PERSONS ENDANGERING THE NATIONAL SECURITY.—A person may not be naturalized if the Secretary of Homeland Security determines, based upon any relevant information or evidence, including classified, sensitive, or national security information, that the person was once an alien described in section 212(a)(3) or 237(a)(4).''.

(f) CONCURRENT NATURALIZATION AND REMOVAL PROCEEDINGS.—Section 318 (8 U.S.C. 1429) is amended by striking ''the Attorney General if'' and all that follows and inserting: ''the Secretary of Homeland Security or any court if there is pending against the applicant any removal proceeding or other proceeding to determine the applicant's inadmissibility or deportability, or to determine

whether the applicant's lawful permanent resident status should be rescinded, regardless of when such proceeding was commenced. The findings of the Attorney General in terminating removal proceedings or canceling the removal of an alien under this Act shall not be deemed binding in any way upon the Secretary of Homeland Security with respect to the question of whether such person has established eligibility for naturalization in accordance with this title.''.

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

''(b) REQUEST FOR HEARING BEFORE DISTRICT COURT.—If there is a failure to render a final administrative decision under section 335 before the end of the 180-day period beginning on the date on which the Secretary of Homeland Security completes all examinations and interviews required under such section, the applicant may apply to the district court for the district in which the applicant resides for a hearing on the matter. The Secretary shall notify the applicant when such examinations and interviews have been completed. Such district court shall only have jurisdiction to review the basis for delay and remand the matter, with appropriate instructions, to the Secretary for the Secretary's determination on the application.''.

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

(1) shall take effect on the date of the enactment of this Act; and

(2) shall apply to any act that occurred on or after such date of enactment.

SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO GANG VIOLENCE, REMOVAL, AND ALIEN SMUGGLING.

(a) CRIMINAL STREET GANGS.—

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

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

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

"(F) MEMBERS OF CRIMINAL STREET GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows or has reason to believe—

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

"(ii) has participated in the activities of a criminal street gang, knowing or having reason to know that such activities promoted, furthered, aided, or supported the illegal activity of the criminal gang,

is inadmissible.".

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

"(F) MEMBERS OF CRIMINAL STREET GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who the Secretary of Homeland Security or the Attorney General knows or has reason to believe—

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

"(ii) has participated in the activities of a criminal street gang, knowing or having reason to know that such activities pro-

moted, furthered, aided, or supported the illegal activity of the criminal gang,

is deportable.''.

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

(A) by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security'';

(B) in subsection (b)(3)—

(i) in subparagraph (B), by striking the last sentence and inserting the following: ''Notwithstanding any other provision of this section, the Secretary of Homeland Security may, for any reason (including national security), terminate or modify any designation under this section. Such termination or modification is effective upon publication in the Federal Register, or after such time as the Secretary may designate in the Federal Register.'';

(ii) in subparagraph (C), by striking ''a period of 12 or 18 months'' and inserting ''any other period not to exceed 18 months'';

(C) in subsection (c)—

(i) in paragraph (1)(B), by striking "The amount of any such fee shall not exceed $50.";

(ii) in paragraph (2)(B)—

(I) in clause (i), by striking ", or" at the end;

(II) in clause (ii), by striking the period at the end and inserting "; or"; and

(III) by adding at the end the following:

"(iii) the alien is, or at any time after admission has been, a member of a criminal street gang (as defined in section 521(a) of title 18, United States Code)."; and

(D) in subsection (d)—

(i) by striking paragraph (3); and

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

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

(1) in subsection (a)(1)—

(A) in the matter preceding subparagraph (A), by inserting ''212(a) or'' after ''section''; and

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

(i) by striking ''or imprisoned not more than four years'' and inserting ''and imprisoned for not less than 6 months or more than 5 years''; and

(ii) by striking '', or both'';

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

(3) by amending subsection (d) to read as follows:

''(d) DENYING VISAS TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—The Sec-

retary of Homeland Security, after making a determination that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, subject, national, or resident of that country after the alien has been ordered removed, and after consultation with the Secretary of State, may instruct the Secretary of State to deny a visa to any citizen, subject, national, or resident of that country until the country accepts the alien that was ordered removed.''.

(c) ALIEN SMUGGLING AND RELATED OFFENSES.—

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

''SEC. 274. ALIEN SMUGGLING AND RELATED OFFENSES.

''(a) CRIMINAL OFFENSES AND PENALTIES.—

''(1) PROHIBITED ACTIVITIES.—Except as provided in paragraph (3), a person shall be punished as provided under paragraph (2), if the person—

''(A) facilitates, encourages, directs, or induces a person to come to or enter the United States, or to cross the border to the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to come to, enter, or cross the border to the United States;

"(B) facilitates, encourages, directs, or induces a person to come to or enter the United States, or to cross the border to the United States, at a place other than a designated port of entry or place other than as designated by the Secretary of Homeland Security, knowing or in reckless disregard of the fact that such person is an alien and regardless of whether such alien has official permission or lawful authority to be in the United States;

"(C) transports, moves, harbors, conceals, or shields from detection a person outside of the United States knowing or in reckless disregard of the fact that such person is an alien in unlawful transit from 1 country to another or on the high seas, under circumstances in which the alien is seeking to enter the United States without official permission or legal authority;

"(D) encourages or induces a person to reside in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in the United States;

"(E) transports or moves a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to enter or be in the United States, if the transportation or movement will further the alien's illegal entry into or illegal presence in the United States;

"(F) harbors, conceals, or shields from detection a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States; or

"(G) conspires or attempts to commit any of the acts described in subparagraphs (A) through (F).

"(2) CRIMINAL PENALTIES.—A person who violates any provision under paragraph (1)—

"(A) except as provided in subparagraphs (C) through (G), if the offense was not committed for commercial advantage, profit, or private financial gain, shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both;

"(B) except as provided in subparagraphs (C) through (G), if the offense was committed

for commercial advantage, profit, or private financial gain—

"(i) if the violation is the offender's first violation under this subparagraph, shall be fined under such title, imprisoned for not more than 20 years, or both; or

"(ii) if the violation is the offender's second or subsequent violation of this subparagraph, shall be fined under such title, imprisoned for not less than 3 years or more than 20 years, or both;

"(C) if the offense furthered or aided the commission of any other offense against the United States or any State that is punishable by imprisonment for more than 1 year, shall be fined under such title, imprisoned for not less than 5 years or more than 20 years, or both;

"(D) shall be fined under such title, imprisoned not less than 5 years or more than 20 years, or both, if the offense created a substantial and foreseeable risk of death, a substantial and foreseeable risk of serious bodily injury (as defined in section 2119(2) of title 18, United States Code), or inhumane conditions to another person, including—

"(i) transporting the person in an engine compartment, storage compartment, or other confined space;

"(ii) transporting the person at an excessive speed or in excess of the rated capacity of the means of transportation; or

"(iii) transporting the person in, harboring the person in, or otherwise subjecting the person to crowded or dangerous conditions;

"(E) if the offense caused serious bodily injury (as defined in section 2119(2) of title 18, United States Code) to any person, shall be fined under such title, imprisoned for not less than 7 years or more than 30 years, or both;

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

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

"(ii) intending to engage in terrorist activity;

"(G) if the offense caused or resulted in the death of any person, shall be punished by death or imprisoned for a term of years not less than 10 years and up to life, and fined under title 18, United States Code.

"(3) LIMITATION.—It is not a violation of subparagraph (D), (E), or (F) of paragraph (1)—

"(A) for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least 1 year; or

"(B) for an individual or organization, not previously convicted of a violation of this section, to provide an alien who is present in the United States with humanitarian assistance, in-

cluding medical care, housing, counseling, victim services, and food, or to transport the alien to a location where such assistance can be rendered.

"(4) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over the offenses described in this subsection.

"(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

"(1) CRIMINAL OFFENSE AND PENALTIES.—Any person who, during any 12-month period, knowingly employs 10 or more individuals with actual knowledge or in reckless disregard of the fact that the individuals are aliens described in paragraph (2), shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.

"(2) DEFINITION.—An alien described in this paragraph is an alien who—

"(A) is an unauthorized alien (as defined in section 274A(i));

"(B) is present in the United States without lawful authority; and

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

"(c) SEIZURE AND FORFEITURE.—

"(1) IN GENERAL.—Any real or personal property used to commit or facilitate the commission of a violation of this section, the gross proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.

"(2) APPLICABLE PROCEDURES.—Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in section 981(d) shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security.

"(3) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—In determining whether a violation of subsection (a) has occurred, prima facie evidence that an alien involved in the alleged violation lacks lawful authority to come to, enter, reside in, remain in, or be in the United States or that such alien had come to, entered, resided in, remained in, or been present in the United States in violation of law shall include—

"(A) any order, finding, or determination concerning the alien's status or lack of status

made by a Federal judge or administrative adjudicator (including an immigration judge or immigration officer) during any judicial or administrative proceeding authorized under Federal immigration law;

"(B) official records of the Department of Homeland Security, the Department of Justice, or the Department of State concerning the alien's status or lack of status; and

"(C) testimony by an immigration officer having personal knowledge of the facts concerning the alien's status or lack of status.

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

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

"(2) other officers responsible for the enforcement of Federal criminal laws.

"(e) ADMISSIBILITY OF VIDEOTAPED WITNESS TESTIMONY.—Notwithstanding any provision of the Federal Rules of Evidence, the videotaped or otherwise audiovisually preserved deposition of a witness to a violation of subsection (a) who has been deported or otherwise ex-

1 pelled from the United States, or is otherwise unavailable
2 to testify, may be admitted into evidence in an action
3 brought for that violation if—
4 "(1) the witness was available for cross exam-
5 ination at the deposition by the party, if any, oppos-
6 ing admission of the testimony; and
7 "(2) the deposition otherwise complies with the
8 Federal Rules of Evidence.
9 "(f) OUTREACH PROGRAM.—
10 "(1) IN GENERAL.—The Secretary of Homeland
11 Security, in consultation with the Attorney General
12 and the Secretary of State, as appropriate, shall—
13 "(A) develop and implement an outreach
14 program to educate people in and out of the
15 United States about the penalties for bringing
16 in and harboring aliens in violation of this sec-
17 tion; and
18 "(B) establish the American Local and In-
19 terior Enforcement Needs (ALIEN) Task Force
20 to identify and respond to the use of Federal,
21 State, and local transportation infrastructure to
22 further the trafficking of unlawful aliens within
23 the United States.
24 "(2) FIELD OFFICES.—The Secretary of Home-
25 land Security, after consulting with State and local

government officials, shall establish such field offices as may be necessary to carry out this subsection.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums are necessary for the fiscal years 2007 through 2011 to carry out this subsection.

"(g) DEFINITIONS.—In this section:

"(1) CROSSED THE BORDER INTO THE UNITED STATES.—An alien is deemed to have crossed the border into the United States regardless of whether the alien is free from official restraint.

"(2) LAWFUL AUTHORITY.—The term 'lawful authority' means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or accompanying regulations. The term does not include any such authority secured by fraud or otherwise obtained in violation of law or authority sought, but not approved. No alien shall be deemed to have lawful authority to come to, enter, reside in, remain in, or be in the United States if such coming to, entry, residence, remaining, or presence was, is, or would be in violation of law.

"(3) PROCEEDS.—The term 'proceeds' includes any property or interest in property obtained or re-

tained as a consequence of an act or omission in violation of this section.

"(4) UNLAWFUL TRANSIT.—The term 'unlawful transit' means travel, movement, or temporary presence that violates the laws of any country in which the alien is present or any country from which the alien is traveling or moving.".

(2) CLERICAL AMENDMENT.—The table of contents is amended by striking the item relating to section 274 and inserting the following:

"Sec. 274. Alien smuggling and related offenses.".

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

(1) in paragraph (1)—

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

(B) in subparagraph (A), by inserting ", alien smuggling crime," after "such crime of violence";

(C) in subparagraph (D)(ii), by inserting ", alien smuggling crime," after "crime of violence"; and

(2) by adding at the end the following:

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

SEC. 206. ILLEGAL ENTRY.

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

"SEC. 275. ILLEGAL ENTRY.

"(a) IN GENERAL.—

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

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

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

"(C) knowingly enters or crosses the border to the United States by means of a knowingly false or misleading representation or the knowing concealment of a material fact (includ-

ing such representation or concealment in the context of arrival, reporting, entry, or clearance requirements of the customs laws, immigration laws, agriculture laws, or shipping laws).

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

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

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

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

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

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

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

"(A) alleged in the indictment or information; and

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

"(4) DURATION OF OFFENSE.—An offense under this subsection continues until the alien is discovered within the United States by an immigration officer.

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

"(b) IMPROPER TIME OR PLACE; CIVIL PENALTIES.—

"(1) IN GENERAL.—Any alien who is apprehended while entering, attempting to enter, or knowingly crossing or attempting to cross the border to the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

"(A) not less than $50 or more than $250 for each such entry, crossing, attempted entry, or attempted crossing; or

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

"(2) CROSSED THE BORDER DEFINED.—In this section, an alien is deemed to have crossed the border if the act was voluntary, regardless of whether the alien was under observation at the time of the crossing.".

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

"Sec. 275. Illegal entry.".

SEC. 207. ILLEGAL REENTRY.

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

"SEC. 276. REENTRY OF REMOVED ALIEN.

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

"(b) REENTRY OF CRIMINAL OFFENDERS.—Notwithstanding the penalty provided in subsection (a), if an alien described in that subsection—

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

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

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

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

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

"(c) REENTRY AFTER REPEATED REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed 3 or more times and thereafter enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both.

"(d) PROOF OF PRIOR CONVICTIONS.—The prior convictions described in subsection (b) are elements of the crimes described in that subsection, and the penalties in

that subsection shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

"(1) alleged in the indictment or information; and

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

"(e) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to a violation of this section that—

"(1) prior to the alleged violation, the alien had sought and received the express consent of the Secretary of Homeland Security to reapply for admission into the United States; or

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

"(A) was not required to obtain such advance consent under the Immigration and Nationality Act or any prior Act; and

"(B) had complied with all other laws and regulations governing the alien's admission into the United States.

"(f) LIMITATION ON COLLATERAL ATTACK ON UNDERLYING REMOVAL ORDER.—In a criminal proceeding under this section, an alien may not challenge the validity of any prior removal order concerning the alien unless the

alien demonstrates by clear and convincing evidence that—

"(1) the alien exhausted all administrative remedies that may have been available to seek relief against the order;

"(2) the removal proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

"(3) the entry of the order was fundamentally unfair.

"(g) REENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has expressly consented to the alien's reentry. Such alien shall be subject to such other penalties relating to the reentry of removed aliens as may be available under this section or any other provision of law.

1 "(h) LIMITATION.—It is not aiding and abetting a
2 violation of this section for an individual to provide an
3 alien with emergency humanitarian assistance, including
4 emergency medical care and food, or to transport the alien
5 to a location where such assistance can be rendered with-
6 out compensation or the expectation of compensation.

7 "(i) DEFINITIONS.—In this section:

8 "(1) CROSSES THE BORDER.—The term
9 'crosses the border' applies if an alien acts volun-
10 tarily, regardless of whether the alien was under ob-
11 servation at the time of the crossing.

12 "(2) FELONY.—Term 'felony' means any crimi-
13 nal offense punishable by a term of imprisonment of
14 more than 1 year under the laws of the United
15 States, any State, or a foreign government.

16 "(3) MISDEMEANOR.—The term 'misdemeanor'
17 means any criminal offense punishable by a term of
18 imprisonment of not more than 1 year under the ap-
19 plicable laws of the United States, any State, or a
20 foreign government.

21 "(4) REMOVAL.—The term 'removal' includes
22 any denial of admission, exclusion, deportation, or
23 removal, or any agreement by which an alien stipu-
24 lates or agrees to exclusion, deportation, or removal.

"(5) STATE.—The term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

SEC. 208. REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD OFFENSES.

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

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

"CHAPTER 75—PASSPORT, VISA, AND 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.
"1555. Exception for refugees and asylees.

"§ 1541. Trafficking in passports

"(a) MULTIPLE PASSPORTS.—Any person who, during any 3-year period, knowingly—

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

"(2) forges, counterfeits, alters, or falsely makes 10 or more passports;

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

"(4) completes, mails, prepares, presents, signs, or submits 10 or more applications for a United States passport (including any supporting documentation), knowing the applications to contain any false statement or representation,

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

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

"§ 1542. False statement in an application for a passport

"Any person who knowingly—

"(1) makes any false statement or representation in an application for a United States passport (including any supporting documentation);

"(2) completes, mails, prepares, presents, signs, or submits an application for a United States passport (including any supporting documentation) knowing the application to contain any false statement or representation; or

"(3) causes or attempts to cause the production of a passport by means of any fraud or false application for a United States passport (including any supporting documentation), if such production occurs or would occur at a facility authorized by the Secretary of State for the production of passports,

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

"§ 1543. Forgery and unlawful production of a passport

"(a) FORGERY.—Any person who—

"(1) knowingly forges, counterfeits, alters, or falsely makes any passport; or

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

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

"(b) UNLAWFUL PRODUCTION.—Any person who knowingly and without lawful authority—

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

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

"(3) transfers or furnishes a passport to a person for use when such person is not the person for whom the passport was issued or designed,

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

"§ 1544. Misuse of a passport

"(a) IN GENERAL.—Any person who—

"(1) knowingly uses any passport issued or designed for the use of another;

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

"(3) knowingly secures, possesses, uses, receives, buys, sells, or distributes any passport knowing it to be forged, counterfeited, altered, falsely

made, procured by fraud, or produced or issued without lawful authority; or

"(4) knowingly violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States,

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

"(b) ENTRY; FRAUD.—Any person who knowingly uses any passport, knowing the passport to be forged, counterfeited, altered, falsely made, procured by fraud, produced or issued without lawful authority, or issued or designed for the use of another—

"(1) to enter or to attempt to enter the United States; or

"(2) to defraud the United States, a State, or a political subdivision of a State,

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

"§ 1545. Schemes to defraud aliens

"(a) IN GENERAL.—Any person who knowingly executes a scheme or artifice, in connection with any matter that is authorized by or arises under Federal immigration laws, or any matter the offender claims or represents is authorized by or arises under Federal immigration laws—

"(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, or
25 produced or issued without lawful authority;

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

"(6) transfers or furnishes an immigration document to a person without lawful authority for use if such person is not the person for whom the immigration document was issued or designed,

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

"(b) MULTIPLE VIOLATIONS.—Any person who, during any 3-year period, knowingly—

"(1) and without lawful authority produces, issues, or transfers 10 or more immigration documents;

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

"(3) secures, possesses, uses, buys, sells, or distributes 10 or more immigration documents, knowing the immigration documents to be forged, counterfeited, altered, stolen, falsely made, procured by fraud, or produced or issued without lawful authority; or

"(4) completes, mails, prepares, presents, signs, or submits 10 or more immigration documents

knowing the documents to contain any materially false statement or representation,

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

"(c) IMMIGRATION DOCUMENT MATERIALS.—Any person who knowingly and without lawful authority produces, counterfeits, secures, possesses, or uses any official paper, seal, hologram, image, text, symbol, stamp, engraving, plate, or other material, used to make an immigration document shall be fined under this title, imprisoned not more than 20 years, or both.

"§ 1547. Marriage fraud

"(a) EVASION OR MISREPRESENTATION.—Any person who—

"(1) knowingly enters into a marriage for the purpose of evading any provision of the immigration laws; or

"(2) knowingly misrepresents the existence or circumstances of a marriage—

"(A) in an application or document authorized by the immigration laws; or

"(B) during any immigration proceeding conducted by an administrative adjudicator (including an immigration officer or examiner, a

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

"(b) MULTIPLE MARRIAGES.—Any person who—

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

"(2) knowingly arranges, supports, or facilitates 2 or more marriages designed or intended to evade any immigration law,

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

"(c) COMMERCIAL ENTERPRISE.—Any person who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be fined under this title, imprisoned for not more than 10 years, or both.

"(d) DURATION OF OFFENSE.—

"(1) IN GENERAL.—An offense under subsection (a) or (b) continues until the fraudulent nature of the marriage or marriages is discovered by an immigration officer.

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

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

"§ 1548. Attempts and conspiracies

''Any person who attempts or conspires to violate any section of this chapter shall be punished in the same manner as a person who completed a violation of that section.

"§ 1549. Alternative penalties for certain offenses

''(a) TERRORISM.—Any person who violates any section of this chapter—

''(1) knowing that such violation will facilitate an act of international terrorism or domestic terrorism (as those terms are defined in section 2331); or

''(2) with the intent to facilitate an act of international terrorism or domestic terrorism,

shall be fined under this title, imprisoned not more than 25 years, or both.

''(b) OFFENSE AGAINST GOVERNMENT.—Any person who violates any section of this chapter—

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

"(2) with the intent to facilitate the commission of any offense against the United States (other than an offense in this chapter) or against any State, which offense is punishable by imprisonment for more than 1 year,

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

"§ 1550. Seizure and forfeiture

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

"(b) APPLICABLE LAW.—Seizures and forfeitures under this section shall be governed by the provisions of chapter 46 relating to civil forfeitures, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in section 981(d) shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security, the Secretary of State, or the Attorney General.

"§ 1551. Additional jurisdiction

"(a) IN GENERAL.—Any person who commits an offense 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.

1101(a)(22))) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of such Act); or

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

"§ 1552. Additional venue

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

"(1) any district in which the false statement or representation was made;

"(2) any district in which the passport application was prepared, submitted, mailed, received, processed, or adjudicated; or

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

"(b) SAVINGS CLAUSE.—Nothing in this section limits the venue otherwise available under sections 3237 and 3238.

"§ 1553. Definitions

"As used in this chapter:

"(1) The term 'falsely make' means to prepare or complete an immigration document with knowledge or in reckless disregard of the fact that the document—

"(A) contains a statement or representation that is false, fictitious, or fraudulent;

"(B) has no basis in fact or law; or

"(C) otherwise fails to state a fact which is material to the purpose for which the document was created, designed, or submitted.

"(2) The term a 'false statement or representation' includes a personation or an omission.

"(3) The term 'felony' means any criminal offense punishable by a term of imprisonment of more than 1 year under the laws of the United States, any State, or a foreign government.

"(4) The term 'immigration document'—

"(A) means—

"(i) any passport or visa; or

"(ii) any application, petition, affidavit, declaration, attestation, form, identification card, alien registration document, employment authorization document, border crossing card, certificate, permit, order, license, stamp, authorization, grant of authority, or other evidentiary document, arising under or authorized by the immigration laws of the United States; and

"(B) includes any document, photograph, or other piece of evidence attached to or submitted in support of an immigration document.

"(5) The term 'immigration laws' includes—

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

"(B) the laws relating to the issuance and use of passports; and

"(C) the regulations prescribed under the authority of any law described in paragraphs (1) and (2).

"(6) The term 'immigration proceeding' includes an adjudication, interview, hearing, or review.

"(7) A person does not exercise 'lawful authority' if the person abuses or improperly exercises lawful authority the person otherwise holds.

"(8) The term 'passport' means a travel document attesting to the identity and nationality of the bearer that is issued under the authority of the Secretary of State, a foreign government, or an international organization; or any instrument purporting to be the same.

"(9) The term 'produce' means to make, prepare, assemble, issue, print, authenticate, or alter.

"(10) The term 'State' means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

"§ 1554. Authorized law enforcement activities

"Nothing in this chapter shall prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (84 Stat. 933).

"§ 1555. Exception for refugees, asylees, and other vulnerable persons

"(a) IN GENERAL.—If a person believed to have violated section 1542, 1544, 1546, or 1548 while attempting to enter the United States, without delay, indicates an intention to apply for asylum under section 208 or 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1158 and 1231), or for relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in accordance with section 208.17 of title 8, Code of Federal Regulations), or under section 101(a)(15)(T), 101(a)(15)(U), 101(a)(27)(J), 101(a)(51), 216(c)(4)(C), 240A(b)(2), or 244(a)(3) (as in

effect prior to March 31, 1997) of such Act, or a credible fear of persecution or torture—

"(1) the person shall be referred to an appropriate Federal immigration official to review such claim and make a determination if such claim is warranted;

"(2) if the Federal immigration official determines that the person qualifies for the claimed relief, the person shall not be considered to have violated any such section; and

"(3) if the Federal immigration official determines that the person does not qualify for the claimed relief, the person shall be referred to an appropriate Federal official for prosecution under this chapter.

"(b) SAVINGS PROVISION.—Nothing in this section shall be construed to diminish, increase, or alter the obligations of refugees or the United States under article 31(1) of the Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).".

(2) CLERICAL AMENDMENT.—The table of chapters in title 18, United States Code, is amended

by striking the item relating to chapter 75 and inserting the following:

"75. Passport, visa, and immigration fraud ..... 1541".

(b) PROTECTION FOR LEGITIMATE REFUGEES AND ASYLUM SEEKERS.—Section 208 (8 U.S.C. 1158) is amended by adding at the end the following:

"(e) PROTECTION FOR LEGITIMATE REFUGEES AND ASYLUM SEEKERS.—The Attorney General, in consultation with the Secretary of Homeland Security, shall develop binding prosecution guidelines for federal prosecutors to ensure that any prosecution of an alien seeking entry into the United States by fraud is consistent with the written terms and limitations of Article 31(1) of the Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).".

SEC. 209. INADMISSIBILITY AND REMOVAL FOR PASSPORT AND IMMIGRATION FRAUD OFFENSES.

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

(1) in subclause (I), by striking ", or" at the end and inserting a semicolon;

(2) in subclause (II), by striking the comma at the end and inserting "; or"; and

(3) by inserting after subclause (II) the following:

"(III) a violation of (or a conspiracy or attempt to violate) any provision of chapter 75 of title 18, United States Code,".

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

"(iii) of a violation of any provision of chapter 75 of title 18, United States Code,".

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

SEC. 210. INCARCERATION OF CRIMINAL ALIENS.

(a) INSTITUTIONAL REMOVAL PROGRAM.—

(1) CONTINUATION.—The Secretary shall continue to operate the Institutional Removal Program (referred to in this section as the "Program") or shall develop and implement another program to—

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

(B) ensure that such aliens are not released into the community; and

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

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

(b) AUTHORIZATION FOR DETENTION AFTER COMPLETION OF STATE OR LOCAL PRISON SENTENCE.—Law enforcement officers of a State or political subdivision of a State may—

(1) hold an illegal alien for a period not to exceed 14 days after the completion of the alien's State prison sentence to effectuate the transfer of the alien to Federal custody if the alien is removable or not lawfully present in the United States; or

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

(c) TECHNOLOGY USAGE.—Technology, such as videoconferencing, shall be used to the maximum extent practicable to make the Program available in remote locations. Mobile access to Federal databases of aliens, such as IDENT, and live scan technology shall be used to the maximum extent practicable to make these resources

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

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

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

SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.

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

(1) in subsection (a)—

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

"(1) INSTEAD OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection instead of being subject to proceedings under section 240.";

(B) by striking paragraph (3);

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

(D) by adding after paragraph (1) the following:

"(2) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Attorney General may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection after the initiation of removal proceedings under section 240 and before the conclusion of such proceedings before an immigration judge.";

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

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

"(A) INSTEAD OF REMOVAL.—Subject to subparagraph (C), permission to voluntarily depart under paragraph (1) shall not be valid for any period in excess of 120 days. The Secretary may require an alien permitted to voluntarily depart under paragraph (1) to post a voluntary departure bond, to be surrendered upon proof

that the alien has departed the United States within the time specified.'';

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

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

''(B) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to voluntarily depart under paragraph (2) shall not be valid for any period in excess of 60 days, and may be granted only after a finding that the alien has the means to depart the United States and intends to do so. An alien permitted to voluntarily depart under paragraph (2) shall post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive the requirement to post a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will pose a serious financial hardship and the alien has presented credible

evidence that such a bond is unnecessary to guarantee timely departure.'';

(iv) in subparagraph (C), as redesignated, by striking ''subparagraphs (C) and(D)(ii)'' and inserting ''subparagraphs (D) and (E)(ii)'';

(v) in subparagraph (D), as redesignated, by striking ''subparagraph (B)'' each place that term appears and inserting ''subparagraph (C)''; and

(vi) in subparagraph (E), as redesignated, by striking ''subparagraph (B)'' each place that term appears and inserting ''subparagraph (C)''; and

(F) in paragraph (4), by striking ''paragraph (1)'' and inserting ''paragraphs (1) and (2)'';

(2) in subsection (b)(2), by striking ''a period exceeding 60 days'' and inserting ''any period in excess of 45 days'';

(3) by amending subsection (c) to read as follows:

''(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

''(1) VOLUNTARY DEPARTURE AGREEMENT.—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-

lowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), the alien is—

"(i) ineligible for the benefits of the agreement;

"(ii) subject to the penalties described in subsection (d); and

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

"(B) EFFECT OF FILING TIMELY APPEAL.—If, after agreeing to voluntary departure, the alien files a timely appeal of the immigration judge's decision granting voluntary departure, the alien may pursue the appeal instead of the voluntary departure agreement. Such appeal operates to void the alien's voluntary departure agreement and the consequences of such agreement, but precludes the alien from another grant of voluntary departure while the alien remains in the United States.

"(5) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary in writing in the exercise of the Secretary's

discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary.'';

(4) by amending subsection (d) to read as follows:

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

''(1) CIVIL PENALTY.—The alien shall be liable for a civil penalty of $3,000. The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record. If the Secretary thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law.

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

"(2) INELIGIBILITY FOR RELIEF.—The alien shall be ineligible during the time the alien remains in the United States and for a period of 10 years after the alien's departure for any further relief under this section and sections 240A, 245, 248, and 249. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection.

"(3) REOPENING.—The alien shall be ineligible to reopen the final order of removal that took effect upon the alien's failure to depart, or upon the alien's other violations of the conditions for voluntary departure, during the period described in paragraph (2). This paragraph does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

"(A) presents material evidence of changed country conditions arising after the date of the order granting voluntary departure in the country to which the alien would be removed; and

"(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection."; and

(5) by amending subsection (e) to read as follows:

"(e) ELIGIBILITY.—

"(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to voluntarily depart under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

"(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsections (a)(2) or (b) of this section for any class or classes of aliens."; and

(6) in subsection (f), by adding at the end the following: "Notwithstanding section 242(a)(2)(D) of this Act, sections 1361, 1651, and 2241 of title 28, United States Code, any other habeas corpus provision, and any other provision of law (statutory or nonstatutory), no court shall have jurisdiction to af-

fect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.''.

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

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the enactment of this Act.

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

SEC. 212. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY.

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

(1) in clause (i), by striking ''seeks admission within 5 years of the date of such removal (or within 20 years'' and inserting ''seeks admission not later than 5 years after the date of the alien's removal (or not later than 20 years after the alien's removal''; and

(2) in clause (ii), by striking ''seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of'' and inserting ''seeks admission not later than 10 years after the date of the alien's departure or removal (or not later than 20 years after''.

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

(1) in subsection (a), by striking ''Commissioner'' and inserting ''Secretary of Homeland Security''; and

(2) by adding at the end the following:

''(c) INELIGIBILITY FOR RELIEF.—

''(1) IN GENERAL.—Unless a timely motion to reopen is granted under section 240(c)(6), an alien described in subsection (a) shall be ineligible for any discretionary relief from removal (including cancellation of removal and adjustment of status) during the time the alien remains in the United States and for

a period of 10 years after the alien's departure from the United States.

"(2) SAVINGS PROVISION.—Nothing in paragraph (1) shall preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

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

"(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection.".

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

SEC. 213. PROHIBITION OF THE SALE OF FIREARMS TO, OR THE POSSESSION OF FIREARMS BY CERTAIN ALIENS.

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

(1) in subsection (d)(5)—

(A) in subparagraph (A), by striking "or" at the end;

(B) in subparagraph (B), by striking "(y)(2)" and all that follows and inserting "(y), is in a nonimmigrant classification; or"; and

(C) by adding at the end the following:

"(C) has been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5));";

(2) in subsection (g)(5)—

(A) in subparagraph (A), by striking "or" at the end;

(B) in subparagraph (B), by striking "(y)(2)" and all that follows and inserting "(y), is in a nonimmigrant classification; or"; and

(C) by adding at the end the following:

"(C) has been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5));"; and

(3) in subsection (y)—

(A) in the header, by striking "ADMITTED UNDER NONIMMIGRANT VISAS" and inserting "IN A NONIMMIGRANT CLASSIFICATION";

(B) in paragraph (1), by amending subparagraph (B) to read as follows:

"(B) the term 'nonimmigrant classification' includes all classes of nonimmigrant aliens described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), or otherwise described in the immigration laws (as defined in section 101(a)(17) of such Act).";

(C) in paragraph (2), by striking "has been lawfully admitted to the United States under a nonimmigrant visa" and inserting "is in a nonimmigrant classification"; and

(D) in paragraph (3)(A), by striking "Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5)" and inserting "Any alien in a nonimmigrant classification may receive a waiver from the requirements of subsection (g)(5)(B)".

SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, NATURALIZATION, AND PEONAGE OFFENSES.

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

"§ 3291. Immigration, naturalization, and peonage offenses

''No person shall be prosecuted, tried, or punished for a violation of any section of chapters 69 (relating to nationality and citizenship offenses), 75 (relating to passport, visa, and immigration offenses), or 77 (relating to peonage, slavery, and trafficking in persons), for an attempt or conspiracy to violate any such section, for a violation of any criminal provision under section 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and 1328), or for an attempt or conspiracy to violate any such section, unless the indictment is returned or the information filed not later than 10 years after the commission of the offense.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by striking the item relating to section 3291 and inserting the following:

''3291. Immigration, naturalization, and peonage offenses.''.

SEC. 215. DIPLOMATIC SECURITY SERVICE.

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

''(1) conduct investigations concerning—

''(A) illegal passport or visa issuance or use;

"(B) identity theft or document fraud affecting or relating to the programs, functions, and authorities of the Department of State;

"(C) violations of chapter 77 of title 18, United States Code; and

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

SEC. 216. FIELD AGENT ALLOCATION AND BACKGROUND CHECKS.

(a) IN GENERAL.—Section 103 (8 U.S.C. 1103) is amended—

(1) by amending subsection (f) to read as follows:

"(f) MINIMUM NUMBER OF AGENTS IN STATES.—

"(1) IN GENERAL.—The Secretary of Homeland Security shall allocate to each State—

"(A) not fewer than 40 full-time active duty agents of the Bureau of Immigration and Customs Enforcement to—

"(i) investigate immigration violations; and

"(ii) ensure the departure of all removable aliens; and

"(B) not fewer than 15 full-time active duty agents of the Bureau of Citizenship and Immigration Services to carry out immigration and naturalization adjudication functions.

"(2) WAIVER.—The Secretary may waive the application of paragraph (1) for any State with a population of less than 2,000,000, as most recently reported by the Bureau of the Census"; and

(2) by adding at the end the following:

"(i) Notwithstanding any other provision of law, appropriate background and security checks, as determined by the Secretary of Homeland Security, shall be completed and assessed and any suspected or alleged fraud relating to the granting of any status (including the granting of adjustment of status), relief, protection from removal, or other benefit under this Act shall be investigated and resolved before the Secretary or the Attorney General may—

"(1) grant or order the grant of adjustment of status of an alien to that of an alien lawfully admitted for permanent residence;

"(2) grant or order the grant of any other status, relief, protection from removal, or other benefit under the immigration laws; or

"(3) issue any documentation evidencing or related to such grant by the Secretary, the Attorney General, or any court.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall take effect on the date that is 90 days after the date of the enactment of this Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Director of the Federal Bureau of Investigations $3,125,000 for each of fiscal years 2007 through 2011 for improving the speed and accuracy of background and security checks conducted by the Federal Bureau of Investigations on behalf of the Bureau of Citizenship and Immigrations Services.

(d) REPORT ON BACKGROUND AND SECURITY CHECKS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigations shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the background and security checks conducted by the Federal Bureau of Investigations on behalf of the Bureau of Citizenship and Immigrations Services

(2) CONTENT.—The report required under paragraph (1) shall include—

(A) a description of the background and security check program;

(B) a statistical breakdown of the background and security check delays associated with different types of immigration applications;

(C) a statistical breakdown of the background and security check delays by applicant country of origin; and

(D) the steps the Federal Bureau of Investigations is taking to expedite background and security checks that have been pending for more than 60 days.

SEC. 217. CONSTRUCTION.

(a) IN GENERAL.—Chapter 4 of title III (8 U.S.C. 1501 et seq.) is amended by adding at the end the following:

"SEC. 362. CONSTRUCTION.

''(a) IN GENERAL.—Nothing in this Act or in any other provision of law shall be construed to require the Secretary of Homeland Security, the Attorney General, the Secretary of State, the Secretary of Labor, or any other authorized head of any Federal agency to grant any application, approve any petition, or grant or continue any

status or benefit under the immigration laws by, to, or on behalf of—

"(1) any alien described in subparagraph (A)(i), (A)(iii), (B), or (F) of section 212(a)(3) or subparagraph (A)(i), (A)(iii), or (B) of section 237(a)(4);

"(2) any alien with respect to whom a criminal or other investigation or case is pending that is material to the alien's inadmissibility, deportability, or eligibility for the status or benefit sought; or

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

"(b) DENIAL; WITHHOLDING.—An official described in subsection (a) may deny or withhold (with respect to an alien described in subsection (a)(1)) or withhold pending resolution of the investigation, case, or law enforcement checks (with respect to an alien described in paragraph (2) or (3) of subsection (a)) any such application, petition, status, or benefit on such basis.".

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

"Sec. 362. Construction.".

SEC. 218. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.

(a) REIMBURSEMENT FOR COSTS ASSOCIATED WITH PROCESSING CRIMINAL ILLEGAL ALIENS.—The Secretary

shall reimburse States and units of local government for costs associated with processing undocumented criminal aliens through the criminal justice system, including—

(1) indigent defense;

(2) criminal prosecution;

(3) autopsies;

(4) translators and interpreters; and

(5) courts costs.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) PROCESSING CRIMINAL ILLEGAL ALIENS.—There are authorized to be appropriated $400,000,000 for each of the fiscal years 2007 through 2012 to carry out subsection (a).

(2) COMPENSATION UPON REQUEST.—Section 241(i)(5) (8 U.S.C. 1231(i)) is amended to read as follows:

''(5) There are authorized to be appropriated to carry this subsection—

''(A) such sums as may be necessary for fiscal year 2007;

''(B) $750,000,000 for fiscal year 2008;

''(C) $850,000,000 for fiscal year 2009; and

''(D) $950,000,000 for each of the fiscal years 2010 through 2012.''.

(c) TECHNICAL AMENDMENT.—Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1365) is amended by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security''.

SEC. 219. TRANSPORTATION AND PROCESSING OF ILLEGAL ALIENS APPREHENDED BY STATE AND LOCAL LAW ENFORCEMENT OFFICERS.

(a) IN GENERAL.—The Secretary shall provide sufficient transportation and officers to take illegal aliens apprehended by State and local law enforcement officers into custody for processing at a detention facility operated by the Department.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2007 through 2011 to carry out this section.

SEC. 220. REDUCING ILLEGAL IMMIGRATION AND ALIEN SMUGGLING ON TRIBAL LANDS.

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

(b) USE OF FUNDS.—Grants awarded under subsection (a) may be used for—

(1) law enforcement activities;

(2) health care services;

(3) environmental restoration; and

(4) the preservation of cultural resources.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that—

(1) describes the level of access of Border Patrol agents on tribal lands;

(2) describes the extent to which enforcement of immigration laws may be improved by enhanced access to tribal lands;

(3) contains a strategy for improving such access through cooperation with tribal authorities; and

(4) identifies grants provided by the Department for Indian tribes, either directly or through State or local grants, relating to border security expenses.

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

SEC. 221. ALTERNATIVES TO DETENTION.

The Secretary shall conduct a study of—

(1) the effectiveness of alternatives to detention, including electronic monitoring devices and intensive supervision programs, in ensuring alien appearance at court and compliance with removal orders;

(2) the effectiveness of the Intensive Supervision Appearance Program and the costs and benefits of expanding that program to all States; and

(3) other alternatives to detention, including—

(A) release on an order of recognizance;

(B) appearance bonds; and

(C) electronic monitoring devices.

SEC. 222. CONFORMING AMENDMENT.

Section 101(a)(43)(P) (8 U.S.C. 1101(a)(43)(P)) is amended—

(1) by striking ''(i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii)'' and inserting ''which is described in chapter 75 of title 18, United States Code, and''; and

(2) by inserting the following: ''that is not described in section 1548 of such title (relating to increased penalties), and'' after ''first offense''.

SEC. 223. REPORTING REQUIREMENTS.

(a) CLARIFYING ADDRESS REPORTING REQUIREMENTS.—Section 265 (8 U.S.C. 1305) is amended—

(1) in subsection (a)—

(A) by striking ''notify the Attorney General in writing'' and inserting ''submit written or electronic notification to the Secretary of Homeland Security, in a manner approved by the Secretary,'';

(B) by striking ''the Attorney General may require by regulation'' and inserting ''the Secretary may require''; and

(C) by adding at the end the following: ''If the alien is involved in proceedings before an immigration judge or in an administrative appeal of such proceedings, the alien shall submit to the Attorney General the alien's current address and a telephone number, if any, at which the alien may be contacted.'';

(2) in subsection (b), by striking ''Attorney General'' each place such term appears and inserting ''Secretary of Homeland Security'';

(3) in subsection (c), by striking ''given to such parent'' and inserting ''given by such parent''; and

(4) by adding at the end the following:

''(d) ADDRESS TO BE PROVIDED.—

''(1) IN GENERAL.—Except as otherwise provided by the Secretary under paragraph (2), an address provided by an alien under this section shall be the alien's current residential mailing address, and shall not be a post office box or other non-residential mailing address or the address of an attorney, representative, labor organization, or employer.

''(2) SPECIFIC REQUIREMENTS.—The Secretary may provide specific requirements with respect to—

''(A) designated classes of aliens and special circumstances, including aliens who are employed at a remote location; and

''(B) the reporting of address information by aliens who are incarcerated in a Federal, State, or local correctional facility.

''(3) DETENTION.—An alien who is being detained by the Secretary under this Act is not required to report the alien's current address under this section during the time the alien remains in detention, but shall be required to notify the Secretary

of the alien's address under this section at the time of the alien's release from detention.

"(e) USE OF MOST RECENT ADDRESS PROVIDED BY THE ALIEN.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may provide for the appropriate coordination and cross referencing of address information provided by an alien under this section with other information relating to the alien's address under other Federal programs, including—

"(A) any information pertaining to the alien, which is submitted in any application, petition, or motion filed under this Act with the Secretary of Homeland Security, the Secretary of State, or the Secretary of Labor;

"(B) any information available to the Attorney General with respect to an alien in a proceeding before an immigration judge or an administrative appeal or judicial review of such proceeding;

"(C) any information collected with respect to nonimmigrant foreign students or exchange program participants under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372); and

"(D) any information collected from State or local correctional agencies pursuant to the State Criminal Alien Assistance Program.

"(2) RELIANCE.—The Secretary may rely on the most recent address provided by the alien under this section or section 264 to send to the alien any notice, form, document, or other matter pertaining to Federal immigration laws, including service of a notice to appear. The Attorney General and the Secretary may rely on the most recent address provided by the alien under section 239(a)(1)(F) to contact the alien about pending removal proceedings.

"(3) OBLIGATION.—The alien's provision of an address for any other purpose under the Federal immigration laws does not excuse the alien's obligation to submit timely notice of the alien's address to the Secretary under this section (or to the Attorney General under section 239(a)(1)(F) with respect to an alien in a proceeding before an immigration judge or an administrative appeal of such proceeding).".

(b) CONFORMING CHANGES WITH RESPECT TO REGISTRATION REQUIREMENTS.—Chapter 7 of title II (8 U.S.C. 1301 et seq.) is amended—

(1) in section 262(c), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security'';

(2) in section 263(a), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''; and

(3) in section 264—

(A) in subsections (a), (b), (c), and (d), by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security''; and

(B) in subsection (f)—

(i) by striking ''Attorney General is authorized'' and inserting ''Secretary of Homeland Security and Attorney General are authorized''; and

(ii) by striking ''Attorney General or the Service'' and inserting ''Secretary or the Attorney General''.

(c) PENALTIES.—Section 266 (8 U.S.C. 1306) is amended—

(1) by amending subsection (b) to read as follows:

''(b) FAILURE TO PROVIDE NOTICE OF ALIEN'S CURRENT ADDRESS.—

1 "(1) CRIMINAL PENALTIES.—Any alien or any
2 parent or legal guardian in the United States of any
3 minor alien who fails to notify the Secretary of
4 Homeland Security of the alien's current address in
5 accordance with section 265 shall be fined under
6 title 18, United States Code, imprisoned for not
7 more than 6 months, or both.
8 "(2) EFFECT ON IMMIGRATION STATUS.—Any
9 alien who violates section 265 (regardless of whether
10 the alien is punished under paragraph (1)) and does
11 not establish to the satisfaction of the Secretary that
12 such failure was reasonably excusable or was not
13 willful shall be taken into custody in connection with
14 removal of the alien. If the alien has not been in-
15 spected or admitted, or if the alien has failed on
16 more than 1 occasion to submit notice of the alien's
17 current address as required under section 265, the
18 alien may be presumed to be a flight risk. The Sec-
19 retary or the Attorney General, in considering any
20 form of relief from removal which may be granted
21 in the discretion of the Secretary or the Attorney
22 General, may take into consideration the alien's fail-
23 ure to comply with section 265 as a separate nega-
24 tive factor. If the alien failed to comply with the re-
25 quirements of section 265 after becoming subject to

a final order of removal, deportation, or exclusion, the alien's failure shall be considered as a strongly negative factor with respect to any discretionary motion for reopening or reconsideration filed by the alien.";

(2) in subsection (c), by inserting "or a notice of current address" before "containing statements"; and

(3) in subsections (c) and (d), by striking "Attorney General" each place it appears and inserting "Secretary".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to proceedings initiated on or after the date of the enactment of this Act.

(2) CONFORMING AND TECHNICAL AMENDMENTS.—The amendments made by paragraphs (1)(A), (1)(B), (2) and (3) of subsection (a) are effective as if enacted on March 1, 2003.

SEC. 224. STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS.

(a) IN GENERAL.—Section 287(g) (8 U.S.C. 1357(g)) is amended—

(1) in paragraph (2), by adding at the end the following: ''If such training is provided by a State or political subdivision of a State to an officer or employee of such State or political subdivision of a State, the cost of such training (including applicable overtime costs) shall be reimbursed by the Secretary of Homeland Security.''; and

(2) in paragraph (4), by adding at the end the following: ''The cost of any equipment required to be purchased under such written agreement and necessary to perform the functions under this subsection shall be reimbursed by the Secretary of Homeland Security.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section and the amendments made by this section.

SEC. 225. REMOVAL OF DRUNK DRIVERS.

(a) IN GENERAL.—Section 101(a)(43)(F) (8 U.S.C. 1101(a)(43)(F)) is amended by inserting '', including a third drunk driving conviction, regardless of the States in which the convictions occurred or whether the offenses are classified as misdemeanors or felonies under State law,'' after ''offense)''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall—

(1) take effect on the date of the enactment of this Act; and

(2) apply to convictions entered on or after such date.

SEC. 226. MEDICAL SERVICES IN UNDERSERVED AREAS.

Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. 1182 note) is amended by striking ''and before June 1, 2006.''.

SEC. 227. EXPEDITED REMOVAL.

(a) IN GENERAL.—Section 238 (8 U.S.C. 1228) is amended—

(1) by striking the section heading and inserting ''EXPEDITED REMOVAL OF CRIMINAL ALIENS'';

(2) in subsection (a), by striking the subsection heading and inserting: ''EXPEDITED REMOVAL FROM CORRECTIONAL FACILITIES.—'';

(3) in subsection (b), by striking the subsection heading and inserting: ''REMOVAL OF CRIMINAL ALIENS.—'';

(4) in subsection (b), by striking paragraphs (1) and (2) and inserting the following:

''(1) IN GENERAL.—The Secretary of Homeland Security may, in the case of an alien described in

paragraph (2), determine the deportability of such alien and issue an order of removal pursuant to the procedures set forth in this subsection or section 240.

"(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

"(A) has not been lawfully admitted to the United States for permanent residence; and

"(B) was convicted of any criminal offense described in subparagraph (A)(iii), (C), or (D) of section 237(a)(2).";

(5) in the subsection (c) that relates to presumption of deportability, by striking "convicted of an aggravated felony" and inserting "described in subsection (b)(2)";

(6) by redesignating the subsection (c) that relates to judicial removal as subsection (d); and

(7) in subsection (d)(5) (as so redesignated), by striking ", who is deportable under this Act,".

(b) APPLICATION TO CERTAIN ALIENS.—

(1) IN GENERAL.—Section 235(b)(1)(A)(iii) (8 U.S.C. 1225(b)(1)(A)(iii)) is amended—

(A) in subclause (I), by striking "Attorney General" and inserting "Secretary of Homeland Security" each place it appears; and

(B) by adding at the end the following new subclause:

"(III) EXCEPTION.—Notwithstanding subclauses (I) and (II), the Secretary of Homeland Security shall apply clauses (i) and (ii) of this subparagraph to any alien (other than an alien described in subparagraph (F)) who is not a national of a country contiguous to the United States, who has not been admitted or paroled into the United States, and who is apprehended within 100 miles of an international land border of the United States and within 14 days of entry.".

(2) EXCEPTIONS.—Section 235(b)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(F)) is amended—

(A) by striking "and who arrives by aircraft at a port of entry" and inserting "and—"; and

(B) by adding at the end the following:

"(i) who arrives by aircraft at a port of entry; or

"(ii) who is present in the United States and arrived in any manner at or between a port of entry.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to all aliens apprehended or convicted on or after such date.

SEC. 228. PROTECTING IMMIGRANTS FROM CONVICTED SEX OFFENDERS.

(a) IMMIGRANTS.—Section 204(a)(1) (8 U.S.C. 1154(a)(1)), is amended—

(1) in subparagraph (A)(i), by striking "Any" and inserting "Except as provided in clause (vii), any";

(2) in subparagraph (A), by inserting after clause (vi) the following:

"(vii) Clause (i) shall not apply to a citizen of the United States who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in clause (i) is filed."; and

(3) in subparagraph (B)(i)—

(A) by striking ''Any alien'' and inserting the following: ''(I) Except as provided in subclause (II), any alien''; and

(B) by adding at the end the following:

''(II) Subclause (I) shall not apply in the case of an alien admitted for permanent residence who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the alien lawfully admitted for permanent residence poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.''.

(b) NONIMMIGRANTS.—Section 101(a)(15)(K) (8 U.S.C. 1101(a)(15)(K)), is amended by inserting ''(other than a citizen described in section 204(a)(1)(A)(vii))'' after ''citizen of the United States'' each place that phrase appears.

SEC. 229. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS AND TRANSFER TO FEDERAL CUSTODY.

(a) IN GENERAL.—Title II (8 U.S.C. 1151 et. seq.) is amended by adding after section 240C the following new section:

"SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS AND TRANSFER OF ALIENS TO FEDERAL CUSTODY.

"(a) AUTHORITY.—Notwithstanding any other provision of law, law enforcement personnel of a State, or a political subdivision of a State, have the inherent authority of a sovereign entity to investigate, apprehend, arrest, detain, or transfer to Federal custody (including the transportation across State lines to detention centers) an alien for the purpose of assisting in the enforcement of the criminal provisions of the immigration laws of the United States in the normal course of carrying out the law enforcement duties of such personnel. This State authority has never been displaced or preempted by a Federal law.

"(b) CONSTRUCTION.—Nothing in this section shall be construed to require law enforcement personnel of a State or a political subdivision to assist in the enforcement of the immigration laws of the United States.

"(c) TRANSFER.—If the head of a law enforcement entity of a State (or, if appropriate, a political subdivision of the State) exercising authority with respect to the apprehension or arrest of an alien submits a request to the Secretary of Homeland Security that the alien be taken into Federal custody, the Secretary of Homeland Security—

"(1) shall—

"(A) deem the request to include the inquiry to verify immigration status described in section 642(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373(c)), and expeditiously inform the requesting entity whether such individual is an alien lawfully admitted to the United States or is otherwise lawfully present in the United States; and

"(B) if the individual is an alien who is not lawfully admitted to the United States or otherwise is not lawfully present in the United States—

"(i) take the illegal alien into the custody of the Federal Government not later than 72 hours after—

"(I) the conclusion of the State charging process or dismissal process; or

"(II) the illegal alien is apprehended, if no State charging or dismissal process is required; or

"(ii) request that the relevant State or local law enforcement agency temporarily

detain or transport the alien to a location for transfer to Federal custody; and

"(2) shall designate at least 1 Federal, State, or local prison or jail or a private contracted prison or detention facility within each State as the central facility for that State to transfer custody of aliens to the Department of Homeland Security.

"(d) REIMBURSEMENT.—

"(1) IN GENERAL.—The Secretary of Homeland Security shall reimburse a State, or a political subdivision of a State, for expenses, as verified by the Secretary, incurred by the State or political subdivision in the detention and transportation of an alien as described in subparagraphs (A) and (B) of subsection (c)(1).

"(2) COST COMPUTATION.—Compensation provided for costs incurred under subparagraphs (A) and (B) of subsection (c)(1) shall be—

"(A) the product of—

"(i) the average daily cost of incarceration of a prisoner in the relevant State, as determined by the chief executive officer of a State (or, as appropriate, a political subdivision of the State); multiplied by

"(ii) the number of days that the alien was in the custody of the State or political subdivision; plus

"(B) the cost of transporting the alien from the point of apprehension or arrest to the location of detention, and if the location of detention and of custody transfer are different, to the custody transfer point; plus

"(C) the cost of uncompensated emergency medical care provided to a detained alien during the period between the time of transmittal of the request described in subsection (c) and the time of transfer into Federal custody.

"(e) REQUIREMENT FOR APPROPRIATE SECURITY.—The Secretary of Homeland Security shall ensure that—

"(1) aliens incarcerated in a Federal facility pursuant to this section are held in facilities which provide an appropriate level of security; and

"(2) if practicable, aliens detained solely for civil violations of Federal immigration law are separated within a facility or facilities.

"(f) REQUIREMENT FOR SCHEDULE.—In carrying out this section, the Secretary of Homeland Security shall establish a regular circuit and schedule for the prompt transportation of apprehended aliens from the custody of

1 those States, and political subdivisions of States, which
2 routinely submit requests described in subsection (c), into
3 Federal custody.

4 "(g) AUTHORITY FOR CONTRACTS.—

5 "(1) IN GENERAL.—The Secretary of Homeland
6 Security may enter into contracts or cooperative
7 agreements with appropriate State and local law en-
8 forcement and detention agencies to implement this
9 section.

10 "(2) DETERMINATION BY SECRETARY.—Prior
11 to entering into a contract or cooperative agreement
12 with a State or political subdivision of a State under
13 paragraph (1), the Secretary shall determine wheth-
14 er the State, or if appropriate, the political subdivi-
15 sion in which the agencies are located, has in place
16 any formal or informal policy that violates section
17 642 of the Illegal Immigration Reform and Immi-
18 grant Responsibility Act of 1996 (8 U.S.C. 1373).
19 The Secretary shall not allocate any of the funds
20 made available under this section to any State or po-
21 litical subdivision that has in place a policy that vio-
22 lates such section.".

23 (b) AUTHORIZATION OF APPROPRIATIONS FOR THE
24 DETENTION AND TRANSPORTATION TO FEDERAL CUS-
25 TODY OF ALIENS NOT LAWFULLY PRESENT.—There are

authorized to be appropriated $850,000,000 for fiscal year 2007 and each subsequent fiscal year for the detention and removal of aliens not lawfully present in the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et. seq.).

SEC. 230. LAUNDERING OF MONETARY INSTRUMENTS.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting ''section 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor),'' after ''section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),''; and

(2) by inserting ''section 274(a) of the Immigration and Nationality Act (8 U.S.C.1324(a)) (relating to bringing in and harboring certain aliens),'' after ''section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling),''.

SEC. 231. LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.

(a) PROVISION OF INFORMATION TO THE NATIONAL CRIME INFORMATION CENTER.—

(1) IN GENERAL.—Except as provided in paragraph (3), not later than 180 days after the date of

the enactment of this Act, the Secretary shall provide to the head of the National Crime Information Center of the Department of Justice the information that the Secretary has or maintains related to any alien—

(A) against whom a final order of removal has been issued;

(B) who enters into a voluntary departure agreement, or is granted voluntary departure by an immigration judge, whose period for departure has expired under subsection (a)(3) of section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) (as amended by section 211(a)(1)(C)), subsection (b)(2) of such section 240B, or who has violated a condition of a voluntary departure agreement under such section 240B;

(C) whom a Federal immigration officer has confirmed to be unlawfully present in the United States; and

(D) whose visa has been revoked.

(2) REMOVAL OF INFORMATION.—The head of the National Crime Information Center should promptly remove any information provided by the Secretary under paragraph (1) related to an alien

who is granted lawful authority to enter or remain legally in the United States.

(3) PROCEDURE FOR REMOVAL OF ERRONEOUS INFORMATION.—The Secretary, in consultation with the head of the National Crime Information Center of the Department of Justice, shall develop and implement a procedure by which an alien may petition the Secretary or head of the National Crime Information Center, as appropriate, to remove any erroneous information provided by the Secretary under paragraph (1) related to such alien. Under such procedures, failure by the alien to receive notice of a violation of the immigration laws shall not constitute cause for removing information provided by the Secretary under paragraph (1) related to such alien, unless such information is erroneous. Notwithstanding the 180-day time period set forth in paragraph (1), the Secretary shall not provide the information required under paragraph (1) until the procedures required by this paragraph are developed and implemented.

(b) INCLUSION OF INFORMATION IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.—Section 534(a) of title 28, United States Code, is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following new paragraph:

''(4) acquire, collect, classify, and preserve records of violations of the immigration laws of the United States; and''.

SEC. 232. COOPERATIVE ENFORCEMENT PROGRAMS.

Not later than 2 years after the date of the enactment of this Act, the Secretary shall negotiate and execute, where practicable, a cooperative enforcement agreement described in section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)) with at least 1 law enforcement agency in each State, to train law enforcement officers in the detection and apprehension of individuals engaged in transporting, harboring, sheltering, or encouraging aliens in violation of section 274 of such Act (8 U.S.C. 1324).

SEC. 233. INCREASE OF FEDERAL DETENTION SPACE AND THE UTILIZATION OF FACILITIES IDENTIFIED FOR CLOSURES AS A RESULT OF THE DEFENSE BASE CLOSURE REALIGNMENT ACT OF 1990.

(a) CONSTRUCTION OR ACQUISITION OF DETENTION FACILITIES.—

(1) IN GENERAL.—The Secretary shall construct or acquire, in addition to existing facilities for the detention of aliens, at least 20 detention facilities in the United States that have the capacity to detain a combined total of not less than 20,000 individuals at any time for aliens detained pending removal or a decision on removal of such aliens from the United States subject to available appropriations.

(b) CONSTRUCTION OF OR ACQUISITION OF DETENTION FACILITIES.—

(1) REQUIREMENT TO CONSTRUCT OR ACQUIRE.—The Secretary shall construct or acquire additional detention facilities in the United States to accommodate the detention beds required by section 5204(a) of the Intelligence Reform and Terrorism Protection Act of 2004, as amended by subsection (a), subject to available appropriations.

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

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

(4) DETERMINATION OF LOCATION.—The location of any detention facility constructed or acquired in accordance with this subsection shall be determined, with the concurrence of the Secretary, by the senior officer responsible for Detention and Removal Operations in the Department. The detention facilities shall be located so as to enable the officers and employees of the Department to increase to the max-

imum extent practicable the annual rate and level of removals of illegal aliens from the United States.

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

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

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

SEC. 234. DETERMINATION OF IMMIGRATION STATUS OF INDIVIDUALS CHARGED WITH FEDERAL OFFENSES.

(a) RESPONSIBILITY OF UNITED STATES ATTORNEYS.—Beginning not later than 2 years after the date of the enactment of this Act, the office of the United States Attorney that is prosecuting a criminal case in a Federal court—

(1) shall determine, not later than 30 days after filing the initial pleadings in the case, whether each defendant in the case is lawfully present in the United States (subject to subsequent legal proceedings to determine otherwise);

(2)(A) if the defendant is determined to be an alien lawfully present in the United States, shall notify the court in writing of the determination and the current status of the alien under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); and

(B) if the defendant is determined not to be lawfully present in the United States, shall notify the court in writing of the determination, the defendant's alien status, and, to the extent possible, the country of origin or legal residence of the defendant; and

(3) ensure that the information described in paragraph (2) is included in the case file and the criminal records system of the office of the United States attorney.

(b) GUIDELINES.—A determination made under subsection (a)(1) shall be made in accordance with guidelines of the Executive Office for Immigration Review of the Department of Justice.

(c) RESPONSIBILITIES OF FEDERAL COURTS.—

(1) MODIFICATIONS OF RECORDS AND CASE MANAGEMENTS SYSTEMS.—Not later than 2 years after the date of the enactment of this Act, all Federal courts that hear criminal cases, or appeals of criminal cases, shall modify their criminal records and case management systems, in accordance with guidelines which the Director of the Administrative Office of the United States Courts shall establish, so as to enable accurate reporting of information described in subsection (a)(2).

(2) DATA ENTRIES.—Beginning not later than 2 years after the date of the enactment of this Act, each Federal court described in paragraph (1) shall enter into its electronic records the information contained in each notification to the court under subsection (a)(2).

(d) CONSTRUCTION.—Nothing in this section may be construed to provide a basis for admitting evidence to a jury or releasing information to the public regarding an alien's immigration status.

(e) ANNUAL REPORT TO CONGRESS.—The Director of the Administrative Office of the United States Courts shall include, in the annual report filed with Congress under section 604 of title 28, United States Code—

(1) statistical information on criminal trials of aliens in the courts and criminal convictions of aliens in the lower courts and upheld on appeal, including the type of crime in each case and including information on the legal status of the aliens; and

(2) recommendations on whether additional court resources are needed to accommodate the volume of criminal cases brought against aliens in the Federal courts.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of fiscal years 2007 through 2011, such sums as may be necessary to carry out this Act. Funds appropriated pursuant to this subsection in any fiscal year shall remain available until expended.

SEC. 235. EXPANSION OF THE JUSTICE PRISONER AND ALIEN TRANSFER SYSTEM.

Not later than 60 days after the date of enactment of this Act, the Attorney General shall issue a directive to expand the Justice Prisoner and Alien Transfer System (JPATS) so that such System provides additional services with respect to aliens who are illegally present in the United States. Such expansion should include—

(1) increasing the daily operations of such System with buses and air hubs in 3 geographic regions;

(2) allocating a set number of seats for such aliens for each metropolitan area;

(3) allowing metropolitan areas to trade or give some of seats allocated to them under the System for such aliens to other areas in their region based on the transportation needs of each area; and

(4) requiring an annual report that analyzes of the number of seats that each metropolitan area is allocated under this System for such aliens and modifies such allocation if necessary.

TITLE III—UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 301. UNLAWFUL EMPLOYMENT OF ALIENS.

(a) IN GENERAL.—Section 274A (8 U.S.C. 1324a) is amended to read as follows:

"SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.

"(a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

"(1) IN GENERAL.—It is unlawful for an employer—

"(A) to hire, or to recruit or refer for a fee, an alien for employment in the United States knowing, or with reckless disregard, that the alien is an unauthorized alien with respect to such employment; or

"(B) to hire, or to recruit or refer for a fee, for employment in the United States an individual unless such employer meets the requirements of subsections (c) and (d).

"(2) CONTINUING EMPLOYMENT.—It is unlawful for an employer, after lawfully hiring an alien for employment, to continue to employ the alien in the United States knowing that the alien is (or has become) an unauthorized alien with respect to such employment.

"(3) USE OF LABOR THROUGH CONTRACT.—

"(A) IN GENERAL.—An employer who uses a contract, subcontract, or exchange to obtain the labor of an alien in the United States knowing, or with reckless disregard—

"(i) that the alien is an unauthorized alien with respect to performing such labor, shall be considered to have hired the alien in violation of paragraph (1)(A); or

"(ii) that the person hiring such alien failed to comply with the requirements of subsections (c) and (d) shall be considered to have hired the alien in violation of paragraph (1)(B).

"(B) INFORMATION SHARING.—The person hiring the alien shall provide to the employer, who obtains the labor of the alien, the employer identification number assigned to such person by the Commissioner of Internal Revenue. Failure to provide such number shall be considered a recordkeeping violation under subsection (e)(4)(B).

"(C) REPORTING REQUIREMENT.—The employer shall submit to the Electronic Verification System established under subsection (d), in a manner prescribed by the Secretary, the employer identification number provided by the person hiring the alien. Failure to submit such number shall be considered a recordkeeping violation under subsection (e)(4)(B).

"(D) ENFORCEMENT.—The Secretary shall implement procedures to utilize the information obtained under subparagraphs (B) and (C) to identify employers who use a contract, subcontract, or exchange to obtain the labor of an alien from another person, where such person hiring such alien fails to comply with the requirements of subsections (c) and (d).

"(4) DEFENSE.—

"(A) IN GENERAL.—Subject to subparagraph (B), an employer that establishes that the employer has complied in good faith with the requirements of subsections (c) and (d) has established an affirmative defense that the employer has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

"(B) EXCEPTION.—Until the date that an employer is required to participate in the Electronic Employment Verification System under subsection (d) or is participating in such System on a voluntary basis, the employer may establish an affirmative defense under subparagraph (A) by complying with the requirements of subsection (c).

"(b) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—

"(1) AUTHORITY TO REQUIRE CERTIFICATION.—If the Secretary has reasonable cause to believe that an employer has failed to comply with this section, the Secretary is authorized, at any time, to require that the employer certify that the employer is in compliance with this section, or has instituted a program to come into compliance.

"(2) CONTENT OF CERTIFICATION.—Not later than 60 days after the date an employer receives a request for a certification under paragraph (1) the employer shall certify under penalty of perjury that—

"(A) the employer is in compliance with the requirements of subsections (c) and (d); or

"(B) that the employer has instituted a program to come into compliance with such requirements.

"(3) EXTENSION.—The 60-day period referred to in paragraph (2), may be extended by the Secretary for good cause, at the request of the employer.

"(4) PUBLICATION.—The Secretary is authorized to publish in the Federal Register standards or methods for certification under paragraph (1) and for specific recordkeeping practices with respect to such certification, and procedures for the audit of any records related to such certification.

"(c) DOCUMENT VERIFICATION REQUIREMENTS.—An employer hiring, or recruiting or referring for a fee, an individual for employment in the United States shall verify that the individual is eligible for such employment by meeting the following requirements:

"(1) ATTESTATION BY EMPLOYER.—

"(A) REQUIREMENTS.—

"(i) IN GENERAL.—The employer shall attest, under penalty of perjury and on a form prescribed by the Secretary, that the employer has verified the identity and eligibility for employment of the individual by examining a document described in subparagraph (B).

"(ii) SIGNATURE REQUIREMENTS.—An attestation required by clause (i) may be manifested by a handwritten or electronic signature.

"(iii) STANDARDS FOR EXAMINATION.—The employer has complied with the requirement of this paragraph with respect to examination of documentation if a reasonable person would conclude that the document examined is genuine and relates to the individual whose identity and eligibility for employment in the United States is being verified. If the individual provides a document sufficient to meet the requirements of this paragraph, nothing in this paragraph shall be construed as requiring

an employer to solicit any other document or as requiring the individual to produce any other document.

"(B) IDENTIFICATION DOCUMENTS.—A document described in this subparagraph is—

"(i) in the case of an individual who is a national of the United States—

"(I) a United States passport; or

"(II) a driver's license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States that satisfies the requirements of division B of Public Law 109–13 (119 Stat. 302);

"(ii) in the case of an alien lawfully admitted for permanent residence in the United States, a permanent resident card, as specified by the Secretary;

"(iii) in the case of an alien who is authorized under this Act or by the Secretary to be employed in the United States, an employment authorization card, as specified by the Secretary that—

"(I) contains a photograph of the individual or other identifying information, including name, date of birth, gender, and address; and

"(II) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use;

"(iv) in the case of an individual who is unable to obtain a document described in clause (i), (ii), or (iii), a document designated by the Secretary that—

"(I) contains a photograph of the individual or other identifying information, including name, date of birth, gender, and address; and

"(II) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use; or

"(v) until the date that an employer is required to participate in the Electronic Employment Verification System under subsection (d) or is participating in such System on a voluntary basis, a document,

or a combination of documents, of such type that, as of the date of the enactment of the Comprehensive Immigration Reform Act of 2006, the Secretary had established by regulation were sufficient for purposes of this section.

"(C) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—

"(i) AUTHORITY.—If the Secretary finds that a document or class of documents described in subparagraph (B) is not reliable to establish identity or is being used fraudulently to an unacceptable degree, the Secretary shall prohibit, or impose conditions, on the use of such document or class of documents for purposes of this subsection.

"(ii) REQUIREMENT FOR PUBLICATION.—The Secretary shall publish notice of any findings under clause (i) in the Federal Register.

"(2) ATTESTATION OF EMPLOYEE.—

"(A) REQUIREMENTS.—

"(i) IN GENERAL.—The individual shall attest, under penalty of perjury on

the form described in paragraph (1)(A)(i), that the individual is a national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary to be hired, or to be recruited or referred for a fee, in the United States.

"(ii) SIGNATURE FOR EXAMINATION.—An attestation required by clause (i) may be manifested by a handwritten or electronic signature.

"(B) PENALTIES.—An individual who falsely represents that the individual is eligible for employment in the United States in an attestation required by subparagraph (A) shall, for each such violation, be subject to a fine of not more than $5,000, a term of imprisonment not to exceed 3 years, or both.

"(3) RETENTION OF ATTESTATION.—The employer shall retain a paper, microfiche, microfilm, or electronic version of the attestations made under paragraph (1) and (2) and make such attestations available for inspection by an officer of the Department of Homeland Security, any other person designated by the Secretary, the Special Counsel for

Immigration-Related Unfair Employment Practices of the Department of Justice, or the Secretary of Labor during a period beginning on the date of the hiring, or recruiting or referring for a fee, of the individual and ending—

"(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, 5 years after the date of the recruiting or referral; or

"(B) in the case of the hiring of an individual the later of—

"(i) 5 years after the date of such hiring;

"(ii) 1 year after the date the individual's employment is terminated; or

"(iii) in the case of an employer or class of employers, a period that is less than the applicable period described in clause (i) or (ii) if the Secretary reduces such period for such employer or class of employers.

"(4) DOCUMENT RETENTION AND RECORD-KEEPING REQUIREMENTS.—

"(A) RETENTION OF DOCUMENTS.—Notwithstanding any other provision of law, an em-

ployer shall retain, for the applicable period described in paragraph (3), the following documents:

"(i) IN GENERAL.—The employer shall copy all documents presented by an individual described in paragraph (1)(B) and shall retain paper, microfiche, microfilm, or electronic copies of such documents. Such copies shall be designated as copied documents.

"(ii) OTHER DOCUMENTS.—The employer shall maintain records of any action taken and copies of any correspondence written or received with respect to the verification of an individual's identity or eligibility for employment in the United States.

"(B) USE OF RETAINED DOCUMENTS.—An employer shall use copies retained under clause (i) or (ii) of subparagraph (A) only for the purposes of complying with the requirements of this subsection, except as otherwise permitted under law.

"(5) PENALTIES.—An employer that fails to comply with the recordkeeping requirements of this

subsection shall be subject to the penalties described in subsection (e)(4)(B).

"(6) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section may be construed to authorize, directly or indirectly, the issuance, use, or establishment of a national identification card.

"(d) ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.—

"(1) REQUIREMENT FOR SYSTEM.—The Secretary, in cooperation with the Commissioner of Social Security, shall implement an Electronic Employment Verification System (referred to in this subsection as the 'System') to determine whether—

"(A) the identifying information submitted by an individual is consistent with the information maintained by the Secretary or the Commissioner of Social Security; and

"(B) such individual is eligible for employment in the United States.

"(2) REQUIREMENT FOR PARTICIPATION.—The Secretary shall require all employers in the United States to participate in the System, with respect to all employees hired by the employer on or after the date that is 18 months after the date that not less

than $400,000,000 have been appropriated and made available to implement this subsection.

"(3) OTHER PARTICIPATION IN SYSTEM.—Notwithstanding paragraph (2), the Secretary has the authority—

"(A) to permit any employer that is not required to participate in the System under paragraph (2) to participate in the System on a voluntary basis; and

"(B) to require any employer or class of employers to participate on a priority basis in the System with respect to individuals employed as of, or hired after, the date of enactment of the Comprehensive Immigration Reform Act of 2006—

"(i) if the Secretary designates such employer or class of employers as a critical employer based on an assessment of homeland security or national security needs; or

"(ii) if the Secretary has reasonable cause to believe that the employer has engaged in material violations of paragraph (1), (2), or (3) of subsection (a).

"(4) REQUIREMENT TO NOTIFY.—The Secretary shall notify the employer or class of employers

in writing regarding the requirement for participation in the System under paragraph (3)(B) not less than 60 days prior to the effective date of such requirement. Such notice shall include the training materials described in paragraph (8)(E)(v).

"(5) REGISTRATION OF EMPLOYERS.—An employer shall register the employer's participation in the System in the manner prescribed by the Secretary prior to the date the employer is required or permitted to submit information with respect to an employee under this subsection.

"(6) ADDITIONAL GUIDANCE.—A registered employer shall be permitted to utilize any technology that is consistent with this section and with any regulation or guidance from the Secretary to streamline the procedures to facilitate compliance with—

"(A) the attestation requirement in subsection (c); and

"(B) the employment eligibility verification requirements in this subsection.

"(7) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If an employer is required to participate in the System and fails to comply with the requirements of the System with respect to an employee—

"(A) such failure shall be treated as a violation of subsection (a)(1)(B); and

"(B) a rebuttable presumption is created that the employer has violated subsection (a)(1)(A), however, such presumption may not apply to a prosecution under subsection (f)(1).

"(8) DESIGN AND OPERATION OF SYSTEM.—

"(A) IN GENERAL.—The Secretary shall, through the System—

"(i) respond to each inquiry made by a registered employer through the Internet or other electronic media, or over a toll-free telephone line regarding an individual's identity and eligibility for employment in the United States; and

"(ii) maintain a record of each such inquiry and the information provided in response to such inquiry.

"(B) INITIAL INQUIRY.—

"(i) INFORMATION REQUIRED.—A registered employer shall, with respect to the hiring, or recruiting or referring for a fee, any individual for employment in the United States, obtain from the individual

and record on the form described in subsection (c)(1)(A)(i)—

"(I) the individual's name and date of birth and, if the individual was born in the United States, the State in which such individual was born;

"(II) the individual's social security account number;

"(III) the employment identification number of the individual's employer during any one of the 5 most recently completed calendar years; and

"(IV) in the case of an individual who does not attest that the individual is a national of the United States under subsection (c)(1)(A)(i), such alien identification or authorization number that the Secretary shall require.

"(ii) SUBMISSION TO SYSTEM.—A registered employer shall submit an inquiry through the System to seek confirmation of

the individual's identity and eligibility for employment in the United States—

"(I) not later than 3 days after the date of the hiring, or recruiting or referring for a fee, of the individual (as the case may be); or

"(II) in the case of an employee hired by a critical employer designated by the Secretary under paragraph (3)(B) at such time as the Secretary shall specify.

"(iii) EIN REQUIREMENTS.—

"(I) REQUIREMENT TO PROVIDE.—An employer shall provide the employer identification number issued to such employer to the individual, upon request, for purposes of providing the information under clause (i)(III).

"(II) REQUIREMENT TO AFFIRMATIVELY STATE A LACK OF RECENT EMPLOYMENT.—An individual providing information under clause (i)(III) who was not employed in the United States during any of the 5

most recently completed calendar years shall affirmatively state on the form described in subsection (c)(1)(A)(i) that no employer identification number is provided because the individual was not employed in the United States during such period.

"(C) INITIAL RESPONSE.—Not later than 10 days after an employer submits an inquiry to the System regarding an individual, the Secretary shall provide, through the System, to the employer—

"(i) if the System is able to confirm the individual's identity and eligibility for employment in the United States, a confirmation notice, including the appropriate codes on such confirmation notice; or

"(ii) if the System is unable to confirm the individual's identity or eligibility for employment in the United States, and after a secondary manual verification has been conducted, a tentative nonconfirmation notice, including the appropriate codes on such tentative nonconfirmation notice.

"(D) CONFIRMATION OR NONCONFIRMATION.—

"(i) CONFIRMATION UPON INITIAL INQUIRY.—If an employer receives a confirmation notice under paragraph (C)(i) for an individual, the employer shall record, on the form described in subsection (c)(1)(A)(i), the appropriate code provided in such notice.

"(ii) TENTATIVE NONCONFIRMATION.—If an employer receives a tentative nonconfirmation notice under paragraph (C)(ii) for an individual, the employer shall inform such individual of the issuance of such notice in writing, on a form prescribed by the Secretary not later than 3 days after receiving such notice. Such individual shall acknowledge receipt of such notice in writing on the form described in subsection (c)(1)(A)(i).

"(iii) NO CONTEST.—If the individual does not contest the tentative nonconfirmation notice within 10 days of receiving notice from the individual's employer, the notice shall become final and the employer

shall record on the form described in subsection (1)(A)(i), the appropriate code provided through the System to indicate the individual did not contest the tentative nonconfirmation. An individual's failure to contest a tentative nonconfirmation shall not be considered an admission of guilt with respect to any violation of this Act or any other provision of law.

"(iv) CONTEST.—If the individual contests the tentative nonconfirmation notice, the individual shall submit appropriate information to contest such notice under the procedures established in subparagraph (E)(iii) not later than 10 days after receiving the notice from the individual's employer.

"(v) EFFECTIVE PERIOD OF TENTATIVE NONCONFIRMATION NOTICE.—A tentative nonconfirmation notice shall remain in effect until such notice becomes final under clause (iii), or the earlier of—

"(I) a final confirmation notice or final nonconfirmation notice is issued through the System; or

"(II) 30 days after the individual contests a tentative nonconfirmation under clause (iv).

"(vi) AUTOMATIC FINAL NOTICE.—

"(I) IN GENERAL.—If a final notice is not issued within the 30-day period described in clause (v)(II), the Secretary shall automatically provide to the employer, through the System, the appropriate code indicating a final notice.

"(II) PERIOD PRIOR TO INITIAL CERTIFICATION.—During the period beginning on the date of the enactment of the Comprehensive Immigration Reform Act of 2006 and ending on the date the Secretary submits the initial report described in subparagraph (E)(ii), an automatic notice issued under subclause (I) shall be a final confirmation notice.

"(III) PERIOD AFTER INITIAL CERTIFICATION.—After the date that the Secretary submits the initial report described in subparagraph

(E)(ii), an automatic notice issued under subclause (I) shall be a final confirmation notice unless the most recent such report includes a certification that the System is able to correctly issue, within the period beginning on the date an employer submits an inquiry to the System and ending on the date an automatic default notice would be issued by the System, a final notice in at least 99 percent of the cases in which the notice relates to an individual who is eligible for employment in the United States. If the most recent such report includes such a certification, the automatic notice issued under subclause (I) shall be a final nonconfirmation notice.

"(IV) ADDITIONAL AUTHORITY.—Notwithstanding the second sentence of subclause (III), the Secretary shall have the authority to issue a final confirmation notice for an individual who would be subject to a final nonconfirmation notice under

such sentence. In such a case, the Secretary shall determine the individual's eligibility for employment in the United States and record the results of such determination in the System within 12 months.

"(vii) EFFECTIVE PERIOD OF FINAL NOTICE.—A final confirmation notice issued under this paragraph for an individual shall remain in effect—

"(I) during any continuous period of employment of such individual by such employer, unless the Secretary determines the final confirmation was the result of identity fraud; or

"(II) in the case of an alien authorized to be employed in the United States for a temporary period, during such period.

"(viii) PROHIBITION ON TERMINATION.—An employer may not terminate the employment of an individual based on a tentative nonconfirmation notice until such notice becomes final under clause (iii)

or a final nonconfirmation notice is issued for the individual by the System. Nothing in this clause shall prohibit the termination of employment for any reason other than such tentative nonconfirmation.

"(ix) RECORDING OF CONTEST RESOLUTION.—The employer shall record on the form described in subsection (c)(1)(A)(i) the appropriate code that is provided through the System to indicate a final confirmation notice or final nonconfirmation notice.

"(x) CONSEQUENCES OF NONCONFIRMATION.—If the employer has received a final nonconfirmation regarding an individual, the employer shall terminate the employment, recruitment, or referral of the individual. Such employer shall provide to the Secretary any information relating to the individual that the Secretary determines would assist the Secretary in enforcing or administering the immigration laws. If the employer continues to employ, recruit, or refer the individual after receiving final nonconfirmation, a rebuttable pre-

sumption is created that the employer has violated subsections (a)(1)(A) and (a)(2). Such presumption may not apply to a prosecution under subsection (f)(1).

"(E) RESPONSIBILITIES OF THE SECRETARY.—

"(i) IN GENERAL.—The Secretary shall establish a reliable, secure method to provide through the System, within the time periods required by this subsection—

"(I) a determination of whether the name and alien identification or authorization number provided in an inquiry by an employer is consistent with such information maintained by the Secretary in order to confirm the validity of the information provided; and

"(II) a determination of whether the individual is authorized to be employed in the United States.

"(ii) ANNUAL REPORT AND CERTIFICATION.—Not later than the date that is 24 months after the date that not less than $400,000,000 have been appropriated

and made available to the Secretary to implement this subsection, and annually thereafter, the Secretary shall submit to Congress a report that includes—

"(I) an assessment of whether the System is able to correctly issue, within the period described in subparagraph (D)(v)(II), a final notice in at least 99 percent of the cases in which the final notice relates to an individual who is eligible for employment in the United States (excluding an individual who fails to contest a tentative nonconfirmation notice); and

"(II) if the assessment under subclause (I) is that the System is able to correctly issue within the specified time period a final notice in at least 99 percent of the cases described in such subclause, a certification of such assessment.

"(iii) CONTEST AND SELF-VERIFICATION.—The Secretary in consultation with the Commissioner of Social Security, shall establish procedures to per-

mit an individual who contests a tentative or final nonconfirmation notice, or seeks to verify the individual's own employment eligibility prior to obtaining or changing employment, to contact the appropriate agency and, in a timely manner, correct or update the information used by the System.

"(iv) INFORMATION TO EMPLOYEE.—The Secretary shall develop a written form for employers to provide to individuals who receive a tentative or final nonconfirmation notice. Such form shall be made available in a language other than English, as necessary and reasonable, and shall include—

"(I) information about the reason for such notice;

"(II) the right to contest such notice;

"(III) contact information for the appropriate agency and instructions for initiating such contest; and

"(IV) a 24-hour toll-free telephone number to respond to inquiries related to such notice.

"(v) TRAINING MATERIALS.—The Secretary shall make available or provide to the employer, upon request, not later than 60 days prior to such employer's participation in the System, appropriate training materials to facilitate compliance with this subsection, and sections 274B(a)(7) and 274C(a).

"(F) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—The responsibilities of the Commissioner of Social Security with respect to the System are set out in section 205(c)(2) of the Social Security Act.

"(9) PROTECTION FROM LIABILITY.—No employer that participates in the System shall be liable under any law for any employment-related action taken with respect to an individual in good faith reliance on information provided by the System.

"(10) ADMINISTRATIVE REVIEW.—

"(A) IN GENERAL.—An individual who is terminated from employment as a result of a final nonconfirmation notice may, not later than 60 days after the date of such termination, file an appeal of such notice.

"(B) PROCEDURES.—The Secretary and Commissioner of Social Security shall develop procedures to review appeals filed under subparagraph (A) and to make final determinations on such appeals.

"(C) REVIEW FOR ERRORS.—If a final determination on an appeal filed under subparagraph (A) results in a confirmation of an individual's eligibility to work in the United States, the administrative review process shall require the Secretary to determine if the final nonconfirmation notice issued for the individual was the result of—

"(i) an error or negligence on the part of an employee or official operating or responsible for the System;

"(ii) the decision rules, processes, or procedures utilized by the System; or

"(iii) erroneous system information that was not the result of acts or omissions of the individual.

"(D) COMPENSATION FOR ERROR.—

"(i) IN GENERAL.—If the Secretary makes a determination under subparagraph (C) that the final nonconfirmation

notice issued for an individual was not caused by an act or omission of the individual, the Secretary shall compensate the individual for lost wages.

"(ii) CALCULATION OF LOST WAGES.—Lost wages shall be calculated based on the wage rate and work schedule that prevailed prior to termination. The individual shall be compensated for wages lost beginning on the first scheduled work day after employment was terminated and ending 180 days after completion of the administrative review process described in this paragraph or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first.

"(E) LIMITATION ON COMPENSATION.—For purposes of determining an individual's compensation for the loss of employment, such compensation shall not include any period in which the individual was ineligible for employment in the United States.

"(F) SOURCE OF FUNDS.—Compensation or reimbursement provided under this paragraph shall not be provided from funds appro-

priated in annual appropriations Acts to the Secretary for the Department of Homeland Security.

"(11) JUDICIAL REVIEW.—

"(A) IN GENERAL.—After the Secretary makes a final determination on an appeal filed by an individual under the administrative review process described in paragraph (10), the individual may obtain judicial review of such determination by a civil action commenced not later than 60 days after the date of such decision, or such further time as the Secretary may allow.

"(B) JURISDICTION.—A civil action for such judicial review shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has a principal place of business, or, if the plaintiff does not reside or have a principal place of business within any such judicial district, in the District Court of the United States for the District of Columbia.

"(C) ANSWER.—As part of the Secretary's answer to a complaint for such judicial review, the Secretary shall file a certified copy of the

administrative record compiled during the administrative review under paragraph (10), including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming or reversing the result of that administrative review, with or without remanding the cause for a rehearing.

"(D) COMPENSATION FOR ERROR.—

"(i) IN GENERAL.—In cases in which such judicial review reverses the final determination of the Secretary made under paragraph (10), the court shall compensate the individual for lost wages.

"(ii) CALCULATION OF LOST WAGES.—Lost wages shall be calculated based on the wage rate and work scheduled that prevailed prior to termination. The individual shall be compensated for wages lost beginning on the first scheduled work day after employment was terminated and ending 180 days after completion of the judicial review described in this paragraph or the day after the individual is reinstated or

obtains employment elsewhere, whichever occurs first.

"(12) LIMITATION ON COLLECTION AND USE OF DATA.—

"(A) LIMITATION ON COLLECTION OF DATA.—

"(i) IN GENERAL.—The System shall collect and maintain only the minimum data necessary to facilitate the successful operation of the System, and in no case shall the data be other than—

"(I) information necessary to register employers under paragraph (5);

"(II) information necessary to initiate and respond to inquiries or contests under paragraph (8);

"(III) information necessary to establish and enforce compliance with paragraphs (5) and (8);

"(IV) information necessary to detect and prevent employment related identity fraud; and

"(V) such other information the Secretary determines is necessary,

subject to a 180 day notice and comment period in the Federal Register.

"(ii) PENALTIES.—Any officer, employee, or contractor who willfully and knowingly collects and maintains data in the System other than data described in clause (i) shall be guilty of a misdemeanor and fined not more than $1,000 for each violation.

"(B) LIMITATION ON USE OF DATA.—Whoever willfully and knowingly accesses, discloses, or uses any information obtained or maintained by the System—

"(i) for the purpose of committing identity fraud, or assisting another person in committing identity fraud, as defined in section 1028 of title 18, United States Code;

"(ii) for the purpose of unlawfully obtaining employment in the United States or unlawfully obtaining employment in the United States for any other person; or

"(iii) for any purpose other than as provided for under any provision of law;

shall be guilty of a felony and upon conviction shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

"(C) EXCEPTIONS.—Nothing in subparagraph (A) or (B) may be construed to limit the collection, maintenance, or use of data by the Commissioner of Internal Revenue or the Commissioner of Social Security as provided by law.

"(13) MODIFICATION AUTHORITY.—The Secretary, after notice is submitted to Congress and provided to the public in the Federal Register, is authorized to modify the requirements of this subsection with respect to completion of forms, method of storage, attestations, copying of documents, signatures, methods of transmitting information, and other operational and technical aspects to improve the efficiency, accuracy, and security of the System.

"(14) ANNUAL GAO STUDY AND REPORT.—

"(A) REQUIREMENT.—The Comptroller General of the United States shall conduct an annual study of the System.

"(B) PURPOSE.—The study shall evaluate the accuracy, efficiency, integrity, and impact of the System.

"(C) REPORT.—Not later than the date that is 24 months after the date that not less than $400,000,000 have been appropriated and made available to the Secretary to implement this subsection, and annually thereafter, the Comptroller General shall submit to Congress a report containing the findings of the study carried out under this paragraph. Each such report shall include, at a minimum, the following:

"(i) An assessment of the annual report and certification described in paragraph (8)(E)(ii).

"(ii) An assessment of System performance with respect to the rate at which individuals who are eligible for employment in the United States are correctly approved within each of the periods specified in paragraph (8), including a separate assessment of such rate for nationals and aliens.

"(iii) An assessment of the privacy and security of the System and its effects on identity fraud or the misuse of personal data.

"(iv) An assessment of the effects of the System on the employment of unauthorized aliens.

"(v) An assessment of the effects of the System, including the effects of tentative confirmations, on unfair immigration-related employment practices and employment discrimination based on national origin or citizenship status.

"(vi) An assessment of whether the Secretary and the Commissioner of Social Security have adequate resources to carry out the duties and responsibilities of this section.

"(e) COMPLIANCE.—

"(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary shall establish procedures—

"(A) for individuals and entities to file complaints regarding potential violations of subsection (a);

"(B) for the investigation of such complaints that the Secretary determines are appropriate to investigate; and

"(C) for the investigation of other violations of subsection (a) that the Secretary determines is appropriate.

"(2) AUTHORITY IN INVESTIGATIONS.—

"(A) IN GENERAL.—In conducting investigations and hearings under this subsection, officers and employees of the Department of Homeland Security—

"(i) shall have reasonable access to examine evidence regarding any employer being investigated; and

"(ii) if designated by the Secretary, may compel by subpoena the attendance of witnesses and the production of evidence at any designated place in an investigation or case under this subsection.

"(B) FAILURE TO COOPERATE.—In case of refusal to obey a subpoena lawfully issued under subparagraph (A)(ii), the Secretary may request that the Attorney General apply in an appropriate district court of the United States for an order requiring compliance with such subpoena, and any failure to obey such order may be punished by such court as contempt.

"(C) DEPARTMENT OF LABOR.—The Secretary of Labor shall have the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)) to ensure compliance with the provisions of this section.

"(3) COMPLIANCE PROCEDURES.—

"(A) PREPENALTY NOTICE.—If the Secretary has reasonable cause to believe that there has been a violation of a requirement of this section and determines that further proceedings related to such violation are warranted, the Secretary shall issue to the employer concerned a written notice of the Secretary's intention to issue a claim for a fine or other penalty. Such notice shall—

"(i) describe the violation;

"(ii) specify the laws and regulations allegedly violated;

"(iii) specify the amount of fines or other penalties to be imposed;

"(iv) disclose the material facts which establish the alleged violation; and

"(v) inform such employer that the employer shall have a reasonable oppor-

tunity to make representations as to why a claim for a monetary or other penalty should not be imposed.

"(B) REMISSION OR MITIGATION OF PENALTIES.—

"(i) REVIEW BY SECRETARY.—If the Secretary determines that such fine or other penalty was incurred erroneously, or determines the existence of such mitigating circumstances as to justify the remission or mitigation of such fine or penalty, the Secretary may remit or mitigate such fine or other penalty on the terms and conditions as the Secretary determines are reasonable and just, or order termination of any proceedings related to the notice.

"(ii) APPLICABILITY.—This subparagraph may not apply to an employer that has or is engaged in a pattern or practice of violations of paragraph (1), (2), or (3) of subsection (a) or of any other requirements of this section.

"(C) PENALTY CLAIM.—After considering evidence and representations offered by the employer, the Secretary shall determine whether

there was a violation and promptly issue a written final determination setting forth the findings of fact and conclusions of law on which the determination is based and the appropriate penalty.

"(4) CIVIL PENALTIES.—

"(A) HIRING OR CONTINUING TO EMPLOY UNAUTHORIZED ALIENS.—Any employer that violates any provision of paragraph (1), (2), or (3) of subsection (a) shall pay civil penalties as follows:

"(i) Pay a civil penalty of not less than $500 and not more than $4,000 for each unauthorized alien with respect to each such violation.

"(ii) If the employer has previously been fined 1 time during the 12-month period preceding the violation under this subparagraph, pay a civil penalty of not less than $4,000 and not more than $10,000 for each unauthorized alien with respect to each such violation.

"(iii) If the employer has previously been fined more than 1 time during the 24-month period preceding the violation

under this subparagraph or has failed to comply with a previously issued and final order related to any such provision, pay a civil penalty of not less than $6,000 and not more than $20,000 for each unauthorized alien with respect to each such violation.

"(B) RECORDKEEPING OR VERIFICATION PRACTICES.—Any employer that violates or fails to comply with the recordkeeping requirements of subsections (a), (c), and (d), shall pay a civil penalty as follows:

"(i) Pay a civil penalty of not less than $200 and not more than $2,000 for each such violation.

"(ii) If the employer has previously been fined 1 time during the 12-month period preceding the violation under this subparagraph, pay a civil penalty of not less than $400 and not more than $4,000 for each such violation.

"(iii) If the employer has previously been fined more than 1 time during the 24-month period preceding the violation under this subparagraph or has failed to

comply with a previously issued and final order related to such requirements, pay a civil penalty of not less than $600 and not more than $6,000 for each such violation.

"(C) OTHER PENALTIES.—Notwithstanding subparagraphs (A) and (B), the Secretary may impose additional penalties for violations, including violations of cease and desist orders, specially designed compliance plans to prevent further violations, suspended fines to take effect in the event of a further violation, and in appropriate cases, the criminal penalty described in subsection (f).

"(5) JUDICIAL REVIEW.—An employer adversely affected by a final determination may, within 45 days after the date the final determination is issued, file a petition in any appropriate district court of the United States. The filing of a petition as provided in this paragraph shall stay the Secretary's determination until entry of judgment by the court. The burden shall be on the employer to show that the final determination was not supported by substantial evidence. The Secretary is authorized to require that the petitioner provide, prior to filing for review, security for payment of fines and pen-

alties through bond or other guarantee of payment acceptable to the Secretary.

"(6) ENFORCEMENT OF ORDERS.—If an employer fails to comply with a final determination issued against that employer under this subsection, and the final determination is not subject to review as provided in paragraph (5), the Attorney General may file suit to enforce compliance with the final determination, not earlier than 46 days and not later than 180 days after the date the final determination is issued, in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final determination shall not be subject to review.

"(7) RECOVERY OF COSTS AND ATTORNEY'S FEES.—In any appeal brought under paragraph (5) or suit brought under paragraph (6) of this section the employer shall be entitled to recover from the Secretary reasonable costs and attorney's fees if such employer substantially prevails on the merits of the case. Such an award of attorney's fees may not exceed $25,000. Any such costs and attorney's fees assessed against the Secretary shall be charged against the operating expenses of the Department

for the fiscal year in which the assessment is made, and may not be reimbursed from any other source.

"(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN OR PRACTICE VIOLATIONS.—

"(1) CRIMINAL PENALTY.—An employer that engages in a pattern or practice of knowing violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than $20,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than 3 years for the entire pattern or practice, or both.

"(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—If the Secretary or the Attorney General has reasonable cause to believe that an employer is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting a permanent or temporary injunction, restraining order, or other order against the employer, as the Secretary deems necessary.

"(g) ADJUSTMENT FOR INFLATION.—All penalties and limitations on the recovery of costs and attorney's fees in this section shall be increased every 4 years beginning

January 2010 to reflect the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) for the 48 month period ending with September of the year preceding the year such adjustment is made. Any adjustment under this subparagraph shall be rounded to the nearest dollar.

"(h) PROHIBITION OF INDEMNITY BONDS.—

"(1) PROHIBITION.—It is unlawful for an employer, in the hiring, recruiting, or referring for a fee, of an individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

"(2) CIVIL PENALTY.—Any employer which is determined, after notice and opportunity for mitigation of the monetary penalty under subsection (e), to have violated paragraph (1) of this subsection shall be subject to a civil penalty of $10,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the Employer Compliance Fund established under section 286(w).

"(i) PROHIBITION ON AWARD OF GOVERNMENT CONTRACTS, GRANTS, AND AGREEMENTS.—

"(1) EMPLOYERS WITH NO CONTRACTS, GRANTS, OR AGREEMENTS.—

"(A) IN GENERAL.—If an employer who does not hold a Federal contract, grant, or cooperative agreement is determined by the Secretary to be a repeat violator of this section or is convicted of a crime under this section, the employer shall be debarred from the receipt of a Federal contract, grant, or cooperative agreement for a period of 5 years. The Secretary or the Attorney General shall advise the Administrator of General Services of such a debarment, and the Administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for a period of 5 years.

"(B) WAIVER.—The Administrator of General Services, in consultation with the Secretary and the Attorney General, may waive operation of this subsection or may limit the duration or scope of the debarment.

"(2) EMPLOYERS WITH CONTRACTS, GRANTS, OR AGREEMENTS.—

"(A) IN GENERAL.—An employer who holds a Federal contract, grant, or cooperative agreement and is determined by the Secretary to be a repeat violator of this section or is convicted of a crime under this section, shall be debarred from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years.

"(B) NOTICE TO AGENCIES.—Prior to debarring the employer under subparagraph (A), the Secretary, in cooperation with the Administrator of General Services, shall advise any agency or department holding a contract, grant, or cooperative agreement with the employer of the Government's intention to debar the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years.

"(C) WAIVER.—After consideration of the views of any agency or department that holds a contract, grant, or cooperative agreement with the employer, the Secretary may, in lieu of debarring the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years, waive operation

of this subsection, limit the duration or scope of the debarment, or may refer to an appropriate lead agency the decision of whether to debar the employer, for what duration, and under what scope in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. However, any proposed debarment predicated on an administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding. The decision of whether to debar or take alternate action under this subparagraph shall not be judicially reviewed.

"(3) SUSPENSION.—Indictments for violations of this section or adequate evidence of actions that could form the basis for debarment under this subsection shall be considered a cause for suspension under the procedures and standards for suspension prescribed by the Federal Acquisition Regulation.

"(j) MISCELLANEOUS PROVISIONS.—

"(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens eligible to be employed in the United States, the Secretary shall provide that any limitations with re-

spect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement (other than aliens lawfully admitted for permanent residence).

"(2) PREEMPTION.—The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

"(k) DEPOSIT OF AMOUNTS RECEIVED.—Except as otherwise specified, civil penalties collected under this section shall be deposited by the Secretary into the Employer Compliance Fund established under section 286(w).

"(l) DEFINITIONS.—In this section:

"(1) EMPLOYER.—The term 'employer' means any person or entity, including any entity of the Government of the United States, hiring, recruiting, or referring an individual for employment in the United States.

"(2) SECRETARY.—Except as otherwise provided, the term 'Secretary' means the Secretary of Homeland Security.

"(3) UNAUTHORIZED ALIEN.—The term 'unauthorized alien' means, with respect to the employ-

ment of an alien at a particular time, that the alien is not at that time either—

"(A) an alien lawfully admitted for permanent residence; or

"(B) authorized to be so employed by this Act or by the Secretary.".

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENTS.—

(A) REPEAL OF BASIC PILOT.—Sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note) are repealed.

(B) REPEAL OF REPORTING REQUIREMENTS.—

(i) REPORT ON EARNINGS OF ALIENS NOT AUTHORIZED TO WORK.—Subsection (c) of section 290 (8 U.S.C. 1360) is repealed.

(ii) REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT NUMBERS.—Subsection (b) of section 414 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of

Public Law 104–208; 8 U.S.C. 1360 note) is repealed.

(2) CONSTRUCTION.—Nothing in this subsection or in subsection (d) of section 274A, as amended by subsection (a), may be construed to limit the authority of the Secretary to allow or continue to allow the participation of employers who participated in the basic pilot program under sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note) in the Electronic Employment Verification System established pursuant to such subsection (d).

(c) TECHNICAL AMENDMENTS.—

(1) DEFINITION OF UNAUTHORIZED ALIEN.—Sections 218(i)(1) (8 U.S.C. 1188(i)(1)), 245(c)(8) (8 U.S.C. 1255(c)(8)), 274(a)(3)(B)(i) (8 U.S.C. 1324(a)(3)(B)(i)), and 274B(a)(1) (8 U.S.C. 1324b(a)(1)) are amended by striking "274A(h)(3)" and inserting "274A".

(2) DOCUMENT REQUIREMENTS.—Section 274B (8 U.S.C. 1324b) is amended—

(A) in subsections (a)(6) and (g)(2)(B), by striking ''274A(b)'' and inserting ''274A(c) and (d)''; and

(B) in subsection (g)(2)(B)(ii), by striking ''274A(b)(5)'' and inserting ''274A(c)''.

(d) AMENDMENTS TO THE SOCIAL SECURITY ACT.—Section 205(c)(2) of the Social Security Act (42 U.S.C. 405(c)(2)) is amended by adding at the end the following new subparagraphs:

''(I)(i) The Commissioner of Social Security shall, subject to the provisions of section 301(f)(2) of the Comprehensive Immigration Reform Act of 2006, establish a reliable, secure method to provide through the Electronic Employment Verification System established pursuant to subsection (d) of section 274A of the Immigration and Nationality Act (referred to in this subparagraph as the 'System'), within the time periods required by paragraph (8) of such subsection—

''(I) a determination of whether the name, date of birth, employer identification number, and social security account number of an individual provided in an inquiry made to the System by an employer is consistent with such information maintained by the Commissioner in order to confirm the validity of the information provided;

1 "(II) a determination of the citizenship status
2 associated with such name and social security ac-
3 count number, according to the records maintained
4 by the Commissioner;
5 "(III) a determination of whether the name and
6 number belongs to an individual who is deceased, ac-
7 cording to the records maintained by the Commis-
8 sioner;
9 "(IV) a determination of whether the name and
10 number is blocked in accordance with clause (ii); and
11 "(V) a confirmation notice or a nonconfirma-
12 tion notice described in such paragraph (8), in a
13 manner that ensures that other information main-
14 tained by the Commissioner is not disclosed or re-
15 leased to employers through the System.
16 "(ii) The Commissioner of Social Security shall pre-
17 vent the fraudulent or other misuse of a social security
18 account number by establishing procedures under which
19 an individual who has been assigned a social security ac-
20 count number may block the use of such number under
21 the System and remove such block.
22 "(J) In assigning social security account numbers to
23 aliens who are authorized to work in the United States
24 under section 218A of the Immigration and Nationality
25 Act, the Commissioner of Social Security shall, to the

maximum extent practicable, assign such numbers by employing the enumeration procedure administered jointly by the Commissioner, the Secretary of State, and the Secretary.''.

(e) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION.—

(1) IN GENERAL.—Section 6103(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(21) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO DEPARTMENT OF HOMELAND SECURITY.—

''(A) IN GENERAL.—From taxpayer identity information which has been disclosed to the Social Security Administration and upon written request by the Secretary of Homeland Security, the Commissioner of Social Security shall disclose directly to officers, employees, and contractors of the Department of Homeland Security the following information:

''(i) DISCLOSURE OF EMPLOYER NO-MATCH NOTICES.—Taxpayer identity information of each person who has filed an information return required by reason of sec-

tion 6051 during calendar year 2006, 2007, or 2008 which contains—

"(I) more than 100 names and taxpayer identifying numbers of employees (within the meaning of such section) that did not match the records maintained by the Commissioner of Social Security, or

"(II) more than 10 names of employees (within the meaning of such section) with the same taxpayer identifying number.

"(ii) DISCLOSURE OF INFORMATION REGARDING USE OF DUPLICATE EMPLOYEE TAXPAYER IDENTIFYING INFORMATION.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 which the Commissioner of Social Security has reason to believe, based on a comparison with information submitted by the Secretary of Homeland Security, contains evidence of identity fraud due to the multiple use of the same taxpayer identifying number (as-

signed under section 6109) of an employee (within the meaning of section 6051).

"(iii) DISCLOSURE OF INFORMATION REGARDING NONPARTICIPATING EMPLOYERS.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 which the Commissioner of Social Security has reason to believe, based on a comparison with information submitted by the Secretary of Homeland Security, contains evidence of such person's failure to register and participate in the Electronic Employment Verification System authorized under section 274A(d) of the Immigration and Nationality Act (hereafter in this paragraph referred to as the 'System').

"(iv) DISCLOSURE OF INFORMATION REGARDING NEW EMPLOYEES OF NONPARTICIPATING EMPLOYERS.—Taxpayer identity information of all employees (within the meaning of section 6051) hired after the date a person identified in clause (iii) is required to participate in the System under section 274A(d)(2) or section

274A(d)(3)(B) of the Immigration and Nationality Act.

"(v) DISCLOSURE OF INFORMATION REGARDING EMPLOYEES OF CERTAIN DESIGNATED EMPLOYERS.—Taxpayer identity information of all employees (within the meaning of section 6051) of each person who is required to participate in the System under section 274A(d)(3)(B) of the Immigration and Nationality Act.

"(vi) DISCLOSURE OF NEW HIRE TAXPAYER IDENTITY INFORMATION.—Taxpayer identity information of each person participating in the System and taxpayer identity information of all employees (within the meaning of section 6051) of such person hired during the period beginning with the later of—

"(I) the date such person begins to participate in the System, or

"(II) the date of the request immediately preceding the most recent request under this clause,

ending with the date of the most recent request under this clause.

"(B) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security shall disclose taxpayer identity information under subparagraph (A) only for purposes of, and to the extent necessary in—

"(i) establishing and enforcing employer participation in the System,

"(ii) carrying out, including through civil administrative and civil judicial proceedings, of sections 212, 217, 235, 237, 238, 274A, 274B, and 274C of the Immigration and Nationality Act, and

"(iii) the civil operation of the Alien Terrorist Removal Court.

"(C) REIMBURSEMENT.—The Commissioner of Social Security shall prescribe a reasonable fee schedule for furnishing taxpayer identity information under this paragraph and collect such fees in advance from the Secretary of Homeland Security.

"(D) TERMINATION.—This paragraph shall not apply to any request made after the date which is 3 years after the date of the enactment of this paragraph.".

(2) COMPLIANCE BY DHS CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.—

(A) IN GENERAL.—Section 6103(p) of such Code is amended by adding at the end the following new paragraph:

"(9) DISCLOSURE TO DHS CONTRACTORS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor of the Department of Homeland Security unless such Department, to the satisfaction of the Secretary—

"(A) has requirements in effect which require each such contractor which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

"(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 1 year in duration) of each contractor to determine compliance with such requirements,

"(C) submits the findings of the most recent review conducted under subparagraph (B)

to the Secretary as part of the report required by paragraph (4)(E), and

"(D) certifies to the Secretary for the most recent annual period that such contractor is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor, a description of the contract or agreement with such contractor, and the duration of such contract or agreement.".

(3) CONFORMING AMENDMENTS.—

(A) Section 6103(a)(3) of such Code is amended by striking "or (20)" and inserting "(20), or (21)".

(B) Section 6103(p)(3)(A) of such Code is amended by adding at the end the following new sentence: "The Commissioner of Social Security shall provide to the Secretary such information as the Secretary may require in carrying out this paragraph with respect to return information inspected or disclosed under the authority of subsection (l)(21).".

(C) Section 6103(p)(4) of such Code is amended—

(i) by striking ''or (17)'' both places it appears and inserting ''(17), or (21)'', and

(ii) by striking ''or (20)'' each place it appears and inserting ''(20), or (21)''.

(D) Section 6103(p)(8)(B) of such Code is amended by inserting ''or paragraph (9)'' after ''subparagraph (A)''.

(E) Section 7213(a)(2) of such Code is amended by striking ''or (20)'' and inserting ''(20), or (21)''.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the amendments made by this section.

(2) LIMITATION ON VERIFICATION RESPONSIBILITIES OF COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security is authorized to perform activities with respect to carrying out the Commissioner's responsibilities in this title or the amendments made by this title, but only to the extent the Secretary has provided, in advance, funds to cover the Commissioner's full costs in carrying out such responsibilities. In no case shall funds from the Federal Old-Age and Survivors In-

surance Trust Fund or the Federal Disability Insurance Trust Fund be used to carry out such responsibilities.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), (c), and (d) shall take effect on the date that is 180 days after the date of the enactment of this Act.

(2) SUBSECTION (e).—

(A) IN GENERAL.—The amendments made by subsection (e) shall apply to disclosures made after the date of the enactment of this Act.

(B) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (e)(2), shall be made with respect to calendar year 2007.

SEC. 302. EMPLOYER COMPLIANCE FUND.

Section 286 (8 U.S.C. 1356) is amended by adding at the end the following new subsection:

"(w) EMPLOYER COMPLIANCE FUND.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury, a separate account,

which shall be known as the 'Employer Compliance Fund' (referred to in this subsection as the 'Fund').

"(2) DEPOSITS.—There shall be deposited as offsetting receipts into the Fund all civil monetary penalties collected by the Secretary of Homeland Security under section 274A.

"(3) PURPOSE.—Amounts refunded to the Secretary from the Fund shall be used for the purposes of enhancing and enforcing employer compliance with section 274A.

"(4) AVAILABILITY OF FUNDS.—Amounts deposited into the Fund shall remain available until expended and shall be refunded out of the Fund by the Secretary of the Treasury, at least on a quarterly basis, to the Secretary of Homeland Security.".

SEC. 303. ADDITIONAL WORKSITE ENFORCEMENT AND FRAUD DETECTION AGENTS.

(a) INCREASE IN NUMBER OF PERSONNEL.—The Secretary shall, subject to the availability of appropriations for such purpose, annually increase, by not less than 2,200, the number of personnel of the Bureau of Immigration and Customs Enforcement during the 5-year period beginning on the date of the enactment of this Act.

(b) USE OF PERSONNEL.—The Secretary shall ensure that not less than 25 percent of all the hours ex-

pended by personnel of the Bureau of Immigration and Customs Enforcement shall be used to enforce compliance with sections 274A and 274C of the Immigration and Nationality Act (8 U.S.C. 1324a and 1324c).

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

SEC. 304. CLARIFICATION OF INELIGIBILITY FOR MISREPRESENTATION.

Section 212(a)(6)(C)(ii)(I) (8 U.S.C. 1182(a)(6)(C)(ii)(I)), is amended by striking ''citizen'' and inserting ''national''.

SEC. 305. ANTIDISCRIMINATION PROTECTIONS.

(a) APPLICATION OF PROHIBITION OF DISCRIMINATION TO VERIFICATION SYSTEM.—Section 274B(a)(1) (8 U.S.C. 1324b(a)(1)) is amended by inserting '', the verification of the individual's work authorization through the Electronic Employment Verification System described in section 274A(d),'' after ''the individual for employment''.

(b) CLASSES OF ALIENS AS PROTECTED INDIVIDUALS.—Section 274B(a)(3)(B) (8 U.S.C. 1324b(a)(3)(B)) is amended to read as follows:

''(B) is an alien who is—

"(i) lawfully admitted for permanent residence;

"(ii) granted the status of an alien lawfully admitted for temporary residence under section 210(a) or 245(a)(1);

"(iii) admitted as a refugee under section 207;

"(iv) granted asylum under section 208;

"(v) granted the status of a nonimmigrant under section 101(a)(15)(H)(ii)(c);

"(vi) granted temporary protected status under section 244; or

"(vii) granted parole under section 212(d)(5).".

(c) REQUIREMENTS FOR ELECTRONIC EMPLOYMENT VERIFICATION.—Section 274B(a) (8 U.S.C. 1324b(a)) is amended by adding at the end the following:

"(7) ANTIDISCRIMINATION REQUIREMENTS OF THE ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.—It is an unfair immigration-related employment practice for a person or other entity, in the course of the electronic verification process described in section 274A(d)—

"(A) to terminate or undertake any adverse employment action due to a tentative nonconfirmation;

"(B) to use the verification system for screening of an applicant prior to an offer of employment;

"(C) except as described in section 274A(d)(3)(B), to use the verification system for a current employee after the first 3 days of employment, or for the reverification of an employee after the employee has satisfied the process described in section 274A(d); or

"(D) to require an individual to make an inquiry under the self-verification procedures established in section 274A(d)(8)(E)(iii).".

(d) INCREASE IN CIVIL MONEY PENALTIES.—Section 274B(g)(2) (8 U.S.C. 1324b(g)(2)) is amended—

(1) in subparagraph (B)(iv)—

(A) in subclause (I), by striking "$250 and not more than $2,000" and inserting "$1,000 and not more than $4,000";

(B) in subclause (II), by striking "$2,000 and not more than $5,000" and inserting "$4,000 and not more than $10,000";

(C) in subclause (III), by striking ''$3,000 and not more than $10,000'' and inserting ''$6,000 and not more than $20,000''; and

(D) in subclause (IV), by striking ''$100 and not more than $1,000'' and inserting ''$500 and not more than $5,000''.

(e) INCREASED FUNDING OF INFORMATION CAMPAIGN.—Section 274B(l)(3) (8 U.S.C. 1324b(l)(3)) is amended by inserting ''and an additional $40,000,000 for each of fiscal years 2007 through 2009'' before the period at the end.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act and shall apply to violations occurring on or after such date.

TITLE IV—NONIMMIGRANT AND IMMIGRANT VISA REFORM

Subtitle A—Temporary Guest Workers

SEC. 401. IMMIGRATION IMPACT STUDY.

(a) EFFECTIVE DATE.—Any regulation that would increase the number of aliens who are eligible for legal status may not take effect before 90 days after the date on which the Director of the Bureau of the Census submits a report to Congress under subsection (c).

(b) STUDY.—The Director of the Bureau of the Census, jointly with the Secretary, the Secretary of Agriculture, the Secretary of Education, the Secretary of Energy, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of the Interior, the Secretary of Labor, the Secretary of Transportation, the Secretary of the Treasury, the Attorney General, and the Administrator of the Environmental Protection Agency, shall undertake a study examining the impacts of the current and proposed annual grants of legal status, including immigrant and nonimmigrant status, along with the current level of illegal immigration, on the infrastructure of and quality of life in the United States.

(c) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Director of the Bureau of the Census shall submit to Congress a report on the findings of the study required by subsection (b), including the following information:

(1) An estimate of the total legal and illegal immigrant populations of the United States, as they relate to the total population.

(2) The projected impact of legal and illegal immigration on the size of the population of the United States over the next 50 years, which regions of the

country are likely to experience the largest increases, which small towns and rural counties are likely to lose their character as a result of such growth, and how the proposed regulations would affect these projections.

(3) The impact of the current and projected foreign-born populations on the natural environment, including the consumption of nonrenewable resources, waste production and disposal, the emission of pollutants, and the loss of habitat and productive farmland, an estimate of the public expenditures required to maintain current standards in each of these areas, the degree to which current standards will deteriorate if such expenditures are not forthcoming, and the additional effects the proposed regulations would have.

(4) The impact of the current and projected foreign-born populations on employment and wage rates, particularly in industries such as agriculture and services in which the foreign born are concentrated, an estimate of the associated public costs, and the additional effects the proposed regulations would have.

(5) The impact of the current and projected foreign-born populations on the need for additions

and improvements to the transportation infrastructure of the United States, an estimate of the public expenditures required to meet this need, the impact on Americans' mobility if such expenditures are not forthcoming, and the additional effect the proposed regulations would have.

(6) The impact of the current and projected foreign-born populations on enrollment, class size, teacher-student ratios, and the quality of education in public schools, an estimate of the public expenditures required to maintain current median standards, the degree to those standards will deteriorate if such expenditures are not forthcoming, and the additional effect the proposed regulations would have.

(7) The impact of the current and projected foreign-born populations on home ownership rates, housing prices, and the demand for low-income and subsidized housing, the public expenditures required to maintain current median standards in these areas, the degree to which those standards will deteriorate if such expenditures are not forthcoming, and the additional effect the proposed regulations would have.

(8) The impact of the current and projected foreign-born populations on access to quality health care and on the cost of health care and health insurance, an estimate of the public expenditures required to maintain current median standards, the degree to which those standards will deteriorate if such expenditures are not forthcoming, and the additional effect the proposed regulations would have.

(9) The impact of the current and projected foreign-born populations on the criminal justice system in the United States, an estimate of the associated public costs, and the additional effect the proposed regulations would have.

SEC. 402. NONIMMIGRANT TEMPORARY WORKER.

(a) TEMPORARY WORKER CATEGORY.—Section 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is amended to read as follows:

"(H) an alien—

"(i)(b) subject to section 212(j)(2)—

"(aa) who is coming temporarily to the United States to perform services (other than services described in clause (ii)(a) or subparagraph (O) or (P)) in a specialty occupation de-

scribed in section 214(i)(1) or as a fashion model;

"(bb) who meets the requirements for the occupation specified in section 214(i)(2) or, in the case of a fashion model, is of distinguished merit and ability; and

"(cc) with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security that the intending employer has filed an application with the Secretary in accordance with section 212(n)(1);

"(b1)(aa) who is entitled to enter the United States under the provisions of an agreement listed in section 214(g)(8)(A);

"(bb) who is engaged in a specialty occupation described in section 214(i)(3); and

"(cc) with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed an attestation with the

Secretary of Labor in accordance with section 212(t)(1); or

"(c)(aa) who is coming temporarily to the United States to perform services as a registered nurse;

"(bb) who meets the qualifications described in section 212(m)(1); and

"(cc) with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility (as defined in section 212(m)(6)) for which the alien will perform the services; or

"(ii)(a) who—

"(aa) has a residence in a foreign country which the alien has no intention of abandoning; and

"(bb) is coming temporarily to the United States to perform agricultural labor or services (as defined by the Secretary of Labor), including agricultural labor (as defined in section 3121(g) of the Internal Revenue Code

of 1986), agriculture (as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f))), and the pressing of apples for cider on a farm, of a temporary or seasonal nature;

''(b) who—

''(aa) has a residence in a foreign country which the alien has no intention of abandoning;

''(bb) is coming temporarily to the United States to perform nonagricultural work or services of a temporary or seasonal nature (if unemployed persons capable of performing such work or services cannot be found in the United States), excluding medical school graduates coming to the United States to perform services as members of the medical profession; or

''(c) who—

''(aa) has a residence in a foreign country which the alien has no intention of abandoning;

"(bb) is coming temporarily to the United States to perform temporary labor or services other than the labor or services described in clause (i)(b), (i)(c), (ii)(a), or (iii), or subparagraph (L), (O), (P), or (R) (if unemployed persons capable of performing such labor or services cannot be found in the United States); and

"(cc) meets the requirements of section 218A, including the filing of a petition under such section on behalf of the alien;

"(iii) who—

"(a) has a residence in a foreign country which the alien has no intention of abandoning; and

"(b) is coming temporarily to the United States as a trainee (other than to receive graduate medical education or training) in a training program that is not designed primarily to provide productive employment; or

"(iv) who—

"(a) is the spouse or a minor child of an alien described in this subparagraph; and

"(b) is accompanying or following to join such alien.".

(b) EFFECTIVE DATE AND APPLICATION.—The amendment made by subsection (a) shall take effect on the date that is 18 months after the date that not less than $400,000,000 have been appropriated and made available to the Secretary to implement the Electronic Employment Verification System established under 274A(d) of the Immigration and Nationality Act, as amended by section 301(a), with respect to aliens, who, on such effective date, are outside of the United States.

SEC. 403. ADMISSION OF NONIMMIGRANT TEMPORARY GUEST WORKERS.

(a) TEMPORARY GUEST WORKERS.—

(1) IN GENERAL.—Chapter 2 of title II (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:

"SEC. 218A. ADMISSION OF H–2C NONIMMIGRANTS.

"(a) AUTHORIZATION.—The Secretary of State may grant a temporary visa to an H–2C nonimmigrant who demonstrates an intent to perform labor or services in the United States (other than the labor or services described

in clause (i)(b) or (ii)(a) of section 101(a)(15)(H) or subparagraph (L), (O), (P), or (R)) of section 101(a)(15).

"(b) REQUIREMENTS FOR ADMISSION.—An alien shall be eligible for H–2C nonimmigrant status if the alien meets the following requirements:

"(1) ELIGIBILITY TO WORK.—The alien shall establish that the alien is capable of performing the labor or services required for an occupation under section 101(a)(15)(H)(ii)(c).

"(2) EVIDENCE OF EMPLOYMENT.—The alien shall establish that the alien has received a job offer from an employer who has complied with the requirements of 218B.

"(3) FEE.—The alien shall pay a $500 visa issuance fee in addition to the cost of processing and adjudicating such application. Nothing in this paragraph shall be construed to affect consular procedures for charging reciprocal fees.

"(4) MEDICAL EXAMINATION.—The alien shall undergo a medical examination (including a determination of immunization status), at the alien's expense, that conforms to generally accepted standards of medical practice.

"(5) APPLICATION CONTENT AND WAIVER.—

"(A) APPLICATION FORM.—The alien shall submit to the Secretary a completed application, on a form designed by the Secretary of Homeland Security, including proof of evidence of the requirements under paragraphs (1) and (2).

"(B) CONTENT.—In addition to any other information that the Secretary requires to determine an alien's eligibility for H–2C nonimmigrant status, the Secretary shall require an alien to provide information concerning the alien's—

"(i) physical and mental health;

"(ii) criminal history and gang membership;

"(iii) immigration history; and

"(iv) involvement with groups or individuals that have engaged in terrorism, genocide, persecution, or who seek the overthrow of the United States Government.

"(C) KNOWLEDGE.—The alien shall include with the application submitted under this paragraph a signed certification in which the alien certifies that—

"(i) the alien has read and understands all of the questions and statements on the application form;

"(ii) the alien certifies under penalty of perjury under the laws of the United States that the application, and any evidence submitted with it, are all true and correct; and

"(iii) the applicant authorizes the release of any information contained in the application and any attached evidence for law enforcement purposes.

"(c) GROUNDS OF INADMISSIBILITY.—

"(1) IN GENERAL.—In determining an alien's admissibility as an H–2C nonimmigrant—

"(A) paragraphs (5), (6)(A), (7), (9)(B), and (9)(C) of section 212(a) may be waived for conduct that occurred before the effective date of the Comprehensive Immigration Reform Act of 2006;

"(B) the Secretary of Homeland Security may not waive the application of—

"(i) subparagraph (A), (B), (C), (E), (G), (H), or (I) of section 212(a)(2) (relating to criminals);

"(ii) section 212(a)(3) (relating to security and related grounds); or

"(iii) subparagraph (A), (C) or (D) of section 212(a)(10) (relating to polygamists and child abductors); and

"(C) for conduct that occurred before the date of the enactment of the Comprehensive Immigration Reform Act of 2006, the Secretary of Homeland Security may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an individual alien—

"(i) for humanitarian purposes;

"(ii) to ensure family unity; or

"(iii) if such a waiver is otherwise in the public interest.

"(2) RENEWAL OF AUTHORIZED ADMISSION AND SUBSEQUENT ADMISSIONS.—An alien seeking renewal of authorized admission or subsequent admission as an H–2C nonimmigrant shall establish that the alien is not inadmissible under section 212(a).

"(d) BACKGROUND CHECKS.—The Secretary of Homeland Security shall not admit, and the Secretary of State shall not issue a visa to, an alien seeking H–2C non-

immigrant status unless all appropriate background checks have been completed.

"(e) INELIGIBLE TO CHANGE NONIMMIGRANT CLASSIFICATION.—An H–2C nonimmigrant may not change nonimmigrant classification under section 248.

"(f) PERIOD OF AUTHORIZED ADMISSION.—

"(1) AUTHORIZED PERIOD AND RENEWAL.—The initial period of authorized admission as an H–2C nonimmigrant shall be 3 years, and the alien may seek 1 extension for an additional 3-year period.

"(2) INTERNATIONAL COMMUTERS.—An alien who resides outside the United States and commutes into the United States to work as an H–2C nonimmigrant, is not subject to the time limitations under paragraph (1).

"(3) LOSS OF EMPLOYMENT.—

"(A) IN GENERAL.—

"(i) PERIOD OF UNEMPLOYMENT.—Subject to clause (ii) and subsection (c), the period of authorized admission of an H–2C nonimmigrant shall terminate if the alien is unemployed for 60 or more consecutive days.

"(ii) EXCEPTION.—The period of authorized admission of an H–2C nonimmigrant shall not terminate if the alien is unemployed for 60 or more consecutive days if such unemployment is caused by—

"(I) a period of physical or mental disability of the alien or the spouse, son, daughter, or parent (as defined in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611)) of the alien;

"(II) a period of vacation, medical leave, maternity leave, or similar leave from employment authorized by employer policy, State law, or Federal law; or

"(III) any other period of temporary unemployment caused by circumstances beyond the control of the alien.

"(B) RETURN TO FOREIGN RESIDENCE.—Any alien whose period of authorized admission terminates under subparagraph (A) shall be required to leave the United States.

"(C) PERIOD OF VISA VALIDITY.—Any alien, whose period of authorized admission terminates under subparagraph (A), who leaves the United States under subparagraph (B), may reenter the United States as an H–2C nonimmigrant to work for an employer, if the alien has complied with the requirements of subsection (b). The Secretary may, in the Secretary's sole and unreviewable discretion, reauthorize such alien for admission as an H–2C nonimmigrant without requiring the alien's departure from the United States.

"(4) VISITS OUTSIDE UNITED STATES.—

"(A) IN GENERAL.—Under regulations established by the Secretary of Homeland Security, an H–2C nonimmigrant—

"(i) may travel outside of the United States; and

"(ii) may be readmitted without having to obtain a new visa if the period of authorized admission has not expired.

"(B) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under subparagraph (A) shall not extend

the period of authorized admission in the United States.

"(5) BARS TO EXTENSION OR ADMISSION.—An alien may not be granted H–2C nonimmigrant status, or an extension of such status, if—

"(A) the alien has violated any material term or condition of such status granted previously, including failure to comply with the change of address reporting requirements under section 265;

"(B) the alien is inadmissible as a nonimmigrant; or

"(C) the granting of such status or extension of such status would allow the alien to exceed 6 years as an H–2C nonimmigrant, unless the alien has resided and been physically present outside the United States for at least 1 year after the expiration of such H–2C nonimmigrant status.

"(g) EVIDENCE OF NONIMMIGRANT STATUS.—Each H–2C nonimmigrant shall be issued documentary evidence of nonimmigrant status, which—

"(1) shall be machine-readable, tamper-resistant, and allow for biometric authentication;

"(2) shall be designed in consultation with the Forensic Document Laboratory of the Bureau of Immigration and Customs Enforcement;

"(3) shall, during the alien's authorized period of admission under subsection (f), serve as a valid entry document for the purpose of applying for admission to the United States—

"(A) instead of a passport and visa if the alien—

"(i) is a national of a foreign territory contiguous to the United States; and

"(ii) is applying for admission at a land border port of entry; and

"(B) in conjunction with a valid passport, if the alien is applying for admission at an air or sea port of entry;

"(4) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B); and

"(5) shall be issued to the H–2C nonimmigrant by the Secretary of Homeland Security promptly after the final adjudication of such alien's application for H–2C nonimmigrant status.

"(h) PENALTY FOR FAILURE TO DEPART.—If an H–2C nonimmigrant fails to depart the United States before the date which is 10 days after the date that the alien's authorized period of admission as an H–2C nonimmigrant terminates, the H–2C nonimmigrant may not apply for or receive any immigration relief or benefit under this Act or any other law, except for relief under sections 208 and 241(b)(3) and relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for an alien who indicates either an intention to apply for asylum under section 208 or a fear of persecution or torture.

"(i) PENALTY FOR ILLEGAL ENTRY OR OVERSTAY.—Any alien who enters, attempts to enter, or crosses the border after the date of the enactment of this section, and is physically present in the United States after such date in violation of this Act or of any other Federal law, may not receive, for a period of 10 years—

"(1) any relief under section 240A(a), 240A(b)(1), or 240B; or

"(2) nonimmigrant status under section 101(a)(15) (except subparagraphs (T) and (U)).

"(j) PORTABILITY.—A nonimmigrant alien described in this section, who was previously issued a visa or other-

1 wise provided H–2C nonimmigrant status, may accept a
2 new offer of employment with a subsequent employer, if—
3 "(1) the employer complies with section 218B;
4 and
5 "(2) the alien, after lawful admission to the
6 United States, did not work without authorization.
7 "(k) CHANGE OF ADDRESS.—An H–2C non-
8 immigrant shall comply with the change of address report-
9 ing requirements under section 265 through either elec-
10 tronic or paper notification.
11 "(l) COLLECTION OF FEES.—All fees collected under
12 this section shall be deposited in the Treasury in accord-
13 ance with section 286(c).
14 "(m) ISSUANCE OF H–4 NONIMMIGRANT VISAS FOR
15 SPOUSE AND CHILDREN.—
16 "(1) IN GENERAL.—The alien spouse and chil-
17 dren of an H–2C nonimmigrant (referred to in this
18 section as 'dependent aliens') who are accompanying
19 or following to join the H–2C nonimmigrant may be
20 issued nonimmigrant visas under section
21 101(a)(15)(H)(iv).
22 "(2) REQUIREMENTS FOR ADMISSION.—A de-
23 pendent alien is eligible for nonimmigrant status
24 under 101(a)(15)(H)(iv) if the dependent alien
25 meets the following requirements:

"(A) ELIGIBILITY.—The dependent alien is admissible as a nonimmigrant and does not fall within a class of aliens ineligible for H–4A nonimmigrant status listed under subsection (c).

"(B) MEDICAL EXAMINATION.—Before a nonimmigrant visa is issued to a dependent alien under this subsection, the dependent alien shall submit to a medical examination (including a determination of immunization status) at the alien's expense, that conforms to generally accepted standards of medical practice.

"(C) BACKGROUND CHECKS.—Before a nonimmigrant visa is issued to a dependent alien under this section, the consular officer shall conduct such background checks as the Secretary of State, in consultation with the Secretary of Homeland Security, considers appropriate.

"(n) DEFINITIONS.—In this section and sections 218B, 218C, and 218D:

"(1) AGGRIEVED PERSON.— term 'aggrieved person' means a person adversely affected by an alleged violation of this section, including—

"(A) a worker whose job, wages, or working conditions are adversely affected by the violation; and

"(B) a representative for workers whose jobs, wages, or working conditions are adversely affected by the violation who brings a complaint on behalf of such worker.

"(2) AREA OF EMPLOYMENT.—The terms 'area of employment' and 'area of intended employment' mean the area within normal commuting distance of the worksite or physical location at which the work of the temporary worker is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

"(3) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A) with respect to that employment.

"(4) EMPLOY; EMPLOYEE; EMPLOYER.—The terms 'employ', 'employee', and 'employer' have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

"(5) FOREIGN LABOR CONTRACTOR.—The term 'foreign labor contractor' means any person who for any compensation or other valuable consideration paid or promised to be paid, performs any foreign labor contracting activity.

"(6) FOREIGN LABOR CONTRACTING ACTIVITY.—The term 'foreign labor contracting activity' means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a nonimmigrant alien described in section 101(a)(15)(H)(ii)(c).

"(7) H–2C NONIMMIGRANT.—The term 'H–2C nonimmigrant' means a nonimmigrant described in section 101(a)(15)(H)(ii)(c).

"(8) SEPARATION FROM EMPLOYMENT.—The term 'separation from employment' means the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract. The term does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or

higher compensation and benefits than the position from which the employee was discharged, regardless of whether the employee accepts the offer. Nothing in this paragraph shall limit an employee's rights under a collective bargaining agreement or other employment contract.

"(9) UNITED STATES WORKER.—The term 'United States worker' means an employee who is—

"(A) a citizen or national of the United States; or

"(B) an alien who is—

"(i) lawfully admitted for permanent residence;

"(ii) admitted as a refugee under section 207;

"(iii) granted asylum under section 208; or

"(iv) otherwise authorized, under this Act or by the Secretary of Homeland Security, to be employed in the United States.".

(2) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218 the following:

"Sec. 218A. Admission of temporary H–2C workers.".

SEC. 404. EMPLOYER OBLIGATIONS.

(a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.) is amended by inserting after section 218A, as added by section 403, the following:

"SEC. 218B. EMPLOYER OBLIGATIONS.

"(a) GENERAL REQUIREMENTS.—Each employer who employs an H–2C nonimmigrant shall—

"(1) file a petition in accordance with subsection (b); and

"(2) pay the appropriate fee, as determined by the Secretary of Labor.

"(b) REQUIRED PROCEDURE.—Except where the Secretary of Labor has determined that there is a shortage of United States workers in the occupation and area of intended employment to which the H–2C nonimmigrant is sought—

"(1) EFFORTS TO RECRUIT UNITED STATES WORKERS.—During the period beginning not later than 90 days prior to the date on which a petition is filed under subsection (a)(1), and ending on the date that is 14 days prior to the date on which the petition is filed, the employer involved shall take the following steps to recruit United States workers for the position for which the H–2C nonimmigrant is sought under the petition:

"(A) Submit a copy of the job opportunity, including a description of the wages and other terms and conditions of employment and the minimum education, training, experience and other requirements of the job, to the State Employment Service Agency that serves the area of employment in the State in which the employer is located.

"(B) Authorize the State Employment Service Agency to post the job opportunity on the Internet through the website for America's Job Bank, with local job banks, and with unemployment agencies and other labor referral and recruitment sources pertinent to the job involved.

"(C) Authorize the State Employment Service Agency to notify labor organizations in the State in which the job is located, and if applicable, the office of the local union which represents the employees in the same or substantially equivalent job classification of the job opportunity.

"(D) Post the availability of the job opportunity for which the employer is seeking a

worker in conspicuous locations at the place of employment for all employees to see.

"(2) EFFORTS TO EMPLOY UNITED STATES WORKERS.—An employer that seeks to employ an H–2C nonimmigrant shall—

"(A) first offer the job to any eligible United States worker who applies, is qualified for the job and is available at the time of need, notwithstanding any other valid employment criteria.

"(c) PETITION.—A petition to hire an H–2C nonimmigrant under this section shall include an attestation by the employer of the following:

"(1) PROTECTION OF UNITED STATES WORKERS.—The employment of an H–2C nonimmigrant—

"(A) will not adversely affect the wages and working conditions of workers in the United States similarly employed; and

"(B) did not and will not cause the separation from employment of a United States worker employed by the employer within the 180-day period beginning 90 days before the date on which the petition is filed.

"(2) WAGES.—

"(A) IN GENERAL.—The H–2C nonimmigrant will be paid not less than the greater of—

"(i) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

"(ii) the prevailing wage level for the occupational classification in the area of employment, taking into account experience and skill levels of employees.

"(B) CALCULATION.—The wage levels under subparagraph (A) shall be calculated based on the best information available at the time of the filing of the application.

"(C) PREVAILING WAGE LEVEL.—For purposes of subparagraph (A)(ii), the prevailing wage level shall be determined in accordance as follows:

"(i) If the job opportunity is covered by a collective bargaining agreement between a union and the employer, the prevailing wage shall be the wage rate set forth in the collective bargaining agreement.

"(ii) If the job opportunity is not covered by such an agreement and it is in an occupation that is covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing wage level shall be the appropriate statutory wage.

"(iii)(I) If the job opportunity is not covered by such an agreement and it is in an occupation that is not covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing wage level shall be based on published wage data for the occupation from the Bureau of Labor Statistics, including the Occupational Employment Statistics survey, Current Employment Statistics data, National Compensation Survey, and Occupational Employment Projections program. If the Bureau of Labor Statistics does not have wage data applicable to such

occupation, the employer may base the prevailing wage level on another wage survey approved by the Secretary of Labor.

"(II) The Secretary shall promulgate regulations applicable to approval of such other wage surveys that require, among other things, that the Bureau of Labor Statistics determine such surveys are statistically viable.

"(3) WORKING CONDITIONS.—All workers in the occupation at the place of employment at which the H–2C nonimmigrant will be employed will be provided the working conditions and benefits that are normal to workers similarly employed in the area of intended employment.

"(4) LABOR DISPUTE.—There is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the H–2C nonimmigrant will be employed. If such strike, lockout, or work stoppage occurs following submission of the petition, the employer will provide notification in accordance with regulations promulgated by the Secretary of Labor.

"(5) PROVISION OF INSURANCE.—If the position for which the H–2C nonimmigrant is sought is

not covered by the State workers' compensation law, the employer will provide, at no cost to the H–2C nonimmigrant, insurance covering injury and disease arising out of, and in the course of, the worker's employment, which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

"(6) NOTICE TO EMPLOYEES.—

"(A) IN GENERAL.—The employer has provided notice of the filing of the petition to the bargaining representative of the employer's employees in the occupational classification and area of employment for which the H–2C nonimmigrant is sought.

"(B) NO BARGAINING REPRESENTATIVE.—If there is no such bargaining representative, the employer has—

"(i) posted a notice of the filing of the petition in a conspicuous location at the place or places of employment for which the H–2C nonimmigrant is sought; or

"(ii) electronically disseminated such a notice to the employer's employees in the occupational classification for which the H–2C nonimmigrant is sought.

"(7) RECRUITMENT.—Except where the Secretary of Labor has determined that there is a shortage of United States workers in the occupation and area of intended employment for which the H–2C nonimmigrant is sought—

"(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition; and

"(B) good faith efforts have been taken to recruit United States workers, in accordance with regulations promulgated by the Secretary of Labor, which efforts included—

"(i) the completion of recruitment during the period beginning on the date that is 90 days before the date on which the petition was filed with the Department of Homeland Security and ending on the date that is 14 days before such filing date; and

"(ii) the actual wage paid by the employer for the occupation in the areas of intended employment was used in conducting recruitment.

"(8) INELIGIBILITY.—The employer is not currently ineligible from using the H–2C nonimmigrant program described in this section.

"(9) BONAFIDE OFFER OF EMPLOYMENT.—The job for which the H–2C nonimmigrant is sought is a bona fide job—

"(A) for which the employer needs labor or services;

"(B) which has been and is clearly open to any United States worker; and

"(C) for which the employer will be able to place the H–2C nonimmigrant on the payroll.

"(10) PUBLIC AVAILABILITY AND RECORDS RETENTION.—A copy of each petition filed under this section and documentation supporting each attestation, in accordance with regulations promulgated by the Secretary of Labor, will—

"(A) be provided to every H–2C nonimmigrant employed under the petition;

"(B) be made available for public examination at the employer's place of business or work site;

"(C) be made available to the Secretary of Labor during any audit; and

"(D) remain available for examination for 5 years after the date on which the petition is filed.

"(11) NOTIFICATION UPON SEPARATION FROM OR TRANSFER OF EMPLOYMENT.—The employer will notify the Secretary of Labor and the Secretary of Homeland Security of an H–2C nonimmigrant's separation from employment or transfer to another employer not more than 3 business days after the date of such separation or transfer, in accordance with regulations promulgated by the Secretary of Homeland Security.

"(12) ACTUAL NEED FOR LABOR OR SERVICES.—The petition was filed not more than 60 days before the date on which the employer needed labor or services for which the H–2C nonimmigrant is sought.

"(d) AUDIT OF ATTESTATIONS.—

"(1) REFERRALS BY SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall refer all approved petitions for H–2C nonimmigrants to the Secretary of Labor for potential audit.

"(2) AUDITS AUTHORIZED.—The Secretary of Labor may audit any approved petition referred pur-

suant to paragraph (1), in accordance with regulations promulgated by the Secretary of Labor.

"(e) INELIGIBLE EMPLOYERS.—

"(1) IN GENERAL.—The Secretary of Homeland Security shall not approve an employer's petitions, applications, certifications, or attestations under any immigrant or nonimmigrant program if the Secretary of Labor determines, after notice and an opportunity for a hearing, that the employer submitting such documents—

"(A) has, with respect to the attestations required under subsection (b)—

"(i) misrepresented a material fact;

"(ii) made a fraudulent statement; or

"(iii) failed to comply with the terms of such attestations; or

"(B) failed to cooperate in the audit process in accordance with regulations promulgated by the Secretary of Labor.

"(2) LENGTH OF INELIGIBILITY.—An employer described in paragraph (1) shall be ineligible to participate in the labor certification programs of the Secretary of Labor for not less than the time period determined by the Secretary, not to exceed 3 years.

"(3) EMPLOYERS IN HIGH UNEMPLOYMENT AREAS.—Beginning on the date that is 1 year after the date of the enactment of the Initial Entry, Adjustment, and Citizenship Assistance Grant Act of 2006, the Secretary of Homeland Security may not approve any employer's petition under subsection (b) if the work to be performed by the H–2C nonimmigrant is not agriculture based and is located in a metropolitan or micropolitan statistical area (as defined by the Office of Management and Budget) in which the unemployment rate for workers who have not completed any education beyond a high school diploma during the most recently completed 6-month period averaged more than 9.0 percent.

"(f) REGULATION OF FOREIGN LABOR CONTRACTORS.—

"(1) COVERAGE.—Notwithstanding any other provision of law, an H–2C nonimmigrant may not be treated as an independent contractor.

"(2) APPLICABILITY OF LAWS.—An H–2C nonimmigrant shall not be denied any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a United States worker employed in a similar position with

the employer because of the alien's status as a nonimmigrant worker.

"(3) TAX RESPONSIBILITIES.—With respect to each employed H–2C nonimmigrant, an employer shall comply with all applicable Federal, State, and local tax and revenue laws.

"(g) WHISTLEBLOWER PROTECTION.—It shall be unlawful for an employer or a labor contractor of an H–2C nonimmigrant to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner, discriminate against an employee or former employee because the employee or former employee—

"(1) discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of this Act; or

"(2) cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of this Act.

"(h) LABOR RECRUITERS.—

"(1) IN GENERAL.—Each employer that engages in foreign labor contracting activity and each foreign labor contractor shall ascertain and disclose, to each such worker who is recruited for employment at the time of the worker's recruitment—

"(A) the place of employment;

"(B) the compensation for the employment;

"(C) a description of employment activities;

"(D) the period of employment;

"(E) any other employee benefit to be provided and any costs to be charged for each benefit;

"(F) any travel or transportation expenses to be assessed;

"(G) the existence of any labor organizing effort, strike, lockout, or other labor dispute at the place of employment;

"(H) the existence of any arrangement with any owner, employer, foreign contractor, or its agent where such person receives a commission from the provision of items or services to workers;

"(I) the extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including—

"(i) work related injuries and death during the period of employment;

"(ii) the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance;

"(iii) the name and the telephone number of each person who must be notified of an injury or death; and

"(iv) the time period within which such notice must be given;

"(J) any education or training to be provided or required, including—

"(i) the nature and cost of such training;

"(ii) the entity that will pay such costs; and

"(iii) whether the training is a condition of employment, continued employment, or future employment; and

"(K) a statement, in a form specified by the Secretary of Labor, describing the protections of this Act for workers recruited abroad.

"(2) FALSE OR MISLEADING INFORMATION.—No foreign labor contractor or employer who engages in foreign labor contracting activity shall knowingly provide material false or misleading infor-

mation to any worker concerning any matter required to be disclosed in paragraph (1).

"(3) LANGUAGES.—The information required to be disclosed under paragraph (1) shall be provided in writing in English or, as necessary and reasonable, in the language of the worker being recruited. The Secretary of Labor shall make forms available in English, Spanish, and other languages, as necessary, which may be used in providing workers with information required under this section.

"(4) FEES.—A person conducting a foreign labor contracting activity shall not assess any fee to a worker for such foreign labor contracting activity.

"(5) TERMS.—No employer or foreign labor contractor shall, without justification, violate the terms of any agreement made by that contractor or employer regarding employment under this program.

"(6) TRAVEL COSTS.—If the foreign labor contractor or employer charges the employee for transportation such transportation costs shall be reasonable.

"(7) OTHER WORKER PROTECTIONS.—

"(A) NOTIFICATION.—Not less frequently than once every 2 years, each employer shall notify the Secretary of Labor of the identity of

any foreign labor contractor engaged by the employer in any foreign labor contractor activity for, or on behalf of, the employer.

"(B) REGISTRATION OF FOREIGN LABOR CONTRACTORS.—

"(i) IN GENERAL.—No person shall engage in foreign labor recruiting activity unless such person has a certificate of registration from the Secretary of Labor specifying the activities that such person is authorized to perform. An employer who retains the services of a foreign labor contractor shall only use those foreign labor contractors who are registered under this subparagraph.

"(ii) ISSUANCE.—The Secretary shall promulgate regulations to establish an efficient electronic process for the investigation and approval of an application for a certificate of registration of foreign labor contractors not later than 14 days after such application is filed, including—

"(I) requirements under paragraphs (1), (4), and (5) of section 102 of the Migrant and Seasonal Agricul-

tural Worker Protection Act (29 U.S.C. 1812);

"(II) an expeditious means to update registrations and renew certificates; and

"(III) any other requirements that the Secretary may prescribe.

"(iii) TERM.—Unless suspended or revoked, a certificate under this subparagraph shall be valid for 2 years.

"(iv) REFUSAL TO ISSUE; REVOCATION; SUSPENSION.—In accordance with regulations promulgated by the Secretary of Labor, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration under this subparagraph if—

"(I) the application or holder of the certification has knowingly made a material misrepresentation in the application for such certificate;

"(II) the applicant for, or holder of, the certification is not the real party in interest in the application or

certificate of registration and the real party in interest—

"(aa) is a person who has been refused issuance or renewal of a certificate;

"(bb) has had a certificate suspended or revoked; or

"(cc) does not qualify for a certificate under this paragraph; or

"(III) the applicant for or holder of the certification has failed to comply with this Act.

"(C) REMEDY FOR VIOLATIONS.—An employer engaging in foreign labor contracting activity and a foreign labor contractor that violates the provisions of this subsection shall be subject to remedies for foreign labor contractor violations under subsections (h) and (i). If a foreign labor contractor acting as an agent of an employer violates any provision of this subsection, the employer shall also be subject to remedies under subsections (h) and (i). An employer that violates a provision of this subsection relating to employer obligations shall be

subject to remedies under subsections (h) and (i).

"(D) EMPLOYER NOTIFICATION.—An employer shall notify the Secretary of Labor if the employer becomes aware of a violation of this subsection by a foreign labor recruiter.

"(E) WRITTEN AGREEMENTS.—A foreign labor contractor may not violate the terms of any written agreements made with an employer relating to any contracting activity or worker protection under this subsection.

"(F) BONDING REQUIREMENT.—The Secretary of Labor may require a foreign labor contractor to post a bond in an amount sufficient to ensure the protection of individuals recruited by the foreign labor contractor. The Secretary may consider the extent to which the foreign labor contractor has sufficient ties to the United States to adequately enforce this subsection.

"(i) ENFORCEMENT.—

"(1) IN GENERAL.—The Secretary of Labor shall promulgate regulations for the receipt, investigation, and disposition of complaints by an aggrieved person respecting a violation of this section.

"(2) FILING DEADLINE.—No investigation or hearing shall be conducted on a complaint concerning a violation under this section unless the complaint was filed not later than 12 months after the date of such violation.

"(3) REASONABLE CAUSE.—The Secretary of Labor shall conduct an investigation under this subsection if there is reasonable cause to believe that a violation of this section has occurred. The process established under this subsection shall provide that, not later than 30 days after a complaint is filed, the Secretary shall determine if there is reasonable cause to find such a violation.

"(4) NOTICE AND HEARING.—

"(A) IN GENERAL.—Not later than 60 days after the Secretary of Labor makes a determination of reasonable cause under paragraph (4), the Secretary shall issue a notice to the interested parties and offer an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

"(B) COMPLAINT.—If the Secretary of Labor, after receiving a complaint under this subsection, does not offer the aggrieved party or organization an opportunity for a hearing

under subparagraph (A), the Secretary shall notify the aggrieved party or organization of such determination and the aggrieved party or organization may seek a hearing on the complaint in accordance with such section 556.

"(C) HEARING DEADLINE.—Not later than 60 days after the date of a hearing under this paragraph, the Secretary of Labor shall make a finding on the matter in accordance with paragraph (5).

"(5) ATTORNEYS' FEES.—A complainant who prevails with respect to a claim under this subsection shall be entitled to an award of reasonable attorneys' fees and costs.

"(6) POWER OF THE SECRETARY.—The Secretary may bring an action in any court of competent jurisdiction—

"(A) to seek remedial action, including injunctive relief;

"(B) to recover the damages described in subsection (i); or

"(C) to ensure compliance with terms and conditions described in subsection (g).

"(7) SOLICITOR OF LABOR.—Except as provided in section 518(a) of title 28, United States

Code, the Solicitor of Labor may appear for and represent the Secretary of Labor in any civil litigation brought under this subsection. All such litigation shall be subject to the direction and control of the Attorney General.

"(8) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.—The rights and remedies provided to workers under this section are in addition to any other contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

"(j) PENALTIES.—

"(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary of Labor finds a violation of subsection (b), (e), (f), or (g), the Secretary may impose administrative remedies and penalties, including—

"(A) back wages;

"(B) benefits; and

"(C) civil monetary penalties.

"(2) CIVIL PENALTIES.—The Secretary of Labor may impose, as a civil penalty—

"(A) for a violation of subsection (e) or (f)—

"(i) a fine in an amount not to exceed $2,000 per violation per affected worker;

"(ii) if the violation was willful violation, a fine in an amount not to exceed $5,000 per violation per affected worker;

"(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not to exceed $25,000 per violation per affected worker; and

"(B) for a violation of subsection (g)—

"(i) a fine in an amount not less than $500 and not more than $4,000 per violation per affected worker;

"(ii) if the violation was willful, a fine in an amount not less than $2,000 and not more than $5,000 per violation per affected worker; and

"(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not less than $6,000 and not more than $35,000 per violation per affected worker.

"(3) USE OF CIVIL PENALTIES.—All penalties collected under this subsection shall be deposited in the Treasury in accordance with section 286(w).

"(4) CRIMINAL PENALTIES.—If a willful and knowing violation of subsection (g) causes extreme physical or financial harm to an individual, the person in violation of such subsection may be imprisoned for not more than 6 months, fined in an amount not more than $35,000, or both.".

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 218A, as added by section 403, the following:

"Sec. 218B. Employer obligations.".

SEC. 405. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.

(a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.) is amended by inserting after section 218B, as added by section 404, the following:

"SEC. 218C. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.

"(a) ESTABLISHMENT.—The Secretary of Homeland Security, in consultation with the Secretary of Labor, the Secretary of State, and the Commission of Social Security, shall develop and implement a program (referred to in this section as the 'alien employment management system') to manage and track the employment of aliens described in sections 218A and 218D.

"(b) REQUIREMENTS.—The alien employment management system shall—

"(1) provide employers who seek employees with an opportunity to recruit and advertise employment opportunities available to United States workers before hiring an H–2C nonimmigrant;

"(2) collect sufficient information from employers to enable the Secretary of Homeland Security to determine—

"(A) if the nonimmigrant is employed;

"(B) which employers have hired an H–2C nonimmigrant;

"(C) the number of H–2C nonimmigrants that an employer is authorized to hire and is currently employing;

"(D) the occupation, industry, and length of time that an H–2C nonimmigrant has been employed in the United States;

"(3) allow employers to request approval of multiple H–2C nonimmigrant workers; and

"(4) permit employers to submit applications under this section in an electronic form.".

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101

et seq.) is amended by inserting after the item relating to section 218B, as added by section 404, the following:

"Sec. 218C. Alien employment management system.".

SEC. 406. RULEMAKING; EFFECTIVE DATE.

(a) RULEMAKING.—Not later than 6 months after the date of enactment of this Act, the Secretary of Labor shall promulgate regulations, in accordance with the notice and comment provisions of section 553 of title 5, United States Code, to carry out the provisions of sections 218A, 218B, and 218C, as added by this Act.

(b) EFFECTIVE DATE.—The amendments made by sections 403, 404, and 405 shall take effect on the date that is 1 year after the date of the enactment of this Act with regard to aliens, who, on such effective date, are in the foreign country where they maintain residence.

SEC. 407. RECRUITMENT OF UNITED STATES WORKERS.

(a) ELECTRONIC JOB REGISTRY.—The Secretary of Labor shall establish a publicly accessible Web page on the Internet website of the Department of Labor that provides a single Internet link to each State workforce agency's statewide electronic registry of jobs available throughout the United States to United States workers.

(b) RECRUITMENT OF UNITED STATES WORKERS.—

(1) POSTING.—An employer shall attest that the employer has posted an employment opportunity at a prevailing wage level (as described in section

218B(b)(2)(C) of the Immigration and Nationality Act).

(2) RECORDS.—An employer shall maintain records for not less than 1 year after the date on which an H–2C nonimmigrant is hired that describe the reasons for not hiring any of the United States workers who may have applied for such position.

(c) OVERSIGHT AND MAINTENANCE OF RECORDS.—The Secretary of Labor shall promulgate regulations regarding the maintenance of electronic job registry records for the purpose of audit or investigation.

(d) ACCESS TO ELECTRONIC JOB REGISTRY.—The Secretary of Labor shall ensure that job opportunities advertised on an electronic job registry established under this section are accessible—

(1) by the State workforce agencies, which may further disseminate job opportunity information to other interested parties; and

(2) through the Internet, for access by workers, employers, labor organizations, and other interested parties.

SEC. 408. TEMPORARY GUEST WORKER VISA PROGRAM TASK FORCE.

(a) ESTABLISHMENT.—There is established a task force to be known as the ''Temporary Worker Task Force'' (referred to in this section as the ''Task Force'').

(b) PURPOSES.—The purposes of the Task Force are—

(1) to study the impact of the admission of aliens under section 101(a)(15)(ii)(c) on the wages, working conditions, and employment of United States workers; and

(2) to make recommendations to the Secretary of Labor regarding the need for an annual numerical limitation on the number of aliens that may be admitted in any fiscal year under section 101(a)(15)(ii)(c).

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Task Force shall be composed of 10 members, of whom—

(A) 1 shall be appointed by the President and shall serve as chairman of the Task Force;

(B) 1 shall be appointed by the leader of the minority party in the Senate, in consultation with the leader of the minority party in the House of Representatives, and shall serve as vice chairman of the Task Force;

(C) 2 shall be appointed by the majority leader of the Senate;

(D) 2 shall be appointed by the minority leader of the Senate;

(E) 2 shall be appointed by the Speaker of the House of Representatives; and

(F) 2 shall be appointed by the minority leader of the House of Representatives.

(2) DEADLINE FOR APPOINTMENT.—All members of the Task Force shall be appointed not later than 6 months after the date of the enactment of this Act.

(3) VACANCIES.—Any vacancy in the Task Force shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(4) QUORUM.—Six members of the Task Force shall constitute a quorum.

(d) QUALIFICATIONS.—

(1) IN GENERAL.—Members of the Task Force shall be—

(A) individuals with expertise in economics, demography, labor, business, or immigration or other pertinent qualifications or experience; and

(B) representative of a broad cross-section of perspectives within the United States, including the public and private sectors and academia.

(2) POLITICAL AFFILIATION.—Not more than 5 members of the Task Force may be members of the same political party.

(3) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Task Force may not be an officer or employee of the Federal Government or of any State or local government.

(e) MEETINGS.—

(1) INITIAL MEETING.—The Task Force shall meet and begin the operations of the Task Force as soon as practicable.

(2) SUBSEQUENT MEETINGS.—After its initial meeting, the Task Force shall meet upon the call of the chairman or a majority of its members.

(f) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Task Force shall submit, to Congress, the Secretary of Labor, and the Secretary, a report that contains—

(1) findings with respect to the duties of the Task Force; and

(2) recommendations for imposing a numerical limit.

(g) NUMERICAL LIMITATIONS.—Section 214(g)(1) (8 U.S.C. 1184(g)(1)) is amended—

(1) in subparagraph (B), by striking the period at the end and inserting "; and"; and

(2) by adding at the end the following:

"(C) under section 101(a)(15)(H)(ii)(c) may not exceed 200,000.".

(h) ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS.—Section 245 (8 U.S.C. 1255) is amended by adding at the end the following:

"(n)(1) For purposes of adjustment of status under subsection (a), employment-based immigrant visas shall be made available, subject to the numerical limitations set out in sections 201(d) and 203(b), to an alien having nonimmigrant status described in section 101(a)(15)(H)(ii)(c) upon the filing of a petition for such a visa—

"(A) by the alien's employer; or

"(B) by the alien, if—

"(i) the alien has been employed in H–2C status for a cumulative period of not less than 4 years;

"(ii) an employer attests that the employer will employ the alien in the offered job position;

"(iii) the Secretary of Labor determines and certifies that there are not sufficient United States workers who are able, willing, qualified, and available to fill the job position; or

"(iv) the Secretary of Labor determines and certifies that there are not sufficient United States workers who are able, willing, qualified, and available to fill the position in which the alien is, or will be, employed; and

"(v) the alien submits at least 2 documents to establish current employment, as follows:

"(I) Records maintained by the Social Security Administration.

"(II) Records maintained by the alien's employer, such as pay stubs, time sheets, or employment work verification.

"(III) Records maintained by the Internal Revenue Service.

"(IV) Records maintained by any other government agency, such as worker compensation records, disability records, or business licensing records.

"(2) An alien having nonimmigrant status described in section 101(a)(15)(H)(ii)(c) may not apply for adjustment of status under this section unless the alien—

"(A) is physically present in the United States; and

"(B) establishes that the alien meets the requirements of section 312.

"(3) An alien who demonstrates that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

"(4) Filing a petition under paragraph (1) on behalf of an alien or otherwise seeking permanent residence in the United States for such alien shall not constitute evidence of the alien's ineligibility for nonimmigrant status under section 101(a)(15)(H)(ii)(c).

"(5) The Secretary of Homeland Security shall extend, in 1-year increments, the stay of an alien for whom a labor certification petition filed under section 203(b) or an immigrant visa petition filed under section 204(b) is pending until a final decision is made on the alien's lawful permanent residence.

"(6) Nothing in this subsection shall be construed to prevent an alien having nonimmigrant status described in

section 101(a)(15)(H)(ii)(c) from filing an application for adjustment of status under this section in accordance with any other provision of law.''.

SEC. 409. REQUIREMENTS FOR PARTICIPATING COUNTRIES.

(a) IN GENERAL.—The Secretary of State, in cooperation with the Secretary and the Attorney General, shall negotiate with each home country of aliens described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act, as added by section 402, to enter into a bilateral agreement with the United States that conforms to the requirements under subsection (b).

(b) REQUIREMENTS OF BILATERAL AGREEMENTS.—Each agreement negotiated under subsection (a) shall require the participating home country to—

(1) accept the return of nationals who are ordered removed from the United States within 3 days of such removal;

(2) cooperate with the United States Government to—

(A) identify, track, and reduce gang membership, violence, and human trafficking and smuggling; and

(B) control illegal immigration;

(3) provide the United States Government with—

(A) passport information and criminal records of aliens who are seeking admission to, or are present in, the United States; and

(B) admission and entry data to facilitate United States entry-exit data systems; and

(4) educate nationals of the home country regarding United States temporary worker programs to ensure that such nationals are not exploited; and

(5) evaluate means to provide housing incentives in the alien's home country for returning workers.

SEC. 410. S VISAS.

(a) EXPANSION OF S VISA CLASSIFICATION.—Section 101(a)(15)(S) (8 U.S.C. 1101(a)(15)(S)) is amended—

(1) in clause (i)—

(A) by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security'';

(B) in subclause (I), by inserting before the semicolon, ', including a criminal enterprise undertaken by a foreign government, its agents, representatives, or officials';

(C) in subclause (III), by inserting ''where the information concerns a criminal enterprise undertaken by an individual or organization that is not a foreign government, its agents, representatives, or officials,'' before ''whose''; and

(D) by striking ''or'' at the end; and

(2) in clause (ii)—

(A) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''; and

(B) by striking ''1956,'' and all that follows through ''the alien;'' and inserting the following: ''1956; or

''(iii) who the Secretary of Homeland Security and the Secretary of State, in consultation with the Director of Central Intelligence, jointly determine—

''(I) is in possession of critical reliable information concerning the activities of governments or organizations, or their agents, representatives, or officials, with respect to weapons of mass destruction and related delivery systems, if such governments or organizations are at risk of

1 developing, selling, or transferring such
2 weapons or related delivery systems; and
3 ''(II) is willing to supply or has sup-
4 plied, fully and in good faith, information
5 described in subclause (I) to appropriate
6 persons within the United States Govern-
7 ment;
8 ''and, if the Secretary of Homeland Security (or
9 with respect to clause (ii), the Secretary of State
10 and the Secretary of Homeland Security jointly)
11 considers it to be appropriate, the spouse, married
12 and unmarried sons and daughters, and parents of
13 an alien described in clause (i), (ii), or (iii) if accom-
14 panying, or following to join, the alien;''.
15 (b) NUMERICAL LIMITATION.—Section 214(k)(1) (8
16 U.S.C. 1184(k)(1)) is amended by striking ''The number
17 of aliens'' and all that follows through the period and in-
18 serting the following: ''The number of aliens who may be
19 provided a visa as nonimmigrants under section
20 101(a)(15)(S) in any fiscal year may not exceed 1,000.''.
21 (c) REPORTS.—
22 (1) CONTENT.—Paragraph (4) of section
23 214(k) (8 U.S.C. 1184(k)) is amended—
24 (A) in the matter preceding subparagraph
25 (A)—

(i) by striking ''The Attorney General'' and inserting ''The Secretary of Homeland Security''; and

(ii) by striking ''concerning—'' and inserting ''that includes—'';

(B) in subparagraph (D), by striking ''and'';

(C) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(D) by inserting at the end the following:

''(F) in the event that the total number of such nonimmigrants admitted is fewer than 25 percent of the total number provided for under paragraph (1) of this subsection—

''(i) the reasons why the number of such nonimmigrants admitted is fewer than 25 percent of that provided for by law;

''(ii) the efforts made by the Secretary of Homeland Security to admit such nonimmigrants; and

''(iii) any extenuating circumstances that contributed to the admission of a number of such nonimmigrants that is fewer than 25 percent of that provided for by law.''.

(2) FORM OF REPORT.—Section 214(k) (8 U.S.C. 1184(k)) is amended by adding at the end the following new paragraph:

''(5) To the extent required by law and if it is in the interests of national security or the security of such nonimmigrants that are admitted, as determined by the Secretary of Homeland Security, the information contained in a report described in paragraph (4) may be classified, and the Secretary of Homeland Security shall, to the extent feasible, submit a non-classified version of the report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.''.

SEC. 411. L VISA LIMITATIONS.

Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended—

(1) by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security'';

(2) in subparagraph (E), by striking ''In the case'' and inserting ''Except as provided in subparagraph (H), in the case''; and

(3) by adding at the end the following:

"(G)(i) If the beneficiary of a petition under this subsection is coming to the United States to open, or be employed in, a new facility, the petition may be approved for a period not to exceed 12 months only if the employer operating the new facility has—

"(I) a business plan;

"(II) sufficient physical premises to carry out the proposed business activities; and

"(III) the financial ability to commence doing business immediately upon the approval of the petition.

"(ii) An extension of the approval period under clause (i) may not be granted until the importing employer submits to the Secretary of Homeland Security—

"(I) evidence that the importing employer meets the requirements of this subsection;

"(II) evidence that the beneficiary meets the requirements of section 101(a)(15)(L);

"(III) a statement summarizing the original petition;

"(IV) evidence that the importing employer has fully complied with the business plan submitted under clause (i);

"(V) evidence of the truthfulness of any representations made in connection with the filing of the original petition;

"(VI) evidence that the importing employer, during the previous 12 months, has been doing business at the new facility through regular, systematic, and continuous provision of goods or services, or has otherwise been taking commercially reasonable steps to establish the new facility as a commercial enterprise;

"(VII) a statement of the duties the beneficiary has performed at the new facility during the previous 12 months and the duties the beneficiary will perform at the new facility during the extension period approved under this clause;

"(VIII) a statement describing the staffing at the new facility, including the number of employees and the types of positions held by such employees;

"(IX) evidence of wages paid to employees if the beneficiary will be employed in a managerial or executive capacity;

"(X) evidence of the financial status of the new facility; and

1 "(XI) any other evidence or data pre-
2 scribed by the Secretary.
3 "(iii) Notwithstanding subclauses (I) through
4 (VI) of clause (ii) and subject to the maximum pe-
5 riod of authorized admission set forth in subpara-
6 graph (D), the Secretary of Homeland Security may
7 approve a subsequently filed petition on behalf of the
8 beneficiary to continue employment at the facility
9 described in this subsection for a period beyond the
10 initially granted 12-month period if the importing
11 employer demonstrates that the failure to satisfy any
12 of the requirements described in those subclauses
13 was directly caused by extraordinary circumstances
14 beyond the control of the importing employer.
15 "(H)(i) The Secretary of Homeland Security
16 may not authorize the spouse of an alien described
17 under section 101(a)(15)(L), who is a dependent of
18 a beneficiary under subparagraph (G), to engage in
19 employment in the United States during the initial
20 9-month period described in subparagraph (G)(i).
21 "(ii) A spouse described in clause (i) may be
22 provided employment authorization upon the ap-
23 proval of an extension under subparagraph (G)(ii).
24 "(I) For purposes of determining the eligibility
25 of an alien for classification under Section

101(a)(15)(L) of this Act, the Secretary of Homeland Security shall establish a program to work cooperatively with the Department of State to verify a company or facility's existence in the United States and abroad.''.

SEC. 412. COMPLIANCE INVESTIGATORS.

The Secretary of Labor shall, subject to the availability of appropriations for such purpose, annually increase, by not less than 2,000, the number of positions for compliance investigators dedicated to enforcing compliance with this title, and the amendments made by this title.

SEC. 413. VISA WAIVER PROGRAM EXPANSION.

Section 217(c) (8 U.S.C. 1187(c)) is amended by adding at the end the following:

''(8) PROBATIONARY ADMISSION.—

''(A) DEFINITION OF MATERIAL SUPPORT.—In this paragraph, the term 'material support' means the current provision of the equivalent of, but not less than, a battalion (which consists of 300 to 1,000 military personnel) to Operation Iraqi Freedom or Operation Enduring Freedom to provide training, logistical or tactical support, or a military presence.

"(B) DESIGNATION AS A PROGRAM COUNTRY.—Notwithstanding any other provision of this section, a country may be designated as a program country, on a probationary basis, under this section if—

"(i) the country is a member of the European Union;

"(ii) the country is providing material support to the United States or the multilateral forces in Afghanistan or Iraq, as determined by the Secretary of Defense, in consultation with the Secretary of State; and

"(iii) the Secretary of Homeland Security, in consultation with the Secretary of State, determines that participation of the country in the visa waiver program under this section does not compromise the law enforcement interests of the United States.

"(C) REFUSAL RATES; OVERSTAY RATES.—The determination under subparagraph (B)(iii) shall only take into account any refusal rates or overstay rates after the expira-

tion of the first full year of the country's admission into the European Union.

"(D) FULL COMPLIANCE.—Not later than 2 years after the date of a country's designation under subparagraph (B), the country—

"(i) shall be in full compliance with all applicable requirements for program country status under this section; or

"(ii) shall have its program country designation terminated.

"(E) EXTENSIONS.—The Secretary of State may extend, for a period not to exceed 2 years, the probationary designation granted under subparagraph (B) if the country—

"(i) is making significant progress towards coming into full compliance with all applicable requirements for program country status under this section;

"(ii) is likely to achieve full compliance before the end of such 2–year period; and

"(iii) continues to be an ally of the United States against terrorist states, organizations, and individuals, as determined

by the Secretary of Defense, in consultation with the Secretary of State.''.

SEC. 414. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this subtitle and the amendments made by this subtitle for the first fiscal year beginning before the date of enactment of this Act and each of the subsequent fiscal years beginning not more than 7 years after the effective date of the regulations promulgated by the Secretary to implement this subtitle.

Subtitle B—Immigration Injunction Reform

SEC. 421. SHORT TITLE.

This subtitle may be cited as the ''Fairness in Immigration Litigation Act of 2006''.

SEC. 422. APPROPRIATE REMEDIES FOR IMMIGRATION LEGISLATION.

(a) REQUIREMENTS FOR AN ORDER GRANTING PROSPECTIVE RELIEF AGAINST THE GOVERNMENT.—

(1) IN GENERAL.—If a court determines that prospective relief should be ordered against the Government in any civil action pertaining to the administration or enforcement of the immigration laws of the United States, the court shall—

(A) limit the relief to the minimum necessary to correct the violation of law;

(B) adopt the least intrusive means to correct the violation of law;

(C) minimize, to the greatest extent practicable, the adverse impact on national security, border security, immigration administration and enforcement, and public safety, and

(D) provide for the expiration of the relief on a specific date, which is not later than the earliest date necessary for the Government to remedy the violation.

(2) WRITTEN EXPLANATION.—The requirements described in subsection (1) shall be discussed and explained in writing in the order granting prospective relief and must be sufficiently detailed to allow review by another court.

(3) EXPIRATION OF PRELIMINARY INJUNCTIVE RELIEF.—Preliminary injunctive relief shall automatically expire on the date that is 90 days after the date on which such relief is entered, unless the court—

(A) makes the findings required under paragraph (1) for the entry of permanent prospective relief; and

(B) makes the order final before expiration of such 90-day period.

(4) REQUIREMENTS FOR ORDER DENYING MOTION.—This subsection shall apply to any order denying the Government's motion to vacate, modify, dissolve or otherwise terminate an order granting prospective relief in any civil action pertaining to the administration or enforcement of the immigration laws of the United States.

(b) PROCEDURE FOR MOTION AFFECTING ORDER GRANTING PROSPECTIVE RELIEF AGAINST THE GOVERNMENT.—

(1) IN GENERAL.—A court shall promptly rule on the Government's motion to vacate, modify, dissolve or otherwise terminate an order granting prospective relief in any civil action pertaining to the administration or enforcement of the immigration laws of the United States.

(2) AUTOMATIC STAYS.—

(A) IN GENERAL.—The Government's motion to vacate, modify, dissolve, or otherwise terminate an order granting prospective relief made in any civil action pertaining to the administration or enforcement of the immigration laws of the United States shall automatically,

and without further order of the court, stay the order granting prospective relief on the date that is 15 days after the date on which such motion is filed unless the court previously has granted or denied the Government's motion.

(B) DURATION OF AUTOMATIC STAY.—An automatic stay under subparagraph (A) shall continue until the court enters an order granting or denying the Government's motion.

(C) POSTPONEMENT.—The court, for good cause, may postpone an automatic stay under subparagraph (A) for not longer than 15 days.

(D) ORDERS BLOCKING AUTOMATIC STAYS.—Any order staying, suspending, delaying, or otherwise barring the effective date of the automatic stay described in subparagraph (A), other than an order to postpone the effective date of the automatic stay for not longer than 15 days under subparagraph (C), shall be—

(i) treated as an order refusing to vacate, modify, dissolve or otherwise terminate an injunction; and

(ii) immediately appealable under section 1292(a)(1) of title 28, United States Code.

(c) SETTLEMENTS.—

(1) CONSENT DECREES.—In any civil action pertaining to the administration or enforcement of the immigration laws of the United States, the court may not enter, approve, or continue a consent decree that does not comply with subsection (a).

(2) PRIVATE SETTLEMENT AGREEMENTS.—Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with subsection (a) if the terms of that agreement are not subject to court enforcement other than reinstatement of the civil proceedings that the agreement settled.

(d) DEFINITIONS.—In this section:

(1) CONSENT DECREE.—The term ''consent decree''—

(A) means any relief entered by the court that is based in whole or in part on the consent or acquiescence of the parties; and

(B) does not include private settlements.

(2) GOOD CAUSE.—The term ''good cause'' does not include discovery or congestion of the court's calendar.

(3) GOVERNMENT.—The term ''Government'' means the United States, any Federal department or agency, or any Federal agent or official acting within the scope of official duties.

(4) PERMANENT RELIEF.—The term ''permanent relief'' means relief issued in connection with a final decision of a court.

(5) PRIVATE SETTLEMENT AGREEMENT.—The term ''private settlement agreement'' means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil action that the agreement settled.

(6) PROSPECTIVE RELIEF.—The term ''prospective relief'' means temporary, preliminary, or permanent relief other than compensatory monetary damages.

(e) EXPEDITED PROCEEDINGS.—It shall be the duty of every court to advance on the docket and to expedite the disposition of any civil action or motion considered under this section.

SEC. 423. EFFECTIVE DATE.

(a) IN GENERAL.—This subtitle shall apply with respect to all orders granting prospective relief in any civil action pertaining to the administration or enforcement of the immigration laws of the United States, whether such relief was ordered before, on, or after the date of the enactment of this Act.

(b) PENDING MOTIONS.—Every motion to vacate, modify, dissolve or otherwise terminate an order granting prospective relief in any such action, which motion is pending on the date of the enactment of this Act, shall be treated as if it had been filed on such date of enactment.

(c) AUTOMATIC STAY FOR PENDING MOTIONS.—

(1) IN GENERAL.—An automatic stay with respect to the prospective relief that is the subject of a motion described in subsection (b) shall take effect without further order of the court on the date which is 10 days after the date of the enactment of this Act if the motion—

(A) was pending for 45 days as of the date of the enactment of this Act; and

(B) is still pending on the date which is 10 days after such date of enactment.

(2) DURATION OF AUTOMATIC STAY.—An automatic stay that takes effect under paragraph (1)

shall continue until the court enters an order granting or denying the Government's motion under section 422(b). There shall be no further postponement of the automatic stay with respect to any such pending motion under section 422(b)(2). Any order, staying, suspending, delaying or otherwise barring the effective date of this automatic stay with respect to pending motions described in subsection (b) shall be an order blocking an automatic stay subject to immediate appeal under section 422(b)(2)(D).

TITLE V—BACKLOG REDUCTION

SEC. 501. ELIMINATION OF EXISTING BACKLOGS.

(a) FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) (8 U.S.C. 1151(c)) is amended to read as follows:

"(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to the sum of—

"(1) 480,000;

"(2) the difference between the maximum number of visas authorized to be issued under this subsection during the previous fiscal year and the number of visas issued during the previous fiscal year;

"(3) the difference between—

"(A) the maximum number of visas authorized to be issued under this subsection during fiscal years 2001 through 2005 minus the number of visas issued under this subsection during those fiscal years; and

"(B) the number of visas calculated under subparagraph (A) that were issued after fiscal year 2005.".

(b) EMPLOYMENT-BASED IMMIGRANTS.—Section 201(d) (8 U.S.C. 1151(d)) is amended to read as follows:

"(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—

"(1) IN GENERAL.—Subject to paragraph (2), the worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of—

"(A)(i) 450,000, for each of the fiscal years 2007 through 2016; or

"(ii) 290,000, for fiscal year 2017 and each subsequent fiscal year;

"(B) the difference between the maximum number of visas authorized to be issued under this subsection during the previous fiscal year and the number of visas issued during the previous fiscal year; and

"(C) the difference between—

"(i) the maximum number of visas authorized to be issued under this subsection during fiscal years 2001 through 2005 and the number of visa numbers issued under this subsection during those fiscal years; and

"(ii) the number of visas calculated under clause (i) that were issued after fiscal year 2005.

"(2) VISAS FOR SPOUSES AND CHILDREN.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), immigrant visas issued on or after October 1, 2004, to spouses and children of employment-based immigrants shall not be counted against the numerical limitation set forth in paragraph (1).

"(B) NUMERICAL LIMITATION.—The total number of visas issued under paragraph (1)(A) and paragraph (2), excluding such visas issued to aliens pursuant to section 245B or section 245C of the Immigration and Nationality Act, may not exceed 650,000 during any fiscal year.

"(C) CONSTRUCTION.—Nothing in this paragraph may be construed to modify the re-

quirement set out in 245B(a)(1)(I) or 245C(i)(2)(A) that prohibit an alien from receiving an adjustment of status to that of a legal permanent resident prior to the consideration of all applications filed under section 201, 202, or 203 before the date of enactment of section 245B and 245C.''.

SEC. 502. COUNTRY LIMITS.

Section 202(a) (8 U.S.C. 1152(a)) is amended by striking ''7 percent (in the case of a single foreign state) or 2 percent'' and inserting ''10 percent (in the case of a single foreign state) or 5 percent''.

SEC. 503. ALLOCATION OF IMMIGRANT VISAS.

(a) PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.—Section 203(a) (8 U.S.C. 1153(a)) is amended to read as follows:

''(a) PREFERENCE ALLOCATIONS FOR FAMILY-SPONSORED IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(c) for family-sponsored immigrants shall be allocated visas as follows:

''(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a quantity not to exceed the sum of—

"(A) 10 percent of such worldwide level; and

"(B) any visas not required for the class specified in paragraph (4).

"(2) SPOUSES AND UNMARRIED SONS AND DAUGHTERS OF PERMANENT RESIDENT ALIENS.—

"(A) IN GENERAL.—Visas in a quantity not to exceed 50 percent of such worldwide level plus any visas not required for the class specified in paragraph (1) shall be allocated to qualified immigrants who are—

"(i) the spouses or children of an alien lawfully admitted for permanent residence; or

"(ii) the unmarried sons or daughters of an alien lawfully admitted for permanent residence.

"(B) MINIMUM PERCENTAGE.—Visas allocated to individuals described in subparagraph (A)(i) shall constitute not less than 77 percent of the visas allocated under this paragraph.

"(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons and daughters of citizens of the United States

shall be allocated visas in a quantity not to exceed the sum of—

"(A) 10 percent of such worldwide level; and

"(B) any visas not required for the classes specified in paragraphs (1) and (2).

"(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of a citizen of the United States who is at least 21 years of age shall be allocated visas in a quantity not to exceed 30 percent of the worldwide level.".

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 203(b) (8 U.S.C. 1153(b)) is amended—

(1) in paragraph (1), by striking "28.6 percent" and inserting "15 percent";

(2) in paragraph (2)(A), by striking "28.6 percent" and inserting "15 percent";

(3) in paragraph (3)(A)—

(A) by striking "28.6 percent" and inserting "35 percent"; and

(B) by striking clause (iii);

(4) by striking paragraph (4);

(5) by redesignating paragraph (5) as paragraph (4);

(6) in paragraph (4)(A), as redesignated, by striking ''7.1 percent'' and inserting ''5 percent'';

(7) by inserting after paragraph (4), as redesignated, the following:

''(5) OTHER WORKERS.—

''(A) IN GENERAL.—Visas shall be made available, in a number not to exceed 30 percent of such worldwide level, plus any visa numbers not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor that is not of a temporary or seasonal nature, for which qualified workers are determined to be unavailable in the United States.

''(B) PRIORITY IN ALLOCATING VISAS.—In allocating visas under subparagraph (A) for each of the fiscal years 2007 through 2017, the Secretary shall reserve 30 percent of such visas for qualified immigrants who were physically present in the United States before January 7, 2004.''; and

(8) by striking paragraph (6).

(c) SPECIAL IMMIGRANTS NOT SUBJECT TO NUMERICAL LIMITATIONS.—Section 201(b)(1)(A) (8 U.S.C. 1151(b)(1)(A)) is amended by striking ''subparagraph (A) or (B) of ''.

(d) CONFORMING AMENDMENTS.—

(1) DEFINITION OF SPECIAL IMMIGRANT.—Section 101(a)(27)(M) (8 U.S.C. 1101(a)(27)(M)) is amended by striking ''subject to the numerical limitations of section 203(b)(4),''.

(2) REPEAL OF TEMPORARY REDUCTION IN WORKERS' VISAS.—Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act (Public Law 105–100; 8 U.S.C. 1153 note) is repealed.

SEC. 504. RELIEF FOR MINOR CHILDREN AND WIDOWS.

(a) IN GENERAL.—Section 201(b)(2) (8 U.S.C. 1151(b)(2)) is amended to read as follows:

''(2)(A)(i) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa under section 203(a) to their accompanying parent who is an immediate relative.

''(ii) In this subparagraph, the term 'immediate relative' means a child, spouse, or parent of a citizen of the United States (and each child of such child, spouse, or parent who is accompanying or following to join the child, spouse, or parent), except that, in

the case of parents, such citizens shall be at least 21 years of age.

"(iii) An alien who was the spouse of a citizen of the United States for not less than 2 years at the time of the citizen's death or, if married for less than 2 years at the time of the citizen's death, proves by a preponderance of the evidence that the marriage was entered into in good faith and not solely for the purpose of obtaining an immigration benefit and was not legally separated from the citizen at the time of the citizen's death, and each child of such alien, shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death if the spouse files a petition under section 204(a)(1)(A)(ii) before the earlier of—

"(I) 2 years after such date; or

"(II) the date on which the spouse remarries.

"(iv) In this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) remains an immediate relative if the United States citizen spouse or parent loses United States citizenship on account of the abuse.

"(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.".

(b) PETITION.—Section 204(a)(1)(A)(ii) (8 U.S.C. 1154(a)(1)(A)(ii)) is amended by striking "in the second sentence of section 201(b)(2)(A)(i) also" and inserting "in section 201(b)(2)(A)(iii) or an alien child or alien parent described in the 201(b)(2)(A)(iv)".

SEC. 505. SHORTAGE OCCUPATIONS.

(a) EXCEPTION TO DIRECT NUMERICAL LIMITATIONS.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following new subparagraph:

"(F)(i) During the period beginning on the date of the enactment the Comprehensive Immigration Reform Act of 2006 and ending on September 30, 2017, an alien—

"(I) who is otherwise described in section 203(b); and

"(II) who is seeking admission to the United States to perform labor in shortage occupations designated by the Secretary of Labor for blanket certification under section 212(a)(5)(A) due to the lack of sufficient United States workers able, willing,

qualified, and available for such occupations and for which the employment of aliens will not adversely affect the terms and conditions of similarly employed United States workers.

''(ii) During the period described in clause (i), the spouse or dependents of an alien described in clause (i), if accompanying or following to join such alien.''.

(b) EXCEPTION TO NONDISCRIMINATION REQUIREMENTS.—Section 202(a)(1)(A) (8 U.S.C. 1152(a)(1)(A)) is amended by striking ''201(b)(2)(A)(i)'' and inserting ''201(b)''.

(c) EXCEPTION TO PER COUNTRY LEVELS FOR FAMILY-SPONSORED AND EMPLOYMENT-BASED IMMIGRANTS.—Section 202(a)(2) (8 U.S.C. 1152(a)(2)), as amended by section 502(1), is further amended by inserting '', except for aliens described in section 201(b),'' after ''any fiscal year''.

(d) INCREASING THE DOMESTIC SUPPLY OF NURSES AND PHYSICAL THERAPISTS.—Not later than January 1, 2007, the Secretary of Health and Human Services shall—

(1) submit to Congress a report on the source of newly licensed nurses and physical therapists in each State, which report shall—

(A) include the past 3 years for which data are available;

(B) provide separate data for each occupation and for each State;

(C) separately identify those receiving their initial license and those licensed by endorsement from another State;

(D) within those receiving their initial license in each year, identify the number who received their professional education in the United States and those who received such education outside the United States; and

(E) to the extent possible, identify, by State of residence and country of education, the number of nurses and physical therapists who were educated in any of the 5 countries (other than the United States) from which the most nurses and physical therapists arrived;

(F) identify the barriers to increasing the supply of nursing faculty, domestically trained nurses, and domestically trained physical therapists;

(G) recommend strategies to be followed by Federal and State governments that would be effective in removing such barriers, including strategies that address barriers to advancement to become registered nurses for other health care workers, such as home health aides and nurses assistants;

(H) recommend amendments to Federal legislation that would increase the supply of nursing faculty, domestically trained nurses, and domestically trained physical therapists;

(I) recommend Federal grants, loans, and other incentives that would provide increases in nurse educators, nurse training facilities, and other steps to increase the domestic education of new nurses and physical therapists;

(J) identify the effects of nurse emigration on the health care systems in their countries of origin; and

(K) recommend amendments to Federal law that would minimize the effects of health care shortages in the countries of origin from which immigrant nurses arrived;

(2) enter into a contract with the National Academy of Sciences Institute of Medicine to deter-

mine the level of Federal investment under titles VII and VIII of the Public Health Service Act necessary to eliminate the domestic nursing and physical therapist shortage not later than 7 years from the date on which the report is published; and

(3) collaborate with other agencies, as appropriate, in working with ministers of health or other appropriate officials of the 5 countries from which the most nurses and physical therapists arrived, to—

(A) address health worker shortages caused by emigration;

(B) ensure that there is sufficient human resource planning or other technical assistance needed to reduce further health worker shortages in such countries.

SEC. 506. RELIEF FOR WIDOWS AND ORPHANS.

(a) SHORT TITLE.—This section may be cited as the ''Widows and Orphans Act of 2006''.

(b) NEW SPECIAL IMMIGRANT CATEGORY.—

(1) CERTAIN CHILDREN AND WOMEN AT RISK OF HARM.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended—

(A) in subparagraph (L), by inserting a semicolon at the end;

(B) in subparagraph (M), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(N) subject to subsection (j), an immigrant who is not present in the United States—

"(i) who is—

"(I) referred to a consular, immigration, or other designated official by a United States Government agency, an international organization, or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

"(II) determined by such official to be a minor under 18 years of age (as determined under subsection (j)(5))—

"(aa) for whom no parent or legal guardian is able to provide adequate care;

"(bb) who faces a credible fear of harm related to his or her age;

"(cc) who lacks adequate protection from such harm; and

"(dd) for whom it has been determined to be in his or her best interests to be admitted to the United States; or

"(ii) who is—

"(I) referred to a consular or immigration official by a United States Government agency, an international organization or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

"(II) determined by such official to be a female who has—

"(aa) a credible fear of harm related to her sex; and

"(bb) a lack of adequate protection from such harm.".

(2) STATUTORY CONSTRUCTION.—Section 101 (8 U.S.C. 1101) is amended by adding at the end the following:

"(j)(1) No natural parent or prior adoptive parent of any alien provided special immigrant status under subsection (a)(27)(N)(i) shall thereafter, by virtue of such

parentage, be accorded any right, privilege, or status under this Act.

"(2)(A) No alien who qualifies for a special immigrant visa under subsection (a)(27)(N)(ii) may apply for derivative status or petition for any spouse who is represented by the alien as missing, deceased, or the source of harm at the time of the alien's application and admission. The Secretary of Homeland Security may waive this requirement for an alien who demonstrates that the alien's representations regarding the spouse were bona fide.

"(B) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) may apply for derivative status or petition for any sibling under the age of 18 years or children under the age of 18 years of any such alien, if accompanying or following to join the alien. For purposes of this subparagraph, a determination of age shall be made using the age of the alien on the date the petition is filed with the Department of Homeland Security.

"(3) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) shall be treated in the same manner as a refugee solely for purposes of section 412.

"(4) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any alien seeking admission to the United States under sub-

1 section (a)(27)(N), and the Secretary of Homeland Secu-
2 rity may waive any other provision of such section (other
3 than paragraph 2(C) or subparagraph (A), (B), (C), or
4 (E) of paragraph (3)) with respect to such an alien for
5 humanitarian purposes, to assure family unity, or when
6 it is otherwise in the public interest. Any such waiver by
7 the Secretary of Homeland Security shall be in writing
8 and shall be granted only on an individual basis following
9 an investigation. The Secretary of Homeland Security
10 shall provide for the annual reporting to Congress of the
11 number of waivers granted under this paragraph in the
12 previous fiscal year and a summary of the reasons for
13 granting such waivers.

14 ''(5) For purposes of subsection (a)(27)(N)(i)(II), a
15 determination of age shall be made using the age of the
16 alien on the date on which the alien was referred to the
17 consular, immigration, or other designated official.

18 ''(6) The Secretary of Homeland Security shall waive
19 any application fee for a special immigrant visa for an
20 alien described in section 101(a)(27)(N).''.

21 (3) EXPEDITED PROCESS.—Not later than 45
22 days after the date of referral to a consular, immi-
23 gration, or other designated official (as described in
24 section 101(a)(27)(N) of the Immigration and Na-
25 tionality Act, as added by paragraph (1))—

(A) special immigrant status shall be adjudicated; and

(B) if special immigrant status is granted, the alien shall be paroled to the United States pursuant to section 212(d)(5) of that Act (8 U.S.C. 1182(d)(5)) and allowed to apply for adjustment of status to permanent residence under section 245 of that Act (8 U.S.C. 1255) within 1 year after the alien's arrival in the United States.

(4) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the progress of the implementation of this section and the amendments made by this section, including—

(A) data related to the implementation of this section and the amendments made by this section;

(B) data regarding the number of placements of females and children who faces a credible fear of harm as referred to in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by paragraph (1); and

(C) any other information that the Secretary considers appropriate.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection and the amendments made by this subsection.

(c) REQUIREMENTS FOR ALIENS.—

(1) REQUIREMENT PRIOR TO ENTRY INTO THE UNITED STATES.—

(A) DATABASE SEARCH.—An alien may not be admitted to the United States unless the Secretary has ensured that a search of each database maintained by an agency or department of the United States has been conducted to determine whether such alien is ineligible to be admitted to the United States on criminal, security, or related grounds.

(B) COOPERATION AND SCHEDULE.—The Secretary and the head of each appropriate agency or department of the United States shall work cooperatively to ensure that each database search required by subparagraph (A) is completed not later than 45 days after the date on which an alien files a petition seeking a special immigration visa under section 101(a)(27)(N)

of the Immigration and Nationality Act, as added by subsection (b)(1).

(2) REQUIREMENT AFTER ENTRY INTO THE UNITED STATES.—

(A) REQUIREMENT TO SUBMIT FINGERPRINTS.—

(i) IN GENERAL.—Not later than 30 days after the date that an alien enters the United States, the alien shall be fingerprinted and submit to the Secretary such fingerprints and any other personal biometric data required by the Secretary.

(ii) OTHER REQUIREMENTS.—The Secretary may prescribe regulations that permit fingerprints submitted by an alien under section 262 of the Immigration and Nationality Act (8 U.S.C. 1302) or any other provision of law to satisfy the requirement to submit fingerprints of clause (i).

(B) DATABASE SEARCH.—The Secretary shall ensure that a search of each database that contains fingerprints that is maintained by an agency or department of the United States be conducted to determine whether such alien is

ineligible for an adjustment of status under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on criminal, security, or related grounds.

(C) COOPERATION AND SCHEDULE.—The Secretary and the head of each appropriate agency or department of the United States shall work cooperatively to ensure that each database search required by subparagraph (B) is completed not later than 180 days after the date on which the alien enters the United States.

(D) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(i) IN GENERAL.—There may be no review of a determination by the Secretary, after a search required by subparagraph (B), that an alien is ineligible for an adjustment of status, under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on criminal, security, or related grounds except as provided in this subparagraph.

(ii) ADMINISTRATIVE REVIEW.—An alien may appeal a determination described in clause (i) through the Administrative

Appeals Office of the Bureau of Citizenship and Immigration Services. The Secretary shall ensure that a determination on such appeal is made not later than 60 days after the date that the appeal is filed.

(iii) JUDICIAL REVIEW.—There may be no judicial review of a determination described in clause (i).

SEC. 507. STUDENT VISAS.

(a) IN GENERAL.—Section 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)) is amended—

(1) in clause (i)—

(A) by striking ''he has no intention of abandoning, who is'' and inserting the following: ''except in the case of an alien described in clause (iv), the alien has no intention of abandoning, who is—

''(I)'';

(B) by striking ''consistent with section 214(l)'' and inserting ''(except for a graduate program described in clause (iv)) consistent with section 214(m)'';

(C) by striking the comma at the end and inserting the following: ''; or

"(II) engaged in temporary employment for optional practical training related to the alien's area of study, which practical training shall be authorized for a period or periods of up to 24 months;";

(2) in clause (ii)—

(A) by inserting "or (iv)" after "clause (i)"; and

(B) by striking ", and" and inserting a semicolon; and

(3) by adding at the end the following:

"(iv) an alien described in clause (i) who has been accepted and plans to attend an accredited graduate program in mathematics, engineering, technology, or the sciences in the United States for the purpose of obtaining an advanced degree; and

"(v) an alien who maintains actual residence and place of abode in the alien's country of nationality, who is described in clause (i), except that the alien's actual course of study may involve a distance learning program, for which the alien is temporarily visiting the United States for a period not to exceed 30 days.

(b) CREATION OF J–STEM VISA CATEGORY.—Section 101(a)(15)(J) (8 U.S.C. 1101(a)(15)(J)) is amended to read as follows:

"(J) an alien with a residence in a foreign country that (except in the case of an alien described in clause (ii)) the alien has no intention of abandoning, who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, and who—

"(i) is coming temporarily to the United States as a participant in a program (other than a graduate program described in clause (ii)) designated by the Secretary of State, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if coming to the United States to participate in a program under which the alien will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any

such alien if accompanying the alien or following to join the alien; or

"(ii) has been accepted and plans to attend an accredited graduate program in the sciences, technology, engineering, or mathematics in the United States for the purpose of obtaining an advanced degree.

(c) ADMISSION OF NONIMMIGRANTS.—Section 214(b) (8 U.S.C. 1184(b)) is amended by striking "subparagraph (L) or (V)" and inserting "subparagraph (F)(iv), (J)(ii), (L), or (V)".

(d) REQUIREMENTS FOR F–4 OR J–STEM VISA.—Section 214(m) (8 U.S.C. 1184(m)) is amended—

(1) by inserting before paragraph (1) the following:

"(m) NONIMMIGRANT ELEMENTARY, SECONDARY, AND POST-SECONDARY SCHOOL STUDENTS.—"; and

(2) by adding at the end the following:

"(3) A visa issued to an alien under subparagraph (F)(iv) or (J)(ii) of section 101(a)(15) shall be valid—

"(A) during the intended period of study in a graduate program described in such section;

"(B) for an additional period, not to exceed 1 year after the completion of the graduate program, if the alien is actively pursuing an offer of employ-

ment related to the knowledge and skills obtained through the graduate program; and

''(C) for the additional period necessary for the adjudication of any application for labor certification, employment-based immigrant petition, and application under section 245(a)(2) to adjust such alien's status to that of an alien lawfully admitted for permanent residence, if such application for labor certification or employment-based immigrant petition has been filed not later than 1 year after the completion of the graduate program.

(e) WAIVER OF FOREIGN RESIDENCE REQUIREMENT.—Section 212(e) (8 U.S.C. 1182(e)) is amended—

(1) by inserting ''(1)'' before ''No person'';

(2) by striking ''admission (i) whose'' and inserting the following: ''admission—

''(A) whose

(3) by striking ''residence, (ii) who'' and inserting the following: ''residence;

''(B) who

(4) by striking ''engaged, or (iii) who'' and inserting the following: ''engaged; or

''(C) who

(5) by striking ''training, shall'' and inserting the following: ''training,

"shall

(6) by striking "United States: *Provided,* That upon" and inserting the following: "United States.

"(2) Upon";

(7) by striking "section 214(l): And provided further, That, except" and inserting the following: "section 214(l).

"(3) Except"; and

(8) by adding at the end the following:

"(4) An alien who has been issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(J)(ii), or who would have qualified for such nonimmigrant status if section 101(a)(15)(J)(ii) had been enacted before the completion of such alien's graduate studies, shall not be subject to the 2-year foreign residency requirement under this subsection.

(f) OFF CAMPUS WORK AUTHORIZATION FOR FOREIGN STUDENTS.—

(1) IN GENERAL.—Aliens admitted as nonimmigrant students described in section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) may be employed in an off-campus position unrelated to the alien's field of study if—

(A) the alien has enrolled full-time at the educational institution and is maintaining good academic standing;

(B) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer—

(i) has spent at least 21 days recruiting United States citizens to fill the position; and

(ii) will pay the alien and other similarly situated workers at a rate equal to not less than the greater of—

(I) the actual wage level for the occupation at the place of employment; or

(II) the prevailing wage level for the occupation in the area of employment; and

(C) the alien will not be employed more than—

(i) 20 hours per week during the academic term; or

(ii) 40 hours per week during vacation periods and between academic terms.

(2) DISQUALIFICATION.—If the Secretary of Labor determines that an employer has provided an attestation under paragraph (1)(B) that is materially false or has failed to pay wages in accordance with the attestation, the employer, after notice and opportunity for a hearing, shall be disqualified from employing an alien student under paragraph (1).

(g) ADJUSTMENT OF STATUS.—Section 245(a) (8 U.S.C. 1255(a)) is amended to read as follows:

''(a) AUTHORIZATION.—

''(1) IN GENERAL.—The status of an alien, who was inspected and admitted or paroled into the United States, or who has an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 204(a)(1), may be adjusted by the Secretary of Homeland Security or the Attorney General, under such regulations as the Secretary or the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if—

''(A) the alien makes an application for such adjustment;

''(B) the alien is eligible to receive an immigrant visa;

"(C) the alien is admissible to the United States for permanent residence; and

"(D) an immigrant visa is immediately available to the alien at the time the application is filed.

"(2) STUDENT VISAS.—Notwithstanding the requirement under paragraph (1)(D), an alien may file an application for adjustment of status under this section if—

"(A) the alien has been issued a visa or otherwise provided nonimmigrant status under subparagraph (J)(ii) or (F)(iv) of section 101(a)(15), or would have qualified for such nonimmigrant status if subparagraph (J)(ii) or (F)(iv) of section 101(a)(15) had been enacted before the completion of such alien's graduate studies;

"(B) the alien has earned an advanced degree in the sciences, technology, engineering, or mathematics;

"(C) the alien is the beneficiary of a petition filed under subparagraph (E) or (F) of section 204(a)(1); and

"(D) a fee of $2,000 is remitted to the Secretary on behalf of the alien.

"(3) LIMITATION.—An application for adjustment of status filed under this section may not be approved until an immigrant visa number becomes available.

"(4) FILING IN CASES OF UNAVAILABLE VISA NUMBERS.—Subject to the limitation described in paragraph (3), if a supplemental petition fee is paid for a petition under subparagraph (E) or (F) of section 204(a)(1), an application under paragraph (1) on behalf of an alien that is a beneficiary of the petition (including a spouse or child who is accompanying or following to join the beneficiary) may be filed without regard to the requirement under paragraph (1)(D).

"(5) PENDING APPLICATIONS.—Subject to the limitation described in paragraph (3), if a petition under subparagraph (E) or (F) of section 204(a)(1) is pending or approved as of the date of enactment of this paragraph, on payment of the supplemental petition fee under that section, the alien that is the beneficiary of the petition may submit an application for adjustment of status under this subsection without regard to the requirement under paragraph (1)(D).

"(6) EMPLOYMENT AUTHORIZATIONS AND ADVANCED PAROLE TRAVEL DOCUMENTATION.—The Attorney General shall—

"(A) provide to any immigrant who has submitted an application for adjustment of status under this subsection not less than 3 increments, the duration of each of which shall be not less than 3 years, for any applicable employment authorization or advanced parole travel document of the immigrant; and

"(B) adjust each applicable fee payment schedule in accordance with the increments provided under subparagraph (A) so that 1 fee for each authorization or document is required for each 3-year increment."

(h) USE OF FEES.—

(1) JOB TRAINING; SCHOLARSHIPS.—Section 286(s)(1) (8 U.S.C. 1356(s)(1)) is amended by inserting "and 80 percent of the fees collected under section 245(a)(2)(D)" before the period at the end.

(2) FRAUD PREVENTION AND DETECTION.—Section 286(v)(1) (8 U.S.C. 1356(v)(1)) is amended by inserting "and 20 percent of the fees collected under section 245(a)(2)(D)" before the period at the end.

SEC. 508. VISAS FOR INDIVIDUALS WITH ADVANCED DEGREES.

(a) ALIENS WITH CERTAIN ADVANCED DEGREES NOT SUBJECT TO NUMERICAL LIMITATIONS ON EMPLOYMENT BASED IMMIGRANTS.—

(1) IN GENERAL.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by section 505, is amended by adding at the end the following:

"(G) Aliens who have earned an advanced degree in science, technology, engineering, or math and have been working in a related field in the United States under a nonimmigrant visa during the 3-year period preceding their application for an immigrant visa under section 203(b).

"(H) Aliens described in subparagraph (A) or (B) of section 203(b)(1)(A) or who have received a national interest waiver under section 203(b)(2)(B).

"(I) The spouse and minor children of an alien who is admitted as an employment-based immigrant under section 203(b).".

(2) APPLICABILITY.—The amendment made by paragraph (1) shall apply to any visa application—

(A) pending on the date of the enactment of this Act; or

(B) filed on or after such date of enactment.

(b) LABOR CERTIFICATION.—Section 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amended—

(1) in subclause (I), by striking ''or'' at the end;

(2) in subclause (II), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(III) has an advanced degree in the sciences, technology, engineering, or mathematics from an accredited university in the United States and is employed in a field related to such degree.''.

(c) TEMPORARY WORKERS.—Section 214(g) (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) by striking ''(beginning with fiscal year 1992)''; and

(B) in subparagraph (A)—

(i) in clause (vii), by striking ''each succeeding fiscal year; or'' and inserting

"each of fiscal years 2004, 2005, and 2006;"; and

(ii) by adding after clause (vii) the following:

"(viii) 115,000 in the first fiscal year beginning after the date of the enactment of this clause; and

"(ix) the number calculated under paragraph (9) in each fiscal year after the year described in clause (viii); or";

(2) in paragraph (5)—

(A) in subparagraph (B), by striking "or" at the end;

(B) in subparagraph (C), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(D) has earned an advanced degree in science, technology, engineering, or math.";

(3) by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively; and

(4) by inserting after paragraph (8) the following:

"(9) If the numerical limitation in paragraph (1)(A)—

"(A) is reached during a given fiscal year, the numerical limitation under paragraph (1)(A)(ix) for the subsequent fiscal year shall be equal to 120 percent of the numerical limitation of the given fiscal year; or

"(B) is not reached during a given fiscal year, the numerical limitation under paragraph (1)(A)(ix) for the subsequent fiscal year shall be equal to the numerical limitation of the given fiscal year.".

(d) APPLICABILITY.—The amendment made by subsection (c)(2) shall apply to any visa application—

(1) pending on the date of the enactment of this Act; or

(2) filed on or after such date of enactment.

(e) WORLDWIDE LEVEL OF IMMIGRANTS WITH ADVANCED DEGREES.—Section 201 (8 U.S.C. 1151) is amended—

(1) in subsection (a)(3), by inserting "and immigrants with advanced degrees" after "diversity immigrants"; and

(2) by amending subsection (e) to read as follows:

"(e) WORLDWIDE LEVEL OF DIVERSITY IMMIGRANTS AND IMMIGRANTS WITH ADVANCED DEGREES.—

"(1) DIVERSITY IMMIGRANTS.—The worldwide level of diversity immigrants described in section 203(c)(1) is equal to 18,333 for each fiscal year.

"(2) IMMIGRANTS WITH ADVANCED DEGREES.—The worldwide level of immigrants with advanced degrees described in section 203(c)(2) is equal to 36,667 for each fiscal year.".

(f) IMMIGRANTS WITH ADVANCED DEGREES.—Section 203 (8 U.S.C. 1153(c)) is amended—

(1) in subsection (c)—

(A) in paragraph (1), by striking "paragraph (2), aliens subject to the worldwide level specified in section 201(e)" and inserting "paragraphs (2) and (3), aliens subject to the worldwide level specified in section 201(e)(1)";

(B) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(C) by inserting after paragraph (1) the following:

"(2) ALIENS WHO HOLD AN ADVANCED DEGREE IN SCIENCE, MATHEMATICS, TECHNOLOGY, OR ENGINEERING.—

"(A) IN GENERAL.—Qualified immigrants who hold a master's or doctorate degree in the life sciences, the physical sciences, mathematics,

technology, or engineering from an accredited university in the United States, or an equivalent foreign degree, shall be allotted visas each fiscal year in a number not to exceed the worldwide level specified in section 201(e)(2).

''(B) ECONOMIC CONSIDERATIONS.—Beginning on the date which is 1 year after the date of the enactment of this paragraph, the Secretary of State, in consultation with the Secretary of Commerce and the Secretary of Labor, and after notice and public hearing, shall determine which of the degrees described in subparagraph (A) will provide immigrants with the knowledge and skills that are most needed to meet anticipated workforce needs and protect the economic security of the United States.'';

(D) in paragraph (3), as redesignated, by striking ''this subsection'' each place it appears and inserting ''paragraph (1)''; and

(E) by amending paragraph (4), as redesignated, to read as follows:

''(4) MAINTENANCE OF INFORMATION.—

''(A) DIVERSITY IMMIGRANTS.—The Secretary of State shall maintain information on

the age, occupation, education level, and other relevant characteristics of immigrants issued visas under paragraph (1).

"(B) IMMIGRANTS WITH ADVANCED DEGREES.—The Secretary of State shall maintain information on the age, degree (including field of study), occupation, work experience, and other relevant characteristics of immigrants issued visas under paragraph (2)."; and

(2) in subsection (e)—

(A) in paragraph (2), by striking "(c)" and inserting "(c)(1)";

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

"(3) Immigrant visas made available under subsection (c)(2) shall be issued as follows:

"(A) If the Secretary of State has not made a determination under subsection (c)(2)(B), immigrant visas shall be issued in a strictly random order established by the Secretary for the fiscal year involved.

"(B) If the Secretary of State has made a determination under subsection (c)(2)(B) and the number of eligible qualified immigrants who have a degree selected under

such subsection and apply for an immigrant visa described in subsection (c)(2) is greater than the worldwide level specified in section 201(e)(2), the Secretary shall issue immigrant visas only to such immigrants and in a strictly random order established by the Secretary for the fiscal year involved.

''(C) If the Secretary of State has made a determination under subsection (c)(2)(B) and the number of eligible qualified immigrants who have degrees selected under such subsection and apply for an immigrant visa described in subsection (c)(2) is not greater than the worldwide level specified in section 201(e)(2), the Secretary shall—

''(i) issue immigrant visas to eligible qualified immigrants with degrees selected in subsection (c)(2)(B); and

''(ii) issue any immigrant visas remaining thereafter to other eligible qualified immigrants with degrees described in subsection (c)(2)(A) in a strictly random order established by the Secretary for the fiscal year involved.''.

(g) EFFECTIVE DATE.—The amendments made by subsections (e) and (f) shall take effect on October 1, 2006.

SEC. 509. CHILDREN OF FILIPINO WORLD WAR II VETERANS.

Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by sections 505 and 508, is further amended by adding at the end the following:

"(J) Aliens who are eligible for a visa under paragraph (1) or (3) of section 203(a) and are the children of a citizen of the United States who was naturalized pursuant to section 405 of the Immigration Act of 1990 (8 U.S.C. 1440 note).".

SEC. 510. EXPEDITED ADJUDICATION OF EMPLOYER PETITIONS FOR ALIENS OF EXTRAORDINARY ARTISTIC ABILITY.

Section 214(c) (8 U.S.C. 1184(c)) is amended—

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

(2) in paragraph (6)(D)—

(A) by Striking "Any person" and inserting "(i) Except as provided in clause (ii), any person"; and

(B) adding at the end the following:

"(ii) The Secretary of Homeland Security shall adjudicate each petition for an alien with extraordinary ability in the arts (as described in section 101(a)(15)(O)(i)), an alien accompanying such an

alien (as described in clauses (ii) and (iii) of section 101(a)(15)(O)), or an alien described in section 101(a)(15)(P) not later than 30 days after—

"(I) the date on which the petitioner submits the petition with a written advisory opinion, letter of no objection, or request for a waiver; or

"(II) the date on which the 15-day period described in clause (i) has expired, if the petitioner has had an opportunity, as appropriate, to supply rebuttal evidence.

"(iii) If a petition described in clause (ii) is not adjudicated before the end of the 30-day period described in clause (ii) and the petitioner is a qualified nonprofit organization or an individual or entity petitioning primarily on behalf of a qualified nonprofit organization, the Secretary of Homeland Security shall provide the petitioner with the premium-processing services referred to in section 286(u), without a fee.".

SEC. 511. POWERLINE WORKERS.

Section 214(e) (8 U.S.C. 1184(e)) is amended by adding at the end the following new paragraph:

"(7) A citizen of Canada who is a powerline worker, who has received significant training, and

who seeks admission to the United States to perform powerline repair and maintenance services shall be admitted in the same manner and under the same authority as a citizen of Canada described in paragraph (2).''.

SEC. 512. DETERMINATIONS WITH RESPECT TO CHILDREN UNDER THE HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998.

(a) IN GENERAL.—Section 902(d) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note) is amended by adding at the end the following:

''(3) DETERMINATIONS WITH RESPECT TO CHILDREN.—

''(A) USE OF APPLICATION FILING DATE.—Determinations made under this subsection as to whether an individual is a child of a parent shall be made using the age and status of the individual on October 21, 1998.

''(B) APPLICATION SUBMISSION BY PARENT.—Notwithstanding paragraph (1)(C), an application under this subsection filed based on status as a child may be filed for the benefit of such child by a parent or guardian of the child, if the child is physically present in the United States on such filing date.''.

(b) NEW APPLICATIONS AND MOTIONS TO REOPEN.—

(1) NEW APPLICATIONS.—Notwithstanding section 902(a)(1)(A) of the Haitian Refugee Immigration Fairness Act of 1998, an alien who is eligible for adjustment of status under such Act, as amended by subsection (a), may submit an application for adjustment of status under such Act not later than the later of—

(A) 2 years after the date of the enactment of this Act; or

(B) 1 year after the date on which final regulations implementing this section, and the amendment made by subsection (a), are promulgated.

(2) MOTIONS TO REOPEN.—The Secretary shall establish procedures for the reopening and reconsideration of applications for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998 that are affected by the amendment made by subsection (a).

(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—Section 902(a)(3) of the Haitian Refugee Immigration Fairness Act of 1998 shall apply to an alien present in the United States who

has been ordered excluded, deported, removed, or ordered to depart voluntarily, and who files an application under paragraph (1) or a motion under paragraph (2), in the same manner as such section 902(a)(3) applied to aliens filing applications for adjustment of status under such Act prior to April 1, 2000.

(c) INADMISSIBILITY DETERMINATION.—Section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note) is amended in subsections (a)(1)(B) and (d)(1)(D) by inserting ''(6)(C)(i),'' after ''(6)(A),''.

Subtitle B—SKIL Act

SEC. 521. SHORT TITLE.

This subtitle may be cited as the ''Securing Knowledge, Innovation, and Leadership Act of 2006'' or the ''SKIL Act of 2006''

SEC. 522. H–1B VISA HOLDERS.

(a) IN GENERAL.—Section 214(g)(5) (8 U.S.C. 1184(g)(5)) is amended—

(1) in subparagraph (B)—

(A) by striking ''nonprofit research'' and inserting ''nonprofit'';

(B) by inserting ''Federal, State, or local'' before ''governmental''; and

(C) by striking ''or'' at the end;

(2) in subparagraph (C)—

(A) by striking ''a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))),'' and inserting ''an institution of higher education in a foreign country,''; and

(B) by striking the period at the end and inserting a semicolon;

(3) by adding at the end, the following new subparagraphs:

''(D) has earned a master's or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)));

''(E) has been awarded medical specialty certification based on post-doctoral training and experience in the United States; or''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to any petition or visa application pending on the date of enactment of this Act and any petition or visa application filed on or after such date.

SEC. 523. MARKET-BASED VISA LIMITS.

Section 214(g) (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking ''(beginning with fiscal year 1992)''; and

(B) in subparagraph (A)—

(i) in clause (vi) by striking ''and'';

(ii) in clause (vii), by striking ''each succeeding fiscal year; or'' and inserting ''each of fiscal years 2004, 2005, and 2006;''; and

(iii) by adding after clause (vii) the following:

''(viii) 115,000 in the first fiscal year beginning after the date of the enactment of the Securing Knowledge, Innovation, and Leadership Act of 2006; and

''(ix) the number calculated under paragraph (9) in each fiscal year after the year described in clause (viii); or'';

(2) in paragraph (8), by striking subparagraphs (B)(iv) and (D);

(3) by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively; and

(4) by inserting after paragraph (8) the following:

"(9) If the numerical limitation in paragraph (1)(A)—

"(A) is reached during a given fiscal year, the numerical limitation under paragraph (1)(A)(ix) for the subsequent fiscal year shall be equal to 120 percent of the numerical limitation of the given fiscal year; or

"(B) is not reached during a given fiscal year, the numerical limitation under paragraph (1)(A)(ix) for the subsequent fiscal year shall be equal to the numerical limitation of the given fiscal year.".

SEC. 524. UNITED STATES EDUCATED IMMIGRANTS.

(a) IN GENERAL.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

"(F) Aliens who have earned a master's or higher degree from an accredited United States university.

"(G) Aliens who have been awarded medical specialty certification based on post-doctoral training and experience in the United States preceding their application for an immigrant visa under section 203(b).

"(H) Aliens who will perform labor in shortage occupations designated by the Secretary of Labor for blanket certification under section 212(a)(5)(A) as lacking sufficient United States workers able, willing, qualified, and available for such occupations and for which the employment of aliens will not adversely affect the terms and conditions of similarly employed United States workers.

"(I) Aliens who have earned a master's degree or higher in science, technology, engineering, or math and have been working in a related field in the United States in a nonimmigrant status during the 3-year period preceding their application for an immigrant visa under section 203(b).

"(J) Aliens described in subparagraph (A) or (B) of section 203(b)(1) or who have received a national interest waiver under section 203(b)(2)(B).

"(K) The spouse and minor children of an alien who is admitted as an employment-based immigrant under section 203(b).".

(b) LABOR CERTIFICATIONS.—Section 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amended—

(1) by striking ''or'' at the end of subclause (I);

(2) by striking the period at the end of subclause (II) and inserting ''; or''; and

(3) by adding at the end the following:

''(III) is a member of the professions and has a master's degree or higher from an accredited United States university or has been awarded medical specialty certification based on post-doctoral training and experience in the United States.''.

SEC. 525. STUDENT VISA REFORM.

(a) IN GENERAL.—

(1) NONIMMIGRANT CLASSIFICATION.—Section 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)) is amended to read as follows:

''(F) an alien—

''(i) who—

''(I) is a bona fide student qualified to pursue a full course of study in mathematics, engineering, technology, or the sciences leading to a bachelors or graduate

degree and who seeks to enter the United States for the purpose of pursuing such a course of study consistent with section 214(m) at an institution of higher education (as defined by section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Secretary the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn; or

''(II) is engaged in temporary employment for optional practical training related to such alien's area of study following completion of the course of study described in subclause (I) for a period or periods of not more than 24 months;

''(ii) who—

"(I) has a residence in a foreign country which the alien has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study, and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(m) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Secretary the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn; or

"(II) is engaged in temporary employment for optional practical training related to such alien's area of study following com-

pletion of the course of study described in subclause (I) for a period or periods of not more than 24 months;

"(iii) who is the spouse or minor child of an alien described in clause (i) or (ii) if accompanying or following to join such an alien; or

"(iv) who—

"(I) is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) or (ii) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico; or

"(II) is engaged in temporary employment for optional practical training related to such the student's area of study following completion of the course of study described in subclause (I) for a period or periods of not more than 24 months;".

(2) ADMISSION.—Section 214(b) (8 U.S.C. 1184(b)) is amended by inserting "(F)(i)," before "(L) or (V)".

(3) CONFORMING AMENDMENT.—Section 214(m)(1) (8 U.S.C. 1184(m)(1)) is amended, in the matter preceding subparagraph (A), by striking ''(i) or (iii)'' and inserting ''(i), (ii), or (iv)''.

(b) OFF CAMPUS WORK AUTHORIZATION FOR FOREIGN STUDENTS.—

(1) IN GENERAL.—Aliens admitted as nonimmigrant students described in section 101(a)(15)(F), as amended by subsection (a), (8 U.S.C. 1101(a)(15)(F)) may be employed in an off-campus position unrelated to the alien's field of study if—

(A) the alien has enrolled full-time at the educational institution and is maintaining good academic standing;

(B) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer—

(i) has spent at least 21 days recruiting United States citizens to fill the position; and

(ii) will pay the alien and other similarly situated workers at a rate equal to not less than the greater of—

(I) the actual wage level for the occupation at the place of employment; or

(II) the prevailing wage level for the occupation in the area of employment; and

(C) the alien will not be employed more than—

(i) 20 hours per week during the academic term; or

(ii) 40 hours per week during vacation periods and between academic terms.

(2) DISQUALIFICATION.—If the Secretary of Labor determines that an employer has provided an attestation under paragraph (1)(B) that is materially false or has failed to pay wages in accordance with the attestation, the employer, after notice and opportunity for a hearing, shall be disqualified from employing an alien student under paragraph (1).

SEC. 526. L–1 VISA HOLDERS SUBJECT TO VISA BACKLOG.

Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following new subparagraph:

''(G) The limitations contained in subparagraph (D) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa

or otherwise provided nonimmigrant status under section 101(a)(15)(L) on whose behalf a petition under section 204(b) to accord the alien immigrant status under section 203(b), or an application for labor certification (if such certification is required for the alien to obtain status under such section 203(b)) has been filed, if 365 days or more have elapsed since such filing. The Secretary of Homeland Security shall extend the stay of an alien who qualifies for an exemption under this subparagraph until such time as a final decision is made on the alien's lawful permanent residence.''.

SEC. 527. RETAINING WORKERS SUBJECT TO GREEN CARD BACKLOG.

(a) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—Section 245(a) (8 U.S.C. 1255(a)) is amended to read as follows:

''(a) ELIGIBILITY.—

''(1) IN GENERAL.—The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 204(a)(1) may be adjusted by the Secretary of Homeland Security or the Attorney General, in the discretion of the Secretary or the Attorney General

under such regulations as the Secretary or Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if—

"(A) the alien makes an application for such adjustment;

"(B) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and

"(C) an immigrant visa is immediately available to the alien at the time the application is filed.

"(2) SUPPLEMENTAL FEE.—An application under paragraph (1) that is based on a petition approved or approvable under subparagraph (E) or (F) of section 204(a)(1) may be filed without regard to the limitation set forth in paragraph (1)(C) if a supplemental fee of $500 is paid by the principal alien at the time the application is filed. A supplemental fee may not be required for any dependent alien accompanying or following to join the principal alien.

"(3) VISA AVAILABILITY.—An application for adjustment filed under this paragraph may not be approved until such time as an immigrant visa become available.".

(b) USE OF FEES.—Section 286(v)(1) (8 U.S.C. 1356(v)(1)) is amended by inserting before the period at the end ''and the fees collected under section 245(a)(2).''.

SEC. 528. STREAMLINING THE ADJUDICATION PROCESS FOR ESTABLISHED EMPLOYERS.

Section 214(c) (8. U.S.C. 1184) is amended by adding at the end the following new paragraph:

''(1) Not later than 180 days after the date of the enactment of the Securing Knowledge, Innovation, and Leadership Act of 2006, the Secretary of Homeland Security shall establish a pre-certification procedure for employers who file multiple petitions described in this subsection or section 203(b). Such precertification procedure shall enable an employer to avoid repeatedly submitting documentation that is common to multiple petitions and establish through a single filing criteria relating to the employer and the offered employment opportunity.''.

SEC. 529. PROVIDING PREMIUM PROCESSING OF EMPLOYMENT-BASED VISA PETITIONS.

(a) IN GENERAL.—Pursuant to section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)), the Secretary of Homeland Security shall establish and collect a fee for premium processing of employment-based immigrant petitions.

(b) APPEALS.—Pursuant to such section 286(u), the Secretary of Homeland Security shall establish and collect a fee for premium processing of an administrative appeal of any decision on a permanent employment-based immigrant petition.

SEC. 530. ELIMINATING PROCEDURAL DELAYS IN LABOR CERTIFICATION PROCESS.

(a) PREVAILING WAGE RATE.—

(1) REQUIREMENT TO PROVIDE.—The Secretary of Labor shall provide prevailing wage determinations to employers seeking a labor certification for aliens pursuant to part 656 of title 20, Code of Federal Regulation (or any successor regulation). The Secretary of Labor may not delegate this function to any agency of a State.

(2) SCHEDULE FOR DETERMINATION.—Except as provided in paragraph (3), the Secretary of Labor shall provide a response to an employer's request for a prevailing wage determination in no more than 20 calendar days from the date of receipt of such request. If the Secretary of Labor fails to reply during such 20-day period, then the wage proposed by the employer shall be the valid prevailing wage rate.

(3) USE OF SURVEYS.—The Secretary of Labor shall accept an alternative wage survey provided by

the employer unless the Secretary of Labor determines that the wage component of the Occupational Employment Statistics Survey is more accurate for the occupation in the labor market area.

(b) PLACEMENT OF JOB ORDER.—The Secretary of Labor shall maintain a website with links to the official website of each workforce agency of a State, and such official website shall contain instructions on the filing of a job order in order to satisfy the job order requirements of section 656.17(e)(1) of title 20, Code of Federal Regulation (or any successor regulation).

(c) TECHNICAL CORRECTIONS.—The Secretary of Labor shall establish a process by which employers seeking certification under section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)), as amended by section 524(b), may make technical corrections to applications in order to avoid requiring employers to conduct additional recruitment to correct an initial technical error. A technical error shall include any error that would not have a material effect on the validity of the employer's recruitment of able, willing, and qualified United States workers.

(d) ADMINISTRATIVE APPEALS.—Motions to reconsider, and administrative appeals of, a denial of a permanent labor certification application, shall be decided by the

Secretary of Labor not later than 60 days after the date of the filing of such motion or such appeal.

(e) APPLICATIONS UNDER PREVIOUS SYSTEM.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall process and issue decisions on all applications for permanent alien labor certification that were filed prior to March 28, 2005.

(f) EFFECTIVE DATE.—The provisions of this section shall take effect 90 days after the date of enactment of this Act, whether or not the Secretary of Labor has amended the regulations at part 656 of title 20, Code of Federal Regulation to implement such changes.

SEC. 531. COMPLETION OF BACKGROUND AND SECURITY CHECKS.

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

"(i) REQUIREMENT FOR BACKGROUND CHECKS.—Notwithstanding any other provision of law, until appropriate background and security checks, as determined by the Secretary of Homeland Security, have been completed, and the information provided to and assessed by the official with jurisdiction to grant or issue the benefit or documentation, on an in camera basis as may be necessary with respect to classified, law enforcement, or other information that cannot be disclosed publicly, the Secretary of

1 Homeland Security, the Attorney General, or any court
2 may not—
3 "(1) grant or order the grant of adjustment of
4 status of an alien to that of an alien lawfully admit-
5 ted for permanent residence;
6 "(2) grant or order the grant of any other sta-
7 tus, relief, protection from removal, or other benefit
8 under the immigration laws; or
9 "(3) issue any documentation evidencing or re-
10 lated to such grant by the Secretary, the Attorney
11 General, or any court.
12 "(j) REQUIREMENT TO RESOLVE FRAUD ALLEGA-
13 TIONS.—Notwithstanding any other provision of law, until
14 any suspected or alleged fraud relating to the granting of
15 any status (including the granting of adjustment of sta-
16 tus), relief, protection from removal, or other benefit
17 under this Act has been investigated and resolved, the Sec-
18 retary of Homeland Security and the Attorney General
19 may not be required to—
20 "(1) grant or order the grant of adjustment of
21 status of an alien to that of an alien lawfully admit-
22 ted for permanent residence;
23 "(2) grant or order the grant of any other sta-
24 tus, relief, protection from removal, or other benefit
25 under the immigration laws; or

"(3) issue any documentation evidencing or related to such grant by the Secretary, the Attorney General, or any court.

"(k) PROHIBITION OF JUDICIAL ENFORCEMENT.—Notwithstanding any other provision of law, no court may require any act described in subsection (i) or (j) to be completed by a certain time or award any relief for the failure to complete such acts.".

SEC. 532. VISA REVALIDATION.

(a) IN GENERAL.—Section 222 (8 U.S.C. 1202) is amended by adding at the end the following:

"(i) The Secretary of State shall permit an alien granted a nonimmigrant visa under subparagraph E, H, I, L, O, or P of section 101(a)(15) to apply for a renewal of such visa within the United States if—

"(1) such visa expired during the 12-month period ending on the date of such application;

"(2) the alien is seeking a nonimmigrant visa under the same subparagraph under which the alien had previously received a visa; and

"(3) the alien has complied with the immigration laws and regulations of the United States.".

(b) CONFORMING AMENDMENT.—Section 222(h) of such Act is amended, in the matter preceding subpara-

graph (1), by inserting ''and except as provided under subsection (i),'' after ''Act''.

Subtitle C—Preservation of Immigration Benefits for Hurricane Katrina Victims

SEC. 541. SHORT TITLE.

This subtitle may be cited as the ''Hurricane Katrina Victims Immigration Benefits Preservation Act''.

SEC. 542. DEFINITIONS.

In this subtitle:

(1) APPLICATION OF DEFINITIONS FROM THE IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this subtitle, the definitions in the Immigration and Nationality Act shall apply in the administration of this subtitle.

(2) DIRECT RESULT OF A SPECIFIED HURRICANE DISASTER.—The term ''direct result of a specified hurricane disaster''—

(A) means physical damage, disruption of communications or transportation, forced or voluntary evacuation, business closures, or other circumstances directly caused by Hurricane Katrina (on or after August 26, 2005) or Hurricane Rita (on or after September 21, 2005); and

(B) does not include collateral or consequential economic effects in or on the United States or global economies.

SEC. 543. SPECIAL IMMIGRANT STATUS.

(a) PROVISION OF STATUS.—

(1) IN GENERAL.—For purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Secretary may provide an alien described in subsection (b) with the status of a special immigrant under section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)), if the alien—

(A) files with the Secretary a petition under section 204 of such Act (8 U.S.C. 1154) for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4));

(B) is otherwise eligible to receive an immigrant visa; and

(C) is otherwise admissible to the United States for permanent residence.

(2) INAPPLICABLE PROVISION.—In determining admissibility under paragraph (1)(C), the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)) shall not apply.

(b) ALIENS DESCRIBED.—

(1) PRINCIPAL ALIENS.—An alien is described in this subsection if—

(A) the alien was the beneficiary of—

(i) a petition that was filed with the Secretary on or before August 26, 2005—

(I) under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) to classify the alien as a family-sponsored immigrant under section 203(a) of such Act (8 U.S.C. 1153(a)) or as an employment-based immigrant under section 203(b) of such Act (8 U.S.C. 1153(b)); or

(II) under section 214(d) of such Act (8 U.S.C. 1184(d)) to authorize the issuance of a nonimmigrant visa to the alien under section 101(a)(15)(K) of such Act (8 U.S.C. 1101(a)(15)(K)); or

(ii) an application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. 1182(a)(5)(A)) that was filed under regulations of the Secretary of Labor on or before such date; and

(B) such petition or application was revoked or terminated (or otherwise rendered null), before or after its approval, solely due to—

(i) the death or disability of the petitioner, applicant, or alien beneficiary as a direct result of a specified hurricane disaster; or

(ii) loss of employment as a direct result of a specified hurricane disaster.

(2) SPOUSES AND CHILDREN.—

(A) IN GENERAL.—An alien is described in this subsection if—

(i) the alien, as of August 26, 2005, was the spouse or child of a principal alien described in paragraph (1); and

(ii) the alien—

(I) is accompanying such principal alien; or

(II) is following to join such principal alien not later than August 26, 2007.

(B) CONSTRUCTION.—In construing the terms ''accompanying'' and ''following to join'' in subparagraph (A)(ii), the death of a prin-

cipal alien described in paragraph (1)(B)(i) shall be disregarded.

(3) GRANDPARENTS OR LEGAL GUARDIANS OF ORPHANS.—An alien is described in this subsection if the alien is a grandparent or legal guardian of a child whose parents died as a direct result of a specified hurricane disaster, if either of the deceased parents was, as of August 26, 2005, a citizen or national of the United States or an alien lawfully admitted for permanent residence in the United States.

(c) PRIORITY DATE.—Immigrant visas made available under this section shall be issued to aliens in the order in which a petition on behalf of each such alien is filed with the Secretary under subsection (a)(1), except that if an alien was assigned a priority date with respect to a petition described in subsection (b)(1)(A)(i), the alien may maintain that priority date.

(d) NUMERICAL LIMITATIONS.—In applying sections 201 through 203 of the Immigration and Nationality Act (8 U.S.C. 1151–1153) in any fiscal year, aliens eligible to be provided status under this section shall be treated as special immigrants who are not described in subparagraph (A), (B), (C), or (K) of section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)).

SEC. 544. EXTENSION OF FILING OR REENTRY DEADLINES.

(a) AUTOMATIC EXTENSION OF NONIMMIGRANT STATUS.—

(1) IN GENERAL.—Notwithstanding section 214 of the Immigration and Nationality Act (8 U.S.C. 1184), an alien described in paragraph (2) who was lawfully present in the United States as a nonimmigrant on August 26, 2005, may, unless otherwise determined by the Secretary in the Secretary's discretion, lawfully remain in the United States in the same nonimmigrant status until the later of—

(A) the date on which such lawful nonimmigrant status would have otherwise terminated absent the enactment of this subsection; or

(B) 1 year after the death or onset of disability described in paragraph (2).

(2) ALIENS DESCRIBED.—

(A) PRINCIPAL ALIENS.—An alien is described in this paragraph if the alien was disabled as a direct result of a specified hurricane disaster.

(B) SPOUSES AND CHILDREN.—An alien is described in this paragraph if the alien, as of August 26, 2005, was the spouse or child of—

(i) a principal alien described in subparagraph (A); or

(ii) an alien who died as a direct result of a specified hurricane disaster.

(3) AUTHORIZED EMPLOYMENT.—During the period in which a principal alien or alien spouse is in lawful nonimmigrant status under paragraph (1), the alien may be provided an ''employment authorized'' endorsement or other appropriate document signifying authorization of employment.

(b) NEW DEADLINES FOR EXTENSION OR CHANGE OF NONIMMIGRANT STATUS.—

(1) FILING DELAYS.—

(A) IN GENERAL.—If an alien, who was lawfully present in the United States as a nonimmigrant on August 26, 2005, was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified hurricane disaster, the alien's application may be considered timely filed if it is filed not later 1 year after the application would have otherwise been due.

(B) CIRCUMSTANCES PREVENTING TIMELY ACTION.—For purposes of subparagraph (A),

circumstances preventing an alien from timely acting are—

(i) office closures;

(ii) mail or courier service cessations or delays;

(iii) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements;

(iv) mandatory evacuation and relocation; or

(v) other circumstances, including medical problems or financial hardship.

(2) DEPARTURE DELAYS.—

(A) IN GENERAL.—If an alien, who was lawfully present in the United States as a nonimmigrant on August 26, 2005, is unable to timely depart the United States as a direct result of a specified hurricane disaster, the alien shall not be considered to have been unlawfully present in the United States during the period beginning on August 26, 2005, and ending on the date of the alien's departure, if such departure occurred on or before February 28, 2006.

(B) CIRCUMSTANCES PREVENTING TIMELY ACTION.—For purposes of subparagraph (A),

circumstances preventing an alien from timely acting are—

(i) office closures;

(ii) transportation cessations or delays;

(iii) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements;

(iv) mandatory evacuation and relocation; or

(v) other circumstances, including medical problems or financial hardship.

(c) DIVERSITY IMMIGRANTS.—Section 204(a)(1)(I)(ii)(II) (8 U.S.C. 1154(a)(1)(I)(ii)(II)), is amended to read as follows:

''(II) An immigrant visa made available under subsection 203(c) for fiscal year 1998, or for a subsequent fiscal year, may be issued, or adjustment of status under section 245(a) based upon the availability of such visa may be granted, to an eligible qualified alien who has properly applied for such visa or adjustment in the fiscal year for which the alien was selected notwithstanding the end of such fiscal year. Such visa or adjustment of status shall be counted against the worldwide level set forth in sub-

1 section 201(e) for the fiscal year for which the alien was
2 selected.''.

3 (d) EXTENSION OF FILING PERIOD.—If an alien is
4 unable to timely file an application to register or reregister
5 for Temporary Protected Status under section 244 of the
6 Immigration and Nationality Act (8 U.S.C. 1254a) as a
7 direct result of a specified hurricane disaster, the alien's
8 application may be considered timely filed if it is filed not
9 later than 90 days after it otherwise would have been due.

10 (e) VOLUNTARY DEPARTURE.—

11 (1) IN GENERAL.—Notwithstanding section
12 240B of the Immigration and Nationality Act (8
13 U.S.C. 1229c), if a period for voluntary departure
14 under such section expired during the period begin-
15 ning on August 26, 2005, and ending on December
16 31, 2005, and the alien was unable to voluntarily de-
17 part before the expiration date as a direct result of
18 a specified hurricane disaster, such voluntary depar-
19 ture period is deemed extended for an additional 60
20 days.

21 (2) CIRCUMSTANCES PREVENTING DEPAR-
22 TURE.—For purposes of this subsection, cir-
23 cumstances preventing an alien from voluntarily de-
24 parting the United States are—

25 (A) office closures;

(B) transportation cessations or delays;

(C) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements;

(D) mandatory evacuation and removal; and

(E) other circumstances, including medical problems or financial hardship.

(f) CURRENT NONIMMIGRANT VISA HOLDERS.—

(1) IN GENERAL.—An alien, who was lawfully present in the United States on August 26, 2005, as a nonimmigrant under section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) and lost employment as a direct result of a specified hurricane disaster may accept new employment upon the filing by a prospective employer of a new petition on behalf of such nonimmigrant not later than August 26, 2006.

(2) CONTINUATION OF EMPLOYMENT AUTHORIZATION.—Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such employment shall cease.

(3) SAVINGS PROVISION.—Nothing in this subsection shall be construed to limit eligibility for port-

ability under section 214(n) of the Immigration and Nationality Act (8 U.S.C. 1184(n)).

SEC. 545. HUMANITARIAN RELIEF FOR CERTAIN SURVIVING SPOUSES AND CHILDREN.

(a) TREATMENT AS IMMEDIATE RELATIVES.—

(1) SPOUSES.—Notwithstanding the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), in the case of an alien who was the spouse of a citizen of the United States at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, if the citizen died as a direct result of a specified hurricane disaster, the alien (and each child of the alien) may be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen's death if the alien files a petition under section 204(a)(1)(A)(ii) of such Act not later than 2 years after such date and only until the date on which the alien remarries. For purposes of such section 204(a)(1)(A)(ii), an alien granted relief under this paragraph shall be considered an alien spouse described in the second sentence of section 201(b)(2)(A)(i) of such Act.

(2) CHILDREN.—

(A) IN GENERAL.—In the case of an alien who was the child of a citizen of the United States at the time of the citizen's death, if the citizen died as a direct result of a specified hurricane disaster, the alien may be considered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen's death (regardless of subsequent changes in age or marital status), but only if the alien files a petition under subparagraph (B) not later than 2 years after such date.

(B) PETITIONS.—An alien described in subparagraph (A) may file a petition with the Secretary for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), which shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

(b) SPOUSES, CHILDREN, UNMARRIED SONS AND DAUGHTERS OF LAWFUL PERMANENT RESIDENT ALIENS.—

(1) IN GENERAL.—Any spouse, child, or unmarried son or daughter of an alien described in para-

graph (3) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)) that was filed by such alien before August 26, 2005, may be considered (if the spouse, child, son, or daughter has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for preference status under such section with the same priority date as that assigned before the death described in paragraph (3)(A). No new petition shall be required to be filed. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(2) SELF-PETITIONS.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is not a beneficiary of a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act may file a petition for such classification with the Secretary, if the spouse, child, son, or daughter was present in the United States on August 26, 2005. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(3) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a specified hurricane disaster; and

(B) on the day of such death, was lawfully admitted for permanent residence in the United States.

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES AND CHILDREN OF EMPLOYMENT-BASED IMMIGRANTS.—

(1) IN GENERAL.—Any alien who was, on August 26, 2005, the spouse or child of an alien described in paragraph (2), and who applied for adjustment of status before the death described in paragraph (2)(A), may have such application adjudicated as if such death had not occurred.

(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a specified hurricane disaster; and

(B) on the day before such death, was—

(i) an alien lawfully admitted for permanent residence in the United States by reason of having been allotted a visa under

section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)); or

(ii) an applicant for adjustment of status to that of an alien described in clause (i), and admissible to the United States for permanent residence.

(d) APPLICATIONS BY SURVIVING SPOUSES AND CHILDREN OF REFUGEES AND ASYLEES.—

(1) IN GENERAL.—Any alien who, on August 26, 2005, was the spouse or child of an alien described in paragraph (2), may have his or her eligibility to be admitted under section 207(c)(2)(A) or 208(b)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1157(c)(2)(A), 1158(b)(3)(A)) considered as if the alien's death had not occurred.

(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a specified hurricane disaster; and

(B) on the day before such death, was—

(i) an alien admitted as a refugee under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157); or

(ii) granted asylum under section 208 of such Act (8 U.S.C. 1158).

(e) WAIVER OF PUBLIC CHARGE GROUNDS.—In determining the admissibility of any alien accorded an immigration benefit under this section, the grounds for inadmissibility specified in section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) shall not apply.

SEC. 546. RECIPIENT OF PUBLIC BENEFITS.

An alien shall not be inadmissible under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) or deportable under section 237(a)(5) of such Act (8 U.S.C. 1227(a)(5)) on the basis that the alien received any public benefit as a direct result of a specified hurricane disaster.

SEC. 547. AGE-OUT PROTECTION.

In administering the immigration laws, the Secretary and the Attorney General may grant any application or benefit notwithstanding the applicant or beneficiary (including a derivative beneficiary of the applicant or beneficiary) reaching an age that would render the alien ineligible for the benefit sought, if the alien's failure to meet the age requirement occurred as a direct result of a specified hurricane disaster.

SEC. 548. EMPLOYMENT ELIGIBILITY VERIFICATION.

(a) IN GENERAL.—The Secretary may suspend or modify any requirement under section 274A(b) of the Im-

1 migration and Nationality Act (8 U.S.C. 1324a(b)) or
2 subtitle A of title IV of the Illegal Immigration Reform
3 and Immigrant Responsibility Act of 1996 (8 U.S.C.
4 1324a note), either generally or with respect to particular
5 persons, class of persons, geographic areas, or economic
6 sectors, to the extent to which the Secretary determines
7 necessary or appropriate to respond to national emer-
8 gencies or disasters.

9 (b) NOTIFICATION.—If the Secretary suspends or
10 modifies any requirement under section 274A(b) of the
11 Immigration and Nationality Act pursuant to subsection
12 (a), the Secretary shall send notice of such decision, in-
13 cluding the reasons for the suspension or modification,
14 to—

15 (1) the Committee on the Judiciary of the Sen-
16 ate; and

17 (2) the Committee of the Judiciary of the
18 House of Representatives.

19 (c) SUNSET DATE.—The authority under subsection
20 (a) shall expire on August 26, 2008.

21 **SEC. 549. NATURALIZATION.**

22 The Secretary may, with respect to applicants for
23 naturalization in any district of the United States Citizen-
24 ship and Immigration Services affected by a specified hur-
25 ricane disaster, administer the provisions of Title III of

the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) notwithstanding any provision of such title relating to the jurisdiction of an eligible court to administer the oath of allegiance, or requiring residence to be maintained or any action to be taken in any specific district or State within the United States.

SEC. 550. DISCRETIONARY AUTHORITY.

The Secretary or the Attorney General may waive violations of the immigration laws committed, on or before March 1, 2006, by an alien—

(1) who was in lawful status on August 26, 2005; and

(2) whose failure to comply with the immigration laws was a direct result of a specified hurricane disaster.

SEC. 551. EVIDENTIARY STANDARDS AND REGULATIONS.

The Secretary shall establish appropriate evidentiary standards for demonstrating, for purposes of this subtitle, that a specified hurricane disaster directly resulted in—

(1) death;

(2) disability; or

(3) loss of employment due to physical damage to, or destruction of, a business.

SEC. 552. IDENTIFICATION DOCUMENTS.

(a) TEMPORARY IDENTIFICATION.—The Secretary shall have the authority to instruct any Federal agency to issue temporary identification documents to individuals affected by a specified hurricane disaster. Such documents shall be acceptable for purposes of identification under any Federal law or regulation until August 26, 2006.

(b) ISSUANCE.—An agency may not issue identity documents under this section after January 1, 2006.

(c) NO COMPULSION TO ACCEPT OR CARRY IDENTIFICATION DOCUMENTS.—Nationals of the United States shall not be compelled to accept or carry documents issued under this section.

(d) NO PROOF OF CITIZENSHIP.—Identity documents issued under this section shall not constitute proof of citizenship or immigration status.

SEC. 553. WAIVER OF REGULATIONS.

The Secretary shall carry out the provisions of this subtitle as expeditiously as possible. The Secretary is not required to promulgate regulations before implementing this subtitle. The requirements of chapter 5 of title 5, United States Code (commonly referred to as the ''Administrative Procedure Act'') or any other law relating to rule making, information collection, or publication in the Federal Register, shall not apply to any action to implement this subtitle to the extent the Secretary of Homeland Se-

curity, the Secretary of Labor, or the Secretary of State determine that compliance with such requirement would impede the expeditious implementation of such Act.

SEC. 554. NOTICES OF CHANGE OF ADDRESS.

(a) IN GENERAL.—If a notice of change of address otherwise required to be submitted to the Secretary by an alien described in subsection (b) relates to a change of address occurring during the period beginning on August 26, 2005, and ending on the date of the enactment of this Act, the alien may submit such notice.

(b) ALIENS DESCRIBED.—An alien is described in this subsection if the alien—

(1) resided, on August 26, 2005, within a district of the United States that was declared by the President to be affected by a specified hurricane disaster; and

(2) is required, under section 265 of the Immigration and Nationality Act (8 U.S.C. 1305) or any other provision of law, to notify the Secretary in writing of a change of address.

SEC. 555. FOREIGN STUDENTS AND EXCHANGE PROGRAM PARTICIPANTS.

(a) IN GENERAL.—The nonimmigrant status of an alien described in subsection (b) shall be deemed to have been maintained during the period beginning on August

26, 2005, and ending on September 15, 2006, if, on September 15, 2006, the alien is enrolled in a course of study, or participating in a designated exchange visitor program, sufficient to satisfy the terms and conditions of the alien's nonimmigrant status on August 26, 2005.

(b) ALIENS DESCRIBED.—An alien is described in this subsection if the alien—

(1) was, on August 26, 2005, lawfully present in the United States in the status of a nonimmigrant described in subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)); and

(2) fails to satisfy a term or condition of such status as a direct result of a specified hurricane disaster.

TITLE VI—WORK AUTHORIZATION AND LEGALIZATION OF UNDOCUMENTED INDIVIDUALS

Subtitle A—Access to Earned Adjustment and Mandatory Departure and Reentry

SEC. 601. ACCESS TO EARNED ADJUSTMENT AND MANDATORY DEPARTURE AND REENTRY.

(a) SHORT TITLE.—This section may be cited as the ''Immigrant Accountability Act of 2006''.

(b) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—Chapter 5 of title II (8 U.S.C. 1255 et seq.) is amended by inserting after section 245A the following:

''SEC. 245B. ACCESS TO EARNED ADJUSTMENT.

''(a) ADJUSTMENT OF STATUS.—

''(1) PRINCIPAL ALIENS.—Notwithstanding any other provision of law, including section 244(h) of this Act, the Secretary of Homeland Security shall adjust to the status of an alien lawfully admitted for permanent residence, an alien who satisfies the following requirements:

''(A) APPLICATION.—The alien shall file an application establishing eligibility for adjust-

ment of status and pay the fine required under subsection (m) and any additional amounts owed under that subsection.

"(B) CONTINUOUS PHYSICAL PRESENCE.—

"(i) IN GENERAL.—The alien shall establish that the alien—

"(I) was physically present in the United States on or before the date that is 5 years before April 5, 2006;

"(II) was not legally present in the United States on April 5, 2006, under any classification set forth in section 101(a)(15); and

"(III) did not depart from the United States during the 5-year period ending on April 5, 2006, except for brief, casual, and innocent departures.

"(ii) LEGALLY PRESENT.—For purposes of this subparagraph, an alien who has violated any conditions of his or her visa shall be considered not to be legally present in the United States.

"(C) ADMISSIBLE UNDER IMMIGRATION LAWS.—The alien shall establish that the alien

is not inadmissible under section 212(a) except for any provision of that section that is waived under subsection (b) of this section.

"(D) EMPLOYMENT IN UNITED STATES.—

"(i) IN GENERAL.—The alien shall have been employed in the United States, in the aggregate, for—

"(I) at least 3 years during the 5-year period ending on April 5, 2006; and

"(II) at least 6 years after the date of enactment of the Immigrant Accountability Act of 2006.

"(ii) EXCEPTIONS.—

"(I) The employment requirement in clause (i)(I) shall not apply to an individual who is under 20 years of age on the date of enactment of the Immigrant Accountability Act of 2006.

"(II) The employment requirement in clause (i)(II) shall be reduced for an individual who cannot demonstrate employment based on a phys-

ical or mental disability or as a result of pregnancy.

"(III) The employment requirement in clause (i)(II) shall be reduced for an individual who is under 20 years of age on the date of enactment of the Immigrant Accountability Act of 2006 by a period of time equal to the time period beginning on such date of enactment and ending on the date on which the individual reaches 20 years of age.

"(IV) The employment requirements in clause (i) shall be reduced by 1 year for each year of full time post-secondary study in the United States during the relevant period.

"(V) The employment requirement under clause (i)(I) shall not apply to any individual who is 65 years of age or older on the date of the enactment of the Immigrant Accountability Act of 2006.

"(iii) PORTABILITY.—An alien shall not be required to complete the employ-

ment requirements in clause (i) with the same employer.

"(iv) EVIDENCE OF EMPLOYMENT.—

"(I) CONCLUSIVE DOCUMENTS.—For purposes of satisfying the requirements in clause (i), the alien shall submit at least 2 of the following documents for each period of employment, which shall be considered conclusive evidence of such employment:

"(aa) Records maintained by the Social Security Administration.

"(bb) Records maintained by an employer, such as pay stubs, time sheets, or employment work verification.

"(cc) Records maintained by the Internal Revenue Service.

"(dd) Records maintained by a union or day labor center.

"(ee) Records maintained by any other government agency, such as worker compensation

records, disability records, or business licensing records.

"(II) OTHER DOCUMENTS.—An alien who is unable to submit a document described in subclause (I) may satisfy the requirement in clause (i) by submitting to the Secretary at least 2 other types of reliable documents that provide evidence of employment for each required period of employment, including—

"(aa) bank records;

"(bb) business records;

"(cc) sworn affidavits from non-relatives who have direct knowledge of the alien's work, including the name, address, and phone number of the affiant, the nature and duration of the relationship between the affiant and the alien, and other verification information; or

"(dd) remittance records.

"(v) BURDEN OF PROOF.—An alien applying for adjustment of status under

this subsection has the burden of proving by a preponderance of the evidence that the alien has satisfied the employment requirements in clause (i). Once the burden is met, the burden shall shift to the Secretary of Homeland Security to disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence.

"(E) PAYMENT OF INCOME TAXES.—

"(i) IN GENERAL.—Not later than the date on which status is adjusted under this section, the alien establishes the payment of any applicable Federal tax liability by establishing that—

"(I) no such tax liability exists;

"(II) all outstanding liabilities have been paid; or

"(III) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

"(ii) APPLICABLE FEDERAL TAX LIABILITY.—For purposes of clause (i), the term 'applicable Federal tax liability'

means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required by subparagraph (D)(i) for which the statutory period for assessment of any deficiency for such taxes has not expired.

"(iii) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all taxes required by this subparagraph.

"(i) IN GENERAL.—The alien may satisfy such requirement by establishing that—

"(I) no such tax liability exists;

"(II) all outstanding liabilities have been met; or

"(III) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service and with the department of revenue of each State to which taxes are owed.

"(ii) LIMITATION.—Provided further that an alien required to pay taxes under this subpara-

graph, or who otherwise satisfies the requirements of clause (i), shall not be allowed to collect any tax refund for any taxable year prior to 2006, or to file any claim for the Earned Income Tax Credit, or any other tax credit otherwise allowable under the tax code, prior to such taxable year.

"(F) BASIC CITIZENSHIP SKILLS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the alien shall demonstrate that the alien meets the requirements of section 312(a) (relating to English proficiency and understanding of United States history and Government).

"(ii) EXCEPTIONS.—

"(I) MANDATORY.—The requirements of clause (i) shall not apply to any person who is unable to comply with those requirements because of a physical or developmental disability or mental impairment.

"(II) DISCRETIONARY.—The Secretary of Homeland Security may waive all or part of the requirements of clause (i) in the case of an alien

who is 65 years of age or older as of the date of the filing of the application for adjustment of status.

"(G) SECURITY AND LAW ENFORCEMENT CLEARANCES.—The alien shall submit fingerprints in accordance with procedures established by the Secretary of Homeland Security. Such fingerprints shall be submitted to relevant Federal agencies to be checked against existing databases for information relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status under this subsection. The relevant Federal agencies shall work to ensure that such clearances are completed within 90 days of the submission of fingerprints. An appeal of a security clearance determination by the Secretary of Homeland Security shall be processed through the Department of Homeland Security.

"(H) MILITARY SELECTIVE SERVICE.—The alien shall establish that if the alien is within the age period required under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) that such alien has registered under that Act.

"(I) ADJUSTMENT OF STATUS.—The Secretary may not adjust the status of an alien under this section to that of lawful permanent resident until the Secretary determines that the priority dates have become current for the class of aliens whose family-based or employment-based petitions for permanent residence were pending on the date of the enactment of the Comprehensive Immigration Reform Act of 2006.

"(2) SPOUSES AND CHILDREN.—

"(A) IN GENERAL.—

"(i) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall, if otherwise eligible under subparagraph (B), adjust the status to that of a lawful permanent resident for—

"(I) the spouse, or child who was under 21 years of age on the date of enactment of the Immigrant Accountability Act of 2006, of an alien who adjusts status or is eligible to adjust status to that of a permanent resident under paragraph (1); or

"(II) an alien who, within 5 years preceding the date of enactment of the Immigrant Accountability Act of 2006, was the spouse or child of an alien who adjusts status to that of a permanent resident under paragraph (1), if—

"(aa) the termination of the qualifying relationship was connected to domestic violence; or

"(bb) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent who adjusts status or is eligible to adjust status to that of a permanent resident under paragraph (1).

"(ii) APPLICATION OF OTHER LAW.—In acting on applications filed under this paragraph with respect to aliens who have been battered or subjected to extreme cruelty, the Secretary of Homeland Security shall apply the provisions of section 204(a)(1)(J) and the protections, prohibitions, and penalties under section 384 of

the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

"(B) GROUNDS OF INADMISSIBILITY NOT APPLICABLE.—In establishing admissibility to the United States, the spouse or child described in subparagraph (A) shall establish that they are not inadmissible under section 212(a), except for any provision of that section that is waived under subsection (b) of this section.

"(C) SECURITY AND LAW ENFORCEMENT CLEARANCE.—The spouse or child, if that child is 14 years of age or older, described in subparagraph (A) shall submit fingerprints in accordance with procedures established by the Secretary of Homeland Security. Such fingerprints shall be submitted to relevant Federal agencies to be checked against existing databases for information relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status under this subsection. The relevant Federal agencies shall work to ensure that such clearances are completed within 90 days of the submission of fingerprints. An ap-

peal of a denial by the Secretary of Homeland Security shall be processed through the Department of Homeland Security.

"(3) NONAPPLICABILITY OF NUMERICAL LIMITATIONS.—When an alien is granted lawful permanent resident status under this subsection, the number of immigrant visas authorized to be issued under any provision of this Act shall not be reduced.

"(b) GROUNDS OF INADMISSIBILITY.—

"(1) APPLICABLE PROVISIONS.—In the determination of an alien's admissibility under paragraphs (1)(C) and (2) of subsection (a), the following provisions of section 212(a) shall apply and may not be waived by the Secretary of Homeland Security under paragraph (3)(A):

"(A) Paragraph (1) (relating to health).

"(B) Paragraph (2) (relating to criminals).

"(C) Paragraph (3) (relating to security and related grounds).

"(D) Subparagraphs (A) and (C) of paragraph (10) (relating to polygamists and child abductors).

"(2) GROUNDS OF INADMISSIBILITY NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (6)(B), (6)(C), (6)(F), (6)(G), (7), (9) (other than

subparagraph (C)(i)(II)), and (10)(B) of section 212(a) shall not apply to an alien who is applying for adjustment of status under subsection (a).

"(3) WAIVER OF OTHER GROUNDS.—

"(A) IN GENERAL.—Except as provided in paragraph (1), the Secretary of Homeland Security may waive any provision of section 212(a) in the case of individual aliens for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest.

"(B) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the authority of the Secretary of Homeland Security, other than under this subparagraph, to waive the provisions of section 212(a).

"(4) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under subsection (a) by reason of a ground of inadmissibility under section 212(a)(4) if the alien establishes a history of employment in the United States evidencing self-support without public cash assistance.

"(5) SPECIAL RULE FOR INDIVIDUALS WHERE THERE IS NO COMMERCIAL PURPOSE.—An alien is not ineligible for adjustment of status under sub-

section (a) by reason of a ground of inadmissibility under section 212(a)(6)(E) if the alien establishes that the action referred to in that section was taken for humanitarian purposes, to ensure family unity, or was otherwise in the public interest.

"(6) APPLICABILITY OF OTHER PROVISIONS.—Section 241(a)(5) and section 240B(d) shall not apply with respect to an alien who is applying for adjustment of status under subsection (a).

"(6) INELIGIBILITY.—

"(A) IN GENERAL.—An alien is ineligible for adjustment to lawful permanent resident status under this section if—

"(i) the alien has been ordered removed from the United States—

"(I) for overstaying the period of authorized admission under section 217;

"(II) under section 235 or 238; or

"(III) pursuant to a final order of removal under section 240;

"(ii) the alien failed to depart the United States during the period of a vol-

untary departure order issued under section 240B;

"(iii) the alien is subject to section 241(a)(5);

"(iv) the Secretary of Homeland Security determines that—

"(I) the alien, having been convicted by a final judgment of a serious crime, constitutes a danger to the community of the United States;

"(II) there are reasonable grounds for believing that the alien has committed a serious crime outside the United States prior to the arrival of the alien in the United States; or

"(III) there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

"(v) the alien has been convicted of a felony or 3 or more misdemeanors.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), an alien who has not been ordered removed from the United States shall remain eligible for adjustment to lawful perma-

nent resident status under this section if the alien's ineligibility under subparagraph (A) is solely related to the alien's—

"(i) entry into the United States without inspection;

"(ii) remaining in the United States beyond the period of authorized admission; or

"(iii) failure to maintain legal status while in the United States.

"(C) WAIVER.—The Secretary may, in the Secretary's sole and unreviewable discretion, waive the application of subparagraph (A) if the alien was ordered removed on the basis that the alien—

"(i) entered without inspection;

"(ii) failed to maintain status; or

"(iii) was ordered removed under 212(a)(6)(C)(i) prior to April 7, 2006,

"and—

"(i) demonstrates that the alien did not receive notice of removal proceedings in accordance with paragraph (1) or (2) of section 239(a); or

"(ii) establishes that the alien's failure to appear was due to exceptional circumstances beyond the control of the alien; or

"(iii) the alien's departure from the United States now would result in extreme hardship to the alien's spouse, parent, or child who is a citizen of the United States or an alien lawfully admitted for permanent residence.

"(c) TREATMENT OF APPLICANTS.—

"(1) IN GENERAL.—An alien who files an application under subsection (a)(1)(A) for adjustment of status, including a spouse or child who files for adjustment of status under subsection (b)—

"(A) shall be granted employment authorization pending final adjudication of the alien's application for adjustment of status;

"(B) shall be granted permission to travel abroad pursuant to regulation pending final adjudication of the alien's application for adjustment of status;

"(C) shall not be detained, determined inadmissible or deportable, or removed pending final adjudication of the alien's application for

adjustment of status, unless the alien commits an act which renders the alien ineligible for such adjustment of status; and

"(D) shall not be considered an unauthorized alien as defined in section 274A(i) until such time as employment authorization under subparagraph (A) is denied.

"(2) DOCUMENT OF AUTHORIZATION.—The Secretary of Homeland Security shall provide each alien described in paragraph (1) with a counterfeit-resistant document of authorization that—

"(A) meets all current requirements established by the Secretary of Homeland Security for travel documents, including the requirements under section 403 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note); and

"(B) reflects the benefits and status set forth in paragraph (1).

"(3) SECURITY AND LAW ENFORCEMENT CLEARANCE.—Before an alien is granted employment authorization or permission to travel under paragraph (1), the alien shall be required to undergo a name check against existing databases for information relating to criminal, national security, or

other law enforcement actions. The relevant Federal agencies shall work to ensure that such name checks are completed not later than 90 days after the date on which the name check is requested.

"(4) TERMINATION OF PROCEEDINGS.—An alien in removal proceedings who establishes prima facie eligibility for adjustment of status under subsection (a) shall be entitled to termination of the proceedings pending the outcome of the alien's application, unless the removal proceedings are based on criminal or national security grounds.

"(e) CONFIDENTIALITY OF INFORMATION.—

"(1) IN GENERAL.—Except as otherwise provided in this section, no Federal agency or bureau, nor any officer or employee of such agency or bureau, may—

"(A) use the information furnished by the applicant pursuant to an application filed under paragraph (1) or (2) of subsection (a) for any purpose other than to make a determination on the application;

"(B) make any publication through which the information furnished by any particular applicant can be identified; or

"(C) permit anyone other than the sworn officers and employees of such agency, bureau, or approved entity, as approved by the Secretary of Homeland Security, to examine individual applications that have been filed.

"(2) REQUIRED DISCLOSURES.—The Secretary of Homeland Security and the Secretary of State shall provide the information furnished pursuant to an application filed under paragraph (1) or (2) of subsection (a), and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution or a national security investigation or prosecution, in each instance about an individual suspect or group of suspects, when such information is requested in writing by such entity.

"(3) CRIMINAL PENALTY.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be fined not more than $10,000.

"(f) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

"(1) CRIMINAL PENALTY.—

"(A) VIOLATION.—It shall be unlawful for any person to—

"(i) file or assist in filing an application for adjustment of status under this section and knowingly and willfully falsify, conceal, or cover up a material fact or make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

"(ii) create or supply a false writing or document for use in making such an application.

"(B) PENALTY.—Any person who violates subparagraph (A) shall be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both.

"(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States.

"(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), any alien or other entity (including an employer or union) that submits an employment record that contains incorrect data that the alien

used in order to obtain such employment, shall not have violated this subsection.

"(g) INELIGIBILITY FOR PUBLIC BENEFITS.—For purposes of section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613), an alien whose status has been adjusted in accordance with subsection (a) shall not be eligible for any Federal means-tested public benefit unless the alien meets the alien eligibility criteria for such benefit under title IV of such Act (8 U.S.C. 1601 et seq.).

"(h) RELATIONSHIPS OF APPLICATION TO CERTAIN ORDERS.—

"(1) IN GENERAL.—An alien who is present in the United States and has been ordered excluded, deported, removed, or to depart voluntarily from the United States or is subject to reinstatement of removal under any provision of this Act may, notwithstanding such order, apply for adjustment of status under subsection (a). Such an alien shall not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal or voluntary departure order. If the Secretary of Homeland Security grants the application, the order shall be canceled. If the Secretary of Home-

land Security renders a final administrative decision to deny the application, such order shall be effective and enforceable. Nothing in this paragraph shall affect the review or stay of removal under subsection (j).

"(2) STAY OF REMOVAL.—The filing of an application described in paragraph (1) shall stay the removal or detainment of the alien pending final adjudication of the application, unless the removal or detainment of the alien is based on criminal or national security grounds.

"(i) APPLICATION OF OTHER PROVISIONS.—Nothing in this section shall preclude an alien who may be eligible to be granted adjustment of status under subsection (a) from seeking such status under any other provision of law for which the alien may be eligible.

"(j) ADMINISTRATIVE AND JUDICIAL REVIEW.—

"(1) IN GENERAL.—Except as provided in this subsection, there shall be no administrative or judicial review of a determination respecting an application for adjustment of status under subsection (a).

"(2) ADMINISTRATIVE REVIEW.—

"(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary of Homeland Security shall establish an appellate au-

thority to provide for a single level of administrative appellate review of a determination respecting an application for adjustment of status under subsection (a).

"(B) STANDARD FOR REVIEW.—Administrative appellate review referred to in subparagraph (A) shall be based solely upon the administrative record established at the time of the determination on the application and upon the presentation of additional or newly discovered evidence during the time of the pending appeal.

"(3) JUDICIAL REVIEW.—

"(A) DIRECT REVIEW.—A person whose application for adjustment of status under subsection (a) is denied after administrative appellate review under paragraph (2) may seek review of such denial, in accordance with chapter 7 of title 5, United States Code, before the United States district court for the district in which the person resides.

"(B) REVIEW AFTER REMOVAL PROCEEDINGS.—There shall be judicial review in the Federal courts of appeal of the denial of an application for adjustment of status under subsection (a) in conjunction with judicial review of

an order of removal, deportation, or exclusion, but only if the validity of the denial has not been upheld in a prior judicial proceeding under subparagraph (A). Notwithstanding any other provision of law, the standard for review of such a denial shall be governed by subparagraph (C).

"(C) STANDARD FOR JUDICIAL REVIEW.—Judicial review of a denial of an application under this section shall be based solely upon the administrative record established at the time of the review. The findings of fact and other determinations contained in the record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record, considered as a whole.

"(4) STAY OF REMOVAL.—Aliens seeking administrative or judicial review under this subsection shall not be removed from the United States until a final decision is rendered establishing ineligibility under this section, unless such removal is based on criminal or national security grounds.

"(k) DISSEMINATION OF INFORMATION ON ADJUSTMENT PROGRAM.—During the 12 months following the

1 issuance of final regulations in accordance with subsection
2 (o), the Secretary of Homeland Security, in cooperation
3 with approved entities, approved by the Secretary of
4 Homeland Security, shall broadly disseminate information
5 respecting adjustment of status under this section and the
6 requirements to be satisfied to obtain such status. The
7 Secretary of Homeland Security shall also disseminate in-
8 formation to employers and labor unions to advise them
9 of the rights and protections available to them and to
10 workers who file applications under this section. Such in-
11 formation shall be broadly disseminated, in the languages
12 spoken by the top 15 source countries of the aliens who
13 would qualify for adjustment of status under this section,
14 including to television, radio, and print media such aliens
15 would have access to.

16 "(l) EMPLOYER PROTECTIONS.—

17 "(1) IMMIGRATION STATUS OF ALIEN.—Em-
18 ployers of aliens applying for adjustment of status
19 under this section shall not be subject to civil and
20 criminal tax liability relating directly to the employ-
21 ment of such alien.

22 "(2) PROVISION OF EMPLOYMENT RECORDS.—
23 Employers that provide unauthorized aliens with
24 copies of employment records or other evidence of
25 employment pursuant to an application for adjust-

ment of status under this section or any other application or petition pursuant to other provisions of the immigration laws, shall not be subject to civil and criminal liability pursuant to section 274A for employing such unauthorized aliens.

"(3) APPLICABILITY OF OTHER LAW.—Nothing in this subsection shall be used to shield an employer from liability pursuant to section 274B or any other labor and employment law provisions.

"(m) AUTHORIZATION OF FUNDS; FINES.—

"(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Homeland Security such sums as are necessary to commence the processing of applications filed under this section.

"(2) FINE.—An alien who files an application under this section shall pay a fine commensurate with levels charged by the Department of Homeland Security for other applications for adjustment of status.

"(3) ADDITIONAL AMOUNTS OWED.—Prior to the adjudication of an application for adjustment of status filed under this section, the alien shall pay an amount equaling $2,000, but such amount shall not be required from an alien under the age of 18.

"(4) USE OF AMOUNTS COLLECTED.—The Secretary of Homeland Security shall deposit payments received under paragraphs (2) and (3) in the Immigration Examinations Fee Account, and these payments in such account shall be available, without fiscal year limitation, such that—

"(A) 80 percent of such funds shall be available to the Department of Homeland Security for border security purposes;

"(B) 10 percent of such funds shall be available to the Department of Homeland Security for implementing and processing applications under this section; and

"(C) 10 percent of such funds shall be available to the Department of Homeland Security and the Department of State to cover administrative and other expenses incurred in connection with the review of applications filed by immediate relatives of aliens applying for adjustment of status under this section.

"(5) STATE IMPACT ASSISTANCE FEE.—

"(A) IN GENERAL.—In addition to any other amounts required to be paid under this subsection, an alien shall submit, at the time

the alien files an application under this section, a State impact assistance fee equal to—

"(i) $750 for the principal alien; and

"(ii) $100 for the spouse and each child described in subsection (a)(2).

"(B) USE OF FEE.—The fees collected under subparagraph (A) shall be deposited in the State Impact Assistance Account established under section 286(x).

"(n) MANDATORY DEPARTURE AND REENTRY.—Any alien who was physically present in the United States on January 7, 2004, who seeks to adjust status under this section, but does not satisfy the requirements of subparagraph (B) or (D) of subsection (a)(1), shall be eligible to depart the United States and to seek admission as a nonimmigrant or an immigrant alien described in section 245C.

"(o) ISSUANCE OF REGULATIONS.—Not later than 120 days after the date of enactment of the Immigrant Accountability Act of 2006, the Secretary of Homeland Security shall issue regulations to implement this section.".

(2) TABLE OF CONTENTS.—The table of contents (8 U.S.C. 1101 et seq.) is amended by insert-

ing after the item relating to section 245A the following:

"245B. Access to Earned Adjustment.".

(c) MANDATORY DEPARTURE AND REENTRY.—

(1) IN GENERAL.—Chapter 5 of title II (8 U.S.C. 1255 et seq.), as amended by subsection (b)(1), is further amended by inserting after section 245B the following:

"SEC. 245C. MANDATORY DEPARTURE AND REENTRY.

"(a) IN GENERAL.—The Secretary of Homeland Security may grant Deferred Mandatory Departure status to aliens who are in the United States illegally to allow such aliens time to depart the United States and to seek admission as a nonimmigrant or immigrant alien.

"(b) REQUIREMENTS.—Notwithstanding section 244(h), an alien desiring an adjustment of status under subsection (a) shall meet the following requirements:

"(1) PRESENCE.—The alien shall establish that the alien—

"(A) was physically present in the United States on January 7, 2004;

"(B) has been continuously in the United States since such date, except for brief, casual, and innocent departures; and

"(C) was not legally present in the United States on that date under any classification set forth in section 101(a)(15).

"(2) EMPLOYMENT.—

"(A) IN GENERAL.—The alien shall establish that the alien—

"(i) was employed in the United States, whether full time, part time, seasonally, or self-employed, before January 7, 2004; and

"(ii) has been continuously employed in the United States since that date, except for brief periods of unemployment lasting not longer than 60 days.

"(B) EVIDENCE OF EMPLOYMENT.—

"(i) IN GENERAL.—An alien may conclusively establish employment status in compliance with subparagraph (A) by submitting to the Secretary of Homeland Security records demonstrating such employment maintained by—

"(I) the Social Security Administration, Internal Revenue Service, or by any other Federal, State, or local government agency;

1 "(II) an employer; or

2 "(III) a labor union, day labor
3 center, or an organization that assists
4 workers in matters related to employ-
5 ment.

6 "(ii) OTHER DOCUMENTS.—An alien
7 who is unable to submit a document de-
8 scribed in subclauses (I) through (III) of
9 clause (i) may satisfy the requirement in
10 subparagraph (A) by submitting to the
11 Secretary at least 2 other types of reliable
12 documents that provide evidence of em-
13 ployment, including—

14 "(I) bank records;

15 "(II) business records;

16 "(III) sworn affidavits from non-
17 relatives who have direct knowledge of
18 the alien's work, including the name,
19 address, and phone number of the af-
20 fiant, the nature and duration of the
21 relationship between the affiant and
22 the alien, and other verification infor-
23 mation; or

24 "(IV) remittance records.

"(iii) INTENT OF CONGRESS.—It is the intent of Congress that the requirement in this subsection be interpreted and implemented in a manner that recognizes and takes into account the difficulties encountered by aliens in obtaining evidence of employment due to the undocumented status of the alien.

"(iv) BURDEN OF PROOF.—An alien who is applying for adjustment of status under this section has the burden of proving by a preponderance of the evidence that the alien has satisfied the requirements of this subsection. An alien may meet such burden of proof by producing sufficient evidence to demonstrate such employment as a matter of reasonable inference.

"(C) EXEMPTION.—The employment requirement under subparagraph (A) shall not apply to any individual who is 65 years of age or older on the date of the enactment of the Immigrant Accountability Act of 2006.

"(3) ADMISSIBILITY.—

"(A) IN GENERAL.—The alien shall establish that such alien—

"(i) is admissible to the United States, except as provided as in (B); and

"(ii) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(B) GROUNDS NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7), and (9)(B) of section 212(a) shall not apply.

"(C) WAIVER.—The Secretary of Homeland Security may waive any other provision of section 212(a), or a ground of ineligibility under paragraph (4), in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(4) INELIGIBILITY.—

"(A) IN GENERAL.—The alien is ineligible for Deferred Mandatory Departure status if the alien—

"(i) has been ordered removed from the United States—

"(I) for overstaying the period of authorized admission under section 217;

"(II) under section 235 or 238; or

"(III) pursuant to a final order of removal under section 240;

"(ii) the alien failed to depart the United States during the period of a voluntary departure order issued under section 240B;

"(iii) the alien is subject to section 241(a)(5);

"(iv) the Secretary of Homeland Security determines that—

"(I) the alien, having been convicted by a final judgment of a serious crime, constitutes a danger to the community of the United States;

"(II) there are reasonable grounds for believing that the alien has committed a serious crime outside the United States prior to the arrival of the alien in the United States; or

"(III) there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

"(v) the alien has been convicted of a felony or 3 or more misdemeanors.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), an alien who has not been ordered removed from the United States shall remain eligible for adjustment to lawful permanent resident status under this section if the alien's ineligibility under subparagraph (A) is solely related to the alien's—

"(i) entry into the United States without inspection;

"(ii) remaining in the United States beyond the period of authorized admission; or

"(iii) failure to maintain legal status while in the United States.

"(C) WAIVER.—The Secretary may, in the Secretary's sole and unreviewable discretion, waive the application of subparagraph (A) if the alien was ordered removed on the basis that the alien—

"(i) entered without inspection;

"(ii) failed to maintain status; or

"(iii) was ordered removed under 212(a)(6)(C)(i) prior to April 7, 2006,

"and—

"(i) demonstrates that the alien did not receive notice of removal proceedings in accordance with paragraph (1) or (2) of section 239(a); or

"(ii) establishes that the alien's failure to appear was due to exceptional circumstances beyond the control of the alien; or

"(iii) the alien's departure from the United States now would result in extreme hardship to the alien's spouse, parent, or child who is a citizen of the United States or an alien lawfully admitted for permanent residence.

"(5) MEDICAL EXAMINATION.—The alien may be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

1 "(6) TERMINATION.—The Secretary of Home-
2 land Security may terminate an alien's Deferred
3 Mandatory Departure status if—
4 "(A) the Secretary of Homeland Security
5 determines that the alien was not in fact eligi-
6 ble for such status; or
7 "(B) the alien commits an act that makes
8 the alien removable from the United States.
9 "(7) APPLICATION CONTENT AND WAIVER.—
10 "(A) APPLICATION FORM.—The Secretary
11 of Homeland Security shall create an applica-
12 tion form that an alien shall be required to
13 complete as a condition of obtaining Deferred
14 Mandatory Departure status.
15 "(B) CONTENT.—In addition to any other
16 information that the Secretary requires to de-
17 termine an alien's eligibility for Deferred Man-
18 datory Departure, the Secretary shall require
19 an alien to answer questions concerning the
20 alien's physical and mental health, criminal his-
21 tory, gang membership, renunciation of gang
22 affiliation, immigration history, involvement
23 with groups or individuals that have engaged in
24 terrorism, genocide, persecution, or who seek
25 the overthrow of the United States Government,

voter registration history, claims to United States citizenship, and tax history.

"(C) WAIVER.—The Secretary of Homeland Security shall require an alien to include with the application a waiver of rights that explains to the alien that, in exchange for the discretionary benefit of obtaining Deferred Mandatory Departure status, the alien agrees to waive any right to judicial review or to contest any removal action, other than on the basis of an application for asylum or restriction of removal pursuant to the provisions contained in section 208 or 241(b)(3), or under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984, or cancellation of removal pursuant to section 240A(a).

"(D) KNOWLEDGE.—The Secretary of Homeland Security shall require an alien to include with the application a signed certification in which the alien certifies that the alien has read and understood all of the questions and statements on the application form, and that the alien certifies under penalty of perjury under the laws of the United States that the

application, and any evidence submitted with it, are all true and correct, and that the applicant authorizes the release of any information contained in the application and any attached evidence for law enforcement purposes.

"(c) IMPLEMENTATION AND APPLICATION TIME PERIODS.—

"(1) IN GENERAL.—The Secretary of Homeland Security shall ensure that the application process is secure and incorporates antifraud protection. The Secretary of Homeland Security shall interview an alien to determine eligibility for Deferred Mandatory Departure status and shall utilize biometric authentication at time of document issuance.

"(2) INITIAL RECEIPT OF APPLICATIONS.—The Secretary of Homeland Security shall begin accepting applications for Deferred Mandatory Departure status not later than 3 months after the date on which the application form is first made available.

"(3) APPLICATION.—An alien must submit an initial application for Deferred Mandatory Departure status not later than 6 months after the date on which the application form is first made available. An alien that fails to comply with this requirement is ineligible for Deferred Mandatory Departure

status. The provisions under subsections (e) and (f) of section 245B shall apply to applications filed under this section.

"(4) COMPLETION OF PROCESSING.—The Secretary of Homeland Security shall ensure that all applications for Deferred Mandatory Departure status are processed not later than 12 months after the date on which the application form is first made available.

"(d) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—An alien may not be granted Deferred Mandatory Departure status unless the alien submits biometric data in accordance with procedures established by the Secretary of Homeland Security. The Secretary of Homeland Security may not grant Deferred Mandatory Departure status until all appropriate background checks are completed to the satisfaction of the Secretary of Homeland Security.

"(e) ACKNOWLEDGMENT.—

"(1) IN GENERAL.—An alien who applies for Deferred Mandatory Departure status shall submit to the Secretary of Homeland Security—

"(A) an acknowledgment made in writing and under oath that the alien—

"(i) is unlawfully present in the United States and subject to removal or deportation, as appropriate, under this Act; and

"(ii) understands the terms of the terms of Deferred Mandatory Departure;

"(B) any Social Security account number or card in the possession of the alien or relied upon by the alien;

"(C) any false or fraudulent documents in the alien's possession.

"(2) USE OF INFORMATION.—None of the documents or other information provided in accordance with paragraph (1) may be used in a criminal proceeding against the alien providing such documents or information.

"(f) MANDATORY DEPARTURE.—

"(1) IN GENERAL.—The Secretary of Homeland Security shall grant Deferred Mandatory Departure status to an alien who meets the requirements of this section for a period not to exceed 3 years.

"(2) REGISTRATION AT TIME OF DEPARTURE.—An alien granted Deferred Mandatory Departure shall—

"(A) depart from the United States before the expiration of the period of Deferred Mandatory Departure status;

"(B) register with the Secretary of Homeland Security at the time of departure; and

"(C) surrender any evidence of Deferred Mandatory Departure status at the time of departure.

"(3) APPLICATION FOR READMISSION.—

"(A) IN GENERAL.—An alien under this section may apply for admission to the United States as an immigrant or nonimmigrant while in the United States or from any location outside of the United States, but may not be granted admission until the alien has departed from the United States in accordance with paragraph (2).

"(B) APPROVAL.—The Secretary may approve an application under subparagraph (A) during the period in which the alien is present in the United States under Deferred Mandatory Departure status.

"(C) US–VISIT.—An alien in Deferred Mandatory Departure status who is seeking admission as a nonimmigrant or immigrant alien

may exit the United States and immediately re-enter the United States at any land port of entry at which the US–VISIT exit and entry system can process such alien for admission into the United States.

"(D) INTERVIEW REQUIREMENTS.—Notwithstanding any other provision of law, any admission requirement involving in-person interviews at a consulate of the United States shall be waived for aliens granted Deferred Mandatory Departure status under this section.

"(E) WAIVER OF NUMERICAL LIMITATIONS.—The numerical limitations under section 214 shall not apply to any alien who is admitted as a nonimmigrant under this paragraph.

"(4) EFFECT OF READMISSION ON SPOUSE OR CHILD.—The spouse or child of an alien granted Deferred Mandatory Departure and subsequently granted an immigrant or nonimmigrant visa before departing the United States shall be—

"(A) deemed to have departed under this section upon the successful admission of the principal alien; and

"(B) eligible for the derivative benefits associated with the immigrant or nonimmigrant visa granted to the principal alien without regard to numerical caps related to such visas.

"(5) WAIVERS.—The Secretary of Homeland Security may waive the departure requirement under this subsection if the alien—

"(A) is granted an immigrant or nonimmigrant visa; and

"(B) can demonstrate that the departure of the alien would create a substantial hardship on the alien or an immediate family member of the alien.

"(6) RETURN IN LEGAL STATUS.—An alien who complies with the terms of Deferred Mandatory Departure status and who departs before the expiration of such status—

"(A) shall not be subject to section 212(a)(9)(B);

"(B) if otherwise eligible, may immediately seek admission as a nonimmigrant or immigrant; and

"(C) is eligible to be employed by an employer in the United States regardless of wheth-

er the employer has complied with the requirements of section 218B(b)(7).

"(7) FAILURE TO DEPART.—An alien who fails to depart the United States prior to the expiration of Mandatory Deferred Departure status is not eligible and may not apply for or receive any immigration relief or benefit under this Act or any other law for a period of 10 years, with the exception of section 208 or 241(b)(3) or the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984, in the case of an alien who indicates either an intention to apply for asylum under section 208 or a fear of persecution or torture.

"(8) PENALTIES FOR DELAYED DEPARTURE.—An alien who fails to depart immediately shall be subject to—

"(A) no fine if the alien departs not later than 1 year after the grant of Deferred Mandatory Departure;

"(B) a fine of $2,000 if the alien does not depart within 2 years after the grant of Deferred Mandatory Departure; and

"(C) a fine of $3,000 if the alien does not depart within 3 years after the grant of Deferred Mandatory Departure.

"(g) EVIDENCE OF DEFERRED MANDATORY DEPARTURE STATUS.—Evidence of Deferred Mandatory Departure status shall be machine-readable and tamper-resistant, shall allow for biometric authentication, and shall comply with the requirements under section 403 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note). The Secretary of Homeland Security is authorized to incorporate integrated-circuit technology into the document. The Secretary of Homeland Security shall consult with the Forensic Document Laboratory in designing the document. The document may serve as a travel, entry, and work authorization document during the period of its validity. The document may be accepted by an employer as evidence of employment authorization and identity under section 274A(c).

"(h) TERMS OF STATUS.—

"(1) REPORTING.—During the period of Deferred Mandatory Departure, an alien shall comply with all registration requirements under section 264.

"(2) TRAVEL.—

"(A) An alien granted Deferred Mandatory Departure is not subject to section 212(a)(9) for any unlawful presence that occurred prior to the Secretary of Homeland Security granting the alien Deferred Mandatory Departure status.

"(B) Under regulations established by the Secretary of Homeland Security, an alien granted Deferred Mandatory Departure—

"(i) may travel outside of the United States and may be readmitted if the period of Deferred Mandatory Departure status has not expired; and

"(ii) must establish at the time of application for admission that the alien is admissible under section 212.

"(C) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under subparagraph (B) shall not extend the period of Deferred Mandatory Departure status.

"(3) BENEFITS.—During the period in which an alien is granted Deferred Mandatory Departure under this section—

"(A) the alien shall not be considered to be permanently residing in the United States

under the color of law and shall be treated as a nonimmigrant admitted under section 214; and

"(B) the alien may be deemed ineligible for public assistance by a State (as defined in section 101(a)(36)) or any political subdivision thereof which furnishes such assistance.

"(i) PROHIBITION ON CHANGE OF STATUS OR ADJUSTMENT OF STATUS.—

"(1) IN GENERAL.—Before leaving the United States, an alien granted Deferred Mandatory Departure status may not apply to change status under section 248.

"(2) ADJUSTMENT OF STATUS.—An alien may not adjust to an immigrant classification under this section until after the earlier of—

"(A) the consideration of all applications filed under section 201, 202, or 203 before the date of enactment of this section; or

"(B) 8 years after the date of enactment of this section.

"(j) APPLICATION FEE.—

"(1) IN GENERAL.—An alien seeking a grant of Deferred Mandatory Departure status shall submit,

in addition to any other fees authorized by law, an application fee of $1,000.

"(2) USE OF FEE.—The fees collected under paragraph (1) shall be available for use by the Secretary of Homeland Security for activities to identify, locate, or remove illegal aliens.

"(3) STATE IMPACT ASSISTANCE FEE.—

"(A) IN GENERAL.—In addition to any other amounts required to be paid under this subsection, an alien seeking Deferred Mandatory Departure status shall submit, at the time the alien files an application under this section, a State impact assistance fee equal to $750.

"(B) USE OF FEE.—The fees collected under subparagraph (A) shall be deposited in the State Impact Assistance Account established under section 286(x).

"(k) FAMILY MEMBERS.—

"(1) IN GENERAL.—Subject to subsection (f)(4), the spouse or child of an alien granted Deferred Mandatory Departure status is subject to the same terms and conditions as the principal alien.

"(2) APPLICATION FEE.—

"(A) IN GENERAL.—The spouse or child of an alien seeking Deferred Mandatory Departure

status shall submit, in addition to any other fee authorized by law, an additional fee of $500.

"(B) USE OF FEE.—The fees collected under subparagraph (A) shall be available for use by the Secretary of Homeland Security for activities to identify, locate, or remove aliens who are removable under section 237.

"(3) STATE IMPACT ASSISTANCE FEE.—

"(A) IN GENERAL.—In addition to any other amounts required to be paid under this subsection, the spouse and each child of an alien seeking Deferred Mandatory Departure status shall submit a State impact assistance fee equal to $100.

"(B) USE OF FEE.—The fees collected under subparagraph (A) shall be deposited in the State Impact Assistance Account established under section 286(x).

"(l) EMPLOYMENT.—

"(1) IN GENERAL.—An alien who has applied for or has been granted Deferred Mandatory Departure status may be employed in the United States.

"(2) CONTINUOUS EMPLOYMENT.—An alien granted Deferred Mandatory Departure status must be employed while in the United States. An alien

who fails to be employed for 60 days is ineligible for hire until the alien has departed the United States and reentered. The Secretary of Homeland Security may reauthorize an alien for employment without requiring the alien's departure from the United States.

"(m) ENUMERATION OF SOCIAL SECURITY NUMBER.—The Secretary of Homeland Security, in coordination with the Commissioner of the Social Security system, shall implement a system to allow for the enumeration of a Social Security number and production of a Social Security card at the time the Secretary of Homeland Security grants an alien Deferred Mandatory Departure status.

"(n) PENALTIES FOR FALSE STATEMENTS IN APPLICATION FOR DEFERRED MANDATORY DEPARTURE.—

"(1) CRIMINAL PENALTY.—

"(A) VIOLATION.—It shall be unlawful for any person—

"(i) to file or assist in filing an application for adjustment of status under this section and knowingly and willfully falsify, misrepresent, conceal, or cover up a material fact or make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any

false, fictitious, or fraudulent statement or entry; or

"(ii) to create or supply a false writing or document for use in making such an application.

"(B) PENALTY.—Any person who violates subparagraph (A) shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

"(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

"(o) RELATION TO CANCELLATION OF REMOVAL.—With respect to an alien granted Deferred Mandatory Departure status under this section, the period of such status shall not be counted as a period of physical presence in the United States for purposes of section 240A(a), unless the Secretary of Homeland Security determines that extreme hardship exists.

"(p) WAIVER OF RIGHTS.—An alien is not eligible for Deferred Mandatory Departure status, unless the alien has waived any right under subsection (b)(7)(C), other than on the basis of an application for asylum, restriction of removal, or protection under the Convention Against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984, or cancellation of removal pursuant to section 240A(a), any action for deportation or removal of the alien that is instituted against the alien subsequent to a grant of Deferred Mandatory Departure status.

"(q) DENIAL OF DISCRETIONARY RELIEF.—The determination of whether an alien is eligible for a grant of Deferred Mandatory Departure status is solely within the discretion of the Secretary of Homeland Security. Notwithstanding any other provision of law, no court shall have jurisdiction to review—

"(1) any judgment regarding the granting of relief under this section; or

"(2) any other decision or action of the Secretary of Homeland Security the authority for which is specified under this section to be in the discretion of the Secretary, other than the granting of relief under section 208(a).

"(r) JUDICIAL REVIEW.—

"(1) LIMITATIONS ON RELIEF.—Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may—

"(A) enter declaratory, injunctive, or other equitable relief in any action pertaining to—

"(i) an order or notice denying an alien a grant of Deferred Mandatory Departure status or any other benefit arising from such status; or

"(ii) an order of removal, exclusion, or deportation entered against an alien after a grant of Deferred Mandatory Departure status; or

"(B) certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.

"(2) CHALLENGES TO VALIDITY.—

"(A) IN GENERAL.—Any right or benefit not otherwise waived or limited pursuant this section is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

"(i) whether such section, or any regulation issued to implement such section, violates the Constitution of the United States; or

"(ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Secretary of Homeland Security to implement such section, is not consistent with applicable provisions of this section or is otherwise in violation of law.".

(2) TABLE OF CONTENTS.—The table of contents (8 U.S.C. 1101 et seq.), as amended by this subsection (b)(2), is further amended by inserting after the item relating to section 245B the following:

"245C. Mandatory Departure and Reentry.".

(3) CONFORMING AMENDMENT.—Section 237(a)(2)(A)(i)(II) (8 U.S.C. 1227(a)(2)(A)(i)(II)) is amended by inserting "(or 6 months in the case of an alien granted Deferred Mandatory Departure status under section 245C)" after "imposed".

(4) STATUTORY CONSTRUCTION.—Nothing in this subsection, or any amendment made by this subsection, shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such

amounts as may be necessary for facilities, personnel (including consular officers), training, technology, and processing necessary to carry out the amendments made by this subsection.

(d) CORRECTION OF SOCIAL SECURITY RECORDS.—Section 208(e)(1) of the Social Security Act (42 U.S.C. 408(e)(1)) is amended—

(1) in subparagraph (B)(ii), by striking ''or'' at the end;

(2) in subparagraph (C), by inserting ''or'' at the end;

(3) by inserting after subparagraph (C) the following:

''(D) whose status is adjusted to that of lawful permanent resident under section 245B of the Immigration and Nationality Act,''; and

(4) by striking ''1990.'' and inserting ''1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred prior to the date on which the alien became lawfully admitted for temporary residence.''.

(e) STATE IMPACT ASSISTANCE ACCOUNT.—Section 286 (8 U.S.C. 1356) is amended by inserting after subsection (w) the following:

''(x) STATE IMPACT ASSISTANCE ACCOUNT.—

"(1) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'State Impact Assistance Account'.

"(2) SOURCE OF FUNDS.—Notwithstanding any other provision under this Act, there shall be deposited as offsetting receipts into the State Impact Assistance Account all State impact assistance fees collected under section 245B(m)(5) and subsections (j)(3) and (k)(3) of section 245C.

"(3) USE OF FUNDS.—Amounts deposited into the State Impact Assistance Account may only be used to carry out the State Impact Assistance Grant Program established under paragraph (4).

"(4) STATE IMPACT ASSISTANCE GRANT PROGRAM.—

"(A) ESTABLISHMENT.—The Secretary of Health and Human Services, in consultation with the Secretary of Education, shall establish the State Impact Assistance Grant Program (referred to in this section as the 'Program'), under which the Secretary may award grants to States to provide health and education services to noncitizens in accordance with this paragraph.

"(B) STATE ALLOCATIONS.—The Secretary of Health and Human Services shall annually allocate the amounts available in the State Impact Assistance Account among the States as follows:

"(i) NONCITIZEN POPULATION.—Eighty percent of such amounts shall be allocated so that each State receives the greater of—

"(I) $5,000,000; or

"(II) after adjusting for allocations under subclause (I), the percentage of the amount to be distributed under this clause that is equal to the noncitizen resident population of the State divided by the noncitizen resident population of all States, based on the most recent data available from the Bureau of the Census.

"(ii) HIGH GROWTH RATES.—Twenty percent of such amounts shall be allocated among the 20 States with the largest growth rates in noncitizen resident population, as determined by the Secretary of Health and Human Services, so that each

1 such State receives the percentage of the
2 amount distributed under this clause that
3 is equal to—
4 "(I) the growth rate in the non-
5 citizen resident population of the
6 State during the most recent 3-year
7 period for which data is available from
8 the Bureau of the Census; divided by
9 "(II) the average growth rate in
10 noncitizen resident population for the
11 20 States during such 3-year period.
12 "(iii) LEGISLATIVE APPROPRIA-
13 TIONS.—The use of grant funds allocated
14 to States under this paragraph shall be
15 subject to appropriation by the legislature
16 of each State in accordance with the terms
17 and conditions under this paragraph.
18 "(C) FUNDING FOR LOCAL GOVERN-
19 MENT.—
20 "(i) DISTRIBUTION CRITERIA.—Grant
21 funds received by States under this para-
22 graph shall be distributed to units of local
23 government based on need and function.
24 "(ii) MINIMUM DISTRIBUTION.—Ex-
25 cept as provided in clause (iii), a State

shall distribute not less than 30 percent of the grant funds received under this paragraph to units of local government not later than 180 days after receiving such funds.

"(iii) EXCEPTION.—If an eligible unit of local government that is available to carry out the activities described in subparagraph (D) cannot be found in a State, the State does not need to comply with clause (ii).

"(iv) UNEXPENDED FUNDS.—Any grant funds distributed by a State to a unit of local government that remain unexpended as of the end of the grant period shall revert to the State for redistribution to another unit of local government.

"(D) USE OF FUNDS.—States and units of local government shall use grant funds received under this paragraph to provide health services, educational services, and related services to noncitizens within their jurisdiction directly, or through contracts with eligible services providers, including—

"(i) health care providers;

"(ii) local educational agencies; and

"(iii) charitable and religious organizations.

"(E) STATE DEFINED.—In this paragraph, the term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(F) CERTIFICATION.—In order to receive a payment under this section, the State shall provide the Secretary of Health and Human Services with a certification that the State's proposed uses of the fund are consistent with (D).

"(G) ANNUAL REPORT.—The Secretary of Health and Human Services shall inform the States annually of the amount of funds available to each State under the Program.".

Subtitle B—Agricultural Job Opportunities, Benefits, and Security

SEC. 611. SHORT TITLE.

This subtitle may be cited as the ''Agricultural Job Opportunities, Benefits, and Security Act of 2006'' or the ''AgJOBS Act of 2006''.

SEC. 612. DEFINITIONS.

In this subtitle:

(1) AGRICULTURAL EMPLOYMENT.—The term ''agricultural employment'' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)). For purposes of this paragraph, agricultural employment includes employment under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(2) BLUE CARD STATUS.—The term ''blue card status'' means the status of an alien who has been lawfully admitted into the United States for temporary residence under section 613(a).

(3) EMPLOYER.—The term ''employer'' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

(4) JOB OPPORTUNITY.—The term ''job opportunity'' means a job opening for temporary full-time employment at a place in the United States to which United States workers can be referred.

(5) TEMPORARY.—A worker is employed on a ''temporary'' basis where the employment is intended not to exceed 10 months.

(6) UNITED STATES WORKER.—The term ''United States worker'' means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(7) WORK DAY.—The term ''work day'' means any day in which the individual is employed 5.75 or more hours in agricultural employment.

CHAPTER 1—PILOT PROGRAM FOR EARNED STATUS ADJUSTMENT OF AGRICULTURAL WORKERS

SEC. 613. AGRICULTURAL WORKERS.

(a) BLUE CARD PROGRAM.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall confer blue card status upon an alien who qualifies under this subsection if the Secretary determines that the alien—

(A) has performed agricultural employment in the United States for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2005;

(B) applied for such status during the 18-month application period beginning on the first day of the seventh month that begins after the date of enactment of this Act; and

(C) is otherwise admissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as otherwise provided under subsection (e)(2).

(2) AUTHORIZED TRAVEL.—An alien in blue card status has the right to travel abroad (including commutation from a residence abroad) in the same

manner as an alien lawfully admitted for permanent residence.

(3) AUTHORIZED EMPLOYMENT.—An alien in blue card status shall be provided an ''employment authorized'' endorsement or other appropriate work permit, in the same manner as an alien lawfully admitted for permanent residence.

(4) TERMINATION OF BLUE CARD STATUS.—

(A) IN GENERAL.—The Secretary may terminate blue card status granted under this subsection only upon a determination under this subtitle that the alien is deportable.

(B) GROUNDS FOR TERMINATION OF BLUE CARD STATUS.—Before any alien becomes eligible for adjustment of status under subsection (c), the Secretary may deny adjustment to permanent resident status and provide for termination of the blue card status granted such alien under paragraph (1) if—

(i) the Secretary finds, by a preponderance of the evidence, that the adjustment to blue card status was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i) of the

Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(ii) the alien—

(I) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (e)(2);

(II) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(III) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500.

(5) RECORD OF EMPLOYMENT.—

(A) IN GENERAL.—Each employer of a worker granted status under this subsection shall annually—

(i) provide a written record of employment to the alien; and

(ii) provide a copy of such record to the Secretary.

(B) SUNSET.—The obligation under subparagraph (A) shall terminate on the date that

is 6 years after the date of the enactment of this Act.

(6) REQUIRED FEATURES OF BLUE CARD.—The Secretary shall provide each alien granted blue card status and the spouse and children of each such alien residing in the United States with a card that contains—

(A) an encrypted, machine-readable, electronic identification strip that is unique to the alien to whom the card is issued;

(B) biometric identifiers, including fingerprints and a digital photograph; and

(C) physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes.

(7) FINE.—An alien granted blue card status shall pay a fine to the Secretary in an amount equal to $100.

(8) MAXIMUM NUMBER.—The Secretary may issue not more than 1,500,000 blue cards during the 5-year period beginning on the date of the enactment of this Act.

(b) RIGHTS OF ALIENS GRANTED BLUE CARD STATUS.—

(1) IN GENERAL.—Except as otherwise provided under this subsection, an alien in blue card status shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(2) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An alien in blue card status shall not be eligible, by reason of such status, for any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after the date on which the Secretary confers blue card status upon that alien.

(3) TERMS OF EMPLOYMENT RESPECTING ALIENS ADMITTED UNDER THIS SECTION.—

(A) PROHIBITION.—No alien granted blue card status may be terminated from employment by any employer during the period of blue card status except for just cause.

(B) TREATMENT OF COMPLAINTS.—

(i) ESTABLISHMENT OF PROCESS.—The Secretary shall establish a process for the receipt, initial review, and disposition of complaints by aliens granted blue card

status who allege that they have been terminated without just cause. No proceeding shall be conducted under this subparagraph with respect to a termination unless the Secretary determines that the complaint was filed not later than 6 months after the date of the termination.

(ii) INITIATION OF ARBITRATION.—If the Secretary finds that a complaint has been filed in accordance with clause (i) and there is reasonable cause to believe that the complainant was terminated without just cause, the Secretary shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint a mutually agreeable arbitrator from the roster of arbitrators maintained by such Service for the geographical area in which the employer is located. The procedures and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Secretary shall pay the fee and expenses of the arbitrator, subject

to the availability of appropriations for such purpose.

(iii) ARBITRATION PROCEEDINGS.—The arbitrator shall conduct the proceeding in accordance with the policies and procedures promulgated by the American Arbitration Association applicable to private arbitration of employment disputes. The arbitrator shall make findings respecting whether the termination was for just cause. The arbitrator may not find that the termination was for just cause unless the employer so demonstrates by a preponderance of the evidence. If the arbitrator finds that the termination was not for just cause, the arbitrator shall make a specific finding of the number of days or hours of work lost by the employee as a result of the termination. The arbitrator shall have no authority to order any other remedy, including, but not limited to, reinstatement, back pay, or front pay to the affected employee. Within 30 days from the conclusion of the arbitration proceeding, the arbitrator shall transmit the findings in the

form of a written opinion to the parties to the arbitration and the Secretary. Such findings shall be final and conclusive, and no official or court of the United States shall have the power or jurisdiction to review any such findings.

(iv) EFFECT OF ARBITRATION FINDINGS.—If the Secretary receives a finding of an arbitrator that an employer has terminated an alien granted blue card status without just cause, the Secretary shall credit the alien for the number of days or hours of work lost for purposes of the requirement of subsection (c)(1).

(v) TREATMENT OF ATTORNEY'S FEES.—The parties shall bear the cost of their own attorney's fees involved in the litigation of the complaint.

(vi) NONEXCLUSIVE REMEDY.—The complaint process provided for in this subparagraph is in addition to any other rights an employee may have in accordance with applicable law.

(vii) EFFECT ON OTHER ACTIONS OR PROCEEDINGS.—Any finding of fact or

law, judgment, conclusion, or final order made by an arbitrator in the proceeding before the Secretary shall not be conclusive or binding in any separate or subsequent action or proceeding between the employee and the employee's current or prior employer brought before an arbitrator, administrative agency, court, or judge of any State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts, except that the arbitrator's specific finding of the number of days or hours of work lost by the employee as a result of the employment termination may be referred to the Secretary pursuant to clause (iv).

(C) CIVIL PENALTIES.—

(i) IN GENERAL.—If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted blue card status has failed to provide the record of employment required under subsection (a)(5) or has provided a false statement of material fact in such a

record, the employer shall be subject to a civil money penalty in an amount not to exceed $1,000 per violation.

(ii) LIMITATION.—The penalty applicable under clause (i) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this section.

(c) ADJUSTMENT TO PERMANENT RESIDENCE.—

(1) AGRICULTURAL WORKERS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall adjust the status of an alien granted blue card status to that of an alien lawfully admitted for permanent residence if the Secretary determines that the following requirements are satisfied:

(i) QUALIFYING EMPLOYMENT.—The alien has performed at least—

(I) 5 years of agricultural employment in the United States, for at least 100 work days or 575 hours, but in no case less than 575 hours per year, during the 5-year period begin-

ning on the date of the enactment of this Act; or

(II) 3 years of agricultural employment in the United States, for at least 150 work days or 863 hours, but in no case less than 863 hours per year, during the 5-year period beginning on the date of the enactment of this Act.

(ii) PROOF.—An alien may demonstrate compliance with the requirement under clause (i) by submitting—

(I) the record of employment described in subsection (a)(5); or

(II) such documentation as may be submitted under subsection (d)(3).

(iii) EXTRAORDINARY CIRCUMSTANCES.—In determining whether an alien has met the requirement under clause (i)(I), the Secretary may credit the alien with not more than 12 additional months to meet the requirement under clause (i) if the alien was unable to work in agricultural employment due to—

(I) pregnancy, injury, or disease, if the alien can establish such pregnancy, disabling injury, or disease through medical records;

(II) illness, disease, or other special needs of a minor child, if the alien can establish such illness, disease, or special needs through medical records; or

(III) severe weather conditions that prevented the alien from engaging in agricultural employment for a significant period of time.

(iv) APPLICATION PERIOD.—The alien applies for adjustment of status not later than 7 years after the date of the enactment of this Act.

(v) FINE.—The alien pays a fine to the Secretary in an amount equal to $400.

(B) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary may deny an alien adjustment to permanent resident status, and provide for termination of the blue card status granted such alien, if—

(i) the Secretary finds by a preponderance of the evidence that the adjustment to blue card status was the result of fraud or willful misrepresentation, as described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(ii) the alien—

(I) commits an act that makes the alien inadmissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as provided under subsection (e)(2);

(II) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(III) is convicted of a single misdemeanor for which the actual sentence served is 6 months or longer.

(C) GROUNDS FOR REMOVAL.—Any alien granted blue card status who does not apply for adjustment of status under this subsection before the expiration of the application period described in subparagraph (A)(iv), or who fails to

meet the other requirements of subparagraph (A) by the end of the applicable period, is deportable and may be removed under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(D) PAYMENT OF TAXES.—

(i) IN GENERAL.—Not later than the date on which an alien's status is adjusted under this subsection, the alien shall establish the payment of any applicable Federal tax liability by establishing that—

(I) no such tax liability exists;

(II) all outstanding liabilities have been paid; or

(III) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(ii) APPLICABLE FEDERAL TAX LIABILITY.—For purposes of clause (i), the term ''applicable Federal tax liability'' means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required under paragraph (1)(A) for which the stat-

1 utory period for assessment of any defi-
2 ciency for such taxes has not expired.
3 (iii) IRS COOPERATION.—The Sec-
4 retary of the Treasury shall establish rules
5 and procedures under which the Commis-
6 sioner of Internal Revenue shall provide
7 documentation to an alien upon request to
8 establish the payment of all taxes required
9 by this subparagraph.
10 (2) SPOUSES AND MINOR CHILDREN.—
11 (A) IN GENERAL.—Notwithstanding any
12 other provision of law, the Secretary shall con-
13 fer the status of lawful permanent resident on
14 the spouse and minor child of an alien granted
15 status under paragraph (1), including any indi-
16 vidual who was a minor child on the date such
17 alien was granted blue card status, if the
18 spouse or minor child applies for such status, or
19 if the principal alien includes the spouse or
20 minor child in an application for adjustment of
21 status to that of a lawful permanent resident.
22 (B) TREATMENT OF SPOUSES AND MINOR
23 CHILDREN BEFORE ADJUSTMENT OF STATUS.—
24 (i) REMOVAL.—The spouse and any
25 minor child of an alien granted blue card

status may not be removed while such alien maintains such status, except as provided in subparagraph (C).

(ii) TRAVEL.—The spouse and any minor child of an alien granted blue card status may travel outside the United States in the same manner as an alien lawfully admitted for permanent residence.

(iii) EMPLOYMENT.—The spouse of an alien granted blue card status may apply to the Secretary for a work permit to authorize such spouse to engage in any lawful employment in the United States while such alien maintains blue card status.

(C) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS AND REMOVAL.—The Secretary may deny an alien spouse or child adjustment of status under subparagraph (A) and may remove such spouse or child under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) if the spouse or child—

(i) commits an act that makes the alien spouse or child inadmissible to the United States under section 212 of such

Act (8 U.S.C. 1182), except as provided under subsection (e)(2);

(ii) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(iii) is convicted of a single misdemeanor for which the actual sentence served is 6 months or longer.

(d) APPLICATIONS.—

(1) TO WHOM MAY BE MADE.—The Secretary shall provide that—

(A) applications for blue card status may be filed—

(i) with the Secretary, but only if the applicant is represented by an attorney or a non-profit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations; or

(ii) with a qualified designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Secretary; and

(B) applications for adjustment of status under subsection (c) shall be filed directly with the Secretary.

(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—

(A) IN GENERAL.—For purposes of receiving applications under subsection (a), the Secretary—

(i) shall designate qualified farm labor organizations and associations of employers; and

(ii) may designate such other persons as the Secretary determines are qualified and have substantial experience, demonstrate competence, and have traditional long-term involvement in the preparation and submission of applications for adjustment of status under section 209, 210, or 245 of the Immigration and Nationality Act, Public Law 89–732, Public Law 95–145, or the Immigration Reform and Control Act of 1986.

(B) REFERENCES.—Organizations, associations, and persons designated under subpara-

graph (A) are referred to in this subtitle as "qualified designated entities".

(3) PROOF OF ELIGIBILITY.—

(A) IN GENERAL.—An alien may establish that the alien meets the requirement of subsection (a)(1)(A) or (c)(1)(A) through government employment records or records supplied by employers or collective bargaining organizations, and other reliable documentation as the alien may provide. The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(B) DOCUMENTATION OF WORK HISTORY.—

(i) BURDEN OF PROOF.—An alien applying for status under subsection (a)(1) or (c)(1) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of hours or days (as required under subsection (a)(1)(A) or (c)(1)(A)).

(ii) TIMELY PRODUCTION OF RECORDS.—If an employer or farm labor contractor employing such an alien has

kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Secretary.

(iii) SUFFICIENT EVIDENCE.—An alien can meet the burden of proof under clause (i) to establish that the alien has performed the work described in subsection (a)(1)(A) or (c)(1)(A) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

(4) TREATMENT OF APPLICATIONS BY QUALIFIED DESIGNATED ENTITIES.—Each qualified designated entity shall agree to forward to the Secretary applications filed with it in accordance with paragraph (1)(A)(i)(II) but shall not forward to the Secretary applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Secretary. Upon the request of the alien, a qualified designated entity shall assist

the alien in obtaining documentation of the work history of the alien.

(5) LIMITATION ON ACCESS TO INFORMATION.—Files and records prepared for purposes of this subsection by qualified designated entities operating under this subsection are confidential and the Secretary shall not have access to such files or records relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to paragraph (6).

(6) CONFIDENTIALITY OF INFORMATION.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, neither the Secretary, nor any other official or employee of the Department, or a bureau or agency of the Department, may—

(i) use the information furnished by the applicant pursuant to an application filed under this section, the information provided to the applicant by a person designated under paragraph (2)(A), or any information provided by an employer or former employer, for any purpose other than to make a determination on the appli-

cation, or for enforcement of paragraph (7);

(ii) make any publication whereby the information furnished by any particular individual can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department, or a bureau or agency of the Department, or, with respect to applications filed with a qualified designated entity, that qualified designated entity, to examine individual applications.

(B) REQUIRED DISCLOSURES.—The Secretary shall provide the information furnished under this section, or any other information derived from such furnished information, to—

(i) a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, if such information is requested in writing by such entity; or

(ii) an official coroner, for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

(C) CONSTRUCTION.—

(i) IN GENERAL.—Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Department pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) CRIMINAL CONVICTIONS.—Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(D) CRIME.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be subject to a fine in an amount not to exceed $10,000.

(7) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(A) CRIMINAL PENALTY.—Any person who—

(i) files an application for status under subsection (a) or (c) and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

(B) INADMISSIBILITY.—An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(8) ELIGIBILITY FOR LEGAL SERVICES.—Section 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Cor-

1 poration Act (42 U.S.C. 2996 et seq.) from pro-
2 viding legal assistance directly related to an applica-
3 tion for adjustment of status under this section.
4 (9) APPLICATION FEES.—
5 (A) FEE SCHEDULE.—The Secretary shall
6 provide for a schedule of fees that—
7 (i) shall be charged for the filing of
8 applications for status under subsections
9 (a) and (c); and
10 (ii) may be charged by qualified des-
11 ignated entities to help defray the costs of
12 services provided to such applicants.
13 (B) PROHIBITION ON EXCESS FEES BY
14 QUALIFIED DESIGNATED ENTITIES.—A quali-
15 fied designated entity may not charge any fee
16 in excess of, or in addition to, the fees author-
17 ized under subparagraph (A)(ii) for services
18 provided to applicants.
19 (C) DISPOSITION OF FEES.—
20 (i) IN GENERAL.—There is established
21 in the general fund of the Treasury a sepa-
22 rate account, which shall be known as the
23 ''Agricultural Worker Immigration Status
24 Adjustment Account''. Notwithstanding
25 any other provision of law, there shall be

deposited as offsetting receipts into the account all fees collected under subparagraph (A)(i).

(ii) USE OF FEES FOR APPLICATION PROCESSING.—Amounts deposited in the ''Agricultural Worker Immigration Status Adjustment Account'' shall remain available to the Secretary until expended for processing applications for status under subsections (a) and (c).

(e) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151 and 1152) shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien's eligibility for status under subsection (a)(1)(C) or an alien's eligibility for adjustment of status under subsection (c)(1)(B)(ii)(I), the following rules shall apply:

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7), and (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Secretary may waive any other provision of such section 212(a) in the case of individual aliens for humanitarian purposes, to ensure family unity, or if otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—Paragraphs (2)(A), (2)(B), (2)(C), (3), and (4) of such section 212(a) may not be waived by the Secretary under clause (i).

(iii) CONSTRUCTION.—Nothing in this subparagraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for status under this section by reason of a

ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(f) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—Effective on the date of enactment of this Act, the Secretary shall provide that, in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(B) and who can establish a nonfrivolous case of eligibility for blue card status (but for the fact that the alien may not apply for such status until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for blue card status, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an ''employment authorized'' en-

dorsement or other appropriate work permit for such purpose.

(2) DURING APPLICATION PERIOD.—The Secretary shall provide that, in the case of an alien who presents a nonfrivolous application for blue card status during the application period described in subsection (a)(1)(B), including an alien who files such an application within 30 days of the alien's apprehension, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an ''employment authorized'' endorsement or other appropriate work permit for such purpose.

(g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) IN GENERAL.—There shall be no administrative or judicial review of a determination respecting an application for status under subsection (a) or (c) except in accordance with this subsection.

(2) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall es-

tablish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF REMOVAL.—There shall be judicial review of such a determination only in the judicial review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to

clear and convincing facts contained in the record considered as a whole.

(h) DISSEMINATION OF INFORMATION ON ADJUSTMENT PROGRAM.—Beginning not later than the first day of the application period described in subsection (a)(1)(B), the Secretary, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits that aliens may receive under this section and the requirements to be satisfied to obtain such benefits.

(i) REGULATIONS.—The Secretary shall issue regulations to implement this section not later than the first day of the seventh month that begins after the date of enactment of this Act.

(j) EFFECTIVE DATE.—This section shall take effect on the date that regulations are issued implementing this section on an interim or other basis.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $40,000,000 for each of fiscal years 2007 through 2010.

SEC. 614. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—Section 208(d)(1) of the Social Security Act (42 U.S.C. 408(d)(1)) is amended—

(1) in subparagraph (B)(ii), by striking ''or'' at the end;

(2) in subparagraph (C), by inserting ''or'' at the end;

(3) by inserting after subparagraph (C) the following:

''(D) who is granted blue card status under the Agricultural Job Opportunity, Benefits, and Security Act of 2006,''; and

(4) by striking ''1990.'' and inserting ''1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted blue card status.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of the enactment of this Act.

CHAPTER 2—REFORM OF H–2A WORKER PROGRAM

SEC. 615. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.) is amended—

(1) by striking section 218 and inserting the following:

"SEC. 218. H–2A EMPLOYER APPLICATIONS.

"(a) APPLICATIONS TO THE SECRETARY OF LABOR.—

"(1) IN GENERAL.—No alien may be admitted to the United States as an H–2A worker, or otherwise provided status as an H–2A worker, unless the employer has filed with the Secretary of Labor an application containing—

"(A) the assurances described in subsection (b);

"(B) a description of the nature and location of the work to be performed;

"(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and

"(D) the number of job opportunities in which the employer seeks to employ the workers.

"(2) ACCOMPANIED BY JOB OFFER.—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question.

"(b) ASSURANCES FOR INCLUSION IN APPLICATIONS.—The assurances referred to in subsection (a)(1) are the following:

"(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is covered under a collective bargaining agreement:

"(A) UNION CONTRACT DESCRIBED.—The job opportunity is covered by a union contract which was negotiated at arm's length between a bona fide union and the employer.

"(B) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

"(C) NOTIFICATION OF BARGAINING REPRESENTATIVES.—The employer, at the time of filing the application, has provided notice of the filing under this paragraph to the bargaining representative of the employer's employees in the occupational classification at the place or places of employment for which aliens are sought.

"(D) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

"(E) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or the nonimmigrants are, sought and who will be available at the time and place of need.

"(F) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

"(2) JOB OPPORTUNITIES NOT COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is not covered under a collective bargaining agreement:

"(A) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is re-

1 questing an H–2A worker is not vacant because
2 the former occupant is on strike or being locked
3 out in the course of a labor dispute.

4 "(B) TEMPORARY OR SEASONAL JOB OP-
5 PORTUNITIES.—The job opportunity is tem-
6 porary or seasonal.

7 "(C) BENEFIT, WAGE, AND WORKING CON-
8 DITIONS.—The employer will provide, at a min-
9 imum, the benefits, wages, and working condi-
10 tions required by section 218E to all workers
11 employed in the job opportunities for which the
12 employer has applied under subsection (a) and
13 to all other workers in the same occupation at
14 the place of employment.

15 "(D) NONDISPLACEMENT OF UNITED
16 STATES WORKERS.—The employer did not dis-
17 place and will not displace a United States
18 worker employed by the employer during the
19 period of employment and for a period of 30
20 days preceding the period of employment in the
21 occupation at the place of employment for
22 which the employer seeks approval to employ
23 H–2A workers.

24 "(E) REQUIREMENTS FOR PLACEMENT OF
25 NONIMMIGRANT WITH OTHER EMPLOYERS.—

The employer will not place the nonimmigrant with another employer unless—

"(i) the nonimmigrant performs duties in whole or in part at 1 or more work sites owned, operated, or controlled by such other employer;

"(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer; and

"(iii) the employer has inquired of the other employer as to whether, and has no actual knowledge or notice that, during the period of employment and for a period of 30 days preceding the period of employment, the other employer has displaced or intends to displace a United States worker employed by the other employer in the occupation at the place of employment for which the employer seeks approval to employ H–2A workers.

"(F) STATEMENT OF LIABILITY.—The application form shall include a clear statement explaining the liability under subparagraph (E) of an employer if the other employer described

in such subparagraph displaces a United States worker as described in such subparagraph.

"(G) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

"(H) EMPLOYMENT OF UNITED STATES WORKERS.—

"(i) RECRUITMENT.—The employer has taken or will take the following steps to recruit United States workers for the job opportunities for which the H–2A nonimmigrant is, or H–2A nonimmigrants are, sought:

"(I) CONTACTING FORMER WORKERS.—The employer shall make reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact any United States worker the em-

ployer employed during the previous season in the occupation at the place of intended employment for which the employer is applying for workers and has made the availability of the employer's job opportunities in the occupation at the place of intended employment known to such previous workers, unless the worker was terminated from employment by the employer for a lawful job-related reason or abandoned the job before the worker completed the period of employment of the job opportunity for which the worker was hired.

"(II) FILING A JOB OFFER WITH THE LOCAL OFFICE OF THE STATE EMPLOYMENT SECURITY AGENCY.—Not later than 28 days before the date on which the employer desires to employ an H–2A worker in a temporary or seasonal agricultural job opportunity, the employer shall submit a copy of the job offer described in subsection (a)(2) to the local office of the

State employment security agency which serves the area of intended employment and authorize the posting of the job opportunity on 'America's Job Bank' or other electronic job registry, except that nothing in this subclause shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations.

"(III) ADVERTISING OF JOB OPPORTUNITIES.—Not later than 14 days before the date on which the employer desires to employ an H–2A worker in a temporary or seasonal agricultural job opportunity, the employer shall advertise the availability of the job opportunities for which the employer is seeking workers in a publication in the local labor market that is likely to be patronized by potential farm workers.

"(IV) EMERGENCY PROCEDURES.—The Secretary of Labor shall, by regulation, provide a proce-

dure for acceptance and approval of applications in which the employer has not complied with the provisions of this subparagraph because the employer's need for H–2A workers could not reasonably have been foreseen.

"(ii) JOB OFFERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or nonimmigrants are, sought and who will be available at the time and place of need.

"(iii) PERIOD OF EMPLOYMENT.—The employer will provide employment to any qualified United States worker who applies to the employer during the period beginning on the date on which the foreign worker departs for the employer's place of employment and ending on the date on which 50 percent of the period of employment for which the foreign worker who is in the job was hired has elapsed, subject to the following requirements:

"(I) PROHIBITION.—No person or entity shall willfully and knowingly withhold United States workers before the arrival of H–2A workers in order to force the hiring of United States workers under this clause.

"(II) COMPLAINTS.—Upon receipt of a complaint by an employer that a violation of subclause (I) has occurred, the Secretary of Labor shall immediately investigate. The Secretary of Labor shall, within 36 hours of the receipt of the complaint, issue findings concerning the alleged violation. If the Secretary of Labor finds that a violation has occurred, the Secretary of Labor shall immediately suspend the application of this clause with respect to that certification for that date of need.

"(III) PLACEMENT OF UNITED STATES WORKERS.—Before referring a United States worker to an employer during the period described in the matter preceding subclause (I),

the Secretary of Labor shall make all reasonable efforts to place the United States worker in an open job acceptable to the worker, if there are other job offers pending with the job service that offer similar job opportunities in the area of intended employment.

"(iv) STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall be construed to prohibit an employer from using such legitimate selection criteria relevant to the type of job that are normal or customary to the type of job involved so long as such criteria are not applied in a discriminatory manner.

"(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS.—

"(1) IN GENERAL.—An agricultural association may file an application under subsection (a) on behalf of 1 or more of its employer members that the association certifies in its application has or have agreed in writing to comply with the requirements of this section and sections 218E through 218G.

"(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association filing an application

under paragraph (1) is a joint or sole employer of the temporary or seasonal agricultural workers requested on the application, the certifications granted under subsection (e)(2)(B) to the association may be used for the certified job opportunities of any of its producer members named on the application, and such workers may be transferred among such producer members to perform the agricultural services of a temporary or seasonal nature for which the certifications were granted.

"(d) WITHDRAWAL OF APPLICATIONS.—

"(1) IN GENERAL.—An employer may withdraw an application filed pursuant to subsection (a), except that if the employer is an agricultural association, the association may withdraw an application filed pursuant to subsection (a) with respect to 1 or more of its members. To withdraw an application, the employer or association shall notify the Secretary of Labor in writing, and the Secretary of Labor shall acknowledge in writing the receipt of such withdrawal notice. An employer who withdraws an application under subsection (a), or on whose behalf an application is withdrawn, is relieved of the obligations undertaken in the application.

"(2) LIMITATION.—An application may not be withdrawn while any alien provided status under section 101(a)(15)(H)(ii)(a) pursuant to such application is employed by the employer.

"(3) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred by an employer under any other law or regulation as a result of the recruitment of United States workers or H–2A workers under an offer of terms and conditions of employment required as a result of making an application under subsection (a) is unaffected by withdrawal of such application.

"(e) REVIEW AND APPROVAL OF APPLICATIONS.—

"(1) RESPONSIBILITY OF EMPLOYERS.—The employer shall make available for public examination, within 1 working day after the date on which an application under subsection (a) is filed, at the employer's principal place of business or work site, a copy of each such application (and such accompanying documents as are necessary).

"(2) RESPONSIBILITY OF THE SECRETARY OF LABOR.—

"(A) COMPILATION OF LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational

classification) of the applications filed under this subsection. Such list shall include the wage rate, number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for examination in the District of Columbia.

"(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall certify that the intending employer has filed with the Secretary of Labor an application as described in subsection (a). Such certification shall be provided within 7 days of the filing of the application."; and

(2) by inserting after section 218D, as added by section 601 of this Act, the following:

"SEC. 218E. H–2A EMPLOYMENT REQUIREMENTS.

"(a) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States workers shall offer the United States workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–

2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H–2A workers.

"(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—Except in cases where higher benefits, wages, or working conditions are required by the provisions of subsection (a), in order to protect similarly employed United States workers from adverse effects with respect to benefits, wages, and working conditions, every job offer which shall accompany an application under section 218(b)(2) shall include each of the following benefit, wage, and working condition provisions:

"(1) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.—

"(A) IN GENERAL.—An employer applying under section 218(a) for H–2A workers shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

"(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at

the employer's election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

"(C) FAMILY HOUSING.—When it is the prevailing practice in the occupation and area of intended employment to provide family housing, family housing shall be provided to workers with families who request it.

"(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

"(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer

to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

"(F) CHARGES FOR HOUSING.—

"(i) CHARGES FOR PUBLIC HOUSING.—If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers, such charges shall be paid by the employer directly to the appropriate individual or entity affiliated with the housing's management.

"(ii) DEPOSIT CHARGES.—Charges in the form of deposits for bedding or other similar incidentals related to housing shall not be levied upon workers by employers who provide housing for their workers. An employer may require a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitation to re-

imburse the employer for the reasonable cost of repair of such damage.

"(G) HOUSING ALLOWANCE AS ALTERNATIVE.—

"(i) IN GENERAL.—If the requirement under clause (ii) is satisfied, the employer may provide a reasonable housing allowance instead of offering housing under subparagraph (A). Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance. No housing allowance may be used for housing which is owned or controlled by the employer.

"(ii) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers, and H–2A workers, who are seeking temporary housing while employed at farm work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

"(iii) AMOUNT OF ALLOWANCE.—

"(I) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)),

based on a 2 bedroom dwelling unit and an assumption of 2 persons per bedroom.

"(II) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this paragraph is in a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

"(2) REIMBURSEMENT OF TRANSPORTATION.—

"(A) TO PLACE OF EMPLOYMENT.—A worker who completes 50 percent of the period of employment of the job opportunity for which the worker was hired shall be reimbursed by the employer for the cost of the worker's transpor-

tation and subsistence from the place from which the worker came to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment.

"(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker's transportation and subsistence to such subsequent employer's place of employment.

"(C) LIMITATION.—

"(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed the lesser of—

"(I) the actual cost to the worker or alien of the transportation and subsistence involved; or

"(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

"(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

"(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (4)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

"(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORK SITE.—The employer shall provide transportation between the worker's living quarters and the employer's work site without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

"(3) REQUIRED WAGES.—

"(A) IN GENERAL.—An employer applying for workers under section 218(a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less (and is not required to pay more) than the greater of the prevailing wage in the occupation in the area of intended employment or the adverse effect wage rate. No worker shall be paid less than the greater of the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State minimum wage.

"(B) LIMITATION.—Effective on the date of the enactment of the Agricultural Job Opportunities, Benefits, and Security Act of 2006 and continuing for 3 years thereafter, no ad-

verse effect wage rate for a State may be more than the adverse effect wage rate for that State in effect on January 1, 2003, as established by section 655.107 of title 20, Code of Federal Regulations.

"(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

"(i) FIRST ADJUSTMENT.—If Congress does not set a new wage standard applicable to this section before the first March 1 that is not less than 3 years after the date of enactment of this section, the adverse effect wage rate for each State beginning on such March 1 shall be the wage rate that would have resulted if the adverse effect wage rate in effect on January 1, 2003, had been annually adjusted, beginning on March 1, 2006, by the lesser of—

"(I) the 12 month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

"(II) 4 percent.

"(ii) SUBSEQUENT ANNUAL ADJUSTMENTS.—Beginning on the first March 1 that is not less than 4 years after the date of enactment of this section, and each March 1 thereafter, the adverse effect wage rate then in effect for each State shall be adjusted by the lesser of—

"(I) the 12 month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

"(II) 4 percent.

"(D) DEDUCTIONS.—The employer shall make only those deductions from the worker's wages that are authorized by law or are reasonable and customary in the occupation and area of employment. The job offer shall specify all deductions not required by law which the employer will make from the worker's wages.

"(E) FREQUENCY OF PAY.—The employer shall pay the worker not less frequently than twice monthly, or in accordance with the pre-

vailing practice in the area of employment, whichever is more frequent.

"(F) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to the worker, on or before each payday, in 1 or more written statements—

"(i) the worker's total earnings for the pay period;

"(ii) the worker's hourly rate of pay, piece rate of pay, or both;

"(iii) the hours of employment which have been offered to the worker (broken out by hours offered in accordance with and over and above the three-quarters guarantee described in paragraph (4);

"(iv) the hours actually worked by the worker;

"(v) an itemization of the deductions made from the worker's wages; and

"(vi) if piece rates of pay are used, the units produced daily.

"(G) REPORT ON WAGE PROTECTIONS.—Not later than December 31, 2008, the Comptroller General of the United States shall prepare and transmit to the Secretary of Labor,

the Committee on the Judiciary of the Senate, and Committee on the Judiciary of the House of Representatives, a report that addresses—

"(i) whether the employment of H–2A or unauthorized aliens in the United States agricultural work force has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

"(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

"(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage level that would have prevailed in the absence of H–2A employment;

"(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage; and

"(v) recommendations for future wage protection under this section.

"(H) COMMISSION ON WAGE STANDARDS.—

"(i) ESTABLISHMENT.—There is established the Commission on Agricultural Wage Standards under the H–2A program (in this subparagraph referred to as the 'Commission').

"(ii) COMPOSITION.—The Commission shall consist of 10 members as follows:

"(I) 4 representatives of agricultural employers and 1 representative of the Department of Agriculture, each appointed by the Secretary of Agriculture.

"(II) 4 representatives of agricultural workers and 1 representative of the Department of Labor, each appointed by the Secretary of Labor.

1 "(iii) FUNCTIONS.—The Commission
2 shall conduct a study that shall address—
3 "(I) whether the employment of
4 H–2A or unauthorized aliens in the
5 United States agricultural workforce
6 has depressed United States farm
7 worker wages below the levels that
8 would otherwise have prevailed if alien
9 farm workers had not been employed
10 in the United States;
11 "(II) whether an adverse effect
12 wage rate is necessary to prevent
13 wages of United States farm workers
14 in occupations in which H–2A work-
15 ers are employed from falling below
16 the wage levels that would have pre-
17 vailed in the absence of the employ-
18 ment of H–2A workers in those occu-
19 pations;
20 "(III) whether alternative wage
21 standards, such as a prevailing wage
22 standard, would be sufficient to pre-
23 vent wages in occupations in which
24 H–2A workers are employed from fall-
25 ing below the wage level that would

have prevailed in the absence of H–2A employment;

"(IV) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

"(V) recommendations for future wage protection under this section.

"(iv) FINAL REPORT.—Not later than December 31, 2008, the Commission shall submit a report to the Congress setting forth the findings of the study conducted under clause (iii).

"(v) TERMINATION DATE.—The Commission shall terminate upon submitting its final report.

"(4) GUARANTEE OF EMPLOYMENT.—

"(A) OFFER TO WORKER.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least three-fourths of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date

specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker's Sabbath and Federal holidays. If the employer affords the United States or H–2A worker less employment than that required under this paragraph, the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

"(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

"(C) ABANDONMENT OF EMPLOYMENT, TERMINATION FOR CAUSE.—If the worker vol-

untarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the 'three-fourths guarantee' described in subparagraph (A).

"(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster, including but not limited to a flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought, before the guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will make efforts to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the em-

ployer shall provide the return transportation required in paragraph (2)(D).

"(5) MOTOR VEHICLE SAFETY.—

"(A) MODE OF TRANSPORTATION SUBJECT TO COVERAGE.—

"(i) IN GENERAL.—Except as provided in clauses (iii) and (iv), this subsection applies to any H–2A employer that uses or causes to be used any vehicle to transport an H–2A worker within the United States.

"(ii) DEFINED TERM.—In this paragraph, the term 'uses or causes to be used'—

"(I) applies only to transportation provided by an H–2A employer to an H–2A worker, or by a farm labor contractor to an H–2A worker at the request or direction of an H–2A employer; and

"(II) does not apply to—

"(aa) transportation provided, or transportation arrangements made, by an H–2A worker, unless the employer specifi-

cally requested or arranged such transportation; or

"(bb) car pooling arrangements made by H–2A workers themselves, using 1 of the workers' own vehicles, unless specifically requested by the employer directly or through a farm labor contractor.

"(iii) CLARIFICATION.—Providing a job offer to an H–2A worker that causes the worker to travel to or from the place of employment, or the payment or reimbursement of the transportation costs of an H–2A worker by an H–2A employer, shall not constitute an arrangement of, or participation in, such transportation.

"(iv) AGRICULTURAL MACHINERY AND EQUIPMENT EXCLUDED.—This subsection does not apply to the transportation of an H–2A worker on a tractor, combine, harvester, picker, or other similar machinery or equipment while such worker is actually engaged in the planting, cultivating, or harvesting of agricultural commodities or

the care of livestock or poultry or engaged in transportation incidental thereto.

"(v) COMMON CARRIERS EXCLUDED.—This subsection does not apply to common carrier motor vehicle transportation in which the provider holds itself out to the general public as engaging in the transportation of passengers for hire and holds a valid certification of authorization for such purposes from an appropriate Federal, State, or local agency.

"(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE REQUIREMENTS.—

"(i) IN GENERAL.—When using, or causing to be used, any vehicle for the purpose of providing transportation to which this subparagraph applies, each employer shall—

"(I) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b))

and other applicable Federal and State safety standards;

"(II) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle; and

"(III) have an insurance policy or a liability bond that is in effect which insures the employer against liability for damage to persons or property arising from the ownership, operation, or causing to be operated, of any vehicle used to transport any H–2A worker.

"(ii) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of Labor pursuant to regulations to be issued under this subsection.

"(iii) EFFECT OF WORKERS' COMPENSATION COVERAGE.—If the employer of any H–2A worker provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by State law, the following adjust-

ments in the requirements of subparagraph (B)(i)(III) relating to having an insurance policy or liability bond apply:

"(I) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

"(II) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

"(c) COMPLIANCE WITH LABOR LAWS.—An employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, except that a violation of this assurance shall not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

"(d) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer's application and job offer described in section 218(a), or, if the employer will require the worker to enter into a separate employment contract covering the employment in question, such separate employment contract.

"(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing in this section, section 218, or section 218F shall preclude the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

"SEC. 218F. PROCEDURE FOR ADMISSION AND EXTENSION OF STAY OF H–2A WORKERS.

"(a) PETITIONING FOR ADMISSION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H–2A worker may file a petition with the Secretary. The petition shall be accompanied by an accepted and currently valid certification provided by the Secretary of Labor under section 218(e)(2)(B) covering the petitioner.

"(b) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary shall establish a procedure for

expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means assuring expedited delivery, transmit a copy of notice of action on the petition to the petitioner and, in the case of approved petitions, to the appropriate immigration officer at the port of entry or United States consulate (as the case may be) where the petitioner has indicated that the alien beneficiary (or beneficiaries) will apply for a visa or admission to the United States.

"(c) CRITERIA FOR ADMISSIBILITY.—

"(1) IN GENERAL.—An H–2A worker shall be considered admissible to the United States if the alien is otherwise admissible under this section, section 218, and section 218E, and the alien is not ineligible under paragraph (2).

"(2) DISQUALIFICATION.—An alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years—

"(A) violated a material provision of this section, including the requirement to promptly depart the United States when the alien's authorized period of admission under this section has expired; or

"(B) otherwise violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

"(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—

"(A) IN GENERAL.—An alien who has not previously been admitted into the United States pursuant to this section, and who is otherwise eligible for admission in accordance with paragraphs (1) and (2), shall not be deemed inadmissible by virtue of section 212(a)(9)(B). If an alien described in the preceding sentence is present in the United States, the alien may apply from abroad for H–2A status, but may not be granted that status in the United States.

"(B) MAINTENANCE OF WAIVER.—An alien provided an initial waiver of ineligibility pursuant to subparagraph (A) shall remain eligible for such waiver unless the alien violates the terms of this section or again becomes ineligible under section 212(a)(9)(B) by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

"(d) PERIOD OF ADMISSION.—

"(1) IN GENERAL.—The alien shall be admitted for the period of employment in the application certified by the Secretary of Labor pursuant to section 218(e)(2)(B), not to exceed 10 months, supplemented by a period of not more than 1 week before the beginning of the period of employment for the purpose of travel to the work site and a period of 14 days following the period of employment for the purpose of departure or extension based on a subsequent offer of employment, except that—

"(A) the alien is not authorized to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

"(B) the total period of employment, including such 14-day period, may not exceed 10 months.

"(2) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Secretary to extend the stay of the alien under any other provision of this Act.

"(e) ABANDONMENT OF EMPLOYMENT.—

"(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who

abandons the employment which was the basis for such admission or status shall be considered to have failed to maintain nonimmigrant status as an H–2A worker and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

"(2) REPORT BY EMPLOYER.—The employer, or association acting as agent for the employer, shall notify the Secretary not later than 7 days after an H–2A worker prematurely abandons employment.

"(3) REMOVAL BY THE SECRETARY.—The Secretary shall promptly remove from the United States any H–2A worker who violates any term or condition of the worker's nonimmigrant status.

"(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

"(f) REPLACEMENT OF ALIEN.—

"(1) IN GENERAL.—Upon presentation of the notice to the Secretary required by subsection (e)(2), the Secretary of State shall promptly issue a visa to, and the Secretary shall admit into the United States, an eligible alien designated by the employer to replace an H–2A worker—

"(A) who abandons or prematurely terminates employment; or

"(B) whose employment is terminated after a United States worker is employed pursuant to section 218(b)(2)(H)(iii), if the United States worker voluntarily departs before the end of the period of intended employment or if the employment termination is for a lawful job-related reason.

"(2) CONSTRUCTION.—Nothing in this subsection is intended to limit any preference required to be accorded United States workers under any other provision of this Act.

"(g) IDENTIFICATION DOCUMENT.—

"(1) IN GENERAL.—Each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) shall be provided an identification and employment eligibility document to verify eligibility for employment in the United States and verify such person's proper identity.

"(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

"(A) The document shall be capable of reliably determining whether—

"(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

"(ii) the individual whose eligibility is being verified is claiming the identity of another person; and

"(iii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H–2A worker.

"(B) The document shall be in a form that is resistant to counterfeiting and to tampering.

"(C) The document shall—

"(i) be compatible with other databases of the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

"(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

"(h) EXTENSION OF STAY OF H–2A ALIENS IN THE UNITED STATES.—

"(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H–2A alien who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (a), shall request an extension of the alien's stay and a change in the alien's employment.

"(2) LIMITATION ON FILING A PETITION FOR EXTENSION OF STAY.—A petition may not be filed for an extension of an alien's stay—

"(A) for a period of more than 10 months; or

"(B) to a date that is more than 3 years after the date of the alien's last admission to the United States under this section.

"(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF STAY.—

"(A) IN GENERAL.—An alien who is lawfully present in the United States may commence the employment described in a petition under paragraph (1) on the date on which the petition is filed.

"(B) DEFINITION.—For purposes of subparagraph (A), the term 'file' means sending the petition by certified mail via the United States Postal Service, return receipt requested,

or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition.

"(C) HANDLING OF PETITION.—The employer shall provide a copy of the employer's petition to the alien, who shall keep the petition with the alien's identification and employment eligibility document as evidence that the petition has been filed and that the alien is authorized to work in the United States.

"(D) APPROVAL OF PETITION.—Upon approval of a petition for an extension of stay or change in the alien's authorized employment, the Secretary shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

"(4) LIMITATION ON EMPLOYMENT AUTHORIZATION OF ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An expired identification and employment eligibility document, together with a copy of a petition for extension of stay or change in the alien's authorized em-

ployment that complies with the requirements of paragraph (1), shall constitute a valid work authorization document for a period of not more than 60 days beginning on the date on which such petition is filed, after which time only a currently valid identification and employment eligibility document shall be acceptable.

"(5) LIMITATION ON AN INDIVIDUAL'S STAY IN STATUS.—

"(A) MAXIMUM PERIOD.—The maximum continuous period of authorized status as an H–2A worker (including any extensions) is 3 years.

"(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—

"(i) IN GENERAL.—Subject to clause (ii), in the case of an alien outside the United States whose period of authorized status as an H–2A worker (including any extensions) has expired, the alien may not again apply for admission to the United States as an H–2A worker unless the alien has remained outside the United States for a continuous period equal to at least 1/5 the duration of the alien's previous period

of authorized status as an H–2A worker (including any extensions).

"(ii) EXCEPTION.—Clause (i) shall not apply in the case of an alien if the alien's period of authorized status as an H–2A worker (including any extensions) was for a period of not more than 10 months and such alien has been outside the United States for at least 2 months during the 12 months preceding the date the alien again is applying for admission to the United States as an H–2A worker.

"(i) SPECIAL RULES FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORKERS.—Notwithstanding any provision of the Agricultural Job Opportunities, Benefits, and Security Act of 2006, an alien admitted under section 101(a)(15)(H)(ii)(a) for employment as a sheepherder, goat herder, or dairy worker—

"(1) may be admitted for an initial period of 12 months;

"(2) subject to subsection (j)(5), may have such initial period of admission extended for a period of up to 3 years; and

"(3) shall not be subject to the requirements of subsection (h)(5) (relating to periods of absence from the United States).

"(j) ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

"(1) ELIGIBLE ALIEN.—For purposes of this subsection, the term 'eligible alien' means an alien—

"(A) having nonimmigrant status under section 101(a)(15)(H)(ii)(a) based on employment as a sheepherder, goat herder, or dairy worker;

"(B) who has maintained such nonimmigrant status in the United States for a cumulative total of 36 months (excluding any period of absence from the United States); and

"(C) who is seeking to receive an immigrant visa under section 203(b)(3)(A)(iii).

"(2) CLASSIFICATION PETITION.—In the case of an eligible alien, the petition under section 204 for classification under section 203(b)(3)(A)(iii) may be filed by—

"(A) the alien's employer on behalf of an eligible alien; or

"(B) the eligible alien.

"(3) NO LABOR CERTIFICATION REQUIRED.—Notwithstanding section 203(b)((3)(C), no determination under section 212(a)(5)(A) is required with respect to an immigrant visa described in paragraph (1)(C) for an eligible alien.

"(4) EFFECT OF PETITION.—The filing of a petition described in paragraph (2) or an application for adjustment of status based on the approval of such a petition, shall not constitute evidence of an alien's ineligibility for nonimmigrant status under section 101(a)(15)(H)(ii)(a).

"(5) EXTENSION OF STAY.—The Secretary of Homeland Security shall extend the stay of an eligible alien having a pending or approved classification petition described in paragraph (2) in 1-year increments until a final determination is made on the alien's eligibility for adjustment of status to that of an alien lawfully admitted for permanent residence.

"(6) CONSTRUCTION.—Nothing in this subsection shall be construed to prevent an eligible alien from seeking adjustment of status in accordance with any other provision of law.

"SEC. 218G. WORKER PROTECTIONS AND LABOR STANDARDS ENFORCEMENT.

"(a) ENFORCEMENT AUTHORITY.—

"(1) INVESTIGATION OF COMPLAINTS.—

"(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINTS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in section 218(b), or an employer's misrepresentation of material facts in an application under section 218(a). Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure, or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

"(B) DETERMINATION ON COMPLAINT.—Under such process, the Secretary of Labor shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to

make a finding described in subparagraph (C), (D), (E), or (H). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

"(C) FAILURES TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(A), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218(b), a substantial failure to meet a condition of paragraph (1)(C), (1)(E), (2)(C), (2)(D), (2)(E), or (2)(H) of section 218(b), or a mate-

rial misrepresentation of fact in an application under section 218(a)—

"(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

"(ii) the Secretary may disqualify the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(a) for a period of 1 year.

"(D) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b), a willful misrepresentation of a material fact in an application under section 218(a), or a violation of subsection (d)(1)—

"(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000

per violation) as the Secretary of Labor determines to be appropriate;

"(ii) the Secretary of Labor may seek appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and

"(iii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 2 years.

"(E) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b) or a willful misrepresentation of a material fact in an application under section 218(a), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer's application under section 218(a) or during the period of 30 days preceding such period of employment—

"(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money pen-

alties in an amount not to exceed $15,000 per violation) as the Secretary of Labor determines to be appropriate; and

"(ii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 3 years.

"(F) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose total civil money penalties with respect to an application under section 218(a) in excess of $90,000.

"(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment, required under section 218E(b), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H–2A worker employed by the employer in the specific employment in question. The back wages or other required benefits under section 218E(b) shall be equal to the difference between the

amount that should have been paid and the amount that actually was paid to such worker.

"(2) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority of the Secretary of Labor to conduct any compliance investigation under any other labor law, including any law affecting migrant and seasonal agricultural workers, or, in the absence of a complaint under this section, under section 218 or 218E.

"(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF ACTION.—H–2A workers may enforce the following rights through the private right of action provided in subsection (c), and no other right of action shall exist under Federal or State law to enforce such rights:

"(1) The providing of housing or a housing allowance as required under section 218E(b)(1).

"(2) The reimbursement of transportation as required under section 218E(b)(2).

"(3) The payment of wages required under section 218E(b)(3) when due.

"(4) The benefits and material terms and conditions of employment expressly provided in the job offer described in section 218(a)(2), not including the assurance to comply with other Federal, State, and local labor laws described in section 218E(c),

compliance with which shall be governed by the provisions of such laws.

"(5) The guarantee of employment required under section 218E(b)(4).

"(6) The motor vehicle safety requirements under section 218E(b)(5).

"(7) The prohibition of discrimination under subsection (d)(2).

"(c) PRIVATE RIGHT OF ACTION.—

"(1) MEDIATION.—Upon the filing of a complaint by an H–2A worker aggrieved by a violation of rights enforceable under subsection (b), and within 60 days of the filing of proof of service of the complaint, a party to the action may file a request with the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute. Upon a filing of such request and giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (B).

"(A) MEDIATION SERVICES.—The Federal Mediation and Conciliation Service shall be available to assist in resolving disputes arising under subsection (b) between H–2A workers

and agricultural employers without charge to the parties.

"(B) 90-DAY LIMIT.—The Federal Mediation and Conciliation Service may conduct mediation or other non-binding dispute resolution activities for a period not to exceed 90 days beginning on the date on which the Federal Mediation and Conciliation Service receives the request for assistance unless the parties agree to an extension of this period of time.

"(C) AUTHORIZATION.—

"(i) IN GENERAL.—Subject to clause (ii), there are authorized to be appropriated to the Federal Mediation and Conciliation Service $500,000 for each fiscal year to carry out this section.

"(ii) MEDIATION.—Notwithstanding any other provision of law, the Director of the Federal Mediation and Conciliation Service is authorized to conduct the mediation or other dispute resolution activities from any other appropriated funds available to the Director and to reimburse such appropriated funds when the funds are appropriated pursuant to this authorization,

such reimbursement to be credited to appropriations currently available at the time of receipt.

"(2) MAINTENANCE OF CIVIL ACTION IN DISTRICT COURT BY AGGRIEVED PERSON.—An H–2A worker aggrieved by a violation of rights enforceable under subsection (b) by an agricultural employer or other person may file suit in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, without regard to the citizenship of the parties, and without regard to the exhaustion of any alternative administrative remedies under this Act, not later than 3 years after the date the violation occurs.

"(3) ELECTION.—An H–2A worker who has filed an administrative complaint with the Secretary of Labor may not maintain a civil action under paragraph (2) unless a complaint based on the same violation filed with the Secretary of Labor under subsection (a)(1) is withdrawn before the filing of such action, in which case the rights and remedies available under this subsection shall be exclusive.

"(4) PREEMPTION OF STATE CONTRACT RIGHTS.—Nothing in this Act shall be construed to diminish the rights and remedies of an H–2A worker

under any other Federal or State law or regulation or under any collective bargaining agreement, except that no court or administrative action shall be available under any State contract law to enforce the rights created by this Act.

"(5) WAIVER OF RIGHTS PROHIBITED.—Agreements by employees purporting to waive or modify their rights under this Act shall be void as contrary to public policy, except that a waiver or modification of the rights or obligations in favor of the Secretary of Labor shall be valid for purposes of the enforcement of this Act. The preceding sentence may not be construed to prohibit agreements to settle private disputes or litigation.

"(6) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF.—

"(A) If the court finds that the respondent has intentionally violated any of the rights enforceable under subsection (b), it shall award actual damages, if any, or equitable relief.

"(B) Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

"(7) WORKERS' COMPENSATION BENEFITS; EXCLUSIVE REMEDY.—

"(A) Notwithstanding any other provision of this section, where a State's workers' compensation law is applicable and coverage is provided for an H–2A worker, the workers' compensation benefits shall be the exclusive remedy for the loss of such worker under this section in the case of bodily injury or death in accordance with such State's workers' compensation law.

"(B) The exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for loss from an injury or death but does not preclude other equitable relief, except that such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect—

"(i) a recovery under a State workers' compensation law; or

"(ii) rights conferred under a State workers' compensation law.

"(8) TOLLING OF STATUTE OF LIMITATIONS.—If it is determined under a State workers' compensation law that the workers' compensation law is not applicable to a claim for bodily injury or death of an

H–2A worker, the statute of limitations for bringing an action for actual damages for such injury or death under subsection (c) shall be tolled for the period during which the claim for such injury or death under such State workers' compensation law was pending. The statute of limitations for an action for actual damages or other equitable relief arising out of the same transaction or occurrence as the injury or death of the H–2A worker shall be tolled for the period during which the claim for such injury or death was pending under the State workers' compensation law.

"(9) PRECLUSIVE EFFECT.—Any settlement by an H–2A worker and an H–2A employer or any person reached through the mediation process required under subsection (c)(1) shall preclude any right of action arising out of the same facts between the parties in any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

"(10) SETTLEMENTS.—Any settlement by the Secretary of Labor with an H–2A employer on behalf of an H–2A worker of a complaint filed with the Secretary of Labor under this section or any finding by the Secretary of Labor under subsection

(a)(1)(B) shall preclude any right of action arising out of the same facts between the parties under any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

"(d) DISCRIMINATION PROHIBITED.—

"(1) IN GENERAL.—It is a violation of this subsection for any person who has filed an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this subsection, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of section 218 or 218E or any rule or regulation pertaining to section 218 or 218E, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of section 218 or 218E or any rule or regulation pertaining to either of such sections.

"(2) DISCRIMINATION AGAINST H–2A WORKERS.—It is a violation of this subsection for any per-

son who has filed an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against an H–2A employee because such worker has, with just cause, filed a complaint with the Secretary of Labor regarding a denial of the rights enumerated and enforceable under subsection (b) or instituted, or caused to be instituted, a private right of action under subsection (c) regarding the denial of the rights enumerated under subsection (b), or has testified or is about to testify in any court proceeding brought under subsection (c).

"(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE EMPLOYMENT.—The Secretary of Labor and the Secretary shall establish a process under which an H–2A worker who files a complaint regarding a violation of subsection (d) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

"(f) ROLE OF ASSOCIATIONS.—

"(1) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An employer on whose behalf an application is filed by an association acting as its agent is fully

responsible for such application, and for complying with the terms and conditions of sections 218 and 218E, as though the employer had filed the application itself. If such an employer is determined, under this section, to have committed a violation, the penalty for such violation shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge, or reason to know, of the violation, in which case the penalty shall be invoked against the association or other association member as well.

"(2) VIOLATIONS BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing an application as a sole or joint employer is determined to have committed a violation under this section, the penalty for such violation shall apply only to the association unless the Secretary of Labor determines that an association member or members participated in or had knowledge, or reason to know of the violation, in which case the penalty shall be invoked against the association member or members as well.

"SEC. 218H. DEFINITIONS.

"For purposes of this section, section 218, and sections 218E through 218G:

"(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)). For purposes of this paragraph, agricultural employment includes employment under section 101(a)(15)(H)(ii)(a).

"(2) BONA FIDE UNION.—The term 'bona fide union' means any organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of work for agricultural employees. Such term does not include an organization formed, created, administered, supported, dominated, financed, or controlled by an employer or employer association or its agents or representatives.

"(3) DISPLACE.—The term 'displace', in the case of an application with respect to 1 or more H–2A workers by an employer, means laying off a United States worker from a job for which the H–2A worker or workers is or are sought.

"(4) ELIGIBLE.—The term 'eligible', when used with respect to an individual, means an individual who is not an unauthorized alien (as defined in section 274A).

"(5) EMPLOYER.—The term 'employer' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

"(6) H–2A EMPLOYER.—The term 'H–2A employer' means an employer who seeks to hire 1 or more nonimmigrant aliens described in section 101(a)(15)(H)(ii)(a).

"(7) H–2A WORKER.—The term 'H–2A worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

"(8) JOB OPPORTUNITY.—The term 'job opportunity' means a job opening for temporary full-time employment at a place in the United States to which United States workers can be referred.

"(9) LAYS OFF.—

"(A) IN GENERAL.—The term 'lays off', with respect to a worker—

"(i) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, viola-

tion of workplace rules, cause, voluntary departure, voluntary retirement, contract impossibility (as described in section 218E(b)(4)(D)), or temporary layoffs due to weather, markets, or other temporary conditions; but

''(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under section 218(b)(2)(E), with either employer described in such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

''(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

''(10) REGULATORY DROUGHT.—The term 'regulatory drought' means a decision subsequent to the filing of the application under section 218 by an en-

tity not under the control of the employer making such filing which restricts the employer's access to water for irrigation purposes and reduces or limits the employer's ability to produce an agricultural commodity, thereby reducing the need for labor.

"(11) SEASONAL.—Labor is performed on a 'seasonal' basis if—

"(A) ordinarily, it pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

"(B) from its nature, it may not be continuous or carried on throughout the year.

"(12) SECRETARY.—The term 'Secretary' means the Secretary of Homeland Security.

"(13) TEMPORARY.—A worker is employed on a 'temporary' basis where the employment is intended not to exceed 10 months.

"(14) UNITED STATES WORKER.—The term 'United States worker' means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a).".

(b) TABLE OF CONTENTS.—The table of contents (8 U.S.C. 1101 et seq.) is amended—

(1) by striking the item relating to section 218 and inserting the following:

"Sec. 218. H–2A employer applications."

and

(2) by inserting after the item relating to section 218D, as added by section 601 of this Act, the following:

"Sec. 218E. H–2A employment requirements.
"Sec. 218F. Procedure for admission and extension of stay of H–2A workers.
"Sec. 218G. Worker protections and labor standards enforcement.
"Sec. 218H. Definitions.".

CHAPTER 3—MISCELLANEOUS PROVISIONS

SEC. 616. DETERMINATION AND USE OF USER FEES.

(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust a schedule of fees for the employment of aliens under this subtitle and the amendments made by this subtitle, and a collection process for such fees from employers participating in the program provided under this subtitle. Such fees shall be the only fees chargeable to employers for services provided under this subtitle.

(b) DETERMINATION OF SCHEDULE.—

(1) IN GENERAL.—The schedule under subsection (a) shall reflect a fee rate based on the number of job opportunities indicated in the employer's

application under section 218 of the Immigration and Nationality Act, as added by section 615 of this Act, and sufficient to provide for the direct costs of providing services related to an employer's authorization to employ eligible aliens pursuant to this subtitle, to include the certification of eligible employers, the issuance of documentation, and the admission of eligible aliens.

(2) PROCEDURE.—

(A) IN GENERAL.—In establishing and adjusting such a schedule, the Secretary shall comply with Federal cost accounting and fee setting standards.

(B) PUBLICATION AND COMMENT.—The Secretary shall publish in the Federal Register an initial fee schedule and associated collection process and the cost data or estimates upon which such fee schedule is based, and any subsequent amendments thereto, pursuant to which public comment shall be sought and a final rule issued.

(c) USE OF PROCEEDS.—Notwithstanding any other provision of law, all proceeds resulting from the payment of the alien employment user fees shall be available without further appropriation and shall remain available with-

out fiscal year limitation to reimburse the Secretary, the Secretary of State, and the Secretary of Labor for the costs of carrying out sections 218 and 218F of the Immigration and Nationality Act, as added by section 615 of this Act, and the provisions of this subtitle.

SEC. 617. REGULATIONS.

(a) REGULATIONS OF THE SECRETARY.—The Secretary shall consult with the Secretary of Labor and the Secretary of Agriculture on all regulations to implement the duties of the Secretary under this subtitle and the amendments made by this subtitle.

(b) REGULATIONS OF THE SECRETARY OF STATE.—The Secretary of State shall consult with the Secretary, the Secretary of Labor, and the Secretary of Agriculture on all regulations to implement the duties of the Secretary of State under this subtitle and the amendments made by this subtitle.

(c) REGULATIONS OF THE SECRETARY OF LABOR.—The Secretary of Labor shall consult with the Secretary of Agriculture and the Secretary on all regulations to implement the duties of the Secretary of Labor under this subtitle and the amendments made by this subtitle.

(d) DEADLINE FOR ISSUANCE OF REGULATIONS.—All regulations to implement the duties of the Secretary, the Secretary of State, and the Secretary of Labor created

under sections 218, 218E, 218F, and 218G of the Immigration and Nationality Act, as added by section 615 of this Act, shall take effect on the effective date of section 615 and shall be issued not later than 1 year after the date of enactment of this Act.

SEC. 618. REPORT TO CONGRESS.

Not later than September 30 of each year, the Secretary shall submit a report to Congress that identifies, for the previous year—

(1) the number of job opportunities approved for employment of aliens admitted under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the number of workers actually admitted, by State and by occupation;

(2) the number of such aliens reported to have abandoned employment pursuant to subsection 218F(e)(2) of such Act;

(3) the number of such aliens who departed the United States within the period specified in subsection 218F(d) of such Act;

(4) the number of aliens who applied for adjustment of status pursuant to section 613(a);

(5) the number of such aliens whose status was adjusted under section 613(a);

(6) the number of aliens who applied for permanent residence pursuant to section 613(c); and

(7) the number of such aliens who were approved for permanent residence pursuant section 613(c).

SEC. 619. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided, sections 615 and 616 shall take effect 1 year after the date of the enactment of this Act.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall prepare and submit to the appropriate committees of Congress a report that describes the measures being taken and the progress made in implementing this subtitle.

Subtitle C—DREAM Act

SEC. 621. SHORT TITLE.

This subtitle may be cited as the ''Development, Relief, and Education for Alien Minors Act of 2006'' or the ''DREAM Act of 2006''.

SEC. 622. DEFINITIONS.

In this subtitle:

(1) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(2) UNIFORMED SERVICES.—The term ''uniformed services'' has the meaning given that term in section 101(a) of title 10, United States Code.

SEC. 623. RESTORATION OF STATE OPTION TO DETERMINE RESIDENCY FOR PURPOSES OF HIGHER EDUCATION BENEFITS.

(a) IN GENERAL.—Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) is repealed.

(b) EFFECTIVE DATE.—The repeal under subsection (a) shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

SEC. 624. CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS OF CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.

(a) SPECIAL RULE FOR CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law and except as otherwise provided in this subtitle, the Secretary may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, subject to the condi-

tional basis described in section 625, an alien who is inadmissible or deportable from the United States, if the alien demonstrates that—

(A) the alien has been physically present in the United States for a continuous period of not less than 5 years immediately preceding the date of enactment of this Act, and had not yet reached the age of 16 years at the time of initial entry;

(B) the alien has been a person of good moral character since the time of application;

(C) the alien—

(i) is not inadmissible under paragraph (2), (3), (6)(B), (6)(C), (6)(E), (6)(F), or (6)(G) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), or, if inadmissible solely under subparagraph (C) or (F) of paragraph (6) of such subsection, the alien was under the age of 16 years at the time the violation was committed; and

(ii) is not deportable under paragraph (1)(E), (1)(G), (2), (3)(B), (3)(C), (3)(D), (4), or (6) of section 237(a) of the Immigration and Nationality Act (8 U.S.C.

1227(a)), or, if deportable solely under subparagraphs (C) or (D) of paragraph (3) of such subsection, the alien was under the age of 16 years at the time the violation was committed;

(D) the alien, at the time of application, has been admitted to an institution of higher education in the United States, or has earned a high school diploma or obtained a general education development certificate in the United States; and

(E) the alien has never been under a final administrative or judicial order of exclusion, deportation, or removal, unless the alien has remained in the United States under color of law or received the order before attaining the age of 16 years.

(2) WAIVER.—The Secretary may waive the grounds of ineligibility under section 212(a)(6) of the Immigration and Nationality Act and the grounds of deportability under paragraphs (1), (3), and (6) of section 237(a) of that Act for humanitarian purposes or family unity or when it is otherwise in the public interest.

(3) PROCEDURES.—The Secretary shall provide a procedure by regulation allowing eligible individuals to apply affirmatively for the relief available under this subsection without being placed in removal proceedings.

(b) TERMINATION OF CONTINUOUS PERIOD.—For purposes of this section, any period of continuous residence or continuous physical presence in the United States of an alien who applies for cancellation of removal under this section shall not terminate when the alien is served a notice to appear under section 239(a) of the Immigration and Nationality Act (8 U.S.C. 1229(a)).

(c) TREATMENT OF CERTAIN BREAKS IN PRESENCE.—

(1) IN GENERAL.—An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsection (a) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

(2) EXTENSIONS FOR EXCEPTIONAL CIRCUMSTANCES.—The Secretary may extend the time periods described in paragraph (1) if the alien demonstrates that the failure to timely return to the United States was due to exceptional circumstances.

The exceptional circumstances determined sufficient to justify an extension should be no less compelling than serious illness of the alien, or death or serious illness of a parent, grandparent, sibling, or child.

(d) EXEMPTION FROM NUMERICAL LIMITATIONS.—Nothing in this section may be construed to apply a numerical limitation on the number of aliens who may be eligible for cancellation of removal or adjustment of status under this section.

(e) REGULATIONS.—

(1) PROPOSED REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall publish proposed regulations implementing this section. Such regulations shall be effective immediately on an interim basis, but are subject to change and revision after public notice and opportunity for a period for public comment.

(2) INTERIM, FINAL REGULATIONS.—Within a reasonable time after publication of the interim regulations in accordance with paragraph (1), the Secretary shall publish final regulations implementing this section.

(f) REMOVAL OF ALIEN.—The Secretary may not remove any alien who has a pending application for conditional status under this subtitle.

SEC. 625. CONDITIONAL PERMANENT RESIDENT STATUS.

(a) IN GENERAL.—

(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of law, and except as provided in section 626, an alien whose status has been adjusted under section 624 to that of an alien lawfully admitted for permanent residence shall be considered to have obtained such status on a conditional basis subject to the provisions of this section. Such conditional permanent resident status shall be valid for a period of 6 years, subject to termination under subsection (b).

(2) NOTICE OF REQUIREMENTS.—

(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien obtains permanent resident status on a conditional basis under paragraph (1), the Secretary shall provide for notice to the alien regarding the provisions of this section and the requirements of subsection (c) to have the conditional basis of such status removed.

(B) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Secretary to provide a notice under this paragraph—

(i) shall not affect the enforcement of the provisions of this subtitle with respect to the alien; and

(ii) shall not give rise to any private right of action by the alien.

(b) TERMINATION OF STATUS.—

(1) IN GENERAL.—The Secretary shall terminate the conditional permanent resident status of any alien who obtained such status under this subtitle, if the Secretary determines that the alien—

(A) ceases to meet the requirements of subparagraph (B) or (C) of section 624(a)(1);

(B) has become a public charge; or

(C) has received a dishonorable or other than honorable discharge from the uniformed services.

(2) RETURN TO PREVIOUS IMMIGRATION STATUS.—Any alien whose conditional permanent resident status is terminated under paragraph (1) shall return to the immigration status the alien had immediately prior to receiving conditional permanent resident status under this subtitle.

(c) REQUIREMENTS OF TIMELY PETITION FOR REMOVAL OF CONDITION.—

(1) IN GENERAL.—In order for the conditional basis of permanent resident status obtained by an alien under subsection (a) to be removed, the alien must file with the Secretary, in accordance with paragraph (3), a petition which requests the removal of such conditional basis and which provides, under penalty of perjury, the facts and information so that the Secretary may make the determination described in paragraph (2)(A).

(2) ADJUDICATION OF PETITION TO REMOVE CONDITION.—

(A) IN GENERAL.—If a petition is filed in accordance with paragraph (1) for an alien, the Secretary shall make a determination as to whether the alien meets the requirements set out in subparagraphs (A) through (E) of subsection (d)(1).

(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Secretary determines that the alien meets such requirements, the Secretary shall notify the alien of such determination and immediately remove the conditional basis of the status of the alien.

(C) TERMINATION IF ADVERSE DETERMINATION.—If the Secretary determines that

the alien does not meet such requirements, the Secretary shall notify the alien of such determination and terminate the conditional permanent resident status of the alien as of the date of the determination.

(3) TIME TO FILE PETITION.—An alien may petition to remove the conditional basis to lawful resident status during the period beginning 180 days before and ending 2 years after either the date that is 6 years after the date of the granting of conditional permanent resident status or any other expiration date of the conditional permanent resident status as extended by the Secretary in accordance with this subtitle. The alien shall be deemed in conditional permanent resident status in the United States during the period in which the petition is pending.

(d) DETAILS OF PETITION.—

(1) CONTENTS OF PETITION.—Each petition for an alien under subsection (c)(1) shall contain information to permit the Secretary to determine whether each of the following requirements is met:

(A) The alien has demonstrated good moral character during the entire period the

alien has been a conditional permanent resident.

(B) The alien is in compliance with section 624(a)(1)(C).

(C) The alien has not abandoned the alien's residence in the United States. The Secretary shall presume that the alien has abandoned such residence if the alien is absent from the United States for more than 365 days, in the aggregate, during the period of conditional residence, unless the alien demonstrates that alien has not abandoned the alien's residence. An alien who is absent from the United States due to active service in the uniformed services has not abandoned the alien's residence in the United States during the period of such service.

(D) The alien has completed at least 1 of the following:

(i) The alien has acquired a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the United States.

(ii) The alien has served in the uniformed services for at least 2 years and, if discharged, has received an honorable discharge.

(E) The alien has provided a list of all of the secondary educational institutions that the alien attended in the United States.

(2) HARDSHIP EXCEPTION.—

(A) IN GENERAL.—The Secretary may, in the Secretary's discretion, remove the conditional status of an alien if the alien—

(i) satisfies the requirements of subparagraphs (A), (B), and (C) of paragraph (1);

(ii) demonstrates compelling circumstances for the inability to complete the requirements described in paragraph (1)(D); and

(iii) demonstrates that the alien's removal from the United States would result in exceptional and extremely unusual hardship to the alien or the alien's spouse, parent, or child who is a citizen or a lawful permanent resident of the United States.

(B) EXTENSION.—Upon a showing of good cause, the Secretary may extend the period of the conditional resident status for the purpose of completing the requirements described in paragraph (1)(D).

(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.), in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence. However, the conditional basis must be removed before the alien may apply for naturalization.

SEC. 626. RETROACTIVE BENEFITS.

If, on the date of enactment of this Act, an alien has satisfied all the requirements of subparagraphs (A) through (E) of section 624(a)(1) and section 625(d)(1)(D), the Secretary may adjust the status of the alien to that of a conditional resident in accordance with section 624. The alien may petition for removal of such condition at the end of the conditional residence period in accordance with section 625(c) if the alien has met the

requirements of subparagraphs (A), (B), and (C) of section 625(d)(1) during the entire period of conditional residence.

SEC. 627. EXCLUSIVE JURISDICTION.

(a) IN GENERAL.—The Secretary shall have exclusive jurisdiction to determine eligibility for relief under this subtitle, except where the alien has been placed into deportation, exclusion, or removal proceedings either prior to or after filing an application for relief under this subtitle, in which case the Attorney General shall have exclusive jurisdiction and shall assume all the powers and duties of the Secretary until proceedings are terminated, or if a final order of deportation, exclusion, or removal is entered the Secretary shall resume all powers and duties delegated to the Secretary under this subtitle.

(b) STAY OF REMOVAL OF CERTAIN ALIENS ENROLLED IN PRIMARY OR SECONDARY SCHOOL.—The Attorney General shall stay the removal proceedings of any alien who—

(1) meets all the requirements of subparagraphs (A), (B), (C), and (E) of section 624(a)(1);

(2) is at least 12 years of age; and

(3) is enrolled full time in a primary or secondary school.

(c) EMPLOYMENT.—An alien whose removal is stayed pursuant to subsection (b) may be engaged in employment in the United States, consistent with the Fair Labor Standards Act (29 U.S.C. 201 et seq.), and State and local laws governing minimum age for employment.

(d) LIFT OF STAY.—The Attorney General shall lift the stay granted pursuant to subsection (b) if the alien—

(1) is no longer enrolled in a primary or secondary school; or

(2) ceases to meet the requirements of subsection (b)(1).

SEC. 628. PENALTIES FOR FALSE STATEMENTS IN APPLICATION.

Whoever files an application for relief under this subtitle and willfully and knowingly falsifies, misrepresents, or conceals a material fact or makes any false or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both.

SEC. 629. CONFIDENTIALITY OF INFORMATION.

(a) PROHIBITION.—No officer or employee of the United States may—

(1) use the information furnished by the applicant pursuant to an application filed under this subtitle to initiate removal proceedings against any persons identified in the application;

(2) make any publication whereby the information furnished by any particular individual pursuant to an application under this subtitle can be identified; or

(3) permit anyone other than an officer or employee of the United States Government or, in the case of applications filed under this subtitle with a designated entity, that designated entity, to examine applications filed under this subtitle.

(b) REQUIRED DISCLOSURE.—The Attorney General or the Secretary shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or

not such individual is deceased as a result of a crime).

(c) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

SEC. 630. EXPEDITED PROCESSING OF APPLICATIONS; PROHIBITION ON FEES.

Regulations promulgated under this subtitle shall provide that applications under this subtitle will be considered on an expedited basis and without a requirement for the payment by the applicant of any additional fee for such expedited processing.

SEC. 631. HIGHER EDUCATION ASSISTANCE.

Notwithstanding any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), with respect to assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), an alien who adjusts status to that of a lawful permanent resident under this subtitle shall be eligible only for the following assistance under such title IV:

(1) Student loans under parts B, D, and E of such title IV (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.), subject to the requirements of such parts.

(2) Federal work-study programs under part C of such title IV (42 U.S.C. 2751 et seq.), subject to the requirements of such part.

(3) Services under such title IV (20 U.S.C. 1070 et seq.), subject to the requirements for such services.

SEC. 632. GAO REPORT.

Seven years after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, which sets forth—

(1) the number of aliens who were eligible for cancellation of removal and adjustment of status under section 624(a);

(2) the number of aliens who applied for adjustment of status under section 624(a);

(3) the number of aliens who were granted adjustment of status under section 624(a); and

(4) the number of aliens whose conditional permanent resident status was removed under section 625.

Subtitle D—Programs To Assist Nonimmigrant Workers

SEC. 641. INELIGIBILITY AND REMOVAL PRIOR TO APPLICATION PERIOD.

(a) LIMITATIONS ON INELIGIBILITY.—

(1) IN GENERAL.—An alien is not ineligible for any immigration benefit under any provision of this title, or any amendment made by this title, solely on the basis that the alien violated section 1543, 1544, or 1546 of chapter 75 of title 18, United States Code, during the period beginning on the date of the enactment of this Act and ending on the date that the Department of Homeland Security begins accepting applications for benefits under title VI.

(2) PROSECUTION.—An alien who commits a violation of such section 1543, 1544, or 1546 during the period beginning on the date the enactment of this Act and ending on the date that the alien applies for eligibility for such benefit may be prosecuted for the violation if the alien's application for such benefit is denied.

(b) LIMITATION ON REMOVAL.—If an alien who is apprehended prior to the beginning of the applicable application period described in a provision of this title, or an amendment made by this title, is able to establish prima

1 facie eligibility for an adjustment of status under such a
2 provision, the alien may not be removed from the United
3 States for any reason until the date that is 180 days after
4 the first day of such applicable application period unless
5 the alien has engaged in criminal conduct or is a threat
6 to the national security of the United States.

7 **SEC. 642. GRANTS TO SUPPORT PUBLIC EDUCATION AND**
8 **COMMUNITY TRAINING.**

9 (a) GRANTS AUTHORIZED.—The Assistant Attorney
10 General, Office of Justice Programs, may award grants
11 to qualified non-profit community organizations to edu-
12 cate, train, and support non-profit agencies, immigrant
13 communities, and other interested entities regarding the
14 provisions of this Act and the amendments made by this
15 Act.

16 (b) USE OF FUNDS.—

17 (1) IN GENERAL.—Grants awarded under this
18 section shall be used—

19 (A) for public education, training, technical
20 assistance, government liaison, and all related
21 costs (including personnel and equipment) in-
22 curred by the grantee in providing services re-
23 lated to this Act; and

24 (B) to educate, train, and support non-
25 profit organizations, immigrant communities,

and other interested parties regarding this Act and the amendments made by this Act and on matters related to its implementation.

(2) EDUCATION.—In addition to the purposes described in paragraph (1), grants awarded under this section shall be used to—

(A) educate immigrant communities and other interested entities regarding—

(i) the individuals and organizations that can provide authorized legal representation in immigration matters under regulations prescribed by the Secretary; and

(ii) the dangers of securing legal advice and assistance from those who are not authorized to provide legal representation in immigration matters;

(B) educate interested entities regarding the requirements for obtaining nonprofit recognition and accreditation to represent immigrants under regulations prescribed by the Secretary;

(C) provide nonprofit agencies with training and technical assistance on the recognition and accreditation process; and

(D) educate nonprofit community organizations, immigrant communities, and other interested entities regarding—

(i) the process for obtaining benefits under this Act or under an amendment made by this Act; and

(ii) the availability of authorized legal representation for low-income persons who may qualify for benefits under this Act or under an amendment made by this Act.

(c) DIVERSITY.—The Assistant Attorney General shall ensure, to the extent possible, that the nonprofit community organizations receiving grants under this section serve geographically diverse locations and ethnically diverse populations who may qualify for benefits under the Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office of Justice Programs of the Department of Justice such sums as may be necessary for each of the fiscal years 2007 through 2009 to carry out this section.

SEC. 643. STRENGTHENING AMERICAN CITIZENSHIP.

(a) SHORT TITLE.—This section may be cited as the ''Strengthening American Citizenship Act of 2006''.

(b) DEFINITION.—In this section, the term ''Oath of Allegiance'' means the binding oath (or affirmation) of allegiance required to be naturalized as a citizen of the United States, as prescribed in section 337(e) of the Immigration and Nationality Act, as added by subsection (h)(1)(B).

(c) ENGLISH FLUENCY.—

(1) EDUCATION GRANTS.—

(A) ESTABLISHMENT.—The Chief of the Office of Citizenship of the Department (referred to in this paragraph as the ''Chief'') shall establish a grant program to provide grants in an amount not to exceed $500 to assist legal residents of the United States who declare an intent to apply for citizenship in the United States to meet the requirements under section 312 of the Immigration and Nationality Act (8 U.S.C. 1423).

(B) USE OF FUNDS.—Grant funds awarded under this paragraph shall be paid directly to an accredited institution of higher education or other qualified educational institution (as determined by the Chief) for tuition, fees, books, and other educational resources required by a

course on the English language in which the legal resident is enrolled.

(C) APPLICATION.—A legal resident desiring a grant under this paragraph shall submit an application to the Chief at such time, in such manner, and accompanied by such information as the Chief may reasonably require.

(D) PRIORITY.—If insufficient funds are available to award grants to all qualified applicants, the Chief shall give priority based on the financial need of the applicants.

(E) NOTICE.—The Secretary, upon relevant registration of a legal resident with the Department, shall notify such legal resident of the availability of grants under this paragraph for legal residents who declare an intent to apply for United States citizenship.

(F) DEFINITION.—For purposes of this subsection, the term ''legal resident'' means a lawful permanent resident or a lawfully admitted alien who, in order to adjust status to that of a lawful permanent resident must demonstrate a knowledge of the English language or satisfactory pursuit of a course of study to

acquire such knowledge of the English language.

(2) FASTER CITIZENSHIP FOR ENGLISH FLUENCY.—Section 316 (8 U.S.C. 1427) is amended by adding at the end the following:

''(g) A lawful permanent resident of the United States who demonstrates English fluency, in accordance with regulations prescribed by the Secretary of Homeland Security, in consultation with the Secretary of State, will satisfy the residency requirement under subsection (a) upon the completion of 4 years of continuous legal residency in the United States.''.

(3) SAVINGS PROVISION.—Nothing in this subsection shall be construed to—

(A) modify the English language requirements for naturalization under section 312(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1423(a)(1)); or

(B) influence the naturalization test redesign process of the Office of Citizenship (except for the requirement under subsection (h)(2)).

(d) AMERICAN CITIZENSHIP GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a competitive grant program to provide financial assistance for—

(A) efforts by entities (including veterans and patriotic organizations) certified by the Office of Citizenship to promote the patriotic integration of prospective citizens into the American way of life by providing civics, history, and English as a second language courses, with a specific emphasis on attachment to principles of the Constitution of the United States, the heroes of American history (including military heroes), and the meaning of the Oath of Allegiance; and

(B) other activities approved by the Secretary to promote the patriotic integration of prospective citizens and the implementation of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), including grants—

(i) to promote an understanding of the form of government and history of the United States; and

(ii) to promote an attachment to the principles of the Constitution of the United States and the well being and happiness of the people of the United States.

(2) ACCEPTANCE OF GIFTS.—The Secretary may accept and use gifts from the United States

Citizenship Foundation, if the foundation is established under subsection (e), for grants under this subsection.

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

(e) FUNDING FOR THE OFFICE OF CITIZENSHIP.—

(1) AUTHORIZATION.—The Secretary, acting through the Director of the Bureau of Citizenship and Immigration Services, is authorized to establish the United States Citizenship Foundation (referred to in this subsection as the ''Foundation''), an organization duly incorporated in the District of Columbia, exclusively for charitable and educational purposes to support the functions of the Office of Citizenship.

(2) DEDICATED FUNDING.—

(A) IN GENERAL.—Not less than 1.5 percent of the funds made available to the Bureau of Citizenship and Immigration Services from fees shall be dedicated to the functions of the Office of Citizenship, which shall include the patriotic integration of prospective citizens into—

(i) American common values and traditions, including an understanding of American history and the principles of the Constitution of the United States; and

(ii) civic traditions of the United States, including the Pledge of Allegiance, respect for the flag of the United States, and voting in public elections.

(B) SENSE OF CONGRESS.—It is the sense of Congress that dedicating increased funds to the Office of Citizenship should not result in an increase in fees charged by the Bureau of Citizenship and Immigration Services.

(3) GIFTS.—

(A) TO FOUNDATION.—The Foundation may solicit, accept, and make gifts of money and other property in accordance with section 501(c)(3) of the Internal Revenue Code of 1986.

(B) FROM FOUNDATION.—The Office of Citizenship may accept gifts from the Foundation to support the functions of the Office.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the mission of the

Office of Citizenship, including the functions described in paragraph (2)(A).

(f) RESTRICTION ON USE OF FUNDS.—No funds appropriated to carry out a program under this subsection (d) or (e) may be used to organize individuals for the purpose of political activism or advocacy.

(g) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Chief of the Office of Citizenship shall submit an annual report to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on the Judiciary of the Senate, the Committee on Education and the Workforce of the House of Representatives, and the Committee on the Judiciary of the House of Representatives.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) a list of the entities that have received funds from the Office of Citizenship during the reporting period under this section and the amount of funding received by each such entity;

(B) an evaluation of the extent to which grants received under this section successfully promoted an understanding of—

(i) the English language; and

(ii) American history and government, including the heroes of American history, the meaning of the Oath of Allegiance, and an attachment to the principles of the Constitution of the United States; and

(C) information about the number of legal residents who were able to achieve the knowledge described under paragraph (2) as a result of the grants provided under this section.

(h) OATH OR AFFIRMATION OF RENUNCIATION AND ALLEGIANCE.—

(1) REVISION OF OATH.—Section 337 (8 U.S.C. 1448) is amended—

(A) in subsection (a), by striking ''under section 310(b) an oath'' and all that follows through ''personal moral code.'' and inserting ''under section 310(b), the oath (or affirmation) of allegiance prescribed in subsection (e).''; and

(B) by adding at the end the following:

''(e)(1) Subject to paragraphs (2) and (3), the oath (or affirmation) of allegiance prescribed in this subsection is as follows: 'I take this oath solemnly, freely, and without any mental reservation. I absolutely and entirely renounce all allegiance to any foreign state or power of which I have been a subject or citizen. My fidelity and allegiance from

this day forward are to the United States of America. I will bear true faith and allegiance to the Constitution and laws of the United States, and will support and defend them against all enemies, foreign and domestic. I will bear arms, or perform noncombatant military or civilian service, on behalf of the United States when required by law. This I do solemnly swear, so help me God.'.

''(2) If a person, by reason of religious training and belief (or individual interpretation thereof) or for other reasons of good conscience, cannot take the oath prescribed in paragraph (1)—

''(A) with the term 'oath' included, the term 'affirmation' shall be substituted for the term 'oath'; and

''(B) with the phrase 'so help me God' included, the phrase 'so help me God' shall be omitted.

''(3) If a person shows by clear and convincing evidence to the satisfaction of the Attorney General that such person, by reason of religious training and belief, cannot take the oath prescribed in paragraph (1)—

''(A) because such person is opposed to the bearing of arms in the Armed Forces of the United States, the words 'bear arms, or' shall be omitted; and

"(B) because such person is opposed to any type of service in the Armed Forces of the United States, the words 'bear arms, or' and 'noncombatant military or' shall be omitted.

"(4) As used in this subsection, the term 'religious training and belief'—

"(A) means a belief of an individual in relation to a Supreme Being involving duties superior to those arising from any human relation; and

"(B) does not include essentially political, sociological, or philosophical views or a merely personal moral code.

"(5) Any reference in this title to 'oath' or 'oath of allegiance' under this section shall be deemed to refer to the oath (or affirmation) of allegiance prescribed under this subsection.".

(2) HISTORY AND GOVERNMENT TEST.—The Secretary shall incorporate a knowledge and understanding of the meaning of the Oath of Allegiance into the history and government test given to applicants for citizenship.

(3) NOTICE TO FOREIGN EMBASSIES.—Upon the naturalization of a new citizen, the Secretary, in cooperation with the Secretary of State, shall notify

the embassy of the country of which the new citizen was a citizen or subject that such citizen has—

(A) renounced allegiance to that foreign country; and

(B) sworn allegiance to the United States.

(4) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date that is 6 months after the date of enactment of this Act.

(i) ESTABLISHMENT OF NEW CITIZENS AWARD PROGRAM.—

(1) ESTABLISHMENT.—There is established a new citizens award program to recognize citizens who—

(A) have made an outstanding contribution to the United States; and

(B) were naturalized during the 10-year period ending on the date of such recognition.

(2) PRESENTATION AUTHORIZED.—

(A) IN GENERAL.—The President is authorized to present a medal, in recognition of outstanding contributions to the United States, to citizens described in paragraph (1).

(B) MAXIMUM NUMBER OF AWARDS.—Not more than 10 citizens may receive a medal under this subsection in any calendar year.

(3) DESIGN AND STRIKING.—The Secretary of the Treasury shall strike a medal with suitable emblems, devices, and inscriptions, to be determined by the President.

(4) NATIONAL MEDALS.—The medals struck pursuant to this subsection are national medals for purposes of chapter 51 of title 31, United States Code.

(j) NATURALIZATION CEREMONIES.—

(1) IN GENERAL.—The Secretary, in consultation with the Director of the National Park Service, the Archivist of the United States, and other appropriate Federal officials, shall develop and implement a strategy to enhance the public awareness of naturalization ceremonies.

(2) VENUES.—In developing the strategy under this subsection, the Secretary shall consider the use of outstanding and historic locations as venues for select naturalization ceremonies.

(3) REPORTING REQUIREMENT.—The Secretary shall submit an annual report to Congress that includes—

(A) the content of the strategy developed under this subsection; and

(B) the progress made towards the implementation of such strategy.

SEC. 644. SUPPLEMENTAL IMMIGRATION FEE.

(a) AUTHORIZATION OF FEE.—

(1) IN GENERAL.—Subject to paragraph (2), any alien who receives any immigration benefit under this title, or the amendments made by this title, shall, before receiving such benefit, pay a fee to the Secretary in an amount equal to $500, in addition to other applicable fees and penalties imposed under this title, or the amendments made by this title.

(2) FEES CONTINGENT ON APPROPRIATIONS.—No fee may be collected under this section except to the extent that the expenditure of the fee to pay the costs of activities and services for which the fee is imposed, as described in subsection (b), is provided for in advance in an appropriations Act.

(b) DEPOSIT AND EXPENDITURE OF FEES.—

(1) DEPOSIT.—Amounts collected under subsection (a) shall be deposited as an offsetting collection in, and credited to, the accounts providing appropriations—

(A) to carry out the apprehension and detention of any alien who is inadmissible by reason of any offense described in section 212(a);

(B) to carry out the apprehension and detention of any alien who is deportable for any offense under section 237(a);

(C) to acquire border sensor and surveillance technology;

(D) for air and marine interdiction, operations, maintenance, and procurement;

(E) for construction projects in support of the United States Customs and Border Protection;

(F) to train Federal law enforcement personnel; and

(G) for maritime security activities.

(2) AVAILABILITY OF FEES.—Amounts deposited under paragraph (1) shall remain available until expended for the activities and services described in paragraph (1).

SEC. 645. ADDRESSING POVERTY IN MEXICO.

(a) FINDINGS.—Congress finds the following:

(1) There is a strong correlation between economic freedom and economic prosperity.

(2) Trade policy, fiscal burden of government, government intervention in the economy, monetary policy, capital flows and foreign investment, banking and finance, wages and prices, property rights, regulation, and informal market activity are key factors in economic freedom.

(3) Poverty in Mexico, including rural poverty, can be mitigated through strengthened economic freedom within Mexico.

(4) Strengthened economic freedom in Mexico can be a major influence in mitigating illegal immigration.

(5) Advancing economic freedom within Mexico is an important part of any comprehensive plan to understanding the sources of poverty and the path to economic prosperity.

(b) GRANT AUTHORIZED.—The Secretary of State may award a grant to a land grant university in the United States to establish a national program for a broad, university-based Mexican rural poverty mitigation program.

(c) FUNCTIONS OF MEXICAN RURAL POVERTY MITIGATION PROGRAM.—The program established pursuant to subsection (b) shall—

(1) match a land grant university in the United States with the lead Mexican public university in each of Mexico's 31 states to provide state-level coordination of rural poverty programs in Mexico;

(2) establish relationships and coordinate programmatic ties between universities in the United States and universities in Mexico to address the issue of rural poverty in Mexico;

(3) establish and coordinate relationships with key leaders in the United States and Mexico to explore the effect of rural poverty on illegal immigration of Mexicans into the United States; and

(4) address immigration and border security concerns through a university-based, binational approach for long-term institutional change.

(d) USE OF FUNDS.—

(1) AUTHORIZED USES.—Grant funds awarded under this section may be used—

(A) for education, training, technical assistance, and any related expenses (including personnel and equipment) incurred by the grantee in implementing a program described in subsection (a); and

(B) to establish an administrative structure for such program in the United States.

(2) LIMITATIONS.—Grant funds awarded under this section may not be used for activities, responsibilities, or related costs incurred by entities in Mexico.

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

TITLE VII—MISCELLANEOUS

Subtitle A—Immigration Litigation Reduction

CHAPTER 1—APPEALS AND REVIEW

SEC. 701. ADDITIONAL IMMIGRATION PERSONNEL.

(a) DEPARTMENT OF HOMELAND SECURITY.—

(1) TRIAL ATTORNEYS.—In each of fiscal years 2007 through 2011, the Secretary shall, subject to the availability of appropriations for such purpose, increase the number of positions for attorneys in the Office of General Counsel of the Department who represent the Department in immigration matters by not less than 100 above the number of such positions for which funds were made available during each preceding fiscal year.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of fiscal years 2007 through 2011

such sums as may be necessary to carry out this subsection.

(b) DEPARTMENT OF JUSTICE.—

(1) LITIGATION ATTORNEYS.—In each of fiscal years 2007 through 2011, the Attorney General shall, subject to the availability of appropriations for such purpose, increase by not less than 50 the number of positions for attorneys in the Office of Immigration Litigation of the Department of Justice.

(2) UNITED STATES ATTORNEYS.—In each of fiscal years 2007 through 2011, the Attorney General shall, subject to the availability of appropriations for such purpose, increase by not less than 50 the number of attorneys in the United States Attorneys' office to litigate immigration cases in the Federal courts.

(3) IMMIGRATION JUDGES.—In each of fiscal years 2007 through 2011, the Attorney General shall, subject to the availability of appropriations for such purpose—

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

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

(4) STAFF ATTORNEYS.—In each of fiscal years 2007 through 2011, the Attorney General shall, subject to the availability of appropriations for such purpose—

(A) increase by not less than 10 the number of positions for full-time staff attorneys in the Board of Immigration Appeals compared to the number of such positions for which funds were made available during the preceding fiscal year; and

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

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General for each of the fiscal years 2007

through 2011 such sums as may be necessary to carry out this subsection, including the hiring of necessary support staff.

(c) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—In each of the fiscal years 2007 through 2011, the Director of the Administrative Office of the United States Courts shall, subject to the availability of appropriations, increase by not less than 50 the number of attorneys in the Federal Defenders Program who litigate criminal immigration cases in the Federal courts.

CHAPTER 2—IMMIGRATION REVIEW REFORM

SEC. 702. BOARD OF IMMIGRATION APPEALS.

(a) COMPOSITION AND APPOINTMENT.—Notwithstanding any other provision of law, the Board of Immigration Appeals of the Department of Justice (referred to in this section as the ''Board''), shall be composed of a Chair and 22 other immigration appeals judges, who shall be appointed by the Attorney General. Upon the expiration of a term of office, a Board member may continue to act until a successor has been appointed and qualified.

(b) QUALIFICATIONS.—Each member of the Board, including the Chair, shall—

(1) be an attorney in good standing of a bar of a State or the District of Columbia;

(2) have at least—

(A) 7 years of professional, legal expertise; or

(B) 5 years of professional, legal expertise in immigration and nationality law; and

(3) meet the minimum appointment requirements of an administrative law judge under title 5, United States Code.

(c) DUTIES OF THE CHAIR.—The Chair of the Board, subject to the supervision of the Director of the Executive Office for Immigration Review, shall—

(1) be responsible, on behalf of the Board, for the administrative operations of the Board and shall have the power to appoint such administrative assistants, attorneys, clerks, and other personnel as may be needed for that purpose;

(2) direct, supervise, and establish internal operating procedures and policies of the Board;

(3) designate a member of the Board to act as Chair if the Chair is absent or unavailable;

(4) adjudicate cases as a member of the Board;

(5) form 3-member panels as provided by subsection (g);

(6) direct that a case be heard en banc as provided by subsection (h); and

(7) exercise such other authorities as the Director may provide.

(d) BOARD MEMBERS DUTIES.—In deciding a case before the Board, the Board—

(1) shall exercise independent judgment and discretion; and

(2) may take any action that is appropriate and necessary for the disposition of such case that is consistent with the authority provided in this section and any regulations established in accordance with this section.

(e) JURISDICTION.—

(1) IN GENERAL.—The Board shall have jurisdiction to hear appeals described in section 1003.1(b) of title 8, Code of Federal Regulations (or any corresponding similar regulation).

(2) LIMITATION.—The Board shall not have jurisdiction to hear an appeal of a decision of an immigration judge for an order of removal entered in absentia.

(f) SCOPE OF REVIEW.—

(1) FINDINGS OR FACT.—The Board shall—

(A) accept findings of fact determined by an immigration judge, including findings as to the credibility of testimony, unless the findings are clearly erroneous; and

(B) give due deference to an immigration judge's application of the law to the facts.

(2) QUESTIONS OF LAW.—The Board shall review de novo questions of law, discretion, and judgment, and all other issues in appeals from decisions of immigration judges.

(3) APPEALS FROM OFFICERS' DECISIONS.—

(A) STANDARD OF REVIEW.—The Board shall review de novo all questions arising in appeals from decisions issued by officers of the Department.

(B) PROHIBITION OF FACT FINDING.—Except for taking administrative notice of commonly known facts such as current events or the contents of official documents, the Board may not engage in fact-finding in the course of deciding appeals.

(C) REMAND.—A party asserting that the Board cannot properly resolve an appeal without further fact-finding shall file a motion for remand. If further fact-finding is needed in a

case, the Board shall remand the proceeding to the immigration judge or, as appropriate, to the Secretary.

(g) PANELS.—

(1) IN GENERAL.—Except as provided in paragraph (5) all cases shall be subject to review by a 3-member panel. The Chair shall divide the Board into 3-member panels and designate a presiding member.

(2) AUTHORITY.—Each panel may exercise the appropriate authority of the Board that is necessary for the adjudication of cases before the Board.

(3) QUORUM.—Two members appointed to a panel shall constitute a quorum for such panel.

(4) CHANGES IN COMPOSITION.—The Chair may from time to time make changes in the composition of a panel and of the presiding member of a panel.

(5) PRESIDING MEMBER DECISIONS.—The presiding member of a panel may act alone on any motion as provided in paragraphs (2) and (3) of subsection (i) and may not otherwise dismiss or determine an appeal as a single Board member.

(h) EN BANC PROCESS.—

(1) IN GENERAL.—The Board may on its own motion, by a majority vote of the Board members, or by direction of the Chair—

(A) consider any case as the full Board en banc; or

(B) reconsider as the full Board en banc any case that has been considered or decided by a 3-member panel or by a limited en banc panel.

(2) QUORUM.—A majority of the Board members shall constitute a quorum of the Board sitting en banc.

(i) DECISIONS OF THE BOARD.—

(1) AFFIRMANCE WITHOUT OPINION.—Upon individualized review of a case, the Board may affirm the decision of an immigration judge without opinion only if—

(A) the decision of the immigration judge resolved all issues in the case;

(B) the issue on appeal is squarely controlled by existing Board or Federal court precedent and does not involve the application of precedent to a novel fact situation;

(C) the factual and legal questions raised on appeal are so insubstantial that the case

1 does not warrant the issuance of a written opin-
2 ion in the case; and
3 (D) the Board approves both the result
4 reached in the decision below and all of the rea-
5 soning of that decision.
6 (2) SUMMARY DISMISSAL OF APPEALS.—The 3-
7 member panel or the presiding member acting alone
8 may summarily dismiss any appeal or portion of any
9 appeal in any case which—
10 (A) the party seeking the appeal fails to
11 specify the reasons for the appeal;
12 (B) the only reason for the appeal specified
13 by such party involves a finding of fact or a
14 conclusion of law that was conceded by that
15 party at a prior proceeding;
16 (C) the appeal is from an order that grant-
17 ed such party the relief that had been re-
18 quested;
19 (D) the appeal is determined to be filed for
20 an improper purpose, such as to cause unneces-
21 sary delay; or
22 (E) the appeal lacks an arguable basis in
23 fact or in law and is not supported by a good
24 faith argument for extension, modification, or
25 reversal of existing law.

(3) UNOPPOSED DISPOSITIONS.—The 3-member panel or the presiding member acting alone may—

(A) grant an unopposed motion or a motion to withdraw an appeal pending before the Board; or

(B) adjudicate a motion to remand any appeal—

(i) from the decision of an officer of the Department if the appropriate official of the Department requests that the matter be remanded back for further consideration;

(ii) if remand is required because of a defective or missing transcript; or

(iii) if remand is required for any other procedural or ministerial issue.

(4) NOTICE OF RIGHT TO APPEAL.—The decision by the Board shall include notice to the alien of the alien's right to file a petition for review in a United States Court of Appeals not later than 30 days after the date of the decision.

SEC. 703. IMMIGRATION JUDGES.

(a) APPOINTMENT OF IMMIGRATION JUDGES.—

(1) IN GENERAL.—The Chief Immigration Judge (as described in section 1003.9 of title 8,

Code of Federal Regulations, or any corresponding similar regulation) and other immigration judges shall be appointed by the Attorney General. Upon the expiration of a term of office, the immigration judge may continue to act until a successor has been appointed and qualified.

(2) QUALIFICATIONS.—Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 5 years of professional, legal expertise or at least 3 years professional or legal expertise in immigration and nationality law.

(b) JURISDICTION.—An Immigration judge shall have the authority to hear matters related to any removal proceeding pursuant to section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) described in section 1240.1(a) of title 8, Code of Federal Regulations (or any corresponding similar regulation).

(c) DUTIES OF IMMIGRATION JUDGES.—In deciding a case, an immigration judge—

(1) shall exercise independent judgment and discretion; and

(2) may take any action that is appropriate and necessary for the disposition of such case that is

consistent with their authorities under this section and regulations established in accordance with this section.

(d) REVIEW.—Decisions of immigration judges are subject to review by the Board of Immigration Appeals in any case in which the Board has jurisdiction.

SEC. 704. REMOVAL AND REVIEW OF JUDGES.

No immigration judge or member of the Board may be removed or otherwise subject to disciplinary or adverse action for their exercise of independent judgment and discretion as prescribed by this chapter.

SEC. 705. LEGAL ORIENTATION PROGRAM.

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

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

SEC. 706. REGULATIONS.

Not later than 180 days after the date of the enactment of this Act, the Attorney General shall issue regulations to implement this subtitle.

SEC. 707. GAO STUDY ON THE APPELLATE PROCESS FOR IMMIGRATION APPEALS.

(a) IN GENERAL.—The Comptroller General of the United States shall, not later than 180 days after enactment of this Act, conduct a study on the appellate process for immigration appeals.

(b) REQUIREMENTS.—In conducting the study under subsection (a), the Comptroller General shall consider the possibility of consolidating all appeals from the Board of Immigration Appeals and habeas corpus petitions in immigration cases into 1 United States Court of Appeals, by—

(1) consolidating all such appeals into an existing circuit court, such as the United States Court of Appeals for the Federal Circuit;

(2) consolidating all such appeals into a centralized appellate court consisting of active circuit court judges temporarily assigned from the various circuits, in a manner similar to the Foreign Intelligence Surveillance Court or the Temporary Emergency Court of Appeals; or

(3) implementing a mechanism by which a panel of active circuit court judges shall have the authority to reassign such appeals from circuits with relatively high caseloads to circuits with relatively low caseloads.

(c) FACTORS TO CONSIDER.—In conducting the study under subsection (a), the Comptroller General, in consultation with the Attorney General, the Secretary, and the Judicial Conference of the United States, shall consider—

(1) the resources needed for each alternative, including judges, attorneys and other support staff, case management techniques including technological requirements, physical infrastructure, and other procedural and logistical issues as appropriate;

(2) the impact of each plan on various circuits, including their caseload in general and caseload per panel;

(3) the possibility of utilizing case management techniques to reduce the impact of any consolidation option, such as requiring certificates of reviewability, similar to procedures for habeas and existing summary dismissal procedures in local rules of the courts of appeals;

(4) the effect of reforms in this Act on the ability of the circuit courts to adjudicate such appeals;

(5) potential impact, if any, on litigants; and

(6) other reforms to improve adjudication of immigration matters, including appellate review of motions to reopen and reconsider, and attorney fee

awards with respect to review of final orders of removal.

SEC. 708. SENIOR JUDGE PARTICIPATION IN THE SELECTION OF MAGISTRATES.

Section 631(a) of title 28, United States Code, is amended by striking ''Northern Mariana Islands'' the first place it appears and inserting ''Northern Mariana Islands, including any judge in regular active service and any judge who has retired from regular active service under section 371(b) of this title,''.

Subtitle B—Citizenship Assistance for Members of the Armed Services

SEC. 711. SHORT TITLE.

This subtitle may be cited as the ''Kendell Frederick Citizenship Assistance Act''.

SEC. 712. WAIVER OF REQUIREMENT FOR FINGERPRINTS FOR MEMBERS OF THE ARMED FORCES.

Notwithstanding any other provision of law or any regulation, the Secretary shall use the fingerprints provided by an individual at the time the individual enlists in the Armed Forces to satisfy any requirement for fingerprints as part of an application for naturalization if the individual—

(1) may be naturalized pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 or 1440);

(2) was fingerprinted in accordance with the requirements of the Department of Defense at the time the individual enlisted in the Armed Forces; and

(3) submits an application for naturalization not later than 12 months after the date the individual enlisted in the Armed Forces.

SEC. 713. PROVISION OF INFORMATION ON NATURALIZATION TO MEMBERS OF THE ARMED FORCES.

The Secretary shall—

(1) establish a dedicated toll-free telephone service available only to members of the Armed Forces and the families of such members to provide information related to naturalization pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 or 1440), including the status of an application for such naturalization;

(2) ensure that the telephone service required by paragraph (1) is operated by employees of the Department who—

(A) have received specialized training on the naturalization process for members of the

Armed Forces and the families of such members; and

(B) are physically located in the same unit as the military processing unit that adjudicates applications for naturalization pursuant to such section 328 or 329; and

(3) implement a quality control program to monitor, on a regular basis, the accuracy and quality of information provided by the employees who operate the telephone service required by paragraph (1), including the breadth of the knowledge related to the naturalization process of such employees.

SEC. 714. PROVISION OF INFORMATION ON NATURALIZATION TO THE PUBLIC.

Not later than 30 days after the date that a modification to any law or regulation related to the naturalization process becomes effective, the Secretary shall update the appropriate application form for naturalization, the instructions and guidebook for obtaining naturalization, and the Internet website maintained by the Secretary to reflect such modification.

SEC. 715. REPORTS.

(a) ADJUDICATION PROCESS.—Not later than 120 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to

the appropriate congressional committees a report on the entire process for the adjudication of an application for naturalization filed pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 or 1440), including the process that begins at the time the application is mailed to, or received by, the Secretary, regardless of whether the Secretary determines that such application is complete, through the final disposition of such application. Such report shall include a description of—

(1) the methods of the Secretary to prepare, handle, and adjudicate such applications;

(2) the effectiveness of the chain of authority, supervision, and training of employees of the Government or of other entities, including contract employees, who have any role in the such process or adjudication; and

(3) the ability of the Secretary to use technology to facilitate or accomplish any aspect of such process or adjudication.

(b) IMPLEMENTATION.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on the implementation of this subtitle by the Secretary, including studying any technology that may be used to im-

prove the efficiency of the naturalization process for members of the Armed Forces.

(2) REPORT.—Not later than 180 days after the date that the Comptroller General submits the report required by subsection (a), the Comptroller General shall submit to the appropriate congressional committees a report on the study required by paragraph (1). The report shall include any recommendations of the Comptroller General for improving the implementation of this subtitle by the Secretary.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ''appropriate congressional committees'' means—

(1) the Committee on Armed Services and the Committee on the Judiciary of the Senate; and

(2) the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives.

Subtitle C—State Court Interpreter Grant Program

SEC. 721. SHORT TITLE.

This subtitle may be cited as the ''State Court Interpreter Grant Program Act''.

SEC. 722. FINDINGS.

Congress finds that—

(1) the fair administration of justice depends on the ability of all participants in a courtroom proceeding to understand that proceeding, regardless of their English proficiency;

(2) 19 percent of the population of the United States over 5 years of age speaks a language other than English at home;

(3) only qualified court interpreters can ensure that persons with limited English proficiency comprehend judicial proceedings in which they are a party;

(4) the knowledge and skills required of a qualified court interpreter differ substantially from those required in other interpretation settings, such as social service, medical, diplomatic, and conference interpreting;

(5) the Federal Government has demonstrated its commitment to equal administration of justice regardless of English proficiency;

(6) regulations implementing title VI of the Civil Rights Act of 1964, as well as the guidance issued by the Department of Justice pursuant to Executive Order 13166, issued August 11, 2000, clarify that all recipients of Federal financial assistance,

including State courts, are required to take reasonable steps to provide meaningful access to their proceedings for persons with limited English proficiency;

(7) 34 States have developed, or are developing, court interpreting programs;

(8) robust, effective court interpreter programs—

(A) actively recruit skilled individuals to be court interpreters;

(B) train those individuals in the interpretation of court proceedings;

(C) develop and use a thorough, systematic certification process for court interpreters; and

(D) have sufficient funding to ensure that a qualified interpreter will be available to the court whenever necessary; and

(9) Federal funding is necessary to—

(A) encourage State courts that do not have court interpreter programs to develop them;

(B) assist State courts with nascent court interpreter programs to implement them;

(C) assist State courts with limited court interpreter programs to enhance them; and

(D) assist State courts with robust court interpreter programs to make further improvements and share successful programs with other States.

SEC. 723. STATE COURT INTERPRETER PROGRAM.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Administrator of the Office of Justice Programs of the Department of Justice (referred to in this section as the ''Administrator'') shall make grants, in accordance with such regulations as the Attorney General may prescribe, to State courts to develop and implement programs to assist individuals with limited English proficiency to access and understand State court proceedings in which they are a party.

(2) TECHNICAL ASSISTANCE.—The Administrator shall allocate, for each fiscal year, $500,000 of the amount appropriated pursuant to section 724 to be used to establish a court interpreter technical assistance program to assist State courts receiving grants under this subtitle.

(b) USE OF GRANTS.—Grants awarded under subsection (a) may be used by State courts to—

(1) assess regional language demands;

(2) develop a court interpreter program for the State courts;

(3) develop, institute, and administer language certification examinations;

(4) recruit, train, and certify qualified court interpreters;

(5) pay for salaries, transportation, and technology necessary to implement the court interpreter program developed under paragraph (2); and

(6) engage in other related activities, as prescribed by the Attorney General.

(c) APPLICATION.—

(1) IN GENERAL.—The highest State court of each State desiring a grant under this section shall submit an application to the Administrator at such time, in such manner, and accompanied by such information as the Administrator may reasonably require.

(2) STATE COURTS.—The highest State court of each State submitting an application under paragraph (1) shall include in the application—

(A) an identification of each State court in that State which would receive funds from the grant;

(B) the amount of funds each State court identified under subparagraph (A) would receive from the grant; and

(C) the procedures the highest State court would use to directly distribute grant funds to State courts identified under subparagraph (A).

(d) STATE COURT ALLOTMENTS.—

(1) BASE ALLOTMENT.—From amounts appropriated for each fiscal year pursuant to section 724, the Administrator shall allocate $100,000 to each of the highest State court of each State, which has an application approved under subsection (c).

(2) DISCRETIONARY ALLOTMENT.—From amounts appropriated for each fiscal year pursuant to section 724, the Administrator shall allocate a total of $5,000,000 to the highest State court of States that have extraordinary needs that must be addressed in order to develop, implement, or expand a State court interpreter program.

(3) ADDITIONAL ALLOTMENT.—In addition to the allocations made under paragraphs (1) and (2), the Administrator shall allocate to each of the highest State court of each State, which has an application approved under subsection (c), an amount equal to the product reached by multiplying—

(A) the unallocated balance of the amount appropriated for each fiscal year pursuant to section 724; and

(B) the ratio between the number of people over 5 years of age who speak a language other than English at home in the State and the number of people over 5 years of age who speak a language other than English at home in all the States that receive an allocation under paragraph (1), as those numbers are determined by the Bureau of the Census.

SEC. 724. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $15,000,000 for each of the fiscal years 2007 through 2010 to carry out this subtitle.

Subtitle D—Border Infrastructure and Technology Modernization

SEC. 731. SHORT TITLE.

This subtitle may be cited as the ''Border Infrastructure and Technology Modernization Act''.

SEC. 732. DEFINITIONS.

In this subtitle:

(1) COMMISSIONER.—The term ''Commissioner'' means the Commissioner of the Bureau of

Customs and Border Protection of the Department of Homeland Security.

(2) MAQUILADORA.—The term ''maquiladora'' means an entity located in Mexico that assembles and produces goods from imported parts for export to the United States.

(3) NORTHERN BORDER.—The term ''northern border'' means the international border between the United States and Canada.

(4) SOUTHERN BORDER.—The term ''southern border'' means the international border between the United States and Mexico.

SEC. 733. PORT OF ENTRY INFRASTRUCTURE ASSESSMENT STUDY.

(a) REQUIREMENT TO UPDATE.—Not later than January 31 of each year, the Administrator of General Services shall update the Port of Entry Infrastructure Assessment Study prepared by the Bureau of Customs and Border Protection in accordance with the matter relating to the ports of entry infrastructure assessment that is set out in the joint explanatory statement in the conference report accompanying H.R. 2490 of the 106th Congress, 1st session (House of Representatives Rep. No. 106–319, on page 67) and submit such updated study to Congress.

(b) CONSULTATION.—In preparing the updated studies required in subsection (a), the Administrator of General Services shall consult with the Director of the Office of Management and Budget, the Secretary, and the Commissioner.

(c) CONTENT.—Each updated study required in subsection (a) shall—

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

(2) include the projects identified in the National Land Border Security Plan required by section 734; and

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

(A) fulfill immediate security requirements; and

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

(d) PROJECT IMPLEMENTATION.—The Commissioner shall implement the infrastructure and technology improvement projects described in subsection (c) in the order

of priority assigned to each project under subsection (c)(3).

(e) DIVERGENCE FROM PRIORITIES.—The Commissioner may diverge from the priority order if the Commissioner determines that significantly changed circumstances, such as immediate security needs or changes in infrastructure in Mexico or Canada, compellingly alter the need for a project in the United States.

SEC. 734. NATIONAL LAND BORDER SECURITY PLAN.

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

(b) VULNERABILITY ASSESSMENT.—

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

(2) PORT SECURITY COORDINATORS.—The Secretary may establish 1 or more port security coordi-

nators at each port of entry located on the northern border or the southern border—

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

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

SEC. 735. EXPANSION OF COMMERCE SECURITY PROGRAMS.

(a) CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Commissioner, in consultation with the Secretary, shall develop a plan to expand the size and scope, including personnel, of the Customs–Trade Partnership Against Terrorism programs along the northern border and southern border, including—

(A) the Business Anti-Smuggling Coalition;

(B) the Carrier Initiative Program;

(C) the Americas Counter Smuggling Initiative;

(D) the Container Security Initiative;

(E) the Free and Secure Trade Initiative; and

(F) other Industry Partnership Programs administered by the Commissioner.

(2) SOUTHERN BORDER DEMONSTRATION PROGRAM.—Not later than 180 days after the date of enactment of this Act, the Commissioner shall implement, on a demonstration basis, at least 1 Customs–Trade Partnership Against Terrorism program, which has been successfully implemented along the northern border, along the southern border.

(b) MAQUILADORA DEMONSTRATION PROGRAM.—Not later than 180 days after the date of enactment of this Act, the Commissioner shall establish a demonstration program to develop a cooperative trade security system to improve supply chain security.

SEC. 736. PORT OF ENTRY TECHNOLOGY DEMONSTRATION PROGRAM.

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

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

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

(3) train personnel under realistic conditions.

(b) TECHNOLOGY AND FACILITIES.—

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

(A) inspections;

(B) communications;

(C) port tracking;

(D) identification of persons and cargo;

(E) sensory devices;

(F) personal detection;

(G) decision support; and

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

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

(A) cross-training among agencies;

(B) advanced law enforcement training; and

(C) equipment orientation.

(c) DEMONSTRATION SITES.—

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

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

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

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

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

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

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

(e) REPORT.—

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

(2) CONTENT.—The report submitted under paragraph (1) shall include an assessment by the Secretary of the feasibility of incorporating any demonstrated technology for use throughout the Bureau of Customs and Border Protection.

SEC. 737. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—In addition to any funds otherwise available, there are authorized to be appropriated—

(1) such sums as may be necessary for the fiscal years 2007 through 2011 to carry out the provisions of section 733(a);

(2) to carry out section 733(d)—

(A) $100,000,000 for each of the fiscal years 2007 through 2011; and

(B) such sums as may be necessary in any succeeding fiscal year;

(3) to carry out section 735(a)—

(A) $30,000,000 for fiscal year 2007, of which $5,000,000 shall be made available to fund the demonstration project established in section 736(a)(2); and

(B) such sums as may be necessary for the fiscal years 2008 through 2011;

(4) to carry out section 735(b)—

(A) $5,000,000 for fiscal year 2007; and

(B) such sums as may be necessary for the fiscal years 2008 through 2011; and

(5) to carry out section 736, provided that not more than $10,000,000 may be expended for technology demonstration program activities at any 1 port of entry demonstration site in any fiscal year—

(A) $50,000,000 for fiscal year 2007; and

(B) such sums as may be necessary for each of the fiscal years 2008 through 2011.

(b) INTERNATIONAL AGREEMENTS.—Amounts authorized to be appropriated under this subtitle may be used for the implementation of projects described in the Declaration on Embracing Technology and Cooperation to Promote the Secure and Efficient Flow of People and

Commerce across our Shared Border between the United States and Mexico, agreed to March 22, 2002, Monterrey, Mexico (commonly known as the Border Partnership Action Plan) or the Smart Border Declaration between the United States and Canada, agreed to December 12, 2001, Ottawa, Canada that are consistent with the provisions of this subtitle.

Subtitle E—Family Humanitarian Relief

SEC. 741. SHORT TITLE.

This subtitle may be cited as the ''September 11 Family Humanitarian Relief and Patriotism Act''.

SEC. 742. ADJUSTMENT OF STATUS FOR CERTAIN NONIMMIGRANT VICTIMS OF TERRORISM.

(a) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—The status of any alien described in subsection (b) shall be adjusted by the Secretary to that of an alien lawfully admitted for permanent residence, if the alien—

(A) applies for such adjustment not later than 2 years after the date on which the Secretary promulgates final regulations to implement this section; and

(B) is otherwise admissible to the United States for permanent residence, except in deter-

mining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(2) RULES IN APPLYING CERTAIN PROVISIONS.—

(A) IN GENERAL.—In the case of an alien described in subsection (b) who is applying for adjustment of status under this section—

(i) the provisions of section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)) shall not apply; and

(ii) the Secretary may grant the alien a waiver on the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act (8 U.S.C. 1182(a)(9)).

(B) STANDARDS.—In granting waivers under subparagraph (A)(ii), the Secretary shall use standards used in granting consent under subparagraphs (A)(iii) and (C)(ii) of such section 212(a)(9).

(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—

(A) APPLICATION PERMITTED.—An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) may, notwithstanding such order, apply for adjustment of status under paragraph (1).

(B) MOTION NOT REQUIRED.—An alien described in subparagraph (A) may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such order.

(C) EFFECT OF DECISION.—If the Secretary grants a request under subparagraph (A), the Secretary shall cancel the order. If the Secretary renders a final administrative decision to deny the request, the order shall be effective and enforceable to the same extent as if the application had not been made.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided by subsection (a) shall apply to any alien who—

(1) was lawfully present in the United States as a nonimmigrant alien described in section

101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) on September 10, 2001;

(2) was, on such date, the spouse, child, dependent son, or dependent daughter of an alien who—

(A) was lawfully present in the United States as a nonimmigrant alien described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) on such date; and

(B) died as a direct result of a specified terrorist activity; and

(3) was deemed to be a beneficiary of, and by, the September 11th Victim Compensation Fund of 2001 (49 U.S.C. 40101 note).

(c) STAY OF REMOVAL; WORK AUTHORIZATION.—

(1) IN GENERAL.—The Secretary shall establish, by regulation, a process by which an alien subject to a final order of removal may seek a stay of such order based on the filing of an application under subsection (a).

(2) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Secretary shall not order any alien to be removed from the

United States, if the alien is in removal proceedings under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Secretary has rendered a final administrative determination to deny the application.

(3) WORK AUTHORIZATION.—The Secretary shall authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application.

(d) AVAILABILITY OF ADMINISTRATIVE REVIEW.—The Secretary shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255); or

(2) aliens subject to removal proceedings under section 240 of such Act (8 U.S.C. 1229a).

SEC. 743. CANCELLATION OF REMOVAL FOR CERTAIN IMMIGRANT VICTIMS OF TERRORISM.

(a) IN GENERAL.—Subject to the provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), other than subsections (b)(1), (d)(1), and (e) of section 240A of such Act (8 U.S.C. 1229b), the Secretary shall,

1 under such section 240A, cancel the removal of, and ad-
2 just to the status of an alien lawfully admitted for perma-
3 nent residence, an alien described in subsection (b), if the
4 alien applies for such relief.

5 (b) ALIENS ELIGIBLE FOR CANCELLATION OF RE-
6 MOVAL.—The benefits provided by subsection (a) shall
7 apply to any alien who—

8 (1) was, on September 10, 2001, the spouse,
9 child, dependent son, or dependent daughter of an
10 alien who died as a direct result of a specified ter-
11 rorist activity; and

12 (2) was deemed to be a beneficiary of, and by,
13 the September 11th Victim Compensation Fund of
14 2001 (49 U.S.C. 40101 note).

15 (c) STAY OF REMOVAL; WORK AUTHORIZATION.—

16 (1) IN GENERAL.—The Secretary shall provide
17 by regulation for an alien subject to a final order of
18 removal to seek a stay of such order based on the
19 filing of an application under subsection (a).

20 (2) WORK AUTHORIZATION.—The Secretary
21 shall authorize an alien who has applied for cancella-
22 tion of removal under subsection (a) to engage in
23 employment in the United States during the pend-
24 ency of such application.

(d) MOTIONS TO REOPEN REMOVAL PROCEEDINGS.—

(1) IN GENERAL.—Notwithstanding any limitation imposed by law on motions to reopen removal proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43))), any alien who has become eligible for cancellation of removal as a result of the enactment of this section may file 1 motion to reopen removal proceedings to apply for such relief.

(2) FILING PERIOD.—The Secretary shall designate a specific time period in which all such motions to reopen are required to be filed. The period shall begin not later than 60 days after the date of enactment of this Act and shall extend for a period not to exceed 240 days.

SEC. 744. EXCEPTIONS.

Notwithstanding any other provision of this subtitle, an alien may not be provided relief under this subtitle if the alien is—

(1) inadmissible under paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), or deportable under para-

graph (2) or (4) of section 237(a) of such Act (8 U.S.C. 1227(a)), including any individual culpable for a specified terrorist activity; or

(2) a family member of an alien described in paragraph (1).

SEC. 745. EVIDENCE OF DEATH.

For purposes of this subtitle, the Secretary shall use the standards established under section 426 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (115 Stat. 362) in determining whether death occurred as a direct result of a specified terrorist activity.

SEC. 746. DEFINITIONS.

(a) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this subtitle, the definitions used in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), other than the definitions applicable exclusively to title III of such Act, shall apply in the administration of this subtitle.

(b) SPECIFIED TERRORIST ACTIVITY.—For purposes of this subtitle, the term ''specified terrorist activity'' means any terrorist activity conducted against the Government or the people of the United States on September 11, 2001.

Subtitle F—Other Matters

SEC. 751. NONCITIZEN MEMBERSHIP IN THE ARMED FORCES.

Section 329 of the Immigration and Nationality Act (8 U.S.C. 1440) is amended—

(1) in subsection (b), by striking ''subsection (a)'' and inserting ''subsection (a) and (d)''; and

(2) by adding at the end the following:

''(d) Notwithstanding any other provision of law, except for provisions relating to revocation of citizenship under subsection (c), individuals who are not United States citizens shall not be denied the opportunity to apply for membership in the United States Armed Forces. Such individuals who become active duty members of the United States Armed Forces shall, consistent with subsections (a) through (e) and with the approval of their chain of command, be granted United States citizenship after performing at least 2 years of honorable and satisfactory service on active duty. Not later than 90 days after such requirements are met with respect to an individual, such individual shall be granted United States citizenship.

''(e) An alien described in subsection (d) shall be naturalized without regard to the requirements of title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) and any other requirements, processes, or procedures

of the Immigration and Naturalization Service, if the alien—

"(1) filed an application for naturalization in accordance with such procedures to carry out this section as may be established by regulation by the Secretary of Homeland Security or the Secretary of Defense;

"(2) demonstrates to his or her military chain of command, proficiency in the English language, good moral character, and knowledge of the Federal Government and United States history, consistent with the requirements contained in the Immigration and Nationality Act; and

"(3) takes the oath required under section 337 of such Act (8 U.S.C. 1448 et seq.) and participates in an oath administration ceremony in accordance with such Act.".

SEC. 752. NONIMMIGRANT ALIEN STATUS FOR CERTAIN ATHLETES.

(a) IN GENERAL.—Section 214(c)(4)(A) (8 U.S.C. 1184(c)(4)(A)) is amended by striking clauses (i) and (ii) and inserting the following:

"(i)(I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance,

"(II) is a professional athlete, as defined in section 204(i)(2),

"(III) performs as an athlete, or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams, if—

"(aa) the foreign league or association is the highest level of amateur performance of that sport in the relevant foreign country,

"(bb) participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the National Collegiate Athletic Association (NCAA), and

"(cc) a significant number of the individuals who play in such league or association are drafted by a major sports league or a minor league affiliate of such a sports league, or

"(IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production, and

"(ii) seeks to enter the United States temporarily and solely for the purpose of performing—

"(I) as such an athlete with respect to a specific athletic competition, or

"(II) in the case of an individual described in clause (i)(IV), in a specific theatrical ice skating production or tour.".

(b) PETITIONS FOR MULTIPLE ALIENS.—Section 214(c)(4) (8 U.S.C. 1184(c)(4)) is amended by adding at the end the following new paragraph:

"(F) The Secretary of Homeland Security shall permit a petition under this subsection to seek classification of more than one alien as a nonimmigrant under section 101(a)(15)(P)(i)(a). The fee charged for such a petition may not be more than the fee charged for a petition seeking classification of one such alien.".

(c) RELATIONSHIP TO OTHER PROVISIONS OF THE IMMIGRATION AND NATIONALITY ACT.—Section 214(c)(4) (8 U.S.C. 1184(c)(4)), as amended by subsection (c), is further amended by adding at the end the following new paragraph:

"(G) Notwithstanding any other provision of this title, the Secretary of Homeland Security shall permit an athlete, or the employer of an athlete, to seek admission to the United States for such athlete under a provision of this Act other than section 101(a)(15)(P)(i).".

SEC. 753. EXTENSION OF RETURNING WORKER EXEMPTION.

Section 402(b)(1) of the Save Our Small and Seasonal Businesses Act of 2005 (title IV of division B of Public Law 109–13; 8 U.S.C. 1184 note) is amended by striking ''2006'' and inserting ''2009''.

SEC. 754. SURVEILLANCE TECHNOLOGIES PROGRAMS.

(a) AERIAL SURVEILLANCE PROGRAM.—

(1) IN GENERAL.—In conjunction with the border surveillance plan developed under section 5201 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1701 note), the Secretary, not later than 90 days after the date of enactment of this Act, shall develop and implement a program to fully integrate and utilize aerial surveillance technologies, including unmanned aerial vehicles, to enhance the security of the international border between the United States and Canada and the international border between the United States and Mexico. The goal of the program shall be to ensure continuous monitoring of each mile of each such border.

(2) ASSESSMENT AND CONSULTATION REQUIREMENTS.—In developing the program under this subsection, the Secretary shall—

(A) consider current and proposed aerial surveillance technologies;

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

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

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

(3) ADDITIONAL REQUIREMENTS.—

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

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

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

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

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

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

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

(b) INTEGRATED AND AUTOMATED SURVEILLANCE PROGRAM.—

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

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

(A) the technologies utilized in the Program are integrated and function cohesively in an automated fashion, including the integration of motion sensor alerts and cameras, whereby a sensor alert automatically activates a cor-

1 responding camera to pan and tilt in the direc-
2 tion of the triggered sensor;
3 (B) cameras utilized in the Program do
4 not have to be manually operated;
5 (C) such camera views and positions are
6 not fixed;
7 (D) surveillance video taken by such cam-
8 eras can be viewed at multiple designated com-
9 munications centers;
10 (E) a standard process is used to collect,
11 catalog, and report intrusion and response data
12 collected under the Program;
13 (F) future remote surveillance technology
14 investments and upgrades for the Program can
15 be integrated with existing systems;
16 (G) performance measures are developed
17 and applied that can evaluate whether the Pro-
18 gram is providing desired results and increasing
19 response effectiveness in monitoring and detect-
20 ing illegal intrusions along the international
21 borders of the United States;
22 (H) plans are developed under the Pro-
23 gram to streamline site selection, site valida-
24 tion, and environmental assessment processes to

minimize delays of installing surveillance technology infrastructure;

(I) standards are developed under the Program to expand the shared use of existing private and governmental structures to install remote surveillance technology infrastructure where possible; and

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

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

(4) EVALUATION OF CONTRACTORS.—

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

providing goods or services to carry out the Integrated and Automated Surveillance Program.

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

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

SEC. 755. COMPREHENSIVE IMMIGRATION EFFICIENCY REVIEW.

(a) REVIEW.—The Secretary, in consultation with the Secretary of State, shall conduct a comprehensive review of the immigration procedures in existence as of the date of the enactment of this Act.

(b) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report, in classified form, if necessary, that—

(1) identifies inefficient immigration procedures; and

(2) outlines a plan to improve the efficiency and responsiveness of the immigration process.

SEC. 756. NORTHERN BORDER PROSECUTION INITIATIVE.

(a) INITIATIVE REQUIRED.—

(1) IN GENERAL.—From amounts made available to carry out this section, the Attorney General, acting through the Director of the Bureau of Justice Assistance of the Office of Justice Programs, shall establish and carry out a program, to be known as the Northern Border Prosecution Initiative, to provide funds to reimburse eligible northern border entities for costs incurred by those entities for handling case dispositions of criminal cases that are federally initiated but federally declined-referred.

(2) RELATION WITH SOUTHWESTERN BORDER PROSECUTION INITIATIVE.—The program established in paragraph (1) shall—

(A) be modeled after the Southwestern Border Prosecution Initiative; and

(B) serve as a partner program to that initiative to reimburse local jurisdictions for processing Federal cases.

(b) PROVISION AND ALLOCATION OF FUNDS.—Funds provided under the program established in subsection (a) shall be—

(1) provided in the form of direct reimbursements; and

(2) allocated in a manner consistent with the manner under which funds are allocated under the Southwestern Border Prosecution Initiative.

(c) USE OF FUNDS.—Funds provided to an eligible northern border entity under this section may be used by the entity for any lawful purpose, including:

(1) Prosecution and related costs;

(2) Court costs;

(3) Costs of courtroom technology;

(4) Costs of constructing holding spaces;

(5) Costs of administrative staff;

(6) Costs of defense counsel for indigent defendants; and

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

(d) DEFINITIONS.—In this section:

(1) CASE DISPOSITION.—The term ''case disposition''—

(A) for purposes of the Northern Border Prosecution Initiative, refers to the time between the arrest of a suspect and the resolution of the criminal charges through a county or State judicial or prosecutorial process; and

(B) does not include incarceration time for sentenced offenders, or time spent by prosecutors on judicial appeals.

(2) ELIGIBLE NORTHERN BORDER ENTITY.—The term ''eligible northern border entity'' means—

(A) the States of Alaska, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Ohio, Pennsylvania, Vermont, Washington, and Wisconsin; or

(B) any unit of local government within a State referred to in subparagraph (A).

(3) FEDERALLY DECLINED-REFERRED.—The term ''federally declined-referred''—

(A) means, with respect to a criminal case, that a decision has been made in that case by a United States Attorney or a Federal law enforcement agency during a Federal investigation to no longer pursue Federal criminal charges against a defendant and to refer such investigation to a State or local jurisdiction for possible prosecution; and

(B) includes a decision made on an individualized case-by-case basis as well as a decision made pursuant to a general policy or practice or pursuant to prosecutorial discretion.

(4) FEDERALLY INITIATED.—The term ''federally initiated'' means, with respect to a criminal case, that the case results from a criminal investigation or an arrest involving Federal law enforcement authorities for a potential violation of Federal criminal law, including investigations resulting from multi-jurisdictional task forces.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $28,000,000 for fiscal year 2006 and such sums as may be necessary for fiscal years thereafter.

SEC. 757. SOUTHWEST BORDER PROSECUTION INITIATIVE.

(a) REIMBURSEMENT TO STATE AND LOCAL PROSECUTORS FOR PROSECUTING FEDERALLY INITIATED DRUG CASES.—The Attorney General shall, subject to the availability of appropriations, reimburse Southern Border State and county prosecutors for prosecuting federally initiated and referred drug cases.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $50,000,000 for each of the fiscal years 2007 through 2012 to carry out subsection (a).

SEC. 758. GRANT PROGRAM TO ASSIST ELIGIBLE APPLICANTS.

(a) SHORT TITLE.—This section may be cited as the ''Initial Entry, Adjustment, and Citizenship Assistance Grant Act of 2006''.

(b) PURPOSE.—The purpose of this section is to establish a grant program within the Bureau of Citizenship and Immigration Services that provides funding to community-based organizations, including community-based legal service organizations, as appropriate, to develop and implement programs to assist eligible applicants for the conditional nonimmigrant worker program established under this Act by providing them with the services described in subsection (d)(2).

(c) DEFINITIONS.—In this section:

(1) COMMUNITY-BASED ORGANIZATION.—The term ''community-based organization'' means a non-profit, tax-exempt organization, including a faith-based organization, whose staff has experience and expertise in meeting the legal, social, educational, cultural educational, or cultural needs of immigrants, refugees, persons granted asylum, or persons applying for such statuses.

(2) IEACA GRANT.—The term ''IEACA grant'' means an Initial Entry, Adjustment, and Citizenship Assistance Grant authorized under subsection (d).

(d) ESTABLISHMENT OF INITIAL ENTRY, ADJUSTMENT, AND CITIZENSHIP ASSISTANCE GRANT PROGRAM.—

(1) GRANTS AUTHORIZED.—The Secretary, working through the Director of the Bureau of Citizenship and Immigration Services, may award IEACA grants to community-based organizations.

(2) USE OF FUNDS.—Grants awarded under this section may be used for the design and implementation of programs to provide the following services:

(A) INITIAL APPLICATION.—Assistance and instruction, including legal assistance, to aliens making initial application for treatment

under the program established by section 218D of the Immigration and Nationality Act, as added by section 601. Such assistance may include assisting applicants in—

(i) screening to assess prospective applicants' potential eligibility or lack of eligibility;

(ii) filling out applications;

(iii) gathering proof of identification, employment, residence, and tax payment;

(iv) gathering proof of relationships of eligible family members;

(v) applying for any waivers for which applicants and qualifying family members may be eligible; and

(vi) any other assistance that the Secretary or grantee considers useful to aliens who are interested in filing applications for treatment under such section 218D.

(B) ADJUSTMENT OF STATUS.—Assistance and instruction, including legal assistance, to aliens seeking to adjust their status in accordance with section 245 or 245B of the Immigration and Nationality Act.

(C) CITIZENSHIP.—Assistance and instruction to applicants on—

(i) the rights and responsibilities of United States Citizenship;

(ii) English as a second language;

(iii) civics; or

(iv) applying for United States citizenship.

(3) DURATION AND RENEWAL.—

(A) DURATION.—Each grant awarded under this section shall be awarded for a period of not more than 3 years.

(B) RENEWAL.—The Secretary may renew any grant awarded under this section in 1-year increments.

(4) APPLICATION FOR GRANTS.—Each entity desiring an IEACA grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(5) ELIGIBLE ORGANIZATIONS.—A community-based organization applying for a grant under this section to provide services described in subparagraph (A), (B), or (C)(iv) of paragraph (2) may not receive such a grant unless the organization is—

(A) recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations; or

(B) otherwise directed by an attorney.

(6) SELECTION OF GRANTEES.—Grants awarded under this section shall be awarded on a competitive basis.

(7) GEOGRAPHIC DISTRIBUTION OF GRANTS.—The Secretary shall approve applications under this section in a manner that ensures, to greatest extent practicable, that—

(A) not less than 50 percent of the funding for grants under this section are awarded to programs located in the 10 States with the highest percentage of foreign-born residents; and

(B) not less than 20 percent of the funding for grants under this section are awarded to programs located in States that are not described in subparagraph (A).

(8) ETHNIC DIVERSITY.—The Secretary shall ensure that community-based organizations receiving grants under this section provide services to an ethnically diverse population, to the greatest extent possible.

(e) LIAISON BETWEEN USCIS AND GRANTEES.—The Secretary shall establish a liaison between the Bureau of Citizenship and Immigration Services and the community of providers of services under this section to assure quality control, efficiency, and greater client willingness to come forward.

(f) REPORTS TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, and each subsequent July 1, the Secretary shall submit a report to Congress that includes information regarding—

(1) the status of the implementation of this section;

(2) the grants issued pursuant to this section; and

(3) the results of those grants.

(g) SOURCE OF GRANT FUNDS.—

(1) APPLICATION FEES.—The Secretary may use funds made available under sections 218A(l)(2) and 218D(f)(4)(B) of the Immigration and Nationality Act, as added by this Act, to carry out this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—

(A) AMOUNTS AUTHORIZED.—In addition to the amounts made available under paragraph (1), there are authorized to be appropriated

such additional sums as may be necessary for each of the fiscal years 2007 through 2011 to carry out this section.

(B) AVAILABILITY.—Any amounts appropriated pursuant to subparagraph (A) shall remain available until expended.

(h) DISTRIBUTION OF FEES AND FINES.—

(1) H–2C VISA FEES.—Notwithstanding section 218A(l) of the Immigration and Nationality Act, as added by section 403, 2 percent of the fees collected under section 218A of such Act shall be made available for grants under the Initial Entry, Adjustment, and Citizenship Assistance Grant Program established under this section.

(2) CONDITIONAL NONIMMIGRANT VISA FEES AND FINES.—Notwithstanding section 218D(f)(4) of the Immigration and Nationality Act, as added by section 601, 2 percent of the fees and fines collected under section 218D of such Act shall be made available for grants under the Initial Entry, Adjustment, and Citizenship Assistance Grant Program established under this section.

SEC. 759. SCREENING OF MUNICIPAL SOLID WASTE.

(a) DEFINITIONS.—In this section:

(1) BUREAU.—The term ‘‘ Bureau’’ means the Bureau of Customs and Border Protection.

(2) COMMERCIAL MOTOR VEHICLE.—The term ‘‘commercial motor vehicle’’ has the meaning given the term in section 31101 of title 49, United States Code.

(3) COMMISSIONER.—The term ‘‘Commissioner’’ means the Commissioner of the Bureau.

(4) MUNICIPAL SOLID WASTE.—The term ‘‘municipal solid waste’’ includes sludge (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)).

(b) REPORTS TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, the Commissioner shall submit to Congress a report that—

(1) indicates whether the methodologies and technologies used by the Bureau to screen for and detect the presence of chemical, nuclear, biological, and radiological weapons in municipal solid waste are as effective as the methodologies and technologies used by the Bureau to screen for those materials in other items of commerce entering the United States through commercial motor vehicle transport; and

(2) if the report indicates that the methodologies and technologies used to screen municipal solid waste are less effective than those used to screen other items of commerce, identifies the actions that the Bureau will take to achieve the same level of effectiveness in the screening of municipal solid waste, including actions necessary to meet the need for additional screening technologies.

(c) IMPACT ON COMMERCIAL MOTOR VEHICLES.—If the Commissioner fails to fully implement an action identified under subsection (b)(2) before the earlier of the date that is 180 days after the date on which the report under subsection (b) is required to be submitted or the date that is 180 days after the date on which the report is submitted, the Secretary shall deny entry into the United States of any commercial motor vehicle carrying municipal solid waste until the Secretary certifies to Congress that the methodologies and technologies used by the Bureau to screen for and detect the presence of chemical, nuclear, biological, and radiological weapons in municipal solid waste are as effective as the methodologies and technologies used by the Bureau to screen for those materials in other items of commerce entering into the United States through commercial motor vehicle transport.

SEC. 760. ACCESS TO IMMIGRATION SERVICES IN AREAS THAT ARE NOT ACCESSIBLE BY ROAD.

Notwithstanding any other provision of law, the Secretary shall permit an employee of Customs and Border Protection or Immigration and Customs Enforcement who carries out the functions of Customs and Border Protection or Immigration and Customs Enforcement in a geographic area that is not accessible by road to carry out any function that was performed by an employee of the Immigration and Naturalization Service in such area prior to the date of the enactment of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).

SEC. 761. BORDER SECURITY ON CERTAIN FEDERAL LAND.

(a) DEFINITIONS.—In this section:

(1) PROTECTED LAND.—The term ''protected land'' means land under the jurisdiction of the Secretary concerned.

(2) SECRETARY CONCERNED.—The term ''Secretary concerned'' means—

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

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

(b) SUPPORT FOR BORDER SECURITY NEEDS.—

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

(A) increased Customs and Border Protection personnel to secure protected land along the international land borders of the United States;

(B) Federal land resource training for Customs and Border Protection agents dedicated to protected land; and

(C) Unmanned Aerial Vehicles, aerial assets, Remote Video Surveillance camera systems, and sensors on protected land that is directly adjacent to the international land border of the United States, with priority given to units of the National Park System.

(2) COORDINATION.—In providing training for Customs and Border Protection agents under paragraph (1)(B), the Secretary shall coordinate with the Secretary concerned to ensure that the training is appropriate to the mission of the National Park Service, the United States Fish and Wildlife Service,

the Forest Service, or the relevant agency of the Department of the Interior or the Department of Agriculture to minimize the adverse impact on natural and cultural resources from border protection activities.

(c) INVENTORY OF COSTS AND ACTIVITIES.—The Secretary concerned shall develop and submit to the Secretary an inventory of costs incurred by the Secretary concerned relating to illegal border activity, including the cost of equipment, training, recurring maintenance, construction of facilities, restoration of natural and cultural resources, recapitalization of facilities, and operations.

(d) RECOMMENDATIONS.—The Secretary shall—

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

(2) not later than March 31, 2007, submit to the appropriate congressional committees (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)), including the Subcommittee on National Parks of the Senate and the Subcommittee on National Parks, Recreation and Public Lands of the

House of Representatives, the recommendations developed under paragraph (1).

(e) BORDER PROTECTION STRATEGY.—The Secretary, the Secretary of the Interior, and the Secretary of Agriculture shall jointly develop a border protection strategy that supports the border security needs of the United States in the manner that best protects—

(1) units of the National Park System;

(2) National Forest System land;

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

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

SEC. 762. UNMANNED AERIAL VEHICLES.

(a) UNMANNED AERIAL VEHICLES AND ASSOCIATED INFRASTRUCTURE.—The Secretary shall acquire and maintain MQ–9 unmanned aerial vehicles for use on the border, including related equipment such as—

(1) additional sensors;

(2) critical spares;

(3) satellite command and control; and

(4) other necessary equipment for operational support.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary to carry out subsection (a)—

(A) $178,400,000 for fiscal year 2007; and

(B) $276,000,000 for fiscal year 2008.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 763. RELIEF FOR WIDOWS AND ORPHANS.

(a) IN GENERAL.—

(1) IN GENERAL.—In applying clause (iii) of section 201(b)(2)(A) of the Immigration and Nationality Act, as added by section 504(a), to an alien whose citizen relative died before the date of the enactment of this Act, the alien relative may (notwithstanding the deadlines specified in such clause) file the classification petition under section 204(a)(1)(A)(ii) of such Act not later than 2 years after the date of the enactment of this Act.

(2) ELIGIBILITY FOR PAROLE.—If an alien was excluded, deported, removed or departed voluntarily before the date of the enactment of this Act based solely upon the alien's lack of classification as an immediate relative (as defined by 201(b)(2)(A)(ii) of

the Immigration and Nationality Act) due to the citizen's death—

(A) such alien shall be eligible for parole into the United States pursuant to the Attorney General's discretionary authority under section 212(d)(5) of such Act; and

(B) such alien's application for adjustment of status shall be considered notwithstanding section 212(a)(9) of such Act.

(b) ADJUSTMENT OF STATUS.—Section 245 (8 U.S.C. 1255), as amended by section 408(h) of this Act, is further amended by adding at the end the following:

"(o) APPLICATION FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES, PARENTS, AND CHILDREN.—

"(1) IN GENERAL.—Any alien described in paragraph (2) who applies for adjustment of status before the death of the qualifying relative, may have such application adjudicated as if such death had not occurred.

"(2) ALIEN DESCRIBED.—An alien is described in this paragraph is an alien who—

"(A) is an immediate relative (as described in section 201(b)(2)(A));

"(B) is a family-sponsored immigrant (as described in subsection (a) or (d) of section 203);

"(C) is a derivative beneficiary of an employment-based immigrant under section 203(b) (as described in section 203(d)); or

"(D) is a derivative beneficiary of a diversity immigrant (as described in section 203(c)).".

(c) TRANSITION PERIOD.—

(1) IN GENERAL.—Notwithstanding a denial of an application for adjustment of status for an alien whose qualifying relative died before the date of the enactment of this Act, such application may be renewed by the alien through a motion to reopen, without fee, if such motion is filed not later than 2 years after such date of enactment.

(2) ELIGIBILITY FOR PAROLE.—If an alien was excluded, deported, removed or departed voluntarily before the date of the enactment of this Act—

(A) such alien shall be eligible for parole into the United States pursuant to the Attorney General's discretionary authority under section 212(d)(5) of the Immigration and Nationality Act; and

(B) such alien's application for adjustment of status shall be considered notwithstanding section 212(a)(9) of such Act.

(d) PROCESSING OF IMMIGRANT VISAS.—Section 204(b) (8 U.S.C. 1154), as amended by section 204(b) of this Act, is further amended—

(1) by striking ''After an investigation'' and inserting the following:

''(1) IN GENERAL.—After an investigation''; and

(2) by adding at the end the following:

''(2) DEATH OF QUALIFYING RELATIVE.—

''(A) IN GENERAL.—Any alien described in paragraph (2) whose qualifying relative died before the completion of immigrant visa processing may have an immigrant visa application adjudicated as if such death had not occurred. An immigrant visa issued before the death of the qualifying relative shall remain valid after such death.

''(B) ALIEN DESCRIBED.—An alien is described in this paragraph is an alien who—

''(i) is an immediate relative (as described in section 201(b)(2)(A));

"(ii) is a family-sponsored immigrant (as described in subsection (a) or (d) of section 203);

"(iii) is a derivative beneficiary of an employment-based immigrant under section 203(b) (as described in section 203(d)); or

"(iv) is a derivative beneficiary of a diversity immigrant (as described in section 203(c)).".

(e) NATURALIZATION.—Section 319(a) (8 U.S.C. 1429(a)) is amended by inserting "(or, if the spouse is deceased, the spouse was a citizen of the United States)" after "citizen of the United States".

SEC. 764. TERRORIST ACTIVITIES.

Section 212(a)(3)(B)(i) (8 U.S.C. 1182(a)(3)(B)(i)) is amended—

(1) in subclause (III), by striking ", under circumstances indicating an intention to cause death or serious bodily harm, incited" and inserting "incited or advocated"; and

(2) in subclause (VII), by striking "or espouses terrorist activity or persuades others to endorse or espouse" and inserting "espouses, or advocates terrorist activity or persuades others to endorse, espouse, or advocate".

SEC. 765. FAMILY UNITY.

Section 212(a)(9) (8 U.S.C. 1182(a)(9)), as amended by section 212(a) of this Act, is further amended—

(1) in subparagraph (C)(ii), by striking ''between—'' and all that follows and inserting the following: ''between—

''(I) the alien having been battered or subjected to extreme cruelty; and

''(II) the alien's removal, departure from the United States, reentry or reentries into the United States, or attempted reentry into the United States.''; and

(2) by adding at the end the following:

''(D) WAIVER.—

''(i) IN GENERAL.—The Secretary may waive the application of subparagraphs (B) and (C) for an alien who is a beneficiary of a petition filed under section 201 or 203 if such petition was filed not later than the date of the enactment of the Comprehensive Immigration Reform Act of 2006.

"(ii) FINE.—An alien who is granted a waiver under clause (i) shall pay a $2,000 fine.".

SEC. 766. TRAVEL DOCUMENT PLAN.

Section 7209 (b)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1185 note) is amended by striking "January 1, 2008" and inserting "June 1, 2009".

SEC. 767. ENGLISH AS NATIONAL LANGUAGE.

(a) IN GENERAL.—Title 4, United States Code, is amended by adding at the end the following:

"CHAPTER 6—LANGUAGE OF THE GOVERNMENT

"Sec.
"161. Declaration of national language.
"162. Preserving and enhancing the role of the national language.

"§ 161. Declaration of national language

"English is the national language of the United States.

"§ 162. Preserving and enhancing the role of the national language

"The Government of the United States shall preserve and enhance the role of English as the national language of the United States of America. Unless otherwise authorized or provided by law, no person has a right, entitlement, or claim to have the Government of the United States or

any of its officials or representatives act, communicate, perform or provide services, or provide materials in any language other than English. If exceptions are made, that does not create a legal entitlement to additional services in that language or any language other than English. If any forms are issued by the Federal Government in a language other than English (or such forms are completed in a language other than English), the English language version of the form is the sole authority for all legal purposes.''.

(b) CONFORMING AMENDMENT.—The table of chapters for title 4, United States Code, is amended by adding at the end the following:

"6. Language of the Government ..... **161**''.

SEC. 768. REQUIREMENTS FOR NATURALIZATION.

(a) FINDINGS.—The Senate makes the following findings:

(1) Under United States law (8 U.S.C. 1423 (a)), lawful permanent residents of the United States who have immigrated from foreign countries must, among other requirements, demonstrate an understanding of the English language, United States history and Government, to become citizens of the United States.

(2) The Department of Homeland Security is currently conducting a review of the testing process

used to ensure prospective United States citizens demonstrate said knowledge of the English language and United States history and Government for the purpose of redesigning said test.

(b) DEFINITIONS.—For purposes of this section only, the following words are defined:

(1) KEY DOCUMENTS.—The term ''key documents'' means the documents that established or explained the foundational principles of democracy in the United States, including the United States Constitution and the amendments to the Constitution (particularly the Bill of Rights), the Declaration of Independence, the Federalist Papers, and the Emancipation Proclamation.

(2) KEY EVENTS.—The term ''key events'' means the critical turning points in the history of the United States (including the American Revolution, the Civil War, the world wars of the twentieth century, the civil rights movement, and the major court decisions and legislation) that contributed to extending the promise of democracy in American life.

(3) KEY IDEAS.—The term ''key ideas'' means the ideas that shaped the democratic institutions and heritage of the United States, including the no-

tion of equal justice under the law, freedom, individualism, human rights, and a belief in progress.

(4) KEY PERSONS.—The term ''key persons'' means the men and women who led the United States as founding fathers, elected officials, scientists, inventors, pioneers, advocates of equal rights, entrepreneurs, and artists.

(c) GOALS FOR CITIZENSHIP TEST REDESIGN.—The Department of Homeland Security shall establish as goals of the testing process designed to comply with provisions of (8 U.S.C. 1423 (a)) that prospective citizens—

(1) demonstrate a sufficient understanding of the English language for usage in everyday life;

(2) demonstrate an understanding of American common values and traditions, including the principles of the Constitution of the United States, the Pledge of Allegiance, respect for the flag of the United States, the National Anthem, and voting in public elections;

(3) demonstrate an understanding of the history of the United States, including the key events, key persons, key ideas, and key documents that shaped the institutions and democratic heritage of the United States;

(4) demonstrate an attachment to the principles of the Constitution of the United States and the well being and happiness of the people of the United States; and

(5) demonstrate an understanding of the rights and responsibilities of citizenship in the United States.

(d) IMPLEMENTATION.—The Secretary of Homeland Security shall implement changes to the testing process designed to ensure compliance with (8 U.S.C. 1423 (a)) not later than January 1, 2008.

SEC. 769. DECLARATION OF ENGLISH.

English is the common and unifying language of the United States that helps provide unity for the people of the United States.

SEC. 770. PRESERVING AND ENHANCING THE ROLE OF THE ENGLISH LANGUAGE.

The Government of the United States shall preserve and enhance the role of English as the common and unifying language of America. Nothing herein shall diminish or expand any existing rights under the law of the United States relative to services or materials provided by the Government of the United States in any language other than English.

For the purposes of this section, law is defined as including provisions of the United States Code and the United States Constitution, controlling judicial decisions, regulations, and controlling Presidential Executive Orders.

(a) CONFORMING AMENDMENT.—The table of chapters for title 4, United States Code, is amended by adding at the end Language of Government of the United States.

SEC. 771. EXCLUSION OF ILLEGAL ALIENS FROM CONGRESSIONAL APPORTIONMENT TABULATIONS.

In addition to any report under this Act the Director of the Bureau of the Census shall submit to Congress a report on the impact of illegal immigration on the apportionment of Representatives of Congress among the several States, and any methods and procedures that the Director determines to be feasible and appropriate, to ensure that individuals who are found by an authorized Federal agency to be unlawfully present in the United States are not counted in tabulating population for purposes of apportionment of Representatives in Congress among the several States.

SEC. 772. OFFICE OF INTERNAL CORRUPTION INVESTIGATION.

(a) INTERNAL CORRUPTION; BENEFITS FRAUD.—Section 453 of the Homeland Security Act of 2002 (6 U.S.C. 273) is amended—

(1) by striking ''the Bureau of'' each place it appears and inserting ''United States'';

(2) in subsection (a)—

(A) by striking paragraph (1) and inserting the following:

''(1) establishing the Office of Internal Corruption Investigation, which shall—

''(A) receive, process, administer, and investigate criminal and noncriminal allegations of misconduct, corruption, and fraud involving any employee or contract worker of United States Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;

''(B) ensure that all complaints alleging any violation described in subparagraph (A) are handled and stored in a manner appropriate to their sensitivity;

''(C) have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to United States Citizenship and Immigration Services, which relate to programs and operations for which the Director is responsible under this Act;

"(D) request such information or assistance from any Federal, State, or local government agency as may be necessary for carrying out the duties and responsibilities under this section;

"(E) require the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to carry out the functions under this section—

"(i) by subpoena, which shall be enforceable, in the case of contumacy or refusal to obey, by order of any appropriate United States district court; or

"(ii) through procedures other than subpoenas if obtaining documents or information from Federal agencies;

"(F) administer to, or take from, any person an oath, affirmation, or affidavit, as necessary to carry out the functions under this section, which oath, affirmation, or affidavit, if administered or taken by or before an agent of the Office of Internal Corruption Investigation shall have the same force and effect as if ad-

ministered or taken by or before an officer having a seal;

"(G) investigate criminal allegations and noncriminal misconduct;

"(H) acquire adequate office space, equipment, and supplies as necessary to carry out the functions and responsibilities under this section; and

"(I) be under the direct supervision of the Director.";

(B) in paragraph (2), by striking "and" at the end;

(C) in paragraph (3), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following:

"(4) establishing the Office of Immigration Benefits Fraud Investigation, which shall—

"(A) conduct administrative investigations, including site visits, to address immigration benefit fraud;

"(B) assist United States Citizenship and Immigration Services provide the right benefit to the right person at the right time;

"(C) track, measure, assess, conduct pattern analysis, and report fraud-related data to the Director; and

"(D) work with counterparts in other Federal agencies on matters of mutual interest or information-sharing relating to immigration benefit fraud."; and

(3) by adding at the end the following:

"(c) ANNUAL REPORT.—The Director, in consultation with the Office of Internal Corruption Investigations, shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes—

"(1) the activities of the Office, including the number of investigations began, completed, pending, turned over to the Inspector General for criminal investigations, and turned over to a United States Attorney for prosecution; and

"(2) the types of allegations investigated by the Office during the 12-month period immediately preceding the submission of the report that relate to the misconduct, corruption, and fraud described in subsection (a)(1).".

(b) USE OF IMMIGRATION FEES TO COMBAT FRAUD.—Section 286(v)(2)(B) (8 U.S.C. 1356(v)(2)(B))

is amended by adding at the end the following: ''Not less than 20 percent of the funds made available under this subparagraph shall be used for activities and functions described in paragraphs (1) and (4) of section 453(a) of the Homeland Security Act of 2002 (6 U.S.C. 273(a)).''.

SEC. 773. ADJUSTMENT OF STATUS FOR CERTAIN PERSECUTED RELIGIOUS MINORITIES.

(a) IN GENERAL.—The Secretary shall adjust the status of an alien to that of an alien lawfully admitted for permanent residence if the alien—

(1) is a persecuted religious minority;

(2) is admissible to the United States as an immigrant, except as provided under subsection (b);

(3) had an application for asylum pending on May 1, 2003;

(4) applies for such adjustment of status;

(5) was physically present in the United States on the date the application for such adjustment is filed; and

(6) pays a fee, in an amount determined by the Secretary, for the processing of such application.

(b) WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.—

(1) INAPPLICABLE PROVISION.—Section 212(a)(7) of the Immigration and Nationality Act (8

U.S.C. 1182(a)(7)) shall not apply to any adjustment of status under this section.

(2) WAIVER.—The Secretary may waive any other provision of section 212(a) of such Act (except for paragraphs (2) and (3)) if extraordinary and compelling circumstances warrant such an adjustment for humanitarian purposes, to ensure family unity, or if it is otherwise in the public interest.

SEC. 774. ELIGIBILITY OF AGRICULTURAL AND FORESTRY WORKERS FOR CERTAIN LEGAL ASSISTANCE.

Section 305 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 note; Public Law 99–603) is amended—

(1) by striking ''section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a))'' and inserting ''item (a) or (b) of section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii))''; and

(2) by inserting ''or forestry'' after ''agricultural''.

SEC. 775. DESIGNATION OF PROGRAM COUNTRIES.

Section 217(c)(1) (8 U.S.C. 1187(c)(1)) is amended to read as follows:

"(1) IN GENERAL.—As soon as any country fully meets the requirements under paragraph (2), the Secretary of Homeland Security, in consultation with the Secretary of State, shall designate such country as a program country.".

SEC. 776. GLOBAL HEALTHCARE COOPERATION.

(a) GLOBAL HEALTHCARE COOPERATION.—Title III (8 U.S.C. 1401 et seq.) is amended by inserting after section 317 the following:

"SEC. 317A. TEMPORARY ABSENCE OF ALIENS PROVIDING HEALTHCARE IN DEVELOPING COUNTRIES.

"(a) IN GENERAL.—Notwithstanding any other provision of this Act, the Secretary of Homeland Security shall allow an eligible alien and the spouse or child of such alien to reside in a candidate country during the period that the eligible alien is working as a physician or other healthcare worker in a candidate country. During such period the eligible alien and such spouse or child shall be considered—

"(1) to be physically present and residing in the United States for purposes of naturalization under section 316(a); and

"(2) to meet the continuous residency requirements under section 316(b).

"(b) DEFINITIONS.—In this section:

"(1) CANDIDATE COUNTRY.—The term 'candidate country' means a country that the Secretary of State determines is—

"(A) eligible for assistance from the International Development Association, in which the per capita income of the country is equal to or less than the historical ceiling of the International Development Association for the applicable fiscal year, as defined by the International Bank for Reconstruction and Development;

"(B) classified as a lower middle income country in the then most recent edition of the World Development Report for Reconstruction and Development published by the International Bank for Reconstruction and Development and having an income greater than the historical ceiling for International Development Association eligibility for the applicable fiscal year; or

"(C) qualifies to be a candidate country due to special circumstances, including natural disasters or public health emergencies.

"(2) ELIGIBLE ALIEN.—The term 'eligible alien' means an alien who—

"(A) has been lawfully admitted to the United States for permanent residence; and

"(B) is a physician or other healthcare worker.

"(c) CONSULTATION.—The Secretary of Homeland Security shall consult with the Secretary of State in carrying out this subsection.

"(d) PUBLICATION.—The Secretary of State shall publish—

"(1) not later than 6 months after the date of the enactment of the Comprehensive Immigration Reform Act of 2006, and annually thereafter, a list of candidate countries; and

"(2) an immediate amendment to such list at any time to include any country that qualifies as a candidate country due to special circumstances under subsection (b)(1)(C).".

(b) RULEMAKING.—

(1) REQUIREMENT.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall promulgate regulations to carry out the amendments made by this section.

(2) CONTENT.—The regulations required by paragraph (1) shall—

(A) permit an eligible alien (as defined in section 317A of the Immigration and Nationality Act, as added by subsection (a)) and the

spouse or child of the eligible alien to reside in a foreign country to work as a physician or other healthcare worker as described in subsection (a) of such section 317A for not less than a 12-month period and not more than a 24-month period, and shall permit the Secretary to extend such period for an additional period not to exceed 12 months, if the Secretary determines that such country has a continuing need for such a physician or other healthcare worker;

(B) provide for the issuance of documents by the Secretary to such eligible alien, and such spouse or child, if appropriate, to demonstrate that such eligible alien, and such spouse or child, if appropriate, is authorized to reside in such country under such section 317A; and

(C) provide for an expedited process through which the Secretary shall review applications for such an eligible alien to reside in a foreign country pursuant to subsection (a) of such section 317A if the Secretary of State determines a country is a candidate country pursuant to subsection (b)(1)(C) of such section 317A.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The Immigration and Nationality Act is amended as follows:

(1) Section 101(a)(13)(C)(ii) (8 U.S.C. 1101(a)(13)(C)(ii)) is amended by adding at the end ''except in the case of an eligible alien, or the spouse or child of such alien, authorized to be absent from the United States pursuant to section 317A,''.

(2) Section 211(b) (8 U.S.C. 1181(b)) is amended by inserting '', including an eligible alien authorized to reside in a foreign country pursuant to section 317A and the spouse or child of such eligible alien, if appropriate,'' after ''101(a)(27)(A),''.

(3) Section 212(a)(7)(A)(i)(I) (8 U.S.C. 1182(a)(7)(A)(i)(I)) is amended by inserting ''other than an eligible alien authorized to reside in a foreign country pursuant to section 317A and the spouse or child of such eligible alien, if appropriate,'' after ''Act,''.

(4) Section 319(b)(1)(B) (8 U.S.C. 1430(b)(1)(B)) is amended by inserting ''an eligible alien who is residing or has resided in a foreign country pursuant to section 317A'' before ''and'' at the end.

(5) The table of contents is amended by inserting after the item relating to section 317 the following:

"Sec. 317A. Temporary absence of aliens providing healthcare in developing countries.".

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Bureau of Citizenship and Immigration Services such sums as may be necessary to carry out this section and the amendments made by this section.

SEC. 777. ATTESTATION BY HEALTHCARE WORKERS.

(a) REQUIREMENT FOR ATTESTATION.—Section 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended by adding at the end the following new subparagraph:

"(E) HEALTHCARE WORKERS WITH OTHER OBLIGATIONS.—

"(i) IN GENERAL.—An alien who seeks to enter the United States for the purpose of performing labor as a physician or other healthcare worker is inadmissible unless the alien submits to the Secretary of Homeland Security or the Secretary of State, as appropriate, an attestation that the alien is not seeking to enter the United States for such purpose during any period in which the alien has an outstanding obli-

gation to the government of the alien's country of origin or the alien's country of residence.

"(ii) OBLIGATION DEFINED.—In this subparagraph, the term 'obligation' means an obligation incurred as part of a valid, voluntary individual agreement in which the alien received financial assistance to defray the costs of education or training to qualify as a physician or other healthcare worker in consideration for a commitment to work as a physician or other healthcare worker in the alien's country of origin or the alien's country of residence.

"(iii) WAIVER.—The Secretary of Homeland Security may waive a finding of inadmissibility under clause (i) if the Secretary determines that—

"(I) the obligation was incurred by coercion or other improper means;

"(II) the alien and the government of the country to which the alien has an outstanding obligation have reached a valid, voluntary agreement, pursuant to which the alien's obliga-

tion has been deemed satisfied, or the alien has shown to the satisfaction of the Secretary that the alien has been unable to reach such an agreement because of coercion or other improper means; or

"(III) the obligation should not be enforced due to other extraordinary circumstances, including undue hardship that would be suffered by the alien in the absence of a waiver.".

(b) EFFECTIVE DATE AND APPLICATION.—

(1) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective 180 days after the date of the enactment of this Act.

(2) APPLICATION BY THE SECRETARY.—The Secretary shall begin to carry out the subparagraph (E) of section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)), as added by subsection (a), not later than the effective date described in paragraph (1), including the requirement for the attestation and the granting of a waiver described in such subparagraph, regardless of whether regulations to implement such subparagraph have been promulgated.

SEC. 778. PUBLIC ACCESS TO THE STATUE OF LIBERTY.

Not later than 60 days after the date of the enactment of this Act, the Secretary of the Interior shall ensure that all persons who satisfy reasonable and appropriate security measures shall have full access to the public areas of the Statue of Liberty, including the crown and the stairs leading thereto.

SEC. 779. NATIONAL SECURITY DETERMINATION.

Notwithstanding any other provision of this Act, the President shall ensure that no provision of title IV or title VI of this Act, or any amendment made by either such title, is carried out until after the date on which the President makes a determination that the implementation of such title IV and title VI, and the amendments made by either such title, will strengthen the national security of the United States.

TITLE VIII—INTERCOUNTRY ADOPTION REFORM

SEC. 801. SHORT TITLE.

This title may be cited as the ''Intercountry Adoption Reform Act of 2006'' or the ''ICARE Act''.

SEC. 802. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) That a child, for the full and harmonious development of his or her personality, should grow

up in a family environment, in an atmosphere of happiness, love, and understanding.

(2) That intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her country of origin.

(3) There has been a significant growth in intercountry adoptions. In 1990, Americans adopted 7,093 children from abroad. In 2004, they adopted 23,460 children from abroad.

(4) Americans increasingly seek to create or enlarge their families through intercountry adoptions.

(5) There are many children worldwide that are without permanent homes.

(6) In the interest of children without a permanent family and the United States citizens who are waiting to bring them into their families, reforms are needed in the intercountry adoption process used by United States citizens.

(7) Before adoption, each child should have the benefit of measures taken to ensure that intercountry adoption is in his or her best interest and that prevents the abduction, selling, or trafficking of children.

(8) In addition, Congress recognizes that foreign-born adopted children do not make the decision whether to immigrate to the United States. They are being chosen by Americans to become part of their immediate families.

(9) As such these children should not be classified as immigrants in the traditional sense. Once fully and finally adopted, they should be treated as children of United States citizens.

(10) Since a child who is fully and finally adopted is entitled to the same rights, duties, and responsibilities as a biological child, the law should reflect such equality.

(11) Therefore, foreign-born adopted children of United States citizens should be accorded the same procedural treatment as biological children born abroad to a United States citizen.

(12) If a United States citizen can confer citizenship to a biological child born abroad, then the same citizen is entitled to confer such citizenship to their legally and fully adopted foreign-born child immediately upon final adoption.

(13) If a United States citizen cannot confer citizenship to a biological child born abroad, then such citizen cannot confer citizenship to their legally

and fully adopted foreign-born child, except through the naturalization process.

(b) PURPOSES.—The purposes of this title are—

(1) to ensure the any adoption of a foreign-born child by parents in the United States is carried out in the manner that is in the best interest of the child;

(2) to ensure that foreign-born children adopted by United States citizens will be treated identically to a biological child born abroad to the same citizen parent; and

(3) to improve the intercountry adoption process to make it more citizen friendly and focused on the protection of the child.

SEC. 803. DEFINITIONS.

In this title:

(1) ADOPTABLE CHILD.—The term ''adoptable child'' has the same meaning given such term in section 101(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(c)(3)), as added by section 824(a) of this Act.

(2) AMBASSADOR AT LARGE.—The term ''Ambassador at Large'' means the Ambassador at Large for Intercountry Adoptions appointed to head the Office pursuant to section 811(b).

(3) COMPETENT AUTHORITY.—The term ''competent authority'' means the entity or entities authorized by the law of the child's country of residence to engage in permanent placement of children who are no longer in the legal or physical custody of their biological parents.

(4) CONVENTION.—The term ''Convention'' means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993.

(5) FULL AND FINAL ADOPTION.—The term ''full and final adoption'' means an adoption—

(A) that is completed according to the laws of the child's country of residence or the State law of the parent's residence;

(B) under which a person is granted full and legal custody of the adopted child;

(C) that has the force and effect of severing the child's legal ties to the child's biological parents;

(D) under which the adoptive parents meet the requirements of section 825; and

(E) under which the child has been adjudicated to be an adoptable child in accordance with section 826.

(6) OFFICE.—The term ''Office'' means the Office of Intercountry Adoptions established under section 811(a).

(7) READILY APPROVABLE.—A petition or certification is ''readily approvable'' if the documentary support provided along with such petition or certification demonstrates that the petitioner satisfies the eligibility requirements and no additional information or investigation is necessary.

Subtitle A—ADMINISTRATION OF INTERCOUNTRY ADOPTIONS

SEC. 811. OFFICE OF INTERCOUNTRY ADOPTIONS.

(a) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, there shall be established within the Department of State, an Office of Intercountry Adoptions which shall be headed by the Ambassador at Large for Intercountry Adoptions.

(b) AMBASSADOR AT LARGE.—

(1) APPOINTMENT.—The Ambassador at Large shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who have background, experience, and training in intercountry adoptions.

(2) CONFLICTS OF INTEREST.—The individual appointed to be the Ambassador at Large shall be

free from any conflict of interest that could impede such individual's ability to serve as the Ambassador.

(3) AUTHORITY.—The Ambassador at Large shall report directly to the Secretary of State, in consultation with the Assistant Secretary for Consular Affairs.

(4) REGULATIONS.—The Ambassador at Large may not issue rules or regulations unless such rules or regulations have been approved by the Secretary of State.

(5) DUTIES OF THE AMBASSADOR AT LARGE.—The Ambassador at Large shall have the following responsibilities:

(A) IN GENERAL.—The primary responsibilities of the Ambassador at Large shall be—

(i) to ensure that any adoption of a foreign-born child by parents in the United States is carried out in the manner that is in the best interest of the child; and

(ii) to assist the Secretary of State in fulfilling the responsibilities designated to the central authority under title I of the Intercountry Adoption Act of 2000 (42 U.S.C. 14911 et seq.).

(B) ADVISORY ROLE.—The Ambassador at Large shall be a principal advisor to the President and the Secretary of State regarding matters affecting intercountry adoption and the general welfare of children abroad and shall make recommendations regarding—

(i) the policies of the United States with respect to the establishment of a system of cooperation among the parties to the Convention;

(ii) the policies to prevent abandonment, to strengthen families, and to advance the placement of children in permanent families; and

(iii) policies that promote the protection and well-being of children.

(C) DIPLOMATIC REPRESENTATION.—Subject to the direction of the President and the Secretary of State, the Ambassador at Large may represent the United States in matters and cases relevant to international adoption in—

(i) fulfillment of the responsibilities designated to the central authority under title I of the Intercountry Adoption Act of 2000 (42 U.S.C. 14911 et seq.);

(ii) contacts with foreign governments, intergovernmental organizations, and specialized agencies of the United Nations and other international organizations of which the United States is a member; and

(iii) multilateral conferences and meetings relevant to international adoption.

(D) INTERNATIONAL POLICY DEVELOPMENT.—The Ambassador at Large shall advise and support the Secretary of State and other relevant Bureaus of the Department of State in the development of sound policy regarding child protection and intercountry adoption.

(E) REPORTING RESPONSIBILITIES.—The Ambassador at Large shall have the following reporting responsibilities:

(i) IN GENERAL.—The Ambassador at Large shall assist the Secretary of State and other relevant Bureaus in preparing those portions of the Human Rights Reports that relate to the abduction, sale, and trafficking of children.

(ii) ANNUAL REPORT ON INTERCOUNTRY ADOPTION.—Not later than Sep-

tember 1 of each year, the Secretary of State shall prepare and submit to Congress an annual report on intercountry adoption. Each annual report shall include—

(I) a description of the status of child protection and adoption in each foreign country, including—

(aa) trends toward improvement in the welfare and protection of children and families;

(bb) trends in family reunification, domestic adoption, and intercountry adoption;

(cc) movement toward ratification and implementation of the Convention; and

(dd) census information on the number of children in orphanages, foster homes, and other types of nonpermanent residential care as reported by the foreign country;

(II) the number of intercountry adoptions by United States citizens, including the country from which each

child emigrated, the State in which each child resides, and the country in which the adoption was finalized;

(III) the number of intercountry adoptions involving emigration from the United States, including the country where each child now resides and the State from which each child emigrated;

(IV) the number of placements for adoption in the United States that were disrupted, including the country from which the child emigrated, the age of the child, the date of the placement for adoption, the reasons for the disruption, the resolution of the disruption, the agencies that handled the placement for adoption, and the plans for the child, and in addition, any information regarding disruption or dissolution of adoptions of children from other countries received pursuant to section 422(b)(14) of the Social Security Act (42 U.S.C. 622(b)(14));

(V) the average time required for completion of an adoption, set forth by the country from which the child emigrated;

(VI) the current list of agencies accredited and persons approved under the Intercountry Adoption Act of 2000 (42 U.S.C. 14901 et seq.) to provide adoption services;

(VII) the names of the agencies and persons temporarily or permanently debarred under the Intercountry Adoption Act of 2000 (42 U.S.C. 14901 et seq.), and the reasons for the debarment;

(VIII) the range of adoption fees involving adoptions by United States citizens and the median of such fees set forth by the country of origin;

(IX) the range of fees charged for accreditation of agencies and the approval of persons in the United States engaged in providing adoption services under the Convention; and

(X) recommendations of ways the United States might act to improve the welfare and protection of children and families in each foreign country.

(c) FUNCTIONS OF OFFICE.—The Office shall have the following 7 functions:

(1) APPROVAL OF A FAMILY TO ADOPT.—To approve or disapprove the eligibility of a United States citizen to adopt a child born in a foreign country.

(2) CHILD ADJUDICATION.—To investigate and adjudicate the status of a child born in a foreign country to determine whether that child is an adoptable child.

(3) FAMILY SERVICES.—To provide assistance to United States citizens engaged in the intercountry adoption process in resolving problems with respect to that process and to track intercountry adoption cases so as to ensure that all such adoptions are processed in a timely manner.

(4) INTERNATIONAL POLICY DEVELOPMENT.—To advise and support the Ambassador at Large and other relevant Bureaus of the Department of State in the development of sound policy regarding child protection and intercountry adoption.

(5) CENTRAL AUTHORITY.—To assist the Secretary of State in carrying out duties of the central authority as defined in section 3 of the Intercountry Adoption Act of 2000 (42 U.S.C. 14902).

(6) ENFORCEMENT.—To investigate, either directly or in cooperation with other appropriate international, Federal, State, or local entities, improprieties relating to intercountry adoption, including issues of child protection, birth family protection, and consumer fraud.

(7) ADMINISTRATION.—To perform administrative functions related to the functions performed under paragraphs (1) through (6), including legal functions and congressional liaison and public affairs functions.

(d) ORGANIZATION.—

(1) IN GENERAL.—All functions of the Office shall be performed by officers employed in a central office located in Washington, D.C. Within that office, there shall be 7 divisions corresponding to the 7 functions of the Office. The director of each such division shall report directly to the Ambassador at Large.

(2) APPROVAL TO ADOPT.—The division responsible for approving parents to adopt shall be divided into regions of the United States as follows:

(A) Northwest.

(B) Northeast.

(C) Southwest.

(D) Southeast.

(E) Midwest.

(F) West.

(3) CHILD ADJUDICATION.—To the extent practicable, the division responsible for the adjudication of foreign-born children as adoptable shall be divided by world regions which correspond to the world regions used by other divisions within the Department of State.

(4) USE OF INTERNATIONAL FIELD OFFICERS.—Nothing in this section shall be construed to prohibit the use of international field officers posted abroad, as necessary, to fulfill the requirements of this Act.

(5) COORDINATION.—The Ambassador at Large shall coordinate with appropriate employees of other agencies and departments of the United States, whenever appropriate, in carrying out the duties of the Ambassador.

(e) QUALIFICATIONS AND TRAINING.—In addition to meeting the employment requirements of the Department of State, officers employed in any of the 7 divisions of the Office shall undergo extensive and specialized training in the laws and processes of intercountry adoption as well as understanding the cultural, medical, emotional, and social issues surrounding intercountry adoption and adoptive families. The Ambassador at Large shall, whenever possible, recruit and hire individuals with background and experience in intercountry adoptions, taking care to ensure that such individuals do not have any conflicts of interest that might inhibit their ability to serve.

(f) USE OF ELECTRONIC DATABASES AND FILING.—To the extent possible, the Office shall make use of centralized, electronic databases and electronic form filing.

SEC. 812. RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES.

Section 505(a)(1) of the Intercountry Adoption Act of 2000 (42 U.S.C. 14901 note) is amended by inserting ''301, 302,'' after ''205,''.

SEC. 813. TECHNICAL AND CONFORMING AMENDMENT.

Section 104 of the Intercountry Adoption Act of 2000 (42 U.S.C. 14914) is repealed.

SEC. 814. TRANSFER OF FUNCTIONS.

(a) IN GENERAL.—Subject to subsection (c), all functions under the immigration laws of the United States with respect to the adoption of foreign-born children by United States citizens and their admission to the United States that have been vested by statute in, or exercised by, the Secretary of Homeland Security immediately prior to the effective date of this Act, are transferred to the Secretary of State on the effective date of this Act and shall be carried out by the Ambassador at Large, under the supervision of the Secretary of State, in accordance with applicable laws and this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Ambassador at Large may, for purposes of performing any function transferred to the Ambassador at Large under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function pursuant to this subtitle.

(c) LIMITATION ON TRANSFER OF PENDING ADOPTIONS.—If an individual has filed a petition with the Immigration and Naturalization Service or the Department of Homeland Security with respect to the adoption of a foreign-born child prior to the date of enactment of this

Act, the Secretary of Homeland Security shall have the authority to make the final determination on such petition and such petition shall not be transferred to the Office.

SEC. 815. TRANSFER OF RESOURCES.

Subject to section 1531 of title 31, United States Code, upon the effective date of this Act, there are transferred to the Ambassador at Large for appropriate allocation in accordance with this Act, the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department of Homeland Security in connection with the functions transferred pursuant to this subtitle.

SEC. 816. INCIDENTAL TRANSFERS.

The Ambassador at Large may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out this subtitle. The Ambassador at Large shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this subtitle.

SEC. 817. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Ambassador at Large, the former Commissioner of the Immigration and Naturalization Service, or the Secretary of Homeland Security, or their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this subtitle; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under section 814 shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this subtitle before an office whose functions are transferred pursuant to this subtitle, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This subtitle shall not affect suits commenced before the effective date of this subtitle, and in

all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of State, the Immigration and Naturalization Service, or the Department of Homeland Security, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this subtitle such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this subtitle, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this subtitle shall apply to the exercise of such

function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

Subtitle B—Reform of United States Laws Governing Intercountry Adoptions

SEC. 821. AUTOMATIC ACQUISITION OF CITIZENSHIP FOR ADOPTED CHILDREN BORN OUTSIDE THE UNITED STATES.

(a) AUTOMATIC CITIZENSHIP PROVISIONS.—

(1) AMENDMENT OF THE INA.—Section 320 of the Immigration and Nationality Act (8 U.S.C. 1431) is amended to read as follows:

"SEC. 320. CONDITIONS FOR AUTOMATIC CITIZENSHIP FOR CHILDREN BORN OUTSIDE THE UNITED STATES.

"(a) IN GENERAL.—A child born outside of the United States automatically becomes a citizen of the United States—

"(1) if the child is not an adopted child—

"(A) at least 1 parent of the child is a citizen of the United States, whether by birth or naturalization, who has been physically present (as determined under subsection (b)) in the United States or its outlying possessions for a

period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years; and

"(B) the child is under the age of 18 years; or

"(2) if the child is an adopted child, on the date of the full and final adoption of the child—

"(A) at least 1 parent of the child is a citizen of the United States, whether by birth or naturalization, who has been physically present (as determined under subsection (b)) in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years;

"(B) the child is an adoptable child;

"(C) the child is the beneficiary of a full and final adoption decree entered by a foreign government or a court in the United States; and

"(D) the child is under the age of 16 years.

"(b) PHYSICAL PRESENCE.—For the purposes of subsection (a)(2)(A), the requirement for physical pres-

ence in the United States or its outlying possessions may be satisfied by the following:

"(1) Any periods of honorable service in the Armed Forces of the United States.

"(2) Any periods of employment with the United States Government or with an international organization as that term is defined in section 1 of the International Organizations Immunities Act (22 U.S.C. 288) by such citizen parent.

"(3) Any periods during which such citizen parent is physically present outside the United States or its outlying possessions as the dependent unmarried son or daughter and a member of the household of a person—

"(A) honorably serving with the Armed Forces of the United States; or

"(B) employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act (22 U.S.C. 288).

"(c) FULL AND FINAL ADOPTION.—In this section, the term 'full and final adoption' means an adoption—

"(1) that is completed under the laws of the child's country of residence or the State law of the parent's residence;

"(2) under which a person is granted full and legal custody of the adopted child;

"(3) that has the force and effect of severing the child's legal ties to the child's biological parents;

"(4) under which the adoptive parents meet the requirements of section 825 of the Intercountry Adoption Reform Act of 2006; and

"(5) under which the child has been adjudicated to be an adoptable child in accordance with section 826 of the Intercountry Adoption Reform Act of 2006.".

(b) CONFORMING AMENDMENT.—The table of contents in the first section of the Immigration and Nationality Act (66 Stat. 163) is amended by striking the item relating to section 320 and inserting the following:

"Sec. 320. Conditions for automatic citizenship for children born outside the United States.".

(c) EFFECTIVE DATE.—This section shall take effect as if enacted on June 27, 1952.

SEC. 822. REVISED PROCEDURES.

Notwithstanding any other provision of law, the following requirements shall apply with respect to the adoption of foreign born children by United States citizens:

(1) Upon completion of a full and final adoption, the Secretary shall issue a United States passport and a Consular Report of Birth for a child who

satisfies the requirements of section 320(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1431(a)(2)), as amended by section 821 of this Act, upon application by a United States citizen parent.

(2) An adopted child described in paragraph (1) shall not require the issuance of a visa for travel and admission to the United States but shall be admitted to the United States upon presentation of a valid, unexpired United States passport.

(3) No affidavit of support under section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a) shall be required in the case of any adoptable child.

(4) The Secretary of State, acting through the Ambassador at Large, shall require that agencies provide prospective adoptive parents an opportunity to conduct an independent medical exam and a copy of any medical records of the child known to exist (to the greatest extent practicable, these documents shall include an English translation) on a date that is not later than the earlier of the date that is 2 weeks before the adoption, or the date on which prospective adoptive parents travel to such a foreign country to complete all procedures in such country relating to adoption.

(5) The Secretary of State, acting through the Ambassador at Large, shall take necessary measures to ensure that all prospective adoptive parents adopting internationally are provided with training that includes counseling and guidance for the purpose of promoting a successful intercountry adoption before such parents travel to adopt the child or the child is placed with such parents for adoption.

(6) The Secretary of State, acting through the Ambassador at Large, shall take necessary measures to ensure that—

(A) prospective adoptive parents are given full disclosure of all direct and indirect costs of intercountry adoption before the parents are matched with a child for adoption;

(B) fees charged in relation to the intercountry adoption be on a fee-for-service basis not on a contingent fee basis; and

(C) that the transmission of fees between the adoption agency, the country of origin, and the prospective adoptive parents is carried out in a transparent and efficient manner.

(7) The Secretary of State, acting through the Ambassador at Large, shall take all measures necessary to ensure that all documents provided to a

country of origin on behalf of a prospective adoptive parent are truthful and accurate.

SEC. 823. NONIMMIGRANT VISAS FOR CHILDREN TRAVELING TO THE UNITED STATES TO BE ADOPTED BY A UNITED STATES CITIZEN.

(a) NONIMMIGRANT CLASSIFICATION.—

(1) IN GENERAL.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended by adding at the end the following:

''(W) an adoptable child who is coming into the United States for adoption by a United States citizen and a spouse jointly or by an unmarried United States citizen at least 25 years of age, who has been approved to adopt by the Office of International Adoption of the Department of State.''.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Such section 101(a)(15) is further amended—

(A) by striking ''or'' at the end of subparagraph (U); and

(B) by striking the period at the end of subparagraph (V) and inserting ''; or''.

(b) TERMINATION OF PERIOD OF AUTHORIZED ADMISSION.—Section 214 of the Immigration and Nation-

1 ality Act (8 U.S.C. 1184) is amended by adding at the
2 end the following:

3 "(s) In the case of a nonimmigrant described in sec-
4 tion 101(a)(15)(W), the period of authorized admission
5 shall terminate on the earlier of—

6 "(1) the date on which the adoption of the non-
7 immigrant is completed by the courts of the State
8 where the parents reside; or

9 "(2) the date that is 4 years after the date of
10 admission of the nonimmigrant into the United
11 States, unless a petitioner is able to show cause as
12 to why the adoption could not be completed prior to
13 such date and the Secretary of State extends such
14 period for the period necessary to complete the adop-
15 tion.".

16 (c) TEMPORARY TREATMENT AS LEGAL PERMANENT
17 RESIDENT.—Notwithstanding any other law, all benefits
18 and protections that apply to a legal permanent resident
19 shall apply to a nonimmigrant described in section
20 101(a)(15)(W) of the Immigration and Nationality Act,
21 as added by subsection (a), pending a full and final adop-
22 tion.

23 (d) EXCEPTION FROM IMMUNIZATION REQUIREMENT
24 FOR CERTAIN ADOPTED CHILDREN.—Section

212(a)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(1)(C)) is amended—

(1) in the heading by striking ''**10 YEARS**'' and inserting ''**18 YEARS**''; and

(2) in clause (i), by striking ''10 years'' and inserting ''18 years''.

(e) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of State shall prescribe such regulations as may be necessary to carry out this section.

SEC. 824. DEFINITION OF ADOPTABLE CHILD.

(a) IN GENERAL.—Section 101(c) of the Immigration and Nationality Act (8 U.S.C. 1101(c)) is amended by adding at the end the following:

''(3) The term 'adoptable child' means an unmarried person under the age of 18—

''(A)(i) whose biological parents (or parent, in the case of a child who has one sole or surviving parent) or other persons or institutions that retain legal custody of the child—

''(I) have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption and that such consent has not been induced by payment or compensa-

tion of any kind and has not been given prior to the birth of the child;

"(II) are unable to provide proper care for the child, as determined by the competent authority of the child's residence; or

"(III) have voluntarily relinquished the child to the competent authorities pursuant to the law of the child's residence; or

"(ii) who, as determined by the competent authority of the child's residence—

"(I) has been abandoned or deserted by their biological parent, parents, or legal guardians; or

"(II) has been orphaned due to the death or disappearance of their biological parent, parents, or legal guardians;

"(B) with respect to whom the Secretary of State is satisfied that the proper care will be furnished the child if admitted to the United States;

"(C) with respect to whom the Secretary of State is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship and that the parent-child relationship of the child and the biological parents has been terminated (and in carrying out both obligations under this subpara-

graph the Secretary of State, in consultation with the Secretary of Homeland Security, may consider whether there is a petition pending to confer immigrant status on one or both of the biological parents);

"(D) with respect to whom the Secretary of State, is satisfied that there has been no inducement, financial or otherwise, offered to obtain the consent nor was it given before the birth of the child;

"(E) with respect to whom the Secretary of State, in consultation with the Secretary of Homeland Security, is satisfied that the person is not a security risk; and

"(F) whose eligibility for adoption and emigration to the United States has been certified by the competent authority of the country of the child's place of birth or residence.".

(b) CONFORMING AMENDMENT.—Section 204(d) of the Immigration and Nationality Act (8 U.S.C. 1154(d)) is amended by inserting "and an adoptable child as defined in section 101(c)(3)" before "unless a valid home-study".

SEC. 825. APPROVAL TO ADOPT.

(a) IN GENERAL.—Prior to the issuance of a visa under section 101(a)(15)(W) of the Immigration and Nationality Act, as added by section 823(a) of this Act, or the issuance of a full and final adoption decree, the United States citizen adoptive parent shall have approved by the Office a petition to adopt. Such petition shall be subject to the same terms and conditions as are applicable to petitions for classification under section 204.3 of title 8 of the Code of Federal Regulations, as in effect on the day before the date of enactment of this Act.

(b) EXPIRATION OF APPROVAL.—Approval to adopt under this Act is valid for 24 months from the date of approval. Nothing in this section may prevent the Secretary of Homeland Security from periodically updating the fingerprints of an individual who has filed a petition for adoption.

(c) EXPEDITED REAPPROVAL PROCESS OF FAMILIES PREVIOUSLY APPROVED TO ADOPT.—The Secretary of State shall prescribe such regulations as may be necessary to provide for an expedited and streamlined process for families who have been previously approved to adopt and whose approval has expired, so long as not more than 4 years have lapsed since the original application.

(d) DENIAL OF PETITION.—

(1) NOTICE OF INTENT.—If the officer adjudicating the petition to adopt finds that it is not readily approvable, the officer shall notify the petitioner, in writing, of the officer's intent to deny the petition. Such notice shall include the specific reasons why the petition is not readily approvable.

(2) PETITIONER'S RIGHT TO RESPOND.—Upon receiving a notice of intent to deny, the petitioner has 30 days to respond to such notice.

(3) DECISION.—Within 30 days of receipt of the petitioner's response the Office must reach a final decision regarding the eligibility of the petitioner to adopt. Notice of a formal decision must be delivered in writing.

(4) RIGHT TO AN APPEAL.—Unfavorable decisions may be appealed to the Department of State and, after the exhaustion of the appropriate appeals process of the Department, to a United States district court.

(5) REGULATIONS REGARDING APPEALS.—Not later than 6 months after the date of enactment of this Act, the Secretary of State shall promulgate formal regulations regarding the process for appealing the denial of a petition.

SEC. 826. ADJUDICATION OF CHILD STATUS.

(a) IN GENERAL.—Prior to the issuance of a full and final adoption decree or a visa under section 101(a)(15)(W) of the Immigration and Nationality Act, as added by section 823(a) of this Act—

(1) the Ambassador at Large shall obtain from the competent authority of the country of the child's residence a certification, together with documentary support, that the child sought to be adopted meets the definition of an adoptable child; and

(2) not later than 15 days after the date of the receipt of the certification referred to in paragraph (1), the Secretary of State shall make a final determination on whether the certification and the documentary support are sufficient to meet the requirements of this section or whether additional investigation or information is required.

(b) PROCESS FOR DETERMINATION.—

(1) IN GENERAL.—The Ambassador at Large shall work with the competent authorities of the child's country of residence to establish a uniform, transparent, and efficient process for the exchange and approval of the certification and documentary support required under subsection (a).

(2) NOTICE OF INTENT.—If the Secretary of State determines that a certification submitted by

the competent authority of the child's country of origin is not readily approvable, the Ambassador at Large shall—

(A) notify the competent authority and the prospective adoptive parents, in writing, of the specific reasons why the certification is not sufficient; and

(B) provide the competent authority and the prospective adoptive parents the opportunity to address the stated insufficiencies.

(3) PETITIONERS RIGHT TO RESPOND.—Upon receiving a notice of intent to find that a certification is not readily approvable, the prospective adoptive parents shall have 30 days to respond to such notice.

(4) DECISION.—Not later than 30 days after the date of receipt of a response submitted under paragraph (3), the Secretary of State shall reach a final decision regarding the child's eligibility as an adoptable child. Notice of such decision must be in writing.

(5) RIGHT TO AN APPEAL.—Unfavorable decisions on a certification may be appealed through the appropriate process of the Department of State and,

after the exhaustion of such process, to a United States district court.

SEC. 827. FUNDS.

The Secretary of State shall provide the Ambassador at Large with such funds as may be necessary for—

(1) the hiring of staff for the Office;

(2) investigations conducted by such staff; and

(3) travel and other expenses necessary to carry out this title.

Subtitle C—Enforcement

SEC. 831. CIVIL PENALTIES AND ENFORCEMENT.

(a) CIVIL PENALTIES.—A person shall be subject, in addition to any other penalty that may be prescribed by law, to a civil money penalty of not more than $50,000 for a first violation, and not more than $100,000 for each succeeding violation if such person—

(1) violates a provision of this title or an amendment made by this title;

(2) makes a false or fraudulent statement, or misrepresentation, with respect to a material fact, or offers, gives, solicits, or accepts inducement by way of compensation, intended to influence or affect in the United States or a foreign country—

(A) a decision for an approval under title II;

(B) the relinquishment of parental rights or the giving of parental consent relating to the adoption of a child; or

(C) a decision or action of any entity performing a central authority function; or

(3) engages another person as an agent, whether in the United States or in a foreign country, who in the course of that agency takes any of the actions described in paragraph (1) or (2).

(b) CIVIL ENFORCEMENT.—

(1) AUTHORITY OF ATTORNEY GENERAL.—The Attorney General may bring a civil action to enforce subsection (a) against any person in any United States district court.

(2) FACTORS TO BE CONSIDERED IN IMPOSING PENALTIES.—In imposing penalties the court shall consider the gravity of the violation, the degree of culpability of the defendant, and any history of prior violations by the defendant.

SEC. 832. CRIMINAL PENALTIES.

Whoever knowingly and willfully commits a violation described in paragraph (1) or (2) of section 831(a) shall

1 be subject to a fine of not more than $250,000, imprison-
2 ment for not more than 5 years, or both.

Passed the Senate May 25, 2006.

Attest:

Secretary.

109th CONGRESS
2d Session

S. 2611

AN ACT

To provide for comprehensive immigration reform and for other purposes.